

April 23, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1360

That the Senate recede from its amendments as printed on page 1089 of the House Journal and page 879 of the Senate Journal and that House Bill No. 1360 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-09.1 of the North Dakota Century Code, relating to the employment of personnel by regional education associations; to amend and reenact subsection 11 of section 15-39.1-04, section 15-39.1-23, subsection 17 of section 65-01-02, and section 65-04-04 of the North Dakota Century Code, relating to the inclusion of teachers employed by regional education associations in the teachers' fund for retirement, to provide a date by which workforce safety and insurance premiums paid by regional education associations are due, and to reconcile references to other education entities; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11. "Teacher" means:

- a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. For purposes of this subdivision, "teacher" includes persons contractually employed by one of the above employers to provide teaching, supervisory, administrative, or extracurricular services to a separate state institution, state agency, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state under a third-party contract.
- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
- c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.

- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

SECTION 2. AMENDMENT. Section 15-39.1-23 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-23. Penalties for failure to make required reports and payments.

Except for unintentional reporting errors, an employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter is subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the report was required to be filed or the payment became due. The board, if satisfied the delay or underpayment was unintentional and excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty and may reduce the interest rate charge to the investment return rate used in the most recent actuarial valuation, compounded annually, but may not waive the entire amount of the interest. The penalty must be paid to the fund and deposited in the same manner as other receipts under this chapter.

In addition, a school district, multidistrict special education unit, area career and technology center, and regional education association may not share in the apportionment of any money from the state for any year unless the school ~~board, or an officer thereof,~~ district, multidistrict special education unit, area career and technology center, or regional education association has made the reports required by the board as permitted by this chapter, and has paid over for credit to the fund the amounts required to be paid under this chapter.

SECTION 3. A new section to chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

Employment contracts - Representation - Negotiation.

1. An individual considering the acceptance of employment with a regional education association may enlist another individual or organization to serve as a representative for purposes of negotiating the terms of an initial employment contract.
2. The initial employment contract must include terms governing:
 - a. The individual's compensation;
 - b. The duration of the contract;
 - c. The process that will be followed to renew the contract, provided that the process must allow the employee to select an individual or organization for the purposes of negotiating the terms of renewal;
 - d. The conditions upon which either party to the contract may declare an impasse in negotiating renewal provisions;
 - e. The process that will be followed to resolve an impasse in negotiating renewal provisions;
 - f. The time and manner in which the employee will be evaluated and the manner in which the results of the evaluation will be communicated to the employee; and
 - g. The grounds for dismissal and the due process proceedings to be followed in the case that dismissal is pursued.

3. The initial employment contract may include any other terms or address any other items commonly found in an employment contract negotiated between a representative organization and the board of a school district under chapter 15.1-16.

SECTION 4. AMENDMENT. Subsection 17 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:
 - a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.

SECTION 5. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has no employees for the period indicated on the certificate. If an employer defaults on premium payments after a

certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

SECTION 6. LEGISLATIVE COUNCIL STUDY. During the 2009-10 biennium, the legislative council shall consider studying the employment of licensed and nonlicensed personnel by regional education associations and examine the relationship between school districts and school district employees, for the purpose of determining whether statutory provisions governing that relationship should be made applicable to employees of all regional education associations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly