

2009 SENATE EDUCATION

SB 2087

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2087

Senate Education Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6978

Committee Clerk Signature

*Troy Schuchard*

Minutes:

**Chairman Freborg** opened the hearings on SB 2087, all members present.

**Bill Goetz**, Chancellor of North Dakota University System, introduced and testified in favor of SB 2087. (See attachment #1). Goetz summarized the hiring process to which presidents and chancellors go through. The position is that individuals, who may be interested in a position in the North Dakota University System, may be deterred due to the public open records laws in North Dakota. Closing these records may entice high profile candidates to apply.

**Senator Lee** inquired what happens to the names of the applicants who do not make "the cut".

**Bill Goetz** referred question to **Pat Seaworth**, Legal Counsel for North Dakota Higher Education, and stated the applicant's names would stay sealed unless they were semi-finalists for the position.

**Chairman Freborg** asked for testimony in opposition to SB 2087.

**Roger Bailey**, Executive Director of the North Dakota Newspaper Association, testified in opposition of SB 2087. (See attachment #2)

**Chairman Freborg** closed hearing on SB 2087

**Senator Flakoll** moved for a DO PASS on SB 2087, **Senator Lee** seconded the motion.

The vote was 4-1 with **Senator Taylor** in opposition. **Senator Lee** carrying.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2087

Senate Education Committee

Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7883, 7885

Committee Clerk Signature

Minutes:

Chairman Freborg opened the discussion on SB 2087.

Senator Flakoll moved the committee reconsider its action by which it passed SB 2087. He was on the prevailing side, seconded by Senator Lee. The motion passed 5 – 0.

Senator Andrist appeared before the committee to propose an amendment. He spent much of his life in the newspaper business and open records are part of his heart and soul. He learned some time ago that the North Dakota University System thought they were not getting enough applications for their presidency positions because the names of the applicants are disclosed. His former colleagues have asked him to find some kind of middle ground. He would be willing to let them have the first screening but 2087 goes way too far in keeping them secret. He would propose the next round of candidates, no matter how many, are notified and have 7 days to verify he wants to be considered and the names are public record from that point on. If they say they do not want to be considered, there is no public record.

Senator Bakke said the bill says the semi finalist level. Would this second round be before the semi finalist level?

Senator Andrist said it would be considerable prior. The semi final round would be final interviews and that is closing far too much.

Senator Lee said in the third bullet , if applications are reopened, would they all be open records. If they are not satisfied with the first round candidates, and reopened applications to would all those candidates be open records?

Senator Andrist said we would need to ask Jack McDonald. It would depend if it was just one candidate who asked to be reconsidered or a new pool.

Senator Flakoll asked the purpose of #4.

Senator Andrist said we can ask Jack McDonald.

Jack McDonald , North Dakota Newspaper Association, appeared to answer questions. He said #4 restates what is already in law. They can meet in closed session to look at exempt records.

Senator Flakoll said he is uncertain about the first portion of #2. If there were 40 applicants and a selection committee narrowed them down to 10, would only those 10 be open records?

Jack McDonald said the intent is to make the initial pool exempt. Once a reduction of the pool is made, the records are open. For example, if there are 40 applicants, they might reduce the list to 20 out of hand. After the initial reduction, the remaining people would be notified that they have made the first cut and told they have 1 week to withdraw their application or in 1 week their application will be an open record.

Senator Flakoll said they could go from 40 to 5 in one big cut.

Jack McDonald said they could but that has not been done in the past. Traditionally they reduce it to a workable group, they might go from 40 to 20 and then make some calls and take the 20 to 12, then do some interviews and reduce the pool to 7.

Senator Flakoll said if they are able to go from 40 to 10 in the first cut, can they contact colleagues or references and still exempt the first round from open records.

Jack McDonald said there are 3 kinds of records:

1. Always open
2. Exempt, gives the record holder discretion to release for the benefit of the organization
3. Confidential, they are closed and it is a felony to release them

Senator Flakoll asked the rationale of the 1 week time period.

Jack McDonald said it is to give a person an opportunity to withdraw. It seemed a reasonable amount and it is time certain.

Senator Flakoll said he is confused. In earlier testimony on 2087, the representative from the North Dakota Newspaper Association unanimously supported the bill as introduced and the executive committee voted 7 – 1- 1 against the bill. Is there an official position of the North Dakota Newspaper Association on the amendment, both the policy committee and the executive committee?

Jack McDonald said they have not had a chance to review the amendment. He understands Senator Andrist has discussed this with the executive director.

Senator Bakke said she heard concern from the carriers of the bill, when they got to a certain point, if people did not think they were in the final selection, they would pull out. Would we lose qualified candidates?

Jack McDonald said he didn't think so. If they made it to that level they are under serious consideration for the position. One reason it is difficult is each search committee sets its own numbers and terminology, there is no uniformity.

Senator Taylor said we would know in two years if they lose a lot of candidate with this method. The colleges could come back next session if they were having a problem.

Jack McDonald said he presumes so.

Senator Lee said the Board of Higher Education brought the bill, do they agree with the amendment?

Jack McDonald said he isn't sure, probably not. Senator Andrist brought the amendment.

Senator Bakke said what if you reopen applications, can you make one cut again?

Jack McDonald said if one candidate was discarded before and now brought in, it is now public record. If they do not have qualified applicants and re advertize, then you would start over.

Senator Flakoll asked if this would affect interim positions.

Jack McDonald said it applies those who apply for the job. The interim appointee is usually named without a search. If there was a search, it would apply.

Senator Flakoll said in the situation with Mr. Dunn, we thought he would be the interim chancellor and then the board made him the full fledged chancellor.

Jack McDonald said at that time the board said 2 or 3 candidates were under consideration for the temporary position. He is not sure this would have applied, several names were

mentioned, most decided not to pursue the temporary position.

Senator Flakoll asked Senator Andrist if this has been discussed with the newspaper folks.

Senator Andrist said the government affairs committee thought it was the practical thing to do, to try to compromise with the North Dakota University System. The board, in a telephone poll, which he thinks was a mistake, decided to override. From his standpoint when he put together this amendment idea, he went to the executive director. He said the board of directors had given him a directive. Senator Andrist's son is chair of the government affairs committee and he did not agree with their decision. He was happy with the amendment, at that point they were happy to get half a loaf. He said we are talking about searches here, it would only apply if there was a search process going on.

Senator Bakke asked if the Board of Higher Education has seen the amendments.

Senator Andrist said they have not seen the amendments.

Senator Freborg said he would prefer to go to 2 or 3 weeks instead of one week.

Senator Bakke said she wants to know Higher Education's position on the amendment.

Senator Freborg said they won't like it, we can wait if she wants to.

Senator Bakke said she agrees, they won't like it.

Senator Freborg said we don't have to do anything, it does destroy the bill. It was a courtesy to allow Senator Andrist to propose his amendment.

Senator Flakoll said if the board was smart, they might indicate in the application process they would narrow the field to a specific number, say 10 in the first cut. Two weeks might be better.

Sometimes they have time, sometimes they are on a dead run to replace someone.

Senator Bakke asked if Senator Flakoll is suggesting we put a number into section 2.

Senator Flakoll said no, just in practice or policy the board could implement some rules for a search.

Senator Flakoll said it is part of the process to involve an executive search firm and have different representatives from the North Dakota University System on the search committee.

There are sometime intermediary processes. The wild card is we don't know how many candidates they have to start.

Senator Lee said if the board had to work with this, they would try to get down to a reasonable number of good applicants before they would disclose any, then make their cut. This is a reasonable position to put them in, it's not what they wanted but it is halfway back.

Senator Freborg said it is a compromise for the media too.

Senator Bakke said we want the very best applicants. Why are we making it so difficult to get those people. The Board of Higher Education came to use and told us this was becoming a problem. This puts it back to where it was for them in the beginning.

Senator Flakoll said one challenge with a search is when an individual has to fill out a form to rate and rank the candidates and in most cases, one of the candidates is your boss who will

have access to your ranking. You are reluctant to be honest. He wishes they would go to a more anonymous system. The bill does not really address this.

Senator Taylor moved amendment .0102 with the change from one week to two weeks, seconded by Senator Lee.

The motion passed 4 – 1.

Senator Bakke moved a Do Pass As Amended on SB 2087, seconded by Senator Flakoll. The motion passed 5 – 0. Senator Lee will carry the bill.



2087

Date: 1-14-09  
Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.**

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Flakoll Seconded By Lee

| Senators         | Yes | No | Senators       | Yes | No |
|------------------|-----|----|----------------|-----|----|
| Senator Freborg  | ✓   |    | Senator Taylor |     | ✓  |
| Senator Gary Lee | ✓   |    | Senator Bakke  | ✓   |    |
| Senator Flakoll  | ✓   |    |                |     |    |
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Total (Yes) 4 No 1

Absent N/A

Floor Assignment Lee

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

**REPORT OF STANDING COMMITTEE**

**SB 2087: Education Committee (Sen. Freborg, Chairman) recommends DO PASS**  
(4 YEAS, 1 NAY, ABSENT AND NOT VOTING). SB 2087 was placed on the Eleventh order on the calendar.

Date: 1/27/09  
 Roll Call Vote #: \_\_\_\_\_

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2087

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Reconsider Action

Motion Made By Sen. Flakoll Seconded By Sen Lee

| Senators         | Yes | No | Senators       | Yes | No |
|------------------|-----|----|----------------|-----|----|
| Senator Freborg  | ✓   |    | Senator Taylor | ✓   |    |
| Senator Gary Lee | ✓   |    | Senator Bakke  | ✓   |    |
| Senator Flakoll  | ✓   |    |                |     |    |
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Total (Yes) 5 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

January 26, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2087

Page 1, replace lines 9 through 23 with:

- "1. Except as otherwise provided in this section, a record that would identify an individual applying for or under consideration for employment or appointment as the commissioner of higher education or president of an institution under the control of the state board of higher education is an exempt record as defined in section 44-04-17.1. The board or a board search committee, upon request, shall disclose information regarding the number of applicants or candidates for a position covered by this section.
2. Once the board or board search committee begins to reduce the number of applicants or candidates under consideration for a position, the board or board search committee shall notify each applicant or candidate remaining under consideration that any record relating to the candidate will become an open record within one week unless the applicant or candidate elects to withdraw from consideration for the position. If an applicant or candidate elects to withdraw from consideration for the position, any record relating to that individual remains an exempt record.
3. If the board or board search committee considers a new applicant or candidate after the initial reduction in the number of applicants or candidates, any record relating to the new applicant or candidate is an open record.
4. The board or board search committee may enter an executive session under section 44-04-19.2 to consider or discuss an exempt record or the identity of an applicant or candidate whose records are exempt under this section."

Page 2, remove lines 1 through 18

Renumber accordingly

1/27/09

Date: 1/27/09  
 Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2087

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Pass Amendment .0102 & change below

Motion Made By Sen. Taylor Seconded By Sen. Lee

| Senators         | Yes | No | Senators       | Yes | No |
|------------------|-----|----|----------------|-----|----|
| Senator Freborg  | ✓   |    | Senator Taylor | ✓   |    |
| Senator Gary Lee | ✓   |    | Senator Bakke  |     | ✓  |
| Senator Flakoll  | ✓   |    |                |     |    |
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Total (Yes) 4 No 1

Absent 0

Floor Assignment \_\_\_\_\_

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

*Subsection 2 change 1 week to 2 weeks.*

Date: 1/27/09 :  
Roll Call Vote #: 3 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2087

Senate Education \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended.

Motion Made By Sen. Bakke Seconded By Sen. Flakoll

| Senators         | Yes | No | Senators       | Yes | No |
|------------------|-----|----|----------------|-----|----|
| Senator Freborg  | ✓   |    | Senator Taylor | ✓   |    |
| Senator Gary Lee | ✓   |    | Senator Bakke  | ✓   |    |
| Senator Flakoll  | ✓   |    |                |     |    |
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Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Lee

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

**REPORT OF STANDING COMMITTEE**

**SB 2087: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2087 was placed on the Sixth order on the calendar.

Page 1, replace lines 9 through 23 with:

- "1. Except as otherwise provided in this section, a record that would identify an individual applying for or under consideration for employment or appointment as the commissioner of higher education or president of an institution under the control of the state board of higher education is an exempt record as defined in section 44-04-17.1. The board or a board search committee, upon request, shall disclose information regarding the number of applicants or candidates for a position covered by this section.
2. Once the board or board search committee begins to reduce the number of applicants or candidates under consideration for a position, the board or board search committee shall notify each applicant or candidate remaining under consideration that any record relating to the candidate will become an open record within two weeks unless the applicant or candidate elects to withdraw from consideration for the position. If an applicant or candidate elects to withdraw from consideration for the position, any record relating to that individual remains an exempt record.
3. If the board or board search committee considers a new applicant or candidate after the initial reduction in the number of applicants or candidates, any record relating to the new applicant or candidate is an open record.
4. The board or board search committee may enter an executive session under section 44-04-19.2 to consider or discuss an exempt record or the identity of an applicant or candidate whose records are exempt under this section."

Page 2, remove lines 1 through 18

Renumber accordingly

2009 HOUSE EDUCATION

SB 2087



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2087

House Education Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10171

Committee Clerk Signature 

Minutes:

**William Goetz, Chancellor, North Dakota University System,** appeared. (See Attachment 1.)

**Rep. Bob Hunsakor:** Number 2 at the bottom of page 1, once the board or search committee begins to reduce the number of applicants, I am not sure at what point you would tell the candidates that their records would be open, once the committee begins to reduce it. Is that once we sit down and we have all the names there? Then you are beginning to reduce or is it further in the process?

**Chancellor Goetz:** At the first point of reduction when you have the first step taken relative to making a decision as to exemption of anyone from the pool, it would be at that point then that records would become public upon again two weeks' notice served.

**Vice Chair Lisa Meier:** Is this the first time that the State Board has made a request to have closed records?

**Chancellor Goetz:** I cannot answer that. I have not been involved. My role here has been a 1 ½ year ago so I can't answer that in terms of historical significance to this issue.

**Rep. Phillip Mueller:** When we are talking about presidents, you identified 7, 8 presidents of universities. Is that the only presidents we are talking about here or are we talking about presidents of academic affairs or student services? Which presidents are we dealing with?

**Chancellor Goetz:** We would be talking about presidents of our institutions. I want to clarify. We have 11 institutions. We do have ten presidents. We have a dean at Bottineau.

**Rep. Phillip Mueller:** In your testimony, Number 4, help me understand what that does. The board or board search committee goes into executive session and they have somewhere with all of them to decide if we disclose this information or not? What does that do?

**Chancellor Goetz:** It means then in this case that they might go into executive session to discuss a candidate who is under again is exempt where a change may take place so that candidate becoming a public candidate, so to speak.

**Rep. Lyle Hanson:** Do you think this is going to spill over to any other positions in the state of North Dakota say depending whoever is in charge, the penitentiary or the state hospital in Jamestown? Is that going to limit the number of people applying if we don't pass this?

**Chancellor Goetz:** That is an issue that is real in terms of how other entities, other organizations might look at this issue, and I would be the first to admit that certainly this issue could spill into other areas in terms of like consideration for those entities. I certainly wouldn't deny that fact.

**Rep. Jerry Kelsh:** I was wondering if you personally would feel that if one of our\_\_ presidents applied for a job in another state, would you feel that they would no longer be able to serve in the state of North Dakota? That we are not good enough for him? I don't quite understand that saying that because the person trying to improve their lot they are somehow different, somehow not fit to no longer serve.

**Chancellor Goetz:** Again we have to put this in the context of really a market that we deal with nationally. We have many different systems in terms of how they approach the positions that we have at various institutions. Some presidents are presidents of the institution. They are also sometimes referred to as a chancellor. They have different relationship to a board

situation much different than we do. If you are asking me personally in terms of negative reaction that I might have of a president making application because they want to advance themselves, I guess to be honest with you personally I would not look upon that as being reflective on that individual. However again as it has been brought forward to the board and the result of consultants out there who have assisted in searches on behalf of the Board of Higher Education and on behalf of the institution, we have been served out of those individuals, those firms, this has been an issue for people putting their hat into the ring and making application. For whatever it is worth the numbers that we have in terms of sitting presidents having applied for a position at our institutions that we have just completed searches for, we have had very few sitting presidents make application. I will be honest with you this is an issue that prevails in the minds of some, but I want to also take advantage of the opportunity here this morning to tell you that there is also other reasons for that and one is salaries. We are dealing with a bargain situation that prevails out there that we need to compete with for presidents, and we also to have to do that on the basis of salary. That too, of course, as you know prevails as an issue for many people in the state. I want to again bring forward the fact that this information, again the advice that the consultants caused concern and is reflected in the numbers of candidates as sitting presidents who have made application for the vacancies we have had the past couple of years.

**Rep. David Rust:** Having been in the position of having to apply for jobs and getting your name in the paper, there are a couple of things that go with that. Number 1, you are elated when you get the job. Number 2, your ego is greatly deflated when you don't even make the first cut. When you come in second, you are also somewhat deflated at the same point in time.

As I think about it as both somebody who has applied and somebody who has had people who have been under them in some capacity, when somebody applies for a job in another place, I

don't think I have ever felt anything against that individual. I would wonder why people would because at some point in time they did the same thing. My question deals with Section 44-04-19.2. Can you refresh our memory as to exactly what that is? Is the board able to enter into executive sessions now?

**Chancellor Goetz:** Yes, the board enters into executive session and from my experience exists in executive session has to do with Number 1 where we have dealt with again the point where we end up with the finalists, the final three candidates, as per policy of the board.

Search committee is to submit three, no fewer than three, names to the state board.

Interviews are conducted upon of those three by the Board of Higher Education. The board then at that point goes into executive session upon completion of the interview and discusses amongst themselves and the consultant, myself included, what the ultimate decision reached

as to who will be hired. There are also opportunities where the board can go into executive session again to discuss a particular legal case.

**Chairman Kelsch:** I have the confidential and closed meeting of executive session statue right here.

**Rep. John Wall:** We live in an era of common buzzword seems to be transparency. People want transparency in government. If we pass 2087, how do you think the public will perceive that action?

**Chancellor Goetz:** There are going to be those that do and those that don't. There are those that feel very strongly about openness, and I respect that. There are those who feel that there is and should be the opportunity where an individual has the right of privacy to conduct this process to a certain point. People in North Dakota do expect openness. That is very true. On the other hand, when we are actually in the trenches of having to do with something like this as an issue, it poses some challenges that we need to reconcile in our own minds.

**Rep. Bob Hunsakor:** With the two-week stipulation on the top of page 2, conceivably there could be a number of candidates eliminated before those who remain their names would become public knowledge.

**Chancellor Goetz:** There would be the opportunity for individuals to withdraw from that pool as a result of any number of reasons. One would be that the information would become public.

**Rep. Bob Hunsakor:** Isn't it also true that within that two-week period the committee reviewing the applicants could eliminate some of them?

**Chancellor Goetz:** I would not see that as the routine in terms of the committee as to how you conduct the search and you begin the process of review. By the way, we do have a timeline. When a search is conducted, there is a timeline that is put together by the search committee. I am involved in reviewing that and then ultimately the Board of Higher Education does review it as well.

**Rep. Bob Hunsakor:** You are saying then in this two week period there wouldn't be--all of the candidates would still be there in the two weeks?

**Chancellor Goetz:** Yes, that is correct.

**Chairman Kelsch:** I have participated on two national search teams for presidents of the education commissioner of the states. Both of those searches, and they were done with national consulting groups, were done confidentially. At the end of the second search that we did, we returned all of the documents that we had with every bit of information from each one of the applicants so that it could be destroyed. That information was not to be released to the public or to let those candidates' names to be made public. It was an interesting experience for me because it was a very confidential process to the point where returning materials to have them destroyed. We were not able to keep people's private information.

Opposition

**Jack McDonald, North Dakota Newspaper Association and North Dakota Broadcasters Association,** appeared in opposition. (See Attachment 2.)

**Chairman Kelsch:** Did I really understand you to say that you didn't think that any university presidents from any of the larger universities—I guess I took it to say any high quality presidents would apply for these positions in North Dakota?

**Jack McDonald:** No. In the context I was saying was in the context that Chancellor Goetz was talking about the salary thing. I was saying that no sitting presidents are going to apply. What I meant was that because of the salary and the situation, you are not going to have a president of a major university who is earning \$500,000, \$600,000, and \$700,000 applying for a position at UND. In many of these cases if you are talking about sitting presidents applying, they are going to be presidents, quite frankly, of smaller colleges and smaller universities. To

say we have to change our open meeting law to get more open record law to get more sitting presidents, it doesn't correlate. That is not going to make the change. A person earning \$500,000 is not going to apply for a job that pays UND or NDSU, \$290,000 and less than some of the other colleges. I didn't mean to say...

**Chairman Kelsch:** That was the way I took it. The second issue is you were in attendance at the interim higher ed. meetings. You were aware that this issue was going on. I was under the understanding that you were going to work together with the chancellor and with the board to come up with some language that could work for all parties.

**Jack McDonald:** Yes, you are correct in that. The operative words in your question are language that could work for all the parties. In the end it just wasn't possible. You all know that sometimes you try as you may to reach an agreement on amendments, on legislation, and sometimes it just doesn't work out. In all due respect, it just didn't work out.

**Chairman Kelsch:** Did you oppose this testimony on the senate side too?

**Jack McDonald:** The North Dakota Newspaper Association did.

**Chairman Kelsch** stated she had read the editorial and did point out a misspelling.

**Rep. Bob Hunsakor:** It seems like I am hearing two different things. If the candidate pool would be strengthened by the passage of this bill, does two weeks make that much difference? According to the chancellor except for those who may withdraw their names, I think I heard him say all candidates' records would be public knowledge after two weeks. I thought I heard you say that if the board chose to go into executive session that possibly some of these candidates' names could disappear before they got into their regular session and eliminated candidates. Maybe I heard wrong.

**Jack McDonald:** As Chancellor Goetz and myself were talking about it, the way the bill reads right now and the way it is intended to read right now and let us just use this as an example--if you have 50 applicants for a job, those 50 applications are all closed applications right now. They are going to be closed applications until the university system and a search committee makes its first so called cut. We don't tell when that is going to be, if it cuts in half, to 25, or if it cuts down to 5 or 10. That is one of the vague things that I complained about. Nevertheless, they are exempt until they make that first cut. Then the bill says okay, we are going to make the cut, we are going to cut it down from 50 to 25. At that point it is going to notify the remaining 25 and they are going to say okay you remaining 25, you are still in the running but now your records are going to be open so we are going to give you one more shot at keeping your record confidential by saying you are going to have two weeks to withdraw your name. Otherwise, those 25 names are going to be open records. The first 25, the 25 people who were shut out or kicked out, those records are always going to be confidential. Those are God. Those will never be opened. We are never going to know who those 25 were that were initially taken out nor are we going to know who the ones are that took advantage of the two-week

notice and withdrew their application. Then the only records that are going to be open after that would be the remaining number of people. In my example, it was 25. It could be 5. It could be 3. It could be 1. At UND they only picked one finalist. What if the committee said we are going to take that initial pool and we are just going to eliminate everybody but one? We think this one guy or one woman is so good, we are just going to eliminate everybody, so they eliminate 49. We never know who that 40 were. That is why we are so opposed to this.

**Chairman Kelsch:** There is no working on this bill, correct? There is nothing to be done on this bill that can make you more comfortable and aid the chancellor's office? There is nothing that can be done, no amendments?

**Jack McDonald:** I hate to say that and I know where you are going with that, but I have to honestly say no, I don't believe there is. No, there isn't. I am sorry. I don't like to say that but I have to do that. It is just not going to work out.

**Rep. Dennis Johnson:** When you mentioned Devils Lake, I believe the search committee did have three candidates and in the 11<sup>th</sup> hour, the sitting president withdrew, I believe.

**Jack McDonald:** I do recall that. In fact the one that withdrew was the sitting president at another college. However, the board could have gone back in and selected a couple more. The search committee could have gone back in and selected a couple more if they wanted to, but they just chose to put them as the two finalists then.

**Rep. Bob Hunsakor:** I would like to ask the chancellor a question. Would you address what we are talking about? The board sits down and you have 50 names as Jack was saying and potential to say 25 or 49 are gone and 1 is left. I know that is extreme. Talk about that a little bit.

