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2001 HOUSE EDUCATION

HB 1045

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1 -13

15.1
13

House Education Committee

☐ Conference Committee

Hearing Date 01/15/01

Tape Number	Side A	Side B	Meter #
#2	X		97 to 3075
Committee Clerk Signature	Lisa Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now hear HB1045

Anita Thomas: (Legislative Council) I'd like to do a brief history about how we got to this point. This efforts has its roots back in 1995. At that point, the legislature directed the state auditor to conduct a performance audit of the DPI. The audit was presented to the Legislative Audit and Review Committee. That committee referenced a number of education issues and it should be heard by the Education Finance Committee. When it was heard by the Finance Committee, the 1995-1996, the committee was told that sections to the title were inconsistent, unclear, illogically arranged, etc., so the committee recognized that it would take time and it would take commitment on the part of committees, on the part of interested parties, agencies and

our office as well. They suggested a legislative council study. That study was subsequently assigned to the '97-'98 interim education services committee. The first thing the committee did was segregate chapters that are not directly related to k12 education from those that are directly related to k12 education. So the committee chose not to address issues such as higher ed. Their main chapters were looked at, they were put in some logical order. The committee knew that it would have to address sections that were inconsistent, unclear, illogically arranged, but more importantly, the committee wanted to ensure that the rewritten sections would accurately reflect the manner in which business was conducted at the school level, the school district level and within the DPI. It didn't take that committee long to realize that the project would encompass more than one interest. The last interim, the committee worked on 16 of the 34 proposed chapters. These include the State Board of Public School Education, DPI, Contract for Education, the Educational Telecommunications Council, schools, school districts, military installation school districts, school boards, county committees, county superintendents, school district boundaries, students chemical abuse prevention program, post-secondary enrollment options and adult education. Those efforts in the passage of 1999 HB1034, with no descending votes in either the House or the Senate. At this interim, the Education Services Committee returned to its efforts, and they addressed the following chapter. ESPB, Superintendent and Director Dismissal, teacher dismissal, teacher employment contracts, teacher personnel issues, teacher qualification, compulsory attendance, courses in curricula kindergartens, home education, school finance, state tuition fund, payment of tuition, student transportation, open enrollment, special education, multidistrict special education unit, boarding home care, child nutrition and food distribution program, and school construction. The one thing that's important for you to

note is not the intent of the interim committee to make substantive changes in the law. However, in meeting the other goals, there were changes that were sometimes necessary.

Moving on the first chapter that we're going to be dealing with, that's the ESPB. This deals with teachers who hold teaching licenses, the second, the Administrative Practices Board deals with administrators who hold teaching licenses. The ESPB consists of 9 members. The Administrative Board consists of five of those members. When the interim committee started working on this chapters. We found that referencing two boards with different duties in the same section, just didn't work. The committee's first thought was to put each of the boards and their separate duties in separate chapters. Chapter 13 would deal with the ESPB, and Chapter 14 would deal with Administrators Professional Practices Board. That was certainly more clear, but it created a problem. There were issues of separate notices, compensation and the list went on. So the committee finally concluded since we're dealing with teaching licenses, that the individual holding the license might be a teacher or administrator, that the license was the same. Then the committee went back to referencing only one board, and as it stands in the rewrite when decisions need to be made by the administrators who hold teachers licenses, the committee of the ESPB will handle those decisions. One other thing the committee found, is that the present law didn't define who fell into the category of an administrator. People who worked with the law had a sense of when they were talking about an administrator and when they weren't. The committee thought that a definition should be included and what they came up with is under the first section of the proposed bill. *For Definition, see **15.1-13-01. Definitions.***

*Under Section **15-38-17. Education standards and practices board and administrator's professional practices board.** Of the current law, which is attached, you can find a description of the ESPB*

In 15.1-13-02 we set forth the membership requirements. We made one change from current law. Presently, one member of the board must be the dean of a college of education. Because title vary from school to school, the committee added language providing that the member could be the dean of a college of education or the chairman of the dept. of education.

Next section, 15.1-13-03 sets forth the board of compensation. That is still $25 per day, plus expenses.

15.1-13-04 sets fort the term of office for board members which is three years, and it provides that no person may serve for more than two consecutive terms.

15.1-13-05 provides the board officers and designates the executive director of the ESPB and the board's secretary.

15.1-13-06 sets forth the notice requirements.

15.1-13-07 addresses quorum requirements. This section the committee also made some changes. *Read current law **15-38-17** that is attached* The ESPB has 9 members, 5 members would constitute a quorum, and 3 members would constitute a majority of the quorum. Having 3 members agree to new letterhead wasn't a problem, it's the decision before a board of the revocation of an individual seeking license. The sense was the committee of three members should be in agreement, so in the rewrite, the committee provided that at least 5 members of the board must consent to the revocation of an individual seeking license.

15.1-13-08 and 15.1-13-09 these two sections stem from present sections 15-38-18 under current law **(Duties of the ESPB).** A duty is a mandate 'thou shall', so it was confusing when the section contained language provided that the board 'shall' perform certain functions and the board 'may' perform other functions, so in the rewrite, the committee chose to do it in two sections. 13-08 deals with the things that 'must' be done and 13-09 lists the board's powers, if so chosen.

15.1-13-10, like current law requires the ESPB to adopt the criteria for teacher licenship

15.1-13-11 like current law authorizes the board to set and charge for filing an application and for issuing an application. These selected by the board have to be deposited in accordance with section 54-44-12.

15.1-13-12 like current law provides the teaching licenses that are effective for at least one school year.

15.1-13-13 deals with provisional certificates. The current law can be found at the end of the fingerprint section, which is 15-38-18.2

15.1-13-14 deals with the background check and fingerprints.

15.1-13-15 Earlier I had mentioned that the ESPB section was spread out over two chapters. Actually, this section comes from yet a third chapter, 15-37-01. That chapter contains oaths for teachers or faculty members of state colleges and universities and for aliens to teach in state colleges and universities. We will be looking at latter two oaths in another bill, but for now, the committee opted to put the teacher oaths in the teacher licensing section. That was just moved from one spot to another, the content was not changed.

15.1-13-16 deals with obtaining transcripts from colleges and universities. Apparently, some institutions were not timely in responding to requests for transcripts. The current law directed that they be given 10 days. The committee made one small change. Present law directs that the institute of higher education is to forward the transcript to the ESPB, and since some people do seek licenser in another state, the committee thought that the we should require the transcript be sent to the ESPB or a comparable entity in another state.

15.1-13-17 combines the content of both 15-36-11 and 15-36-11.1. It requires licenser or approval from the ESPB before one can teach in this state. The committee did make one change in phraseology. Current the law provides that an individual must hold a 'valid ND professional teaching license'. First, the committee removed the word 'valid'. Secondly, the committee removed the word 'professional'.

15.1-13-18 We provide in current law that one cannot teach without a license. 15-36-12 provides that a teacher cannot be paid for any time that they teach in a public school without a license. The committee eliminated some verbiage. Before being employed to teach the individual must present his/her teaching license or other evidence of approval to teach to the school district business manager.

15.1-13-19 This section sets forth one exception to the requirement. If one's license expires within the final six weeks of the school year, the individual is permitted to finish out the year under the expired license. It applies to someone who is about to retire.

15.1-13-20 deals with the interim reciprocal teaching license. The committee made no substantive changes

15.1-13-21 this directed that the ESPB pursue the reciprocal acceptance of teaching licenses by other states. The ESPB was also directed by law to report the progress of their efforts to the committee. The ESPB made the report and the specific requirement was removed from the rewrite.

15.1-13-22 allows for the licenser of instructors of North American Indian languages. Such individuals have to have a BA degree, but not a teaching license. The concept is found in section 15-38-18.1 of the current law.

15.1-13-23 was enacted in the '97 session. It gives individuals who hold graduate degrees in counseling and who want to employed as school guidance counselors 7 years in which to obtain a teaching license.

In this point in the rewrite, we get away from the point of issuing licenses, and we enter the complaint segment of the ESPB.

15.1-13-24 pulls language from several different sections. First an individual files with the board a complaint against a teacher or an administrator. This complaint has to state the complaint's charges, it has to be signed, and it has to include supporting documentation. When the board receives the complaint, it must be sent to the named individual. That individual is given 20 days in which to respond. If the individual responds, the board needs to review the complaint. No testimony is taken at this point. The board may decide to dismiss the complaint or determine that the charges are substantive and file a formal board complaint. In the latter case, the board then schedules a public hearing on the complaint. Subsection isn't new practice, but it is new language requesting actual practice. If the individual fails to file a timely response, the board can determine whether this is an admission of the charges and whether or not the license should be

acted upon. It gives the board some discretion over whether or not they want to continue pursuing the complaint.

15.1-13-25 This section continues the chronicle of board action. After the hearing, the board can issues a warning or a reprimand, suspend the individual's license or revoke the individual's license. The grounds for taking action set forth in this section, the committee did a little bit of modernization. One of the grounds is still that the individual is incompetent, immoral, intemperate or cruel. We attempted to delve into these standards, but the committee thought that it should be the subject of an independent bill draft if anyone wanted to pursue that.

15.1-13.26 This section is take virtually verbatim from present law. It calls for the denial of an application, an immediate revocation of the teacher's license if that teacher is found guilty of a crime against a child or as a sexual offense. The statutory section used in defining a crime against a child are listed in subsection 5 (see attached subsection for the list).

15.1-13-27 requires the board to give notice of the suspension or revocation to the business manager of the school district that employs the individual, to each county superintendent in the state, to the superintendent of public instruction. This individual is, under such circumstances, expected to surrender his/her license, and if the individual fails to do so, the ESPB may publish notice of the suspension or revocation in the official newspaper of the county in which the individual was employed.

15.1-13-28 like current section 15-36-15, it provides that the revocation of one's teaching license result in immediate termination.

15-13-29 This section sets forth the manner in which the inner-committee chose to address the teaching licenses of the administrators. If a complaint is filed against an administrator, the

complaint goes to a subcommittee of the ESPB. The subcommittee is made up of the same ESPB members that currently make up the Administrator's Professional Practices Board. Two ESPB members who are administrators, the member who is the school board member, and the two ESPB members who are teachers and who have been appointed to the subcommittee by the ESPB. This subcommittee operates much as the APPB did, in terms of convening its meetings, selecting its chairmen, etc. Any action or determination by the subcommittee has the same force and effect as any action taken by the full board. The action can't be changed by full board, it can, however, be appealed to the courts.

15.1-13-30 provide that the venue for legal actions involving ESPB is Burleigh County

15.1-13-31 directs state's attorneys to notify ESPB when an individual who holds a teaching license is convicted of a felony or a class A misdemeanor.

Chairman Kelsch: Any questions?

Janet Welk: (Executive Director of the ESPB) during the process of the rewrite, the ESPB rules and laws, we had our Asst. Attorney General, Bill Peterson, go through them, review them, and the board believes and is very well aware of the rewrite and is in favor of the entire rewrite. We wish to thank the interim committee for their hard work.

Rep. Hunskor: Going back to pg. 2, I'm wondering why there was not one individual on the board that would not be associated with education when determining revoking licenses to get a different perspective. These are all people who are involved in the education system.

Welk: The makeup of the board, because of the educational board, involves teacher education, administrators, teachers and school board, and it's always been the interpretation that the school

board member is the representative from 'back of the field', the parents, the educational community.

Chairman Kelsch: Anyone else who wishes to appear in support of HB1045?

Joe Westby: (NDEA) I, too, would render our approval to the rewrite on this section as those of you who were on the interim committee that studied this bill recall, we had had a problem with the definition of athletic director in 13-01, but I think the language in here now satisfies that concern, and so we're fine with this section. We think the committee has done a good job, and we would encourage you to support it.

Chairman Kelsch: Anyone else who wishes to appear in support of HB1045? In opposition?

Rep. Froelich: I'm not here in support or opposition to HB1045, but I have a few questions. I've come across a few things that I don't think are in here, I just received it a half an hour ago, and I guess the schools in my district has brought this to my attention. Since this board has been established, now this the information that I've received, I don't have anything to give you a documentation, but I didn't know this bill was coming up until this morning. Teachers licensing fees, since this board has been established, I believe with the DPI was $5. Now, I believe that it's $185. Have we created a monster here? I've had quite a school districts call me and complain that when they get a hold of the ESPB...They had a whole different deal when they worked with DPI. DPI would work with them and say they had a new teacher coming in. On page 7, 15.1-13-21, I think that somebody needs to get into this a little more. I think we also should look at the fact that the amount MN, SD charge for a state school licenses. We're pricing our teachers right out of the picture right now. We don't give them enough money. Let's not put so many standards against them. So many fees against them, that we continue to do this. Pg. 12

that a mention of an individual holding a teaching license revocation for a class A misdemeanor. Is a class A misdemeanor a DUI? Maybe someone with a better understanding of the law can tell me. If we're going to draft this thing to a T, and if we're going to charge these people... my understanding is that the ESPB is self-sustaining, have we created a monster going from $5 to $185, and if have, we've created all these restrictions for our teachers and educators to teach in ND. I think I'm afraid that we've created a big problem for our educators.

Rep. Hanson: Some of the things that you brought up have been in the existing law for awhile, it's not due in this bill.

Chairman Kelsch: What we did here was just the rewrite, so there were no real substantive changes that were made to current law, really what you're seeing here is basically current law with some updated language, in some cases taking out some sections that were no longer in use. So, basically that's all this is, and that's all we're doing. We haven't put major changes in there, and what our recommendation has been for individuals, if there were concerns in certain areas, to bring in an individual bill, rather than to try to make the corrections in this bill, because we want to see that this bill is passed, because of all the work that went through with it. This bill is going to be around for awhile.

Is there anyone else who wanted to appear in support, in opposition to? Seeing none, we will close the hearing on HB1045, Chapter 15.1

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-20

House Education Committee

☐ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
#1	X		55 to 580
Committee Clerk Signature	Lynn Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will open the keep open the hearing on HB1045 15.1-20 relating to compulsory attendence.

Anita Thomas: (Legislative Council) The present law regarding compulsory school attendance, 15-34.1-00.1 begins with a set of definitions. The interim committee decided that those definitions were pretty self explanatory and were prepared to omit them all, but at the suggestion of one of the interest groups, the committee kept the definition of home education.

15.1-20-01 is a shortened version of 15-34.1-01. It provides that any person who has a responsibility for a child between the ages of 7-16 must ensure that a child attends a public school unless the child is exempted under the following sections/

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15.1-20-02 sets forth those exemptions *see bill for those exemptions* The school board must make the determination regarding an exemption, and that the board's decision is appealed to a district court.

15.1-20-03 provides that every school board member, school superintendent, principal, truancy officer, teacher and county superintendent is charged with enforcing the compulsory attendance laws, and those individuals are given the authority to investigate any alleged violation of the compulsory attendance laws. One thing the committee did do is omit the provision in current section 15-34.1-04. The committee was told that truant officers were not employed anymore and that school districts already had the authority to a higher personnel as they sought fit. The last thing in this chapter is the definition of home education. The rewrite merely cleans up the existing language and provides an educational program for a child provided in accordance with 15.1-23, and it has to be provided by the child's parent in the child's home.

Rep. Hawken: If we don't do truant officers, why do we leave it in?

Thomas: That would be an excellent question. The committee didn't make a motion to remove it.

Rep. Kelsch: Remind me, in 20-02, did we talk about that during the interim? Does that still apply? Are there still cases where children are staying home to support the family?

Thomas: That issue did come up, and the first thought was that there are enough social support programs that should never happen, but one of the committee members gave me instances where the father had died, the boys were juniors and seniors in high school, and they had to take a few weeks off to help with the harvest, and what was explained to the committee was that those are odd situations may still exist, so the interim committee decided to leave the language.

Rep. Hanson: Did you say that home school has to be schooled at home? For example if you had parents that were divorced, and a child was living with the mother, but the father wanted to home school in his house, would that be called the home? Which one would be determined the home?

Thomas: Normally, we think about the custodial parent when we're talking about home education, but I'm not sure that I could tell you whether or not that could be permissible. We put everything in terms of the child's home and the child's school district. Hopefully that's an arrangement that would be settled by the parents.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HBHB1045 15.1-35

House Education Committee

☐ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
Tape #1	X		600-933

Committee Clerk Signature Dan Eilbert

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will open the hearing on child nutrition.

Anita Thomas:(Legislative Council) 15.1-35-01 like current law chapter begins with a definition section. The rewrite still defines child nutrition programs, food distribution programs in a school. School board was self explanatory, in terms of the committee's view, so that particular definition was omitted. The current law for state educational agencies is phrasing from federal law, and the rewrite merely directs the superintendent of public instruction to perform the function.

15.1-35

15.1-35-02 This section is a parallel section of present section 15-54-02. It authorizes the superintendent of public instruction to administer the federal funds, and to enter into contracts with federal agencies.

15.1-35-03 parallels 15-34-03. The committee merely eliminated the unnecessary verbiage of present law, and what remains is the section that gives the superintendent of public instruction specific authorization to contract without rules, employ personnel, provide technical assistance and advice, train personnel, disperse funds, and take any other necessary action.

15.1-35-04 Like present law, this section authorizes the school board to expend the money that they receive under the chapter.

15.1-35-05 this section contains one small change from present law. It begins by authorizing the superintendent of public instruction to adopt rules regarding record keeping and accounting and reporting by any public and private entity participating in the program. Our present law requires that the records be kept for a period not in excess of five year. The rewrite provides that the records must be reserved for a period of time prescribed by the superintendent. We check the record keeping requirements of other agencies, and we didn't find specific time requirements. We found instead the authority for the agency head to set those requirements, and that's what's provided in here too.

15.1-35-06 This sections parallels 15-54-06. It authorizes the superintendent of public instruction to study methods for improving the program, methods for promoting nutrition education in schools, appraising the program, and reporting the findings to the governor.

15.1-35-07 requires that each individual that manages a food services program of the type governed by this chapter to undergo initial training and continuing training regarding the safe

handling, preparation and service of food. Again, the superintendent is directed to adopt rules regarding the nature scope and frequency of such training.

Chairman Kelsch: Any questions? Seeing none, we'll close the hearing for HB1045

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 Fee Explanation

House Education Committee

❑ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
#1	X		1,035 to 2647
Committee Clerk Signature	Dana Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: Janet would you answer some questions regarding the handout?

Rep. Nelson: Yesterday there was some confusion about the cost, and there are a number of fees here, would you go over what normally the charge would be when applying for a teacher's licence in this state?

Janet Welk: (Executive Director of ESPB) As you will remember in '95, the ESPB became an independent board, no longer receiving any state appropriations, and relies solely on the licensure fees of educators of ND for maintenance. The board not only licenses teachers, but it also provides for professional development, program approval of the teacher education programs, and also the professional practices, so what we do is, use the funds from the teacher license fees to

provide the entire workings of the board. In many other states, you will see that they may have a teacher licenser board, but #1 it could be state funded, and it usually only has one function, it doesn't have all of the functions that the ESPB has.

Please refer to attached testimony for fees

Rep. Nelson: Do you have any flexibility in the fines, in situations where the administrator: where somebody comes in and they weren't told that they had to update their license, and a severe fine was imposed.

Welk: Based on the Attorney General's recommendation, no, we don't, because then it would become a very..... Where do we stop. We have had business that were supposed to be collecting valid licenses from every teacher prior to putting them in the classroom. Larry Klundt, at his in services, talks about this. I write a letter to every business manager in July, and remind them, 'before you put anyone in your classroom, make sure they have a valid license'. We send out, if someone is on contract, letters of renewal to them and to administration. I also have put a letter in the $25 application packet, in bold '**Do not go into the classroom without a license**'. Prior to that letter, we relied on the business managers and it wasn't happening, but by law, they are committing a Class B misdemeanor. The board has never chosen to do anything about that, but legally could.

Rep. Nottestad: In the fall of the year, every principal must sign forms, and on those forms, every single that is on your staff, the expiration of that certificate is made very clear. Every supervisor must sign that.

Welk: Just as a point of reference, the educational profession, is just slowly getting started, nationally and in the state of ND, as far as regulation of its own field. With that is the

reeducation, the education of the teachers, the professional development and the professional practices. I know that as we are in very difficult times in ND, we're going to be asked to drop all sorts of things, from our standards to our regulations, and I ask you at this point, there are other ways to do things, I don't think that that's going to be the solution. Whether we drop our standards, let anyone into our schools to teach, or whether we drop our professional practices, that's not going to be the solution in ND.

Rep. Hawken: One problem that I know exists, is the time frame in background checks, and that costs the school district a lot of money. I'm assuming that that is no longer a concern?

Welk: There's one I forgot to add to that, and that's the Affordity of Provisional license, but we can turn that around in 24 hours.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-22

House Education Committee

☐ Conference Committee

Hearing Date 01/17/01

Tape Number	Side A	Side B	Meter #
#1	X		57-309

Committee Clerk Signature Lee Gilbertson

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: we will now reopen the hearing on HB1045 15.1-22 relating to kindergarten.

Anita Thomas: (Legislative Council) Section 15.1-22-01 like present 15.1-45-01 authorizes the school board on its own motion, to establish a kindergarten. Present law provides that if the board receives a petition, the board must place the question of establishing a kindergarten on the ballot of the next general election. The petition currently has to be signed by 5% of the qualified voters of the district, as tabulated by the last census. That number, however, may not be less than 25. The interim committee was told that some districts may not have 25 qualified voters. At any rate, the committee opted to try to make petition requirements consistent, so the rewrite provides for the petition for 20% of those who voted in the most recent annual school district election.

15.1 22

15.1-22-01 sets forth the requirements for a public kindergarten. *those requirements can be found in the bill*

15.1-22-03 precludes the superintendent of public instruction from approving a kindergarten unless all the requirements are met.

15.1-22-04 like current law provides that a school board may discontinue a kindergarten through the resolution process. You will note in your copy of the present kindergarten law that there's one section 15.1-45-03 which addresses the accreditation rules. This was omitted in the rewrite because the superintendent, in his chapter already had brought authority to issue rules governing the accreditation rules.

Vice Chairman Brusegaard: You said you worked to make petition requirements consistent. Consistent with what?

Thomas: We try to have consistency throughout the title. As we do some of the other chapters, you'll see that there aren't very many instances where the petitions do come up, but we try to relate them to a percentage requirement of those who voted in the last election.

Vice Chairman Brusegaard: And that's generally going to be about 20%?

Thomas: Yes.

Chairman Kelsch: We will now close the hearing that portion of the hearing.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-23

House Education Committee

☐ Conference Committee

Hearing Date 01/17/01

Tape Number	Side A	Side B	Meter #
#1	X		310 to 2263

Committee Clerk Signature Rose Gilbert

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1045 15.1-23

Anita Thomas: If you look at the current law, you'll see long paragraphs containing multiple concepts. The requirements were neither clear nor coherent. Some of the committee members had strong feelings toward home education, both positively and negatively. In this case, the committee wanted craft a chapter that would clearly set forth the reporting and testing requirements, and with equal clarity set forth the parents duties and responsibilities. The ultimate desire was to craft a chapter that gives due notice of the law, those already involved in home education to those who might be contemplating home education, and to those that have to administer the law. We'll begin 15.1-23-01 with the definition of home education. This is the

15.1-23

same definition that we used in the compulsory attendance chapter. It merely provides that home education is a program of education supervised by the child's parent in the child's home in accordance with the provisions of the chapter.

15.1-23-02 one of the first steps in pursuing home education is to follow statement of intent with the child's school district. This section sets forth the requirements in an ABCDE fashion, sets forth what must be contained in the statement. The current law requires the statement of intent include a proof o" immunization record, and the committee determined that what was intended was, in fact, a copy of the immunization record, not proof that it existed.

15.1-23-03 This section sets forth the qualifications for a parent undertaking home education. Current law quite frequently refers to a parent who is licensed to teach in ND. As a rewrite uses the phrase, 'licensed to teach by the ESPB or approved to teach by the ESPB. In recent sessions, the ESPB was given the authority to grant interim reciprocal licenses and even provisional licenses, and the committee wanted to ensure that the individual so approved, would not be denied the right to teach, by a statute that appear to require only traditional licensere. The new phraseology is used throughout the title rewrite, and in this chapter includes the sentitude by representatives of the Home Education Association.

15.1-23-04 Like present law, this section requires instruction in those subjects required by law, be taught to public school students. Instruction has to take place at least four hours a day, for at least 175 days a year.

15.1-23-05 Like present law, this section requires the parent to maintain an annual record of the courses taken by the child, the child's academic progress assessment, and the standardized test

results, and the record is to be given to the school superintendent or the school administer if and when the child transfers to a public school.

15.1-23-06 This section sets forth monitoring requirements. If a parent has only a high school diploma or a GED, monitoring must take place for two years. If the child scores below the 50th percentile on a standardized test, the parent must be monitored for at least one more year and until such time that the child receives a higher score.

15.1-23-07 This section was a rewrite of 15-34.1-07. It was particularly tough to sort through. As you can see, the present law goes on for nearly two pages. Many have trouble understanding it, and those that did, indicated that it didn't reflect the original intent. When all was said and done, the committee had crafted a much clearer version. Subsection 1 provides that monitoring is required, and as we noted in the previous section, it's the school districts responsibility to assign and compensate the monitor. If the parent does not want this, the parent can contact his/her own monitor and compensate that individual. Subsection 2 provides that regardless of who picks the monitor, that individual has to be licensed to teach by the ESPB or approved by the ESPB. Subsection 3 requires that the monitor report on the child's progress twice each year, and subsection 4 provides that if one child receives home education, the monitor must spend, on average of one hour a week in contact with the child and the parent. If two or more children are receiving home education, the monitor has to spend an extra half an hour per month with each additional child.

15.1-23-08 This section is a reporting requirement. It states that any individual who monitors the child or who administers a standardized test, must notify the child's school district.

15.1-23-09 requires that the child must take as standardized test in grades 4,6,8 and 10. Private law requires that the test be grades 3,4,6,8 and 11, and the change was told, aligns the home education requirements with the period in which tests are given the public school system.

15.1-23-10 This section deals with the cost of the test. Because the issue is unclear in present law, the committee took a fair bit of time to craft this section as well. It provides that if the child takes the standardized achievement test used by the school district, and the school districts pays for the test and for the cost of administering the test, the school district has the responsibility for ensuring that the test is administered by an individual that is either licensed to teach by the ESPB or approved to teach by the ESPB. If the child takes the test that is not used by the school district, then the parent pays for the cost of the test. If the test is administered by an individual selected by the parent, the parent pays for the cost of the administration. The individual selected by the parents to administer the test must also be licensed to teach by the ESPB or again, approved to teach by the board. If the test is administered by the school district by the request of the parent, the school district pays for the cost of administering the test.

15.1-23-11 This section deals with the test results. The parent is to file the test results with the superintendent of the child's school district of residence, or if there is no superintendent, then with the county superintendent. If the child's score is below the 30th percentile, a multidisciplinary team must assess the child. If the team finds that the child is not disabled, the parent, with the advice and consent of an individual who is licensed or approved to teach by the ESPB, must prepare a remediation plan, and file that plan with the superintendent of that child's residence or the county superintendent if there is no superintendent.

15.1-23-12 The remediation plan becomes the basis for determining reasonable academic progress. The plan stays in place until the child scores higher than the 30th percentile, or until the child shows one full year of academic progress.

15.1-23-13 This section also stems from present 15-34.1-07. It provides that if a multidisciplinary team determines that a child is disabled, the parent can still continue to provide home education, so long as the child does not have a developmental disability, and further provided that the parent files a services plan that shows that the child's needs are being addressed by people qualified to provide special education services to the child. For a child in this category, the superintendent is directed to annually determine reasonable academic progress.

15.1-23-14 sets the parameters for allowing a parent to home school an autistic child. These parameters include the filing of a copy of the child's diagnosis and the development of a services plan.

15.1-23-15 requires the filing of progress reports by the child's services team on Nov. 1, Feb. 1 and May 1 of each school year. If at any time the services team believes that the child is not benefiting from home education, the team may request that the child be evaluated by a multidisciplinary team.

15.1-23-16 was enacted last session to ensure that children who were home schooled could participate in extracurricular activities, either under the offices of the child's school district of residence or under the offices of an approved nonpublic school. The selection is made and noted on the statement of intent, and the child is then subject to the transfer rules imposed by the ND High School's Activities Association.

15.1-23-17 It provides that a child's school district of residence and approved nonpublic school, or the ND Division of Independent Study may issue a high school diploma to a child, who through home education, has met the issuing entities requirements for high school graduation. These same entities may issue a high school diploma to a child who has completed at least 17 units of high school course work from the minimum curriculum offerings established by law by public and nonpublic school. This issue surfaced because some school districts required more units for graduation than the minimum required by the state.

15.1-23-18 This is current language transferred from 15-34.1-10. It provides that no state agency, school district or county superintendent may be held liable for accepting as correct, the information on any statement of intent or for any damages resulting from the parents failure to educate the child.

15.1-23-19 This, too, is current law, and it's found in 15-34.1-08. It provides that a child receiving home education is needed to be enrolled in the child's school district of residence for purposes of foundation aid if the school district is providing monitoring services. The school district then receives 50% of the weighted per student payment. That includes the summary.

Rep. Nottestad: On home education and the standardization of tests. Just to be sure we're covering everything, when it speaks about the family of the school paying for the administrations. Does that include both the giving and the scoring?

Thomas: I know we referenced the cost of the test, I guess I would feel better if some of the people more involved would answer that.

Rep. Nottestad: Pertaining to the home education and the 17 units that could be acceptable. Is it possible, under 15.1-23-17 that someone in their last semester could switch to home schooling

and they wouldn't be graduating from their program, because the school calls for 17 credits, and they wouldn't fulfill the 17, so they went into home schooling the last semester of their senior year, and graduate this way. Would this permit this to happen?

Thomas: My first response was, I suppose, probably yes, but I would also assume that if that did happen, it would be a relatively isolated incident.

Rep. Hanson: Say that somebody lived in the Fargo district, and he wanted to participate in the West Fargo district, would they have to go through the open enrollment to switch from one district to the other?

Thomas: I know that in the statement of intent to home school, you have to pick the district with which you're going to be affiliated, and then beyond that, I don't know what rules and regulations the High School Activities Association would impose on the child.

Rep. Hanson: Say that the student lived in Fargo and wanted to participate in West Fargo, would they have to get permission, then from the Fargo district to leave their district to take part in West Fargo?

Thomas: My inclination is to say no, because they have selected the district initially, but I would feel better if I had a chance to research that more thoroughly.

Rep. Mueller: It confused me, the language here on the top of page 54; it has to do with demonstration one year of academic progress, can you elaborate, can you explain the intent on what that really means?

Thomas: When we were talking about a remediation plan, the committee didn't get into great detail, I think people from DPI who work with the plans would be better able to answer that question, but dealing with the test score and the child did not need the tests, then you need to

look at where the child is placed, and assuming a particular test score for a particular child may not be an adequate response if you're looking academic progress.

Rep. Mueller: As far as you can respond, it's kind of an open ended deal.

Thomas: Yes, the one year of academic progress is still a substantial decrease over where the child was.

Cam Leedahl: (home education mother) I've been home educating for 12 years, and two of my children are now in college. I support this home education portion of the rewrite for several main reasons. One is that it doesn't further restrict home education, which we're very glad about. The words read much easier, I think there will be much less confusion for superintendents who are trying to enforce the requirements, and for home schoolers who are trying to understand how they home school. It also clarifies the areas of achievement testing and monitoring, so I appreciate the work the education services committee did in the interim.

Cam Leedahl: In response to earlier questions, I do know that when I purchase a test for my children that the scoring is included in the cost of the test. Now that might not be in the case of every test, but when I purchase it for my children, and the test is sent in, that's part of the cost. If there's hand scoring involved by the teacher, I don't know about that.

Rep. Nelson: Why do you purchase the test, why don't you use the standardized test that they use in the public schools?

Leedahl: There's differences between tests, and I looked over some sample tests, and I just liked the one, which was the Iowa test of basic skills, which I preferred over the CTBS. Now some of the schools in the state use these Iowa tests, some use the CTBS, and my school district use

CTBS, which I used for a number of years, but then they switched their format, and I just decided it would work out better for my child.

Rep. Nelson: Is it common that home school teachers purchase a different test than the ones that the public schools are using?

Leedahl: My experience is half and half. A number of them, especially if they're financially strapped, would rather use the school district test, and the other half just prefer to find one of their own.

Rep. Nelson: What is the cost of a test?

Leedahl: I paid $30.

Chairman Kelsch: Do you know the answer to Rep. Hanson's question regarding the open enrollment situation?

Leedahl: I couldn't answer that for sure. I could try and find out from home school legal council. I don't think it's done very often, if it's ever been done.

Rep. Hanson: I use Fargo, West Fargo, because a street divides the school district, and if you're home schooling at this side of the street, and you have a buddy over here on this side of the street, they probably want to leave that district to be with the friend.

Leedahl: I do know there are home schoolers who have open enrollment to another district for other purposes, but not for athletics, so I know it is done.

Rep. Hunskor: You seem very happy with your relationship with the whole process, DPI and the local superintendents. Are there any bugs in home schooling?

Leedahl: I need about an hour an a half.

Rep. Hunskor: Is there a major issue or two that needs to be addressed?

Leedahl: One problem with bringing up possible changes as a home educator is that then those who want to have tighter restrictions have something to say too, and it might end up going in our disfavor, so that's why home schoolers aren't bringing up any changes right now, but we of course would less regulations and restrictions on home education. I've found that the freer parents are to really individualized the education of the child and not have to worry about if they're following every little letter of the law, the right month, the right year, they're more creative and more responsive to their children, and more relaxed with it. In states that have no restrictions, the children perform just as well. If I had my way, we would just say, parents can just home educate and leave it at that, but I know that's not comfortable in our state, so I'm not going to ask for that. The vast majority of home educators are very responsible, they care very much for their child, they know their child better than anybody else. There are so many resources now, there is just no end to the resources.

Chairman Kelsch: We will close the portion of 1045 regarding home education, 15.1-23.

15.1-14

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-14

House Education Committee

☐ Conference Committee

Hearing Date 01/29/01

Tape Number	Side A	Side B	Meter #
#1	X		51 to 1594
Committee Clerk Signature			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now re-open HB1045 15.1-14 relating to superintendents.

Anita Thomas: (Legislative Council) *Please refer to attached testimony*

Rep. Haas: Whne you were discussing the issue of either cross-examination or clarification, aren't both languages used in here?

Thomas: The cross-examinition language is used when there's a discharge for cause only.

Chairman Kelsch: We will close the hearing on HB1045 15.1-14.

154-15

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-15

House Education Committee

☐ Conference Committee

Hearing Date 01/31/01

Tape Number	Side A	Side B	Meter #
#1	X		56 to 1441
Committee Clerk Signature	Lesa Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will reopen the hearing on HB1045 on teacher dismissal on page 45.

Anita Thomas: (Legislative Council) *Please refer to attached testimony*

Rep. Brusegaard: The last section about people not covered by the code, ar those people covered someplace else, or does the board just not have the power to discharge them?

Thomas: There's the university people, the people employed at the state institutions are covered under a personnel system. I don't know what the coverage is for the temporary people. It's not in the present law.

Chairman Kelsch: We will now close the hearing on HB1045.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-16

House Education Committee

☐ Conference Committee

Hearing Date 01/31/01

Tape Number	Side A	Side B	Meter #
#1	X		1444 to 3258
Committee Clerk Signature	Lisa Gilbertson		

15.1-16

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will reopen the hearing on HB1045 15.1-16.

Anita Thomas: (Legislative Council) *Please refer to written testimony*

Rep. Hunskor: On page 40 top line, the sick leave carries over from year to year up to thirty days. Many states have more days than thirty.

Thomas: That is the minimum that the state requires each contract to have, so an individual school district can raise that if they would like.

Chairman Kelsch: We will now close the hearing on HB1045 15.1-16.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-17

House Education Committee

☐ Conference Committee

Hearing Date 01/31/01

Tape Number	Side A	Side B	Meter #
#1	X		3259 to 3838

Committee Clerk Signature Lisa Gilbertson

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1045 section 15.1-17.

Anita Thomas: (Legislative Council) *Please refer to written testimony*

Chairman Kelsch: We will now close the hearing on HB1045 section 15.1-17.

15.1-17

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045- 15.1-18

House Education Committee

☐ Conference Committee

Hearing Date 02-13-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to
Committee Clerk Signature			

Minutes:VIce Chr Brusegaard called the committee to order and had the clerk take the roll call.

Note that a quorum was present. We will reopen the hearing on HB 1045.

Anita Thomas: (Legislative Council) *Please refer to attached testimony* Relating to Teacher Qualifications. 15.1-18

Vice Chr Brusegaard: Are there any questions, we will continue on.

Anita Thomas: (Legislative Council) See attached testimony- Relating to Courses and Curricula 15.1-21.

DISCUSSION

Vice Chr Brusegaard: we will continue on.

Anita Thomas: (Legislative Council) See attached testimony 15.1-27

Vice Chr Brusegaard: Are there any questions on the finance chapter. On page 59 sub section two, what is the code.

Anita Thomas: I don't know, but I will be happy to check.

15.1-18

Vice Chr Brusegaard: Any further questions, is there further testimony from these three sections from the audience, seeing none.

DISCUSSION

Vice Chr Brusegaard:Any other questions, seeing none we will adjourn for the morning.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-15.1-28 - 15.1-31

House Education Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to2750
Committee Clerk Signature			

Minutes:Chairman Kelsch, Vice Chair T. Brusegaard, Rep Bellew, Rep Grumbo, Rep Haas, Rep Hanson, Rep Hawken, Rep Hunskor, Rep Johnson, Rep Meier, Rep Mueller, Rep Nelson, Rep Nottestad, Rep Solberg, Rep Thoreson.

Chairman Kelsch: we will reopen the hearing on HB 1045.

Anita Thomas: (Legislative Council: today we will take up the state tuition fund (see attached testimony).

Chairman Kelsch: Are there any questions.

Rep Brusegaard: Right now the county treasurer forwards the money.

Anita Thomas: That is how its done, just not noted in the chapter.

Rep Mueller: Would you have some suggested language.

Anita Thomas: I will include it in the proposed amendments.

Rep Nelson: Do you know what the net proceeds are

15.1-28 31

Anita Thomas: I do not. We will go to the a longer chapter 15.1-29. (see attached testimony) Payment of tuition.

Rep Bellew: asks for a clarification.

Anita Thomas: Tuition payment between school districts.Comes on to give examples.

Rep Hawken: I can't find in here where it says we have to pay for transportation. But I know we do.

Anita Thomas: It is under special education.

Rep Hunsker: Asks a question about kindergarten student.

Anita Thomas: This is current law.

Rep Nelson: BIA students, asks a question of the auditing and reporting in those cases.

Anita Thomas: I believe Mr Deckert is the one to ask. We are now going to look at 15.1-30. Student transportation.

Rep Brusegaard: Does the school district still have to put out a contract for transportation services.

Anita Thomas: I would assume not.

Rep Brusegaard: Should that not read that do not provide transportation have to contract.

Anita Thomas: I believe you are correct, we should look at a change of verbiage.

Rep Mueller: I am not seeing compensation.

Anita Thomas: On the very bottom of page 96, it states what can be paid. We now have 15.1-31, Open Enrollment.

Chairman Kelsch: Questions by the committee members, hearing none. Will we finish up on Monday.

Anita Thomas: I am looking at one hour and fifteen minutes to go through the chapter.

Chairman Kelsch: We will go through HB 1046 and you will propose all the amendments.

Anita Thomas: That may be the easiest.

Chairman Kelsch: Anyone else wishing to testify on the chapters that we discussed. Anyone who wishes to testify in opposition, we will close the hearing on HB 1045.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-15.1-32-amendments

House Education Committee

☐ Conference Committee

Hearing Date 02-19-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 1644
Committee Clerk Signature	Joan Deis		

Minutes:Chairman Kelsch: Called the Education Committee to order and ask the clerk to take the roll. The Chair noted that a quorum was present. Let's take up HB 1045 beginning on page 100.

Anita Thomas: (Legislative Council) 15.1-32 Special Education (see written testimony attached).

Rep Brusegaard: On page 105, 15.1-32-17,Extended educational program, asked a question about a reference to another page 102, sub section two of 15.1-32-14, is that the same thing.

Anita Thomas:I believe the reference on page 105, authorizes the program and participation in the program and the reference on page 102 operates the payment for the program.

Rep Nelson: ON the last section 15.1-32-23, credentials process, any changes of the credentials would have to be approved by the Administrative Rules Committee.

Anita Thomas: I don't know, I believe yes. This is the Multidistrict Special Education chapter - 15.1-33. (see attached testimony)

Chairman Kelsch: Are there any questions, seeing none we will continue on with 15.1-34.

Anita Thomas: (15.1-34 -- see written testimony) Boarding Home Care.

154-32-34

15.1-36

Chairman Kelsch: Are there any questions by committee members, seeing none we will move on.

Anita Thomas: We are now on 15.1-36 School Construction (see written testimony)

Chairman Kelsch: Are there any questions, you may proceed.

Anita Thomas: You have a document in your pile of testimony that is entitled Testimony for amendments. These include Chairman Kelsch's amendments and also that is hand written. We photo copied the page and wrote in what the amendments would look like. (see attached testimony)

Chairman Kelsch: Are there any questions by committee members.

Rep Hawken: You certainly made it easy to look through these.

Chairman Kelsch: The amendments on page 39, basically we are cleaning up the language.

Anita Thomas: The Interim Committee couldn't decide what to do, if you can't participate in the strike, you can't participate in a strike.

Rep Thoreson: Is there anything to indicate a penalty is if we do strike.

Anita Thomas: The only penalty is that the teacher or administrator participating may be denied their wages. That is an option on the part of the board not a mandate.

Chairman Kelsch: Any further questions, seeing none, thank you. Anyone else wishing to testify in support of the sections we went through on HB 1045. Anyone in opposition. Hearing none we will close the hearing on HB 1045.

COMMITTEE ACTION

Chairman Kelsch: The amendments have been moved and seconded, we have the bill before us, what are the wishes of the committee on HB 1045.

Rep Thoreson: I move a DO PASS as amended.

Rep Mueller: Second.

Chairman Kelsch: We have a DO PASS as amended on HB 1045. The clerk will call the roll on the motion. The motion passes with a vote of 14 YES, 0 No and 1 ABSENT. Carrier Chairman Kelsch.

FISCAL NOTE

Requested by Legislative Council
12/14/2000

Bill/Resolution No.: HB 1045

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Revision of NDCC - no substantive changes were made to existing code.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Gary Gronberg	**Agency:**	Public Instruction
Phone Number:	328-1240	**Date Prepared:**	12/29/2000

10184.0201
Title.

Prepared by the Legislative Council staff for
House Education
February 19, 2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

Page 14, line 16, replace "to exceed" with "in excess of"

Page 15, line 21, replace "and written" with "evaluation"

Page 15, line 22, remove "evaluations"

Page 18, line 26, replace "to exceed" with "in excess of"

Page 23, line 2, replace "to exceed" with "in excess of"

Page 29, line 1, replace "special school board meeting" with "hearing"

Page 29, line 4, replace "special school" with "hearing"

Page 29, line 5, remove "board meeting"

Page 29, line 15, replace "**Meeting**" with "**Hearing**"

Page 29, line 16, replace "special school board meeting" with "hearing"

Page 29, line 29, replace "meeting" with "hearing"

Page 30, line 2, replace "special meeting" with "hearing"

Page 30, line 4, replace "meeting" with "hearing"

Page 30, line 6, replace "meeting" with "hearing"

Page 32, line 6, replace "If an individual employed as" with "The board of a school district may not discharge or refuse to renew the contract of" and remove the second "as"

Page 32, line 7, replace "is the subject of an investigation alleging" with "solely because a report of suspected"

Page 32, line 8, replace "and it is determined that no probable cause exists to" with "alleges participation by the individual.

2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate

superintendent, the board of a school district may suspend the individual pending the outcome of the case."

Page 32, remove lines 9 through 22

Page 34, line 7, after "licensed" insert "to teach" by the ESPB

Page 37, line 17, replace "The formulation of an agreement" with "Formation of a contract"

Page 37, line 19, replace "agreement" with "contract"

Page 39, line 16, replace "No teacher, administrator, or" with "Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section."

Page 39, remove lines 17 and 18

Page 45, line 25, remove "school board"

Page 45, line 26, remove "member, school superintendent, principal, truant officer," and replace ", and county superintendent of" with "and administrator"

Page 45, line 27, remove "schools"

Page 47, line 6, remove "industrial arts,"

Page 47, line 12, replace "Each" with:

"1. Except as provided in subsection 2, each" and remove ", other than a natural"

Page 47, line 13, remove "science unit,"

Page 47, line 14, replace "Each natural science unit" with:

"2. The following units"

Page 47, line 15, after "calendar" insert ": natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.

3.", after "The" insert "hour", and after "to" insert "reductions resulting from"

Page 54, line 11, replace **"Individualized education"** with **"Services"**

Page 64, line 6, after ".50" insert "adjusted by seventy-five percent of the difference between .50"

Page 80, line 3, after "forward" insert "the amounts collected, together with"

Page 80, line 20, remove "or institution"

Page 91, line 22, after "to" insert "and from"

Page 93, after line 30, insert:

"3. This section does not apply to a school district that owns its own buses and employs its own busdrivers."

Page 98, line 24, after "made" insert "to the admitting district"

Page 101, line 17, replace "**Powers and duties**" with "**Assistance to school districts**"

Renumber accordingly

Adopted by the Education Committee
February 19, 2001

YR
2/20/01
1 of 3

House Amendments to HB1045 **House EDU** **2/20/01**
Page 14, line 18, replace "to exceed" with "in excess of"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 15, line 21, replace "and written" with "evaluation"

Page 15, line 22, remove "evaluations"

House Amendments to HB1045 **House EDU** **2/20/01**
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House Amendments to HB1045 **House EDU** **2/20/01**
Page 23, line 2, replace "to exceed" with "in excess of"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 29, line 1, replace "special school board meeting" with "hearing"

Page 29, line 4, replace "special school" with "hearing"

Page 29, line 5, remove "board meeting"

Page 29, line 15, replace "**Meeting**" with "**Hearing**"

Page 29, line 16, replace "special school board meeting" with "hearing"

Page 29, line 29, replace "meeting" with "hearing"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 30, line 2, replace "special meeting" with "hearing"

Page 30, line 4, replace "meeting" with "hearing"

Page 30, line 6, replace "meeting" with "hearing"

Page 30, line 10, remove "for a period determined by the board but"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 31, line 29, remove "for a period determined by the board, but"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 32, line 6, replace "If an individual employed as" with "The board of a school district may not discharge or refuse to renew the contract of" and remove the second "as"

Page 32, line 7, replace "is the subject of an investigation alleging" with "solely because a report of suspected"

Page 32, line 8, replace "and it is determined that no probable cause exists to" with "alleges participation by the individual.

2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate superintendent, the board of a school district may suspend the individual pending the outcome of the case."

Page 32, remove lines 9 through 22

House Amendments to HB1045 **House EDU** **2/20/01**

Page 34, line 7, after "licensed" insert "to teach"

House Amendments to HB1045 **House EDU** **2/20/01**

Page 37, line 17, replace "The formulation of an agreement" with "Formation of a contract"

Page 37, line 19, replace "agreement" with "contract"

House Amendments to HB1045 **House EDU** **2/20/01**

Page 39, line 16, replace "No teacher, administrator, or" with "Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section."

Page 39, remove lines 17 and 18

House Amendments to HB1045 **House EDU** **2/20/01**

Page 45, line 25, remove "school board"

Page 45, line 26, remove "member, school superintendent, principal, truant officer," and replace ", and county superintendent of" with "and administrator"

Page 45, line 27, remove "schools"

House Amendments to HB1045 **House EDU** **2/20/01**

Page 47, line 6, remove "industrial arts,"

Page 47, line 12, replace "Each unit, other than a natural" with:

"1. Except as provided in subsection 2, each unit"

Page 47, line 13, remove "science unit,"

Page 47, line 14, replace "Each natural science unit" with:

"2. The following units"

Page 47, line 15, replace ". The requirements of this section are subject to" with ": natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.

3. The hour requirements of this section are subject to reductions resulting from"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 64, line 11, replace "**Individualized education**" with "**Services**"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 64, line 6, after ".50" insert "adjusted by seventy-five percent of the difference between .50"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 80, line 3, after "forward" insert "the amounts collected, together with"

Page 80, line 20, remove "or institution"

House AMendments to HB1045 **House EDU** **2/20/01**
Page 91, line 22, after "to" insert "and from"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 93, after line 30, insert:

"3. This section does not apply to a school district that owns its own buses and employs its own busdrivers."

House Amendments to HB1045 **House EDU** **2/20/01**
Page 98, line 24, after "made" insert "to the admitting district"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 101, line 17, replace "**Powers and duties**" with "**Assistance to school districts**"

Renumber accordingly

Date: 2/19/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1045

House House Education Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep Thoreson Seconded By Rep. Mueller

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	✓		Rep. Howard Grumbo	✓	
V. Chairman-Thomas T. Brusegaard	✓		Rep. Lyle Hanson		
Rep. Larry Bellew	✓		Rep. Bob Hunskor	✓	
Rep. C.B. Haas	✓		Rep. Phillip Mueller	✓	
Rep. Kathy Hawken	✓		Rep. Dorvan Solberg	✓	
Rep. Dennis E. Johnson	✓				
Rep. Lisa Meier	✓				
Rep. Jon O. Nelson	✓				
Rep.Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Kelsch

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

REPORT OF STANDING COMMITTEE (410)
February 20, 2001 8:31 a.m.

Module No: HR-31-3932
Carrier: R. Kelsch
Insert LC: 10184.0202 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1045: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1045 was placed on the Sixth order on the calendar.

