



Great Public Schools

Great Public Service

**Testimony before the House Education Committee
In opposition to House Bill 1201
Michael Geiermann, North Dakota United
January 18, 2023**

Chairman Heinert and the members of the House Education Committee, I am Michael Geiermann and I serve as General Counsel for North Dakota United. I am here to testify in opposition to House Bill 1201. The provisions of this bill deal with an isolated situation which can be adequately remedied by existing North Dakota law. There is no need for this bill and it will not assist a school district that is dealing with the teacher shortage.

Under North Dakota contract law, individuals, companies, corporations and the State have the freedom to contract with whomever they choose. The law concerning contract in North Dakota is found at NDCC Title 9 and contains all of the law concerning contracts. In addition, the North Dakota Supreme Court has issued numerous opinions on the parameters of contract law. Pursuant to this body of law, individuals who enter contracts have the right to breach their contractual duties if they choose to do so. A breach is defined as the nonperformance of their contractual duties. Under existing law, there are legal consequences for a breaching party. The remedy for breach of contract since statehood has been an action for damages for the non-breaching party to put that person or entity in the same position it would have been in had the contract not been breached. These rules apply in the public sector, the private sector and to all parties to contracts in ND. This bill is not in keeping with the law of contracts in North Dakota as it provides an additional remedy to school district not available to any other employer.

There have been instances in which school district employees breach their employment contracts and leave their employment. This is a very rare occurrence and usually is very justified. When that happens the remedy for school districts, if they have been damaged by the breach/departure of the employee, is to seek damages. An additional remedy is the enforcement of a liquidated damages provision in the negotiated agreement. These provisions are common in school districts and are most often times negotiated with the

teacher's association. This bill now purports to give school districts an additional remedy available to no other employer in the state. It legalizes a school board to interfere with the employees right to contract in ND. It holds the employee hostage in an employment situation where the employee prefers not to stay.

North Dakota has had a well-established public policy on allowing employees to practice their professions without interference. North Dakota is one of the few states which still prohibits covenants not to compete. See NDCC 9-08-06. This bill legalizes covenants not to compete and is contrary to the public policy of the State. Moreover, it puts public employers at a disadvantage to their private sector counterparts. This bill only prevents the public sector from hiring a school district contracted employee. A private sector can hire the same person.

I urge this committee to give this bill a do not pass recommendation.