**Chancellor Goetz:** Let me just go through the process. The search committee is formed. As chancellor, the search committee is approved by recommendation from me to the board and



approved. At that point the search committee puts together a profile of the institution for purposes of information to potential candidates to create interest in the institutions. There is also a timeline adopted by the search committee as to when meetings will be held, what the purpose is, and what will take place. We also have a board policy that says no fewer than three candidates are to be submitted by the search committee to the Board of Higher Education for final determination. That policy was, upon the experience of our search let me generically say, probably not as strong as it should have been. Policy has been strengthened but the bottom line is three candidates are to be submitted. How the search committee goes through the process normally is this way. You have 50 candidates. The search committee will take a first run at narrowing that down without even having an interview. There may be some checks and so forth that will be made but not even through an interview process. We get down to, let's say, 15. The 15 will be interviewed by way of, generally speaking, by IVN. That will take that cut down at that point to very likely 5 or 6 people. Then it is at that point where these candidates, the 6 people, will be called in for actual on campus interviews, and it is at that point then that the search committee is to narrow it down to three candidates. Those then in turn will be interviewed again on campus by the Board of Higher Education and then ultimately from that one hired.

**Rep. Jerry Kelsh:** Years ago, the cry of, as we had some probably poor at that time commissioners of higher education, all hired from out of state, the cry of around hearing then, I would guess you probably were one of them that would do it, maybe we should hire somebody in the state that understands the people in North Dakota. At one time that happened and think there was a pretty good commissioner of higher ed. If I remember right, we had another one from out of state that really worked out. He didn't understand, I think, the people of North Dakota, didn't understand our system, and then we got you. I think you are doing a pretty fair

job. If we wouldn't have known back in those early days that there were people from North Dakota that applied and were being overlooked for people out, I don't think it would have ever happened. We knew that there were some good people had applied. This would not allow that to happen. This would not allow us to know that there were good people had applied for these positions. What do you think of that argument?

**Chancellor Goetz:** Yes, I could agree with you.

**Chairman Kelsch:** In the last searches there have been several North Dakota people that have applied for those positions, and they haven't been chosen. Just because Chancellor Goetz is a chancellor doesn't mean that it is guaranteeing us that we are going to get North Dakota people to apply for those positions to actually get those positions.

**Rep. Jerry Kelsh:** That is not my point. We knew there were some good people that had applied. We questioned pretty strongly why some of those good people weren't appointed. They were always going out of state. That is one of the problems I have with this bill.

**Chancellor Goetz:** My agreement with you is not because I am chancellor.

**Chairman Kelsch:** He is agreeing with you because you said he was doing a good job.

**Rep. John Wall:** Could you give me any approximate number of applicants you had for the eight presidential vacancies?

**Chancellor Goetz:** I can. Let me just go through these that I have been involved in. Dickinson State, we had 22 applicants, no sitting presidents, 2 had past experience as a president. Lake Region, we had 15 applicants, no sitting presidents, but 4 had past experience as a president. UND, we had 33 applicants, 1 sitting president, there weren't any that were in the pool that had past experience, had previously had been a president. Valley City, 25 applicants, 1 sitting president, 5 who had past experience. Williston State, I don't have the numbers, all I know is that we had 33 applicants.

**Rep. David Rust:** I am not trying to be sarcastic. Please don't take it that way. As a former superintendent, I can see that almost all of these arguments could be applied to the superintendent of a public school district. Do you see any problem with amending this to include and superintendents of public schools in North Dakota?

**Chancellor Goetz:** I am here representing the Board of Higher Education and specifically this bill, and I would not want to take a position on that.

**Rep. Corey Mock:** In follow up to Rep. Wall, do you know of any applicants or anybody that was interested in applying for any of these positions that chose not to because of the fear of having the records released and causing adverse relationships with the current employer?

**Chancellor Goetz:** The process of my involvement relative to the first steps of a search is minimal. What goes on at that first stage in terms of seeking applicants, particularly when you have a search consultant or search company involved, really I am not able to determine out in the field what certain candidates are saying and not saying.

**Rep. Corey Mock:** This goes back to the timeline. It was brought out in Mr. McDonald's testimony that there is a lot of uncertainty and vagueness regarding the timeframe.

Approximately how long does the search take from beginning to absolute end?

**Chancellor Goetz:** Approximately four months.

**Rep. Corey Mock:** At what point is a semifinalist pool announced? About how far along?

**Chancellor Goetz:** I would say within two months, roughly.

**Rep. John Wall:** I have a question for Mr. McDonald. It appears there was a meeting where you discussed the possibility of amending this at some point in time. Is that correct?

**Jack McDonald:** That is correct.

**Rep. John Wall:** Did you discuss at all the possibility of setting a cut point where your concerns would be met if you could name, say the last 10 people that were in contention for

presidency? Are numbers not the issue? If you have 50 people apply or 35, is it a huge concern of your group and the general public who may be the first 20 to get cut really are, because they probably were under qualified, they probably didn't even have the right credentials to apply, and it would be the last maybe 10 or 7? Did you play with numbers at all?

**Jack McDonald:** Yes, we did. I guess that comes down to one of the real loggerheads that we arrived at where it is difficult because what you described is the way the bill is right now basically. As you just heard Chancellor Goetz say, let's just say they kick out the first 35 or 25, the remainder would be public. The problem is what led up to that process and as Chancellor Goetz, in all honesty and in all due respect to Chancellor Goetz and his position, he did say what is the policy but also the search committee set their own timelines and own guidelines. He said it is a policy of the university system to do it this way, and generally this is how it happens, but not always. They could reduce it down very great or they could take a little time. They could expend the time if they want. They can shorten the time if they want, the search committees. The search committees are kind of entities onto themselves in a sense. That is one of the problems. There is no magic in the numbers. We don't know what the numbers are.

**Chairman Kelsch:** If it was prescriptive, if the numbers were in legislation, then they would have to abide by that, if the cuts were there. It may be a possibility that they didn't reach those numbers. We didn't have that many applicants. If it was spelled out in state law, then that would have to be followed, correct?

**Jack McDonald:** Yes, it would. That is the problem. We can't tell how many applicants there are. As you heard Chancellor Goetz say they go from 33 to 16 or 15 or something like that.

What if there were only ten applicants? That could happen too. If you have a state law that says you have to reduce it down to the first 10, the first 25, or whatever it is, that is why we just

never could reach an agreement. We would just prefer that the applications be open. They have been opened for the last 57 years, and I think they should stay open.

The hearing was closed.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2087

House Education Committee

Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11107

Committee Clerk Signature

*Carmen Hart*

Minutes:

A SUBCOMMITTEE WAS FORMED FOR THIS BILL. THIS ACTION IS ON RECORDING 10173. THIS SUBCOMMITTEE WAS **Rep. John Wall, Rep. Mike Schatz, AND Rep. Phillip Mueller.**

**Rep. John Wall** presented the attached amendment. **(See Attachment 1.)** Working on the amendment we tried to find some middle ground that would be acceptable to both entities involved. The amendments, for the most part that are important, take place in the original bill Line 16 we have reduces the number of applicants or candidates to 50% or fewer of the total number of applicant candidates for the position, etc. Some of the heartburn that the Newspaper Association had was the fact that candidates for chancellor position or president of a college or university reduction that is in the bill now could really reduce that number to two or three or any other. They didn't feel that was enough transparency public exposure. Talking to Rep. Heller after their testimony, she mentioned a percentage. I thought of that also, so we tried that. Chancellor Goetz said that the last five open positions had an average of 24 applicants. Under this amendment 50%, 12, would be exposed to or be under public scrutiny. Those 12 names would be published, would be televised, whatever the case would be. We included to 50% in case a scenario happened where say a chancellor's position opened, 4 people applied and that is all. We don't want to limit them to say we have two that are finalists,

those are the names we are making available to the media. They were probably like three, four, or whatever. That is why we have to 50%. Our committee did meet with Chancellor Goetz and Mr. McDonald. Chancellor Goetz was fine with the amendment. Mr. McDonald was not. He felt that the amendment was better than the original bill, but doesn't particularly care for the amended version of SB 2087. Our committee brings this amendment to this group without recommendation.

**Rep. Lee Myxter:** When it says 50% or fewer, that confuses me. In other words if you have 20 people apply, you could cut it down to 10 or fewer? Is there any limit to how many you could cut it down?