Page 14, line 18, replace "to exceed" with "in excess of"

Page 15, line 21, replace "and written" with "evaluation"

Page 15, line 22, remove "evaluations"

Page 18, line 26, replace "to exceed" with "in excess of"

Page 23, line 2, replace "to exceed" with "in excess of"

Page 29, line 1, replace "special school board meeting" with "hearing"

Page 29, line 4, replace "special school" with "hearing"

Page 29, line 5, remove "board meeting"

Page 29, line 15, replace "**Meeting**" with "**Hearing**"

Page 29, line 16, replace "special school board meeting" with "hearing"

Page 29, line 29, replace "meeting" with "hearing"

Page 30, line 2, replace "special meeting" with "hearing"

Page 30, line 4, replace "meeting" with "hearing"

Page 30, line 6, replace "meeting" with "hearing"

Page 30, line 10, remove "for a period determined by the board but"

Page 31, line 29, remove "for a period determined by the board, but"

Page 32, line 6, replace "If an individual employed as" with "The board of a school district may not discharge or refuse to renew the contract of" and remove the second "as"

Page 32, line 7, replace "is the subject of an investigation alleging" with "solely because a report of suspected"

Page 32, line 8, replace "and it is determined that no probable cause exists to" with "alleges participation by the individual.

2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate superintendent, the board of a school district may suspend the individual pending the outcome of the case."

Page 32, remove lines 9 through 22

Page 34, line 7, after "licensed" insert "to teach"

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Page 37, line 19, replace "agreement" with "contract"

Page 39, line 16, replace "No teacher, administrator, or" with "Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section."

Page 39, remove lines 17 and 18

Page 45, line 25, remove "school board"

Page 45, line 26, remove "member, school superintendent, principal, truant officer," and replace ", and county superintendent of" with "and administrator"

Page 45, line 27, remove "schools"

Page 47, line 6, remove "industrial arts,"

Page 47, line 12, replace "Each unit, other than a natural" with:

"1. Except as provided in subsection 2, each unit"

Page 47, line 13, remove "science unit,"

Page 47, line 14, replace "Each natural science unit" with:

"2. The following units"

Page 47, line 15, replace ". The requirements of this section are subject to" with ": natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.

3. The hour requirements of this section are subject to reductions resulting from"

Page 54, line 11, replace "**individualized education**" with "**Services**"

Page 64, line 6, after ".50" insert "adjusted by seventy-five percent of the difference between .50"

Page 80, line 3, after "forward" insert "the amounts collected, together with"

Page 80, line 20, remove "or institution"

Page 91, line 22, after "to" insert "and from"

Page 93, after line 30, insert:

"3. This section does not apply to a school district that owns its own buses and employs its own busdrivers."

Page 98, line 24, after "made" insert "to the admitting district"

Page 101, line 17, replace "**Powers and duties**" with "**Assistance to school districts**"

Renumber accordingly

2001 SENATE EDUCATION

HB 1045

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045

Senate Education Committee

☐ Conference Committee

Hearing Date 03-19-01

Tape Number	Side A	Side B	Meter #
1	x		0 - end
1		B	0 - 34.0
1 (3-20-01)		x	25.8 - 45.8
2 (3 - 20- 01)	x		0 - 41.0
1 (03-21-01)		x	0.5 - 54.7
1 03-26-01)	x		2.9 - 18.4
1 (03-28-01)	x		5.8 - 45.5
1 (04-02-01)		x	34.0 - 39.0
2 (04-02-01)	x		0 - 8.5
1 (04-03-01)	X		0 - 11.5

Committee Clerk Signature Sandra Johnson

Minutes: **CHAIRMAN FREBORG called the committee to order. Roll was taken with all (7) members present.**

CHAIRMAN FREBORG called the hearing on HB 1045 which is the rewrite of Chapter 15-38 of NDCC. He further stated that SENATOR WANZEK will be responsible for carrying the bill when it goes to the floor.

ANITA THOMAS, Legislative Council, explained the bill. (Testimony attached with referenced sections of current law also attached).

Questions on Chapter 15.1-13 dealing with ESPB. SENATOR COOK asked if a school counselor is considered a "teacher". She replied yes, because they would need a teaching certification. SENATOR COOK asked about the term "administrator". She stated the term can

be explained differently in each section of law. SENATOR O'CONNELL asked if there was any problem with fees. She stated the subject of fee levels did not come up in the interim committee.

CAM LEDAHL, a home educator, presented testimony in support of HB 1045 rewrite and a suggested amendment. (see attached).

Hearing no further testimony, the hearing on HB 1045 was closed.

03-20-01, Tape 1, Side B, 25.8 - 45.8, Tape 2, side A, 0 - 41.0

SENATOR FLAKOLL presented an amendment (10184.0302). This amendment alludes to the problem CAM LEDAHL had and had proposed an amendment for such. It inserts the word "basic" before "composite score" to clarify the la (see testimony from Ms. Ledahl).

SENATOR FLAKOLL moved to adopt the amendment (10184.0302). Seconded by SENATOR WANZEK. Roll Call Vote: 6 YES. 1 NO. 0 Absent. Amendment Adopted.

SENATOR FLAKOLL presented an amendment (10184.0304). This amendment deals with "large" buses. Currently large buses, as defined on pg. 73, Subsec. 1b, receive $ .67 per mile for school buses that drive outside the city limits. The intent of this amendment would be that this same type of bus that drives inside the city limit would get $.35 per mile. This raises the current level by $.10 per mile for buses that carry more than 10 children when in the incorporated limits of a city. It is still $.32 less than when driving outside the incorporated city.

More discussion.

SENATOR FLAKOLL moved the amendment (10184.0304). Seconded by SENATOR COOK. Roll Call Vote: 3 YES. 4 NO. 0 Absent. Motion failed.

SENATOR COOK presented an amendment (10184.0305) which deals with libel and slander.

This amendment clarifies the law as to cause of action for libel and slander. It states an individual who acts without malice is not subject to civil liability for libel or slander. However, if someone knowingly makes malicious remarks for personal gain, they can be held accountable.

SENATOR COOK moved to adopt the amendment (10184.0305). Seconded by SENATOR WANZEK. Roll Call Vote: 6 YES. 0 NO. 1 Absent. Amendment adopted.

SENATOR CHRISTENSON asked to reconsider the actions on amendment 10184.0304 which deals with busing. She would like to change her vote. Since the amendment was not adopted earlier, the correct procedure is to move the amendment.

SENATOR CHRISTENSON moved to adopt the amendment 10184.0304. Seconded by SENATOR FLAKOLL. Roll Call Vote: 3 YES. 4 NO. 0 Absent. Motion Failed.

SENATOR KELSH stated that if there had been a fiscal note attached, or if the committee would have had testimony on what the actual cost would be, he may have voted in favor of it.

SENATOR FLAKOLL presented an amendment (10184.0301). He explained this amendment keeps the current practice whereby an individual can negotiate with the local school board. He feels this would not change existing law.

SENATOR FLAKOLL moved the amendment (10184.0301). Seconded by SENATOR WANZEK.

There was discussion on administrators superintendents, teachers, current law, etc. SENATOR COOK stated what he believes the current law is and how it is interpreted, and what the rewrite now says. He feels the rewrite has a different intent than what is in current law. BEV NIELSON, ND School Boards Assn., stated that she is under the impression that current law is interpreted to mean that if an individual is legitimately defined as in the unit, they can not negotiate independently for a contract. However, superintendents were never meant to be in this

part of law, one way or the other. Superintendents negotiate directly with the board. She feels the way the rewrite reads, superintendents would not be able to independently negotiate their contracts. SENATOR KELSH feels "or as an administrator" should be removed only. MS. NIELSON, when asked by members of the committee, stated that principals can form their own negotiating unit as teachers can. Also, principals can elect to not join a unit and can independently negotiate with the board. SENATOR COOK stated that if these amendments don't pass then the option of the principals to either join or independently negotiate would be eliminated. SENATOR COOK stated that by adopting these amendments, the law is left as it is today. SENATOR KELSH stated that the new language is to clarify that an individual (teacher) can talk to the board but are still part of a bargaining unit and cannot negotiate on their own. More discussion on bargaining units and rights of teachers as individuals and rights of principals as individuals. SENATOR COOK feels this changes more than what was first thought.

ANITA THOMAS, Legislative Council, answered questions from the members:

(3-20-01, Tape 2, Side A, 19.4 - 32.3)

SENATOR FREBORG asked if under current law, can an individual teacher negotiate. She stated the law today states a teacher can present their points of view to the board, but can not individually negotiate. And the principals are under the same law. Only superintendents can independently negotiate. The law is really unclear on this issue and seems subject to interpretation. SENATOR FREBORG stated this point needs clarification so the committee can deal with it. SENATOR COOK again reiterated that if the amendment passes, there would be no change to existing law as he sees it. ANITA THOMAS stated that during the interim, NDEA wanted it made clear in the rewrite that teachers and administrators can present their views to the board but can not independently negotiate. SENATOR FREBORG stated that then there needs

to be clarification. She feels the law, as it is right now, is being ignored with respect to administrators. She stated that this is another instance where the law doesn't seem to make sense and people have found ways to work around the law. Discussion on how to clarify the bill.

SENATOR FLAKOLL withdrew his motion to adopt the amendment (10184.0301).

SENATOR WANZEK withdrew his second.

03-21-01, Tape 1, Side B, 0.5 - 54.7

SENATOR COOK moved the amendment 10184.0307. SENATOR FLAKOLL seconded. The purpose of the amendment is to allow any individual to negotiate as an indvidual without a bargaining unit. He feels this has always been what was intended, but this would clarity the law. SENATOR O'CONNELL feels this takes away the power of the bargaining unit. SENATOR CHRISTENSON interprets the language to read that the person who is a member of the negotiating group cannot go outside that unit to bargain individually. The key word is "exclusive". SENATOR COOK agrees that the bargaining unit of which the individual is a member has the exclusive right to bargain for that individual. However, if you are not a member, you have the right to negotiate yourself, if you so desire. He further stated he is not trying to eliminate a role but he feels the individual has the right to negotiate on their own behalf. The committee discussed what constitutes a group or unit. SENATOR CHRISTENSON stated she felt the amendment came about because of principals being categorized as administrators and therefore they can negotiate as a unit or on their own. However, this now gives the teaches the right to negotiate on their own. She does feel the law needs to be clear. She thought initially the concern was for superintendents to be able to individually negotiate. SENATOR KELSH has a

fear that one individual may undercut the bargaining unit. He feels that would not be fair to the teachers who recognize the bargaining unit. Discussion. He feels if the teachers who do not belong to the bargaining unit want to form their own unit, that is okay and they are not totally excluded. They don't have to accept the one bargaining unit. He feels the intent was not to give the individual the right to bargain but to it does give them the right to express their concerns. SENATOR FREBORG stated that is why this amendment is in front of the committee. The amendment does give them the right to bargain. He stated the word "exclusive", if eliminated, would alleviate some member's concerns. SENATOR WANZEK is having trouble seeing what is wrong with an individual doing what is best for him, whether it be to bargain as a unit or individual. SENATOR CHRISTENSON feels we need to keep an equality among teachers and not demoralize them in any way, which is what she feels this will do. They need to focus on what is best for the children and not have to worry about if one teacher or another teacher is more important or that one's contibution does more for the good of the school or for the children. This could cause the focus to shift from the kids to internal kinds of bickering. SENATOR FREBORG asked if the negotiating units of the past have been successful. SENATOR CHRISTENSON feels they have done the best they could and have been for the most part successful. What comes to mind for SENATOR FREBORG is that he heard a number of years ago a union negotiator say "there are two reasons to negotiate, money and power". He has never forgotten this and he's not sure that he was wrong. There was more discussion among the committee on money and power or prestige. SENATOR KELSH sees this as a devisive element and feels it would break the bargaining unit which he feels is important. SENATOR O'CONNELL feels this may lead to merit pay SENATOR FLAKOLL stated that in looking at the pay scale and incremental increases for teachers, some things may not be equal. SENATOR

KELSH presented an amendment (10184.0306). This would remove all, except the superintendent, from negotiating as an individual. SENATOR WANZEK feels the issue boils down to a philosophy. He feels the individual should have rights and they should include being able to negotiate for themselves. After more discussion, SENATOR COOK withdrew his motion. SENATOR FLAKOLL withdrew his second.

The committee stood at recess.

03-26-01, Tape 1, Side A, 0 - 2.9

CHAIRMAN FREBORG called the committee to order. Roll Call taken with 7 members present. CHAIRMAN FREBORG asked the committee to get their amendments in order for the following day because of time constraints.

The committee stood at recess.

03-26-01, Tape 1, Side A, 2.9 - 18.4

SENATOR COOK asked the committee to review the amendment (10184.0315). He explained his amendment. The first part of the amendment clarifies present law and the second part adds language as to when and how the withdrawal from the negotiating unit and independent negotiations can be done. More Discussion. By existing law, the board of a local district does not have to negotiate and this further affirms this.

SENATOR COOK moved to adopt the amendment. Seconded by SENATOR FLAKOLL.

SENATOR KELSH feels this amendment is a major change in law and he feels the intent and the interpretation of the Interim committee was not as this amendment suggests.

Roll Call Vote: 4 YES. 3 No. 0 Absent. Amendment Adopted.

3-26-01

SENATOR KELSH moved a DO NOT PASS as Amended. Seconded by SENATOR O'CONNELL.

Roll Call Vote: 3 YES. 4 NO. 0 Absent. Motion Failed.

SENATOR COOK moved a DO PASS as Amended. Seconded by SENATOR FLAKOLL.

Roll Call Vote: 4 YES. 3 NO. 0 Absent. Motion Carried.

Carrier: SENATOR WANZEK

03-28-01, Tape 1, Side A, 5.8 - 45.5

Discussion on the amendments on HB 1045. SENATOR COOK brought up the issue of independent negotiations being done by teachers. Discussion on current law and how it is interpreted. Also referred to an attorney general's opinion. More discussion on this issue.

JOE WESTBY, NDEA, was asked to answer questions from the committee. He and his group believe in negotiating units. They believe the unit has the right to negotiate and the individual does not have that right. SENATOR FREBORG asked about the word "exclusive". Mr. Westby feels the intent in law always has been for the unit to negotiate.

Committee adjourned.

04-02-01, Tape 1, Side B, 34.0 - 39.0, Tape 2, Side A, 0 - 8.5

SENATOR KELSH moved to reconsider HB 1045. Seconded by SENATOR O'CONNELL. SENATOR KELSH stated that after reading through the minutes of the interim committee, he feels that committee wanted the negotiating section (s) of HB 1045 rewrite left as it was in current law, before the rewrite. The school board association's letter also reflects the bill go back to current law (prior rewrite).

 4-2-01

Roll Call Vote on reconsideration: 7 YES. 0 NO. 0 Absent. Motion Carried.

SENATOR COOK presented an amendment (10184.0319) for the committee to consider. He reminded the committee that he had never before had to have a whole entire binder for one bill, but with this bill, he does. He has studied all the minutes of all the committees who have visited the issue of teacher negotiations. His interest was perked primarily when it became obvious that in the rewrite it stated the superintendent would have to have his/her salary negotiated. He now feels this is a very important section of law with many opinions as to what can and cannot be done. He feels any changes to this section on negotiations should come in a bill of it's own. That is the intent of these amendments.

SENATOR COOK moved the adoption of the amendments (10184.0319). Seconded by SENATOR FLAKOLL.

This removes from the rewrite all of Chapter 15.1-16 except sick leave (15.1-16-19) and school for the blind, school for the deaf, and YCC (15.1-16-20). There are other parts in Chapter 15 that need to be addressed such as definitions etc. He feels these issues would be better served in a new bill which can be addressed by the next legislative session. He feels there needs to be more discussion on these issues and during the interim, maybe they can be addressed.

Roll Call Vote: 7 YES. 0 NO. 0 Absent. Amendment Adopted

SENATOR COOK moved a DO PASS as AMENDED. Seconded by SENATOR WANZEK. Roll Call Vote: 5 YES. 2 NO. 0 Absent. Motion Carried.

Carrier: SENATOR WANZEK.

04-03-01, Tape 1, Side A, 0 - 11.5

CHAIRMAN TREBORG called the committee to order. Roll Call was taken with all members (7) present.

SENATOR COOK moved to reconsider HB 1045 as amended. Seconded by SENATOR WANZEK. Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion to reconsider carried.

SENATOR WANZEK moved to reconsider amendment 10184.0315. Seconded by SENATOR COOK. In reviewing the amendment, there were parts of it that were left on the bill as amended that the committee wanted taken off. Section 15.1-16-18.1 should be taken out of the bill. This is the section that deals with withdrawal from negotiating unit - Independent negotiations. The intent of the committee was for this part to be also taken out of the bill.

Roll Call Vote: 5 YES. 2 NO. 0 Absent. Motion Carried.

SENATOR COOK moved a DO PASS as Amended. Seconded by SENATOR FLAKOLL.

Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: SENATOR WANZEK.

10184.0301
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 35, line 2, remove ", but may not enter into independent negotiations with"

Page 35, line 3, remove "the board"

Renumber accordingly

Withdrawn motion
to adopt

6-1-0

#1 3/20/01

10184.0302
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend: 10184.0302

Motion Made By Sen. Flakoll Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

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

10184.0304
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 73, line 25, after "vehicle" insert "having a capacity of nine or fewer students and"

Page 73, line 27, after the period insert "Thirty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of ten or more students and transporting students who reside within the incorporated limits of a city in which the student's school is located.

e."

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend. 10184.0304

Motion Made By Sen. Flakoll Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson		✓
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek		✓			

Total (Yes) 3 No 4

Absent _____

Floor Assignment _____

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

#3 3/20/01

6--0--1

10184.0305
Title.

Prepared by the Legislative Council staff for
Senator Cook
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend. 10184.0305

Motion Made By Sen. Cook Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	A		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Date: 3/20/01
Roll Call Vote #: 4

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amendment 10184.0304

Motion Made By Sen. Christenson Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman		✓	Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek		✓			

Total (Yes) 3 No 4

Absent _____

Floor Assignment _____

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

10184.0306
Title.

Prepared by the Legislative Council staff for
Senator Kelsh
March 21, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 35, line 2, replace ", but may not" with ". Only a school district superintendent may"

Renumber accordingly

10184.0307
Title.

withdrawn

Prepared by the Legislative Council staff for
Senator Cook
March 21, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 35, line 2, replace ", but" with "and" and remove "not"

Renumber accordingly

Date: 3/21/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend 10184.0307 Withdrawn

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman			Senator Christenson		
Senator Flakoll - Vice Chairman			Senator Kelsh		
Senator Cook			Senator O'Connell		
Senator Wanzek					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

4-3-0 #1 3/26/01

10184.0315
Title.

Prepared by the Legislative Council staff for
Senator Cook
March 26, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 34, line 31, remove "exclusive"

Page 35, line 2, replace ", but" with "and" and remove "not"

Page 35, line 3, after the period insert "In the case of an individual who serves as a part-time administrator, the independent negotiations must cover all compensation and benefits payable to the individual by the board. The education factfinding commission may not provide services when an individual teacher or administrator has entered into independent negotiations with a board under this section."

Page 39, after line 8, insert:

"**15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.**

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Renumber accordingly

4-3-0

#1 3/26/01

Date: 3/26/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amendment 10184.0315

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson		✓
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 4 No 3

Absent _____

Floor Assignment _____

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

Date: 3/26/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DNPA

Motion Made By Sen. Kelsh Seconded By Sen O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman		✓	Senator Christenson	✓	
Senator Flakoll - Vice Chairman		✓	Senator Kelsh	✓	
Senator Cook		✓	Senator O'Connell	✓	
Senator Wanzek		✓			

Total (Yes) ~~3~~ 3 No ~~3~~ 4

Absent _____

Floor Assignment _____

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

failed

Date: 3/26/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson		✓
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 4 No 3

Absent _____

Floor Assignment Sen. Wanzek

If the vote is on an amendment, briefly indicate intent: Sen. Cook will also answer, esp. on amendments

REPORT OF STANDING COMMITTEE

HB 1045, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 34, line 31, remove "exclusive"

Page 35, line 2, replace ", but" with "and" and remove "not"

Page 35, line 3, after the period insert "In the case of an individual who serves as a part-time administrator, the independent negotiations must cover all compensation and benefits payable to the individual by the board. The education factfinding commission may not provide services when an individual teacher or administrator has entered into independent negotiations with a board under this section."

Page 39, after line 8, insert:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the

conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

Date: 4/2/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider HB 1045

Motion Made By Sen. Kelsh Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Adopted by the Education Committee
March 26, 2001

3-27-01
1012

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 34, line 31, remove "exclusive"

Page 35, line 2, replace ", but" with "and" and remove "not"

Page 35, line 3, after the period insert "In the case of an individual who serves as a part-time administrator, the independent negotiations must cover all compensation and benefits payable to the individual by the board. The education factfinding commission may not provide services when an individual teacher or administrator has entered into independent negotiations with a board under this section."

Page 39, after line 8, insert:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

10184.0319
Title.

7-0

Prepared by the Legislative Council staff for
Senator Cook
April 2, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 1, line 5, remove "15-38.1,"

Page 33, remove lines 6 through 31

Remove pages 34 through 38

Page 39, remove lines 1 through 8

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

Date: 4/2/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend. 10184.0319

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

10184.0320
Title.0500

Adopted by the Education Committee
March 26, 2001

4-2-1
1012

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 1, line 5, remove "15-38.1,"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 33, remove lines 6 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 34, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 35, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 36, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 37, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 38, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 39, replace lines 1 through 8 with:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 50, line 30, after the second "a" insert "basic"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

Date: 4/2/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen Cook Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Wanzek

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

REPORT OF STANDING COMMITTEE

HB 1045, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "15-38.1,"

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

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Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 33, remove lines 6 through 31

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 31

Page 37, remove lines 1 through 31

Page 38, remove lines 1 through 31

Page 39, replace lines 1 through 8 with:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Page 50, line 30, after the second "a" insert "basic"

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

Date: 4/3/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken reconsider bill as amended

Motion Made By Sen. Cook Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: 4/3/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken move D accordion amend. 10184.0315

Motion Made By Sen. Wanzek Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 5 No 2

Absent _____

Floor Assignment _____

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

Date: 4/2/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1045, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "15-38.1,"

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

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Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

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Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 33, remove lines 6 through 31

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 31

Page 37, remove lines 1 through 31

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 8

Page 50, line 30, after the second "a" insert "basic"

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

2001 HOUSE EDUCATION

CONFERENCE COMMITTEE

HB 1045

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-conference

House Education Committee

☐ Conference Committee

Hearing Date 04-16-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 3321
Committee Clerk Signature	Joan Davis		

Minutes: Chairman Hawken, Rep J Nelson, Rep Hunskor, Sen Wanzek, Sen Cook, Sen O'Connell.

Chairman Hawken called the conference committee to order on HB 1045, the clerk will call the roll. For the record all members present. Would some Senator like to explain what your committee did and why.

Senator Wanzek: The first part of the amendments were the non renewal or dismissal hearing, the current language states there is no slander or libel suits can be brought any of the participants. We added the words, as long as there is not malice intent there can be no civil or libel suit brought. It seems kind of open ended we thought, then there is also the section, there is much disagreement in the house over the one part of the teacher negotiation laws with the words exclusive. There is confusion as to whether there are independent negotiation rights or not. We felt that it would be best to leave that whole section out and address that in a separate bill. This bill was meant to be the rewrite bill. Adding the word "basic" for home school is a reference to

basic standardized tests was consistent with the other types of tests. That is the extent of our amendments.

Senator Cook: I think he covered it.

Chairman Hawken: The question that I have is the language that was replaced. What would happen to the Executive session. Does this language cause additional law suits.

Senator Wanzek: It seemed to make sense at the time, as far as thinking about since it has passed. I am troubled because we are making it somewhat subjective as to the content of malice. I don't know if we want to do that or not.

Chairman Hawken: So that would be one area we would want to talk about. If we just want to go back to the original language of the rewrite.

Senator Wanzek: I understand, it is my concern that we don't want to get mean spirited, but by adding the word malice we are making this a lawyer bill.

Senator Cook: Malice means that you intentionally lie for gain, that you knowingly and intentionally lie for gain. Why would we want to allow a situation where someone would intentionally and willingly lie for gain. That is why we put the amendments in. We can understand anything you say, you could possibly be threatened by a law suit. I can see the pro's and con's of the situation. I don't know if I am that close to those amendments.

Chairman Hawken: The original language on the first part where the new language says no cause or actin for libel or slander may be brought. It still is the only change is adding malice.

Comments from House members.

Rep Nelson: My understanding is that I had language similar to House in the past.I realize it is an area of tricky water. From the board's perspective there is a safe guard. Maybe we are getting to specific.

Chairman Hawken:Executive sessions are not frequent. Anything said can be considered mean. Do we need to go back to the original language or do we go forward. Do you want to think about it.

Senator Cook: I am not going to speak for the entire Senate conferees, but I am open to going back to the original language.

Chairman Hawken: Do we want address the other issues, or see if we want to do this all together or one at a time. Then we will go to page 34. You deleted most of that.

Senator O'Connell: we removed it all.

Chairman Hawken: So this would go back to the original, what the current law is.

Senator Cook: It would go back to the identical language of the teacher negotiation ace of 1969. It would be the only chapter left in chapter fifteen.It would not be in 15.1, take it out of this rewrite, which takes it out of 15.1 and it would be the only section left in chapter 15. I would fully expect in the next session, that legislation would be introduced in a separate bill. The way that the amendments take it out, there would still be the opportunity to put it into chapter 15.1 in a separate bill. It was our intention to leave it there and to be addressed on its own.

Chairman Hawken: Other comments on that. The way it is in the rewrite, it would just be eliminated.

Senator Cook: That section four, that has the teacher negation act starting with 15.1-16-01 , you would take everything out up until page 39 to 15.1-16-19 and 15.1-16-20. Those are the only two sub sections that are not a part of the rewrite.

Chairman Hawken: How would they renumber that.

Senator Cook: I am not too sure how that would be renumbered. If a bill was introduced to change teacher negotiation in the next session, it would go into this section and then they would become 19 and 20.

Chairman Hawken: Thoughts on that suggestion. One other thing that I have here from Legislative Council is under 15.1-16-08 which is at the bottom of the engrossed bill on page 34. It would remove the exclusive and at the top insert , it would delete "but may not" and insert an individual employed as a teacher or administrator may enter into independent negotiations with the board provided the board agrees to participate. On lines 2 and 3, I don't know if we want to go down that road or have it looked at in the next session.

Senator Cook: That is very close to the amendments that we put on. That mirrors exactly what I believe that the teacher negotiation acts says now. That is exactly what the Attorney General's opinion says. That the board has the right not to do that. That is the practice that is generally followed.

Chairman Hawken: That is the current law.

Senator Cook: That is the current law, but there will probably be an argument what the current law says. I have an Attorney General's opinion that is dated in 1970, there has not been one since. That is the argument we had in the Senate Education Committee, what does current law say today. We have court cases pending, there are none that have gone to court and been

tried.There are some other changes in the definition of teacher and administrator that come in to this rewrite that have not been addressed. If you go back in the minutes of the Interim Committee you will find testimony that both of these issues, the definition changes and the changes of the section that you just referenced, there was testimony given that they should be in a separate bill.

Chairman Hawken: Are there thoughts or comments on this.

Senator O'Connell: what is the suggested language on page 35.

Chairman Hawken: Gives out to the committee 10184.0323. These do not address your issues.

Senator Cook: I agree with these amendments, but I do believe that if you are going to pass those amendments what really has to be done, then we have more work that we must do. That is the work if we are going to do it and make any changes in the teacher negotiation act it should be done in the open standing by itself in a separate bill. We were comfortable with leaving this teacher negotiation act as sacred as it was when it was passed in 1969.

Senator Wanzek: It did become quite contentious, he feels that they have this right and there are others that feel from the other position. It was decided by our committee that it should be dealt with separately. If we adopt your amendments, we would be putting them back in.

Chairman Hawken: Right they came from Legislative Council.I asked for these changes and this is what I got back. Other thoughts on this section. Our thoughts on this is to go back to current law and look at putting in a new bill next session.

Senator Wanzek: That does not mean that the part of the old law, there might not be a bill in that. I am not sure that we should change the old law. Then at the end of this session it would go back to current law and for the next two years it would be the same law.

Chairman Hawken: Isn't there any way to put the old section into this.

O'Connell: You mean to go back to original law.

Chairman Hawken: To put the language of the old law into this. In the same section.

Senator Wanzek:By removing the rewrite and then we went into the last section and took the repeal out of it, the old law is going to still be there as it is now.

Chairman Hawken: I am just trying to be concise and get everything in the same place.

Senator O'Connell: Just accede from the amendment.

Senator Cook: I don't see why it would, you are still going to have a century code book and it will still be there. Goes on to give some examples.

Rep Hunskor: As I read through all the Senate amendments , if I understand with what you are saying here, all of this will be pulled out and rewritten.

Senator Wanzek: What you are reading was the proposed amendments and the final amendments from the Senate did not include that.

Rep Hunskor: That is out then.

Senator Wanzek: Right.

Chairman Hawken: That whole section is gone. Are there other comments, we will move on to the last section and the word basic.

Senator Wanzek:On page 10, on the Senate standing committee minutes, you will see the actin of removing the section you had questions about.

Chairman Hawken: Do anyone have problems with inserting the word basic for home school. What I think that I am hearing is that we would return to the original language of the rewrite in dealing with the verbiage malice (found on several pages) and those would be returned to the

original language of the rewrite. Then on pay 33 of section four, remove down to line 27 of page 39 and renumber accordingly. Then on page 50 on line 30 insert the word basic. Is that correct.

Senator Wanzek: If that is conscience of the committee, I think the proper motion would be to have the Senate recede from the Senate amendments and further amend.

Rep Nelson: Would it be worth our time to look at the removed section and keep it in, we have the time.

Senator Cook: I would have one question, when you say getting it in there, do you mean in the identical language that it is in today.

Rep Nelson: I would think that it would be as close to that as possible.

Chairman Hawken: That is what I was saying.

Senator Wanzek: As far as that one part, leave it as is today, not make any subsitive changes.

Chairman Hawken: Do you have a copy of current law.

Senator Cook: Yes, I do.

Rep Nelson: When the bill was brought to us, we were lead down the path that there was no subsitive changes. We could look at possibly trying to clarify this whole section.

DISCUSSION

Chairman Hawken: This is the century code today. What we have been talking about is putting this into chapter 15.1-16.

Senator Cook: The answer to your question is in the definition of possibly.

Chairman Hawken: Do you all want a copy of this to look at, we also have a copy of Anita's testimony that you all have.

Senator Wanzek: I think that you would want the actual rewrite language. As long as it doesn't make a change.

DISCUSSION

Chairman Hawken: Is there anything else, I will check on this and reschedule for another meeting.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB-1045-conference-b

House Education Committee

❑ Conference Committee

Hearing Date 04-17-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 484
Committee Clerk Signature	Joan Diers		

Minutes:Chairman Hawken, Rep j. Nelson, Rep Hunskor, Senator Wanzek, Senator Cook, Senator O'Connell.

Chairman Hawken called the conference committee on HB 1045 to order. The clerk will call the roll. Note that all members are present. I visited with Anita Thomas from Legislative Council about if we could put the section on current law into section four and the answer is no.An it has to do with the fact that it is current law. What they will do is save those numbers for a rewrite in an Interim for us look at and approve next session. I have amendments (10184.0324) that change the language back to the original rewrite on the malice wording and it would insert basic in the home school testing. Would you like to check the copy on those.

Senator Cook: I would move that the Senate recede from its amendments and further amend.

Senator Wanzek: Second.

DISCUSSION

Senator Cook: Doing this, does it require the Interim committee to try and do a rewrite or can they say that their work is done, can it be done in a bill that any one can introduce.

Chairman Hawken: It is my understanding that we did pass the language in HB 1046, so they could go back and look at those sort of things in the Interim.

Senator Cook: I was wondering if we have to have something to reference the 1997 rewrite.

Chairman Hawken: That was my understanding, it would be taken care of. I asked if we had to do anything further and she said no. Any other comments. We will take a voice vote on the amendments, the motion carries. The clerk will call the roll on the motion that the Senate recede from its amendments and further amend. The motion passes with a vote of 6 YES, 0 NO and 0 Absent. This conference committee is dissolved.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-conference (c)

House Education Committee

☐ Conference Committee

Hearing Date 04-23-01

Tape Number	Side A	Side B	Meter #
TAPE i	x		01 to 418
Committee Clerk Signature	Joan Diers		

Minutes: Chairman Hawken, Rep J Nelson, rep Hunskor, Senator Wanzek, Senator Cook, Senator O'Connell.

Chairman Hawken called the conference committee to order on HB 1045. The clerk will call the roll. All members present. The reason for looking at this bill one more time is that four yers went into the rewrite and we wanted to include all of the rewrite. We need a motion to reconsider our actions.

Senator O'Connell: I move that we reconsider our actions.

Rep Nelson: Second.

Chairman Hawken: We will have a recorded vote.

DISCUSSION

Chairman Hawken: The clerk will call the roll on the motion to reconsider our actions. The motion fails with a vote of 4 YES and 2 NO. The meeting is adjourned.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-20

House Education Committee

☐ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
#1	X		55 to 580
Committee Clerk Signature	Lynn Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will open the keep open the hearing on HB1045 15.1-20 relating to compulsory attendence.

Anita Thomas: (Legislative Council) The present law regarding compulsory school attendance, 15-34.1-00.1 begins with a set of definitions. The interim committee decided that those definitions were pretty self explanatory and were prepared to omit them all, but at the suggestion of one of the interest groups, the committee kept the definition of home education.

15.1-20-01 is a shortened version of 15-34.1-01. It provides that any person who has a responsibility for a child between the ages of 7-16 must ensure that a child attends a public school unless the child is exempted under the following sections/

15.1
20

15.1-20-02 sets forth those exemptions *see bill for those exemptions* The school board must make the determination regarding an exemption, and that the board's decision is appealed to a district court.

15.1-20-03 provides that every school board member, school superintendent, principal, truancy officer, teacher and county superintendent is charged with enforcing the compulsory attendance laws, and those individuals are given the authority to investigate any alleged violation of the compulsory attendance laws. One thing the committee did do is omit the provision in current section 15-34.1-04. The committee was told that truant officers were not employed anymore and that school districts already had the authority to a higher personnel as they sought fit. The last thing in this chapter is the definition of home education. The rewrite merely cleans up the existing language and provides an educational program for a child provided in accordance with 15.1-23, and it has to be provided by the child's parent in the child's home.

Rep. Hawken: If we don't do truant officers, why do we leave it in?

Thomas: That would be an excellent question. The committee didn't make a motion to remove it.

Rep. Kelsch: Remind me, in 20-02, did we talk about that during the interim? Does that still apply? Are there still cases where children are staying home to support the family?

Thomas: That issue did come up, and the first thought was that there are enough social support programs that should never happen, but one of the committee members gave me instances where the father had died, the boys were juniors and seniors in high school, and they had to take a few weeks off to help with the harvest, and what was explained to the committee was that those are odd situations may still exist, so the interim committee decided to leave the language.

Rep. Hanson: Did you say that home school has to be schooled at home? For example if you had parents that were divorced, and a child was living with the mother, but the father wanted to home school in his house, would that be called the home? Which one would be determined the home?

Thomas: Normally, we think about the custodial parent when we're talking about home education, but I'm not sure that I could tell you whether or not that could be permissible. We put everything in terms of the child's home and the child's school district. Hopefully that's an arrangement that would be settled by the parents.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HBHB1045 15.1-35

House Education Committee

☐ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
Tape #1	X		600-933

Committee Clerk Signature Dan Eilbert

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will open the hearing on child nutrition.

Anita Thomas:(Legislative Council) 15.1-35-01 like current law chapter begins with a definition section. The rewrite still defines child nutrition programs, food distribution programs in a school. School board was self explanatory, in terms of the committee's view, so that particular definition was omitted. The current law for state educational agencies is phrasing from federal law, and the rewrite merely directs the superintendent of public instruction to perform the function.

15.1-35

15.1-35-02 This section is a parallel section of present section 15-54-02. It authorizes the superintendent of public instruction to administer the federal funds, and to enter into contracts with federal agencies.

15.1-35-03 parallels 15-34-03. The committee merely eliminated the unnecessary verbiage of present law, and what remains is the section that gives the superintendent of public instruction specific authorization to contract without rules, employ personnel, provide technical assistance and advice, train personnel, disperse funds, and take any other necessary action.

15.1-35-04 Like present law, this section authorizes the school board to expend the money that they receive under the chapter.

15.1-35-05 this section contains one small change from present law. It begins by authorizing the superintendent of public instruction to adopt rules regarding record keeping and accounting and reporting by any public and private entity participating in the program. Our present law requires that the records be kept for a period not in excess of five year. The rewrite provides that the records must be reserved for a period of time prescribed by the superintendent. We check the record keeping requirements of other agencies, and we didn't find specific time requirements. We found instead the authority for the agency head to set those requirements, and that's what's provided in here too.

15.1-35-06 This sections parallels 15-54-06. It authorizes the superintendent of public instruction to study methods for improving the program, methods for promoting nutrition education in schools, appraising the program, and reporting the findings to the governor.

15.1-35-07 requires that each individual that manages a food services program of the type governed by this chapter to undergo initial training and continuing training regarding the safe

handling, preparation and service of food. Again, the superintendent is directed to adopt rules regarding the nature scope and frequency of such training.

Chairman Kelsch: Any questions? Seeing none, we'll close the hearing for HB1045

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 Fee Explanation

House Education Committee

❑ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
#1	X		1,035 to 2647
Committee Clerk Signature	Dana Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: Janet would you answer some questions regarding the handout?

Rep. Nelson: Yesterday there was some confusion about the cost, and there are a number of fees here, would you go over what normally the charge would be when applying for a teacher's licence in this state?

Janet Welk: (Executive Director of ESPB) As you will remember in '95, the ESPB became an independent board, no longer receiving any state appropriations, and relies solely on the licensure fees of educators of ND for maintenance. The board not only licenses teachers, but it also provides for professional development, program approval of the teacher education programs, and also the professional practices, so what we do is, use the funds from the teacher license fees to

provide the entire workings of the board. In many other states, you will see that they may have a teacher licenser board, but #1 it could be state funded, and it usually only has one function, it doesn't have all of the functions that the ESPB has.

Please refer to attached testimony for fees

Rep. Nelson: Do you have any flexibility in the fines, in situations where the administrator: where somebody comes in and they weren't told that they had to update their license, and a severe fine was imposed.

Welk: Based on the Attorney General's recommendation, no, we don't, because then it would become a very..... Where do we stop. We have had business that were supposed to be collecting valid licenses from every teacher prior to putting them in the classroom. Larry Klundt, at his in services, talks about this. I write a letter to every business manager in July, and remind them, 'before you put anyone in your classroom, make sure they have a valid license'. We send out, if someone is on contract, letters of renewal to them and to administration. I also have put a letter in the $25 application packet, in bold '**Do not go into the classroom without a license**'. Prior to that letter, we relied on the business managers and it wasn't happening, but by law, they are committing a Class B misdemeanor. The board has never chosen to do anything about that, but legally could.

Rep. Nottestad: In the fall of the year, every principal must sign forms, and on those forms, every single that is on your staff, the expiration of that certificate is made very clear. Every supervisor must sign that.

Welk: Just as a point of reference, the educational profession, is just slowly getting started, nationally and in the state of ND, as far as regulation of its own field. With that is the

reeducation, the education of the teachers, the professional development and the professional practices. I know that as we are in very difficult times in ND, we're going to be asked to drop all sorts of things, from our standards to our regulations, and I ask you at this point, there are other ways to do things, I don't think that that's going to be the solution. Whether we drop our standards, let anyone into our schools to teach, or whether we drop our professional practices, that's not going to be the solution in ND.

Rep. Hawken: One problem that I know exists, is the time frame in background checks, and that costs the school district a lot of money. I'm assuming that that is no longer a concern?

Welk: There's one I forgot to add to that, and that's the Affordity of Provisional license, but we can turn that around in 24 hours.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-22

House Education Committee

☐ Conference Committee

Hearing Date 01/17/01

Tape Number	Side A	Side B	Meter #
#1	X		57-309

Committee Clerk Signature Lee Gilbertson

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: we will now reopen the hearing on HB1045 15.1-22 relating to kindergarten.

Anita Thomas: (Legislative Council) Section 15.1-22-01 like present 15.1-45-01 authorizes the school board on its own motion, to establish a kindergarten. Present law provides that if the board receives a petition, the board must place the question of establishing a kindergarten on the ballot of the next general election. The petition currently has to be signed by 5% of the qualified voters of the district, as tabulated by the last census. That number, however, may not be less than 25. The interim committee was told that some districts may not have 25 qualified voters. At any rate, the committee opted to try to make petition requirements consistent, so the rewrite provides for the petition for 20% of those who voted in the most recent annual school district election.

15.1 22

15.1-22-01 sets forth the requirements for a public kindergarten. *those requirements can be found in the bill*

15.1-22-03 precludes the superintendent of public instruction from approving a kindergarten unless all the requirements are met.

15.1-22-04 like current law provides that a school board may discontinue a kindergarten through the resolution process. You will note in your copy of the present kindergarten law that there's one section 15.1-45-03 which addresses the accreditation rules. This was omitted in the rewrite because the superintendent, in his chapter already had brought authority to issue rules governing the accreditation rules.

Vice Chairman Brusegaard: You said you worked to make petition requirements consistent. Consistent with what?

Thomas: We try to have consistency throughout the title. As we do some of the other chapters, you'll see that there aren't very many instances where the petitions do come up, but we try to relate them to a percentage requirement of those who voted in the last election.

Vice Chairman Brusegaard: And that's generally going to be about 20%?

Thomas: Yes.

Chairman Kelsch: We will now close the hearing that portion of the hearing.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-23

House Education Committee

☐ Conference Committee

Hearing Date 01/17/01

Tape Number	Side A	Side B	Meter #
#1	X		310 to 2263

Committee Clerk Signature Rose Gilbert

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1045 15.1-23

Anita Thomas: If you look at the current law, you'll see long paragraphs containing multiple concepts. The requirements were neither clear nor coherent. Some of the committee members had strong feelings toward home education, both positively and negatively. In this case, the committee wanted craft a chapter that would clearly set forth the reporting and testing requirements, and with equal clarity set forth the parents duties and responsibilities. The ultimate desire was to craft a chapter that gives due notice of the law, those already involved in home education to those who might be contemplating home education, and to those that have to administer the law. We'll begin 15.1-23-01 with the definition of home education. This is the

15.1-23

same definition that we used in the compulsory attendance chapter. It merely provides that home education is a program of education supervised by the child's parent in the child's home in accordance with the provisions of the chapter.

15.1-23-02 one of the first steps in pursuing home education is to follow statement of intent with the child's school district. This section sets forth the requirements in an ABCDE fashion, sets forth what must be contained in the statement. The current law requires the statement of intent include a proof o" immunization record, and the committee determined that what was intended was, in fact, a copy of the immunization record, not proof that it existed.

15.1-23-03 This section sets forth the qualifications for a parent undertaking home education. Current law quite frequently refers to a parent who is licensed to teach in ND. As a rewrite uses the phrase, 'licensed to teach by the ESPB or approved to teach by the ESPB. In recent sessions, the ESPB was given the authority to grant interim reciprocal licenses and even provisional licenses, and the committee wanted to ensure that the individual so approved, would not be denied the right to teach, by a statute that appear to require only traditional licensere. The new phraseology is used throughout the title rewrite, and in this chapter includes the sentitude by representatives of the Home Education Association.

15.1-23-04 Like present law, this section requires instruction in those subjects required by law, be taught to public school students. Instruction has to take place at least four hours a day, for at least 175 days a year.

15.1-23-05 Like present law, this section requires the parent to maintain an annual record of the courses taken by the child, the child's academic progress assessment, and the standardized test

results, and the record is to be given to the school superintendent or the school administer if and when the child transfers to a public school.

15.1-23-06 This section sets forth monitoring requirements. If a parent has only a high school diploma or a GED, monitoring must take place for two years. If the child scores below the 50th percentile on a standardized test, the parent must be monitored for at least one more year and until such time that the child receives a higher score.

15.1-23-07 This section was a rewrite of 15-34.1-07. It was particularly tough to sort through. As you can see, the present law goes on for nearly two pages. Many have trouble understanding it, and those that did, indicated that it didn't reflect the original intent. When all was said and done, the committee had crafted a much clearer version. Subsection 1 provides that monitoring is required, and as we noted in the previous section, it's the school districts responsibility to assign and compensate the monitor. If the parent does not want this, the parent can contact his/her own monitor and compensate that individual. Subsection 2 provides that regardless of who picks the monitor, that individual has to be licensed to teach by the ESPB or approved by the ESPB. Subsection 3 requires that the monitor report on the child's progress twice each year, and subsection 4 provides that if one child receives home education, the monitor must spend, on average of one hour a week in contact with the child and the parent. If two or more children are receiving home education, the monitor has to spend an extra half an hour per month with each additional child.

15.1-23-08 This section is a reporting requirement. It states that any individual who monitors the child or who administers a standardized test, must notify the child's school district.

15.1-23-09 requires that the child must take as standardized test in grades 4,6,8 and 10. Private law requires that the test be grades 3,4,6,8 and 11, and the change was told, aligns the home education requirements with the period in which tests are given the public school system.

15.1-23-10 This section deals with the cost of the test. Because the issue is unclear in present law, the committee took a fair bit of time to craft this section as well. It provides that if the child takes the standardized achievement test used by the school district, and the school districts pays for the test and for the cost of administering the test, the school district has the responsibility for ensuring that the test is administered by an individual that is either licensed to teach by the ESPB or approved to teach by the ESPB. If the child takes the test that is not used by the school district, then the parent pays for the cost of the test. If the test is administered by an individual selected by the parent, the parent pays for the cost of the administration. The individual selected by the parents to administer the test must also be licensed to teach by the ESPB or again, approved to teach by the board. If the test is administered by the school district by the request of the parent, the school district pays for the cost of administering the test.

15.1-23-11 This section deals with the test results. The parent is to file the test results with the superintendent of the child's school district of residence, or if there is no superintendent, then with the county superintendent. If the child's score is below the 30th percentile, a multidisciplinary team must assess the child. If the team finds that the child is not disabled, the parent, with the advice and consent of an individual who is licensed or approved to teach by the ESPB, must prepare a remediation plan, and file that plan with the superintendent of that child's residence or the county superintendent if there is no superintendent.

15.1-23-12 The remediation plan becomes the basis for determining reasonable academic progress. The plan stays in place until the child scores higher than the 30th percentile, or until the child shows one full year of academic progress.

15.1-23-13 This section also stems from present 15-34.1-07. It provides that if a multidisciplinary team determines that a child is disabled, the parent can still continue to provide home education, so long as the child does not have a developmental disability, and further provided that the parent files a services plan that shows that the child's needs are being addressed by people qualified to provide special education services to the child. For a child in this category, the superintendent is directed to annually determine reasonable academic progress.

15.1-23-14 sets the parameters for allowing a parent to home school an autistic child. These parameters include the filing of a copy of the child's diagnosis and the development of a services plan.

15.1-23-15 requires the filing of progress reports by the child's services team on Nov. 1, Feb. 1 and May 1 of each school year. If at any time the services team believes that the child is not benefiting from home education, the team may request that the child be evaluated by a multidisciplinary team.

15.1-23-16 was enacted last session to ensure that children who were home schooled could participate in extracurricular activities, either under the offices of the child's school district of residence or under the offices of an approved nonpublic school. The selection is made and noted on the statement of intent, and the child is then subject to the transfer rules imposed by the ND High School's Activities Association.

15.1-23-17 It provides that a child's school district of residence and approved nonpublic school, or the ND Division of Independent Study may issue a high school diploma to a child, who through home education, has met the issuing entities requirements for high school graduation. These same entities may issue a high school diploma to a child who has completed at least 17 units of high school course work from the minimum curriculum offerings established by law by public and nonpublic school. This issue surfaced because some school districts required more units for graduation than the minimum required by the state.

15.1-23-18 This is current language transferred from 15-34.1-10. It provides that no state agency, school district or county superintendent may be held liable for accepting as correct, the information on any statement of intent or for any damages resulting from the parents failure to educate the child.

15.1-23-19 This, too, is current law, and it's found in 15-34.1-08. It provides that a child receiving home education is needed to be enrolled in the child's school district of residence for purposes of foundation aid if the school district is providing monitoring services. The school district then receives 50% of the weighted per student payment. That includes the summary.

Rep. Nottestad: On home education and the standardization of tests. Just to be sure we're covering everything, when it speaks about the family of the school paying for the administrations. Does that include both the giving and the scoring?

Thomas: I know we referenced the cost of the test, I guess I would feel better if some of the people more involved would answer that.

Rep. Nottestad: Pertaining to the home education and the 17 units that could be acceptable. Is it possible, under 15.1-23-17 that someone in their last semester could switch to home schooling

and they wouldn't be graduating from their program, because the school calls for 17 credits, and they wouldn't fulfill the 17, so they went into home schooling the last semester of their senior year, and graduate this way. Would this permit this to happen?

Thomas: My first response was, I suppose, probably yes, but I would also assume that if that did happen, it would be a relatively isolated incident.

Rep. Hanson: Say that somebody lived in the Fargo district, and he wanted to participate in the West Fargo district, would they have to go through the open enrollment to switch from one district to the other?

Thomas: I know that in the statement of intent to home school, you have to pick the district with which you're going to be affiliated, and then beyond that, I don't know what rules and regulations the High School Activities Association would impose on the child.

Rep. Hanson: Say that the student lived in Fargo and wanted to participate in West Fargo, would they have to get permission, then from the Fargo district to leave their district to take part in West Fargo?

Thomas: My inclination is to say no, because they have selected the district initially, but I would feel better if I had a chance to research that more thoroughly.

Rep. Mueller: It confused me, the language here on the top of page 54; it has to do with demonstration one year of academic progress, can you elaborate, can you explain the intent on what that really means?

Thomas: When we were talking about a remediation plan, the committee didn't get into great detail, I think people from DPI who work with the plans would be better able to answer that question, but dealing with the test score and the child did not need the tests, then you need to

look at where the child is placed, and assuming a particular test score for a particular child may not be an adequate response if you're looking academic progress.

Rep. Mueller: As far as you can respond, it's kind of an open ended deal.

Thomas: Yes, the one year of academic progress is still a substantial decrease over where the child was.

