

Sixtieth
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to create and enact chapter 15.1-09.1, a new section to chapter 15.1-27, and
2 a new chapter to title 32 of the North Dakota Century Code, relating to educational associations
3 governed by joint powers agreements, the payment of state aid, and the insurance of
4 educational associations; to amend and reenact sections 15.1-02-08, 15.1-07-23, and
5 15.1-09-33 of the North Dakota Century Code, relating to accounting procedures for
6 educational associations governed by joint powers agreements; to repeal section 15.1-27-40 of
7 the North Dakota Century Code, relating to the reporting of expenses by educational
8 associations governed by joint powers agreements; and to provide for a report to the legislative
9 council.

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

11 **SECTION 1. AMENDMENT.** Section 15.1-02-08 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **15.1-02-08. Accounting and reporting system - Uniformity.** The superintendent of
14 public instruction shall implement a uniform system for the accounting, budgeting, and reporting
15 of data for all school districts in the state and for all educational associations governed by
16 chapter 15.1-09.1. The superintendent of public instruction shall designate the software
17 standards to be used by the school districts and by the educational associations in their
18 accounting, budgeting, and reporting functions.

19 **SECTION 2. AMENDMENT.** Section 15.1-07-23 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **15.1-07-23. School district business manager - Bond.** A Any person serving as a
22 school district business manager shall furnish to the school board a bond in an amount to be
23 fixed by the school board and equal to at least twenty-five percent of the maximum amount of
24 money subject to the business manager's control at any one time. The bond must be

1 conditioned for the faithful discharge of the business manager's duties, including the
2 maintenance of accurate financial records and the safekeeping and deliverance of all school
3 district property and funds that come into the business manager's control.

4 **SECTION 3. AMENDMENT.** Section 15.1-09-33 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **15.1-09-33. School board - Powers.** The board of a school district may:

- 7 1. Establish a system of free public schools for all children of legal school age
8 residing within the district.
- 9 2. Organize, establish, operate, and maintain elementary, middle, and high schools.
- 10 3. Have custody and control of all school district property and, in the case of the
11 board of education of the city of Fargo, have custody and control of all public
12 school property within the boundaries of the Fargo public school district and to
13 manage and control all school matters.
- 14 4. Acquire real property and construct school buildings and other facilities.
- 15 5. Relocate or discontinue schools and liquidate the assets of the district as required
16 by law; provided no site may be acquired or building constructed, or no school may
17 be organized, established, operated, maintained, discontinued, or changed in
18 location without the approval of the state board of public school education if outside
19 the boundary of the district.
- 20 6. Purchase, sell, exchange, and improve real property.
- 21 7. Lease real property for a maximum of one year except in the case of a career and
22 technical education facility constructed in whole or in part with financing acquired
23 under chapter 40-57, which may be leased for up to twenty years.
- 24 8. Exercise the power of eminent domain to acquire real property for school
25 purposes.
- 26 9. Purchase, sell, exchange, improve, and lease for up to one year, equipment,
27 furniture, supplies, and textbooks.
- 28 10. Recruit or contract with others to recruit homes and facilities which provide
29 boarding care for special education students.
- 30 11. Provide dormitories for the boarding care of special education students.
- 31 12. Insure school district property.

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- 1 13. Independently or jointly with other school districts, purchase telecommunications
- 2 equipment or lease a telecommunications system or network.
- 3 14. Provide for the education of students by another school district.
- 4 15. Contract with federal officials for the education of students in a federal school.
- 5 16. Prescribe courses of study in addition to those prescribed by the superintendent of
- 6 public instruction or by law.
- 7 17. Adopt rules regarding the instruction of students, including their admission,
- 8 transfer, organization, grading, and government.
- 9 18. Join the North Dakota high school activities association and pay membership fees.
- 10 19. Adopt alternative curricula for high school seniors who require fewer than four
- 11 academic units.
- 12 20. Contract with, employ, and compensate school district personnel.
- 13 21. Contract with and provide reimbursement for the provision of teaching services by
- 14 an individual certified as an instructor in the areas of North Dakota American Indian
- 15 languages and culture by the education standards and practices board.
- 16 22. Suspend school district personnel.
- 17 23. Dismiss school district personnel.
- 18 24. Participate in group insurance plans and pay all or part of the insurance premiums.
- 19 25. Contract for the services of a district superintendent, provided that the contract,
- 20 which may be renewed, does not exceed a period of three years.
- 21 26. Contract for the services of a principal.
- 22 27. Employ a an individual to serve as the school district business manager or contract
- 23 with any person to perform the duties assigned to a school district business
- 24 manager by law.
- 25 28. Suspend or dismiss a school district business manager for cause without prior
- 26 notice.
- 27 29. Suspend or dismiss a school district business manager without cause with thirty
- 28 days' written notice.
- 29 30. Defray the necessary and contingent expenses of the board.
- 30 31. Levy a tax upon property in the district for school purposes.
- 31 32. Amend and certify budgets and tax levies, as provided in title 57.