**Rep. John Wall:** The intent is to cut it to ten, but again if the number applying is four that is \_\_\_

**Rep. Bob Hunsakor:** I understood the 24, 12, but the 4, 2 I lost there. Go through that again.

**Rep. John Wall:** We have included in the amendment to 50%. The intent would be 50% would become public knowledge, but if say a position opened and only four people applied, we would want to give the Board of Higher Education the ability not to cut two of them necessarily because the law said \_\_\_.

**Rep. Corey Mock:** You have, say 30 candidates, let's go 40 candidates, and they start chipping away and eliminating them 2 by 2. It doesn't become public record until it has been narrowed to at least 50%, is that correct?

**Rep. John Wall:** There are 20 left. They would be given notice that within so many days if they didn't want to remain, it would be public.

**Rep. Mike Schatz:** I would like to applaud Rep. Wall. He worked very hard on this to try to get to the middle ground and he did an excellent job with this. I, however, feel that the

newspaper should have access to all the names. That is kind of one of the situations with the amendments.

**Chairman Kelsch:** Rep. Wall, I think you did an excellent job. I like the amendments. I think that they are good. My biggest problem with the process that we have gone through in the last five openings is that we did not have a sitting president apply for those positions, and I think if we are going to have quality higher education in the state of North Dakota, not to say that there is anything wrong with the current presidents we have, but I do think that there were not any two-year college presidents that applied or smaller campus presidents that did apply, and I think that is sad. I think that our higher education system probably deserves better than that. I am also going to express my frustration once again, because during the higher ed. interim meetings this summer, we asked for a compromised bill to come forward. We asked for the two organizations to work together. I was under the understanding that this was the compromised bill that had been brought forth this session. I do have a difficult time with this because this was discussed during the interim. Both sides knew that it was an issue and were asked to come forward with a compromised bill. That gets to be a little bit frustrating for those of us that said here is an issue, we would like to have it addressed.

**Vice Chair Lisa Meier** moved the amendment. **Rep. Corey Mock** seconded the motion.

There was a voice vote. The motion carries.

**Rep. John Wall** made a motion for a **Do Pass as Amended**. **Rep. Karen Karls** seconded the motion.

**Rep. David Rust:** I will oppose a do pass for the following reasons: There have been eight new presidents hired in the last couple years so we probably won't have to do a search for one of those positions in the near future. The arguments to close the records for college presidents could easily be applied to other positions. I can see the same thing happening in school superintendents. Somebody from nearby, one doesn't apply because they don't want their board to know about it. It is just a fact of life. You know your name is going to get in the



paper. We are talking in today's world about more transparency. This certainly gives less transparency. There is a sufficient number of applicants. You are getting someplace around a low of 12 or 14 and a high in the upper 20s. I think that is a sufficient number. I think it may have an adverse effect on the input of the general public especially as Rep. Kelsh said when sometimes we have passed over some people from North Dakota, and we have some pretty good applicants from there. I think the process of doing this is still a bit vague. At what point do you get to 50%? I believe the major reason for non sitting college presidents applying is not the open record, but rather salary.

**Rep. Lee Myxter:** I am still leery of the word fewer. To me it opens it up. In other words I can put whatever number I want, 50% or whatever number that I feel like. I am going to oppose it also.

**Rep. Phillip Mueller:** I commend Rep. Wall too for what he went through and tried to find the compromised ground. I understand that fewer means basically that a college campus will \_\_\_ doing the search thing. They cannot do less than 50% in terms of exposing names. They may expose more of the names which again let's them make that call if they choose to. If I am understanding it, that is the intention. You can't go less than 50% of those that you expose to the media. You can go more.

**Chairman Kelsch:** Do you understand now?

**Rep. Lee Myxter:** That is not the way I read it. I am thinking there is some confusion. If that is the way, that makes it different. For me I read it as 50%. In other words, if you take half of 20, but I can make it fewer by a \_\_\_

**Chairman Kelsch:** No. That is why it is to 50%. Rep. Mueller is exactly correct with the way that he described it. They can do 50% or they do can 75% or they can do all of them.

**Rep. Phillip Mueller:** I agree it is a little bit confusing. If you read through the whole thing, that is really the only conclusion you can come to.

Roll was taken. **3 Yeas, 11 Nays. Motion fails.**

**Vice Chair Lisa Meier** moved a **Do Not Pass as Amended**. **Rep. Mike Schatz** seconded the motion.

**Chairman Kelsch:** Senate passed it 30-15.

**DO NOT PASS AS AMENDED. 11 YEAS, 3 NAYS.** **Rep. David Rust** is the carrier of this bill.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2087

House Education Committee

Check here for Conference Committee

Hearing Date: April 1, 2009

Recorder Job Number: 11609

Committee Clerk Signature

*Carmen Hart*

Minutes:

**Chairman Kelsch** stated that Rep. Wall explained the amendment that he brought forward at the last committee meeting as he thought it was written, and the more he looked at it and the more that he asked questions about it, what he thought was in the amendment and what was actually in the amendment was not accurate. I told him that I would give him the courtesy and, hopefully the committee will as well, of changing his amendment so it does exactly what he stood up at the podium and related to us that he felt that it did.

**Vice Chair Lisa Meier** made a motion to reconsider the bill and bring it back before this committee. **Rep. Phillip Mueller** seconded the motion.

A voice vote was taken. Motion carries.

**Rep. John Wall** handed out the attached amendment. **(See Attachment 1.)** When we discussed originally the amendment on 2087, there was a great deal of confusion, ambiguity surrounding the amendment, rightfully so. A lot of it dealt with the 50% or up to 50% clause. The first change, page 1, Line 16, begins to reduce with reduces is added. Page 1, Line 17, replace under consideration by 50% from the total number of applicants per candidates. If you remember the other one, the up to is gone. Page 1, Line 19, after the word the insert applicant or for consistency. The biggest change, page 1, Line 21, after the underscored period insert if the total number of applicants or candidates for the position is six or fewer, however, the board

or board search committee shall notify each applicant or candidate who will be interviewed for the position that any record relating to the applicant or candidate will become an open record within two weeks unless the applicant or candidate elects to withdraw from consideration for the position. Now the changes from the first amendment offered, this one if the average which we discussed last time for the last five openings was 24, 12 of these would not become part of open records. The board could dismiss them, seal them, return them. They would not become part of the public record. The last 12, however, would. After being notified or sending notification, if the people did not withdraw their names, those 12 would become part of the public record. The big change here is if six people or less apply for president's job, chancellor's job, all six of those candidates' names will become part of the open record unless in the two-week period they say they wish to withdraw. The confusion of over the up to 50% which the subcommittee and I tried to cover with that up to word we have gotten rid of totally and we have plugged in if there are six or less candidates or applicants say all come under the open records law. I hope it ends confusion.

**Rep. Brenda Heller:** How did you come up with six?

**Rep. John Wall:** Hypothetically, let's say if six were part of the 50% or less, then they would be down to three applicants or candidates. I don't think Newspaper Association press would be very happy with only the final three being named, so we went with the number six. We think that is a third compromise with the last six names being offered up. Under the normal averages of 24 applicants, there would be 12 that would become part of the public record. However, if six or less, why all of those become part of open records.

**Rep. Phillip Mueller:** One point that probably should be made about it is if there are eight candidates total. Now we are down to four. There is no magic in six.

**Rep. John Wall:** That is correct. A number we felt had to be chosen. Six was the one. There is nothing magic about it. Like you say with eight, there would really be less, because we would limit it to four. In testimony we heard of one example of maybe the board narrowed it down to two or three, and that was borderline. In fact, it was felt unacceptable. With this, the least one could have I guess would be four. If only six or less apply, there would be six, five, four.

**Rep. Jerry Kelsh:** I am having a little trouble figuring out in the first place why we really need this bill. If there has been an average of 24 people in the last five, it doesn't seem to me that there is really much concern about the applicants, that their names are going to be in the paper or whatever with 24. That is a lot of people to apply for a job. I am failing to see why we are even dealing with this. If we were getting one and two and people were saying that I am not going to apply because I don't want my name in the paper, I would say well, maybe we should do so, but when you are getting an average of 24 over the last five times, I don't think there is a problem.