Cam Leedahl: (home education mother) I've been home educating for 12 years, and two of my children are now in college. I support this home education portion of the rewrite for several main reasons. One is that it doesn't further restrict home education, which we're very glad about. The words read much easier, I think there will be much less confusion for superintendents who are trying to enforce the requirements, and for home schoolers who are trying to understand how they home school. It also clarifies the areas of achievement testing and monitoring, so I appreciate the work the education services committee did in the interim.

Cam Leedahl: In response to earlier questions, I do know that when I purchase a test for my children that the scoring is included in the cost of the test. Now that might not be in the case of every test, but when I purchase it for my children, and the test is sent in, that's part of the cost. If there's hand scoring involved by the teacher, I don't know about that.

Rep. Nelson: Why do you purchase the test, why don't you use the standardized test that they use in the public schools?

Leedahl: There's differences between tests, and I looked over some sample tests, and I just liked the one, which was the Iowa test of basic skills, which I preferred over the CTBS. Now some of the schools in the state use these Iowa tests, some use the CTBS, and my school district use

CTBS, which I used for a number of years, but then they switched their format, and I just decided it would work out better for my child.

Rep. Nelson: Is it common that home school teachers purchase a different test than the ones that the public schools are using?

Leedahl: My experience is half and half. A number of them, especially if they're financially strapped, would rather use the school district test, and the other half just prefer to find one of their own.

Rep. Nelson: What is the cost of a test?

Leedahl: I paid $30.

Chairman Kelsch: Do you know the answer to Rep. Hanson's question regarding the open enrollment situation?

Leedahl: I couldn't answer that for sure. I could try and find out from home school legal council. I don't think it's done very often, if it's ever been done.

Rep. Hanson: I use Fargo, West Fargo, because a street divides the school district, and if you're home schooling at this side of the street, and you have a buddy over here on this side of the street, they probably want to leave that district to be with the friend.

Leedahl: I do know there are home schoolers who have open enrollment to another district for other purposes, but not for athletics, so I know it is done.

Rep. Hunskor: You seem very happy with your relationship with the whole process, DPI and the local superintendents. Are there any bugs in home schooling?

Leedahl: I need about an hour an a half.

Rep. Hunskor: Is there a major issue or two that needs to be addressed?

Leedahl: One problem with bringing up possible changes as a home educator is that then those who want to have tighter restrictions have something to say too, and it might end up going in our disfavor, so that's why home schoolers aren't bringing up any changes right now, but we of course would less regulations and restrictions on home education. I've found that the freer parents are to really individualized the education of the child and not have to worry about if they're following every little letter of the law, the right month, the right year, they're more creative and more responsive to their children, and more relaxed with it. In states that have no restrictions, the children perform just as well. If I had my way, we would just say, parents can just home educate and leave it at that, but I know that's not comfortable in our state, so I'm not going to ask for that. The vast majority of home educators are very responsible, they care very much for their child, they know their child better than anybody else. There are so many resources now, there is just no end to the resources.

Chairman Kelsch: We will close the portion of 1045 regarding home education, 15.1-23.

15.1-14

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-14

House Education Committee

☐ Conference Committee

Hearing Date 01/29/01

Tape Number	Side A	Side B	Meter #
#1	X		51 to 1594
Committee Clerk Signature			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now re-open HB1045 15.1-14 relating to superintendents.

Anita Thomas: (Legislative Council) *Please refer to attached testimony*

Rep. Haas: Whne you were discussing the issue of either cross-examination or clarification, aren't both languages used in here?

Thomas: The cross-examinition language is used when there's a discharge for cause only.

Chairman Kelsch: We will close the hearing on HB1045 15.1-14.

154-15

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-15

House Education Committee

☐ Conference Committee

Hearing Date 01/31/01

Tape Number	Side A	Side B	Meter #
#1	X		56 to 1441
Committee Clerk Signature	Lesa Gilbertson		

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will reopen the hearing on HB1045 on teacher dismissal on page 45.

Anita Thomas: (Legislative Council) *Please refer to attached testimony*

Rep. Brusegaard: The last section about people not covered by the code, ar those people covered someplace else, or does the board just not have the power to discharge them?

Thomas: There's the university people, the people employed at the state institutions are covered under a personnel system. I don't know what the coverage is for the temporary people. It's not in the present law.

Chairman Kelsch: We will now close the hearing on HB1045.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-16

House Education Committee

☐ Conference Committee

Hearing Date 01/31/01

Tape Number	Side A	Side B	Meter #
#1	X		1444 to 3258
Committee Clerk Signature	Lisa Gilbertson		

15.1-16

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will reopen the hearing on HB1045 15.1-16.

Anita Thomas: (Legislative Council) *Please refer to written testimony*

Rep. Hunskor: On page 40 top line, the sick leave carries over from year to year up to thirty days. Many states have more days than thirty.

Thomas: That is the minimum that the state requires each contract to have, so an individual school district can raise that if they would like.

Chairman Kelsch: We will now close the hearing on HB1045 15.1-16.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1045 15.1-17

House Education Committee

☐ Conference Committee

Hearing Date 01/31/01

Tape Number	Side A	Side B	Meter #
#1	X		3259 to 3838

Committee Clerk Signature Lisa Gilbertson

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1045 section 15.1-17.

Anita Thomas: (Legislative Council) *Please refer to written testimony*

Chairman Kelsch: We will now close the hearing on HB1045 section 15.1-17.

15.1-17

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045- 15.1-18

House Education Committee

☐ Conference Committee

Hearing Date 02-13-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to
Committee Clerk Signature			

Minutes:VIce Chr Brusegaard called the committee to order and had the clerk take the roll call.

Note that a quorum was present. We will reopen the hearing on HB 1045.

Anita Thomas: (Legislative Council) *Please refer to attached testimony* Relating to Teacher Qualifications. 15.1-18

Vice Chr Brusegaard: Are there any questions, we will continue on.

Anita Thomas: (Legislative Council) See attached testimony- Relating to Courses and Curricula 15.1-21.

DISCUSSION

Vice Chr Brusegaard: we will continue on.

Anita Thomas: (Legislative Council) See attached testimony 15.1-27

Vice Chr Brusegaard: Are there any questions on the finance chapter. On page 59 sub section two, what is the code.

Anita Thomas: I don't know, but I will be happy to check.

15.1-18

Vice Chr Brusegaard: Any further questions, is there further testimony from these three sections from the audience, seeing none.

DISCUSSION

Vice Chr Brusegaard:Any other questions, seeing none we will adjourn for the morning.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-15.1-28 - 15.1-31

House Education Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to2750
Committee Clerk Signature			

Minutes:Chairman Kelsch, Vice Chair T. Brusegaard, Rep Bellew, Rep Grumbo, Rep Haas, Rep Hanson, Rep Hawken, Rep Hunskor, Rep Johnson, Rep Meier, Rep Mueller, Rep Nelson, Rep Nottestad, Rep Solberg, Rep Thoreson.

Chairman Kelsch: we will reopen the hearing on HB 1045.

Anita Thomas: (Legislative Council: today we will take up the state tuition fund (see attached testimony).

Chairman Kelsch: Are there any questions.

Rep Brusegaard: Right now the county treasurer forwards the money.

Anita Thomas: That is how its done, just not noted in the chapter.

Rep Mueller: Would you have some suggested language.

Anita Thomas: I will include it in the proposed amendments.

Rep Nelson: Do you know what the net proceeds are

15.1-28 31

Anita Thomas: I do not. We will go to the a longer chapter 15.1-29. (see attached testimony) Payment of tuition.

Rep Bellew: asks for a clarification.

Anita Thomas: Tuition payment between school districts.Comes on to give examples.

Rep Hawken: I can't find in here where it says we have to pay for transportation. But I know we do.

Anita Thomas: It is under special education.

Rep Hunsker: Asks a question about kindergarten student.

Anita Thomas: This is current law.

Rep Nelson: BIA students, asks a question of the auditing and reporting in those cases.

Anita Thomas: I believe Mr Deckert is the one to ask. We are now going to look at 15.1-30. Student transportation.

Rep Brusegaard: Does the school district still have to put out a contract for transportation services.

Anita Thomas: I would assume not.

Rep Brusegaard: Should that not read that do not provide transportation have to contract.

Anita Thomas: I believe you are correct, we should look at a change of verbiage.

Rep Mueller: I am not seeing compensation.

Anita Thomas: On the very bottom of page 96, it states what can be paid. We now have 15.1-31, Open Enrollment.

Chairman Kelsch: Questions by the committee members, hearing none. Will we finish up on Monday.

Anita Thomas: I am looking at one hour and fifteen minutes to go through the chapter.

Chairman Kelsch: We will go through HB 1046 and you will propose all the amendments.

Anita Thomas: That may be the easiest.

Chairman Kelsch: Anyone else wishing to testify on the chapters that we discussed. Anyone who wishes to testify in opposition, we will close the hearing on HB 1045.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-15.1-32-amendments

House Education Committee

☐ Conference Committee

Hearing Date 02-19-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 1644
Committee Clerk Signature	Joan Deis		

Minutes:Chairman Kelsch: Called the Education Committee to order and ask the clerk to take the roll. The Chair noted that a quorum was present. Let's take up HB 1045 beginning on page 100.

Anita Thomas: (Legislative Council) 15.1-32 Special Education (see written testimony attached).

Rep Brusegaard: On page 105, 15.1-32-17,Extended educational program, asked a question about a reference to another page 102, sub section two of 15.1-32-14, is that the same thing.

Anita Thomas:I believe the reference on page 105, authorizes the program and participation in the program and the reference on page 102 operates the payment for the program.

Rep Nelson: ON the last section 15.1-32-23, credentials process, any changes of the credentials would have to be approved by the Administrative Rules Committee.

Anita Thomas: I don't know, I believe yes. This is the Multidistrict Special Education chapter - 15.1-33. (see attached testimony)

Chairman Kelsch: Are there any questions, seeing none we will continue on with 15.1-34.

Anita Thomas: (15.1-34 -- see written testimony) Boarding Home Care.

154-32-34

15.1-36

Chairman Kelsch: Are there any questions by committee members, seeing none we will move on.

Anita Thomas: We are now on 15.1-36 School Construction (see written testimony)

Chairman Kelsch: Are there any questions, you may proceed.

Anita Thomas: You have a document in your pile of testimony that is entitled Testimony for amendments. These include Chairman Kelsch's amendments and also that is hand written. We photo copied the page and wrote in what the amendments would look like. (see attached testimony)

Chairman Kelsch: Are there any questions by committee members.

Rep Hawken: You certainly made it easy to look through these.

Chairman Kelsch: The amendments on page 39, basically we are cleaning up the language.

Anita Thomas: The Interim Committee couldn't decide what to do, if you can't participate in the strike, you can't participate in a strike.

Rep Thoreson: Is there anything to indicate a penalty is if we do strike.

Anita Thomas: The only penalty is that the teacher or administrator participating may be denied their wages. That is an option on the part of the board not a mandate.

Chairman Kelsch: Any further questions, seeing none, thank you. Anyone else wishing to testify in support of the sections we went through on HB 1045. Anyone in opposition. Hearing none we will close the hearing on HB 1045.

COMMITTEE ACTION

Chairman Kelsch: The amendments have been moved and seconded, we have the bill before us, what are the wishes of the committee on HB 1045.

Rep Thoreson: I move a DO PASS as amended.

Rep Mueller: Second.

Chairman Kelsch: We have a DO PASS as amended on HB 1045. The clerk will call the roll on the motion. The motion passes with a vote of 14 YES, 0 No and 1 ABSENT. Carrier Chairman Kelsch.

FISCAL NOTE

Requested by Legislative Council
12/14/2000

Bill/Resolution No.: HB 1045

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Revision of NDCC - no substantive changes were made to existing code.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Gary Gronberg	**Agency:**	Public Instruction
Phone Number:	328-1240	**Date Prepared:**	12/29/2000

10184.0201
Title.

Prepared by the Legislative Council staff for
House Education
February 19, 2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

Page 14, line 16, replace "to exceed" with "in excess of"

Page 15, line 21, replace "and written" with "evaluation"

Page 15, line 22, remove "evaluations"

Page 18, line 26, replace "to exceed" with "in excess of"

Page 23, line 2, replace "to exceed" with "in excess of"

Page 29, line 1, replace "special school board meeting" with "hearing"

Page 29, line 4, replace "special school" with "hearing"

Page 29, line 5, remove "board meeting"

Page 29, line 15, replace "**Meeting**" with "**Hearing**"

Page 29, line 16, replace "special school board meeting" with "hearing"

Page 29, line 29, replace "meeting" with "hearing"

Page 30, line 2, replace "special meeting" with "hearing"

Page 30, line 4, replace "meeting" with "hearing"

Page 30, line 6, replace "meeting" with "hearing"

Page 32, line 6, replace "If an individual employed as" with "The board of a school district may not discharge or refuse to renew the contract of" and remove the second "as"

Page 32, line 7, replace "is the subject of an investigation alleging" with "solely because a report of suspected"

Page 32, line 8, replace "and it is determined that no probable cause exists to" with "alleges participation by the individual.

2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate

superintendent, the board of a school district may suspend the individual pending the outcome of the case."

Page 32, remove lines 9 through 22

Page 34, line 7, after "licensed" insert "to teach" by the ESPB

Page 37, line 17, replace "The formulation of an agreement" with "Formation of a contract"

Page 37, line 19, replace "agreement" with "contract"

Page 39, line 16, replace "No teacher, administrator, or" with "Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section."

Page 39, remove lines 17 and 18

Page 45, line 25, remove "school board"

Page 45, line 26, remove "member, school superintendent, principal, truant officer," and replace ", and county superintendent of" with "and administrator"

Page 45, line 27, remove "schools"

Page 47, line 6, remove "industrial arts,"

Page 47, line 12, replace "Each" with:

"1. Except as provided in subsection 2, each" and remove ", other than a natural"

Page 47, line 13, remove "science unit,"

Page 47, line 14, replace "Each natural science unit" with:

"2. The following units"

Page 47, line 15, after "calendar" insert ": natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.

3.", after "The" insert "hour", and after "to" insert "reductions resulting from"

Page 54, line 11, replace **"Individualized education"** with **"Services"**

Page 64, line 6, after ".50" insert "adjusted by seventy-five percent of the difference between .50"

Page 80, line 3, after "forward" insert "the amounts collected, together with"

Page 80, line 20, remove "or institution"

Page 91, line 22, after "to" insert "and from"

Page 93, after line 30, insert:

"3. This section does not apply to a school district that owns its own buses and employs its own busdrivers."

Page 98, line 24, after "made" insert "to the admitting district"

Page 101, line 17, replace "**Powers and duties**" with "**Assistance to school districts**"

Renumber accordingly

Adopted by the Education Committee
February 19, 2001

YR
2/20/01
1 of 3

House Amendments to HB1045 **House EDU** **2/20/01**
Page 14, line 18, replace "to exceed" with "in excess of"

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House Amendments to HB1045 **House EDU** **2/20/01**
Page 30, line 2, replace "special meeting" with "hearing"

Page 30, line 4, replace "meeting" with "hearing"

Page 30, line 6, replace "meeting" with "hearing"

Page 30, line 10, remove "for a period determined by the board but"

House Amendments to HB1045 **House EDU** **2/20/01**
Page 31, line 29, remove "for a period determined by the board, but"

House Amendments to HB1045 **House EDU** **2/20/01**
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2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate superintendent, the board of a school district may suspend the individual pending the outcome of the case."

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Page 39, remove lines 17 and 18

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House Amendments to HB1045 **House EDU** **2/20/01**

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"1. Except as provided in subsection 2, each unit"

Page 47, line 13, remove "science unit,"

Page 47, line 14, replace "Each natural science unit" with:

"2. The following units"

Page 47, line 15, replace ". The requirements of this section are subject to" with ": natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.

3. The hour requirements of this section are subject to reductions resulting from"

House Amendments to HB1045 **House EDU** **2/20/01**
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Page 101, line 17, replace "**Powers and duties**" with "**Assistance to school districts**"

Renumber accordingly

Date: 2/19/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1045

House House Education Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep Thoreson Seconded By Rep. Mueller

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	✓		Rep. Howard Grumbo	✓	
V. Chairman-Thomas T. Brusegaard	✓		Rep. Lyle Hanson		
Rep. Larry Bellew	✓		Rep. Bob Hunskor	✓	
Rep. C.B. Haas	✓		Rep. Phillip Mueller	✓	
Rep. Kathy Hawken	✓		Rep. Dorvan Solberg	✓	
Rep. Dennis E. Johnson	✓				
Rep. Lisa Meier	✓				
Rep. Jon O. Nelson	✓				
Rep.Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Kelsch

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

REPORT OF STANDING COMMITTEE (410)
February 20, 2001 8:31 a.m.

Module No: HR-31-3932
Carrier: R. Kelsch
Insert LC: 10184.0202 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1045: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1045 was placed on the Sixth order on the calendar.

Page 14, line 18, replace "to exceed" with "in excess of"

Page 15, line 21, replace "and written" with "evaluation"

Page 15, line 22, remove "evaluations"

Page 18, line 26, replace "to exceed" with "in excess of"

Page 23, line 2, replace "to exceed" with "in excess of"

Page 29, line 1, replace "special school board meeting" with "hearing"

Page 29, line 4, replace "special school" with "hearing"

Page 29, line 5, remove "board meeting"

Page 29, line 15, replace "**Meeting**" with "**Hearing**"

Page 29, line 16, replace "special school board meeting" with "hearing"

Page 29, line 29, replace "meeting" with "hearing"

Page 30, line 2, replace "special meeting" with "hearing"

Page 30, line 4, replace "meeting" with "hearing"

Page 30, line 6, replace "meeting" with "hearing"

Page 30, line 10, remove "for a period determined by the board but"

Page 31, line 29, remove "for a period determined by the board, but"

Page 32, line 6, replace "If an individual employed as" with "The board of a school district may not discharge or refuse to renew the contract of" and remove the second "as"

Page 32, line 7, replace "is the subject of an investigation alleging" with "solely because a report of suspected"

Page 32, line 8, replace "and it is determined that no probable cause exists to" with "alleges participation by the individual.

2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate superintendent, the board of a school district may suspend the individual pending the outcome of the case."

Page 32, remove lines 9 through 22

Page 34, line 7, after "licensed" insert "to teach"

Page 37, line 17, replace "The formulation of an agreement" with "Formation of a contract"

Page 37, line 19, replace "agreement" with "contract"

Page 39, line 16, replace "No teacher, administrator, or" with "Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section."

Page 39, remove lines 17 and 18

Page 45, line 25, remove "school board"

Page 45, line 26, remove "member, school superintendent, principal, truant officer," and replace ", and county superintendent of" with "and administrator"

Page 45, line 27, remove "schools"

Page 47, line 6, remove "industrial arts,"

Page 47, line 12, replace "Each unit, other than a natural" with:

"1. Except as provided in subsection 2, each unit"

Page 47, line 13, remove "science unit,"

Page 47, line 14, replace "Each natural science unit" with:

"2. The following units"

Page 47, line 15, replace ". The requirements of this section are subject to" with ": natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.

3. The hour requirements of this section are subject to reductions resulting from"

Page 54, line 11, replace "**individualized education**" with "**Services**"

Page 64, line 6, after ".50" insert "adjusted by seventy-five percent of the difference between .50"

Page 80, line 3, after "forward" insert "the amounts collected, together with"

Page 80, line 20, remove "or institution"

Page 91, line 22, after "to" insert "and from"

Page 93, after line 30, insert:

"3. This section does not apply to a school district that owns its own buses and employs its own busdrivers."

Page 98, line 24, after "made" insert "to the admitting district"

Page 101, line 17, replace "**Powers and duties**" with "**Assistance to school districts**"

Renumber accordingly

2001 SENATE EDUCATION

HB 1045

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045

Senate Education Committee

☐ Conference Committee

Hearing Date 03-19-01

Tape Number	Side A	Side B	Meter #
1	x		0 - end
1		B	0 - 34.0
1 (3-20-01)		x	25.8 - 45.8
2 (3 - 20- 01)	x		0 - 41.0
1 (03-21-01)		x	0.5 - 54.7
1 03-26-01)	x		2.9 - 18.4
1 (03-28-01)	x		5.8 - 45.5
1 (04-02-01)		x	34.0 - 39.0
2 (04-02-01)	x		0 - 8.5
1 (04-03-01)	X		0 - 11.5

Committee Clerk Signature Sandra Johnson

Minutes: **CHAIRMAN FREBORG called the committee to order. Roll was taken with all (7) members present.**

CHAIRMAN FREBORG called the hearing on HB 1045 which is the rewrite of Chapter 15-38 of NDCC. He further stated that SENATOR WANZEK will be responsible for carrying the bill when it goes to the floor.

ANITA THOMAS, Legislative Council, explained the bill. (Testimony attached with referenced sections of current law also attached).

Questions on Chapter 15.1-13 dealing with ESPB. SENATOR COOK asked if a school counselor is considered a "teacher". She replied yes, because they would need a teaching certification. SENATOR COOK asked about the term "administrator". She stated the term can

be explained differently in each section of law. SENATOR O'CONNELL asked if there was any problem with fees. She stated the subject of fee levels did not come up in the interim committee.

CAM LEDAHL, a home educator, presented testimony in support of HB 1045 rewrite and a suggested amendment. (see attached).

Hearing no further testimony, the hearing on HB 1045 was closed.

03-20-01, Tape 1, Side B, 25.8 - 45.8, Tape 2, side A, 0 - 41.0

SENATOR FLAKOLL presented an amendment (10184.0302). This amendment alludes to the problem CAM LEDAHL had and had proposed an amendment for such. It inserts the word "basic" before "composite score" to clarify the la (see testimony from Ms. Ledahl).

SENATOR FLAKOLL moved to adopt the amendment (10184.0302). Seconded by SENATOR WANZEK. Roll Call Vote: 6 YES. 1 NO. 0 Absent. Amendment Adopted.

SENATOR FLAKOLL presented an amendment (10184.0304). This amendment deals with "large" buses. Currently large buses, as defined on pg. 73, Subsec. 1b, receive $ .67 per mile for school buses that drive outside the city limits. The intent of this amendment would be that this same type of bus that drives inside the city limit would get $.35 per mile. This raises the current level by $.10 per mile for buses that carry more than 10 children when in the incorporated limits of a city. It is still $.32 less than when driving outside the incorporated city.

More discussion.

SENATOR FLAKOLL moved the amendment (10184.0304). Seconded by SENATOR COOK. Roll Call Vote: 3 YES. 4 NO. 0 Absent. Motion failed.

SENATOR COOK presented an amendment (10184.0305) which deals with libel and slander.

This amendment clarifies the law as to cause of action for libel and slander. It states an individual who acts without malice is not subject to civil liability for libel or slander. However, if someone knowingly makes malicious remarks for personal gain, they can be held accountable.

SENATOR COOK moved to adopt the amendment (10184.0305). Seconded by SENATOR WANZEK. Roll Call Vote: 6 YES. 0 NO. 1 Absent. Amendment adopted.

SENATOR CHRISTENSON asked to reconsider the actions on amendment 10184.0304 which deals with busing. She would like to change her vote. Since the amendment was not adopted earlier, the correct procedure is to move the amendment.

SENATOR CHRISTENSON moved to adopt the amendment 10184.0304. Seconded by SENATOR FLAKOLL. Roll Call Vote: 3 YES. 4 NO. 0 Absent. Motion Failed.

SENATOR KELSH stated that if there had been a fiscal note attached, or if the committee would have had testimony on what the actual cost would be, he may have voted in favor of it.

SENATOR FLAKOLL presented an amendment (10184.0301). He explained this amendment keeps the current practice whereby an individual can negotiate with the local school board. He feels this would not change existing law.

SENATOR FLAKOLL moved the amendment (10184.0301). Seconded by SENATOR WANZEK.

There was discussion on administrators superintendents, teachers, current law, etc. SENATOR COOK stated what he believes the current law is and how it is interpreted, and what the rewrite now says. He feels the rewrite has a different intent than what is in current law. BEV NIELSON, ND School Boards Assn., stated that she is under the impression that current law is interpreted to mean that if an individual is legitimately defined as in the unit, they can not negotiate independently for a contract. However, superintendents were never meant to be in this

part of law, one way or the other. Superintendents negotiate directly with the board. She feels the way the rewrite reads, superintendents would not be able to independently negotiate their contracts. SENATOR KELSH feels "or as an administrator" should be removed only. MS. NIELSON, when asked by members of the committee, stated that principals can form their own negotiating unit as teachers can. Also, principals can elect to not join a unit and can independently negotiate with the board. SENATOR COOK stated that if these amendments don't pass then the option of the principals to either join or independently negotiate would be eliminated. SENATOR COOK stated that by adopting these amendments, the law is left as it is today. SENATOR KELSH stated that the new language is to clarify that an individual (teacher) can talk to the board but are still part of a bargaining unit and cannot negotiate on their own. More discussion on bargaining units and rights of teachers as individuals and rights of principals as individuals. SENATOR COOK feels this changes more than what was first thought.

ANITA THOMAS, Legislative Council, answered questions from the members:

(3-20-01, Tape 2, Side A, 19.4 - 32.3)

SENATOR FREBORG asked if under current law, can an individual teacher negotiate. She stated the law today states a teacher can present their points of view to the board, but can not individually negotiate. And the principals are under the same law. Only superintendents can independently negotiate. The law is really unclear on this issue and seems subject to interpretation. SENATOR FREBORG stated this point needs clarification so the committee can deal with it. SENATOR COOK again reiterated that if the amendment passes, there would be no change to existing law as he sees it. ANITA THOMAS stated that during the interim, NDEA wanted it made clear in the rewrite that teachers and administrators can present their views to the board but can not independently negotiate. SENATOR FREBORG stated that then there needs

to be clarification. She feels the law, as it is right now, is being ignored with respect to administrators. She stated that this is another instance where the law doesn't seem to make sense and people have found ways to work around the law. Discussion on how to clarify the bill.

SENATOR FLAKOLL withdrew his motion to adopt the amendment (10184.0301).

SENATOR WANZEK withdrew his second.

03-21-01, Tape 1, Side B, 0.5 - 54.7

SENATOR COOK moved the amendment 10184.0307. SENATOR FLAKOLL seconded. The purpose of the amendment is to allow any individual to negotiate as an indvidual without a bargaining unit. He feels this has always been what was intended, but this would clarity the law. SENATOR O'CONNELL feels this takes away the power of the bargaining unit. SENATOR CHRISTENSON interprets the language to read that the person who is a member of the negotiating group cannot go outside that unit to bargain individually. The key word is "exclusive". SENATOR COOK agrees that the bargaining unit of which the individual is a member has the exclusive right to bargain for that individual. However, if you are not a member, you have the right to negotiate yourself, if you so desire. He further stated he is not trying to eliminate a role but he feels the individual has the right to negotiate on their own behalf. The committee discussed what constitutes a group or unit. SENATOR CHRISTENSON stated she felt the amendment came about because of principals being categorized as administrators and therefore they can negotiate as a unit or on their own. However, this now gives the teaches the right to negotiate on their own. She does feel the law needs to be clear. She thought initially the concern was for superintendents to be able to individually negotiate. SENATOR KELSH has a

fear that one individual may undercut the bargaining unit. He feels that would not be fair to the teachers who recognize the bargaining unit. Discussion. He feels if the teachers who do not belong to the bargaining unit want to form their own unit, that is okay and they are not totally excluded. They don't have to accept the one bargaining unit. He feels the intent was not to give the individual the right to bargain but to it does give them the right to express their concerns. SENATOR FREBORG stated that is why this amendment is in front of the committee. The amendment does give them the right to bargain. He stated the word "exclusive", if eliminated, would alleviate some member's concerns. SENATOR WANZEK is having trouble seeing what is wrong with an individual doing what is best for him, whether it be to bargain as a unit or individual. SENATOR CHRISTENSON feels we need to keep an equality among teachers and not demoralize them in any way, which is what she feels this will do. They need to focus on what is best for the children and not have to worry about if one teacher or another teacher is more important or that one's contibution does more for the good of the school or for the children. This could cause the focus to shift from the kids to internal kinds of bickering. SENATOR FREBORG asked if the negotiating units of the past have been successful. SENATOR CHRISTENSON feels they have done the best they could and have been for the most part successful. What comes to mind for SENATOR FREBORG is that he heard a number of years ago a union negotiator say "there are two reasons to negotiate, money and power". He has never forgotten this and he's not sure that he was wrong. There was more discussion among the committee on money and power or prestige. SENATOR KELSH sees this as a devisive element and feels it would break the bargaining unit which he feels is important. SENATOR O'CONNELL feels this may lead to merit pay SENATOR FLAKOLL stated that in looking at the pay scale and incremental increases for teachers, some things may not be equal. SENATOR

KELSH presented an amendment (10184.0306). This would remove all, except the superintendent, from negotiating as an individual. SENATOR WANZEK feels the issue boils down to a philosophy. He feels the individual should have rights and they should include being able to negotiate for themselves. After more discussion, SENATOR COOK withdrew his motion. SENATOR FLAKOLL withdrew his second.

The committee stood at recess.

03-26-01, Tape 1, Side A, 0 - 2.9

CHAIRMAN FREBORG called the committee to order. Roll Call taken with 7 members present. CHAIRMAN FREBORG asked the committee to get their amendments in order for the following day because of time constraints.

The committee stood at recess.

03-26-01, Tape 1, Side A, 2.9 - 18.4

SENATOR COOK asked the committee to review the amendment (10184.0315). He explained his amendment. The first part of the amendment clarifies present law and the second part adds language as to when and how the withdrawal from the negotiating unit and independent negotiations can be done. More Discussion. By existing law, the board of a local district does not have to negotiate and this further affirms this.

SENATOR COOK moved to adopt the amendment. Seconded by SENATOR FLAKOLL.

SENATOR KELSH feels this amendment is a major change in law and he feels the intent and the interpretation of the Interim committee was not as this amendment suggests.

Roll Call Vote: 4 YES. 3 No. 0 Absent. Amendment Adopted.

3-26-01

SENATOR KELSH moved a DO NOT PASS as Amended. Seconded by SENATOR O'CONNELL.

Roll Call Vote: 3 YES. 4 NO. 0 Absent. Motion Failed.

SENATOR COOK moved a DO PASS as Amended. Seconded by SENATOR FLAKOLL.

Roll Call Vote: 4 YES. 3 NO. 0 Absent. Motion Carried.

Carrier: SENATOR WANZEK

03-28-01, Tape 1, Side A, 5.8 - 45.5

Discussion on the amendments on HB 1045. SENATOR COOK brought up the issue of independent negotiations being done by teachers. Discussion on current law and how it is interpreted. Also referred to an attorney general's opinion. More discussion on this issue.

JOE WESTBY, NDEA, was asked to answer questions from the committee. He and his group believe in negotiating units. They believe the unit has the right to negotiate and the individual does not have that right. SENATOR FREBORG asked about the word "exclusive". Mr. Westby feels the intent in law always has been for the unit to negotiate.

Committee adjourned.

04-02-01, Tape 1, Side B, 34.0 - 39.0, Tape 2, Side A, 0 - 8.5

SENATOR KELSH moved to reconsider HB 1045. Seconded by SENATOR O'CONNELL. SENATOR KELSH stated that after reading through the minutes of the interim committee, he feels that committee wanted the negotiating section (s) of HB 1045 rewrite left as it was in current law, before the rewrite. The school board association's letter also reflects the bill go back to current law (prior rewrite).

 4-2-01

Roll Call Vote on reconsideration: 7 YES. 0 NO. 0 Absent. Motion Carried.

SENATOR COOK presented an amendment (10184.0319) for the committee to consider. He reminded the committee that he had never before had to have a whole entire binder for one bill, but with this bill, he does. He has studied all the minutes of all the committees who have visited the issue of teacher negotiations. His interest was perked primarily when it became obvious that in the rewrite it stated the superintendent would have to have his/her salary negotiated. He now feels this is a very important section of law with many opinions as to what can and cannot be done. He feels any changes to this section on negotiations should come in a bill of it's own. That is the intent of these amendments.

SENATOR COOK moved the adoption of the amendments (10184.0319). Seconded by SENATOR FLAKOLL.

This removes from the rewrite all of Chapter 15.1-16 except sick leave (15.1-16-19) and school for the blind, school for the deaf, and YCC (15.1-16-20). There are other parts in Chapter 15 that need to be addressed such as definitions etc. He feels these issues would be better served in a new bill which can be addressed by the next legislative session. He feels there needs to be more discussion on these issues and during the interim, maybe they can be addressed.

Roll Call Vote: 7 YES. 0 NO. 0 Absent. Amendment Adopted

SENATOR COOK moved a DO PASS as AMENDED. Seconded by SENATOR WANZEK. Roll Call Vote: 5 YES. 2 NO. 0 Absent. Motion Carried.

Carrier: SENATOR WANZEK.

04-03-01, Tape 1, Side A, 0 - 11.5

CHAIRMAN TREBORG called the committee to order. Roll Call was taken with all members (7) present.

SENATOR COOK moved to reconsider HB 1045 as amended. Seconded by SENATOR WANZEK. Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion to reconsider carried.

SENATOR WANZEK moved to reconsider amendment 10184.0315. Seconded by SENATOR COOK. In reviewing the amendment, there were parts of it that were left on the bill as amended that the committee wanted taken off. Section 15.1-16-18.1 should be taken out of the bill. This is the section that deals with withdrawal from negotiating unit - Independent negotiations. The intent of the committee was for this part to be also taken out of the bill.

Roll Call Vote: 5 YES. 2 NO. 0 Absent. Motion Carried.

SENATOR COOK moved a DO PASS as Amended. Seconded by SENATOR FLAKOLL.

Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: SENATOR WANZEK.

10184.0301
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 35, line 2, remove ", but may not enter into independent negotiations with"

Page 35, line 3, remove "the board"

Renumber accordingly

Withdrawn motion
to adopt

6-1-0

#1 3/20/01

10184.0302
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend: 10184.0302

Motion Made By Sen. Flakoll Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

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

10184.0304
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 73, line 25, after "vehicle" insert "having a capacity of nine or fewer students and"

Page 73, line 27, after the period insert "Thirty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of ten or more students and transporting students who reside within the incorporated limits of a city in which the student's school is located.

e."

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend. 10184.0304

Motion Made By Sen. Flakoll Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson		✓
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek		✓			

Total (Yes) 3 No 4

Absent _____

Floor Assignment _____

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

#3 3/20/01

6--0--1

10184.0305
Title.

Prepared by the Legislative Council staff for
Senator Cook
March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend. 10184.0305

Motion Made By Sen. Cook Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	A		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Date: 3/20/01
Roll Call Vote #: 4

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amendment 10184.0304

Motion Made By Sen. Christenson Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman		✓	Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek		✓			

Total (Yes) 3 No 4

Absent _____

Floor Assignment _____

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

10184.0306
Title.

Prepared by the Legislative Council staff for
Senator Kelsh
March 21, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 35, line 2, replace ", but may not" with ". Only a school district superintendent may"

Renumber accordingly

10184.0307
Title.

withdrawn

Prepared by the Legislative Council staff for
Senator Cook
March 21, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 35, line 2, replace ", but" with "and" and remove "not"

Renumber accordingly

Date: 3/21/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend 10184.0307 Withdrawn

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman			Senator Christenson		
Senator Flakoll - Vice Chairman			Senator Kelsh		
Senator Cook			Senator O'Connell		
Senator Wanzek					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

4-3-0 #1 3/26/01

10184.0315
Title.

Prepared by the Legislative Council staff for
Senator Cook
March 26, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 34, line 31, remove "exclusive"

Page 35, line 2, replace ", but" with "and" and remove "not"

Page 35, line 3, after the period insert "In the case of an individual who serves as a part-time administrator, the independent negotiations must cover all compensation and benefits payable to the individual by the board. The education factfinding commission may not provide services when an individual teacher or administrator has entered into independent negotiations with a board under this section."

Page 39, after line 8, insert:

"**15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.**

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Renumber accordingly

4-3-0

#1 3/26/01

Date: 3/26/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amendment 10184.0315

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson		✓
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 4 No 3

Absent _____

Floor Assignment _____

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

Date: 3/26/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DNPA

Motion Made By Sen. Kelsh Seconded By Sen O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman		✓	Senator Christenson	✓	
Senator Flakoll - Vice Chairman		✓	Senator Kelsh	✓	
Senator Cook		✓	Senator O'Connell	✓	
Senator Wanzek		✓			

Total (Yes) ~~3~~ 3 No ~~3~~ 4

Absent _____

Floor Assignment _____

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

failed

Date: 3/26/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson		✓
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 4 No 3

Absent _____

Floor Assignment Sen. Wanzek

If the vote is on an amendment, briefly indicate intent: Sen. Cook will also answer, esp. on amendments

REPORT OF STANDING COMMITTEE

HB 1045, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 34, line 31, remove "exclusive"

Page 35, line 2, replace ", but" with "and" and remove "not"

Page 35, line 3, after the period insert "In the case of an individual who serves as a part-time administrator, the independent negotiations must cover all compensation and benefits payable to the individual by the board. The education factfinding commission may not provide services when an individual teacher or administrator has entered into independent negotiations with a board under this section."

Page 39, after line 8, insert:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the

conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

Date: 4/2/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider HB 1045

Motion Made By Sen. Kelsh Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Adopted by the Education Committee
March 26, 2001

3-27-01
1012

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

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Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 34, line 31, remove "exclusive"

Page 35, line 2, replace ", but" with "and" and remove "not"

Page 35, line 3, after the period insert "In the case of an individual who serves as a part-time administrator, the independent negotiations must cover all compensation and benefits payable to the individual by the board. The education factfinding commission may not provide services when an individual teacher or administrator has entered into independent negotiations with a board under this section."

Page 39, after line 8, insert:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

10184.0319
Title.

7-0

Prepared by the Legislative Council staff for
Senator Cook
April 2, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 1, line 5, remove "15-38.1,"

Page 33, remove lines 6 through 31

Remove pages 34 through 38

Page 39, remove lines 1 through 8

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

Date: 4/2/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amend. 10184.0319

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

10184.0320
Title.0500

Adopted by the Education Committee
March 26, 2001

4-2-1
1012

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 1, line 5, remove "15-38.1,"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 18, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 20, line 18, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 22, line 28, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 24, line 24, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 30, line 6, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 31, line 26, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 33, remove lines 6 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 34, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 35, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 36, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 37, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 38, remove lines 1 through 31

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 39, replace lines 1 through 8 with:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

2. If a teacher or administrator commences initial employment with a school district on or after July first of any school year, the individual may provide the notice of the election provided in subsection 1 within fourteen days after the date of employment. The election remains in effect until the conclusion of the negotiated contract applicable to the school year in which the election was made.

3. In all cases in which subsection 2 does not apply, a teacher or administrator must provide notice of the election provided in subsection 1 between April first and April thirtieth. The election remains in effect until the conclusion of the negotiated contract applicable to the ensuing school year."

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 50, line 30, after the second "a" insert "basic"

Amendments to ENGR HB 1045 **EDUC** **4/2/01**

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

Date: 4/2/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen Cook Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Wanzek

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

REPORT OF STANDING COMMITTEE

HB 1045, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "15-38.1,"

Page 14, line 20, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

Page 16, line 15, replace "No cause of action for libel or slander may be brought" with "An individual who acts without malice is not subject to civil liability for libel or slander"

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Page 33, remove lines 6 through 31

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 31

Page 37, remove lines 1 through 31

Page 38, remove lines 1 through 31

Page 39, replace lines 1 through 8 with:

"15.1-16-18.1. Withdrawal from negotiating unit - Independent negotiations.

1. Notwithstanding the provisions of any other law, a teacher or administrator may elect not to participate in the negotiating unit to which the individual would otherwise belong and instead pursue independent contract negotiations with the board by providing written notice of the individual's intent to the board and to the negotiating unit to which the individual would otherwise belong.

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Page 50, line 30, after the second "a" insert "basic"

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

Date: 4/3/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken reconsider bill as amended

Motion Made By Sen. Cook Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: 4/3/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken move D accordion amend. 10184.0315

Motion Made By Sen. Wanzek Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh		✓
Senator Cook	✓		Senator O'Connell		✓
Senator Wanzek	✓				

Total (Yes) 5 No 2

Absent _____

Floor Assignment _____

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

Date: 4/2/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1045

Senate Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1045, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "15-38.1,"

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Page 33, remove lines 6 through 31

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 31

Page 37, remove lines 1 through 31

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 8

Page 50, line 30, after the second "a" insert "basic"

Page 118, line 21, remove "15-38.1,"

Renumber accordingly

2001 HOUSE EDUCATION

CONFERENCE COMMITTEE

HB 1045

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-conference

House Education Committee

☐ Conference Committee

Hearing Date 04-16-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 3321
Committee Clerk Signature	Joan Davis		

Minutes: Chairman Hawken, Rep J Nelson, Rep Hunskor, Sen Wanzek, Sen Cook, Sen O'Connell.

Chairman Hawken called the conference committee to order on HB 1045, the clerk will call the roll. For the record all members present. Would some Senator like to explain what your committee did and why.

Senator Wanzek: The first part of the amendments were the non renewal or dismissal hearing, the current language states there is no slander or libel suits can be brought any of the participants. We added the words, as long as there is not malice intent there can be no civil or libel suit brought. It seems kind of open ended we thought, then there is also the section, there is much disagreement in the house over the one part of the teacher negotiation laws with the words exclusive. There is confusion as to whether there are independent negotiation rights or not. We felt that it would be best to leave that whole section out and address that in a separate bill. This bill was meant to be the rewrite bill. Adding the word "basic" for home school is a reference to

basic standardized tests was consistent with the other types of tests. That is the extent of our amendments.

Senator Cook: I think he covered it.

Chairman Hawken: The question that I have is the language that was replaced. What would happen to the Executive session. Does this language cause additional law suits.

Senator Wanzek: It seemed to make sense at the time, as far as thinking about since it has passed. I am troubled because we are making it somewhat subjective as to the content of malice. I don't know if we want to do that or not.

Chairman Hawken: So that would be one area we would want to talk about. If we just want to go back to the original language of the rewrite.

Senator Wanzek: I understand, it is my concern that we don't want to get mean spirited, but by adding the word malice we are making this a lawyer bill.

Senator Cook: Malice means that you intentionally lie for gain, that you knowingly and intentionally lie for gain. Why would we want to allow a situation where someone would intentionally and willingly lie for gain. That is why we put the amendments in. We can understand anything you say, you could possibly be threatened by a law suit. I can see the pro's and con's of the situation. I don't know if I am that close to those amendments.

Chairman Hawken: The original language on the first part where the new language says no cause or actin for libel or slander may be brought. It still is the only change is adding malice.

Comments from House members.

Rep Nelson: My understanding is that I had language similar to House in the past.I realize it is an area of tricky water. From the board's perspective there is a safe guard. Maybe we are getting to specific.

Chairman Hawken:Executive sessions are not frequent. Anything said can be considered mean. Do we need to go back to the original language or do we go forward. Do you want to think about it.

Senator Cook: I am not going to speak for the entire Senate conferees, but I am open to going back to the original language.

Chairman Hawken: Do we want address the other issues, or see if we want to do this all together or one at a time. Then we will go to page 34. You deleted most of that.

Senator O'Connell: we removed it all.

Chairman Hawken: So this would go back to the original, what the current law is.

Senator Cook: It would go back to the identical language of the teacher negotiation ace of 1969. It would be the only chapter left in chapter fifteen.It would not be in 15.1, take it out of this rewrite, which takes it out of 15.1 and it would be the only section left in chapter 15. I would fully expect in the next session, that legislation would be introduced in a separate bill. The way that the amendments take it out, there would still be the opportunity to put it into chapter 15.1 in a separate bill. It was our intention to leave it there and to be addressed on its own.

Chairman Hawken: Other comments on that. The way it is in the rewrite, it would just be eliminated.

Senator Cook: That section four, that has the teacher negation act starting with 15.1-16-01 , you would take everything out up until page 39 to 15.1-16-19 and 15.1-16-20. Those are the only two sub sections that are not a part of the rewrite.

Chairman Hawken: How would they renumber that.

Senator Cook: I am not too sure how that would be renumbered. If a bill was introduced to change teacher negotiation in the next session, it would go into this section and then they would become 19 and 20.

Chairman Hawken: Thoughts on that suggestion. One other thing that I have here from Legislative Council is under 15.1-16-08 which is at the bottom of the engrossed bill on page 34. It would remove the exclusive and at the top insert , it would delete "but may not" and insert an individual employed as a teacher or administrator may enter into independent negotiations with the board provided the board agrees to participate. On lines 2 and 3, I don't know if we want to go down that road or have it looked at in the next session.

Senator Cook: That is very close to the amendments that we put on. That mirrors exactly what I believe that the teacher negotiation acts says now. That is exactly what the Attorney General's opinion says. That the board has the right not to do that. That is the practice that is generally followed.

Chairman Hawken: That is the current law.

Senator Cook: That is the current law, but there will probably be an argument what the current law says. I have an Attorney General's opinion that is dated in 1970, there has not been one since. That is the argument we had in the Senate Education Committee, what does current law say today. We have court cases pending, there are none that have gone to court and been

tried.There are some other changes in the definition of teacher and administrator that come in to this rewrite that have not been addressed. If you go back in the minutes of the Interim Committee you will find testimony that both of these issues, the definition changes and the changes of the section that you just referenced, there was testimony given that they should be in a separate bill.

Chairman Hawken: Are there thoughts or comments on this.

Senator O'Connell: what is the suggested language on page 35.

Chairman Hawken: Gives out to the committee 10184.0323. These do not address your issues.

Senator Cook: I agree with these amendments, but I do believe that if you are going to pass those amendments what really has to be done, then we have more work that we must do. That is the work if we are going to do it and make any changes in the teacher negotiation act it should be done in the open standing by itself in a separate bill. We were comfortable with leaving this teacher negotiation act as sacred as it was when it was passed in 1969.

Senator Wanzek: It did become quite contentious, he feels that they have this right and there are others that feel from the other position. It was decided by our committee that it should be dealt with separately. If we adopt your amendments, we would be putting them back in.

Chairman Hawken: Right they came from Legislative Council.I asked for these changes and this is what I got back. Other thoughts on this section. Our thoughts on this is to go back to current law and look at putting in a new bill next session.

Senator Wanzek: That does not mean that the part of the old law, there might not be a bill in that. I am not sure that we should change the old law. Then at the end of this session it would go back to current law and for the next two years it would be the same law.

Chairman Hawken: Isn't there any way to put the old section into this.

O'Connell: You mean to go back to original law.

Chairman Hawken: To put the language of the old law into this. In the same section.

Senator Wanzek:By removing the rewrite and then we went into the last section and took the repeal out of it, the old law is going to still be there as it is now.

Chairman Hawken: I am just trying to be concise and get everything in the same place.

Senator O'Connell: Just accede from the amendment.

Senator Cook: I don't see why it would, you are still going to have a century code book and it will still be there. Goes on to give some examples.

Rep Hunskor: As I read through all the Senate amendments , if I understand with what you are saying here, all of this will be pulled out and rewritten.

Senator Wanzek: What you are reading was the proposed amendments and the final amendments from the Senate did not include that.

Rep Hunskor: That is out then.

Senator Wanzek: Right.

Chairman Hawken: That whole section is gone. Are there other comments, we will move on to the last section and the word basic.

Senator Wanzek:On page 10, on the Senate standing committee minutes, you will see the actin of removing the section you had questions about.

Chairman Hawken: Do anyone have problems with inserting the word basic for home school. What I think that I am hearing is that we would return to the original language of the rewrite in dealing with the verbiage malice (found on several pages) and those would be returned to the

original language of the rewrite. Then on pay 33 of section four, remove down to line 27 of page 39 and renumber accordingly. Then on page 50 on line 30 insert the word basic. Is that correct.

Senator Wanzek: If that is conscience of the committee, I think the proper motion would be to have the Senate recede from the Senate amendments and further amend.

Rep Nelson: Would it be worth our time to look at the removed section and keep it in, we have the time.

Senator Cook: I would have one question, when you say getting it in there, do you mean in the identical language that it is in today.

Rep Nelson: I would think that it would be as close to that as possible.

Chairman Hawken: That is what I was saying.

Senator Wanzek: As far as that one part, leave it as is today, not make any subsitive changes.

Chairman Hawken: Do you have a copy of current law.

Senator Cook: Yes, I do.

Rep Nelson: When the bill was brought to us, we were lead down the path that there was no subsitive changes. We could look at possibly trying to clarify this whole section.

DISCUSSION

Chairman Hawken: This is the century code today. What we have been talking about is putting this into chapter 15.1-16.

Senator Cook: The answer to your question is in the definition of possibly.

Chairman Hawken: Do you all want a copy of this to look at, we also have a copy of Anita's testimony that you all have.

Senator Wanzek: I think that you would want the actual rewrite language. As long as it doesn't make a change.

DISCUSSION

Chairman Hawken: Is there anything else, I will check on this and reschedule for another meeting.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB-1045-conference-b

House Education Committee

❑ Conference Committee

Hearing Date 04-17-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 484
Committee Clerk Signature	Joan Diers		

Minutes:Chairman Hawken, Rep j. Nelson, Rep Hunskor, Senator Wanzek, Senator Cook, Senator O'Connell.

Chairman Hawken called the conference committee on HB 1045 to order. The clerk will call the roll. Note that all members are present. I visited with Anita Thomas from Legislative Council about if we could put the section on current law into section four and the answer is no.An it has to do with the fact that it is current law. What they will do is save those numbers for a rewrite in an Interim for us look at and approve next session. I have amendments (10184.0324) that change the language back to the original rewrite on the malice wording and it would insert basic in the home school testing. Would you like to check the copy on those.

Senator Cook: I would move that the Senate recede from its amendments and further amend.

Senator Wanzek: Second.

DISCUSSION

Senator Cook: Doing this, does it require the Interim committee to try and do a rewrite or can they say that their work is done, can it be done in a bill that any one can introduce.

Chairman Hawken: It is my understanding that we did pass the language in HB 1046, so they could go back and look at those sort of things in the Interim.

Senator Cook: I was wondering if we have to have something to reference the 1997 rewrite.