33. Pay dues allowing for the board to hold membership in city, county, state, and national organizations and associations.

34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

SECTION 4. Chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

15.1-09.1-01. Definition. For purposes of this chapter, "educational association" means a group of school districts that have entered a joint powers agreement which has been reviewed by the superintendent of public instruction and verified as meeting the requirements of section 15.1-09.1-03.

15.1-09.1-02. Educational association - Joint powers agreement - Corporations. An educational association is a body corporate and has all the powers and duties usual to corporations for public purposes or as conferred upon it by law.

15.1-09.1-03. Educational association - Joint powers agreement - Review by superintendent of public instruction - Criteria. Before a group of school districts may be designated as an educational association, the superintendent of public instruction shall review the joint powers agreement that the districts have entered and verify that:

1. The school districts:

a. Have a combined total land mass of at least five thousand eight hundred square miles [1502193 hectares];

b. (1) Have a combined total land mass of at least four thousand five hundred square miles [1165494 hectares]; and

(2) Number at least twelve;

c. (1) Have a combined total land mass of at least four thousand square miles [1035995 hectares]; and

(2) Have at least three thousand students in average daily membership; or

d. (1) Have a combined total land mass of at least one thousand five hundred square miles [388498 hectares]; and

(2) Have at least seven thousand five hundred students in average daily membership.

- 1 2. The school districts are contiguous to each other or, if the districts are not
2 contiguous to each other, the superintendent of public instruction shall verify that
3 the participating districts can provide sound educational opportunities to their
4 students in a fiscally responsible manner without injuring other school districts or
5 educational associations and without negatively impacting the ability of other
6 school districts or educational associations from providing sound educational
7 opportunities to their students in a fiscally responsible manner. A decision by the
8 superintendent of public instruction under this subsection may be appealed to the
9 state board of public school education. A decision by the state board is final.
- 10 3. The joint powers agreement requires that the participating school districts maintain
11 a joint operating fund and share various administrative functions and student
12 services in accordance with subsection 4.
- 13 4. a. During the first two school years in which an educational association is
14 operational, each participating school district shall share in at least two
15 administrative functions and two student services, selected by the district.
- 16 b. During the third and fourth school years in which an educational association is
17 operational, each participating school district shall share in at least three
18 administrative functions and three student services, selected by the district.
- 19 c. During the fifth school year in which an educational association is operational,
20 and each year thereafter, each participating school district shall share at least
21 five administrative functions and five student services, selected by the district.
- 22 d. For purposes of this subsection:
- 23 (1) "Administrative functions" means:
- 24 (a) Business management;
- 25 (b) Career and technical education services management;
- 26 (c) Curriculum mapping or development;
- 27 (d) Data analysis;
- 28 (e) Federal program support;
- 29 (f) Federal title program management;
- 30 (g) Grant writing;
- 31 (h) School improvement;

- 1 (i) School safety and environment management;
- 2 (j) Special education services management;
- 3 (k) Staff development;
- 4 (l) Staff retention and recruitment;
- 5 (m) Staff sharing;
- 6 (n) Technology support; and
- 7 (o) Any other functions approved by the superintendent of public
- 8 instruction.

9 (2) Student services means:

- 10 (a) Advanced placement classes;
- 11 (b) Alternative high schools or alternative high school programs;
- 12 (c) Career and technical education classes;
- 13 (d) Counseling services;
- 14 (e) Common elementary curricula;
- 15 (f) Distance learning classes;
- 16 (g) Dual credit classes;
- 17 (h) Foreign language classes;
- 18 (i) Library and media services;
- 19 (j) Summer programs;
- 20 (k) Supplemental instruction programs; and
- 21 (l) Any other services approved by the superintendent of public
- 22 instruction.

23 e. For purposes of this subsection, if an educational association became
24 operational before July 1, 2005, the 2005-06 school year must be considered
25 the association's first year of operation.

26 5. The joint powers agreement provides:

- 27 a. Criteria for the future participation of school districts that were not parties to
- 28 the original joint powers agreement;
- 29 b. An application process by which school districts that were not parties to the
- 30 original joint powers agreement can become participating districts; and

1 c. A process by which school districts that were not parties to the original joint
2 powers agreement and whose application to participate in the agreement was
3 denied can appeal the decision to the superintendent of public instruction.

4 6. The joint powers agreement provides for the employment and compensation of
5 staff.