**Rep. John Wall:** I don't know if it is going to up the number on this either. I do know that the advocates for the bill felt they would get more and possibly it was mentioned they would get a sitting president who would apply if there was some comfort. I can't answer to that. I don't know, but the people who advocate for the bill felt there would be more people apply.

**Rep. David Rust:** As I think about it, you have a sitting president and you have 24, chances you are using that 12 anyway. Again, I don't see the necessity of it.

**Chairman Kelsch:** We are discussing the amendment at this point. Limit the conversation to the amendment.

**Rep. John Wall** moved the amendment to 2087. That would be 0202. **Vice Chair Lisa Meier** seconded the motion.

A voice vote was taken. Motion carries.

**Rep. Jerry Kelsh** made a motion for a **Do Not Pass as Amended**. **Rep. David Rust** seconded the motion.

**Rep. Phillip Mueller:** This bill as we all know has been around for a little while. I visited with some people from my district about the bill. One of the fairly liberal people I visited with said we have overdone the sunshine thing a little bit especially in certain specific areas. I think we are talking about one of those areas right now. I think I am going to resist the Do Not Pass because what has been attempted in certainly the history of this whole issue comes into play in my opinion. The players had an agreement and there was a change made in that for some reason. I don't think this is a bad bill. I think it should pass and I am going to resist the Do Not Pass.

**Rep. Bob Hunsakor:** Talking or speaking with people who probably don't know the in and out of the bill, anytime the word secrecy or isn't going to be revealed, I find the general public is scared of it. They like things open. That is the way the general public feels about things like this.

**Rep. John Wall:** I too believe in transparency, but it does seem very important to, it appears higher education, and there isn't much push back I don't think by a lot of people on this bill. If I felt this bill did measurable harm I would not have worked on another amendment. I think it stated at least as I see it, I think about the students. If this in any way brings in more qualified applicants even if it is one more qualified applicant, to me the sacrifice if there is a sacrifice, compromise, sunshine law, so on, I think it would be worth it. I don't personally think that if we allow higher ed. board in a situation picking a chancellor or president if we give them the right to reject, keep it from transparency, half of the applicants if there is like the normal 24, if there

is 12, even though I too believe in transparency, I think those 12 people, I think it is incidental, I don't think it hurts anything, and I don't think it is an attack on freedom of press in any way.

**Vice Chair Lisa Meier:** Could you discuss the past just to refresh our memory about the discussion that took place in the interim?

**Chairman Kelsch:** In interim higher ed. committee, Chancellor Goetz had discussed this issue as an item of concern and said that we really did need to look at how we can address the sunshine law so that we could get and he was very careful to not say better candidates but more experienced candidates for our university system. The discussion then during the interim committee led to okay, can you work together with the North Dakota Newspaper Association to come up with some sort of compromise? I think what the chancellor was proposing was probably a little bit too strict, and so could you work on a compromise. It is still my

understanding that this bill as it was introduced was the compromise and the North Dakota Newspaper Association did not testify against this bill in the senate. I believe something happened between the bill coming to between the senate and the house where the compromise or we can live with this was not there any longer. You have to re sector an association who you know that their minds change, that is fine but I guess I have a little bit of an issue with that. From a personal standpoint I think that the state of North Dakota has done an excellent job of protecting our sunshine laws and actually some states would argue that North Dakota has probably gone overboard with their sunshine laws. Many states are now starting to open up some of their laws. There is a lot in other states that is completely shut out from the public. In reading a couple of editorials that were just in the newspapers about a week ago from probably two of the biggest protectors of the sunshine laws in the state of North Dakota, they stated in those editorials that this was not a bad deal. This was not a bad bill and it should pass. Rep. Wall, is there anything you want to add?

**Rep. John Wall:** It is very accurate and you covered it well.

**Rep. Jerry Kelsh:** If they get 24 applicants or if they get 12 and the newspaper wants to know who is and they say we only have 5, and they hold up a pile of papers like this and say here are the other ones, the newspapers can't go look at them. How are they going to know how many are in there? I really have some questions on how. Those folks are not going to have the opportunity to see those pieces of paper and what name is on there. When you talk about opening the laws, we had a little discussion yesterday about corporal punishment, we want open it up a little bit so you can tap a kid on the head, I don't think anybody wants to do that. Do you want to open it up so that pretty soon down the line the only one that will be known is the last guy? I don't think we want to do that, but that is the road we are on. I don't know how they are going to verify, because newspapers can't look into them. I would like an answer to that.

**Rep. John Wall:** Rep. Kelsh, I don't know how it is handled now. Say we have 24 applicants when instead they had 35. I am wondering how that would differ. I think there is a trust factor either way.

**Chairman Kelsch:** That is the way I see it too. I don't think you would ever know if they had received 35 or if they received 24. I think, gosh, we are North Dakotans, we want to trust other North Dakotans. I trust the people around me.

**Rep. David Rust:** In my previous life, I have had good press and I have had bad press as superintendent of schools. There are times that I would have liked them to go away, a long ways away. I think that would have made my job easier, but I don't think it might have made it better. I am kind of surprised at myself even advocating this, but I can't support non transparency. I don't think a democracy can exist without a free press. I don't see this really solving much of anything because I think the people who are going to apply if it were a sitting



president would get in that last group anyway and it would still be revealed and still have the same problem. I don't think you are solving the problem with this.

**Rep. Mike Schatz:** What I am seeing in this amendment and in the bill itself is that we are going to have less time to examine the people that we have, that have applied. When you have less time to examine somebody and especially if the board decides to move rather rapidly on hiring that can be--especially with out of state people—out of state people can come in and have these great references, they interview well, they look good, the only trouble is when you get them on the job, they are not good. I have had that personal experience happen so the more time, the more examination, the better for me.

**DO NOT PASS AS AMENDED. 7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING. Rep. David Rust** is the carrier of this bill.

VR  
3/17/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2087

Page 1, line 16, replace "begins to reduce" with "reduces"

Page 1, line 17, replace "under consideration" with "to fifty percent or fewer of the total number of applicants or candidates"

Renumber accordingly

Date: 3-17-04  
Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. 2087

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep Meier Seconded By Rep. Mock

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman RaeAnn Kelsch   |     |    | Rep. Lyle Hanson     |     |    |
| Vice Chairman Lisa Meier |     |    | Rep. Bob Hunsakor    |     |    |
| Rep. Brenda Heller       |     |    | Rep. Jerry Kelsch    |     |    |
| Rep. Dennis Johnson      |     |    | Rep. Corey Mock      |     |    |
| Rep. Karen Karis         |     |    | Rep. Phillip Mueller |     |    |
| Rep. Mike Schatz         |     |    | Rep. Lee Myxter      |     |    |
| Rep. John D. Wall        |     |    |                      |     |    |
| Rep. David Rust          |     |    |                      |     |    |
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*Vote of a  
voice  
accept  
amendment  
motion  
carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 3-17-09  
Roll Call Vote #: 2

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2087**

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep Wall Seconded By Rep Karl

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman RaeAnn Kelsch   | ✓   |    | Rep. Lyle Hanson     |     | ✓  |
| Vice Chairman Lisa Meier |     | ✓  | Rep. Bob Hunsakor    |     | ✓  |
| Rep. Brenda Heller       |     | ✓  | Rep. Jerry Kelsch    |     | ✓  |
| Rep. Dennis Johnson      |     | ✓  | Rep. Corey Mock      |     | ✓  |
| Rep. Karen Karl          | ✓   |    | Rep. Phillip Mueller |     | ✓  |
| Rep. Mike Schatz         |     | ✓  | Rep. Lee Myxter      |     | ✓  |
| Rep. John D. Wall        | ✓   |    |                      |     |    |
| Rep. David Rust          |     | ✓  |                      |     |    |
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Total (Yes) 3 No 8 11

Absent 1

Floor Assignment \_\_\_\_\_

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

*Motion failed*

Date: 3-17-09  
Roll Call Vote #: 3

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2087**

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman RaeAnn Kelsch   |     | ✓  | Rep. Lyle Hanson     | ✓   |    |
| Vice Chairman Lisa Meier | ✓   |    | Rep. Bob Hunsakor    | ✓   |    |
| Rep. Brenda Heller       | ✓   |    | Rep. Jerry Kelsch    | ✓   |    |
| Rep. Dennis Johnson      | ✓   |    | Rep. Corey Mock      | ✓   |    |
| Rep. Karen Karls         |     | ✓  | Rep. Phillip Mueller | ✓   |    |
| Rep. Mike Schatz         | ✓   |    | Rep. Lee Myxter      | ✓   |    |
| Rep. John D. Wall        |     | ✓  |                      |     |    |
| Rep. David Rust          | ✓   |    |                      |     |    |
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Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep Rust