Chairman Hawken: That was my understanding, it would be taken care of. I asked if we had to do anything further and she said no. Any other comments. We will take a voice vote on the amendments, the motion carries. The clerk will call the roll on the motion that the Senate recede from its amendments and further amend. The motion passes with a vote of 6 YES, 0 NO and 0 Absent. This conference committee is dissolved.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1045-conference (c)

House Education Committee

☐ Conference Committee

Hearing Date 04-23-01

Tape Number	Side A	Side B	Meter #
TAPE i	x		01 to 418
Committee Clerk Signature	Joan Diers		

Minutes: Chairman Hawken, Rep J Nelson, rep Hunskor, Senator Wanzek, Senator Cook, Senator O'Connell.

Chairman Hawken called the conference committee to order on HB 1045. The clerk will call the roll. All members present. The reason for looking at this bill one more time is that four yers went into the rewrite and we wanted to include all of the rewrite. We need a motion to reconsider our actions.

Senator O'Connell: I move that we reconsider our actions.

Rep Nelson: Second.

Chairman Hawken: We will have a recorded vote.

DISCUSSION

Chairman Hawken: The clerk will call the roll on the motion to reconsider our actions. The motion fails with a vote of 4 YES and 2 NO. The meeting is adjourned.

15.1-36 SCHOOL CONSTRUCTION TESTIMONY

This chapter received time and attention in the last couple of sessions as well as in the 1997-98 interim so the committee again limited itself to minor organizational changes.

NOW 15.1-13

EDUCATION STANDARDS AND PRACTICES BOARD
AND
ADMINISTRATOR'S PROFESSIONAL PRACTICES BOARD
(Present Law)

15.1-13

15-36-01. Teachers' licenses - Criteria to be established. The education standards and practices board shall determine the criteria for teacher licensure for school terms beginning on or after July 1, 1995. The criteria shall be based upon standards which include considerations of character, adequate educational preparation, and general fitness to teach in the public schools of this state. After holding a public hearing, the board shall adopt rules concerning the issuance of professional teaching licenses, and licenses must be issued by the board's office in accordance with the rules. However, any teacher who has graduated from college in an accredited teacher education program on or before September 1, 1980, may not be required to earn any college credits in native American or other multicultural courses in order to be licensed or relicensed. Nothing in this section may be interpreted to affect the validity of certificates in existence on July 1, 1999, nor does this section affect vocational education certificate qualifications as provided in chapter 15-20.1. Certificates in effect remain in effect until their expiration date. Subsequent renewals must be issued as licenses.

15-36-01.1. Professional teaching licenses - Student transcript. A student who has met all the criteria necessary to receive a professional teaching license, but who has not graduated from a college or university, may request a copy of the student's completed transcript from the college or university the student attended. Within ten days of the request by the student, the college or university shall mail a copy of the transcript to the education standards and practices board showing that the student has met all the criteria necessary to receive a professional teaching license except graduation. The transcript must indicate areas in which the student has a major or minor.

15-36-08. Fees for licenses. The education standards and practices board must determine a fee for each professional teaching license issued by this state. Except for provisional teaching certificates which are valid for forty days and issued pursuant to rules adopted by the board, a certificate may not be issued for a period of less than one school year. The fees must be deposited and disbursed in accordance with section 54-44-12.

15-36-11. License required. Except as provided by section 15-36-11.1, an individual must hold a valid North Dakota professional teaching license in order to be permitted or employed to teach in any public school in this state.

15-36-11.1. Exception to certificate requirement. An individual without a valid certificate who is teaching under contract with a school may teach and be employed t teach if approved by the education standards and practices board. The education standards and practices board shall establish by rule the terms and conditions of approval. The terms and conditions may include payment of fines to the board, enrollment in and completion of continuing education courses, and a deadline for filing a completed application. Approval to teach and be employed to teach without a valid North Dakota certificate may only be granted if the individual has previously held a valid North Dakota certificate, currently holds a valid teaching certificate or license in another jurisdiction, or has filed a completed application with the board.

15-36-11.2. Interim reciprocal teaching certificate - Period of validity.

1. The education standards and practices board shall grant an interim reciprocal teaching certificate in accordance with sections 15-47-46 and 15-41-25 to an individual who holds a valid regular teaching license or certificate from another state, provided:
   a. The certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in elementary education, middle-level education, or a content area taught in public high school;
   b. The certification requires the completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
   c. The individual submits to a background check as required of initial applicants in section 15-38-18.2;
   d. The background check reveals nothing for which a North Dakota applicant would be denied initial certification; and
   e. The individual submits a plan for meeting all requirements necessary to become a certificated teacher in this state.
2. An interim reciprocal certificate granted under this section is valid for two years. The individual shall submit evidence of progress on the individual's educational plan to the education standards and practices board at the end of the two-year period. The interim reciprocal certificate may be renewed for one additional two-year period if satisfactory progress is demonstrated.
3. Notwithstanding any other law, an interim reciprocal certificate granted under this section is the equivalent of a teaching certificate granted under chapter 15-36.

15-36-11.3. Reciprocal acceptance of teaching certificates - Report. On or before July 1, 2001, the education standards and practices board shall pursue the reciprocal acceptance of

teaching certificates issued by other states. The education standards and practices board shall present a progress report regarding implementation of the program to the legislative council or to a committee designated by the council before October 1, 2000.

15-36-12. Professional teaching license must be exhibited to business manager of the school district - Completion of term after expiration of license. No teacher is entitled to receive any compensation for the time the teacher teaches in a public school without a professional teaching license. Prior to receiving a salary for the first month taught in a school district, a teacher must exhibit a professional teaching license to the business manager of the school district. If a professional teaching license expires by its own limitations within six weeks of the close of the term, the teacher may finish the term without reexamination or renewal thereof. This section does not apply to any person providing teaching services in accordance with subsection 21 of section 15.1-09-33.

15-36-14.1. State's attorney - Duty to notify the education standards and practices board and the administrator's professional practices board. The state's attorney shall notify the education standards and practices board or the administrator's professional practices board in the case of a school administrator, in writing, whenever a licensed teacher or administrator is convicted of a felony or a class A misdemeanor.

15-36-15. Revocation of professional teaching license - Grounds - Effect. The education standards and practices board or the administrator's professional practices board in the case of a school administrator may suspend for a period of time, or revoke and annul any professional teaching license granted in this state upon any or all of the following grounds:

1. For any cause which would have authorized or required the education standards and practices board to refuse to grant the license if the facts were known at the time when the license was granted.
2. For incompetency, immorality, intemperance, or cruelty of the licensee.
3. The licensee has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or before any federal court, of an offense determined by the education standards and practices board or the administrator's professional practices board in the case of a school administrator to have a direct bearing upon a person's ability to serve the public as a teacher or administrator, or the education standards and practices board or the administrator's professional practices board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. For the refusal by the licensee to perform the duties of a teacher or the general neglect of the work of the school.
5. For the breach, by the licensee, of a contract with any school district.

6. Serious violation or a series of violations of the professional codes and standards promulgated in accordance with law.

The revocation of a license shall terminate the employment of the licensee by the school in which the holder is employed when the license is revoked, but the licensee must be paid to the time the notice of revocation is received. Appeals from any order of revocation may be taken to the district court of Burleigh County as provided by chapter 28-32.

15-36-15.1. Crimes against a child and sexual offenses - Denial of or immediate revocation of teaching certificate.

1. Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching certificate and shall revoke immediately the teaching certificate of an individual, other than an administrator, who has been found guilty of a crime against a child or a sexual offense. Notwithstanding any other law, the administrator's professional practices board shall revoke immediately the teaching certificate of an administrator who has been found guilty of a crime against a child or a sexual offense.

2. An individual, other than an administrator, who is denied a teaching certificate or who has had a teaching certificate revoked under subsection 1 may file a request with the education standards and practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. An administrator who has had a teaching certificate revoked under subsection 1 may file a request with the administrator's professional practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. The scope of the hearing is limited to determining whether the individual was convicted of a crime against a child or a sexual offense and whether the conviction has been overturned on appeal.

3. A final decision denying a teaching certificate or revoking a teaching certificate under this section is appealable pursuant to chapter 28-32. A court may not stay the decision pending an appeal. A court shall affirm the decision denying a teaching certificate or revoking a teaching certificate unless the court finds that the individual was not convicted of a crime against a child or a sexual offense or that the conviction was overturned on appeal.

4. The education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, may impose a fee against a certificate holder to reimburse the education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, for all or part of the costs of administrative actions that result in disciplinary action against the certificate holder under this section.

5. As used in this section:

a. "Conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred

imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt overturned on appeal.
b. "Crime against a child" means violation of sections 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-16-04, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-17-07.1, 12.1-17-10, 12.1-18-01, 12.1-18-02, 12.1-18-03, 12.1-29-01, 12.1-29-02, or 12.1-29-03, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-22-03.1, or chapter 12.1-27.2, or an equivalent ordinance.

15-36-16. Proceedings to suspend, revoke, or annul license. The education standards and practices board or the administrator's professional practices board in the case of a school administrator, upon the receipt of a complaint alleging grounds to suspend for a period of time, revoke, or annul any professional teaching license as set forth in section 15-36-15, and upon the determination that sufficient evidence exists to sustain the charges in the complaint, shall conduct proceedings in accordance with chapter 28-32. Upon completion of the proceedings, if the education standards and practices board or the administrator's professional practices board finds that grounds to annul, revoke, or suspend for a period of time do exist, the appropriate board shall issue an order in the manner provided in chapter 28-32 to annul, revoke, or suspend for a period of time the professional teaching license of such person as provided in section 15-36-15.

15-36-17. Notice to be given when professional teaching license is revoked. When a professional teaching license is revoked, the education standards and practices board or the administrator's professional practices board shall notify the business manager of the school district or the secretary of the board of education, as the case may be, of the district wherein the teacher is employed, and shall notify the teacher of the revocation through the business manager of the school district. The appropriate board also shall notify each county superintendent of schools in the state and shall enter an action in the case upon the records of the superintendent's office. Upon being notified that the individual's professional teaching license has been revoked, the teacher or administrator shall return the license to the appropriate board, and if the teacher or administrator neglects so to do, that board may issue notice of the revocation by publication in the official newspaper of the county in which the teacher or administrator last was employed.

15-36-18. School guidance and counseling services - Providers. Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school

counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a valid North Dakota professional teaching license or will obtain one within seven years from the date of first employment under the provisions of this section. The education standards and practices board shall adopt rules relating to the background check of a person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The education standards and practices board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a professional teaching license as determined on the date of first employment under this section.

15-38-16. Responsibilities of the teaching profession. The legislative assembly hereby declares the profession of teaching in the public schools of this state to be a profession affected by high public interest, and that it is in the best interest of the state that such profession be recognized and that it accept its professional responsibilities in the development and promotion of high standards of ethics, conduct, and professional performance and practices. For the purposes of sections 15-38-16 through 15-38-19, the "profession of teaching" or "teaching profession" means persons engaged in teaching in the public schools and persons providing related administrative, supervisory, or other services in the public schools requiring licensure from the education standards and practices board.

15-38-17. Education standards and practices board and administrator's professional practices board. The education standards and practices board consists of nine members. The governor shall appoint four classroom teachers from public schools, one classroom teacher from a private school, one school board member, two school administrators, and one dean of a college of education. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member. The administrator's professional practices board consists of five members from the education standards and practices board. The administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the one school board member who is a member of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board. The term of office of members of the education standards and practices board and the administrator's professional practices board shall be three years commencing on July first of the year of the appointment. Vacancies must be filled for an unexpired term in the same manner as original appointments. A person may not serve for more than two consecutive terms as a member of either board. Members of the current teachers' professional practices commission may serve out their remaining terms.

The education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice chairman, and the executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of either board. A majority constitutes a

quorum and a majority of the quorum has authority to act upon any matter properly before either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of each board are entitled to receive twenty-five dollars for each day actually engaged in the service of the appropriate board and must be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. A member of either board may not lose the member's regular salary or the above compensation while serving on official business of the appropriate board.

15-38-18. Duties of the education standards and practices board. It is the duty of the board to supervise the licensure of teachers; to set standards for and approve teacher preparation programs; to issue minor equivalency endorsements; to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices; and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools. In the development of professional codes and standards, the board shall solicit the assistance of members of the teaching profession and representatives of school administrators, school board members, teacher education professors, and other interested citizens. The board shall adopt approved or revised codes and standards as rules in accordance with chapter 28-32. The board may enter into agreements with other states to acquire reciprocal approval of teacher preparation programs, apply for and receive federal or other funds on behalf of the state for purposes related to its duties, and to perform any other duty that relates to the improvement of instruction through teacher education, professional development, and continuing education programs. The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as the board. The venue of all actions in which the board is a party must be Burleigh County, North Dakota. The board shall appoint an executive director to serve at its discretion. The executive director shall perform the duties assigned by the board. The board shall authorize the employment of staff necessary for the sound and economic administration of its duties, responsibilities, and functions. The executive director shall hire the staff, subject to the approval of the board.

15-38-18.1. Education standards and practices board - Certification of North Dakota American Indian language instructors. The education standards and practices board may certify an individual as an instructor of North Dakota American Indian languages and culture if the individual is recommended for certification to teach North Dakota native languages by the indigenous language boards created by the four North Dakota tribal governments of this state's reservations and if the individual:

1. Displays competence in North Dakota American Indian languages and culture and has successfully completed a three-semester-hour course in classroom instruction at a tribal college or other institution of higher education; or

2. Holds a baccalaureate degree and has knowledge of and experience in North Dakota American Indian languages and culture.

15-38-18.2. Education standards and practices board - Initial licensure of teachers - Application fee - Background - Provisional teaching certificates. The education standards and practices board may charge an application fee established by the board by rule. The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial licensure as a teacher. The board shall require each applicant for licensure to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. The board may adopt by rule, procedures for issuing forty-day provisional teaching certificates to applicants for initial licensure pending completion of the background check. A provisional teaching certificate may be renewed upon approval of the board. An applicant for a provisional teaching certificate may be charged a fee established by the board by rule, but no fee may be imposed for the renewal of a provisional teaching certificate.

15-38-19. Complaints against teachers and school administrators. The education standards and practices board or the administrator's professional practices board shall accept complaints against any member of the teaching profession engaged in teaching or administration alleging a violation of rules adopted in accordance with section 15-38-18 or alleging grounds as set forth in section 15-36-15. The complainant shall prepare and file a clear and concise complaint with the appropriate board. The complaint must contain a concise statement of the claims or charges upon which the complainant relies. The complaint must be signed and may include supporting documentation. Upon the filing of the complaint with the appropriate board, that board shall serve a copy of the complaint and any supporting documentation upon the teacher or administrator personally or by certified mail. Within twenty days of the receipt of the complaint by the teacher or administrator, the teacher or administrator may file with the appropriate board a clear and concise answer to the complaint. The answer may include supporting documentation. If the teacher or administrator fails to file an answer with the appropriate board, the allegations in the complaint will be deemed admitted and the appropriate board shall proceed to hold a hearing pursuant to section 15-36-16. If an answer is submitted by the teacher or administrator, the appropriate board shall hold a meeting for the purpose of reviewing and discussing the documentation submitted by the respective parties. No testimony by any witnesses may be permitted at this meeting. Following the meeting, the board may dismiss a complaint as

unfounded, issue a written warning and reprimand, or, upon the determination that sufficient evidence exists to sustain the charges, order a hearing pursuant to section 15-36-16.

Education Standards and Practices Board
600 E. Boulevard Ave., Dept. 202
Bismarck, ND 58505-0080
(701) 328-2264 Fax (701) 328-2815
www.state.nd.us/espb

Janet
10-14

LICENSURE FEES
1999-PRESENT

$25.00	Application fee covering printing, processing, mailing.
$60.00	Initial 2-yr license for first time educators in ND meeting all ND standards.
$60.00	Interim Reciprocal License with four-year plan after out-of-state transcript review for those not meeting ND standards
$175.00	Out Of State Transcript Review includes a 4-Year Re-Education plan to meet ND Standards. The out-of-state review fee is waived as per the school's request when there is a documented shortage of substitute teachers.
$60.00	Re-entry 2-year license after being out of educational field for more than five years.
$100.00	Five-year license ($20.00 per year).
$40.00	Two-year license for those educators without 18 months of contracted teaching time.
$40.00	Degree added, two years added to the expiration date of license
$100.00	Degree added, five years added to the expiration date of license.
$20.00	Duplicate license
$50.00	Endorsement added to license.
$100.00	Interim/Emergency License 1 year
$30.00	Interim/Substitute License 1 year
$40.00	Probationary License 2 year provided to those educators who have not completed their re-education requirement within the last license period.
$50.00	Fine per day up to$1,000 maximum for those teachers without a valid educator's license to fulfill regulations in 15-36-11. Since 1911, a teacher must have a valid license to teach in ND schools. Prior to 1999, the discipline for an educator in the classroom without a valid license, as per the Attorney General's recommendation, was to not issue a license for the same number of days that the teacher has been in the classroom without a license. This meant the teacher could not be paid for the total number of days without the license, students had interrupted education as substitutes had to be hired, and schools had to pay additionally for substitute teachers at more than $60.00 per day. With the implementation of the fine, the 1999 Legislature saw an

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	opportunity to provide a continuous quality education to the students, continue to regulate the education profession and not provide an extra burden to school districts.
$42.00	Finger printing/back ground check fee. $20.00 is paid to BCI and $22.00 is paid to the FBI.

L. Anita Thomas
03/27/01 04:37 PM

To: sedu@state.nd.us
cc:
Subject: 1046

15.1-14

Lisa -- Hope this helps.
Anita

15.1-14 SUPERINTENDENT AND DIRECTOR DISMISSAL.

TESTIMONY

Chapter 15.1-14 of the Title rewrite consists of 32 sections. Today, we are going to review the first twelve. The last twenty chapters are virtual repetitions of the first chapters. Let me show you what I mean.

If you would please, turn to the copy of the present law -- the handout entitled " Superintendent Dismissal Present Law.

About half way down the first page, you'll see a number 1 and the following words:

"The term superintendent" as used in this section includes district superintendent of schools and chief administrators of multidistrict special education units and multidistrict vocational education centers. If you keep turning the page, you'll see that the whole concept of superintendent dismissal and chief administrator dismissal was embodied in literally one section and that the definition of a superintendent applied to the whole thing.

Let me show you where this started to became problematic.

In subsection 2, present law states:

At least once before December fifteenth, the school board of each school district shall conduct a formative evaluation of the performance of the superintendent of the district. The board shall also conduct a formal and written evaluation. Paraphrasing now, the board must provide details regarding an assessment of unsatisfactory performance. The board must meet with the superintendent to discuss the evaluation. The duties of the board go on and on throughout the multipage section.

Here's the problem. Current law in essence says this is how we dismiss a superintendent.

To save time and space, if you want to dismiss the head of your multidistrict

special education unit or the head of your area vocational and technology center, mentally substitute the titles and follow basically the same procedure. Again, we all know what we mean -- We all know how this should operate.

Well, if you need to dismiss the director of your multidistrict special education unit, it's not the school board that is to conduct the evaluations and hearings. It is the board of the multidistrict special education unit. The same thing happens with the director of your area vocational and technology center. The steps that must occur are not performed by a school board but rather by the board of the area vocational and technology center. But this was never clarified in the present law.

The interim committee determined that any time we have a process that seriously affects a person's livelihood, we better be quite certain that there is no confusion about who has to do what. The committee further determined that the cleanest and easiest approach was to segregate the three concepts.

1

So, the first third of the chapter deals with the dismissal of a superintendent and the role of the school board in that process. The second part of the chapter deals with the dismissal of a multidistrict special education unit director and the role of the unit board in that process.

Finally, the last part of the chapter deals with the dismissal of an area vocational and technology center director, and the role of the center board in that process.

The three processes are identical, except with respect to the appropriate titles and board references. Unless someone really wants a very repetitive presentation, we'll focus only on the first part of the chapter -- the dismissal of a school district superintendent.

-240To begin this chapter of the rewrite, we went into present section 15-38-01.

That section is entitled Superintendent of schools -- Powers and duties. If you

read through the section, you'll see that duties are listed not powers. In the

rewrite, the committee reviewed the duties, modernized the language and

proceeded to list the duties.

Present law provides that the superintendent shall supervise the administration of the courses of study, visit schools, examine classes, and have general supervision of the professional work of the schools, including the holding of teachers' meetings and the classification of teachers, all of which are subject to the final authority of the board. The superintendent is also directed to make recommendations to the board regarding the employment of teachers and janitors, the adoption of textbooks, changes in the courses of study, the enforcement of discipline and school matters in general. Finally, he is directed to make such reports and perform such duties as the board may delegate.

In the rewrite, the committee tried to be a little less specific. Consequently, the superintendent is directed to:

1. Supervise the general operation of the district.
2. Supervise the provision of education to students.
3. Visit the schools of the district.
4. Supervise school personnel.
5. Prepare and deliver reports requested by the board
6. Perform any other duties requested by the board.

Again, these changes were not considered to be substantive, but the section is a little different than in current law.

The second part of present section 15-38-01 requires that the superintendent furnish a bond conditioned that he will honestly and faithfully discharge the duties of his office and that he will safely keep and render a true account of all funds and property that come into his hands. Present law goes on to provide that the bond must be in amount that is at least equal to the maximum amount of money that shall be subject to the superintendent's control at one time. The section was enacted in 1911 and has not been amended since 1961. It is directed at a time that was a little more cash intensive than most modern operations. Nevertheless, the interim committee stayed quite close to the original language. Again, the superintendent is to furnish a bond in the amount fixed by the board and equal at least to the amount of money in the superintendent's control at any one time. It is conditioned for the faithful discharge of duties, including the maintenance of accurate financial records and the safekeeping and deliverance of all school property and funds.

With that, we can now look at the provisions for superintendent dismissal.

The first section 15.1-14-03 sets out the evaluation process. The committee didn't make any substantive changes in this area.

Ÿ Before December 15 of each year, the board is to conduct a formative evaluation.

Ÿ Before March 15, the board is to conduct a formal evaluation of the superintendent's performance.

Ÿ The superintendent is given a copy of this evaluation and another copy goes into the superintendent's file.

Ÿ The board finds anything to be unsatisfactory, the board is to detail its findings and make recommendations.

Ÿ The superintendent can provide a written response to the findings. This response is also placed in the superintendent's personnel file.

The next section of the rewrite -- 15.1-14-04 -- is not new in concept. Present law provides that a superintendent is subject to discharge for good and just causes as described in subsection 3 of section 15-47-48 . Well, that section addresses the reasons for which a teacher can be dismissed. It includes:

a. Immoral conduct, insubordination, or conviction of a felony.

b. Conduct unbecoming a teacher which requires the immediate removal of a teacher from the teacher's classroom duties.

c. Failure without justifiable cause to perform contracted duties.

d. Gross inefficiency which the teacher has failed to correct after reasonable written notice.

e. Continuing physical or mental disability which renders the teacher unfit or unable to perform the teacher's duties as a teacher.In bill drafting, one thing that should be avoided as much as possible is the use of cross references. Over time, one section can get amended and no one might think to check whether the amendment is applicable to cross referenced sections. It gets messy. Look at verbiage such as that just cited -- Conduct unbecoming a teacher which requires the immediate removal of the teacher from the teacher's classroom duties. How applicable is that to a superintendent?

Rather than continue the cross reference, the committee decided that superintendents should have their own list of reasons for dismissal. That way, if there was ever a need to go in and add to or subtract from the list of reasons, it could be easily done, without worrying about any extraneous impacts.

Consequently, the rewrite provides that a school district superintendent may be dismissed for any of the following causes:

1. Immoral conduct.

2. Insubordination.

3. Conviction of a felony.

4 . Conduct unbecoming the position of superintendent.

5. Failure to perform contracted duties without justification.

6. Gross inefficiency that the superintendent has failed to correct after written notice.

7. Continuing physical or mental disability that renders the superintendent unfit or unable to perform the superintendent's duties.

15.1-14-05. This section begins the description of the process by which a superintendent is dismissed for cause. Like present law, it requires the board to:

: Provide the superintendent with a written description of the reasons for the discharge; and to

: Provide the superintendent with written notice specifying the date and time at which the board will conduct a hearing regarding the discharge.

If the superintendent chooses to be accompanied by an attorney, the associated costs are the responsibility of the superintendent.

15.1-14-06. This section sets forth the parameters of the hearing. Like present law, it provides that at the hearing, the superintendent may produce evidence and witnesses to rebut any reasons given by the board for its discharge of the superintendent.

The hearing must be conducted in accordance with chapter 28-32, which is our administrative procedures Act.

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All witnesses are subject to cross-examination.

Unless otherwise agreed to by the board and the superintendent, the hearing must be conducted as an executive session of the board. However, the superintendent may invite to the hearing any two representatives to speak on

behalf of the superintendent and may invite the superintendent's spouse or one other family member.

The board may invite to the hearing any two representatives to speak on behalf of the board and may invite the school district business manager.

If a continuance is requested by the superintendent, the board must grant a continuance for a period not in excess of seven days. The board may grant a continuance in excess of seven days upon a showing of good cause.

Finally, it provides that no cause of action for libel or slander may be brought regarding any communication made at an executive session held by the board for the purposes provided in this section.

15.1-14-07 This section provides that if a board discharges a superintendent for cause, the board must report that discharge to the Education Standards and Practices Board. Current law still references a report to the Administrators' Professional Practices Board. If you'll remember, when the committee rewrote the chapter on the Education Standards and Practices Board, it did away with the Administrators' Professional Practices Board as an independent board. The duties became those of the ESPB, with the exception that a subcommittee of the ESPB dealt with administrator issues.

15.1-14-08. Like present law, this section provides that a school board may suspend a superintendent by unanimous vote, if the board determines that such action is appropriate while the discharge for cause proceeding is going forward. If the superintendent is ultimately discharged, the board can determine the amount of compensation, if any, that is due the superintendent during the period of suspension. The committee wanted to make clear that compensation during the period of suspension is not mandatory. It is up to the discretion of the board.

15.1-14-09. The previous sections have dealt with discharging a superintendent for cause. If the superintendent holds up a bank and is convicted of a felony, the school board can dismiss the superintendent for cause. In the next several sections, we are dealing with a contract nonrenewal. The superintendent is nearing the completion of his contract and the school board is not as enamored with him as they thought they would be and elect not to renew the contract.

Like present law, these provisions apply to a superintendent who been employed by the board in that position for at least two consecutive years.

In these circumstances, before April fifteenth is the important date.

By that date, the school board must:

a. Provide the superintendent with written notification of the contemplated nonrenewal.

b. Schedule a hearing to be held on or before April twenty-first.

c. Notify the superintendent in writing of the date, time, and place for the hearing.

d. Give the superintendent written notice of the reasons for the contemplated nonrenewal.

The reasons for the contemplated nonrenewal of the superintendent's contract must:

(1) Be sufficient to justify the contemplated nonrenewal;

(2) Relate to the ability, competence, or qualifications of the superintendent; and

(3) Originate from specific findings documented in the formal evaluation of the superintendent's performance.

The committee did make one change here. In present law, the reasons for the contemplated nonrenewal must also not be frivolous or arbitrary. That's a legal standard that says you can't elect not to renew the superintendent's contract because he has big feet or red hair.

Standing by itself, that requirement would not have been a problem. However, the section also requires that the reasons for nonrenewal be sufficient to justify the action, that they relate to the ability, competence, or qualifications of the superintendent, and that they originate from findings in the evaluation. The committee thought that adding additional phraseology such as arbitrary and capricious was repetitive. It was akin to overkill.

15.1-14-10. This section deals with what actually happens at the hearing.

We do have one little change that needs to be noted. Present law refers to a "meeting" at which evidence is presented and witnesses are questioned. Colloquially, however, we refer to a nonrenewal hearing, not a nonrenewal

meeting. Even though this procedure does not rise to the level required when a school board wishes to discharge a superintendent for cause, the committee nevertheless opted to refer to it as a nonrenewal hearing as well.

What the committee did in this section was basically to sort out and clarify the steps -- the requirements -- and the options given to the parties under this circumstance.

()
The school board is charged with presenting testimony and evidence to support its reasons for not renewing the superintendent's contract.

The superintendent can likewise call witnesses and present evidence refuting the reasons for nonrenewal.

I need to draw your attention to this next requirement because it left the interested parties divided and the committee ended up settling the matter by taking a vote on the verbiage.

Present law provides that "All witnesses are subject to questioning for purposes of clarification."

When we at the Legislative Council looked at that phrase, we didn't think of it in terms of what implications it might have for the interested parties, we looked at it from a legal perspective and determined that it didn't make any sense. As we said before, even though the nonrenewal hearing doesn't rise to the level of a discharge hearing, it still requires the presentation of testimony and evidence, it allows for legal representation, it allows for the granting of continuances and, subjecting witnesses to questioning for the purposes of clarification seemed like a non sequitur. We also viewed it as a phrase that was fraught with options for gamesmanship.

"Are you cross examining the witnesses?"

"No. I'm merely questioning for purposes of clarification."

We couldn't see what the legal standard was and we found no other occasion in the statutes that provided for "questioning of witnesses for purposes of clarification."

So, in redrafting this section, it was our determination that the concept to be used was the legally understood "cross examination of witnesses."

This selection was viewed with favor by the NDEA and the Council of Educational Leaders and with disfavor by the ND School Boards Association. Testimony was taken by the committee on both sides and the committee ultimately voted to stay with the cross examination verbiage.

As for the rest of the section, like present law, it allows for the superintendent to invite two representatives and a spouse or one other family member and it allows the board to invite two representatives as well as the school district business manager.

A continuance is available if the superintendent requests one as is protection from libel and slander for any communication made at the hearing.

If after hearing all the testimony and evidence, the board still elects not to renew the contract of the superintendent, the board must notify the superintendent of its decision by May first.

15.1-14-11.1. Again, like present law, this section states that the contract of a superintendent is deemed to be renewed for a period of one year from its termination date if:

()The board has not provided written notice of its intent not to renew the contract by April 15 and if the superintendent has not resigned by June 1.
()
15.1-14-12. This section deals with the nonrenewal of a contract if the superintendent has been employed for less than two years. In this situation, the board must provide written notice of the nonrenewal to the superintendent before May first.

If requested by the superintendent, the board must meet with the superintendent tc convey the reasons for the nonrenewal.

That concludes the steps involved in discharging a superintendent for cause as well as the process for nonrenewing a superintendent's contract.

Sections 15.1-14-13 through 15.1-14-22 provide exactly the same thing for directors of multidistrict special education units and sections 15.1-14-23 through 15.1-14-32 provide exactly the same thing for directors of area vocational and technology centers.

SUPERINTENDENT DISMISSAL
PRESENT LAW

15-38-01. Superintendent of schools - Powers and duties. The superintendent of schools, in districts where a superintendent is employed, shall supervise the administration of the courses of study, visit schools, examine classes, and have general supervision of the professional work of the schools, including the holding of teachers' meetings and the classification of teachers, all of which are subject to the final authority of the school board. From time to time, he shall make reports to the board embodying recommendations relative to the employment of teachers and janitors, the adoption of textbooks, changes in the courses of study, enforcement of discipline, and school matters in general. He shall make such other reports and perform such other duties as the board may direct and delegate. The superintendent of schools shall furnish to the school district a bond conditioned that he will honestly and faithfully discharge the duties of his office and that he shall safely keep and render a true account of all funds and property that come into his hands. Such bond must be in an amount set by the school board but may not be less than the maximum amount of money that shall be subject to the superintendent's control at one time. Such bond must be written through the state bonding fund and must be at the expense of the school district.

15-47-38.2. Evaluation, renewal, or discharge of superintendents of school districts.

1. The term "superintendent" as used in this section includes district superintendents of schools and chief administrators of multidistrict special education units and multidistrict vocational education centers.
2. At least once before December fifteenth, the school board of each school district shall conduct a formative evaluation of the performance of the superintendent employed by the district. The board shall also conduct a formal and written evaluation of the performance of the superintendent by March fifteenth and provide a copy to the superintendent. The written evaluation of a superintendent's performance must include recommendations with respect to all subject areas within which the school board considers the performance to be unsatisfactory. The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance.
3. The superintendent, upon receipt of an evaluation, may respond in writing to the substance and content of the evaluation, and the response must become a permanent attachment to the superintendent's personnel file. The school board shall meet with the superintendent to discuss the evaluation.
4. Throughout the term of a contract between a school district and a superintendent, the superintendent is subject to discharge for good and just causes as described in subsection 3 of section 15-47-38. However, the school board may not arbitrarily or capriciously require the superintendent's dismissal.
5. If a school district governing body intends to discharge a superintendent, the superintendent must be served with a detailed and written description of the reasons given

by the school board for the proposed dismissal. Following service of the written description, the superintendent must be granted a hearing before the governing body for which reasonable advance notice is required. If a superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent.

6. The superintendent may produce necessary witnesses to refute charges made by the board against the superintendent or reasons given by the board for its proposal to discharge the superintendent. The witnesses are subject to cross-examination.

7. All procedures relative to evidence, subpoena of witnesses, oaths, records of testimony, decisions, rehearings, appeals, certification of records, scope and procedures for appeals, and appeals to the supreme court must be conducted in accordance with the provisions of chapter 28-32. The meeting must be conducted in an executive session of the board, unless both the school board and the superintendent agree that the meeting be open to the public.

8. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member, may also attend the meeting.

9. In addition to board members and the business manager of the school district, the school board may be represented by two persons chosen by the school board.

10. If the superintendent requests, the superintendent must be granted a continuance by the board not to exceed seven days, unless good cause for a longer continuance is shown.

11. No claim for relief for libel or slander may accrue from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section. 12. A school board dismissing a superintendent for cause shall report the dismissal to the administrator's professional practices board. The school board by unanimous vote may suspend the superintendent from regular duty if such action is deemed desirable during the dismissal process. If the superintendent is dismissed, the board may determine the superintendent's salary or compensation as of the date of suspension. If the final decision is favorable to the superintendent, there may be no abatement of salary or compensation.

13. The school board of a school district contemplating the contract nonrenewal of a superintendent who has been employed in the school district as a superintendent for at least two consecutive years, shall notify the superintendent in writing of the contemplated nonrenewal no later than April fifteenth. The school board shall inform the superintendent in writing of the time, which may not be later than April twenty-first, and the place of a special school board meeting for the purpose of discussing and acting upon the contemplated nonrenewal. The school board shall inform the superintendent in writing of the reasons for nonrenewal. The reasons may not be frivolous or arbitrary, must be related to the ability, competence, or qualifications of the superintendent, must be sufficient to justify the contemplated action of the board, and must be drawn from specific and documented findings arising from the formal and written evaluations of the superintendent's performance as required in subsection 2, except when the nonrenewal results from a necessary reduction in staff. At the board meeting, the superintendent may produce evidence necessary to evaluate the reasons for nonrenewal, and either party may

produce witnesses to confirm or refute the reasons. The school board shall substantiate the reasons or cause the reasons to be substantiated with written or oral evidence presented at the meeting. All witnesses are subject to questioning for purposes of clarification. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member may also attend the meeting. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent. In addition to the board members and the business manager of the school district, the school board may be represented by two persons chosen by the board. If the superintendent requests, the board shall grant the superintendent a continuance not to exceed seven days. No claim for relief for libel or slander accrues from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section. The school board shall give the superintendent final notice of the determination not to renew a contract by May first.

14. If a school district fails to provide notification to a superintendent in writing between March first and April fifteenth of each year that the school board intends to contemplate the nonrenewal of the superintendent's contract, and the superintendent has not resigned in writing before June first, the district and the superintendent are deemed to have renewed the contract for a period of one year extending from the termination date set forth in the existing contract. If a school district provides notification to a superintendent who has not been employed in that school district as a superintendent for at least two years in writing before May first of its intent not to renew the superintendent's contract, the school board shall meet with the superintendent to convey the reason or reasons for the nonrenewal if the superintendent requests such a meeting.

L. Anita Thomas
01/31/01 10:47 AM

To: H Edu NDLA/NDLC/NoDak@NoDak
cc:
Subject: testimony on 1045 -- ch 15.1-15, 16, & 17

15.1-15 TEACHER DISMISSAL

TESTIMONY

In this chapter, we again deal with dismissal, but this time with the dismissal of teachers, principals, and assistant or associate superintendents.

Present law begins with a definition of a "teacher" and references the sections in which that definition is appropriate.

In the rewrite, the committee opted to spell out the positions to which a section applied. Again, it's much clearer. A reader doesn't have to constantly cross reference to determine if the definition is applicable to the particular section being read and we don't need to worry about future amendments inadvertently including or excluding the various positions.

One of our biggest challenges with the area of teacher dismissal again involved organization of the content. If you leaf through the handout of the present law, you'll see some horrendously long sections. As you glance more closely at the present law, you'll see a lack of focus on chronology.

15.1
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15-47-27, which is found on the first page of the present law handout begins with a notice of nonrenewal to a teacher. Buried toward the bottom of the page is what the rewrite

begins with -- the evaluation process. An evaluation of how a teacher is doing should precede any thought about not renewing the teacher's contract.

15.1-15-01. Like present law, this section requires a school district to conduct two annual performance reviews of each individual employed as a teacher, a principal, or as an assistant or an associate principal, during their first three years on the job. Thereafter, only one review is required each year. For the newer teacher, the reports are due on or before December 15th and March 15. For the more experienced teacher -- i.e. For the teacher who has been there at least three years, the report is due March 15th.

Present law, in part by a specific section and in part by cross reference, asks us to distinguish the rights of experienced teachers from those of first year teachers and from those of teachers who have been employed after January first. In the rewrite, the committee chose not to use cross references, but rather to spell out, in separate sections, the rights, duties, and obligations that apply to each.

15.1-15-02 relates to first year teachers. Present law does not define a first year teacher. Again, there was an assumption that everyone knows what that means. Then one asked if an individual teaches for a year in Mandan and then takes a job in Bismarck, is that individual a first year teacher in Bismarck?

In order to avoid any confusion, we now have a definition of a first year teacher -- We mean an individual who is teaching for the first school year since obtaining a license to teach.

If a school board contemplates not renewing the license of such an individual, the board is to review the individual's evaluations and meet with the individual in an executive session to discuss the reasons for the nonrenewal.

Written notice of the nonrenewal must be presented to the individual by the board between April 15th and May 1.

15.1-15-03 sets forth virtually the same protection and requirements for an individual employed after January 1. Once that particular school year is over, the individual has all the rights and protections afforded to teachers under this chapter.

15.1-15-04. This section begins the contract nonrenewal process for individuals who are employed as experienced teachers, principals, or assistant or associated superintendents.

The process begins with written notification of the individual no earlier than March 1 nor later than May 1. If the school board misses these dates, the individual's contract is deemed renewed.

If this notification is an offer to renew the contract, the individual has 30 days to accept or reject the contract. Acceptance or rejection of the contract must be in writing.

If the individual misses the response date, the board has no further obligation to that individual.

If you turn to page 28 of the bill, you will see subsection 4. This is new language but not a new requirement.

In 1979, the ND Supreme Court heard a case and ruled that if negotiations with the board and the teachers are ongoing, the provisions requiring notice to the teacher and the teacher's response within a set number of days are suspended until the completion of negotiations.

This has been court ordered since 1979 and as the committee was told by the interested parties, this is understood to be the case by the parties. The committee therefore directed that it be included in the rewrite and made a part of the legislation.

15.1-15-05 This section provides that if the board of a school district contemplates not renewing the contract of an individual, the board shall provide written notification, schedule a hearing, and provide notice of the reasons for the nonrenewal.

Present law requires that the notification of nonrenewal occur no later than April 15th. The committee was asked by the North Dakota Education Association to insert March 1st as the earliest point by which notice of nonrenewal may be given. The committee was told that this reflects common practice.

The North Dakota School Boards Association had initially not been in favor of insert the March 1 date. In discussions during the summer their position had changed and the

committee was subsequently told that the March 1 date was acceptable to the interested parties.

The reasons for nonrenewal must not be frivolous or arbitrary. The must be sufficient to justify the contemplated nonrenewal and must originate from the individual's performance review and relate to the individual's ability, competence, or qualifications or originate from the district's need to reduce staff.

Monday we had discussed the use of the phrase "frivolous or arbitrary" with respect to superintendent nonrenewals. Here again, the committee had sought to remove the phrase on the grounds that it was duplicative and unnecessary, given the other verbiage in the section.

The NDEA felt strongly that the phrase should be maintained. The committee determined that it may be unnecessary but it wasn't harming anything to leave it in and so they opted to retain it.

15.1-15-06 The interim committee had specific discussions regarding the status of a nonrenewal versus the status of a discharge for cause. Even though we colloquially refer to both as "hearings", it was determined that a nonrenewal is not an adversarial hearing. A discharge for cause is.

Consequently, in the title and in several places in this section, we refer to a meeting of the school board for purposes of considering the nonrenewal -- as opposed to the nonrenewal

hearing.

Much like the superintendents' nonrenewal provisions, the board is given the opportunity to present testimony and evidence regarding the proposed nonrenewal. Witnesses may be called on both sides. Present law provides that the witnesses may be questioned for purposes of clarification. The interim committee, after hearing arguments both for and against, again voted to replace the concept of "questioning for purposes of clarification" with the concept of "cross examination."

The entire proceeding is conducted as an executive session of the board. The individual is able to invite two representatives and the individual's spouse or one other family member, and the board is able to invite two representatives and the school district business manager.

Both present law and the rewrite provide for a continuance. Present law was not clear on who would determine the length of the continuance. The committee therefore worked with the interested parties and the recommended language provides that the teacher may request one continuance. If the teacher so requests, the board shall grant the continuance but the board determines the length of the continuance, which is not to exceed seven days.

If the board ultimately decided not to renew the individual's contract, the board must provide written notice on or before May 1.

15.1-15-07. Like a superintendent, a teacher can also be discharged for cause. In the case of a teacher, the grounds include:

1. Immoral conduct.

2. Insubordination.

3. Conviction of a felony.

4. Conduct unbecoming the position held by the individual.

5. Failure to perform contracted duties without justification.

6. Gross inefficiency that the individual has failed to correct after written notice.

7. Continuing physical or mental disability that renders the individual unfit or unable to perform the individual's duties.

15.1-15-08. As before, if the board intends to discharge a teacher for cause, the board must provide written notice to the individual at least ten days prior to the discharge date.

The notice must state the date and time at which the board will conduct a special hearing and it must state that the individual may demand a list of the charges.

If the individual notifies the board that the individual intends to contest the charges, the board must produce evidence

of the charges at the hearing, together with witnesses who are subject to cross-examination. In this case, even present law references cross examination of witnesses.

The individual is given the opportunity to refute the charges.

This hearing is a full adversarial hearing, conducted in accordance with chapter 28-32, which is

the state's administrative procedures act.

Again, the hearing must be conducted as an executive session of the board, and both parties may invite selected representatives.

As before, the individual subject to the discharge may request one continuance.

15.1-15-09. This section, like current law, provides that if an individual employed as a teacher, a principal, or as an assistant or associate superintendent is the subject of an investigation alleging child abuse or neglect under section 50-25.1-05 and it is determined that no probable cause exists to charge the individual with child abuse or neglect, the board of a school district may neither discharge nor refuse to renew the contract of the individual solely because the individual was the subject of the investigation.

If it is determined that probable cause exists to charge the individual with child abuse or neglect, the board of a school district may neither discharge nor refuse to renew the contract of the individual solely because the individual is charged with child abuse or neglect.

If the individual is the subject of an investigation alleging child abuse or neglect under section 50-25.1-05 and it is determined that probable cause exists to charge the individual with child abuse or neglect, the board of a school district may move to suspend the teacher, pending the outcome of the case.

The department of human services did not participate in the title rewrite. Nevertheless, a few

days ago, I received a call from a Gladys Kirmis ???? Indicating that the terminology should be changed in this section.

She maintains that if there is a report of abuse or neglect, the department initiates an assessment and both the department and an appropriate law enforcement agency then coordinate the planning and execution of the investigation. It was her thought that we ought to remove the reference to section 50-25.1-09 or reference the individual who is the subject of an assessment regarding alleged child abuse or neglect under section 50-25.1-09.

15.1-15-10 Like present law, this section authorizes a board to, by unanimous vote, suspend an individual during the period in which a discharge for cause is pursued.

The board can decide the amount of compensation, <u>if any</u>, that is payable to the individual during the period of suspension. Again, the committee was asked to make clear that the payment of compensation during pursuit of the discharge is not mandatory.

15.1-15-11. As with the discharge of a superintendent, if the school board discharges teacher, a principal, or an assistant or associate superintendent for cause, the school board is directed to report the discharge to the ESPB.

15.1-15-12. In 15-47-26, which is the first section cited in your handout of present law, the definition of a teacher precludes certain individuals.

In the rewrite, we simply said this chapter does not apply to:

1. Any individual who is employed to teach at one of our public institution of higher education;

2. To any individual who is employed to teach at the youth correctional center, the school for the blind, or the school for the deaf; and

3. To any individual who replaces a teacher, a principal, or an assistant or associate superintendent while that teacher, principal, or assistant or associate superintendent is on a leave of absence or a sabbatical.

One of the things that sometimes happens in a rewrite is that certain verbiage does not make it into the new law. Most often, this verbiage falls into the category of legislative intent.

You will occasionally see a legislative intent section in an appropriation bill. CPAs like legislative intent sections and the tradition of using such sections in an appropriations bill has been hard to break.

However, if you brought us a rough draft with a legislative intent section, it won't show up in your final draft.

This is the reason:

Most of you are parents. If you say to your child:

"You shall wear your hat to school" -- That's pretty clear.

If you say, "It is my intent that you wear your hat to school" -- That is less clear. Are you saying that the child shall -- the child should -- the child may -- or that you're hoping the child makes a decision that you believe you can live with. In the latter case, if the child's decision is not all that you had hoped, are there any consequences?

A statement of legislative intent makes good testimony. It makes very bad legislation. If you'll turn to the top of the fourth page in your present law handout, you'll see legislative intent.

This section provides that the legislative assembly, in recognition of the value of good employer-employee relationships between school boards of this state and the teachers employed in the school systems, the need to recruit and retain qualified teachers in this state, and further in recognition of the many intangibles in evaluating the performance of individual members of the teaching profession, urges that each school board of this state ensure through formally adopted policies, that channels of communication exist between the board, supervisory personnel, and teachers employed within its school system. In the very sensitive area of discharge of teachers for cause prior to the expiration of the term of the teachers' contracts, or in decisions not to renew the contracts of teachers, school boards shall give serious consideration to the damage that can result to the professional stature and reputation of such teachers, which stature and reputation were acquired only after the expenditure of substantial time and money in obtaining the necessary qualifications for such profession and in years of practicing the profession of teaching; and that in all decisions of school boards relating to discharge or refusal to renew contracts, all actions of the board be taken with consideration and dignity, giving the maximum consideration to basic fairness and decency.

In one of our earlier drafts, we had tried to maintain the letter and spirit of this section by turning it into statutory language, rather than legislative intent. We had provided that the board of each

school district shall adopt policies to ensure that channels of communication exist between the board, supervisory personnel, and teachers. If the board pursues the discharge of an individual, as provided for in this chapter, the board shall ensure that the process is conducted with fairness and dignity, accordingly to the provisions of this chapter.

After discussing it for a while, the committee decided that the legislative intent section should not be maintained as either a legislative intent section or as a statutory section. The committee thought that the legislative assembly did not need to be micro managing school districts by requiring that the channels of communication remain open or that discharge proceedings are conducted with fairness and dignity. The committee felt that the people involved in all those situations could be counted on to give the situations their due deference and to behave in an acceptable fashion.

Teacher Dismissal 15.1-15

PRESENT LAW

15-47-26. Teacher defined.
The term "teacher", as used in section 15-47-28, includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education, the North Dakota youth correctional facility, the school for the deaf, and the school for the blind. The term "teacher", as used in sections 15-47-27 and 15-47-38, includes all teachers, principals, assistant superintendents, and all persons employed in teaching in any state institution, except institutions of higher education, the North Dakota youth correctional facility, the school for the deaf, and the school for the blind. For purposes of the sections above referenced, the term "teacher" does not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

15-47-27. Time for renewal of teachers' contracts.
Any teacher who has been employed by any school district in this state during any school year, must be notified in writing by the school board not earlier than March first and not later than May first in the school year in which that teacher has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if the determination has been made; and failure to give written notice on or before that date constitutes an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. On or before May first in any year and not earlier than March first, all teachers must be notified of a date, which must not be less than thirty days after the date of the notice, upon which they shall accept or reject proffered reemployment, and failure by the teacher to accept the offer within that time is a rejection of the offer. Any teacher accepting the offer of reemployment, either by the action or nonaction of the school board on or before May first, as herein provided, is entitled to the usual written contract for the ensuing school year under law and shall notify the school board in writing of the teacher's acceptance or rejection on or before the date specified or before June first, whichever is earlier. Failure by the teacher to provide that notification relieves the school board of the continuing contract provision of sections 15-47-26 through 15-47-28. This section does not repeal or limit the operation of any existing law with reference to the dismissal of teachers for cause. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district for each of the first three school years the teachers are employed by the school district. These written performance reviews must be completed and made available to the teacher no later than December fifteenth for the first review and March fifteenth for the second review each year. After three years of employment by a school district, each teacher must be evaluated at least once every school year, and the written performance review must be completed and made available to the teacher no later than March fifteenth.

15-47-27.1. First-year teachers - Evaluation - Renewal and nonrenewal of contracts. Each school district in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than March fifteenth of each year. A school board contemplating not renewing the contract of a first-year teacher shall, after reviewing the evaluations, meet in an executive session with the teacher to discuss the reasons for the proposed nonrenewal. The teacher may be represented at the meeting by two representatives of the teacher's own choosing and the teacher's spouse or one other family member of the teacher's choice. No claim for relief for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held pursuant to this section. If a school board determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April fifteenth nor later than May first. Failure by a school board to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. The notification of nonrenewal given to a first-year teacher must contain a detailed description of the reason or reasons for the nonrenewal.

15-47-27.2. Teachers employed by the North Dakota youth correctional center, school for the deaf, and school for the blind.