6 7. The joint powers agreement:

7 a. Establishes the number of members on the governing board;

8 b. Establishes the manner in which members of the governing board are
9 determined;

10 c. Requires all members of the governing board or their designees to be
11 individuals currently serving on the board of a participating school district; and

12 d. Allows for the inclusion of ex officio nonvoting members on the governing
13 board.

14 8. The joint powers agreement provides that the board of the educational association
15 shall meet at least quarterly.

16 9. The joint powers agreement does not permit the educational association to
17 compensate members of the educational association board for attending meetings
18 of the board and does not permit the educational association to reimburse
19 members of the board for any expenses incurred in attending meetings of the
20 educational association board.

21 **15.1-09.1-04. Joint operating fund - Accounting functions.** The board of an
22 educational association may contract with any person, including a school district, for the
23 maintenance of the association's joint operating fund and for the performance of any business
24 or accounting functions required by law or necessary for the association's operation.

25 **15.1-09.1-05. Educational association - Report of expenses.**

26 1. The board of an educational association shall submit annually to the
27 superintendent of public instruction, at the time and in the manner designated by
28 the superintendent, a report detailing all expenses incurred by the educational
29 association and shall attribute the expenses on a per student basis by participating
30 school district.

2. The board shall deposit any moneys received by or on behalf of the association into the educational association's joint operating fund.

15.1-09.1-06. Compensation - Reimbursement - Extraordinary service. The board of an educational association may provide compensation and reimbursement to any board member who, at the direction of the board, performs extraordinary service on behalf of the board. For purposes of this section, "extraordinary service" means duties beyond those reasonably expected of members of the board and includes travel to and attendance at national meetings or conventions.

SECTION 5. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

State aid - Payable to educational association - Obligation of district.

1. If a school district is eligible to receive state aid as a result of its participation in an educational association governed by chapter 15.1-09.1, the superintendent of public instruction shall forward such aid directly to the educational association on behalf of the school district. The superintendent of public instruction shall forward the aid provided for in this subsection at the same time and in the same manner as that provided for payments under section 15.1-27-01.
2. If the superintendent of public instruction determines that a school district failed to meet any contractual or statutory obligation imposed as a condition of receiving the state aid, the superintendent shall subtract the amount for which the district was not eligible from any future distribution of state aid to the district under section 15.1-27-01.

SECTION 6. A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim permitted by this chapter and brought against an educational association for an injury caused by an educational association or an employee of an educational association acting within the scope of the employee's employment or office.
2. "Commissioner" means the insurance commissioner.

- 1 3. "Educational association" means a group of school districts that have entered a
2 joint powers agreement which has been reviewed by the superintendent of public
3 instruction and verified as meeting the requirements of section 15.1-09.1-03.
- 4 4. "Employee" means any officer, employee, board member, volunteer, or servant of
5 an educational association, whether elected or appointed and whether or not
6 compensated. The term does not include an independent contractor or any person
7 performing tasks the details of which the educational association has no right to
8 control.
- 9 5. "Injury" means personal injury, death, or property damage.
- 10 6. "Personal injury" includes bodily injury, mental injury, sickness, disease, and injury
11 to a person's rights or reputation.
- 12 7. "Property damage" includes injury to or destruction of tangible or intangible
13 property.

14 **Liability of an educational association - Limitations.**

- 15 1. Each educational association is liable for money damages for injuries when the
16 injuries are proximately caused by the negligence or wrongful act or omission of
17 any employee acting within the scope of the employee's employment or office
18 under circumstances where the employee would be personally liable to a claimant
19 in accordance with the laws of this state, or injury caused from some condition or
20 use of tangible property under circumstances where the educational association, if
21 a private person, would be liable to the claimant.
- 22 2. The liability of an educational association under this chapter is limited to a total of
23 two hundred fifty thousand dollars per person and five hundred thousand dollars for
24 injury to three or more persons during any single occurrence regardless of the
25 number of educational associations, or employees of such educational
26 associations, which are involved in that occurrence. An educational association
27 may not be held liable, or be ordered to indemnify an employee held liable, for
28 punitive or exemplary damages.
- 29 3. An educational association or an employee of an educational association is not
30 liable under this chapter for a claim based upon an act or omission of an
31 educational association employee who exercised due care in the execution of a

statute or rule or for injury caused directly or indirectly by a person who was not employed by the educational association.

4. This chapter does not obligate an educational association for an amount that is more than the limitations upon liability imposed by this chapter. Subject to this chapter, any payments to persons constitute payment in full of any compromised claim or judgment or any final judgment under this chapter.
5. Notwithstanding this chapter, an educational association or its insurance carrier is not liable for any claim arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.