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

**REPORT OF STANDING COMMITTEE**

SB 2087, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2087 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "begins to reduce" with "reduces"

Page 1, line 17, replace "under consideration" with "to fifty percent or fewer of the total number of applicants or candidates"

Renumber accordingly

Date: 4-1-09  
Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. 2087

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep Meier Seconded By Rep Mueller

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman RaeAnn Kelsch   |     |    | Rep. Lyle Hanson     |     |    |
| Vice Chairman Lisa Meier |     |    | Rep. Bob Hunsakor    |     |    |
| Rep. Brenda Heller       |     |    | Rep. Jerry Kelsh     |     |    |
| Rep. Dennis Johnson      |     |    | Rep. Corey Mock      |     |    |
| Rep. Karen Karls         |     |    | Rep. Phillip Mueller |     |    |
| Rep. Mike Schatz         |     |    | Rep. Lee Myxter      |     |    |
| Rep. John D. Wall        |     |    |                      |     |    |
| Rep. David Rust          |     |    |                      |     |    |
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*voice taken to reconsider*

Total (Yes) \_\_\_\_\_ No the bill

Absent \_\_\_\_\_ bring back to

Floor Assignment \_\_\_\_\_ get proper

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

*amendment on it motion carries*

VR  
4/1/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2087

In lieu of the amendments adopted by the House as printed on page 986 of the House Journal, Engrossed Senate Bill No. 2087 is amended as follows:

Page 1, line 16, replace "begins to reduce" with "reduces"

Page 1, line 17, replace "under consideration" with "by fifty percent from the total number of applicants or candidates"

Page 1, line 19, after "the" insert "applicant or"

Page 1, line 21, after the underscored period insert "If the total number of applicants or candidates for the position is six or fewer, however, the board or board search committee shall notify each applicant or candidate who will be interviewed for the position that any record relating to the applicant or candidate will become an open record within two weeks unless the applicant or candidate elects to withdraw from consideration for the position."

Renumber accordingly



Date: 4-1-09  
 Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2087

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 98096.0202

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep Wall Seconded By Rep Meier

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman RaeAnn Kelsch   |     |    | Rep. Lyle Hanson     |     |    |
| Vice Chairman Lisa Meier |     |    | Rep. Bob Hunskor     |     |    |
| Rep. Brenda Heller       |     |    | Rep. Jerry Kelsh     |     |    |
| Rep. Dennis Johnson      |     |    | Rep. Corey Mock      |     |    |
| Rep. Karen Karls         |     |    | Rep. Phillip Mueller |     |    |
| Rep. Mike Schatz         |     |    | Rep. Lee Myxter      |     |    |
| Rep. John D. Wall        |     |    |                      |     |    |
| Rep. David Rust          |     |    |                      |     |    |
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*Vote to accept the amendment*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_ *motion carries*

Floor Assignment \_\_\_\_\_

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

Date: 4-1-09  
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2087

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Kelsh Seconded By Rep Rust

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman RaeAnn Kelsch   |     | ✓  | Rep. Lyle Hanson     |     | ✓  |
| Vice Chairman Lisa Meier |     | ✓  | Rep. Bob Hunsakor    | ✓   |    |
| Rep. Brenda Heller       | ✓   |    | Rep. Jerry Kelsh     | ✓   |    |
| Rep. Dennis Johnson      | ✓   |    | Rep. Corey Mock      | ✓   |    |
| Rep. Karen Karls         | ✓   | ✓  | Rep. Phillip Mueller |     | ✓  |
| Rep. Mike Schatz         | ✓   |    | Rep. Lee Myxter      |     |    |
| Rep. John D. Wall        |     | ✓  |                      |     |    |
| Rep. David Rust          | ✓   |    |                      |     |    |
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Total (Yes) 7 No 6

Absent \_\_\_\_\_

Floor Assignment Rep. Rust

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

**REPORT OF STANDING COMMITTEE**

**SB 2087, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING).** Engrossed SB 2087 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 986 of the House Journal, Engrossed Senate Bill No. 2087 is amended as follows:

Page 1, line 16, replace "begins to reduce" with "reduces"

Page 1, line 17, replace "under consideration" with "by fifty percent from the total number of applicants or candidates"

Page 1, line 19, after "the" insert "applicant or"

Page 1, line 21, after the underscored period insert "If the total number of applicants or candidates for the position is six or fewer, however, the board or board search committee shall notify each applicant or candidate who will be interviewed for the position that any record relating to the applicant or candidate will become an open record within two weeks unless the applicant or candidate elects to withdraw from consideration for the position."

Re-number accordingly

2009 TESTIMONY

SB 2087

Attachment #1

# North Dakota University System

## SB2087 - Senate Education, January 14, 2009

### William Goetz, Chancellor

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Mr. Chairman, Senators of the Education Committee.

Good morning. For the record, my name is Bill Goetz, chancellor of the North Dakota University System.

- Introduced at the request of the state board of higher education, following suggestions from recent search committee members
- Search committee members and search consultants retained by the SBHE have suggested that the open records law acts to limit the number and type of applicants for NDUS college and university president positions. Specifically, sitting presidents (and perhaps other individuals in high-profile positions) are reluctant to apply for a position at a state institution if it means (because of application of state open records laws) being publicly identified as an applicant early in the search process. Some higher education institution boards or other employers are not receptive to having their own presidents (or other high profile officers) apply for another position and such action may jeopardize a president's (or other officer's) relationship with a current employer. These individuals do not want to risk that unless they are assured of a reasonable shot at the position. Some of these individuals are willing to be publicly identified as a candidate only after the field has been winnowed down to a few serious candidates, they are assured there is no "inside" candidate who has the position locked up, etc.
- These concerns have been addressed in many other states by adoption of exemptions to open records or sunshine laws. For example, in Georgia, state law exempts from public disclosure records that identify an applicant for a position as executive head of a public entity until 14 days before the meeting at which final action on an appointment is taken. Applicants are free to withdraw their names from consideration to avoid public disclosure prior to that deadline. In Michigan, an exemption applies to records that would identify applicants for a position as president of a higher education institution. After one or more candidate is identified as a finalist, the information regarding the finalists only is open.
- This legislation exempts records that would identify an individual applying for or under consideration for appointment as a NDUS institution president or chancellor if certain conditions are met. There must be a search process requiring selection of five or more semifinalists for interviews. Once the semifinalists are selected, the semifinalists must be identified and records of all semifinalists are open to the public (records of applicants not selected remain exempt). Prior to selection of the semifinalists, the SBHE or a SBHE search committee may go into executive session for discussion involving identity of a candidate or candidate.

January 14, 2009

*Against  
Attachment  
# 2*

**SENATE EDUCATION COMMITTEE  
SB 2087**

**Senator Freeborg and members of the committee:**

I'm Roger Bailey, executive director of the North Dakota Newspaper Association. The members of our association are the 89 legal newspapers in North Dakota.

One of the hallmarks of government in North Dakota is openness – the kind of openness displayed prominently in the State Constitution and by the State Legislature and this committee in holding this hearing today for the public – in the open.

Senate Bill 2087 would restrict the kind of openness for which your predecessors in the Legislature have long commended and supported, and the public has repeatedly desired.

The North Dakota Newspaper Association opposes the passage of SB 2087 on behalf of the taxpayers of the state on pure principle. The selection of presidents of taxpayer-supported institutions and the selection of the Commissioner of Higher Education should remain open information to the taxpayers who are paying the bill.

The North Dakota Newspaper Association has seen no clear evidence that the Board of Higher Education has been unable to attract qualified presidential candidates as well as candidates for Commissioner of Higher Education. Such a claim would seemingly repudiate the fine choices the board has made in just the recent past for the presidencies at several state universities and colleges, and the selection of the Commissioner of Higher Education himself.

The North Dakota Newspaper Association requests the committee give a "DO NOT PASS" recommendation on SB 2087.

Thank You.