1. The term "teacher", as used in this section, means a contracted state employee licensed by the education standards and practices board to teach in this state, whose primary task is to provide direct instruction in a classroom, or on an individualized basis, and whose work schedule must be in accordance with the school calendar, guidance counselors, school librarians, itinerant outreach teachers, and vocational and other technological resource personnel who are required to meet the same teaching and licensure requirements. The term does not include superintendents, assistant superintendents, principals, supervisory personnel, substitutes, and all paraprofessionals.
2. The superintendent of public instruction for the school for the blind and the school for the deaf, and the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for the North Dakota youth correctional center in administering the schools under their authority shall develop contracts for employment of teachers in their departments and establish teacher personnel policies needed for administration of the schools. The contracts may include assignment of job duties, teacher salaries, hours, and job titles, a school calendar, and a salary schedule. The personnel policies adopted under this section must include job descriptions and nonrenewal, discipline, and dismissal procedures, and must seek to harmonize the rights of teachers with law governing state employees. The superintendent of public instruction and the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall work together in the development of personnel policies for teachers employed by their respective departments. Each teacher is entitled to receive a printed copy of a master agreement, which consists of a

policy manual and an individualized contract specifying the annual school calendar and each teacher's contracted hours, rate of pay, job title, salary schedule, applicable benefits, and other details pertinent to a teacher's employment.

15-47-28. Suspension of professional teaching license for breach of contract.
In the event of breach of contract on the part of a teacher or administrator, the education standards and practices board or the administrator's professional practices board shall suspend the individual's professional teaching license for a period not to exceed one year, during which time it is unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota.

15-47-34. Education of deaf-blind children.
The superintendent of public instruction, after consulting with the superintendents of the school for the blind, the school for the deaf, and the developmental center at westwood park, Grafton, shall determine whether those children under the age of twenty-one, who are deaf and blind, should be sent to the school for the blind, the school for the deaf, or the developmental center at westwood park, Grafton. If, in the judgment of the superintendent of public instruction, there are not adequate facilities for the education of deaf-blind children in this state, the superintendent of public instruction may determine whether the deaf-blind children should be sent to any school or institution outside of North Dakota providing a qualified program of education for deaf-blind children.
The superintendent of public instruction may pay for the education of those children in out-of-state institutions within the limitations of legislative appropriations for that purpose. The funds may be spent for room, board, tuition, transportation, and other items necessarily relevant to the education of the children.
In interpreting and carrying out the provisions of this section, the words "deaf-blind child" wherever used, include any child whose combination of handicaps of deafness and blindness prevent the child from profiting satisfactorily from educational programs provided for the blind child or the deaf child.
The superintendent of public instruction may make rules necessary and proper for carrying out this section.

15-47-35. Ten days' annual sick absence - Cumulative.
The employment contract of any teacher, as defined in section 15-47-26, shall provide for at least ten days' permissible absence annually due to sickness, without loss in pay for the period; and shall further provide for any unused portion of such annually permissible absence to be cumulative from year to year, with a minimum accumulation of thirty days.

15-47-38. Legislative intent in employment of teachers - Notification of discharge or failure to renew - Hearing.

1. The legislative assembly, in recognition of the value of good employer-employee relationships between school boards of this state and the teachers employed in the school systems, the need to recruit and retain qualified teachers in this state, and further in recognition of the many intangibles in evaluating the performance of individual members of the teaching profession, urges that each school board of this state ensure through formally adopted policies, that channels of communication exist between the board, supervisory personnel, and teachers employed within its school system. In the very sensitive area of discharge of teachers for cause prior to the expiration of the term of the teachers' contracts, or in decisions not to renew the contracts of teachers, school boards shall give serious consideration to the damage that can result to the professional stature and reputation of such teachers, which stature and reputation were acquired only after the expenditure of substantial time and money in obtaining the necessary qualifications for such profession and in years of practicing the profession of teaching; and that in all decisions of school boards relating to discharge or refusal to renew contracts, all actions of the board be taken with consideration and dignity, giving the maximum consideration to basic fairness and decency.

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher must be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher must also be informed in writing of the teacher's right to demand a specification of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The reasons must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the board in writing at least two days prior thereto that the teacher will contest the charges brought against the teacher, the board must sustain the charges with evidence produced at the hearing with witnesses who are subject to cross-examination by the teacher or the teacher's representative. A witness, if a minor, must be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce witnesses as may be necessary to refute the charges, which witnesses are subject to cross-examination. All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, appeals to the supreme court, and other administrative procedures must be conducted in accordance with chapter 28-32. The meeting must be an executive session of the board unless both the school board and the teacher requesting the meeting shall agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests, the board must grant a continuance of not to exceed seven days unless good cause is otherwise shown. No cause of action for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

3. A school board may dismiss a teacher, effective immediately, for any of the following causes:
a. Immoral conduct, insubordination, or conviction of a felony.
b. Conduct unbecoming a teacher which requires the immediate removal of a teacher from the teacher's classroom duties.
c. Failure without justifiable cause to perform contracted duties.
d. Gross inefficiency which the teacher has failed to correct after reasonable written notice.
e. Continuing physical or mental disability which renders the teacher unfit or unable to perform the teacher's duties as a teacher.
A school board dismissing a teacher for cause under this subsection shall report the dismissal to the teachers' professional practices commission.
4. The school board by unanimous vote may suspend the teacher from regular duty if such action is deemed desirable during the process of determining if cause for dismissal exists. A school board shall address the matter of a teacher's suspension in an executive session, unless both the teacher and the school board agree that the matter may be addressed in the presence of other persons or at an open meeting. If, upon final decision, the teacher is dismissed, the board may in its discretion determine the teacher's salary or compensation as of the date of suspension. If the final decision is favorable to the teacher, there shall be no abatement of salary or compensation.
5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. The teacher must be informed in writing of the time, which may not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher must also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's overall performance. Each district shall have an established system through which written evaluations are prepared for every teacher employed by the district as provided in section 15-47-27. The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must be related to the ability, competence, or qualifications of the teacher or the necessities of the district such as lack of funds calling for a reduction in the staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The administrator shall substantiate the reasons with written or oral evidence presented at the meeting, unless the administrator is the subject of the contemplated nonrenewal, in which case the board shall substantiate the reasons with written or oral evidence presented at the meeting. All witnesses are subject to questioning for the purposes of clarification. At the meeting, the board shall discuss the evidence presented. If the reasons for nonrenewal have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting must be an executive session of the board unless both the school board and the teacher agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. At the

meeting, if the teacher so requests, the teacher must be granted a continuance of not to exceed seven days. No claim for relief for libel or slander lies for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith is final and binding on all parties. Final notice of the determination not to renew a contract must be given in writing by May first as provided in section 15-47-27.

6. No teacher may be discharged and no school board may refuse to renew a teacher's contract under this section based solely upon an investigation of alleged child abuse or neglect made under section 50-25.1-05.1 in which a determination was made that no probable cause existed to believe that the child abuse or neglect was indicated, or in which a determination was made that probable cause did exist to believe that child abuse or neglect was indicated but a decision relating to the alleged abuse or neglect has not been made by a court of competent jurisdiction. If a school board is notified that a finding of probable cause is made, this subsection does not prevent the school board from moving to suspend the teacher under the provisions of subsection 4.

15-47-38.2. Evaluation, renewal, or discharge of superintendents of school districts.

1. The term "superintendent" as used in this section includes district superintendents of schools and chief administrators of multidistrict special education units and multidistrict vocational education centers.

2. At least once before December fifteenth, the school board of each school district shall conduct a formative evaluation of the performance of the superintendent employed by the district. The board shall also conduct a formal and written evaluation of the performance of the superintendent by March fifteenth and provide a copy to the superintendent. The written evaluation of a superintendent's performance must include recommendations with respect to all subject areas within which the school board considers the performance to be unsatisfactory. The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance.

3. The superintendent, upon receipt of an evaluation, may respond in writing to the substance and content of the evaluation, and the response must become a permanent attachment to the superintendent's personnel file. The school board shall meet with the superintendent to discuss the evaluation.

4. Throughout the term of a contract between a school district and a superintendent, the superintendent is subject to discharge for good and just causes as described in subsection 3 of section 15-47-38. However, the school board may not arbitrarily or capriciously require the superintendent's dismissal.

5. If a school district governing body intends to discharge a superintendent, the superintendent must be served with a detailed and written description of the reasons given by the school board for the proposed dismissal. Following service of the written description, the superintendent must be granted a hearing before the governing body for which reasonable advance notice is required. If a superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent.

6. The superintendent may produce necessary witnesses to refute charges made by the board against the superintendent or reasons given by the board for its proposal to discharge the superintendent. The witnesses are subject to cross-examination.

7. All procedures relative to evidence, subpoena of witnesses, oaths, records of testimony, decisions, rehearings, appeals, certification of records, scope and procedures for appeals, and appeals to the supreme court must be conducted in accordance with the provisions of chapter 28-32. The meeting must be conducted in an executive session of the board, unless both the school board and the superintendent agree that the meeting be open to the public.
8. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member, may also attend the meeting.
9. In addition to board members and the business manager of the school district, the school board may be represented by two persons chosen by the school board.
10. If the superintendent requests, the superintendent must be granted a continuance by the board not to exceed seven days, unless good cause for a longer continuance is shown.
11. No claim for relief for libel or slander may accrue from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section.
12. A school board dismissing a superintendent for cause shall report the dismissal to the administrator's professional practices board. The school board by unanimous vote may suspend the superintendent from regular duty if such action is deemed desirable during the dismissal process. If the superintendent is dismissed, the board may determine the superintendent's salary or compensation as of the date of suspension. If the final decision is favorable to the superintendent, there may be no abatement of salary or compensation.
13. The school board of a school district contemplating the contract nonrenewal of a superintendent who has been employed in the school district as a superintendent for at least two consecutive years, shall notify the superintendent in writing of the contemplated nonrenewal no later than April fifteenth. The school board shall inform the superintendent in writing of the time, which may not be later than April twenty-first, and the place of a special school board meeting for the purpose of discussing and acting upon the contemplated nonrenewal. The school board shall inform the superintendent in writing of the reasons for nonrenewal. The reasons may not be frivolous or arbitrary, must be related to the ability, competence, or qualifications of the superintendent, must be sufficient to justify the contemplated action of the board, and must be drawn from specific and documented findings arising from the formal and written evaluations of the superintendent's performance as required in subsection 2, except when the nonrenewal results from a necessary reduction in staff. At the board meeting, the superintendent may produce evidence necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The school board shall substantiate the reasons or cause the reasons to be substantiated with written or oral evidence presented at the meeting. All witnesses are subject to questioning for purposes of clarification. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member may also attend the meeting. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent. In addition to the board members and the business manager of the school district, the school board may be represented by two persons chosen by the board. If the superintendent requests, the board shall grant the superintendent a continuance not to exceed seven days. No claim for relief for libel or slander accrues from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this

section. The school board shall give the superintendent final notice of the determination not to renew a contract by May first.

14. If a school district fails to provide notification to a superintendent in writing between March first and April fifteenth of each year that the school board intends to contemplate the nonrenewal of the superintendent's contract, and the superintendent has not resigned in writing before June first, the district and the superintendent are deemed to have renewed the contract for a period of one year extending from the termination date set forth in the existing contract. If a school district provides notification to a superintendent who has not been employed in that school district as a superintendent for at least two years in writing before May first of its intent not to renew the superintendent's contract, the school board shall meet with the superintendent to convey the reason or reasons for the nonrenewal if the superintendent requests such a meeting.

15-47-42. Status and authority of student and eminence-credentialed teachers.

Any student teacher or eminence-credentialed teacher hired or assigned in this capacity must be given the same legal authority and status as if the student or eminence-credentialed teacher were a licensed teacher employed by the school district. The authority of the student or eminence-credentialed teacher extends to all aspects of student management or discipline, the handling of confidential student records, and to all other aspects of legal authority granted to licensed teachers in the state. The student or eminence-credentialed teacher must be deemed a licensed teacher employed by the district with respect to acts performed by the student or eminence-credentialed teacher at the direction, suggestion, or consent of the district employees under whose supervision and control the student or eminence-credentialed teacher performs duties, whether or not the duties are performed entirely in the presence of district employees assigned to supervise the student or eminence-credentialed teacher, and must be deemed an employee of the school district within the meaning of sections 32-12.1-05 and 39-01-08 relating to liability insurance carried by political subdivisions. For purposes of this section, "eminence-credentialed teacher" means a person providing teaching services in accordance with subsection 21 of section 15.1-09-33.

15-47-46. Teacher qualification - Kindergarten through grade eight - Exceptions.

1. Except as provided in subsections 2 through 4 or subsection 21 of section 15.1-09-33, all teachers teaching kindergarten through grade eight must hold a professional teaching license and:

a. A minimum of a kindergarten endorsement to teach kindergarten;

b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or

c. An endorsement in kindergarten or elementary education from the education standards and practices board attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses prescribed by the education standards and practices board.

2. A teacher who holds a professional teaching license and a major or an endorsement in middle school education attained prior to, or within two years of, the assignment to teach middle school may teach grades five through eight.

3. A teacher who holds a professional teaching license and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.
4. A teacher who holds a professional teaching license from the education standards and practices board and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, business education, and computer education in kindergarten through grade eight.

15-47-52. Early childhood education teaching certificate.
The education standards and practices board shall develop and implement an optional early childhood education teaching certificate. The optional early childhood education teaching certificate may be used in nonparental settings such as early childhood programs, preschool programs, and head start programs.

151-16

15.1-16 TEACHER EMPLOYMENT CONTRACTS

TESTIMONY

Present section 15-38.1-01 begins with a statement of purpose -- or another legislative intent section. As we explained earlier, the purpose of a properly drafted bill should be self evident. Any additional explanation of the reasons for its existence belong in testimony or floor speeches -- not it statute. For these reasons, the rewrite omits the statement of purpose and begins directly with the definition section.

15.1-16-01. This section tries to clarify who comes within the definition of an administrator. One thing the committee zeroed in on was the requirement that the individual hold an administrator's credential. Beyond that, the individual must be employed for the primary purpose of providing administrator services to the schools of the district. An administrator specifically includes a school district superintendent, an assistant or associate school district superintendent, a school principal, an assistant or associate school principal, a special education director, a director of a multidistrict special education unit, a vocational education director, and a director of a vocational technology center. The list is not exclusive. In fact, the committee wanted to make clear that athletic or activity directors who meet the requirements of the section may also be considered administrators.

If you look at your present law handout, in about the middle of the front page, you'll see

something quite novel. Subsection 2 defines an "appropriate negotiating unit" and subsection 3 defines an "appropriate negotiating unit" -- differently.

In the rewrite, we provide that an "appropriate negotiating unit" means a group of administrators or a group of teachers who, because of common interests, common problems, a common employer, or a history of common representation, choose to be represented by a single organization in negotiations with a school board.

Present law provides that an "appropriate negotiating unit" means a group having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single organization in negotiations with a school board.

When the committee first looked at this section, they thought the phrase "which warrants" was well on the way to being dated and opted to reference a group choosing to be represented by a particular organization.

This selection caused some consternation because it was argued that not every person chooses to be represented by the organization. The committee viewed the phrase "chooses to be represented" a little more broadly. As a parallel, the people of North Dakota choose to be represented by a governor and a legislative assembly. That doesn't necessarily mean that every last North Dakotan cast his or her vote for our present leadership and legislative assembly members.

The definition of a representative organization and of a strike parallel current law.

The definition of a teacher references one who is licensed or approved to teach by the ESPB and who is under contract to provide classroom instruction or individualized instruction. It does not include administrators, substitutes, or paraprofessionals.

Section 15.1-16-02 deals with the education factfinding commission. This commission consists of one member appointed by the governor, one member appointed by the superintendent of public instruction, and one member appointed by the attorney general.

15.1-16-03 provides for compensation at the rate of $62.50 per day for members of the education factfinding commission.

15.1-16-04 provides the same rate of compensation for factfinders appointed by the education factfinding commission.

15.1-16-05 authorizes the commission to adopt rules. The commission is not an administrative agency, so any rules adopted under this section are not subject to the administrative agencies practices act (chapter 28-32) and are not published in the administrative code. This section also provides that the commission and any factfinder have the powers provided in section 28-32-09, 11, and 12.

28-32-09 addresses adjudicative proceedings, subpoenas, discovery and protective orders.

28-32-11 addresses the administration of oaths; and

28-32-12 requires that there be a record of all testimony, written statements, documents, exhibits, and other evidence offered at a hearing.

15.1-16-06. Present law states: "The cost of factfinding proceedings, including per diem compensation, and other costs, must be borne as follows:

In those cases where the proceedings to resolve an impasse arises under subdivision a, b, c, or d of subsection 1 of section 15-38.1-13, the cost must be borne equally among the contending parties."

The way it is phrased, one is lead to believe that in other circumstances, the costs should be allocated differently.

No one was able to shed any light on this for the committee so the committee just assumed that the costs of factfinding are in all instances to be shared equally between the parties.

15.1-16-07 This section merely clarifies present law and provides that teachers and administrators may form, join, and participate in the activities of representative organizations of refuse to do so.

15.1-16-08. This section received some embellishment. Present law provides that representative organizations have the right to represent the appropriate negotiating unit in matters of employee relations with the school board. Any teacher, or administrator, has the right to present his views directly to the school board.

At the request of the NDEA, the committee added that an individual presenting his views directly to the school board may not enter into independent negotiations with the board.

15.1-16-09. Here we merely cleaned up the language regarding the scope of representation. An organization's representation may address matters relating to the terms and conditions of employment and employer-employee relations, including salary and working hours.

15.1-16-10 Like present law, this section addresses the formation of a negotiating unit. A group of teachers or administrators may get together and file with the school board a description of the job groupings or positions that constitute the unit.

The board has the right to accept or reject the unit. If the board accepts the unit, the group that filed the description may then designate or select a representative organization.

Neither present law nor the rewrite addresses what happens if the board rejects the unit. The committee worked off the assumption that if the board does not accept the unit, the domino effect is stopped. -- I.e. There is no further action until a more favorable offering is made and meets

with board acceptance.

15.1-16-11. This next section deals with the manner in which a representative group is selected.

The initial step involves an organization filing a petition with the school board and asserting that it represents a majority of the teachers or administrators within the unit.
The petition has to be accompanied by evidence of this claim.

Within 10 days of receiving the petition, the board has to post a notice in each school where the claimed members are employed. The notice must provide that the board shall consider the petition.

In the ensuing 10-20 days, the board must consider the petition and post notice regarding its decision.

If the petition is not contested, the board must recognize the petitioning organization as the representative organization, unless it finds in good faith that there is a doubt as to what was claimed in the petition.
That's what happens if literally only one group steps up and announces its desire to be the representative group.

If however there appears a second group vying for recognition as the representative group, that

second group has to file a petition with the board. Then, there is an election to determine which group becomes the representative group.

The election must be conducted in the manner agreed to by the parties. If they can't agree to a game plan, then the election has to be conducted in the manner determined by the education factfinding commission.

Present law requires that the election be conducted in the manner determined by the commission, "under its rules and regulations." As mentioned earlier, because the education factfinding commission is not an agency, its rules are not promulgated under chapter 28-32, nor are they published in the administrative code. In order to keep someone from searching the ND administrative code, the interim committee thought it would be clearer just to remove any reference to the commission's rules and simply require that the election be conducted in the manner determined by the commission.

Most of the content of this section came from present section 15-38.1-11. That section also provides that once a representative organization has been selected, its authority to represent the negotiating unit continues for at least one year from the date of selection. Because that matter is also addressed in an upcoming section -- namely 15.1-16-18, it was eliminated from this section.

15.1-16-12. This section stems from present section 15-38.1-11.1, which provides that if a teacher requests in writing that the dues for a representative organization to which the teacher

belongs be deducted from the teachers pay, the employing school board must comply with the request.

There were two quite odd things about this section. The first is that present law also goes on to provide that nothing in the section may be interpreted to mean that the dues of a nonmember shall be deducted in such manner. The committee couldn't imagine a circumstance under which a nonmember would be assessed dues, so they chose to omit that final sentence.

The second off thing is that the whole chapter deals with teachers belonging to negotiating units and representative organizations and administrators belonging to the same. This particular section provides only for dues deductions of teachers. It does not include administrators. Since no one stepped up to indicate that administrators were inadvertently omitted, the committee made no changes.

15.1-16-13 This section, like present law, requires the parties to meet at reasonable times and negotiate in good faith regarding the terms and conditions of employment, employer-employee relations, the formulation of an agreement, and the interpretation of an existing agreement.

It is subsection 3 which caused some significant consternation. That subsection is found on page 37, beginning on line 22.

Like present law, it provides that either the board of the school district or the representative organization may modify or terminate a contract negotiated under this section by notifying the other party of the intent to modify or terminate at least 60 days before the anniversary date. Like

present law, the modification or termination is effective on the annual anniversary date of the contract. It would appear that in drawn out negotiations, the settlements are retroactive to July 1.

The discussion in the committee about what the present law actually says versus what may have been intended was quite interesting. In the end, the committee indicated that the rewrite should reflect current law and that if either or both parties believed that a clarification or a modification was in order, they should introduce bills addressing the matter.

15.1-16-14. Present section 15-38.1-13 provides that:

"An impasse must be deemed to exist under any of the following conditions:
a. Where an agreement . . . has not been formulated and after a reasonable period of negotiation regarding terms and conditions of employment or employer-employee relations, a dispute exists between a school board and any representative organization, an impasse may be deemed to exist."

"An impasse must be deemed to exist under any of the following conditions:
c. In the event that the written agreement reached . . . does not include procedures for resolving a dispute which arises, an impasse may be deemed to exist.

Well, does it exist or doesn't it exist?

The committee at this point made an executive decision.

The committee determined that an impasse exists if:

a . After a reasonable period of negotiation, an agreement has not been formulated and a dispute exists.

b. The board of a school district and the representative organization both agree that an impasse exists.

The committee determined that an impasse may exist if:

a. A written contract entered into between the board of a school district and the representative organization does not contain a procedure for resolving a dispute.

b. A written agreement entered into between the board of a school district and the representative organization contains an

inadequate procedure for resolving a dispute.

15.1-16-15 addresses what happens if an impasse is deemed to exist.

The first thing that happens is that the board of the representative organization may agree to mediation. If that fails, either party may request intervention by the education factfinding commission.

The factfinding commission then makes its findings and issues its recommendation. This has to happen no more than 40 days from the date the commission is asked to become involved. Between 10 and 20 days after the commission's findings are delivered to the parties, the findings become public if there is no resolution.

15.1-16-16. This was another odd section.

Present law (15-48.1-14), begins by proclaiming that no teacher, administrator, or representative organization may engage in a strike. It goes on to provide that any teacher engaging in a strike may be denied the full amount of his wages during the period of the violation.

First, it seems inherently contradictory to outlaw strikes and then to turn around and state that if however one does participate one may be denied some of their wages.

Secondly, if both teachers and administrators are prohibited from striking, why is it that only the teachers are subject to a potential denial of wages.

Thirdly, if both teachers and administrators are precluded from striking, what do we mean when we also preclude a representative organization from striking?

These questions were brought up to the interim committee. Unfortunately, they were brought up when it was late and people were tired -- and the issues were consequently not resolved.

15.1-16-17 Present law provides that school boards and administrative officers may not discriminate against teachers because of their exercise of rights under this chapter. Apparently it was okay to discriminate against administrators.

Because the committee wasn't sure what was intended by the phrase "administrative officers", the committee provided that neither the board nor any administrator may discriminate against any individual employed as a teacher or as an administrator because the individual exercises rights available under this chapter. Since administrators are defined to include many positions other than that of a school district superintendent, the committee wanted to be sure that the safe guards

of the section were extended to those individuals.

15.1-16-18 This section simply provides that once a representative organization is selected, that organization can't withdraw or be replaced for the duration of the contract, or three years, whichever is less.

15.1-16-19 The committee had to do a little bit of work on this section to understand the intent and to accurately draft that intent. The section provides that a teacher gets at least 10 days of sick leave each school year and that the teacher can accumulate such days and carry over at least 30 days of accumulated unused sick leave from year to year.

15.1-16-20 This section deals with teachers who are employed not by school districts but rather by the state. This concept has been the subject of quite a bit of work during the last several sessions, so the committee didn't have to do much with this. It simply requires the development of contracts of employment and personnel policies. It sets forth what must be included in each and it ensures that each affected teacher receives a copy of the master contract and an individualized contract that specifies the individual's job title, contracted hours, salary, benefits, and other details applicable to the individual's employment.

Again, we had a couple of sections that will not be found in the rewrite.

Present section 15-38.1-01 is another section of legislative intent. As you can see from the present law handout, it states that the improvement of personnel management and relations

between boards and their employees is a policy of this state as is the recognition of the right of public school employees to join organizations of their own choice, etc.

As we said earlier, such verbiage is far better suited to testimony than statute and in accordance with legislative council drafting policy, it was omitted.

The committee also omitted present section 15-47-28. That section provides that in the event of a breach of contract on the part of a teacher or administrator, the ESPB shall suspend the individual's professional teaching license for a period not to exceed one year, during which time it is unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota. If you'll remember, the issue of suspension by the ESPB for breach of contract, as well as for other reasons, is already addressed in proposed section 15.1-13-25.

TEACHER CONTRACTS

PRESENT LAW

15-38.1-01. Purpose. In order to promote the growth and development of education in North Dakota which is essential to the welfare of its people, it is hereby declared to be the policy of this state to promote the improvement of personnel management and relations between school boards of public school districts and their certificated employees by providing a uniform basis for recognizing the right of public school certificated employees to join organizations of their own choice and be represented by such organization in their professional and employment relationships with the public school districts.

15-38.1-02. Definitions. As used in this chapter:

1. "Administrators" means and includes all public school employees employed primarily for administration of the school or schools of a school district and devoting at least fifty percent of their time in any one year to the duties of administration of the school or schools of a school district.
2. "Appropriate negotiating unit" means a group of administrators having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.
3. "Appropriate negotiating unit" means a group of teachers having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.
4. "Representative organization" means any organization authorized by an appropriate negotiating unit to represent the members of the unit in negotiations with a school board.
5. "Strike" means any concerted work stoppage, slowdown, or withholding of contracted services.
6. "Teachers" means and includes all public school employees licensed under chapter 15-36 and employed primarily as classroom teachers.

15-38.1-03. Education factfinding commission - Appointment - Terms - Quorum. There is hereby created a commission to be known as the education factfinding commission, hereinafter called the commission, which shall consist of three members, one to be appointed by the superintendent of public instruction, one by the governor, and one by the attorney general. The appointee of the superintendent of public instruction shall be the chairman of the commission. The members of the commission shall be persons experienced in educational activities. The original appointment by the superintendent of public instruction shall be for a term of three years.

The original appointment by the governor shall be for a term of two years. The original appointment by the attorney general shall be for a term of one year. Their successors shall be appointed for terms of three years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. At all times, two members of the commission shall constitute a quorum.

15-38.1-04. Compensation of commission and factfinders. Members of the commission are entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission. Factfinders appointed by the commission, including commission members serving as factfinders, are entitled to reimbursement for expenses in the same manner as members of the commission and to compensation as established by the commission.

15-38.1-05. Powers of the commission. The commission may adopt its own rules. In addition to other powers authorized by law and under this chapter, the members of the commission and any factfinder appointed by it have, in the performance of their duties, the powers contained in sections 28-32-09, 28-32-11, and 28-32-12.

15-38.1-06. Cost of factfinding. The cost of factfinding proceedings, including per diem, compensation, and other costs, must be borne as follows: In those cases where the proceedings to resolve an impasse arises under subdivision a, b, c, or d of subsection 1 of section 15-38.1-13, the cost must be borne equally among the contending parties.

15-38.1-07. Right to organize or not organize.
1. Teachers, or administrators, have the right to form, join, and participate in the activities of representative organizations of their choosing for the purpose of representation on matters of employer-employee relations.
2. Teachers, or administrators, also have the right to refuse to join or participate in the activities of representative organizations.

15-38.1-08. Right to negotiate. Representative organizations have the right to represent the appropriate negotiating unit in matters of employee relations with the school board. Any teacher, or administrator, has the right to present his views directly to the school board.

15-38.1-09. Subject of negotiations. The scope of representation includes matters relating to terms and conditions of employment and employer-employee relations, including, but not limited to, salary, hours, and other terms and conditions of employment.

15-38.1-10. Determination of appropriate negotiating unit. Representative organizations may be designated or selected by the majority of teachers, or administrators, employed in the public school district. Any group of teachers, or administrators, employed in a public school district may determine an appropriate negotiating unit by filing with the school board a description of the grouping of jobs or positions which constitute the unit claimed to be appropriate. Upon receipt of such determination, the school board shall accept or reject the proposed appropriate negotiating unit. After the school board has accepted the appropriate negotiating unit, the teachers, or administrators, within such unit may designate or select a representative organization in the manner described in section 15-38.1-11.

15-38.1-11. Selection of representative organization.

1. Uncontested selection. Any organization having an interest in representing teachers, or administrators, may file with the school board a petition alleging that it represents a majority of teachers, or administrators, included within an appropriate negotiating unit. Such petition must be accompanied by evidence substantiating the allegation contained in it. Within ten days after receipt of such petition, the school board shall publish a notice of intent to consider the petition, by posting such notice in each school building in which members of the appropriate negotiating unit are employed. Not less than ten nor more than twenty days after publication of the notice of intent to consider, the school board shall investigate the petition, determine the question of representation, and publish its determination in the same manner as it published its notice of intent to consider. If the petition has not been contested, the school board shall recognize the petitioner as the representative organization of the appropriate negotiating unit unless it finds in good faith that a reasonable doubt of such representation exists.
2. Contested selection. Any organization having an interest in representing teachers, or administrators, and contesting the claim of representation made in the petition must file with the school board its written statement of contest with its evidence substantiating the allegation within ten days after the publication of the notice of intent to consider.
3. The school board shall call an election to determine the question of representation not less than twenty nor more than thirty days after the posting of the notice of intent to consider, if:
a. The school board has failed to make and publish its determination; or
b. The school board has published its determination, and that determination has been contested by a petitioner or contestant.
4. The school board shall call an election to determine the question of representation not less than ten nor more than thirty days after twenty-five percent of the members of an appropriate negotiating unit petition for such election.
5. The conduct of the election must be in the manner agreed to among the interested parties. If the interested parties cannot agree, the election must be conducted in the manner determined by the commission under its rules and regulations.
6. When a representative organization has been selected, its authority to represent the negotiating unit continues for at least one year from the date of such selection.

15-38.1-11.1. Provision for payroll deduction for dues of representative organization for teachers. Whenever a teacher, who is a member of the representative organization as created pursuant to the terms of this chapter, signs a petition requesting that the dues for such representative organization be deducted from the regular paycheck of said teacher, the school board shall be required to comply with such petition. Nothing herein may be interpreted to mean that the dues of a nonmember shall be deducted in such manner.

15-38.1-12. Good faith negotiations.

1. The school board, or its representatives, and the representative organization, selected by the appropriate negotiating unit, or its representatives, have the duty to meet at reasonable times at the request of either party and to negotiate in good faith with respect to:

a. Terms and conditions of employment and employer-employee relations.

b. The formulation of an agreement, which may contain provision for binding arbitration.

c. Any question arising out of interpretation of an existent agreement.

2. The parties must execute a written contract incorporating any agreement reached if requested by either party.

3. Either party to a contract negotiated under this section may modify or terminate the contract on its annual anniversary date by giving notice of its desire to modify or terminate to the other party not less than sixty days prior to the annual anniversary date.

4. The obligations imposed in this section do not compel either party to agree to a proposal or to make a concession.

15-38.1-13. Impasse procedures.

1. An impasse must be deemed to exist under any of the following conditions:

a. Where an agreement as set forth in subdivision b of subsection 1 of section 15-38.1-12 has not been formulated and after a reasonable period of negotiation regarding terms and conditions of employment or employer-employee relations, a dispute exists between a school board and any representative organization, an impasse may be deemed to exist.

b. When both parties agree that an impasse exists.

c. In the event that the written agreement reached under section 15-38.1-12 does not include procedures for resolving a dispute which arises, an impasse may be deemed to exist.

d. Written agreements negotiated under section 15-38.1-12 may include procedures to be invoked in the event of disputes under the contract. Where such procedures are inadequate to resolve the dispute an impasse may be deemed to exist.

2. An impasse may be resolved in the following manner:

a. The parties may agree upon mediation of the controversy by mutually selecting a mediator or mediators, and agreeing to a distribution of the cost of the mediation.

b. If mediation fails or is not attempted, the aggrieved school board or representative organization may request the commission to render assistance as provided in this section.

(1) Upon request of either contending party, and in the event that the commission determines that an impasse exists between a school board and a representative organization, the commission shall itself act as a factfinding commission or appoint a factfinder from a list of qualified persons maintained by the commission. If a factfinder is appointed, he shall have such powers as are

designated to him by the commission and he shall make his recommendation to the commission. The commission shall consider the facts and make its findings and recommendation, or it shall consider the report and recommendation of its factfinder, and, after such further investigation as it may elect to perform, it shall make its findings and recommendation. Within forty days after the request to render assistance is received, the findings and recommendation of the commission must be transmitted to the contending parties and if the issue is not then resolved, the commission shall between ten and twenty days after such transmittal make its findings and recommendation public.

(2) In the event that facts are found or recommendations made under factfinding procedures agreed upon between the contending parties and the impasse continues, the commission may consider such findings and recommendations without instituting its own factfinding procedures and from them issue its own findings and recommendation to the contending parties, and if the issue is not then resolved the commission shall between ten and twenty days after such transmittal make its findings and recommendation public.

15-38.1-14. General provision.

1. No teacher, administrator, or representative organization may engage in a strike.
2. Nothing contained herein is intended to or conflicts with, contravenes, abrogates, or diminishes the powers, authority, duties, and responsibilities vested in boards of education by the statutes and laws of the state of North Dakota.
3. School boards or administrative officers thereof may not discriminate against teachers because of their exercise of rights under this chapter.
4. A contract between the representative organization and the school board shall bar any other representative group from petitioning for recognition, or for the withdrawal of existing recognition, for the term of the contract or three years whichever is less.
5. Any teacher engaging in a strike or any other activity prohibited in subsection 1 may be denied the full amount of his wages during the period of such violation.

15.1-17 TEACHER PERSONNEL ISSUES

TESTIMONY

Present section **15-38.2-01** provides that every teacher employed in a school district or educational institution supported by public funds in this state has the right to review the contents of his personnel file originating after original employment.

The interim committee maintained the concept of this section, but reworded a little bit. In section 15.1-17-01, the committee provided that a teacher employed by a school district or by a state supported institution that provides elementary and secondary education to its students may review documents generated and placed in the teacher's personnel file after the teacher was employed for the position.

The committee assumed that the original section was referring to public school teachers and to teachers employed by state institutions such as the school for the blind, the school for the deaf, and the Youth Correctional Center.

The committee wasn't sure what the reference to "originating after original employment" meant so again, that was clarified by referencing documents generated and placed in the teacher's personnel file after the teacher was employed for the position.

15.1-17

The last two sentences stem from present section 15-38.2-05. That section provides that upon

written request, the teacher must be furnished a reproduction of any material in his personnel file excluding those references and information given at the time he was being evaluated for employment.

The rewrite did not use the present phrase "excluding those references and information given at the time he was being evaluated for employment."

The reason is that in the rewrite, the committee specifically authorized a teacher to see documents that were generated and placed in the teacher's file after the teacher was employed for the position. References and information used to evaluate the teacher for employment would have been generated before employment.

15-38.2-02 provides that the teacher may submit a written notation regarding any material and the same must be attached to the file copy of the material in question. The committee had a little bit of fun contemplating the concept of written notations versus oral notations or printed notations? More seriously, though, the committee noted that the section didn't state to whom the notation was to be addressed or to whom it was to be submitted and likewise, it didn't indicate who would attach the notation to the file copy.

Consequently, in the rewrite, the committee provided that the teacher may present to the school district superintendent a written response to any document in the teacher's file. A teacher

employed by a state institution would present the written response to the institution's administrator. Once the superintendent or the administrator receives the written response, that individual is to place it in the teacher's file.

Present section **15-38.2-03** states if a teacher believes that any material other that the formal evaluations, is placed in the teacher's file in error or is otherwise inappropriate, the teacher may seek review by the school administration regarding the placement of the material in the file and the school administration must grant the review. If the teacher is dissatisfied with the result of the administration's review, the teacher is entitled to, on request, receive a formal review before the school board.

The committee did a little bit of reworking here.

Present law provides for the first review by school administration and then by the school board. Again, the phrase school administration is not exactly clear. Do we mean the school district superintendent or the school principal?

The committee took testimony and determined that if a teacher who is employed by a school district has a problem with something in the teacher's file, the teacher should ask that the school principal review the matter. The next level is a review by the school district superintendent, and finally, the teacher may request a review by the school board.

A teacher employed by a state institution can ask his institution's administrator for a review of

the material.

Present section **15-38.2-04** like section 15.1-17-04 of the rewrite, requires that a teacher be notified if a complaint is going to be placed in the teacher's file.

Present section **15-38.2-06** states that it is a class B misdemeanor for any person in any public school district in this state or in any educational institution supported by public funds to maintain a secret personnel file concerning any teacher or teachers to which said teacher or teachers do not have access as provided in this chapter . Present law is just a little bit broad and so the committee tightened up the concept.

When we make it a class B misdemeanor for any person in any school district to maintain a secret personnel file, we are in fact referencing people residing within the borders of the school district.

The committee therefore provided that it is a class B misdemeanor for any individual employed by a school district or a state supported institution that provides elementary and secondary education to its students to maintain documents about a teacher, unless the teacher as access to the documents. If you'll note, the committee dropped the reference to a secret personnel file. If a teacher knows about the file, it is not a "secret" file. What the section was trying to ensure was access to the material.

TEACHER PERSONNEL ISSUES

15-38.2-01. Teacher's right of review of personnel file established. Every teacher employed in a school district or educational institution supported by public funds in this state has the right to review the contents of his personnel file originating after original employment.

15-38.2-02. Placement of material in personnel file. The teacher may submit a written notation regarding any material and the same must be attached to the file copy of the material in question.

15-38.2-03. Right to object to material in file. If a teacher believes that any material, except the formal evaluations required under sections 15-47-27 and 15-47-38, placed in the teacher's file is inappropriate or in error, he or she may seek review by the school administration of the placement of such material in the file and the school administration must grant the review. If the teacher is dissatisfied with the result of the administration's review, the teacher is entitled to, on request, receive a formal review before the school board regarding the placement of the material in the file.

15-38.2-04. Complaints against teacher. Any complaint made against a teacher or person for whom the teacher is administratively responsible, by any parent, student, or other person, must promptly be called to the attention of the teacher if said complaint is to be placed in the teacher's personnel file.

15-38.2-05. Request for reproduction of materials in personnel file. Upon written request, the teacher must be furnished a reproduction of any material in his personnel file excluding those references and information given at the time he was being evaluated for employment. The teacher shall pay for the cost of such reproduction.

15-38.2-06. No secret files maintained - Penalty. It must be deemed to be a class B misdemeanor for any person in any public school district in this state or in any educational institution supported by public funds to maintain a secret personnel file concerning any teacher or teachers to which said teacher or teachers do not have access as provided in this chapter.

L. Anita Thomas
02/13/01 05:31 PM

To: H Edu NDLA/NDLC/NoDak@NoDak
cc:
Subject: 15.1-18, 21, 27, 28, 29, 30, and 31

Lisa - Here's the testimony for February 13 and 14.
A.

15.1-18

TEACHER QUALIFICATIONS -- 15.1-18

TESTIMONY

15.1-18-01 This section begins the teacher qualification chapter with reference to an optional license. In 1999, the legislative assembly had directed the ESPB to develop and implement an optional early childhood education teaching license. The enacting legislation, like the rewrite, provides that this license may be used in nonparental settings, such as early childhood programs, preschool programs, and head start programs.

15.1-18-02 This section sets forth the specific requirements that must be met for an individual to teach kindergarten, to teach any grade from one through eight, to teach any grade from 5 through eight, or to teach grade seven or eight.

The committee didn't make any substantive changes, but we did organize the section for better readability.

A kindergarten teacher must have a teaching license and a kindergarten endorsement or demonstrate to the ESPB that the individual will obtain the endorsement within two years.

An individual wishing to teach any grade from 1-8 must have a major or a minor in elementary education or an endorsement in elementary education. Again, the individual can teach for two years at this level, during which time the individual is expected to work toward the endorsement.

An individual wishing to teach any grade from 5-8 must have a major in middle school education or an endorsement in middle school. Again, the individual is given two years to obtain the endorsement.

An individual wishing to teach grade 7 or 8 must have a major or a minor in the assigned course area or field.

15.1-18-03 This section sets forth the requirements for a high school teacher. This individual must have a major or a minor in the course area or field being taught or must have a minor equivalency endorsement issued by the ESPB. Neither the present law nor the rewrite offers any details as to what is sufficient for a minor equivalency endorsement.

15.1-18-04 This section sets forth the legal authority and status that is to be granted to student teachers and to eminence credentialed teachers. They are granted the same status and authority as licensed teachers and for purposes of school district liability insurance coverage, they are

deemed to be employees of the school district.

TEACHER QUALIFICATIONS
PRESENT LAW

15-41-25. High schools - Teacher qualification. Except as provided in subsection 21 of section 15.1-09-33, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 must have a valid professional teaching license and must have a major or minor or a minor equivalency endorsement issued by the education standards and practices board in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction. However, a teacher granted a license to teach in the disciplines of trade, industrial, technical, or health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which the teacher is employed does not affect the approval of the employing school district. Any minor equivalency previously granted by the superintendent of public instruction remains valid.

15-47-42. Status and authority of student and eminence-credentialed teachers. Any student teacher or eminence-credentialed teacher hired or assigned in this capacity must be given the same legal authority and status as if the student or eminence-credentialed teacher were a licensed teacher employed by the school district. The authority of the student or eminence-credentialed teacher extends to all aspects of student management or discipline, the handling of confidential student records, and to all other aspects of legal authority granted to licensed teachers in the state. The student or eminence-credentialed teacher must be deemed a licensed teacher employed by the district with respect to acts performed by the student or eminence-credentialed teacher at the direction, suggestion, or consent of the district employees under whose supervision and control the student or eminence-credentialed teacher performs duties, whether or not the duties are performed entirely in the presence of district employees assigned to supervise the student or eminence-credentialed teacher, and must be deemed an employee of the school district within the meaning of sections 32-12.1-05 and 39-01-08 relating to liability insurance carried by political subdivisions. For purposes of this section, "eminence-credentialed teacher" means a person providing teaching services in accordance with subsection 21 of section 15.1-09-33.

15-47-46. Teacher qualification - Kindergarten through grade eight - Exceptions.

1. Except as provided in subsections 2 through 4 or subsection 21 of section 15.1-09-33, all teachers teaching kindergarten through grade eight must hold a professional teaching license and:
   a. A minimum of a kindergarten endorsement to teach kindergarten;
   b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or
   c. An endorsement in kindergarten or elementary education from the education standards and practices board attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by

completing teaching requirements and a minimum number of credit hours in courses prescribed by the education standards and practices board.

2. A teacher who holds a professional teaching license and a major or an endorsement in middle school education attained prior to, or within two years of, the assignment to teach middle school may teach grades five through eight.

3. A teacher who holds a professional teaching license and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.

4. A teacher who holds a professional teaching license from the education standards and practices board and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, business education, and computer education in kindergarten through grade eight.

15-47-52. Early childhood education teaching certificate. The education standards and practices board shall develop and implement an optional early childhood education teaching certificate. The optional early childhood education teaching certificate may be used in nonparental settings such as early childhood programs, preschool programs, and head start programs.

TESTIMONY TUESDAY JANUARY 16, 2001
15.1-20 COMPULSORY ATTENDANCE

The present law regarding compulsory school attendance -- 15-34.1-00.1 begins with a set of definitions. The committee decided that those definitions were pretty self explanatory and were prepared to omit them all. At the suggestion of one of the interest groups, the committee kept the definition of home education -- We'll address that decision when we get to it.

Unlike yesterday's diatribe, this chapter has only four sections.

15.1-20-01 is a shortened version of 15-34.1-01. It provides simply that any person who has responsibility for a child between the ages of 7 and 16 must ensure that the child attends a public school unless the child is exempted under the next section.

15.1-20-02 sets forth the exemptions.

15.1-20

The child can be enrolled in a nonpublic school

If the child has completed high school, regardless of age, there is no further requirement to attend.

If the child is necessary to the support of the child's family, the child may be exempted from having to attend school.

If the child is found to have a disability that renders attendance or participation in a regular or special education program in expedient or impracticable, the child may be exempt.

Finally, an exemption is provided if the child is receiving home education.

The committee clarified present law and provided that the school board must make the determination regarding an exemption. The board's decision is appealable to the district court.

15.1-20-03. This section provides that every school board member, school superintendent, principal, truant officer, teacher, and county superintendent is charged with enforcing the compulsory attendance laws. Those individuals are given the authority to investigate any alleged violation of the compulsory attendance provisions.

One thing that the committee did do is omit the provision in current section 15-34.1-04 that states: "The school board of any school district having more than

five hundred inhabitants may employ a truant officer to assist in the enforcement of the compulsory school attendance provisions."

The committee was told that truant officers were not employed anymore and that school districts already had the authority to hire personnel as they saw fit.

The last thing in this chapter is the definition of home education. The rewrite merely cleans up existing language and provides that it is an educational program for a child provided in accordance with chapter 15.1-23 by the child's parent in the child's home

COMPULORY SCHOOL ATTENDANCE
(PRESENT LAW)

15-34.1-00.1. Definitions.
As used in this chapter, unless the context requires otherwise:
1. "Home education" means an educational program for a child, based in the child's home and supervised by the child's parent or parents wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.
2. "Nonpublic school" means an educational institution which students attend in lieu of public school attendance wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.
3. "Parent" includes a legal guardian.
4. "School" means a public school supported, in whole or in part, by state funds wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

15-34.1-01. Compulsory attendance.
Every parent, guardian, or other person who resides within any school district, or who resides upon any government base or installation without any school district, and has control over any educable child of an age of seven years to sixteen years who does not fall under the provisions of section 15-34.1-02 or 15-34.1-03, shall send or take such child to a public school each year during the entire time such school is in session.

15-34.1-02. Compulsory attendance - Deaf, blind, or mentally deficient persons.
Every parent, guardian, or other person who has control over any deaf child of at least four years of age, or control over any blind, or mentally deficient child of an age of seven years to twenty years, shall send the child, if deaf, to the school for the deaf at Devils Lake or other adequate institution for the entire school year, unless excused by the superintendent of that institution; and if blind, to the school for the blind at Grand Forks or other adequate institution for the entire school year, unless excused by the superintendent of said institution; and if mentally deficient, to the Grafton state school or other adequate institution for the entire school year, unless excused by the superintendent of that institution. Adequate institution means any school, public or private, specializing in the training of handicapped children as stated.

15-34.1-03. Compulsory attendance - Exceptions.
The parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law, that one of the following reasons exists:
1. That the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. Except as provided in section 15-41-27, no such school shall be approved unless the teachers therein are licensed in the state of North Dakota in accordance with section 15-41-25 and chapter

15-36, the subjects offered are in accordance with sections 15-38-07, 15-41-06, and 15-41-24, and such school is in compliance with all municipal and state health, fire, and safety laws.
2. That the child has acquired the branches of learning taught in the public schools and has completed high school.
3. That the child actually is necessary to the support of the child's family, which shall be a question of fact to be determined by the governing board of the district with the approval of the county superintendent of schools, and such determination shall be subject to review by the superintendent of public instruction on appeal.
4. That the child has been identified as handicapped pursuant to the procedure used by the superintendent of public instruction to identify a student as handicapped under subsection 3 of section 15-59-01 and that the handicap renders attendance or participation in the regular or special education program inexpedient or impracticable. The determination that the handicap renders attendance or participation inexpedient or impracticable must be shown by a declaration of a multidisciplinary team which includes the director of special education of the special education unit of which the school district of residence is a member, the school superintendent of the child's district of residence, the child's classroom teacher, the child's physician, and the child's parent or guardian.
5. That the child, not including a child with developmental disabilities as defined by subsection 1 of section 25-01.2-01, is receiving home education in accordance with the provisions of this chapter.

15-34.1-04. Prosecution for violation of compulsory attendance law - Officers charged with enforcement.
Every school board member, school superintendent, principal, truant officer, and teacher in any school system in this state, and every county superintendent of schools shall be charged with the enforcement of the provisions of this chapter relating to compulsory school attendance. Such enforcement shall extend to all children who are offered school facilities by the district, regardless of whether or not they actually reside within the district. Such persons shall inquire into all cases of alleged violation of such provisions and shall obtain from any parent, guardian, or other person having custody of any child of school age not attending school in accordance with the requirements of this chapter the reason, if any, for such absence. In school districts not having a school superintendent, the county superintendent of schools shall be notified of any violation of the compulsory school attendance law, and such county superintendent shall report the fact of the violation to the state's attorney of the county. In school districts which have a school superintendent, the school superintendent or principal shall report to the state's attorney of the county the facts in connection with any violation of the compulsory attendance law. The state's attorney may petition a court, pursuant to chapter 27-20, for a determination as to whether a child is educationally deprived. The school board of any school district having more than five hundred inhabitants may employ a truant officer to assist in the enforcement of the compulsory school attendance provisions.

Testimony on HB 1045 Cam Leedahl 645-2578

Mr. Chairman and members of the committee:

I am Cam Leedahl from Leonard. I am a home educator. I am supportive of this rewrite of the home education law.

HB 1045 clarifies confusing sections of the law. The desire is for uniformity throughout the state in regards to the interpretation of the law, and I think clearing up the vague language of the statute will promote everyone to have the same understanding. This will especially be helpful for administrators new to the home education law.

However, there is one more vague area of the law that I failed to bring to the notice of the Interim committee, that I respectfully ask this committee to consider clarifying. It has to do with the score of the standardized achievement test applied to monitored programs.

I will try to briefly explain.

There are two different achievement testing requirements. In one testing requirement, which applies to all students, the current law clearly states it is the "**basic** composite score" that is to be used to demonstrate reasonable academic progress.