Educational association named in action - Personal liability of employees - Indemnification of claims and final judgments.

1. An action for injuries proximately caused by the alleged negligence, wrongful act, or omission of an employee of an educational association occurring within the scope of the employee's employment or office must be brought against the educational association. If there is any question concerning whether the alleged negligence, wrongful act, or omission occurred within the scope of employment or office of the employee, the employee may be named as a party to the action and the issue may be tried separately. An educational association shall defend the employee until a court determines that the employee was acting outside the scope of the employee's employment or office.
2. An employee is not personally liable for money damages for injuries if the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of the employee's employment or office.
3. An employee is not personally liable for acts or omissions of the employee occurring within the scope of the employee's employment unless the acts or omissions constitute reckless or grossly negligent conduct, or willful or wanton misconduct. An employee may be personally liable for money damages for injuries if the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment or office. The plaintiff in such an action must show by clear and convincing evidence that the employee was acting outside the scope of the employee's employment or office or

1 that the employee was acting within the scope of employment in a reckless, grossly
2 negligent, willful, or wanton manner. An employee may be liable for punitive or
3 exemplary damages. The extent to which an employee may be personally liable
4 pursuant to this section and whether the employee was acting within the scope of
5 employment or office must be specifically stated in a final judgment.

- 6 4. An educational association shall indemnify and save harmless an employee for any
7 claim, whether groundless or not, and final judgment for any act or omission
8 occurring within the scope of employment or office of the employee. The
9 indemnification must be made in the manner provided by this chapter and is
10 subject to the limitations in this chapter.

11 **Liability insurance policy coverage.** An insurance policy or insurance contract
12 purchased by an educational association or a government self-insurance pool in which an
13 educational association participates pursuant to this chapter may provide coverage for the
14 types of liabilities established by this chapter and may provide such additional coverage as the
15 governing body of the educational association determines to be appropriate. The insurer may
16 not assert the defense of governmental immunity. This chapter, however, confers no right upon
17 a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the
18 required insurance coverage, the dispute must be tried separately. The insurance coverage
19 authorized by this chapter may be in addition to any insurance coverage purchased by an
20 educational association pursuant to any other provision of law and if premium savings will result
21 therefrom, any insurance policy purchased pursuant to this chapter or any other provision of law
22 may be written for a period that exceeds one year.

23 **Authorized insurance.**

- 24 1. The insurance authorized by this chapter may be provided by:
25 a. Self-insurance, which may be funded by appropriations to establish or
26 maintain reserves for self-insurance purposes;
27 b. An insurance company that is authorized to do business in this state and
28 which the commissioner has determined to be responsible and financially
29 sound, considering the extent of the coverage required; or
30 c. Any combination of the methods authorized in subdivisions a and b.

2. This chapter does not prohibit an educational association from uniting with other educational associations to purchase liability insurance or to self-insure.

Educational association insurance reserve fund.

1. An educational association may establish and maintain an insurance reserve fund for insurance purposes. The educational association may appropriate from any unexpended balance in its general fund such amounts as the governing body of the educational association determines necessary for the purposes and uses of the insurance reserve fund.

2. The insurance reserve fund must be kept separate and apart from all other funds and may be used only for the payment of claims against the educational association which have been settled or compromised, judgments rendered against the educational association for injuries arising out of risks established by this chapter, or for costs incurred in the defense of claims.

Duties of commissioner. The commissioner shall determine the specifications for the liability insurance covering the areas of risk specified in this chapter. The commissioner shall require the insurance company to guarantee that its policy provides minimum coverages pursuant to the specifications. The commissioner may certify to an educational association obtaining liability insurance from an insurance company that the insurance company is responsible and financially sound, given the extent of coverage that the insurance company is offering.

Statute of limitations. An action brought under this chapter must be commenced within three years after the claim for relief has accrued.

SECTION 7. REPORT TO LEGISLATIVE COUNCIL - EDUCATIONAL

ASSOCIATIONS GOVERNED BY JOINT POWERS AGREEMENTS. At the conclusion of each school year during the 2007-09 biennium, the superintendent of public instruction shall compile a report covering the operations of each educational association governed by chapter 15.1-09.1. The report must include the administrative functions and student services in which members of each educational association participated and the direct and indirect benefits of that participation. The report must specifically address the impact of educational associations on course offerings, student achievement, professional development opportunities, and the sharing of administrative and instructional personnel. The report also must note other resulting

- 1 benefits or efficiencies. The superintendent of public instruction shall present the reports to an
- 2 interim committee designated by the legislative council.

- 3 **SECTION 8. REPEAL.** Section 15.1-27-40 of the North Dakota Century Code is
- 4 repealed.