# North Dakota University System

## SB2087 - House Education, March 4, 2009

### William Goetz, Chancellor

---

Mr. Chairman, Representatives of the Education Committee.

Good morning. For the record, my name is Bill Goetz, chancellor of the North Dakota University System.

- Introduced at the request of the state board of higher education, following suggestions from recent search committee members
- Search committee members and search consultants retained by the SBHE have suggested that the open records law acts to limit the number and type of applicants for NDUS college and university president positions. Specifically, sitting presidents (and perhaps other individuals in high-profile positions) are reluctant to apply for a position at a state institution if it means (because of application of state open records laws) being publicly identified as an applicant early in the search process. Some higher education institution boards or other employers are not receptive to having their own presidents (or other high profile officers) apply for another position and such action may jeopardize a president's (or other officer's) relationship with a current employer. These individuals do not want to risk that unless they are assured of a reasonable opportunity at the position. Some of these individuals are willing to be publicly identified as a candidate only after the field has been winnowed down to a few serious candidates.
- These concerns have been addressed in many other states by adoption of exemptions to open records or sunshine laws. For example, in Georgia, state law exempts from public disclosure records that identify an applicant for a position as executive head of a public entity until 14 days before the meeting at which final action on an appointment is taken. Applicants are free to withdraw their names from consideration to avoid public disclosure prior to that deadline. In Michigan, an exemption applies to records that would identify applicants for a position as president of a higher education institution. After one or more candidate is identified as a finalist, the information regarding the finalists is open.
- This legislation exempts records that would identify an individual applying for or under consideration for appointment as a NDUS institution president or chancellor if certain conditions are met.
  1. The board or a board search committee, upon request, shall disclose information regarding the number of applicants or candidates for a position covered by this section.
  2. Once the board or board search committee begins to reduce the number of applicants or candidates under consideration for a position, the board or board search committee shall notify each applicant or candidate remaining under consideration that any record relating to the

candidate will become an open record within two weeks unless the applicant or candidate elects to withdraw from consideration for the position. If an applicant or candidate elects to withdraw from consideration for the position, any record relating to that individual remains an exempt record.

3. If the board or board search committee considers a new applicant or candidate after the initial reduction in the number of applicants or candidates, any record relating to the new applicant or candidate is an open record.
4. The board or board search committee may enter an executive session under section 44-04-19.2 to consider or discuss an exempt record or the identity of an applicant or candidate whose records are exempt under this section.



March 4, 2009

HOUSE EDUCATION COMMITTEE  
SB 2087

REPRESENTATIVE KELSCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We recognize that this bill was introduced with good intentions by the Board of Higher Education, but good intentions don't always lead to good legislation. We believe this is a bad bill, and we respectfully request that you give it a do not pass.

North Dakota has a long history of open government. There were open records laws on the books of the Dakota Territory. The state passed one of the simplest, yet most comprehensive open government laws in 1957, 52 years ago, that said simply all meetings and records are open unless there's a law that says they are closed.

In the 60s and 70s North Dakota became the first state to put these laws into its constitution, again by overwhelming votes of the people on constitutional revisions placed on the ballot by your predecessors. For at least the last 52 years, and probably before that, all of our college and university presidents have applied for and been selected for their positions under this law. Gordon Olson at Minot State University. Lee Vickers at Dickinson State. Tom Clifford, Charles Kupchella and now Robert Kelly at UND. Joseph Chapman at NDSU. All selected under the open process that now somehow isn't good enough.

Why isn't it good enough now? Why can't the citizens of North Dakota know from the very beginning who is applying for these positions...some of the highest paid positions in state government...that they are paying for? We're told it's because some headhunting agency tried to explain away its poor performance in obtaining candidates, for which it was highly paid by the way, by saying good candidates were scared away by the state's open record law. There's no documentation for this, just hearsay.

We're told that no sitting presidents applied at UND because of this law. That's just a red herring of an excuse. First, it's not true. There was at least one college president...from Eastern Oregon University...who applied for the UND position. There were also several former presidents, and many current deans, provosts and vice presidents. There was a current president who applied at Devils Lake but withdrew at the last minute. Lee Vickers at Dickinson was a college president when he applied and was accepted at Dickinson.

And what's the magic in sitting presidents anyway? The best candidates probably are up and coming deans and provosts...university language for vice presidents...who are eager to move up to a college presidency.

It is said they might not want their present colleges or universities know they are looking for a position. This is a straw man argument. Any college or university dean, or vice president or provost, is always looking to move up, as is anybody who wants to advance in his or her profession. We all know that. It happens everyday.

In fact, just the opposite is probably true. The college or university would consider it an honor that one of their faculty members was in the running for a higher position at another university. In fact, the applicants current employer might well take steps to "sweeten the pot" to keep that person there. That certainly was true in Fargo when it was learned that President Chapman was in the running for another college presidency.

This proposed bill is now just way too vague and uncertain. How do we know when the applications will be open. The Board or its Search Committee could sit on the applications for weeks or months before making its initial cut down. And, all during this time it could be meeting in executive...or closed...sessions to consider these applications, go over the qualifications, and probably make some pretty final decisions. So, this bill will not only lead to more closed records, it will also lead to more closed meetings of some of the most high level governmental entities in the state.

And, there is no way of knowing how many applicants will be selected or rejected in the first round. Maybe the Search Committee will narrow the initial pool of 40 applicants to 5? Or maybe less? What if they narrowed it to just one? We know in recent searches the committees only forwarded one and two names, respectively, to the Board even though the Board requested three.

At a time when transparency is one of the watchwords in state government, and when this legislature is considering ways to make more budget and fiscal data available to the public, it doesn't make sense to make selection of some of the most important positions in the state less transparent.

We ask that you honor North Dakota's long-time commitment to open government and 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.

# The Bismarck Tribune

**03-04-2009: news-opinion**

## **The system needs to stay open**

Since transparency and the rule of law have been pledged as touchstones of a new presidency, doesn't it seem strange that North Dakota's 2009 Legislative Assembly is considering a measure that would restrict access to public information for university presidential applicants?

President Barack Obama might or might not deliver on that and other pledges, but the advancement of transparency is a far more positive step than backtracking into a mode of secrecy of information. It seems safe to suggest that a large majority of North Dakotans would favor transparency in government, a pledge that will be renege upon in North Dakota if SB2087 moves forward.

The House Education Committee will hear the bill Wednesday at 10 a.m. in the Pioneer Room, and in so doing it should consider how the majority of North Dakotans would vote if allowed to speak out against secrecy. Committee members are encouraged to pick apart and ask challenging questions of the specious arguments proposed to change a perfectly good law.

Government secrecy is best only in extreme circumstances, such as national security and maintaining law enforcement effectiveness — combined with foreseeable likely harm. SB2087 is not about such extreme circumstances or consequences. It is about convenience and currying applicant favor.

Former Attorney General John Ashcroft said: "It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed."

Wherever there is secrecy, there is greater opportunity for information manipulation, citizen fraud and abuse of the public trust. All of that, unfortunately, could happen if SB2087 moves forward.

It is suspect that a university system, where there is support for open debate and dialouge on any and all topics, is pushing to limit public information about applicants for college presidency jobs and the system's chancellor, making job candidates' names public only if they make a list of semifinalists.

The rationale is flimsy for the change — "we might miss out on some top candidates who might apply." Might and might. The state's strong open records laws have been painted as the culprit in this debate, demonstrating that secrecy in government is a tempting mistress.

Under existing law, any application for a college presidency or for chancellor of the state university system is an open record. It's a good law that doesn't need fixing.

Roger Bailey, director of the North Dakota Newspaper Association, said North Dakotans deserve to know who is seeking a high-profile, highly paid public job. "The selection of presidents of taxpayer-supported institutions, and the selection

of the commissioner of higher education, should remain open information to ... the taxpayers who are paying the bill," Bailey said.

He is right. The Board of Higher Education has been able to attract well-qualified candidates.

The change rationale has been softened with a delayed transparency, as once a search committee starts to pick candidates for additional review, candidates would be given two weeks to decide whether they wanted to keep going. If they did, news of their interest would become public.

Think of the interpretation of those details and the devilish ways they could be defined.

The Tribune believes the measure would overwhelmingly fail if put to a public vote, and recommends the House committee assign a no-pass designation.