In the other testing requirement, which applies only to the monitored situation, the current law vaguely states it is "**a** composite score" that is to be used to determine whether monitoring may cease. The current law does not state *which* composite score.

Due to the fact that the other testing situation specifically states the **basic** composite score, for which the students take the *basic battery* of tests, the practice for years in many school districts has been to also use the **basic** composite score for the monitored situation and accordingly administer the *basic battery*.

The problem comes when the school administrator new to reading the home education law reaches a different conclusion from what has been generally understood and practiced in other districts. If the school district decides the child in the monitored program needs to take the *complete battery* of tests for the *complete* composite score result, the parent protests, having expected the home education law would be applied uniformly. Legal intervention on behalf of the parent has always taken care of the problem. However, the conflict can be unpleasant for both sides, as it has been this month in several school districts.

Simply inserting the word basic would clarify the statute and prevent those misunderstandings. Then parents and administrators can use their time and energy towards their students, rather than for having conflicts.

Along with this testimony is the wording for the proposed amendment, as well as page 50 of HB 1045 indicating where the word basic would be inserted.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1045

Page 50, line 30, after the second "a" insert "basic"

Renumber accordingly

c. The child's grade level;

d. The name and address of the parent who will supervise the home education;

e. The qualifications of the parent who will supervise the home education;

f. Any public school courses in which the child intends to participate and the school district offering the courses; and

g. Any extracurricular activities in which the child intends to participate and the school district or approved nonpublic school offering the activities.

2. The statement must be accompanied by a copy of the child's immunization record and proof of the child's identity as required by section 54-23.2-04.2.

15.1-23-03. Home education - Parental qualifications. A parent may supervise home education if the parent:

1. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Holds a baccalaureate degree;
3. Has met or exceeded the cutoff score of a national teacher exam given in this state or in any other state if this state does not offer such a test; or
4. Meets the requirements of section 15.1-23-06.

15.1-23-04. Home education - Required subjects - Instructional time. A parent supervising home education shall include instruction in those subjects required by law to be taught to public school students. The instruction must have a duration of at least four hours each day for a minimum of one hundred seventy-five days each year.

15.1-23-05. Home education - Academic records. A parent supervising home education shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. If the child transfers to a public school district, the parent shall furnish the record, upon request, to the school district superintendent or other administrator.

15.1-23-06. Home education - Required monitoring of progress. A parent who has a high school diploma or a general education development certificate may supervise home education but must be monitored in accordance with section 15.1-23-07 for the first two years. If a child receiving home education obtains a basic composite standardized achievement test score below the fiftieth percentile nationally, the parent must be monitored for at least one additional

HOME EDUCATION

15-34.1-06. Home education.

1. Home education is an educational program for a child. It is based in the child's home and supervised by the child's parent or parents.
2. a. A parent is qualified to supervise a program of home education if the parent is licensed to teach in North Dakota; has a baccalaureate degree; or has met or exceeded the cutoff score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test.

   b. A parent who has a high school diploma or a general education development certificate is qualified to supervise home education but must be monitored by a licensed teacher during the first two years the parent supervises home education or until the child being instructed completes the third grade, whichever is later. If the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile. If testing is not required by section 15-34.1-07 in either of the first two years of monitoring, the time of monitoring may not be extended except upon the mutual consent of the parent and the monitor. Once a parent has completed the monitoring requirements for one child, the parent may not be monitored with respect to other children being educated at home.
3. Home education must include instruction in those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24. Instruction must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year.
4. Every parent supervising home education shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise home education for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least fourteen days prior to the beginning of home education or within fourteen days of establishing the child's residency within the district. The statement must include:
   a. The names and addresses of the parent who will supervise and the child who will receive home education;
   b. The date of birth and grade level of each child receiving home education;
   c. The intention of the parent to supervise home education;
   d. The qualifications of the parent who will supervise home education;
   e. A list of courses in which the child intends to enroll and the public school district offering the courses;
   f. A list of extracurricular activities in which the child intends to participate and the public school district or approved nonpublic school offering the activities;
   g. Proof of an immunization record as it relates to section 23-07-16; and

h. Proof of identity as it relates to section 54-23.2-04.2.

15-34.1-07. Home education - Quality assurance.

The following minimum indices of quality education are established:

1. A standardized achievement test used by the public school in the school district in which the parent resides or, if requested by the parent, a nationally normed standardized achievement test must be given to each child receiving home education in grades three, four, six, eight, and eleven. The test must be given in the child's learning environment or, at the option of the child's parent, in the public school and must be administered by a licensed teacher. The cost of the test is the responsibility of the local school district, if it is a test used by the district. The cost of administering the test is the responsibility of the local school if it is district administered by a licensed teacher employed by the district. The cost of the test is the responsibility of the parent if the test requested is not used by the local school district and the cost of having the test administered is the responsibility of the parent if it is administered by a licensed teacher secured by the parent. Results of such testing must be filed with the local public school superintendent. If the parent resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the parent's residence.
2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem by a multidisciplinary assessment team according to guidelines established by the superintendent of public instruction. If the multidisciplinary assessment team evaluation determines that the child is not disabled according to the eligibility criteria established by the superintendent of public instruction, the parent providing instruction may continue to conduct home education, upon filing with the superintendent of the public school district, or county superintendent if there is no local superintendent, a plan of remediation to address the academic deficiencies of the child. An annual determination of reasonable academic progress conducted by the local school district superintendent must be based on the child's plan of remediation. If such a plan is not filed, the parent is deemed to be in violation of the compulsory attendance requirement of section 15-34.1-01 and the child no longer qualifies for home education. Such plan of remediation must be developed in consultation with and with the approval of a state-licensed teacher selected by the parent. Costs associated with the consultation are the responsibility of the parent. The plan of remediation must remain in effect until such time as the child demonstrates reasonable academic progress by achieving a basic composite score on a standardized achievement test at or above the thirtieth percentile or a score indicating one year of academic progress as compared to a score on a test from the previous school year. The test may be one required by this section or one administered in an additional grade level, at the option of the parent. The plan of remediation may be amended from time to time in consultation with and with the approval of the state-licensed teacher in order to accommodate the academic needs of the child. If a plan of remediation is no longer in effect and the child fails to demonstrate reasonable academic progress on a subsequent test required by this section, a plan of remediation must again be developed and instituted. If the evaluation of the multidisciplinary

assessment team determines that the child is disabled, but does not have a developmental disability, according to the eligibility criteria established by the superintendent of public instruction, that the child requires specially designed instruction due to the disability, and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home education, upon filing with the superintendent of the public school district an individualized education program plan, developed privately or through the local school district, indicating that the child's need for special education is being appropriately addressed by persons qualified to provide special education or related services. An annual determination of reasonable academic progress conducted by the local school district superintendent must be based on the child's individualized education plan. If such a plan is not filed, the parent is deemed to be in violation of the compulsory attendance requirements of section 15-34.1-01, and the child no longer qualifies for home education. A child who is once evaluated by a multidisciplinary team need not be reevaluated for a potential learning problem upon scoring below the thirtieth percentile on a subsequent standardized achievement test unless the reevaluation is performed pursuant to the provision of special education and related services.

3. Any licensed teacher monitoring home education shall spend, at a minimum, an average of one hour per week in contact with the first student and in conjunction with the parent. With two or more children under supervision, the teacher shall spend, at a minimum, an additional one-half hour per month for each child under the teacher's supervision who is receiving home education. The time may be reduced proportionately if the child is in attendance in a public school or an approved nonpublic school. The teacher shall evaluate the student's progress and report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence. If a monitor is required by section 15-34.1-06, the school district shall, at the request of the parent, provide the monitor at school district expense. A monitor retained by the parent must be compensated by the parent.

15-34.1-08. State aid. For purposes of allocating foundation aid and other state assistance to local school districts, a student receiving home education is deemed enrolled in the school district in which the student resides if the student is monitored by a licensed teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the per student payment provided in section 15-40.1-06 times the appropriate factor in section 15-40.1-07 or 15-40.1-08 for each such student. When a student is supervised in home education and is enrolled in classes in the public school, proportionate payments must be made as provided in sections 15-40.1-07 and 15-40.1-08. The total amount may not exceed the equivalent of one full foundation aid payment.

15-34.1-09. Monitoring or administration by a licensed teacher.
Any licensed teacher who monitors a child receiving home education or who administers a standardized achievement test to a child receiving home education must notify the child's public school district of residence that the teacher is providing such monitoring or administration. The

parent of any child receiving home education who is monitored by or taking a test administered by a licensed teacher not employed by a public school district is responsible for the costs of the monitoring or test administration.

15-34.1-10. Home education - Liability. No state agency, public school district, or county superintendent may be found liable for accepting as correct the information on the statement of intent or for any damages resulting from the parent's failure to educate the child.

15-34.1-11.1. High school diplomas - Issuance to home education students.

1. A high school diploma may be issued to a student by the student's school district of residence, a state-approved nonpublic high school, or the North Dakota division of independent study if the student, through home education, has met the issuing entity's requirements for high school graduation and the student's parent or legal guardian provides the issuing entity with a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the student's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued to a student by the student's school district of residence, a state-approved nonpublic high school, or the North Dakota division of independent study if the student, through home education, has completed at least seventeen units of high school coursework from the minimum required curriculum offerings established for public and private schools in section 15-41-24 and the student's parent or legal guardian provides the issuing entity with a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the student's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the student has received home education.
3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the student has met the applicable requirements for high school graduation.

15-34.1-12. Children with autism - Home education. Notwithstanding any other law, a parent may provide home education to a developmentally disabled child with autism if:

1. The child has been determined to be autistic by a licensed psychologist;
2. The child's parent qualifies to provide home education under section 15-34.1-06;
3. The child's parent files with the superintendent of the child's school district of residence:
   a. A notice that the child will receive home education;
   b. A copy of the child's diagnosis of autism prepared and attested to by a licensed psychologist; and
   c. An individualized education program developed and followed by the child's school district of residence and the child's parent; or, after providing written notice to the superintendent of the child's school district of residence, a substitute individualized education program, developed and followed, according to section 15-34.1-12.1, by an individualized education program team selected by and compensated by the child's parent.

15-34.1-12.1. Children with autism - Home education - Progress reports.

1. On or before November first, February first, and May first of each school year, a parent providing home education to an autistic child under section 15-34.1-12 shall file with the superintendent of the child's school district of residence progress reports prepared by the individualized education program team selected under section 15-34.1-12. If at any time the individualized education program team agrees that the child is not benefiting from home education, the team shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team appointed by the superintendent of the child's 1 school district of residence.
2. The superintendent of the child's school district of residence shall forward copies of all documentation required by this section to the superintendent of public instruction.

15-34.1-13. Home education - Participation in extracurricular activities.

1. A child receiving home education may participate in extracurricular activities either:
   a. Under the auspices of the child's school district of residence; or
   b. Under the auspices of an approved nonpublic school, if permitted by the administrator of the school.
2. For purposes of this section, a child participating under the auspices of the child's school district of residence is subject to the same standards for participation in extracurricular activities as those required of full-time students enrolled in the district.
3. For purposes of this section, a child participating under the auspices of an approved nonpublic school is subject to the same standards for participation in extracurricular activities as those required of full-time students enrolled in the school.
4. Once a child's parent has selected the public school district or the approved nonpublic school in which the child will participate for purposes of extracurricular activities, and has provided notification of the selection through the statement required by subsection 4 of section 15-34.1-06, the child is subject to the transfer rules as provided in the constitution and bylaws of the North Dakota high school activities association.

COURSES AND CURRICULA -- 15.1-21

TESTIMONY

In at least chapters of the North Dakota Century Code, we presently list courses and subject matter that must be offered to students. With very few exceptions, the law is not particularly clear on when, where, and how those courses and subjects should be taught. Over time, the terminology has changed and as tends to happen, the law has not kept pace with the terminology changes.

What the committee tried to do here was to organize and sort out the directives, while being respectful of the original rationale for the verbiage.

If you'll look at 15-38-07, which is at the bottom of the handout entitled Courses and Curriculum (present law), you'll see that the public and private schools are to teach spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, and elements of agriculture.

Physiology and hygiene also must be taught and teachers must give special and thorough instruction concerning the nature of alcoholic drinks and narcotics and their effect upon the human system, give simple lessons in the nature, treatment, and prevention of tuberculosis and other contagious and infectious diseases, and give a specific number of hygiene lessons during the year.

In the rewrite, the committee referenced the provision of English Language Arts and said that included reading, composition, creative writing, English grammar, and spelling.

The committee also referenced the provision of math and social studies, including the constitution, US history, geography, and government. Present law currently requires the study of geography, US history, and civil government. In a separate section, it also requires that there be regular courses of instruction in the Constitution of the United States, beginning not later than the opening of the 8th grade and continuing in the high school, to an extent to be determined by the superintendent of public instruction.

Getting back to proposed section 15.1-21-01, subsection 4 requires the study of science, including agriculture. Present law requires nature study and the elements of agriculture.

Physical education is listed in section 15.1-21-01. Presently, it has its own section.

And finally, 15.1-21-01, requires that health be taught. This is to specifically include physiology, hygiene, disease control, and the nature and effects of alcohol, tobacco, and narcotics. Teaching about tobacco was an addition by the interim committee. Similarly, since tuberculosis isn't that much of a concern these days, the committee opted to use the more generic reference to disease control as a topic for students.

15.1-21

15.1-21-02. This section parallels present section 15-41-24. Present law begins by providing that "the following units of study must be made available to all students in each public and private high school in this state at least once during each four-year period . . . ." Although not intended to do so, this language would allow a school district to hire an English teacher for the provision of grades 9, 10, 11, and 12 English in one school year and then not have to employ an English teacher for the next three years.

The committee therefore rephrased this section so that each public and nonpublic school must make available to each student the requisite units of English, math, science, social studies, health and physical education and music. The section, like present law, also requires school districts to make available at least six additional units from a list of courses. The committee didn't change the courses, but the committee did update the terminology. Home economics is not family and consumer sciences, office education is now business and office technology, health occupations is now health careers.

15.1-21-03. This is a separate section defining a unit. We have it in present law, but it is buried toward the end of section 15-41-06. Giving it its own section here made sense, especially since these provisions are full of references to units.

Present law provides that "all unit courses must be taught a minimum of forty minutes a day for at least one hundred eighty days, subject to the provisions of section 15-47-33, except that all natural science courses must exceed forty minutes to such an extent as may be determined by the superintendent of public instruction."

What you have in section 15.1-21-03 is a slight variation. The committee took the accreditation minutes and they are slightly higher.

Present law requires 40 minutes x 173 days. That's 6,920 minutes or 115.3 hours.
The rewrite requires 120 hours of instruction. So, instead of sitting in a class for 40 minutes a day, students must sit in a class for 41.6 minutes.

15.1-21-04 is a clean up of another portion of present section 15-41-06. This time, the committee addressed seniors not needing a full course load for graduation. If a senior is to take less than a full load, the district must have a plan in place that sets forth the criteria under which a student can enroll part-time and the plan must have been approved by the superintendent of public instruction.

Present law contains the following sentence: "The work which is done by pupils in any school which does not conform to the requirements contained in this section may not be accredited by the superintendent of public instruction through state high school examinations or otherwise." The committee wasn't certain what this sentence meant and it therefore did not make it into the rewrite.

15.1-21-05 allows for the development of an Indian education curriculum. This section was

adopted in 1977 and placed in the chapter relating to the Superintendent of Public Instruction. When the 1997-98 interim education services committee considered the superintendent's chapter, the committee decided that this section should be placed in the courses and curriculum chapter. Since that chapter didn't exist at the time, there was a understanding that the section would be repealed for two years but then recreated and placed in the appropriate chapter -- this time. Nothing new was added. It merely allows the superintendent to develop an Indian education curriculum.

The rewrite also maintained a couple of sections that were enacted in 1997 amid considerable debate. 15.1-21-06 clarifies that a school district may choose not to participate in Goals 2000 and section 15.1-21-07 provides that a student's parent must give written consent before the student may be allowed to participate in any programs or projects offered under the federal school to work opportunities act.

While the committee opted to keep those two sections, there were a few others that were not recommended for continued inclusion in the code.

15-38-08. We already mentioned this section. This was a free standing section that required the study of the Constitution. That was melded into proposed section 15.1-21-01, which lists subjects in which students should have instruction.

15-38-10 . This section states: "Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, international peace, respect for honest labor, obedience to parents, and deference to old age, must be given by each teacher in the public schools." The committee viewed this as something that does not fit the category of a curricular requirement such as math or science. They treated it as a legislative intent section. While not disagreeing with it, they found that from a clinical perspective, it was not appropriately placed in the chapter.

15-38-11. This section requires that oral instruction be given in the humane treatment of animals Again, this was enacted in 1905 and not amended since 1911. Again, the committee recognized its importance but did not view it as a curricular requirement akin to math or science.

(C.L. is compiled laws -- a recodification).

15-38-12. This is the last section that was omitted. It provides that "at the option of the teacher, the Bible may be read in school for not to exceed ten minutes daily, but no sectarian comment may be made thereon. No pupil may be required to read it or to be present in the schoolroom during the reading thereof contrary to the wishes of his parents or guardians or other person having him in charge." Again, it was enacted in 1890 and not amended since 1911. Even though the provision is optional, if a teacher chose to act on it, a school district would likely have some serious legal issues regarding the separation of church and state. It was also pointed out that if each teacher set aside 10 minutes a day for bible reading, a high school student could very well have nearly 1 1/2 hours of each school day spent in this pursuit.

COURSES AND CURRICULUM
(PRESENT LAW)

15-29-08.5. Goals 2000 - Participation voluntary. The school board of any school district may, on behalf of the district it represents, choose to participate or not to participate in Goals 2000 Educate America Act [Pub. L. 103-227; 108 Stat. 125; 20 U.S.C. 5801 et seq.]. Any school board that chooses to participate and directly or indirectly receives federal funds for its participation shall expend such funds in the manner it determines best meets the goal of educational enhancement in the school district, in accordance with the district's locally developed goals 2000 educational improvement application plan. The superintendent of public instruction may not impose any financial penalty or other sanction on a school or school district if the school board chooses, at any time, to terminate participation in goals 2000.

15-29-08.6. School-to-work - Student participation voluntary. Before any elementary or secondary school student may participate in any course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994, [Pub. L. 103-239; 108 Stat. 568; 20 U.S.C. 2394 et seq.], the student's school principal shall obtain the written consent of the student's parent or legal guardian. Participation by a student is voluntary and may not be deemed a condition of graduation. Neither school personnel, school district personnel, nor the superintendent of public instruction may impose any academic penalties or any other sanctions on a student for failure to participate. A student's participation in a course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 is subject to all state and federal child labor laws.

15-29-09.1 (Repealed) Indian education curriculum. The superintendent of public instruction may contract for services to develop an Indian education curriculum to be implemented within the minimum curriculum requirements for elementary and secondary schools of the state. The superintendent shall provide for continuing research and evaluation and for in-service training necessary to implement such a curriculum.

15-38-07. Required subjects in all schools. The following subjects must be taught in all public and private schools to pupils who are sufficiently advanced to pursue the same: spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, and elements of agriculture. Physiology and hygiene also must be taught, and in teaching such subject, the teacher shall:

1. Give special and thorough instruction concerning the nature of alcoholic drinks and narcotics and their effect upon the human system.
2. Give simple lessons in the nature, treatment, and prevention of tuberculosis and other contagious and infectious diseases.

3. Give, to all pupils below the high school and above the third year of schoolwork, not less than four lessons in hygiene each week for ten weeks of each school year from textbooks adapted to the grade of the pupils.
4. Give, to all pupils in the three lowest primary school years, not less than three oral lessons on hygiene each week for ten weeks of each school year, using textbooks adapted to the grade of the pupils as guides or standards for such instruction.

15-38-08. Study of Constitution of the United States. In all public and private schools in the state, regular courses of instruction in the Constitution of the United States must be given, beginning not later than the opening of the eighth grade and continuing in the high school, to an extent to be determined by the superintendent of public instruction.

15-38-09. Physical education to be taught in all schools. Physical education must be taught as a regular subject to all pupils in all departments of the public schools and offered in all educational institutions supported wholly or in part by money from the state. All school boards and boards of educational institutions receiving money from the state shall make provision for instruction in all the schools and institutions under their respective jurisdictions and shall adopt such methods as will adapt progressive physical exercises to the development, health, and discipline of the pupils in the various grades and classes of such schools and institutions.

15-38-10. Moral instruction. Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, international peace, respect for honest labor, obedience to parents, and deference to old age, must be given by each teacher in the public schools.

15-38-11. Teaching humane treatment of animals. Oral instruction in the humane treatment of animals must be given in each public school.

15-38-12. Reading of Bible optional. The Bible may not be deemed a sectarian book. At the option of the teacher, it may be read in school for not to exceed ten minutes daily, but no sectarian comment may be made thereon. No pupil may be required to read it or to be present in the schoolroom during the reading thereof contrary to the wishes of his parents or guardians or other person having him in charge.

15-41-06. High school courses - Requirements - Credits - Alternative curriculum plans. Four units of high school work must be considered the minimum number of any year from the

ninth grade through the twelfth grade. However, students in their fourth year of standard high school coursework may be enrolled in fewer than four units if the students require fewer than four units for graduation and if the school board of their school district of attendance has adopted an alternative high school senior curriculum plan. An alternative high school senior curriculum plan may be adopted by board action, and must contain specifically described criteria under which high school seniors may be enrolled in fewer than four units. An alternative high school curriculum plan of coursework becomes effective only following formal approval by the superintendent of public instruction, and no student is eligible to be enrolled in fewer than four units of coursework in his or her twelfth-grade year unless that student can graduate during that same school year while carrying fewer than four units. A school board is not obligated to adopt an alternative high school senior curriculum plan, but once having adopted such a plan, a district must permit high school seniors satisfying criteria set forth in the plan to be enrolled in fewer than four units in accordance with this section. All unit courses must be taught a minimum of forty minutes a day for at least one hundred eighty days, subject to the provisions of section 15-47-33, except that all natural science courses must exceed forty minutes to such an extent as may be determined by the superintendent of public instruction. In all high schools and in all schools maintaining any of the grades from the ninth to the twelfth and doing high school work, it must be made possible for each grade to complete four units of work each year. The work which is done by pupils in any school which does not conform to the requirements contained in this section may not be accredited by the superintendent of public instruction through state high school examinations or otherwise.

15-41-24. High schools - Minimum curriculum. The following units of study must be made available to all students in each public and private high school in this state at least once during each four-year period, and each private high school shall comply with the requirements of this section if such high school is to receive approval by the department of public instruction:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units. Effective July 1, 1994, social studies must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units. For purposes of this subsection vocational education includes home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by the state board for vocational and technical education.

RETAKE

DATRUE

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5. Health and physical education, one unit.
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Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by the state board for vocational and technical education.

15-41-28. American sign language - High school elective. American sign language may be offered as an elective at the high school level, in accordance with rules adopted by the superintendent of public instruction.

KINDERGARTENS
(PRESENT LAW)

now 15.1-22

15.1-22

15-45-01. Establishing kindergartens - Election on mill levy. The school board of any school district may, upon its own motion, establish free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term. A school board which establishes free kindergartens may levy a tax pursuant to subdivision p of subsection 1 of section 57-15-14.2. On a petition signed by qualified electors of the school district comprising at least five percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, but in no case less than twenty-five qualified electors, the school board must submit the question of establishing a kindergarten program at the next annual or special school election. The question must be approved by the qualified electors of the district by the respective margins of electorate approval as provided for in section 57-15-14.

15-45-02. Kindergarten curriculum - Approval requirements. All public kindergartens must comply with the following requirements:

1. All kindergarten teachers must hold valid licenses issued under rules adopted by the education standards and practices board as provided in chapter 15-36.
2. The governing body of each kindergarten shall submit to the superintendent of public instruction and must follow a curriculum providing developmentally appropriate skills in the areas identified in section 15-38-07 and promulgated under subsection 4 of section 15-29-08.
3. All kindergartens shall provide the equivalent of a minimum of thirty full days of instruction. The school board shall determine whether kindergarten shall be provided on a half-day or a full-day basis.
4. All kindergartens shall comply with all municipal and state health, fire, and safety laws.
5. No kindergarten may enroll a child who is not five years old by midnight August thirty-first of the year of enrollment, except a child who by reason of special talents or abilities as determined by a series of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the persons operating the kindergarten. A child who has been enrolled in another approved kindergarten program may be enrolled at a younger age. However, no child may start kindergarten in any year unless that child is five years old by the following January first.

Any person operating a private or parochial kindergarten may seek approval from the superintendent of public instruction and those programs must meet the requirements of this section in order to be approved. Only programs receiving approval from the superintendent of public instruction may be called approved kindergartens.

15-45-03. Accreditation rules. The superintendent of public instruction may adopt rules for the accreditation of all kindergartens operated in this state. All kindergartens that comply with these rules are accredited kindergartens.

15-45-04. Discontinuance of kindergartens. Kindergartens may be discontinued by resolution of the school board.

SCHOOL FINANCE -- 15.1-27

TESTIMONY

Like other chapters, this one too contained archaic and unclear language. The committee had to be particularly careful that in cleaning up the language, it didn't change what was commonly understood to be the intent of the language.

One change that the committee did make had to do with the statutory references to foundation aid. In the present law, the phrase "foundation aid" is used at times to refer to per student payments. At other times, it means per student and transportation aid payments. To be certain that there is minimal opportunity for misunderstanding, the committee elected to use the phrase "per s student aid" when that was intended and to use the phrase "per student and transportation aid" when that was appropriate.

15.1-27-01. The chapter begins by setting forth the schedule according to which the money is distributed. As with present law, 10 percent of the payments are distributed in July, August, September, and October. By November, the district's should have half of that to which they are entitled. In December, January, February, March, and April, the remaining amount owed is equally divided.

15.1-27

15.1-27-02. Here the committee engaged in a little bit of clean up. Presently, buried with the per student payments and the mill deducts in section 15-40.1-06, one can find reporting requirements. School districts must file their ADM report, their annual financial report, an enrollment report, and a personnel report. The superintendent may not send out any per student payments after October unless these reports are on file.

The next subsection of the present law provides that "no school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the DPI by December 15th. A literal reading would lead one to believe that if the certification arrives on the 16th of December, the school district would not receive its January payment.

The committee determined that this was never intended to be punitive, so the rewrite now provides that on or before December 15th, the certifications are to be on file. If they are not, the superintendent may not forward any state aid payments to the district until such time as the district files its certifications.

15.1-27-03. This section again takes language that was buried in section 15-40.1-06 and gives it its own section. It spells out how the cost of education is determined. Again, the committee tried to take language that was understood only by accountants and recraft it for a broader audience. The committee did not however make any changes to the method by which the cost of education is determined.

15.1-27-04. The interim committee decided that per student payments should have their own

section. The amounts listed in here are current payments. Assuming that this bill passes, whatever payment levels are agreed to by the legislative assembly will then be inserted in this section. The committee did make one minor change. Present law provides that the stated educational support per student is the basis for calculating grants-in-aid on a per student basis as provided in sections 15-40.1-07 and 15-40.1-08. That phraseology was deemed to be somewhat dated so the committee merely provided that the per student amount is the basis for calculating state payments to school districts, as provided in sections 15.1-27-06 and 07. This just means that the per student amount listed in this section is the number to which the weighting factors are applied.

15.1-27-05. Like per student payments, the mill deduct now has its own section. Again, if any change is made to the number of mills deducted, that too will be inserted.

15.1-27-06. This section virtually parallels present law. It sets forth the high school weighting factors. I need to stress one particular point for the record. Present law, in the same large section, also addresses proportionate payments for students attending nonpublic schools and provides that every high school district must receive at least as much in total payments as it would have received if it had the highest number of students in the next lower category.

These concepts have not been removed. They have instead been moved into a separate section -- 15.1-27-18.

15.1-27-07. This section sets forth the elementary school weighting factors.

15.1-27-08. Present law provides funding for schools that are unapproved and unaccredited.

With respect to unapproved schools, the interim committee determined that by law we require every school to be approved. The standards for approval are set forth in section 15.1-06-06 and they are that:

A school must : have licensed teachers
: offer all subjects required by law
: obey all local and state health, fire, and safety laws.

So, the committee decided that it made no sense to state in one section that every school must be approved and then in another section to provided $220 per student to unapproved schools. The committee therefore removed the requirement that unapproved schools be paid.

That left the issue of payment for unaccredited schools .

15.1-27-08 like present law provides for a per student payment during the first year a high school becomes unaccredited. No weighting factor is permitted. Thereafter, there is a $200 per student reduction each year.

15.1-27-09 like present law provides for a per student payment during the first year an elementary school becomes unaccredited. The weighting factor is part of the calculation here. If

the school remains unaccredited thereafter, there is a $200 per student reduction each year. The next several sections are supplemental or special payments.

15.1-27-10 requires portions of the special education appropriation to be distributed on a per student basis.

15.1-27-11 provides additional dollars to districts having a taxable valuation per student that is below the statewide average and having an educational expenditure per student that is below the statewide average cost of education.

15.1-27-12 provides additional dollars to school districts that provide services to students who have very limited English language skills.

15.1-27-13 ensures that schools receive per student payments for students who are engaged in active duty or other military training.

15.1-27-14 increases the weighting factors by 20 percent for students attending school out of state.

15.1-27-15 increases the weighting factor in the case of students who attend isolated schools

15.1-27-16 provides that cooperating districts receive, for a period of four years, at least the same per student payments for each high school and elementary student as the districts received prior to entering into the cooperative plan.

15.1-27-17 provides this four year buffer for districts that have reorganized and then provides an additional two years during which the weighting factors are adjusted.

15.1-27-18 This section is presently found with the high school weighting factor language. It provides that a student must be enrolled in at least four units to be counted for purposes of per student payments. Students enrolled in fewer units are eligible for proportionate payments. This is the section in which the committee placed the hold harmless provision for high schools.

15.1-27-19 Like present law, this section provides proportionate payments for summer school. It also limits those payments to the lesser of 1.5% of the total per student and transportation aid appropriation or $8 million.

15.1-27-20 This section is a rewrite of a portion of present section 15-40.1-09. That's a very large section and it deals with how claims are filed and the appeal process for claims that are denied. Like present law, the process begins with the business manager filing a claim for payment by September 10th and filing a verification statement no later than the following July 15th. The county superintendent is charged with investigating the validity of this latter statement and determining the residence and other qualifications of each student named in the statement.

The county superintendent may disallow a statement in whole or in part. If the county

superintendent disallows any of the students for payment purposes, the school district may appeal the decision to the superintendent of public instruction.

15.1-27-21 This section has been on the books since 1979 and was last amended in 1981. It provides that if the taxable valuation of property is diminished because real property is classified as personal property, the state payment to an affected school district must be based on the diminished valuation. If the state payment is based upon a property valuation that is later diminished by legislative or judicial action, the district is given one year within which to apply to the superintendent of public instruction for a supplemental state payment that makes up the difference.

15.1-27-22 This section provides that if moneys are inadequate to meet the enacted appropriations, the superintendent of public instruction may prorate the payments to school districts.

15.1-27-23 This is the section that addresses makeup days necessitated by severe weather or other emergencies. Because this language had been crafted in 1999, the committee left it in tact.

15.1-27-24 This section allows for the proportionate distribution to school districts of federal payments stemming from the Taylor Grazing Act.

15.1-27-25 This section allows for the proportionate distribution of coal, oil, and gas royalties paid by the federal government. The state treasurer distributes a portion of these funds among the counties in which the minerals were produced and the remainder to school districts.

The next several sections of this chapter deal with school district transportation payments.

The rewrite did omit present section 15-40.1-15. This was a section that defined daily mileage, route, schoolbus, and school district. The committee felt that these words were commonly understood and not in need of further clarification.

15.1-27-26 The only thing that the committee tried to do here was to separate and segregate the various payment requirements, rather than string then together in paragraph fashion. The payments are identical to what is found in present law.

15.1-27-27 and 15.1-27-28 Whereas present law deals with payments for the transportation of special education students and the transportation of vocational education students in one section, the committee opted to separate the concepts into these two sections.

15.1-27-29 This section is again a filing requirement. The school district business manager is to certify to the county superintendent, by July 15th, the number of buses owner and operated by the district, the capacity of those buses, and the daily mileage that each traveled in transporting the students. Again, the county superintendent is to examine the information and certify its validity. The county superintendent can disallow claims and if such is done, the school district can appeal the decision to the superintendent of public instruction.

15.1-27-30 Because transportation payments are paid the school year after the transportation is provided, this section was enacted in 1995 to direct where those transportation payments should go if the district that had provided the services closed its doors. The section provides that the dollars follow the students into their new districts.

15.1-27-31 This section, like present law directs the superintendent of public instruction to forward the transportation payments at the same time that other state aid is distributed to the districts.

The last few sections are catchall provisions.

15.1-27-32. A couple of sections ago, we had addresses the distribution of transportation payments owed to a district after it had closed. This section makes the same provision for special education payments. Again, the payments follow the students to their new districts.

15.1-27-33 This section was enacted in 1999. It provides that a district can become a nonoperating district for a period of three years. All schools in the district must be closed. The students all attend other districts, and the nonoperating district continues to receive per student payments but in turn pays to the districts that are educating the students the full cost of education incurred by the receiving district. After three years, the nonoperating district must, through a process of reorganization or dissolution, become part of one or more operating districts.

15.1-27-34 This section was added by an appropriation committee in 1997. It merely prohibits the superintendent from transferring any per student or transportation dollars to the youth correctional center to support the provision of educational services by the YCC.

15.1-27-35 This section defines average daily membership. The definition is currently found deep within section 15-40.1-09. The committee felt that because the term is used frequently, it should have its own section. The committee also made a technical change to the language. Right now, because of an amendment that was made years ago, the definition of average daily membership is actually that of average daily attendance. In this section, the committee changed the definition back to what it was originally -- which is more a calculation of enrollment or registration, rather than a calculation of how many students have the flu versus how many are actually at their desks on any given day.

SCHOOL FINANCE
(PRESENT LAW)

15-40.1-01. High school student defined. As used in this chapter and in the provisions relating to payments from the state, the term "high school student" includes only students who:

1. Have completed all of the work of the first eight grades, but have not completed the work of the twelfth grade.
2. Are residents of this state or who are attending a North Dakota school under a foreign student exchange program.

15-40.1-02. State school aid. All payments authorized by this chapter must be made by the state treasurer out of the general fund of the state within the limits of legislative appropriation.

15-40.1-04.1. Adjustment of foundation aid payment.

1. Whenever the taxable valuation of property is diminished because of the reclassification of real property as personal property which results from either legislative or judicial action, the state foundation aid payment to the affected school district must be based on the diminished valuation in the year in which it is paid to the school district.
2. Whenever the foundation aid payment to any school district is based upon a determination of property valuation which is later diminished by legislative or judicial action, the school district has one year from the date of final determination or adjudication of the adjustment of the property tax base to make application to the superintendent of public instruction for a supplemental foundation aid payment in the amount necessary so the district will have received the amount it would have received had the correct property tax base been used. A school district is entitled to the supplemental payment even if the payment is received in a new biennial period. The superintendent of public instruction shall certify the supplemental payment to which a school district is entitled to the office of management and budget, which shall pay the amounts due within the limits of legislative appropriations for the foundation program.

15-40.1-05. Distribution of payments to school districts - Duty of superintendent of public instruction. The superintendent of public instruction shall determine the total payments made to each respective school district during the previous fiscal year. The superintendent shall pay each school district ten percent of that amount, within the limits of legislative appropriation, on or before July fifteenth, August first, September first, and October first of each year. The superintendent of public instruction shall determine what amounts in addition to those payments are necessary to constitute the remainder of the payments due to each school district for the current school year. On or before November first, the superintendent of public instruction shall pay to each school district, within limits of legislative appropriation, the amounts needed in addition to the above payments to constitute fifty percent of the sum found to be due under this

chapter. On or before the first day of December, January, February, March, and April, payments equal to one-fifth of the total remaining payments must be made to each respective school district. If funds appropriated for distribution to school districts for per student and transportation aid become available after April first, the superintendent shall distribute the payments no later than June thirtieth.

15-40.1-05.1. Transfer of funds prohibited. The superintendent of public instruction may not transfer any portion of the funds appropriated for foundation aid to the youth correctional center to support the provision of educational services by the youth correctional center.

15-40.1-06. Declaration of legislative intent - Educational support per student - School district equalization factor - Limitations.

1. It is the intent of the legislative assembly to support elementary and secondary education in this state from state funds. For purposes of this section, state funds include all appropriations for foundation aid, tuition apportionment, supplemental per student payments, special education, vocational education, transportation aid, school district technology, the governor's school, teacher centers, and the leadership in educational administration development consortium. For purposes of distributing state funds, the superintendent of public instruction shall determine the educational cost per student. In determining the educational cost per student, the superintendent may not use:
   a. Expenditures for capital outlay for buildings and sites, or debt service.
   b. Expenditures from school activities and school lunch programs.
   c. Expenditures for the cost of transportation, including the cost of schoolbuses.
2. a. The educational support per student during the first year of the 1999-2001 biennium must be two thousand one hundred forty-five dollars and for the second year of the 1999-2001 biennium the educational support per student must be two thousand two hundred thirty dollars and is the basis for calculating grants-in-aid on a per student basis as provided in sections 15-40.1-07 and 15-40.1-08.
   b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of two hundred twenty dollars, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07.
   c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become unaccredited in any succeeding school year must be supported for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of students in the

school for the second school year that the high school is unaccredited, and an additional two hundred dollars per student in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.

3. In determining the amount of payments due school districts for tuition apportionment provided in section 15-44-03, and per student aid under this section, the amount of tuition apportionment, foundation aid, special education aid, and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted:

a. The product of thirty-two mills times the latest available net assessed and equalized valuation of property of the school district.

b. The amount that the unobligated general fund balance of a school district on the preceding June thirtieth is in excess of three-fourths of the actual expenditures, plus an additional twenty thousand dollars.

4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:

a. Annual average daily membership report.

b. Annual school district financial report.

c. The September tenth fall enrollment report.

d. The personnel report forms for certified and noncertified employees.

5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

15-40.1-07. High school per student payments - Amount - Proportionate payments. Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school students in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

1. For each high school district having under seventy-five students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.625 adjusted by seventy-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student as provided in section 15-40.1-06.

2. For each high school district having seventy-five or more, but less than one hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.335 adjusted by seventy-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06.

3. For each high school district having one hundred fifty or more, but less than five hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.24 adjusted by seventy-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06.

4. For each high school district having a total high school enrollment of five hundred fifty or more students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.14 adjusted by seventy-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06.

5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:

a. Subsection 1 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has less than seventy-five students in average daily membership.

b. Subsection 2 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty students in average daily membership.

c. Subsection 3 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has one hundred fifty or more, but less than five hundred fifty students in average daily membership.

d. Subsection 4 times the number of students registered in the alternative education program times the educational support per student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more students in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of students in the next lower category. Payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only licensed teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which the student is enrolled for specific courses.

15-40.1-07.1. Payments for students on active duty. Payments made pursuant to section 15-40.1-07 must be made to the high school district in which a student is enrolled for graduation even though the student may be absent from daily classroom attendance, for a period not exceeding one semester, while engaged in active duty or training within or outside the state while a member of the North Dakota national guard.

15-40.1-07.2. Payments for alternative programs. Payments made pursuant to section 15-40.1-07 must be made to high school districts which provide approved alternative education programs for students from the ages of sixteen through twenty-one who have dropped out of school. Upon determination by the local school district of nonmembership in the regular program of a high school, a district may apply to the superintendent of public instruction for continuation of the foundation aid funding for high school students enrolled in an approved alternative education program. A subtraction will be made from the district average daily membership when a student is dropped from membership and added back for the days of membership in an approved alternative program. Proportionate payments must be made for students enrolled in less than four units and must be based on the number of units carried and the high school weighting factor.

15-40.1-07.3. Per student payments - Reorganization of school districts.

1. If any school district receiving per student payments calculated under section 15-40.1-07 reorganizes with another school district under chapter 15-27.3 or 15-27.6 before August 1, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school student as each separate school district received for each high school student prior to the reorganization, for a period of four years.

2. If any school district receiving per student payments calculated under this chapter reorganizes with another school district under chapter 15-27.3 or 15-27.6 after July 31, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school and elementary student as each separate school district received for each high school and elementary student prior to the reorganization, for a period of four years.

3. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1 or 2, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the reorganization.

4. Notwithstanding the provisions of any other law, no school district may receive less in per student payments for the first year of its reorganization than the total amount that the districts participating in the reorganization received in per student payments for the school year immediately preceding the reorganization. If less than a whole school district participated in a reorganization, the superintendent of public instruction shall prorate the payments to which the newly reorganized district is entitled under this subsection.

15-40.1-07.4. Per student payments - Cooperating districts.

1. If any school district receiving payments under section 15-40.1-07 cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction and effective before July 1, 1997, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school student as the district received prior to initiation of the cooperative plan.

2. If, on or after July 1, 1997, any school district receiving payments under this chapter cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school and elementary student as the district received prior to initiation of the cooperative plan.

15-40.1-07.5. Supplemental payment to high school districts.

1. The superintendent of public instruction shall calculate the average valuation of property per student by dividing the number of students in average daily membership in grades one through twelve in a high school district into the district's latest available net assessed and equalized taxable valuation of property. If the quotient is less than the latest

available statewide average taxable valuation per student and if the district's educational cost per student is below the most recent available statewide average cost of education per student, the superintendent of public instruction shall:

a. Determine the difference between the latest available statewide average taxable valuation per student and the average valuation per student in the high school district;

b. Multiply the result determined under subsection 1 by the number of students in average daily membership in grades one through twelve in the high school district;

c. Multiply the result determined under subsection 2 by the number of general fund mills levied by the district in excess of one hundred thirty-five, provided that any mills levied by the district which are in excess of two hundred may not be used in this calculation; and

d. Multiply the result determined under subsection 3 by twenty-five percent. The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15-40.1.

2. The supplemental payment contained in subsection 1 is effective through June 30, 1997. If such a plan is to be continued after June 30, 1997, it must be reviewed by an interim committee under the direction of the legislative council. The legislative council shall report its findings and recommendations, including whether or not the plan should be continued and if continued, whether or not the plan should be modified, together with any legislation required to implement the recommendations, to the fifty-fifth legislative assembly.

15-40.1-07.6. Per student payments - Special education.

1. Except as provided in subsection 2, each biennium the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under subsection 3 of section 15-40.1-06, to eligible school districts in the same manner and at the same time that the superintendent distributes foundation aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

2. The superintendent of public instruction may, upon the written request of a school district, forward all or a portion of the moneys for which the school district is eligible under this section directly to the special education unit of which the school district is a member.

3. The superintendent of public instruction may enforce the department's determination of a complaint by withholding state special education funds due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual students' needs.

15-40.1-07.7. Per student payments - Limited English proficient students.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive four hundred dollars for each student who has been assessed by the student's school district and determined to have negligible or very limited English language skills as evidenced by a classification of level I or II using the Woodcock-Munoz language survey.
2. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before October twenty-fifth of each school year. The superintendent shall distribute the payments no later than May thirtieth of each school year. The superintendent shall prorate payments under this section for any students registering in the school district after October first or departing the school district prior to the completion of the school year.

15-40.1-07.8. Supplemental alternative payment to high school districts. The superintendent of public instruction shall calculate the average valuation of property per student by dividing the number of students in average daily membership in grades one through twelve in a high school district into the district's latest available net assessed and equalized taxable valuation of property. If the quotient is less than the latest available statewide average taxable valuation per student and if the district's educational expenditure per student is below the most recent available statewide average cost of education per student, the superintendent of public instruction shall:

1. Determine the difference between the latest available statewide average taxable valuation per student and the average valuation per student in the high school district;
2. Multiply the result determined under subsection 1 by the number of students in average daily membership in grades one through twelve in the high school district;
3. Multiply the result determined under subsection 2 by the number of general fund mills levied by the district in excess of one hundred fifty, provided that any mills levied by the district which are in excess of two hundred ten may not be used in this calculation; and
4. Multiply the result determined under subsection 3 by thirty percent. The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15-40.1.

15-40.1-07.9. School district closure - Distribution of per student special education payments.

1. If a school district ceases to exist, the superintendent of public instruction shall calculate the amount of per student special education payments to which the former school district would have been entitled under section 15-40.1-07.6 for the provision of special education services during its final year of operation and shall pay a percentage of the total amount to each North Dakota school district that enrolls students who attended

the former school district during the prior school year. Each of the school districts eligible for a payment under this section is entitled to receive that percentage of the total amount which is the same as the percentage that the number of the district's students who attended the former school district during the prior school year bears to the total number of students who attended the former school district during the prior school year.

2. The superintendent of public instruction shall make payments under this section in the manner and at the time provided for other state payments in section 15-40.1-05.

3. The total special education payments to which a school district that ceased to exist between the completion of the 1996-97 school year and the commencement of the 1997-98 school year is entitled must be distributed as provided in subsection 1 on or before June 30, 1999.

15-40.1-07.10. Summer school programs - Proportionate payments.

1. A school district that offers high school summer school programs is entitled to receive proportionate payments provided each course offered satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction.

2. A school district that offers remedial elementary summer school programs is entitled to receive proportionate payments provided the programs comply with rules adopted by the superintendent of public instruction.

3. The superintendent of public instruction may adopt rules regarding proportionate payments for remedial elementary summer school programs and high school summer school programs.

4. Proportionate payments made under this section during a biennium for summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium, or eight million dollars, whichever is less. No more than seventy-five percent of the amount made available under this subsection may be used to support high school summer school programs and no more than twenty-five percent of the amount made available under this subsection may be used to support remedial elementary summer school programs.

15-40.1-07.11. Nonoperating school districts - Education of students - State payments.

1. Notwithstanding the provisions of any other law, a school district operating on July 1, 1999, may become a nonoperating district, provided:

a. The board of the district terminates the operation of all public schools in the district;

b. The board provides for the education in other school districts of all kindergarten, elementary, and secondary school students residing in the district; and

c. The board pays to other school districts educating its students the full per student cost of education in the receiving district.

2. The board of a nonoperating school district shall continue to employ, on a full-time or a part-time basis, one person qualified to manage the finances of the district.
3. The board of a nonoperating school district is governed by all laws applicable to the board of an operating school district.
4. In lieu of all other state payments, a nonoperating school district under this section is entitled to receive an amount equal to the per student payment determined under section 15-40.1-06 and multiplied by the number of students ages six through seventeen who reside in the district, as established by the latest available school district census, less the product of thirty-two mills times the latest available net assessed and equalized valuation of property of the school district.
5. A school district may be nonoperational for no more than three school years.
6. At or before the conclusion of the three-year period, the nonoperating school district must become, through reorganization or dissolution, part of one or more operating school districts.
7. A school district that has become a nonoperating district and has accepted state payments, as provided for by this section, may not revert to an independent operating district.

15-40.1-08. Elementary per student payments - Amount. Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary students in a federal school, employing teachers holding valid licenses in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

If it had the highest 1. For each one-room rural school, the amount of money resulting from multiplying the factor 1.28 adjusted by seventy-five percent of the difference between 1.28 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through eight in average daily membership, up to a maximum of sixteen students, times the educational support per student provided in section 15-40.1-06. There must be paid .9 times each additional student in its school in grades one through eight in average daily membership times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty students in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the students in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has students in grade seven or eight, the weighting factor for the students in grade seven or eight must be the same as that provided for in subsection 5.
2. For each elementary school in school districts having under one hundred students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.09 adjusted by seventy-five percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for

this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher, times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher.

3. For each elementary school in school districts having one hundred or more students in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary students in grades one through six, the amount of money resulting from multiplying the factor .905 adjusted by seventy-five percent of the difference between .905 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher.

4. For each elementary school in school districts having an average daily membership of one thousand or more elementary students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by seventy-five percent of the difference between .95 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher.

5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.01 adjusted by seventy-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher.

6. For each elementary school having students under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor 1.01 adjusted by seventy-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of special education students in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06.

7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, the amount of money resulting from multiplying the factor .50 adjusted by seventy-five percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period must receive a proportionately smaller per student payment.

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools. Every school district must receive at least as much in total payments for elementary students as it would have received number of students in the next lower category.

15-40.1-08.1. Per student payments for small but necessary schools. Per student payments made in accordance with sections 15-40.1-07 and 15-40.1-08 must be adjusted as follows:

1. For each elementary school that has less than fifty students and in which fifteen percent or more of the elementary students enrolled would have to travel beyond a fifteen-mile [24.15-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15-40.1-08 must be increased by twenty percent for the first fifteen students. If the school has fewer than fifteen students, the payment received must be for fifteen students.
2. For each high school that has less than thirty-five students and in which fifteen percent or more of the high school students enrolled would have to travel beyond a twenty-mile [32.2-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15-40.1-07 must be increased by twenty percent for the first twenty students. If the school has fewer than twenty students, the payment received must be for twenty students.

15-40.1-08.2. Per student payments for students attending school out of state. For each student attending school out of state in accordance with section 15-40.2-09, the weighting factors provided in sections 15-40.1-07 and 15-40.1-08 must be increased by twenty percent.

15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal. Immediately

upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the business manager of each school district within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever provides the greatest payment, for all current grade levels. Adjustments must be made in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. For purposes of this chapter, "average daily membership" means the total days all students in a given school are in attendance, including two days set aside for the North Dakota education association instructional conference, three holidays listed in subsections 2 through 10 of section 15-38-04.1 which have been selected by the school board in consultation with the teachers, and up to two full days during which parent-teacher conferences are held, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one hundred eighty-day school term. Immediately upon the termination of the school year, and in no event later than July fifteenth of each year, the business manager of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. The statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement. The county superintendent shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in the county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice of the disallowance and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the

county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

15-40.1-09.2. Weather or other emergency conditions - Closure of schools - Foundation aid. If because of severe weather or other emergency conditions a school or school district remains closed or provides less than a full day of instruction, the school or school district shall make every effort to reschedule classes so that students receive at least one hundred seventy-three full days of instruction. Any school or school district for which the rescheduling of classes would create undue hardship may request that, for purposes of foundation aid, the governor waive the rescheduling in whole or in part. The governor may not grant a waiver for less than a full day of instruction.

15-40.1-11. Fractional payments. Should the moneys in the state general fund be insufficient to make all payments, the payments to the various school districts or schools must be prorated by the superintendent of public instruction on a fractional basis. When fractional payments are made, additional payments may be made from time to time as sufficient moneys come into each fund, so as to make full payments under this chapter. If the appropriation made by the legislative assembly is inadequate to meet all claims against such appropriation and is thus the cause of the insufficiency, such prorated fractional payments made pursuant to this section constitute payment in full.

15-40.1-13. (Effective through December 31, 1999) Receipts from federal funds. All moneys paid to the state by the secretary of the treasury of the United States under the provisions of an Act of Congress entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" [Pub. L. 66-146; 41 Stat. 437; 30 U.S.C. 181 et seq.], must be credited to the state general fund and must be distributed only pursuant to the terms of this chapter. Such moneys must be deemed the first moneys withdrawn or expended from the general fund for state school aid purposes.

(Effective after December 31, 1999) Receipts from federal funds - Distribution to counties and school districts. All moneys paid to the state by the secretary of the treasury of the United States under the provisions of an Act of Congress entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" [Pub. L. 66-146; 41 Stat. 437; 30 U.S.C. 181 et seq.], must be credited to the state general fund and must be distributed only pursuant to this section.

Three months following the calendar quarters ending in March, June, September, and December, the state auditor shall certify to the state treasurer the amount of money the state received during the preceding calendar quarter for royalties under the Act of Congress cited above. The state treasurer shall allocate the percentage of the total moneys received as required by this section among the counties in which the minerals were produced based on the proportion each county's

mineral royalty revenue bears to the total mineral royalty revenue received by the state for that calendar quarter. The state treasurer shall pay the amount calculated to each county. The moneys must be used by the counties for planning, construction, and maintenance of public facilities, and the provision of public services.

The percentage of mineral royalty revenues received by the state under the Act of Congress cited above which is to be allocated and paid to the counties under this section is ten percent for collections in 2000, twenty percent for collections in 2001, thirty percent for collections in 2002, forty percent for collections in 2003, and fifty percent for collections in 2004 and thereafter. The funds needed to make the distribution to counties provided for in this section are hereby appropriated on a continuing basis for making these payments.

The balance of all revenue received under the Act of Congress cited above must be distributed only to school districts under this chapter and such moneys must be deemed the first moneys withdrawn or expended from the general fund for state school aid purposes.

15-40.1-14. Taylor Grazing Act funds - Disposition. Payments to the state from the federal government under the provisions of 43 United States Code 315i (the Taylor Grazing Act), must be apportioned by the state treasurer among the counties in the state in the proportion that the number of acres [hectares] of Taylor Grazing Act land in each county bears to the total amount of such land in the state. Such distributions must be made to school districts on the basis of average daily membership of all students residing within the county.

15-40.1-15. Definitions. The following words when used in sections 15-40.1-16 through 15-40.1-18 have the meanings respectively ascribed to them in this section:

1. "Daily mileage" means twice the distance computed to the nearest tenth of a mile [160.93 meters] traveled in a single trip by each schoolbus over its scheduled route or routes.
2. "Route" means a highway, road, or street over and upon which a schoolbus regularly travels in accordance with a schedule maintained for the transportation of pupils from their homes to schools.
3. "Schoolbus" means any vehicle or other means of conveyance owned or operated by a school district or any vehicle subject to a contract for transportation of school pupils in accordance with the provisions of section 15-34.2-07.
4. "School district" means any type of school district prescribed by the laws of this state.

15-40.1-16. Aid for transportation.

1. There must be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school, the following amounts:

a. For schoolbuses and school vehicles transporting students who live outside the incorporated limits of the city in which the students' school is located, a sum equal to twenty-five cents per mile [1.61 kilometers] for vehicles having a capacity of nine or fewer students and sixty-seven cents per mile [1.61 kilometers] for schoolbuses having a capacity of ten or more students and for schoolbuses and school vehicles transporting students who live within the incorporated limits of a city in which the students' school is located, a sum equal to twenty-five cents per mile [1.61 kilometers]. School districts qualifying for payments for buses having a capacity of ten or more students are entitled to an amount equal to forty cents per day for each public school student living outside the city limits who is transported in such buses.

b. For students who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city within which the school that the students attend is located, a sum equal to twenty cents per student per one-way trip.

The mileage payments provided for in this subsection must be made to each school district for transporting students to and from school. Payments may be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to compliance with the laws of this state in regard to schoolbuses and their drivers must be made in such manner and detail as the superintendent of public instruction may require at the time an application is made for payments provided under this subsection.

2. For students transported by family transportation in accordance with section 15-34.2-03, the state shall reimburse school districts in an amount determined by using the rate of forty cents per day for each mile [1.61 kilometers] over two miles [3.22 kilometers] according to the distance between the student's home and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.

3. The superintendent of public instruction shall develop, and require that school districts use, a uniform cost accounting system to calculate and administer the reimbursement provided for in this section. The superintendent shall prepare all forms and statements necessary for a school district to apply for the same.

15-40.1-16.1. Transportation aid for certain vocational education and special education programs. There must be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board for vocational and technical education. That amount must be the same amount for mileage and per day as is provided in subdivision a of subsection 1 of section 15-40.1-16. Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.

2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

School districts entitled to transportation aid pursuant to this section must receive aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether the pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. However, no school district may receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day. Notwithstanding any other provisions of this section, the superintendent of public instruction shall, upon request, make the payments under this section that are due to school districts participating in area vocational and technology centers or multidistrict special education programs, for the transportation of pupils in those centers and programs, directly to the respective area vocational and technology centers or multidistrict special education programs.

15-40.1-17. Application for transportation payments. On or before July fifteenth of each year, the business manager of each school district in this state providing schoolbus transportation shall certify to the county superintendent of schools the following information:

1. For schoolbuses transporting pupils who live outside the incorporated limits of the city in which the school is located, if applicable, the number of schoolbuses operated on a contract basis or owned and operated by the district, the manufacturer's rated pupil capacity of each bus, and the daily mileage each bus traveled on a schoolbus route during the school year in transporting pupils as provided for in sections 15-40.1-16 and 15-40.1-16.1.
2. For schoolbuses or commercial buses transporting pupils who live within the incorporated limits of the city in which the school is located, a city plat or plats indicating each school building location, the routes traveled by each bus, the manufacturer's rated capacity, and the number of one-way trips either to or from school made by pupils from within the city limits on each bus during the school year.

Each business manager of the school district shall also certify the amount of transportation payments claimed, and such other information as the superintendent of public instruction may require. On or before the first day of September in each year, the county superintendent of schools shall certify all claims for transportation payments submitted by school districts in the county to the state superintendent of public instruction. At the time the county superintendent of schools certifies such claims to the superintendent of public instruction, he shall also give notice to any district of any disallowance that may have been made by him in the claim for transportation payments. Any district may appeal the decision of the county superintendent of schools to the superintendent of public instruction on or before the fifteenth day of September of any year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction is final.

15-40.1-18. State transportation payments to school districts. The superintendent of public instruction shall determine the total amount of payments to be made to the school districts for transportation aid. The office of management and budget shall pay the sum certified by the

superintendent of public instruction to each school district. Payments must be made in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05. No school district may receive more than ninety percent of the actual costs it incurs in the provision of transportation services. For purposes of this section, actual costs include the transportation operating expenditures reported to the superintendent of public instruction for the most recent year plus the eight-year average cost of transportation equipment determined by the superintendent of public instruction. Any district that has contracted for transportation services, however, may determine its actual costs for the first year it provides its own transportation services by using the statewide average cost of transportation during that first year.

15-40.1-18.1. School district closure - Distribution of transportation payments.

1. If a school district ceases to exist, the superintendent of public instruction shall calculate the amount of transportation payments to which the former school district would have been entitled for providing transportation services during its final year of operation and shall certify the amount of transportation payments to the office of management and budget. The office of management and budget shall pay a percentage of the total amount certified to each North Dakota school district that enrolls students who attended the former school district during the prior school year. Each of the school districts eligible for a payment under this section is entitled to receive that percentage of the total amount certified which is the same as the percentage that the number of the district's students who attended the former school district during the prior school year bears to the total number of students who attended the former school district during the prior school year.
2. Except as provided in subsection 3, the office of management and budget shall pay the amount certified to the school district in the manner and at the time provided for other state payments in section 15-40.1-05.
3. The total transportation payments to which a school district that ceased to exist between the completion of the 1993-94 school year and the commencement of the 1994-95 school year is entitled must be distributed as provided in subsection 1 on or before June 30, 1995.

STATE TUITION FUND -- 15.1-28

TESTIMONY

15.1-28

15.1-28-01. Like present law, this section provides that fines, school land lease payments, and the interest and income from the common schools trust fund constitute the state tuition fund.

15.1-28-02 This section requires the county treasurer to collect those moneys and to forward a detailed statement of the moneys collected to the state treasurer. As I was preparing for this presentation, I realized that neither present law nor the rewrite requires anything other than a statement of the amounts collected from each source. It struck me that perhaps we should have language directing the county treasurer to forward the moneys -- as well as a statement -- to the state treasurer.

15.1-28-03. This section provides that the tuition fund is distributed at the same time as the per student payments and that it is distributed based on census.

STATE TUITION FUND
(Present Law)

15-44-01. State tuition fund - Source. The net proceeds arising from all fines for violation of state laws, from leasing the school lands, and the interest and income from the state permanent school fund must be paid into the state treasury and constitutes the state tuition fund.

15-44-02. Reports of county treasurer. The county treasurer shall receive from the proper officers the net proceeds of fines for violation of state laws, and all moneys arising from leasing of school lands within the county, and shall forward a detailed statement of moneys so collected, specifying the amount received from each source, to the state treasurer by the fifteenth of each month.

15-44-03. Certificate by office of management and budget - Apportionment by superintendent of public instruction - Warrant - Payment. The office of management and budget on or before the third Monday in February, April, August, October, and December in each year, shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion such fund among the several school districts of the state in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law, and shall pay the amount apportioned to the respective school districts. Payments from the state tuition fund must be combined with and paid at the same time as per student payments pursuant to section 15-40.1-05.

PAYMENT OF TUITION -- 15.1-29

TESTIMONY

15.1-29-01. Like present law, this section provides that a student who lives within 40 miles of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state. Students who have attended since 1990-01 and siblings of students who attended before or during the 1990-91 school year must be permitted to attend.

If the school board denies a request for the student's attendance in and payment of tuition to another state, decision is appealable to a committee of three -- consisting of the county superintendent, the state's attorney, and an individual appointed by the board of county commissioners.

15.1-29-02. This section requires the superintendent of public instruction to pursue a reciprocal contract with our bordering states to address the cost of educating students in the bordering states. A school district can abide by the reciprocal contract or craft its own. The only parameter in this latter instance is that the amount of tuition may not exceed that set in the reciprocal contract. The committee did make a verbiage change in this section. Present law refers to a reciprocal master agreement. First of all, if an agreement is signed, sealed, and delivered, it is a contract and the committee determined it should be called that. Secondly, although a "master" agreement sounds very important and weighty, it is in fact still a contract. The rewrite therefore drops the phrase reciprocal master agreement and replaces it with the superintendent's reciprocal contract.

15.1-29-03. This section authorizes a school district to send its students to other school districts and to pay tuition for those students. If the board is petitioned by qualified electors equal in number to at least a majority of those who voted in the most recent annual school district election, the board must arrange to send students into other districts and to pay for their tuition and transportation.

15.1-29

Present law authorizes a school district to send its students to other school districts "when because of shorter distances and other conveniences, it is in the best interests of the school district to do so." The 1997 interim education services had suggested that some consideration should be given to the best interest of the students as well as the school district and the patrons and taxpayers of the district. The 1999 interim committee determined that school districts should take into account the best interests of all affected parties and that's the verbiage that is now reflected in the rewrite.

15.1-29-04 Present law provides that if a school district is to pay tuition to another district, that tuition should be paid at the end of each semester. The interim committee thought it would be

appropriate to include a more definitive date, especially given the fact that school district calendars often vary. So, the rewrite now requires that at least 50 percent of the annual tuition charge be paid on or before December 31 and that the remainder be paid on or before May 31st.

15.1-29-05. This section provides that if a parent wishes to send a child to another school district, the parent can petition the school board for the payment of tuition. The board has 60 days within which to make a decision. If the board's decision is not favorable to the parent, the parent may file an appeal with the county superintendent.

15.1-29-06. This section governs the parental appeal process. When the county superintendent receives the appeal, the county superintendent must convene the previously mentioned three member committee consisting of the county superintendent, the state's attorney and one member appointed by the board of county commissioners. A hearing is held. The rewrite, like present law, spells out the circumstances under which the tuition must be paid. In the case of a high school student tuition must be paid if the student's attendance in another district is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship.

In the case of an elementary student, shorter distances or extreme hardship are the criteria under which tuition must be paid.

15.1-29-07 Provides that if the appeal is denied, the parent can choose to pay the tuition.

15.1-29-08. This section addresses tuition for kindergarten students. In present law, this concept is included in what is now 15.1-29-06 -- the parental appeal section. The committee moved the verbiage into its own section, because there is no appeal. A parent can petition a board to pay the tuition for a kindergarten student. The board may elect to do so, but that decision is not appealable. Again. if the board does not pay tuition, the parent has the option of so doing.

15.1-29-09. This section, again like present law, allows a district to accept 874 impact aid payments if the student's parent is employed on or resides on a military installation and if the board of the sending and the admitting district agree to the payments in lieu of other tuition for the nonresident student.

15.1-29-10. Present law provides that a school board may make arrangements for the education of pupils in a federal school and may contract with federal officials for such education. It goes on to provide that the contracts may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district. This last sentence is truly extraneous All it says is that the contract can be in Form A, in Form B, or in any form you want. The committee therefore eliminated the sentence and simplified the section to merely authorize a board to contract for the education of students in a federal school.

15.1-29-11. Again, like present law, this section provides that the board of a school district must admit students from other districts if doing so does not create overcrowding and if there are

appropriate provisions for payment or if the sending district does not offer the grade level needed by the students.

15.1-29-12. This section provides that a school district sending a student to another district for purposes of education shall pay the full cost of education incurred by the admitting district. The verbiage is still cumbersome but the committee at least used subsections and subdivisions rather than paragraph form to help clarify the steps in calculating the full cost of education.

15.1-29-13. Here again, the committee tried to clarify the content without making any substantive changes. This section simply requires an admitting district to charge and collect tuition from a nonresident student, which in this case means a student from another school district. If the admitting district fails to do so, the district forfeits any per student and transportation aid otherwise payable for that student.

15.1-29-14. This section, like present law, tries to define a student's district of residence for purposes of financial responsibility. Because we are dealing with either placements or family situations that vary from the norm, it has been a troublesome section for both the DPI and school districts. At the request of the interim committee, a tremendous amount of time was spent trying to clarify the provisions and intent of this section.

The committee began by defining a student's school district of residence as the district in which the student resides at the time a court or the division of juvenile services places the student in a foster home or a child care home or facility, at the time a student is placed in foster care, at the time a student is placed in a state operated institution even if there is a subsequent placement, or at the time a student is voluntarily admitted to a state operated institution, child care home, or facility. This is the district that is given primary responsibility for any payment.

If the student's custodial parent moves to another school district, the payment burden then shifts to the district in which the parent now resides. If the parent moves out of state or if parental rights have been terminated, the payment obligation is placed on the state.

When all was said and done, the section was not substantively changed, it was only clarified. Within those attempts to clarify, the committee opted to refer to a "student", rather than a "child", in order that consistency can be maintained throughout the Title. When the rewrite is complete, the only intentional references to "children" as opposed to "students" should be in the home education chapter.

The other change that the committee made was to try, as much as possible -- given the principles of clarity and comprehension-- to refer just to the duties and powers of a parent, rather than the duties and powers of a parent or a legal guardian. The only way one becomes a legal guardian is if there is some official judicial intervention conferring that authority. Once the authority is conferred, the guardian functions "in loco parentis" -- in place of the parent. So, anything that a parent can legally do, so to can the guardian. Anything that a parent legally must do, so must the guardian.

15.1-29-15. This section is also current law. It authorizes the board of a school district to levy taxes for any tuition payments it chooses to make under this chapter. The only condition is that the payments are limited to students in grades 7 through 12.

PAYMENT OF TUITION
(Present Law)

15-40.2-01. Transfer of students to other districts or institutions - Tuition agreements - Student discretion upon cessation of educational services.

1. The school board of any district may send kindergarten, elementary, or high school students into another school district or to an accredited institution when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of the students to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send students to the other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from the other schools or institutions.
2. If a school district does not provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall pay tuition to the admitting school district. For purposes of determining whether educational services are provided to an entire grade level, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district.

15-40.2-02. Receiving of pupils by admitting districts. Any school district shall admit kindergarten, elementary, and high school pupils from other districts to its schools when it can be done without injuring or overcrowding such schools and after the board of the sending district and the board of the admitting district have entered into an agreement governing the attendance of such pupils as may be enrolled or when tuition will be paid by a parent or guardian in the manner provided for in this chapter or when a grade level is no longer being taught by the sending district as indicated in subsection 2 of section 15-40.2-01.

15-40.2-03. Tuition payments. Except as provided in section 15-40.2-04, school districts educating pupils in other school districts shall pay the full cost of education incurred by the receiving district. The costs must be determined on the basis of the district's full-time equivalent average daily membership and must include annual expenditures from the general fund and annual educational expenditures from all special funds; provided, that only those expenditures permitted in determining the educational cost per pupil in section 15-40.1-06 may be included in determining the receiving district's current operating expenses. To the district's current operating

expense for kindergarten, elementary, or high school students, as the case may be, except special education students where a fair rental charge for each student for capital outlay must be determined by the department of public instruction, must be added the statewide total of all school districts' annual expenditures from sinking and interest funds, plus the statewide total of all school districts' annual tax receipts to the building funds, including any amounts expended from school districts' general funds for capital outlay, divided by the average daily membership of the state. From this amount, the following must be deducted for each individual pupil:

1. Such payments as are received for that pupil from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from the amounts provided for in subsection 3 of section 15-40.1-06; and
2. A credit applied for any school taxes paid to the admitting district by the parent or guardian of the admitted pupil.

The amount remaining is the tuition charge for the individual pupil, and must be paid under this chapter.

If the district of residence and the parent or guardian are both paying tuition, the credit allowed under this section for taxes paid to the admitting district by the parent or guardian must be credited to the district of residence and the parent or guardian in proportion to the amount of tuition paid by each.

Nothing contained in this chapter affects the right of a school district to charge and collect such tuition as may be fixed by agreement from pupils who are not residents of this state, in accordance with section 15-40.2-10.

15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive.

1. a. Except as provided in this subsection, any school district that admits nonresident students to its schools, as provided by this chapter, shall charge tuition for those students. School districts have the option of charging tuition for nonresident students enrolled in an approved alternative education program. The whole amount of the tuition must be paid by the district from which the student is admitted, in accordance with section 15-40.2-03, or by the student's parent or guardian, in accordance with section 15-40.2-06.

   b. Except as otherwise provided, any school district that fails to charge and collect tuition for nonresident students as provided for in section 15-40.2-03 and this section shall forfeit foundation payments for those nonresident students for whom tuition is not paid. A school district may accept a nonresident student from another school district in this state which offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. For purposes of determining whether the same grade level is offered, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district. The written agreement must specify whether transportation is to be provided and if so, by which district. If a school district of residence does not provide transportation to the

student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged. A school district may accept a nonresident student described in section 15-40.3-07 from another school district in this state without a charge and collection of tuition and without a written agreement.

c. No school district may charge or collect from any nonresident student, parent or guardian of a nonresident student, or the district of the student's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident students.

2. For purposes of subsection 1 and all statutory provisions relating to open enrollment, the member districts of a consortium must be treated as a single school district.

15-40.2-05. Application of parent or guardian for payment of tuition by district. The parent or guardian of any student who is a resident of a district may apply in writing to the school board of the student's school district of residence for approval of the payment of tuition charges to another school district for attendance of the student in another school district. The school board shall, within sixty days of its receipt of the application, meet with the student's parent or guardian and render a decision in regard to the payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application is deemed approved. If the school board of the district of residence approves the application, it shall pay the tuition charges. If the application is disapproved, the student's parent or guardian may file an appeal with the county superintendent of schools. A three-member committee consisting of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the student's parent or guardian, hold a hearing after giving advance notice to the parties directly involved, and render a decision in regard to the payment of tuition charges. The hearing must be conducted in a manner that allows the arguments and responses of all parties to be presented. In making its decision, the committee shall determine whether the student is a high school student, which, for purposes of this section, must be defined to mean grades nine through twelve, whether the student is an elementary school student, which, for purposes of this section, must be defined to mean grades one through eight, or whether the student is a kindergarten student, which, for purposes of this section, must be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High school. If the student is a high school student and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the student, or extreme family or student hardship, the committee may approve the application. Upon approval, the committee shall approve the payment of tuition by the student's district of residence, obligating the district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school

terms, up to the completion of the student's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.

2. Elementary. If the student is an elementary student and the committee finds that the attendance of the student is necessitated by shorter distances or extreme family or student hardship, the committee may approve the application. Upon approval, the committee shall approve the payment of tuition by the student's district of residence, and obligate the district of residence to pay the same. The committee's approval for the payment of tuition is limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee is final.

3. Kindergarten. If the student is a kindergarten student, the school board of the student's district of residence may pay tuition to the receiving district. The committee may not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the student's parent or guardian may pay the tuition to the admitting district under the provisions of section 15-40.2-02.

If twenty-five percent or more of the taxable valuation of the school district of residence lies in another county, the joint committee must consist of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools from the county in which the school district headquarters is located, and any counties in which twenty-five percent or more of the taxable valuation is located. The concurrence of a majority of the quorum of the joint committee is necessary to render a decision regarding the payment of tuition. If the student's district of residence does not comply with the decision requiring that tuition charges be paid, the admitting district shall notify the county superintendent of schools of the county of the student's residence and the state superintendent of public instruction. Upon verification by the county superintendent of schools that tuition payments are due the admitting district and are unpaid, all payments from the state for foundation aid to the student's district of residence must be withheld until the tuition due has been fully paid.

A school district of residence may provide transportation to a student for whom tuition is being paid under this section. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student.

15-40.2-06. Payment of tuition by parent or guardian - What tuition contract must contain. If the payment of tuition for pupils attending school in another district is refused by the school board of the pupil's residence and, upon application by the parent or guardian, the three-member committee disapproves the payment of tuition, such tuition may be paid by the parent or guardian of the pupil. Not less than one-half of the yearly tuition must be paid by the parent or guardian on the date of enrollment, and the school board of the admitting district shall execute a contract in

writing with the parent or guardian of the pupil requiring the payment of any balance of tuition on or before the first day of the second semester.

15-40.2-07. Payment of tuition by federal government - Authority to accept. Payments under title 1 of Public Law 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] may be accepted as tuition for a nonresident pupil by an admitting district, if the parent of such pupil both resides and is employed upon an installation owned by the federal government, and the school boards of the district of residence and the admitting district both approve the payment of such sum in lieu of other tuition for the nonresident student.

15-40.2-08. Residency determination and the payment of tuition in cases of child placements for purposes other than education.

1. For purposes of applying this chapter, the school district in which a child resides must be construed to be the district of residence of such child:
   a. At the time an order of a state court, tribal court, or juvenile supervisor requires such child to stay for any prescribed period at a state-licensed foster home, or state-licensed child care home or facility;
   b. At the time of any placement for any prescribed period of time by a county or state social service agency with the consent of the parent or guardian at a state-licensed foster home, or state-licensed child care home or facility;
   c. At the time of a placement to or from a state-operated institution; or
   d. At the time of any voluntary admission to a state-licensed child care home or facility or state-operated institution.
2. The district of residence shall be liable for:
   a. Tuition upon claim of the admitting district.
   b. Tutoring services upon claim of the admitting facility, provided that the tutoring services are delivered by a licensed and qualified teacher according to rules established by the superintendent of public instruction.
3. Where the guardian, parent, or parents of the child were residents of the district at the time of placement under subdivisions a through d of subsection 1, but such guardian, parent, or both parents have subsequently moved to another school district within North Dakota, then the tuition due the admitting district must be paid by the district of residence of the guardian, parent, or parents. If the guardian, parent, or parents have moved to another state, or if parental rights have been terminated, then the tuition due the admitting district must be paid by the state from funds appropriated by the legislative assembly for the foundation aid program.
4. In the event of a voluntary admission to any state-licensed child care home or facility or state-operated institution, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. Within fifteen days, the three-member committee referred to in section 15-40.2-05 shall consult with the school boards of the

districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges.

5. If the district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction, and upon verification that such tuition payments are in fact due and are unpaid, an amount equal to the unpaid tuition must be withheld from payments for foundation aid to the district of residence of the pupil until the tuition due has been fully paid.

6. An amount equal to the state average per student elementary or high school costs, depending on the educational level of the student, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state from funds appropriated for special education in the case of a student with disabilities, or from funds appropriated for foundation aid in all other cases within the limits of legislative appropriations.

7. If a student with disabilities, who is placed in accordance with the provisions of this section, reaches the age of majority and continues to receive special education and related services, the district of residence remains the same as that of the student's guardian, parent, or parents until the special education services are concluded.

8. a. The placement agency shall provide written notice by registered mail of a placement made under court order or in an emergency to the superintendent of the district of residence and the superintendent of the admitting district within five working days after the placement.

b. Except as provided in subdivision a, the placement agency shall provide written notice by registered mail of a placement to the superintendent of the district of residence and the superintendent of the admitting district at least ten working days before the placement.

c. The placement agency shall afford the district of residence reasonable opportunity to participate in permanency planning for the child.

9. Notwithstanding the provisions of this section, educational services provided to a student by the youth correctional center are not subject to the payment of tuition by either the student's school district of residence or the superintendent of public instruction.

15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance under certain circumstances.

1. Students may attend a school in a bordering state in accordance with section 15-40.2-10 under the following circumstances:

a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state.

b. A student who has attended a school district in a bordering state since, and including, the 1990-91 school year, must be permitted to continue attending school in the district in the bordering state.

c. A student, whose sibling attended an out-of-state school during or before the 1990-91 school year, must be permitted to attend school in the district the sibling attends in the bordering state.

2. If the school board of the district in which the student resides denies a request for attendance and payment of tuition in another state, an appeal may be made to the three-member committee in accordance with section 15-40.2-05. If the three-member committee determines that the student falls within the terms of subdivision b or c of subsection 1, then the student may attend in the bordering state and the school district of residence shall pay the tuition. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15-40.2-05. For kindergarten students, the three-member committee shall use the criteria specified for elementary students in section 15-40.2-05. Subsection 3 of section 15-40.2-05 does not apply to an appeal for out-of-state attendance and payment of tuition. Regardless of the provisions of this section, if the school district of residence does not provide for the education of kindergarten students, it may not pay tuition for a kindergarten student to attend school in a bordering state. The decision of the committee regarding payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision is final.

3. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.

4. This section does not require the district of residence to provide student transportation, or payments in lieu thereof, for students attending out-of-state schools.

15-40.2-10. Reciprocal master agreements for student attendance in other states - School district agreements - Procedure when bordering state does not enter into reciprocal master agreement.

1. The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school students in the public schools or institutions in such bordering states. A school district may either comply with the terms of the reciprocal master agreement or, upon notification to the superintendent of public instruction, may enter into an agreement with a school district in a bordering state for the education of elementary and high school students. The agreement, which replaces the provisions of the master reciprocal agreement, must provide for the payment of tuition at an amount agreed upon by the school district of residence and the school district of the bordering state. However, the tuition may not exceed the amount established under the

reciprocal master agreement, nor may it be less than the per student foundation aid plus tuition apportionment in the student's school district of residence. For purposes of foundation aid, a student attending school in a bordering state under such an agreement is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district in the bordering state for payments as provided in the agreement.

2. If the state educational agency or officer of the bordering state is not authorized to or declines to enter into a reciprocal master agreement with the superintendent of public instruction, a school district may negotiate with a school district of that bordering state an amount of tuition it is willing to pay to that other state's school district for the education of pupils in that state. The school district of residence is liable to the school district in the bordering state for the payments it agrees to make under this subsection. However, if the school district accepts students from that bordering state, it may not agree to accept those nonresident students for an amount of tuition less than the foundation aid plus tuition apportionment it would have received from this state for one of its students in the same grade if its student had been attending in that bordering state.

15-40.2-11. Federal tuition contracts. The school board may make arrangements for the education of pupils in a federal school and contract with federal officials for such education. Such contracts may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district.

15-40.2-12. Levy for tuition charges permitted. The school board of any school district approving the payment of tuition charges for students in grades seven through twelve or required to make tuition payments under this chapter may levy an amount pursuant to subdivision c of subsection 1 of section 57-15-14.2 sufficient to pay tuition charges.

15-40.2-13. Payment of tuition by sending districts - Interest on late payments. Any school district approving the payment of tuition charges for pupils attending school in another district or required to make such payments under the provisions of this chapter shall remit to the admitting district not less than one-half of the annual tuition at the end of each semester of attendance. If such payments are not received by the admitting district within thirty days after the end of any semester for which payment is due, simple interest at the rate of six percent per annum accrues to such sums until payment is made.

STUDENT TRANSPORTATION -- 15.1-30

TESTIMONY

15.1-30-01. Present North Dakota Century Code section 15-34.2-01 states that:

> "The school board of any school district in this state, in its discretion, may furnish to each family living in the district vehicular transportation or the equivalent of the payments received from the state in lodging at some other public school if the same is acceptable to the family"

The committee had to do a little bit of work with this one. Firstly, present law literally authorizes the board to furnish vehicular transportation to each family living in the district and this would be regardless of whether or not there was a student in school. Secondly, furnishing vehicular transportation could even be taken to mean that the board could furnish a car or a truck to each family living in the district. Thirdly, present law authorizes the board to provide equivalent payments if they are acceptable to the family. If the offered payments aren't acceptable to the family, we don't know how much negotiating room there is.

Clearly, a literally reading is not what was intended. The committee therefore authorized a school board to provide for the transportation of a student to school or in the alternative, to reimburse the parent for expenses incurred in providing meals and lodging to the student outside the student's home.

Present law throughout this chapter uses several phraseologies in referencing food and accommodations. For consistency, the committee thought the most clearly understandable phrase was "meals and lodging" -- and directed that that be the preferred choice.

15.1-30-02. This section is the rewrite of present section 15-34.2-03. Present law provides that a school board may pay to each family living more than 2 miles from a school a reasonable sum per day for each day's attendance of a student or students of such family, when transported by an adult member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child.

15.1-30-03. Present law provides that a family to whom payment is owed under this chapter must demand the payment before the end of the school year or the payment is denied. The committee determined that a more modern process would involve requiring that the parent file a written request for the payment before June 30th of each school year.

15.1-30-04. This section states that instead of providing transportation, a school district can opt to pay a reasonable allowance to the student's parent to assist with the cost of meals and lodging at a location other than the student's residence. Again, the district is permitted to levy a tax for this purpose.

15.1-30-05. This section allows districts that have not been reorganized to charge fees for the

provision of school bus transportation service.

15.1-30-06. This section, like present law, provides that a school board providing transportation services must contract for those services. The process is one that involves notice and sealed bids. Each successful bidder is required to provide a bond in the amount of $500. A contract entered into under this section may not exceed seven years.

The committee looked at both the bond amount, which hadn't been raised since 1971 and the provision that a transportation contract could extend to seven years and literally bind a future board. The committee determined that both were fine as they appeared in current law and therefore those provisions were carried over in the rewrite without change.

15.1-30-07. Present section 15-34.2-09 contains multiple concepts. The committee decided that in the rewrite, those concepts should be placed in four separate sections.

The first section, 15.1-30-07 directs the superintendent of public instruction to prepare and make available a standards transportation contract form.

15.1-30-08 sets forth what must be in the contract. Like present law, it requires that no vehicle other than the one described in the contract may be used and that only the named individual may drive the vehicle when transporting students. It also requires that the routes be described, that the compensation be described, and that a process for adjusting the compensation be included. Adjustments are generally if a route change becomes necessary.

15.1-30-09. If the regular bus driver is ill and a substitute driver is needed or if the regular bus has mechanical difficulties and an alternate vehicle needs to be used, permission must be obtained from the president of the school board. This is temporary and the issue must be addressed at the next regular or special meeting of the school board.

15.1-30-10. School transportation contracts may be assigned only upon the written authorization of the school board.

15.1-30-11. Present law provides that a transportation contract that was originally bid may be renewed by direct negotiation between the board and the contractor or again by sealed bids. If direct negotiation is used, there is a notice requirement and a requirement that "two or more written quotations be obtained for the service when possible."

The committee had concern about the requirement that two or more written quotes be obtained "when possible." So, rewritten, the requirement is that the board make a good faith effort to obtain at least two written quotations.

15.1-30-12. Like present law, this section provides that a transportation contract must be awarded to the lowest responsible bidder. Contracts of this sort may not be given to an individual board member. However, a board member may serve as the driver of a vehicle identified in the contract.

15.1-30-13. This section parallels present section 15-34.2-11. It merely provides that the operator of a vehicle transporting student is under the supervision and the direction of the board, the superintendent, the principal, and the school teachers. Likewise, the school's disciplinary authority extends to the driver of the vehicle.

15.1-30-14. Present law provides that a school district may extend its route into a bordering state in order to pick up bordering state students attending our schools. The condition on this is that the superintendent of public instruction has entered into a reciprocal agreement with the bordering state. If you'll remember from section 15.1-29-02, a school district may enter into a separate contract in addition to or instead of the superintendent's reciprocal contract. The committee therefore determined that the section should allow a school district to go into a bordering state if the superintendent has entered into a reciprocal contract or if the board of the district has entered into a contract with the district in the bordering state.

15.1-30-15. Present law provides that if the board of a school district provides transportation for its students, it may also provide transportation to nonpublic school students on established bus routes if there is room available.

Present law goes on to cite statutory and constitutional authority under which a school board may enter into agreements with other political subdivisions, the state, or the federal government for the joint provision and integration of transportation services to the public. If such agreements are entered into, all safety requirements imposed by law for schoolbuses and school vehicles must apply, including requirements imposed by title 39 and requirements for schoolbus drivers set forth in section 15-34.2-14.

The committee maintained the general concept of this section but shortened the recitation of other applicable state laws. The rewrite simply allows the board of a school district to contract with other local, state, and federal governmental entities for the joint provision and integration of transportation services to the public. Instead of listing all the safety requirements set forth in law, the rewrite simply requires that all such requirements be observed.

STUDENT TRANSPORTATION
(Present Law)

15-34.2-01. Vehicular transportation or lodging may be furnished at option of school board. The school board of any school district in the state, in its discretion, may furnish to each family living in the district:

1. Vehicular transportation; or
2. The equivalent of the payments received from the state as determined under subsection 2 of section 15-40.1-16, in lodging at some other public school if the same is acceptable to the family.

The board may not accord the benefits of either subsection 1 or subsection 2 to any family which is receiving payments under section 15-34.2-03. In the event any school board elects to furnish vehicular transportation by public conveyance, the distance that each student must reside from the school in order to be entitled to such transportation may be determined by the school board in each district, but all students in the district must be treated on the same basis in accordance with such determination. The furnishing of benefits under this chapter may be extended to families living in the district for the purpose of transporting students to another school district or county agricultural and training school within the state, or another school district outside the state, if the attendance of such students in the other districts is in accordance with the provisions of this title governing the same.

15-34.2-03. Transportation - Payment optional with school board. The school board of any school district in the state may pay to each family living more than two miles [3.22 kilometers] from a school in the district which is taught the required length of time, a reasonable sum per day for each day's attendance of a student or students of such family, when transported by an adult member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.

15-34.2-04. Demand for payment - Waiver. Demand for any payments authorized by a school board under the provisions of this chapter must be made by the family entitled thereto before the close of the school year, or the same must be deemed to be waived. Any payment which has not been made within one year following the date of the demand must be deemed to have been refused and the claim to have expired.

15-34.2-05. Transportation expense - Report of business manager of the school district. The business manager of the school district shall include an item in his annual statement setting forth

any amounts spent for transportation of students or in making any payment in lieu of transportation.

15-34.2-06. Payment of board and lodging for high school students permitted - Levy. If more convenient or economical, any school district may pay a reasonable allowance instead of providing vehicular transportation for eligible high school students residing in the district to attend a high school in another district. Any school district that furnishes either transportation or an allowance for board and lodging for students attending high schools in another district may levy a tax pursuant to subdivision a of subsection 1 of section 57-15-14.2 for such purposes.

15-34.2-06.1. Charge for bus transportation optional. The school board of any school district which has not been reorganized may charge a fee for schoolbus service provided to anyone riding on buses provided by the school district. For schoolbus service which was started prior to July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the state average cost for transportation or the local school district's cost, whichever is the lesser amount. For schoolbus service started on or after July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the local school district's cost for transportation during the preceding school year. Any districts that have not previously provided transportation for pupils may establish charges based on costs estimated by the school board during the first year that transportation is provided.

15-34.2-07. Vehicular transportation - Bids, contracts, bonds. The school board of any school district which furnishes vehicular transportation to any of its schools, prior to the opening of school each year, shall enter into written contracts for the furnishing of such transportation for the ensuing school year. If the vehicle furnished is privately owned, the owner or lessee of the vehicle and the school board may enter into a contract, which may not exceed seven years' time. Except as otherwise provided in section 15-34.2-07.1, the board shall give at least ten days' notice of the time and place of the letting of such contracts and shall call for sealed bids therefor by publication in the official newspaper of the school district. The notices must describe the route to be covered by each contract and must state that the board reserves the right to reject any and all bids, that a bond submitted in a separate envelope will be required of each successful bidder in the sum of five hundred dollars or such greater sum as may be set by the board, conditioned for the faithful performance of the duties prescribed by the contract, and that the bids submitted must name the person or persons who will operate the vehicle and describe the nature of the vehicle.

15-34.2-07.1. School transportation contracts - Direct negotiation. Notwithstanding sections 15-34.2-07 and 15-34.2-08, a contract for the transportation of schoolchildren which was originally bid by and let to a contractor may be renewed by direct negotiation with that contractor provided that two or more written quotations are obtained for the service when possible, or upon sealed bids. At least thirty days before awarding a directly negotiated contract, the school district shall, by published notice, request quotations for the service to be provided. All quotations obtained must be kept on file for a period of at least one year after their receipt. If a contract is made by direct negotiation, all quotations must be maintained as public information. If a contract is made upon sealed bids, the procedure for advertising and awarding bids must conform to the provisions of section 15-34.2-07 except as otherwise provided in this section. A directly negotiated contract may only be entered into at a public meeting of the school district board during which meeting the patrons of the school district are given an opportunity to appear and comment. Notice of the school board meeting must be published at least one week prior to the meeting in the official newspaper of the school district.

15-34.2-07.2. School fuel contracts. A school board may purchase transportation fuel or heating fuel as needed by obtaining written quotes from all vendors who have registered with the school district for that school year. School districts must publish registration information at least once each year and may register interested vendors throughout the year.

15-34.2-08. Contract for vehicular transportation - Conditions for granting. The school board shall let the contract, in each case except as otherwise provided in section 15-34.2-07.1, to the lowest responsible bidder who furnishes a bond as described in section 15-34.2-07, which will be approved by the board, and who agrees to use a vehicle which, in the judgment of the board, meets standards imposed by the superintendent of public instruction under sections 39-21-27 and 39-21-27.1, is a safe, comfortable, and suitable vehicle for the purpose, and who names one or more drivers who, in the judgment of the board, are competent and responsible. No contract may be entered into with any member of the board, but a member of the board may be designated in the contract as the operator of a vehicle.

15-34.2-09. Contents of vehicular transportation contract - Restrictions. The superintendent of public instruction shall prepare a standard form of contract for the furnishing of vehicular transportation and shall distribute copies thereof, upon request, to the various school districts. A contract for the furnishing of vehicular transportation must:

1. Provide for the operation of any vehicle used in such transportation by the person or persons named in the contract.
2. Describe the vehicle or vehicles which must be used for the transportation.

3. Describe the route or routes as fixed by the school board which the vehicle or vehicles described in the contract shall cover, and provide for the amount of compensation to be paid for transportation.

4. Provide that in case it becomes necessary to change in any particular the route or routes specified in the contract, an equitable adjustment of the compensation payable under the contract must be made by the board and the contractholder.

The contract is assignable only upon the written approval of the board. No vehicle other than one described in the contract may be used to transport students and no person other than the persons named in the contract may operate any schoolbus without the written permission of the school board. In temporary emergencies, the president of the board may grant such permission in writing, but permission given by the president of the board under this section is valid only until the next regular or special meeting of the board.

15-34.2-10. Arbitration of disagreement as to compensation on change of route. In case of a change in the route or routes specified in a vehicular transportation contract and the failure of the school board and the contractholder to agree on an adjustment of the compensation specified in the contract, the matter must be submitted to arbitration. One arbitrator must be appointed by the board, and one must be appointed by the contractholder. The two arbitrators thus appointed shall appoint a third arbitrator. The award of the arbitrators must adjust the compensation of the contractholder to meet the changed situation and is binding upon the district and the contractholder.

15-34.2-11. Transportation of students - Authority over drivers and students. The operator or operators of vehicles used in the transportation of students under a contract entered into as provided in this chapter are under the supervision and direction of the board, superintendent, principal, and teachers of the schools at all times while on duty. The disciplinary authority of the schools exists over all students while being transported to and from the schools, and the operator is charged with their control and discipline while they are being transported.

15-34.2-15. Transportation of students outside state by schoolbus - When permitted. A school district may extend its route into a bordering state for the purpose of transporting students from such bordering state when the superintendent of public instruction has entered into a reciprocal agreement with such bordering state as provided in chapter 15-40.2.

15-34.2-16. Transportation of nonpublic elementary and high school students - Comprehensive transportation services - Conditions

1. When authorized by the school board of a public school district providing transportation for public elementary and high school students, elementary and high school students attending nonpublic schools may be transported on public schoolbuses to and

from the point or points on established public schoolbus routes on such days and during the times that the public school district may authorize and agree to the transportation of such students only when there is passenger room available on such buses, according to the legal passenger capacity for such buses, when such buses are scheduled according to this section; provided, however, no payments may be made from state funds for any mileage costs for any deviation from the established public routes which may be caused by any agreement entered into pursuant to this subsection.

2. The school board of a public school district providing transportation for public elementary and high school students may utilize the authority conferred by article VII, section 10 of the Constitution of North Dakota and section 54-40-08 to enter into agreements with other political subdivisions, the state, or the federal government for the joint provision and integration of transportation services to the public. All safety requirements imposed by law for schoolbuses and school vehicles apply to transportation services to students provided pursuant to such an agreement, including requirements imposed by title 39 and requirements for schoolbus drivers set forth in section 15-34.2-14. Transportation services to students provided pursuant to this subsection qualify for state aid for transportation pursuant to chapter 15-40.1; however, no payments may be made from state funds for any mileage costs for any deviation from the established schoolbus routes, which may be caused by any agreement entered into pursuant to this subsection.

OPEN ENROLLMENT - 15.1-31
TESTIMONY

15.1-31-01 This section sets forth the procedure for open enrolling a student. Whereas the current law contains these provisions in one large paragraph, the rewrite uses subsections to distinguish the different steps in the process.

Again, I draw your attention to the fact that here too the committee elected to reference the powers and duties of parents as opposed to saying that the parent or the legal guardian shall do something or may do something.

15.1-31-02. This second section, like present law, works from the premise that the student's school district of residence must allow open enrollment except if the result of the open enrollment would reduce the student population in the district by more than 20%.

15.1-31-03. This section, again like present law, discourages district hopping. Once a student is enrolled in an admitting district, the student remains there until the student graduates, relocates, returns to the district of residence, or until the parent files another application for open enrollment.

Present law also provides that foundation aid must be paid in accordance with chapter 15-40.1. Again, the rewrite specifies that in this case, we mean the per student payment. One thing that neither the present law nor the rewrite makes clear is which district receives the payment. Perhaps this too could be clarified when the committee considers amendments.

15.1-31-04. This section provides that the students school district of residence must pay costs to the admitting districts if the student who is open enrolled is disabled.

15.1-31-05. This section covers the payment of transportation costs for student who are open enrolled. Like present law, a school district of residence may provide transportation to a student participating in open enrollment. If the district of residence does not provide transportation, then the admitting district can do so. In this case, the admitting district would receive the state transportation payments.

15.1-31-06. This section requires that a school board set standards for the acceptance and denial of open enrollment applications. Like current law, it gives districts the option of not considering any open enrollment applications.
Again like present law, the rewrite provides that a school district participating in open enrollment may not give or offer to give remuneration, or directly or indirectly exert influence on the student or the student's family, in order to encourage participation in the open enrollment program for the purpose of having the student participate in varsity athletics.

15.1-31-07. Finally, this section provides that if a student as a result of a dissolution resides in a district other than the one the student chooses to attend at the time of the dissolution, the student

15.1-31

is not subject to this chapter and may attend school in the chosen district. This is the same language as what is found in current law.

OPEN ENROLLMENT

15-40.3-01. Open enrollment - Procedure. A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than February first of the school year preceding the year of enrollment, apply to the school board of the student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By March first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By April first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which a student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section. The school board of a school district of residence and of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent or legal guardian, moves from the student's school district of residence to another school district and who wishes to enroll in a school district, other than the district to which the student moved.

15-40.3-02. Grounds for disapproval - Exception. Except as provided in section 15-40.3-04, the board of the district of residence may deny an application under section 15-40.3-01 only if the application will result in a reduction of the number of students enrolled in the district by more than twenty percent of the average daily membership the previous school year. However, if denying an application would result in the enrollment of children from the same nuclear family in different school districts, the school board of the district of residence may not deny the application. A student attending school in another district and having tuition paid as provided for in section 15-40.2-06 during the 1993-94 school year may enroll in a school district other than the student's school district of residence under the provisions of this chapter, without being considered a student in average daily membership the previous year in the student's school district of residence.

15-40.3-03. Enrollment - Foundation aid - Tuition apportionment. Once enrolled in the admitting district, the student remains enrolled in the admitting district until the student graduates, moves, the student's parent or legal guardian applies for enrollment in another school

district, or the student's parent or legal guardian notifies the student's school district of residence that the student will attend school in the school district of residence the following year. Payment for foundation aid must be made in accordance with chapter 15-40.1. For purposes of tuition apportionment payments, a student whose application is approved under this section is considered a resident of the admitting district. Except as specifically provided in this chapter, the provisions of chapter 15-40.2 do not apply to students involved in open enrollment.

15-40.3-04. Enrollment - Students with disabilities - Additional costs. If an application under section 15-40.3-01 is approved for a student with a disability, the school board of the district of residence shall pay to the admitting district the costs incurred by the admitting district in providing education and related services to the student with a disability up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level. The state is liable for any costs in excess of this amount.

15-40.3-05. Open enrollment - Transportation. A school district of residence may provide transportation to a student participating in open enrollment. If a school district of residence does not provide transportation to a student participating in open enrollment, transportation may be provided by the admitting district, and the admitting district is then entitled to state payments for the transportation of that student.

15-40.3-06. Local school boards - Standards. Each school board shall adopt standards for the acceptance and rejection of applications for open enrollment as provided in section 15-40.3-01. The standards may include the capacity of a program, class, grade level, or school building. The standards may not include previous academic achievement, participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings. The school board of the admitting district may determine that the district may not accept applications for open enrollment under this chapter. A school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly or indirectly exert influence upon the student or the student's family, in order to encourage participation in the open enrollment program for the purpose of having the student participate in varsity athletic activities. However, any student who participated in varsity athletic activities during the 1992-93 school year, at a school in a district other than the student's district of residence or at a school outside the boundary within which the student would normally attend school may continue to participate in varsity athletics at that school for the duration of the student's high school career.

15-40.3-07. Students not subject to this chapter. A student, who as the result of dissolution resides in a district other than the one the student chooses to attend at the time of dissolution, is not subject to the provisions of this chapter and may attend school in the chosen school district. The student may not be considered a student in average daily membership in the student's school district of residence for purposes of section 15-40.3-02.

151-32

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02/19/01 10:59 AM

TO: H Edu NDLA/NDLC/NoDak@NoDak
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15.1-32 SPECIAL EDUCATION

TESTIMONY

15.1-32-01 starts the rewrite with a list of definitions. We still define special education, a student who is gifted, and a student with disabilities.

Present law includes a definition of learning disability. The rewrite does not. The interim committee took no issue with the definition, the committee simply couldn't understand why this one particular disability was defined, to the exclusion of all others. No explanation was forthcoming, so the decision was made not to define any disability in this section.

The committee did however add a definition of "related services". These are transportation, developmental and corrective or supportive services required by a student with disabilities. For some reason, this definition was included in present section 15-59-02.1, which is a legislative intent section.

The definitions are cleaned up versions of what is found in present law. One minor change that the committee did make is in terminology: According to DPI, we used to refer to seriously emotionally disturbed as a disability category and now the preferred terminology is simply emotionally disturbed.

15.1-32-02 In present law, specifically section 15-59-05, one will find the powers and duties of both the superintendent and public instruction and the director of special education. In the rewrite, we used multiple sections to more clearly delineate the powers and duties of each individual. In the rewrite, this section requires the superintendent of establish state policy regarding special education and to ensure a cooperative special education program that coordinated all available services. Like present law, the superintendent is specifically directed to cooperate with private agencies and to solicit their advice and cooperation in the establishment of policy and in the coordination and development of the programs.

15.1-32-03 Again like present law, this section requires the superintendent to develop and implement interagency agreements with the department of corrections, the department of human services, and the department of health, as well as other public and private entities to maximize available resources.

15.1-32-04 Present law requires the superintendent of public instruction to enforce educational standards for all special education programs in institutions that are wholly or partly supported by

the state but not supervised by public school authorities. If you'll remember, I believe it was during the 1997 session, the legislative assembly enacted legislation that removed all references to departmental standards, guidelines, policy directives, etc. and required that such requirements be placed in rules. The rewrite reflects this and directs the superintendent to adopt rules governing special education programs in such institutions.

15.1-32-05 Present section 15-59-02.1 is a very long legislative intent section. Buried therein, however, are certain substantive provisions -- one of which is the following

> As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the superintendent of public instruction, the state department of health, and the department of human services to cooperate in planning and coordinating programs for these children.

15.1-32-05 simply directs the three mentioned agencies to cooperate in the planning and coordinating of early intervention programs for individuals under the age of three.

15.1-32-06 Present law requires the superintendent to employ a qualified director of special education and such assistants as may be necessary and so too does the rewrite.

15.1-32-07 This section harkens back to one we addressed a little bit ago. Present law groups together the powers and duties of the superintendent and the director of special education. This section focuses on the director of special education and provides that his role is to assist school districts with the development and administration of special education programs.

15.1-32-08 Like present law, this section requires school districts to singly or jointly provide special education. Present law contains some additional verbiage requiring schools to file special education plans and to implement special education for students in the 3-6 age range by July 1, 1985. This time specific language was not retained in the rewrite.

15.1-32-09 Present law requires the director of special education to prescribe rules and regulations for the special education of children with disabilities and for the administration of this chapter. The committee changed this to provide that it is the superintendent of public instruction who is to adopt such rules. The committee determined that rulemaking authority rightfully belonged with the constitutional head of the agency and not with an employee of that agency.

15.1-32-10 Again like present law, this section authorizes the provision of special education services to students who are gifted.

15.1-32-11 This section merely requires every school district to keep a current record of all students with disabilities who are residents of the district.

15.1-32-12 This section like some we had previously looked at, also has its roots in the initial legislative intent section. Present law provides that "the school administrator or the

administrator's appointed representative or director of special education other than the student's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the student with disabilities, and make recommendations for required special education and related services."

In the rewrite, the committee provided that if a school district has evidence of a student's disability, the district must convene a multidisciplinary team to share assessment information and if necessary, to develop an individualized education program or services plan.

In this rewrite, you will see references to individualized education programs or services plans. Since the inception of special education legislation some 30 years ago, we have been referencing IEPs --

Apparently the feds decided that federal special education law gives all students the right to a free appropriate public education. Under that concept, IEPs are created. If however the student with disabilities attends a nonpublic school, it was determined that an IEP would not be an appropriate instrument. So, we do the same thing, but we call the end result a services plan, rather than an IEP, when the student in question attends a nonpublic school.

15.1-32-13 This section requires that all family insurance options be utilized to pay for a student's medically related disability . The school district is responsible for all costs not covered by the family's insurance. This language again came from the legislative intent section (15-59-02.1) and at the direction of the committee, was given its own section.

15.1-32-14 This section is the rewrite of present section 15-59-06, which is one long paragraph. The first recommendation on the part of the interim committee was that the content be divided into sections and subsections.

Substantively, the committee kept the same payment requirements -- 2 ½ times the state average per student plus 20 percent of all remaining costs.

Some technical changes however were made too.

Present law requires that with respect to payments for special education summer programs, the student's IEP must be written during the last quarter of the school calendar. The committee was told that this is neither a requirement of federal law, nor practical from the perspective of school personnel. So, the rewrite, in subsection 2, simply provides that an additional prorated per student payment may be made for a student with disabilities who attends a special education summer program, provided the student's IEP or services plan requires such.

Present law also states that the transportation must be provided according to rules adopted by the superintendent. In fact, transportation must be provided in accordance with federal law and the requirements of a proposed section 15.1-32-16. State aid payments are addressed in the finance chapter, in section 15.1-27-27. Consequently, the rewrite does not reference any departmental

rules regarding transportation.

Finally, present law provides that in the case of a student who is enrolled in a nonpublic school but who attends a public school special education program, payments must be made for the portion of a normal school day that the student participates in special education. A normal school day is then defined as consisting of six hours.

Our rewritten statutes, as of last year, define a full day of instruction as being 5 ½ hours for elementary grades and 6 hours for high school grades. So the committee took out that reference to a normal school day. The proposed language, which is found in subsection 3 states that if a nonpublic school student receives special education services, the superintendent must send a proportionate payment to the school district that provides the services.

15.1-32-15 This section tried to make sense out of another conceptually full paragraph. Again using sections and subsections, the committee restated present law. If the IEP team determines that a student is unable to attend the student's school district of residence, because of a physical, a mental, or a learning disability, and if no public school district in the state will accept the student and provide the necessary services, the student's school district of residence must contract with either an instate or an out-of-state private, accredited, nonsectarian, nonprofit institution or with a public school district outside the state. The contract must be approved by the superintendent of public instruction.

Like present law, the rewrite provides that the school district is responsible for 2 ½ times the state average per student elementary or high school cost, plus 20 percent.
The superintendent of public instruction is to provide to the student's school district of residence the remaining 80 percent -- but within the limits of legislative appropriations.

Again like was mentioned earlier, this section in present law requires that transportation be provided according to rules adopted by the superintendent. The committee again eliminated the reference to the rules.

15.1-32-16 This section also came from section 15-59-02.1, the legislative intent section. It provides that if the student's IEP requires transportation, the school district must provide the transportation by any reasonably prudent means. The school district is entitled to state reimbursement for the provision of transportation.

15.1-32-17 Like the previous section, this one too came from legislative intent. It provides that a student is entitled to more than the traditional 180 day school year if the IEP teams determines that regression would be caused by an interruption in the student's educational program and that the student's limited recoupment capacity makes it impossible or unlikely that the student will attain the level of self sufficiency and independence from caretakers which the student would otherwise be expected to reach.

15.1-32-18 This section, like present law, again reiterates that the school district is responsible for 2 ½ times the state average per student elementary or high school cost, plus 20 percent of all

remaining costs. The state is liable for the remaining 80 percent -- but within the limits of legislative appropriations.

15.1-32-19 This section provides that the superintendent, within the limits of legislative appropriations, shall reimburse a school district an amount equal to 80 percent of the room and board costs incurred on behalf of a student with disabilities.
15.1-32-20 Like present law, this section authorizes a school board to levy a tax for its special education program. (This one is part of the 185 mill cap).

15.1-32-21 This section, again like present law, authorizes the receiving and expending of federal dollars for special education.

15.1-32-22 This section required a little bit of clean up. Present law provides that:

> Each parent or guardian of a child with disabilities as defined in subsection 2 of section 15-59-01, or an adult with disabilities between the ages of eighteen and twenty-one is entitled to enforce the right of that child or adult with disabilities to an education guaranteed by state and federal law, through an administrative proceeding, civil action, or other remedy available by common law or statute.

This verbiage was omitted because the committee determined that it merely restates an existing legal right.

Present law goes on to provide that:

> The parent or guardian of a child with disabilities or the adult with disabilities is encouraged to submit a written request to the appropriate school administrator or director of special education regarding the relief sought prior to a proceeding.

Because this verbiage "encourages" action rather than requiring or prohibiting it, the committee determined that the sentence had no place in the statute and so it too was omitted.

Finally, the present law provides that:

> In any administrative or judicial proceeding to enforce that right, the court may, in its discretion, award reasonable attorneys' fees and costs to a parent, guardian, or adult with disabilities who prevails in that proceeding.

This sentence literally became the new section, with one change. The attorney generals office and I believe the office of administrative hearings, conveyed to the committee that attorneys fees were not permitted in administrative proceedings, only in judicial proceedings. Consequently, the rewrite references attorneys fees only in relation to judicial proceedings to enforce rights.

15.1-32-23. Prior to or during the 1997 legislative session, the superintendent had indicated a desire to change the requirements for the credentialing of special education teachers. Senator Holmberg, who served as the chair for both of the interim committees that worked on the Title rewrite, became very involved in this issue and was instrumental in crafting this section. If provides that superintendent may not change the credentialing process without first convening a

meeting of representatives from the Council of Educational Leaders, the Council of exceptional children, the NDEA, and the School Boards Association. If within 30 days of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the proposed changes for a set period of time. The present law in effect sunsetted this provision on June 30, 2001. The committee directed that this date be moved to June 30, 2003.

SPECIAL EDUCATION
PRESENT LAW

15-59-01. Definitions.
As used in this chapter:

1. "Child who is gifted" means a gifted and talented child identified by professional, qualified persons, who, by virtue of outstanding abilities, is capable of high performance and who requires differentiated educational programs and services beyond those normally provided by the regular school program in order to realize his or her contribution to self and society.
2. "Child with disabilities" means a child who has reached the third birthday, and has not reached the age of twenty-one years by midnight of August thirty-first, who because of mental, physical, emotional, or learning characteristics requires regular or special education and related aids and services designed to meet individual education needs. This includes children who are mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually impaired, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, otherwise health impaired, autistic, or traumatic brain injured.
3. "Learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written languages, and which may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. The term "learning disability" includes, but is not limited to, such conditions as perceptual impairments, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but does not include learning problems due primarily to visual, hearing or motor handicaps, mental retardation, emotional disturbance, or environmental disadvantage.
4. "Special education" means classroom, home, hospital, institutional, or other instruction to meet the needs of children with disabilities, transportation, and corrective and supporting services required to assist children with disabilities in taking advantage of, or responding to, educational programs and opportunities.

15-59-02.1. Legislative intent - Special education. This statement of legislative intent is provided to define more clearly the relationship between the federal government, state, school districts, and parents of students with disabilities in the provision of special education and related services. State special education policies are directed to achieving the purposes set out in the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.]. State funding along with federal resources are matched with local funds to achieve these purposes. "Related services" means transportation and such developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.

The school administrator or the administrator's appointed representative or director of special education other than the student's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an

individualized education program plan for the student with disabilities, and make recommendations for required special education and related services.

The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability.

In the case of students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All students with disabilities have the right to a free appropriate public education" means that all students with disabilities have the right to special education and related services which must be provided at public expense, under public supervision and direction and at no cost to parents. "At no cost" means specifically designed instruction and related services as described in the student's individualized education program plan provided without charge but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

School districts must require use of family insurance, or similar third-party payments, in whatever amount is allowed, as long as there is no financial loss to the student or the student's parent, for determining a student's medically related disability or other required related services which results in the student's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program. Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the superintendent of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by the parent of a student with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the superintendent of public instruction, the state department of health, and the department of human services to cooperate in planning and coordinating programs for these children.

15-59-03. Director of special education. A qualified director of special education and such assistants as may be necessary must be employed by the superintendent of public instruction.

15-59-04. School districts to provide special education. School districts shall provide special education to children with disabilities in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education and with the institutions of the state. Each school district shall submit a plan to the superintendent of public instruction for implementing special education in the district. Special education services to children with disabilities three to six years of age must be fully implemented by July 1, 1985. School districts may provide special education to children who are gifted in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education.

15-59-04.1. Records. Every school district shall make and keep a current record of all school age children with disabilities who are residents of the school district.

15-59-05. Powers and duties of the director of special education. The superintendent of public instruction shall establish general state policy within the provisions of this chapter and shall endeavor to ensure a cooperative special education program coordinating all available services. The superintendent of public instruction shall cooperate with private agencies, soliciting their advice and cooperation in the establishment of policy and in the coordination and development of special education programs. In accordance with the provisions of this chapter, the director of special education shall prescribe rules and regulations for the special education of children with disabilities and for the administration of this chapter. The director of special education shall assist the school districts of the state in the inauguration, administration, and development of special education programs, and establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment.

15-59-05.1. Eligibility for state and federal aid. The superintendent of public instruction may apply for, administer, receive, and expend any federal aid for which this state may be eligible, under the office of the superintendent of public instruction, in the administration of this chapter within the limits of legislative appropriation. School districts and multidistrict special education programs are eligible to serve as the local education agency for application, receipt, administration, and expenditure of state and federal aid within the limits of legislative appropriation. The North Dakota school for the blind, the North Dakota school for the deaf, the developmental center at westwood park, Grafton, the North Dakota youth correctional center, and the Jamestown state hospital are eligible to apply, receive, administer, and expend federal aid.

15-59-05.2. Interagency cooperative agreements for the provision of educational-related services to students with disabilities. The department of public instruction shall cooperatively develop and implement interagency agreements with appropriate public and private agencies, including the department of corrections and rehabilitation, the state department of human services, and the state department of health, for purposes of maximizing available state resources in fulfilling the educational-related service requirements of Public Law 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended.

15-59-05.3. Credentialing process for special education teachers. The superintendent of public instruction may not change the credentialing process for special education teachers as it is in effect on March 1, 1999, without first convening a meeting to include representatives of the North Dakota council of education leaders, the council of exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, the applicability of the proposed changes, including the scheduling, the manner of implementation, associated costs, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the change prior to July 1, 2001.

15-59-06. State cooperation in special education. Students with disabilities who are receiving special education services must be deemed to be regularly enrolled in the school district of residence and must be included in the determination of payments from the state foundation aid program whether or not the students regularly attend school in the school or school district receiving the payments. A prorated state foundation aid payment for a student to attend a public school program for students with disabilities, approved by the superintendent of public instruction, may be made if the individualized education program for the student is written during the last quarter of the school term and specifically requires that the student attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who attends a public school special education program, payments must be made to the appropriate public school district for the portion of a normal schoolday the student participates in special education. For the purposes of this section, a normal schoolday consists of six hours. The amount the school district is required to expend must be reduced proportionately if a student attends the school for less than an entire year. If any school district within a special education unit has a student with disabilities who, in the opinion of the student's multidisciplinary team, is unable to attend the public schools in the special education unit because of a disability, the school district shall contract with an in-state public school located outside the special education unit in which the student is a legal resident, if the school will accept the student and has proper services for the student's education. No school district may enter into a contract with any in-state public school for the education of any student because of a disability, unless the services provided by the school and the contract have been approved in advance by the superintendent of public instruction. The contract must provide that the school district agrees to pay to the in-state public school as part of the cost of educating the student an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending

upon the student's level of enrollment. The payment may not exceed the actual per student cost incurred by the in-state public school. The school district's liability must be reduced proportionately if the student attends the in-state public school for less than an entire year. The superintendent of public instruction, upon notification by the admitting district and upon verification by the superintendent that tuition payments are due the admitting district and are unpaid, shall withhold from state foundation aid payments to the district of residence an amount equal to the unpaid tuition until that amount has been paid. The transportation must be furnished as provided by rules of the superintendent of public instruction. The superintendent of public instruction shall reimburse school districts eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits, within the limits of legislative appropriations for that purpose.

15-59-06.1. Enforcement of special education programs in institutions by superintendent of public instruction. The superintendent of public instruction shall enforce educational standards for all special education programs in institutions wholly or partly supported by the state which are not supervised by public school authorities. Such standards must be similar to regulations and standards established for the conduct of special education classes of the public schools in the state.

15-59-06.2. Cost of special education - Liability of school district. If allowable costs for special education and related services for a child with disabilities in a special education program, as determined by the superintendent of public instruction, exceed the reimbursement provided by the state, the school district is liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on whether the enrollment would be in a grade or high school department, and twenty percent of all remaining costs. The two and one-half times amount includes the amount the school district is required to pay in section 15-59-06. The state is liable for eighty percent of the remainder of the cost of education and related services for each such student with disabilities within the limits of legislative appropriations for that purpose.

15-59-07. Contracts for students with disabilities to attend private or out-of-state public schools. If any school district in this state has a student with disabilities who in the opinion of the student's multidisciplinary team is unable to attend the public schools in the district because of a physical or mental disability or because of a learning disability, the school district shall contract with any accredited private nonsectarian nonprofit corporation within or outside the state or an out-of-state public school which has proper facilities for the education of the student, if there is no public school in the state which has the necessary services and which will accept the student. No school district may enter a contract with any private nonsectarian nonprofit corporation or out-of-state public school for the education of any student having a physical or learning disability, unless the services provided by the school and the contract have been approved in advance by the superintendent of public instruction. The contract must provide that the school district agrees to pay to the private nonsectarian nonprofit corporation or the

out-of-state public school as part of the cost of educating the student an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment and twenty percent of all remaining costs. The payment may not exceed the actual per student cost incurred by the private nonsectarian nonprofit corporation or out-of-state public school. The transportation must be furnished and reimbursed as provided by rules of the superintendent of public instruction. The superintendent of public instruction shall reimburse school districts eighty percent of the remainder of the actual cost of educating each student with disabilities not covered by other payments or credits within the limits of legislative appropriations for that purpose. The district of residence is entitled to the per student foundation payment.

15-59-07.2. Reimbursement by the superintendent of public instruction for special education boarding care costs. The superintendent of public instruction, within the limits of legislative appropriations, shall reimburse local school districts for eighty percent of the costs of room and board paid on behalf of children with disabilities placed in facilities outside their school district of residence for special education services not available within their school district of residence. Reimbursements must be made regardless of whether the child has been placed in a facility within the state or outside the state. Any special education room and board costs in excess of those payments made by the superintendent of public instruction are the responsibility of the local school district. The placement of children with disabilities in public or private facilities will be made by school districts. Placement in congregate care will be made in facilities designated by the department of human services.

15-59-08. School district special education program - Financing - Levy. The school board of any school district may budget funds from the school district general fund for a special education program for the school district. The school board may, upon approval by a majority of the school board, levy a tax pursuant to subdivision d of subsection 1 of section 57-15-14.2 for the purpose of carrying out a special education program for the school district, separately or in cooperation with other school districts.

15-59-10. Enforcement of right to education - Attorneys' fees. Each parent or guardian of a child with disabilities as defined in subsection 2 of section 15-59-01, or an adult with disabilities between the ages of eighteen and twenty-one is entitled to enforce the right of that child or adult with disabilities to an education guaranteed by state and federal law, through an administrative proceeding, civil action, or other remedy available by common law or statute. The parent or guardian of a child with disabilities or the adult with disabilities is encouraged to submit a written request to the appropriate school administrator or director of special education regarding the relief sought prior to a proceeding. In any administrative or judicial proceeding to enforce that right, the court may, in its discretion, award reasonable attorneys' fees and costs to a parent, guardian, or adult with disabilities who prevails in that proceeding.

15.1-33 MULTIDISTRICT SPECIAL EDUCATION

TESTIMONY

15.1-33-01. The chapter begins with a statement that multidistrict special education units are body corporates and have all the powers and duties usual to corporations for public purposes or as conferred by law. What this means is found in present language, which was eliminated by the committee -- i.e. That the unit can sue and be sued, contract, convey real and personal property, etc. The committee also eliminated the reference to a corporate seal by which official acts may be attested.

15.1-33-02. This section requires that a school district either be part of a multidistrict special education unit or have on file with the superintendent a plan under which it will offer its own special education services. The section does eliminate some dated language that addressed the initial formation of multidistrict units. The section does keep the language that addresses the exclusion of a district. In this case, the district may petition the superintendent of public instruction for permission to join a multidistrict unit. The superintendent's decision is appealable to the state board.

15.1-33-03. Each multidistrict unit is required to keep on file with the superintendent of public instruction an organizational plan. This plan must address the board's members, school district representation, the selection of officers, the terms of office, meeting times, quorum requirements, and any other items the superintendent might require through rules.

15.1-33-04. Present law provides that "representatives on the multidistrict board must be appointed by the school boards of the participating districts." It does not delineate the manner of appointment. The interim committee was told that appointment-methods are both unique and varied. Seven participating school districts might be governed by a five member board.

The committee asked that we work with the ND School Boards Association to craft appropriate language. What we came up with and what was approved by the committee is a requirement that the organizational plan of each unit provide for the manner in which board members are appointed.

15.1-33

15.1-33-05. Present law provides that "compensation for board members must be the same as that allowed school board members pursuant to section 15.1-09-06." The level of compensation for school board members is set by the members with the proviso that it not exceed $1000 a year. Again, rather than using a cross reference and risk an unintended amendment, the rewrite spells out the provisions in this section. As with school board members, multidistrict board members do receive reimbursement for meals, lodging, and travel expenses.

15.1-33-06. This section parallels present law with respect to withdrawing from a multidistrict special education unit. The board of the school district must vote to withdraw. The board must then inform the board of the multidistrict unit, and then the school board must file a plan for the

provision of services with the superintendent of public instruction.

15.1-33-07. Present section 15-59.2-05 sets forth powers and duties of a multidistrict board. As it had throughout the rewrite, the committee determined that powers and duties should be separated. This section therefore addresses a duty -- The multidistrict board must prepare and submit to the superintendent an annual plan regarding the provision of special education and related services.

15.1-33-08. This section addresses powers of the board i.e. Those things the multidistrict board is authorized to do. The board may receive and expend moneys, hire personnel, and enter into contracts.

15.1-33-09. This section is another duty imposed on the board. It requires the board to plan and coordinate the transportation of each student receiving special education within the unit.

15.1-33-10. This section, again like present law, provides that individuals employed by the unit have the same rights as those accorded to an individual employed by a school district for the same purpose.

MULTIDISTRICT SPECIAL EDUCATION PROGRAMS
Present Law

15-59.2-01. Multidistrict special education plan. School districts may be organized into multidistrict special education programs for purposes of planning and coordinating special education and related services. The multidistrict program board shall submit a plan for implementation by July 1, 1980, for such organization to the superintendent of public instruction, who shall approve or disapprove any plan submitted. Such plan and any amendments must meet the regulations and guidelines as established by the superintendent of public instruction. School districts not participating in a multidistrict special education program shall submit a plan for providing special education and related services. The school board of any school district which has been excluded from a multidistrict special education program and which wishes to have its school district included in such program may petition the superintendent of public instruction, who shall consider such petition prior to approving any plan submitted pursuant to this section or section 15-59.2-05. Appeals may be made to the state board of public school education.

15-59.2-01.1. Multidistrict special education programs - Corporate powers - Corporate name. Each multidistrict special education program is a body corporate for special education purposes and the name of each special education program must be chosen by the multidistrict board. The multidistrict special education program shall possess all powers and shall perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued, enter into contracts, and convey such real and personal property as come into its possession by will or otherwise. It may have a corporate seal by which its official acts may be attested.

15-59.2-02. Organizational plan - Contents. The organizational plan to be submitted to the superintendent of public instruction must include the number of members on the multidistrict special education board, how each district will be represented, selection of officers, terms of office, meeting times, requirements for a quorum, and such other items as may be required by regulation of the superintendent of public instruction. Representatives on the multidistrict board must be appointed by the school boards of the participating districts. Compensation for board members must be the same as that allowed school board members pursuant to section 15.1-09-06.

15-59.2-03. Agreement of participation in multidistrict programs. Upon approval of the plan by each school district by a majority vote of the school board, the school district shall become a member of the multidistrict special education program.

15-59.2-04. Withdrawal from a multidistrict program. In order to withdraw from a multidistrict special education program, a school district must, on or before March first prior to the beginning of the school year for which it seeks withdrawal:

1. Approve the withdrawal by a majority vote of the school board.
2. Notify the multidistrict board of the withdrawal.
3. Submit a plan to the superintendent of public instruction for providing services to handicapped children.

15-59.2-05. Powers and duties of the multidistrict board. The powers and duties of a multidistrict special education board must be as follows:

1. To prepare, on behalf of the participating school districts, an annual plan for providing special education and related services, such plan to be submitted to the superintendent of public instruction for approval.
2. To receive state and federal funds and distribute them to each of the participating school districts.
3. To employ personnel to carry out administrative, itinerant instruction, coordinative, and related services, who shall have the same statutory rights as school district employees. Rights which teachers shall have during the transition as set forth herein shall include, but not be limited to, those rights available under sections 15-47-27 and 15-47-38.
4. To receive and expend any private, local, state, or federal funds for the payment of personnel and for expenses of the multidistrict board.
5. To contract with school districts within and without the multidistrict area to provide special education and related services.
6. To plan and coordinate the transportation of pupils for special education programs within the school districts participating in the multidistrict special education program.

15.1-34 BOARDING HOME CARE
TESTIMONY

15.1-34-01. In this chapter, the committee focused mainly on sorting out and organizing the verbiage. This first section, like present law provides definitions. No substantive changes were made.

15.1-34-02. In this section, like present section 15-59.3-02, we require a registration certificate prior to the establishment or operation of a family boarding home. A family boarding home is a private residence at which boarding home care is provided to no more than 4 students with disabilities. A registration certificate is not required if the student's care is being provided in the home of a relative, in a home or institution under the management and control of the state or the board of a school district, or in a foster home.

15.1-34-03. This section sets forth the steps involved in obtaining a registration certificate. Present law provides that the department of human services must grant a certificate if, among other things, the home will be maintained according to the standards prescribed for its conduct by the rules of the department. The committee determined that issuing a certificate based on an assumption or a promise that the home will be maintained according to standards was not valid criteria for granting or deciding not to grant a certificate. The interim committee therefore eliminated that language but still requires as a condition of certification that the home must be in sanitary condition, properly equipped and properly staffed.

15.1-34-04. This section stems from present section 15-59.3-07. That particular section contains numerous concepts, which the interim committee organized into separate sections. In this section, the committee continued the requirement that the state department of health, the state fire marshal, or a designee of the state fire marshal must inspect any home for which a registration certificate is sought.

The committee tried, whenever possible, to remove references to "designees." If the superintendent or a department director is to do something, it is his ultimate responsibility to see that it is done, regardless of whether he chooses to perform the duty personally or to provide for its performance by another person. In this case, the committee chose to leave the reference to a designee because we are addressing more than just the state fire marshal or an employee of the state fire marshal conducting an inspection. What often happens is that the state fire marshal will designate a local fire official to conduct the inspection. That's a perfectly acceptable designation.

15.1-34-05. This section simply provides that inspections and investigations may take place and any time.

15.1-34-06. This section simply provides that conviction of an offense is not a bar to registration under this chapter, unless the department of human services believes that the offense has a direct bearing on the person's ability to serve as the owner or operator of a boarding home for students or unless the department believes that the person is not sufficiently rehabilitated.

15.1-34-07. Like present law, this section provides that when the department of human services denies a person's request for a registration certificate, the person may ask for and shall then receive an administrative hearing regarding the denial.

15.1-34-08. This section sets forth the information that must be contained on the registration certificate -- i.e. The registrant's name, the location of the home, and the maximum number of students who may board in the home.

15.1-34-09. This section provides that any person who receives a registration certificate must maintain records, submit appropriate forms, and allow for the inspection of all books, records, and reports regarding the student boarders.

15.1-34-10. Present law requires that the records must be made available to "parents and persons having a definite interest in the well-being of the student or students concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary." The committee considered this verbiage to be just a little fluid. So in the rewrite, the committee provided that records must be made available to, among others, the parents of a student for whom care is given under this chapter and to "any person who in the opinion of the department has, or may acquire, an advocacy function on behalf of a student for whom care is provided under this chapter."

15.1-34-11. This section sets forth the reasons for which the department may revoke a certificate of registration. The reasons include unsanitary conditions, lack of proper equipment, unqualified staff, lack of compliance with departmental standards, fraudulent information in the application for certification, rule violations, and various criminal convictions.

15.1-34-12. Like present law, this section provides that when the department of human services revokes a person's registration certificate, the person may ask for and shall then receive an administrative hearing regarding the revocation.

15.1-34-13. Again like present law, this section prohibits a governmental entity from placing a student in a family boarding home unless the person operating the home has obtained a registration certificate or is exempt from that requirement.

15.1-34-14. This section authorizes the department of human services to engage in various activities including the establishment of standards of registration, the application of alternate standards, the adoption of rules, and the authorization of inspections.

15.1-34-15. Finally, this section imposes a penalty for violation of the chapter. The penalty is a class B misdemeanor, which carries a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both.

BOARDING HOME CARE FOR STUDENTS WITH DISABILITIES

Present Law

15-59.3-01. Definitions. As used in this chapter:

1. "Boarding home care for students with disabilities" means the provision of boarding home care for a student who is a child with disabilities as described in subsection 2 of section 15-59-01 and includes the provision of food, shelter, security, and safety, on a twenty-four-hour basis to one or more students.
2. "Department" means the department of human services.
3. "Family boarding home" means an occupied private residence at which boarding home care for students with disabilities is regularly provided by the owner or lessee thereof to no more than four children, unless all students provided boarding home care are related to each other by blood or marriage, in which case this limitation does not apply.
4. "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this chapter.
5. "Registration" means the process whereby the department maintains a record of all family boarding homes, prescribes standards and adopts rules under section 15-59.3-06, and requires the operator of such home to certify that the operator has complied with the prescribed standards and adopted rules.
6. "Registration certificate" is a written instrument issued by the department to publicly document that the certificate holder is in compliance with this chapter and the applicable rules and standards prescribed by the department.
7. "Relative" means any person having the following relationship to the student by marriage, blood, or adoption: grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt.

15-59.3-02. Boarding home care for students with disabilities - Registration required. No person, partnership, voluntary organization, corporation, or limited liability company may establish or operate a family boarding home without first obtaining a registration certificate. The mandatory provisions of this section requiring registration do not apply when the boarding home care is provided in:

1. The home of a relative.
2. A home or institution under the management and control of the state or the public school board.
3. A home furnishing "foster care for children" as defined in subsection 1 of section 50-11-00.1.

15-59.3-03. Public agency purchase of boarding home care for students with disabilities. No agency of state or local government may purchase or provide boarding home care for students with disabilities unless the family boarding home:

1. Has obtained a registration certificate; or

2. If exempted from registration by subsection 1 or 2 of section 15-59.3-02, complies with all applicable standards and rules issued or adopted by the department.

15-59.3-04. Registration certificate granted. Applications for a registration certificate for the operation of a home receiving students with disabilities for boarding home care must be made on the forms provided, and in the manner prescribed, by the department. The department may investigate the applicant's activities and make an inspection of the proposed home. A registration certificate for the operation of the home must be granted by the department within ten working days of receipt of the proper forms upon a determination that:

1. The premises to be used are in sanitary condition and properly equipped to provide for the health and safety of all students who may be received;
2. The persons in charge of such home and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and the rules and standards prescribed by the department; and
3. The home will be maintained according to the standards prescribed for its conduct by the rules of the department. The registration certificate is effective for a period of not more than two years.

15-59.3-05. Conviction not bar to registration - Exceptions. Conviction of an offense does not disqualify a person from registration under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of a boarding home for students with disabilities, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

15-59.3-06. Minimum standards - Rules - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of boarding homes and the registration of such homes. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make such reasonable rules for the regulation of boarding home care for students with disabilities as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
   a. Inspect any home for which a registration certificate is applied for or issued under this chapter; and
   b. Certify to the department that the home meets the requirements of this chapter and the minimum standards prescribed by the department.

15-59.3-07. Investigation of applicants and registrants - Maintenance of records - Confidentiality of records.

1. The department and its authorized agents at any time may investigate and inspect the conditions of the home and the qualifications of the owner or operator. Upon request of the department, the state department of health or the state fire marshal, or a designee, shall inspect any home for which a registration certificate is applied for or issued and shall report its findings to the department.

2. All holders of registration certificates shall:

   a. Maintain such records as the department may prescribe regarding each student in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the students upon forms furnished by the department; and

   b. Admit for inspection authorized agents of the department and open for examination all records, books, and reports of the home.

3. All records and information maintained with respect to students receiving home care for students with disabilities are confidential, must be properly safeguarded, and must not be disclosed except:

   a. In a judicial proceeding;

   b. To officers of the law or other legally constituted departments or agencies; or

   c. To parents and persons having a definite interest in the well-being of the student or students concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.

15-59.3-08. Revocation of registration certificate. The department may revoke the registration certificate of any family boarding home upon a proper showing of any of the following:

1. Any of the applicable conditions set forth in section 15-59.3-04 as prerequisites for the issuance of the registration certificate no longer exist.
2. The registrant is no longer in compliance with the minimum standards prescribed by the department.
3. The registration certificate was issued by fraudulent or untrue representation.
4. The registrant has violated any rules of the department.
5. The registrant has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as a registrant.
6. The registrant has been convicted of any offense and the department, pursuant to section 12.1-33-02.1, has determined that the registrant has not been sufficiently rehabilitated.

15-59.3-09. Denial or revocation of registration certificate - Administrative hearing. Before any application for a registration certificate under the provisions of this chapter may be denied, or before revocation of any registration certificate may take place, written charges as to the reasons therefor must be served upon the applicant or registrant. The applicant or registrant has the right to an administrative hearing in the manner provided in chapter 28-32 if written request for the hearing is made to the department within ten days after service of the written charges.

15-59.3-10. Contents of registration certificate. The registration certificate must show the name of the owner or operator of the boarding home, its location, and the maximum number of students who may be received and kept there at any one time.

15-59.3-11. Penalty. Any person whether owner, manager, operator, or representative of any owner, operator, or manager who violates any of the provisions of this chapter is guilty of a class B misdemeanor.

now 15.1-35

CHILD NUTRITION AND FOOD DISTRIBUTION PROGRAMS (PRESENT LAW)

15-54-01. Definitions. In this chapter unless the context otherwise clearly requires:
1. "Child nutrition program" means any program that provides federal assistance for the provision of nutritious meals for children.
2. "Food distribution program" means any program that provides federally donated agricultural commodities, products, and other foods, or cash payments in lieu of foods, to eligible participants.
3. "School" means a public or private nonprofit school.
4. "School board" means publicly elected officials as provided for in this title.
5. "State educational agency" means the state department of public instruction.

15-54-02. Expenditure of federal funds. The state educational agency shall administer federal funds designed to provide nonprofit child nutrition programs and food distribution programs for eligible participants. The state educational agency may enter into a contract with any agency of the federal government so that the available federal funds may be used to the fullest extent possible by the state. The state educational agency shall receive, deposit, and disburse the funds in accordance with state and federal law, regulations, and policies.

15-54-03. Administration of program. The state educational agency may enter into such agreements with any agency of the federal government, with any person, public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity and prescribe such regulations, employ such personnel, and take such other action, as it may deem necessary to provide for the establishment, maintenance, operation, and expansion of any child nutrition and food distribution program, and to direct the disbursement of federal and state funds, in accordance with any applicable provisions of federal or state law. The state educational agency may give technical advice and assistance to any person, public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity in connection with the establishment and operation of any child nutrition and food distribution program and may assist in training personnel engaged in the operation of such programs. The state educational agency and any person, public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity may accept any gift for use in connection with any child nutrition and food distribution program.

15-54-04. School boards. Pursuant to any power of school boards to operate or provide for the operation of child nutrition and food distribution programs in schools under their jurisdiction, school boards may use therefor funds disbursed to them under the provisions of this chapter, gifts, and other funds received from the sale of meals under such programs.

15-54-05. Accounts, records, reports, and operations. The state educational agency shall prescribe regulations for the keeping of accounts and records and the making of reports by or

15.1-35

under the supervision of any person, public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity participating in a child nutrition or food distribution program. Such accounts and records at all times must be available for inspection and audit by authorized officials and must be preserved for such period of time, not in excess of five years, as the state educational agency lawfully may prescribe. The state educational agency shall conduct or cause to be conducted such audits, inspections, and administrative reviews of accounts, records, and operations with respect to child nutrition and food distribution programs as may be necessary to determine whether agreements entered into and rules adopted under this chapter are being complied with, and to ensure that child nutrition and food distribution programs are effectively administered.

15-54-06. Studies, appraisals, and reports to governor. The state educational agency to the extent that funds are available for that purpose, and in cooperation with other appropriate agencies and organizations, may conduct studies of methods of improving and expanding child nutrition and food distribution programs and promoting nutritional education in the schools, may conduct appraisals of the nutritive benefits of child nutrition and food distribution programs, and may report its findings and recommendations from time to time, to the governor.

15-54-09. Food service personnel - Training. Each individual who manages the food service operation of a public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity, with which the superintendent of public instruction has entered into an agreement under section 15-54-03, shall undergo initial and continuing training regarding the safe handling, preparation, and service of food. The superintendent of public instruction shall by rule prescribe the nature, scope, and frequency of the training.

15.1-36 SCHOOL CONSTRUCTION

TESTIMONY

This chapter received time and attention in the last couple of sessions as well as in the 1997-98 interim so the committee didn't have too much work to do.

15.1-36-01. This section requires the superintendent of public instruction to approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before the project commences, if the project will cost in excess of $25,000.

The rewrite, like present law, is very specific in stating that the superintendent may not approve the project unless the school board demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district; and that the school board demonstrates the capacity to pay for the project.

15.1-36

If there is disagreement with the superintendent's determination, the school board applying for construction approval may appeal the application to the state board or disapproving the of public school education. The decision of the state board is final.

15.1-36-02. This section authorizes the use of $40 million from the coal development trust fund for school construction loans. To access this money, a school board must receive construction approval from the superintendent and then submit an application seeking the loan.

15.1-36-03 This section provides that the Bank of North Dakota will administer all loans made under this chapter.

15.1-36-04 This section limits evidences of indebtedness -- bonds -- used for school construction or improvement. The indebtedness for this purpose may not exceed the lesser of 30 percent of the school district's taxable valuation or $5 million.

15.1-36-05 Under present law, there are two applicable penalty sections. The first provides that any architect or other person who draws plans or specifications for, or who superintends the erection of, a public school building, or who erects or constructs a public school building in violation of the provisions of this chapter, is guilty of an infraction.

The second provides that any person who violates any this chapter, and each member of any board concurring in any the violation by the board, is, unless another penalty is specifically provided in this chapter, guilty of an infraction.

In the rewrite, the committee simply provides that a person is guilty of an infraction if the person

draws plans or specifications for the construction of a public school building or facility in violation of this chapter; superintendents construction in violation of this chapter, actually engages in construction in violation of this chapter, or violates any other provision of the chapter.

A school board member is likewise guilty of an infraction if there was concurrence by the member in the improper activity.

An infraction carries with it a maximum fine of $500.

SCHOOL CONSTRUCTION
(Present Law)

15-35-01.1. Approval required for certain school district construction projects.

1. Notwithstanding the powers and duties of school boards provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars may not be commenced unless approved by the superintendent of public instruction.
2. The superintendent of public instruction may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility unless the school district proposing the project:
   a. Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district; and
   b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education.
3. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
4. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.
5. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15-35-01.2, unless the cost of the improvements exceeds seventy-five thousand dollars.

15-35-15. Duty of superintendent of public instruction to enforce statutes. The provisions of this chapter must be enforced by the superintendent of public instruction or some person designated by him for that purpose.

15-35-16. Penalty for improper erection of school building. Any architect or other person who draws plans or specifications for, or who superintends the erection of, a public school building, or who erects or constructs a public school building in violation of the provisions of this chapter, is guilty of an infraction.

15-35-17. Penalty for violating provisions of chapter. Any person who violates any of the provisions of this chapter, and each member of any board concurring in any such violation by such board, is, unless another penalty is specifically provided in this chapter, guilty of an infraction.

15-60-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Board" means the board of university and school lands.
3. "Construction" means purchase, lease, or construction, and the term "to construct" means to purchase, lease, or construct in such manner as may be deemed desirable.
4. "Fund" means the coal development trust fund created by section 21 of article X of the Constitution of North Dakota and section 57-62-02.
5. "Improvement" means extension, enlargement, or improvement, and the term "to improve" means to extend, to enlarge, or to improve in such manner as may be deemed desirable.
6. "Project" means any structure or facility that a school district is authorized to construct or improve under section 15-35-01.1 and which is estimated to cost in excess of fifty thousand dollars.
7. "Superintendent" means the superintendent of public instruction.

15-60-10. Loans.

1. The board may authorize the use of moneys deposited in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 for the purpose of funding loans described in this chapter. The outstanding principal balance of loans funded under this chapter may not exceed forty million dollars. The board may adopt policies and rules for funding school construction loans.
2. A project must be approved by the superintendent pursuant to section 15-35-01.1 before a loan may be issued under this section. An application for a loan under this section must be submitted to the superintendent. The application may be submitted before or after authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously, but no later than one hundred eighty days from the date it is received by the superintendent. The application must contain information deemed necessary by the superintendent, including a discussion of alternative sources or methods for financing the construction or improvement, and must be considered in the order of its approval under subsection 1 of section 15-35-01.1. If the superintendent approves the loan, the superintendent may also determine the loan amount and a percent of interest to be paid on the loan. In determining the amount of a loan, the superintendent shall take into account the cost of the project and the fiscal capacity of the school district. To be eligible for a loan, the school district must have an existing indebtedness equal to at least fifteen percent of the school district's taxable valuation. In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness

authorized by an election under section 21-03-07 but not issued, and indebtedness authorized to be paid with dedicated tax levies under subsection 7 of section 21-03-07 but not issued. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15-35-01.1, provided the interest rate may not exceed six percent. The superintendent may adopt rules governing school construction loans.

3. Loan applications approved by the superintendent must be forwarded to the Bank. The Bank shall manage and service all school construction loans issued under this chapter and shall execute all necessary loan instruments. The Bank may charge loan recipients a fee for managing and servicing the loan. The Bank shall receive payments of principal and interest from the school districts, and shall remit payments of principal and interest to the board, which must use or deposit the payments in accordance with section 57-62-02 and section 21 of article X of the Constitution of North Dakota.

15-60-11. School board may issue evidences of indebtedness. The school board of a school district may issue and sell evidences of indebtedness pursuant to chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the lesser of thirty percent of the taxable valuation of the school district or five million dollars. Evidences of indebtedness issued pursuant to this chapter constitute a general obligation of the school district.

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15-38.1-01. Purpose. In order to promote the growth and development of education in North Dakota which is essential to the welfare of its people, it is hereby declared to be the policy of this state to promote the improvement of personnel management and relations between school boards of public school districts and their certificated employees by providing a uniform basis for recognizing the right of public school certificated employees to join organizations of their own choice and be represented by such organization in their professional and employment relationships with the public school districts.

15-38.1-02. Definitions. As used in this chapter:

1. "Administrators" means and includes all public school employees employed primarily for administration of the school or schools of a school district and devoting at least fifty percent of their time in any one year to the duties of administration of the school or schools of a school district.
2. "Appropriate negotiating unit" means a group of administrators having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.
3. "Appropriate negotiating unit" means a group of teachers having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.
4. "Representative organization" means any organization authorized by an appropriate negotiating unit to represent the members of the unit in negotiations with a school board.
5. "Strike" means any concerted work stoppage, slowdown, or withholding of contracted services.
6. "Teachers" means and includes all public school employees licensed under chapter 15-36 and employed primarily as classroom teachers.

15-38.1-03. Education factfinding commission - Appointment - Terms - Quorum. There is hereby created a commission to be known as the education factfinding commission, hereinafter called the commission, which shall consist of three members, one to be appointed by the superintendent of public instruction, one by the governor, and one by the attorney general. The appointee of the superintendent of public instruction shall be the chairman of the commission. The members of the commission shall be persons experienced in educational activities. The original appointment by the superintendent of public instruction shall be for a term of three years. The original appointment by the governor shall be for a term of two years. The original appointment by the attorney general shall be for a term of one year. Their successors shall be appointed for terms of three years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. At all times, two members of the commission shall constitute a quorum.

15-38.1-04. Compensation of commission and factfinders. Members of the commission are entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses, as provided by law for state officers, for attending commission

meetings or performing duties directed by the commission. Factfinders appointed by the commission, including commission members serving as factfinders, are entitled to reimbursement for expenses in the same manner as members of the commission and to compensation as established by the commission.

15-38.1-05. Powers of the commission. The commission may adopt its own rules. In addition to other powers authorized by law and under this chapter, the members of the commission and any factfinder appointed by it have, in the performance of their duties, the powers contained in sections 28-32-09, 28-32-11, and 28-32-12.

15-38.1-06. Cost of factfinding. The cost of factfinding proceedings, including per diem, compensation, and other costs, must be borne as follows: In those cases where the proceedings to resolve an impasse arises under subdivision a, b, c, or d of subsection 1 of section 15-38.1-13, the cost must be borne equally among the contending parties.

15-38.1-07. Right to organize or not organize.

1. Teachers, or administrators, have the right to form, join, and participate in the activities of representative organizations of their choosing for the purpose of representation on matters of employer-employee relations.
2. Teachers, or administrators, also have the right to refuse to join or participate in the activities of representative organizations.

15-38.1-08. Right to negotiate. Representative organizations have the right to represent the appropriate negotiating unit in matters of employee relations with the school board. Any teacher, or administrator, has the right to present his views directly to the school board.

15-38.1-09. Subject of negotiations. The scope of representation includes matters relating to terms and conditions of employment and employer-employee relations, including, but not limited to, salary, hours, and other terms and conditions of employment.

15-38.1-10. Determination of appropriate negotiating unit. Representative organizations may be designated or selected by the majority of teachers, or administrators, employed in the public school district. Any group of teachers, or administrators, employed in a public school district may determine an appropriate negotiating unit by filing with the school board a description of the grouping of jobs or positions which constitute the unit claimed to be appropriate. Upon receipt of such determination, the school board shall accept or reject the proposed appropriate negotiating unit. After the school board has accepted the appropriate negotiating unit, the teachers, or administrators, within such unit may designate or select a representative organization in the manner described in section 15-38.1-11.

15-38.1-11. Selection of representative organization.

1. Uncontested selection. Any organization having an interest in representing teachers, or administrators, may file with the school board a petition alleging that it represents a majority of teachers, or administrators, included within an appropriate negotiating unit. Such petition must be accompanied by evidence substantiating the allegation contained in it. Within ten days after receipt of such petition, the school board shall publish a notice of intent to consider the petition, by posting such notice in each school building in which members of the appropriate negotiating unit are employed. Not less than ten nor more than twenty days after publication of the notice of intent to consider, the school board shall investigate the petition, determine the question of representation, and publish its determination in the same manner as it published its notice of intent to consider. If the petition has not been contested, the school board shall recognize the petitioner as the representative organization of the appropriate negotiating unit unless it finds in good faith that a reasonable doubt of such representation exists.

2. Contested selection. Any organization having an interest in representing teachers, or administrators, and contesting the claim of representation made in the petition must file with the school board its written statement of contest with its evidence substantiating the allegation within ten days after the publication of the notice of intent to consider.

3. The school board shall call an election to determine the question of representation not less than twenty nor more than thirty days after the posting of the notice of intent to consider, if:

a. The school board has failed to make and publish its determination; or

b. The school board has published its determination, and that determination has been contested by a petitioner or contestant.

4. The school board shall call an election to determine the question of representation not less than ten nor more than thirty days after twenty-five percent of the members of an appropriate negotiating unit petition for such election.

5. The conduct of the election must be in the manner agreed to among the interested parties. If the interested parties cannot agree, the election must be conducted in the manner determined by the commission under its rules and regulations.

6. When a representative organization has been selected, its authority to represent the negotiating unit continues for at least one year from the date of such selection.

15-38.1-11.1. Provision for payroll deduction for dues of representative organization for teachers. Whenever a teacher, who is a member of the representative organization as created pursuant to the terms of this chapter, signs a petition requesting that the dues for such representative organization be deducted from the regular paycheck of said teacher, the school board shall be required to comply with such petition. Nothing herein may be interpreted to mean that the dues of a nonmember shall be deducted in such manner.

15-38.1-12. Good faith negotiations.

1. The school board, or its representatives, and the representative organization, selected by the appropriate negotiating unit, or its representatives, have the duty to meet at reasonable times at the request of either party and to negotiate in good faith with respect to:
a. Terms and conditions of employment and employer-employee relations.
b. The formulation of an agreement, which may contain provision for binding arbitration.
c. Any question arising out of interpretation of an existent agreement.
2. The parties must execute a written contract incorporating any agreement reached if requested by either party.
3. Either party to a contract negotiated under this section may modify or terminate the contract on its annual anniversary date by giving notice of its desire to modify or terminate to the other party not less than sixty days prior to the annual anniversary date.
4. The obligations imposed in this section do not compel either party to agree to a proposal or to make a concession.

15-38.1-13. Impasse procedures.
1. An impasse must be deemed to exist under any of the following conditions:
a. Where an agreement as set forth in subdivision b of subsection 1 of section 15-38.1-12 has not been formulated and after a reasonable period of negotiation regarding terms and conditions of employment or employer-employee relations, a dispute exists between a school board and any representative organization, an impasse may be deemed to exist.
b. When both parties agree that an impasse exists.
c. In the event that the written agreement reached under section 15-38.1-12 does not include procedures for resolving a dispute which arises, an impasse may be deemed to exist.
d. Written agreements negotiated under section 15-38.1-12 may include procedures to be invoked in the event of disputes under the contract. Where such procedures are inadequate to resolve the dispute an impasse may be deemed to exist.
2. An impasse may be resolved in the following manner:
a. The parties may agree upon mediation of the controversy by mutually selecting a mediator or mediators, and agreeing to a distribution of the cost of the mediation.
b. If mediation fails or is not attempted, the aggrieved school board or representative organization may request the commission to render assistance as provided in this section.
(1) Upon request of either contending party, and in the event that the commission determines that an impasse exists between a school board and a representative organization, the commission shall itself act as a factfinding commission or appoint a factfinder from a list of qualified persons maintained by the commission. If a factfinder is appointed, he shall have such powers as are designated to him by the commission and he shall make his recommendation to the commission. The commission shall consider the facts and make its findings and recommendation, or it shall consider the report and recommendation of its factfinder, and, after such further investigation as it may elect to perform, it shall make its findings and recommendation. Within forty days after the request to render assistance is received, the findings and recommendation of the commission must be transmitted to the contending parties and if the issue is not then resolved, the commission shall between ten and twenty days after such transmittal make its findings and recommendation public.

(2) In the event that facts are found or recommendations made under factfinding procedures agreed upon between the contending parties and the impasse continues, the commission may consider such findings and recommendations without instituting its own factfinding procedures and from them issue its own findings and recommendation to the contending parties, and if the issue is not then resolved the commission shall between ten and twenty days after such transmittal make its findings and recommendation public.

15-38.1-14. General provision.

1. No teacher, administrator, or representative organization may engage in a strike.
2. Nothing contained herein is intended to or conflicts with, contravenes, abrogates, or diminishes the powers, authority, duties, and responsibilities vested in boards of education by the statutes and laws of the state of North Dakota.
3. School boards or administrative officers thereof may not discriminate against teachers because of their exercise of rights under this chapter.
4. A contract between the representative organization and the school board shall bar any other representative group from petitioning for recognition, or for the withdrawal of existing recognition, for the term of the contract or three years whichever is less.
5. Any teacher engaging in a strike or any other activity prohibited in subsection 1 may be denied the full amount of his wages during the period of such violation.