

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## EDUCATION SERVICES COMMITTEE

Monday and Tuesday, August 21-22, 2000  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Ray Holmberg, Layton Freborg, David O'Connell, Rolland W. Redlin; Representatives Michael D. Brandenburg, Bruce A. Eckre, Lyle Hanson, RaeAnn G. Kelsch, Darrell D. Nottestad, Dorvan Solberg, Laurel Thoreson

**Members absent:** Senators Tim Flakoll, Jerome Kelsh, Pete Naaden; Representative David Monson

**Others present:** See attached appendix

**It was moved by Representative Solberg, seconded by Representative Kelsch, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

### ADMINISTRATOR DISMISSAL - CHAPTER 15.1-14

Chairman Holmberg said when the Legislative Council staff began work on this chapter, a draft with margin notes and questions was prepared. He said the draft was provided to Mr. Larry Klundt, Executive Director, North Dakota Council of Educational Leaders, for suggestions and clarification. He said based on the ensuing discussions, the bill draft regarding administrator dismissal was crafted.

Chairman Holmberg said present law, North Dakota Century Code (NDCC) Section 15-38-01, sets forth the powers and duties of a school district superintendent and requires that the superintendent be bonded. He said the rewrite places these two provisions into separate sections and modernizes the language.

Chairman Holmberg said in present law the superintendent dismissal provisions are found in one section covering 2.5 pages. He said the rewrite breaks this down into more manageable sections.

#### Section 15.1-14-03

Chairman Holmberg said Section 15.1-14-03 begins the substantive portion of this chapter. He said like present law it provides for a formative evaluation and formal evaluation of the superintendent. He said it clarifies that a school board must conduct the formal evaluation and provide the evaluation report to the superintendent before March 15.

#### Section 15.1-14-04

Chairman Holmberg said Section 15.1-14-04 sets forth the grounds for dismissal of a superintendent. He said present law just provides that the superintendent may be dismissed for the reasons set forth in NDCC Section 15-47-38(3). He said those are the reasons for which a teacher may be dismissed. He said in the rewrite the reasons that a superintendent may be dismissed were placed in a separate section. He said down the road someone might amend the reasons for which a teacher may be dismissed without realizing that there is a cross-reference affecting superintendents. He said this way it is clean.

#### Section 15.1-14-05

Chairman Holmberg said Section 15.1-14-05 requires the board to provide a superintendent with a written description of the reasons for a proposed discharge and notice of a hearing. He said at the request of Mr. Klundt, a provision was added that the hearing is to be conducted within 10 days. He said holding a hearing within 10 days was common practice.

#### Section 15.1-14-06

Chairman Holmberg said Section 15.1-14-06 sets forth the hearing context. He said the hearing must be conducted in accordance with Chapter 28-32, witnesses may be produced, and limited guests and representatives may be invited.

#### Section 15.1-14-07

Chairman Holmberg said Section 15.1-14-07 requires that the dismissal of a superintendent must be reported to the Education Standards and Practices Board.

#### Section 15.1-14-08

Chairman Holmberg said Section 15.1-14-08 clarifies present law regarding the payment of a superintendent's salary during the period of dismissal.

#### Section 15.1-14-09

Chairman Holmberg said Section 15.1-14-09 details the procedure for nonrenewal of a superintendent's contract, including notice of the contemplated

nonrenewal and the scheduling of a hearing. He said in this case, the notice of a contemplated nonrenewal must be given on or before April 15 and the hearing must be held on or before April 21.

#### **Section 15.1-14-10**

Chairman Holmberg said Section 15.1-14-10 sets forth the hearing context. He said while present law provides that the superintendent may produce evidence necessary to "evaluate" the reasons for the nonrenewal, the rewrite provides that the superintendent may call witnesses and present evidence necessary to "refute" the reasons for the nonrenewal. He said present law provides that all "witnesses are subject to questioning for purposes of clarification." He said the rewrite provides that all witnesses may be cross-examined.

#### **Section 15.1-14-11**

Chairman Holmberg said Section 15.1-14-11 provides that the contract of a superintendent is deemed renewed for a period of one year if the school board does not provide a notice of contemplated nonrenewal prior to April 15 and if the superintendent does not resign prior to June 1.

#### **Section 15.1-14-12**

Chairman Holmberg said Section 15.1-14-12 clarifies the procedure to be used if a school board wishes not to renew the contract of a superintendent who has been employed in that position for less than two years. He said as the drafter's note indicates, present law has a strange configuration of verbiage, which makes notification sound voluntary. He said the Legislative Council staff worked with Mr. Klundt to craft language that is reflective of how business is conducted. Consequently, he said, the language calls for the board to provide written notice of its intent not to renew the contract before May 1. He said the notice must include the board's reasons for nonrenewal. He said if the superintendent requests such, the board must meet with the superintendent to discuss the reasons for the nonrenewal.

#### **Sections 15.1-14-13 Through 15.1-14-22**

Chairman Holmberg said these sections are a complete repetition of the first sections, except that they govern the dismissal of multidistrict special education unit administrators.

#### **Sections 15.1-14-23 Through 15.1-14-32**

Chairman Holmberg said these sections are a complete repetition of the first sections, except that they govern the dismissal of vocational and technology center administrators.

Chairman Holmberg said present law sets forth the manner in which superintendent dismissals and nonrenewals are to take place. He said present law then defines a superintendent to include multidistrict

special education unit administrators and vocational and technology center administrators. He said there is a problem when the present law requires the "school board" to conduct an evaluation or conduct a hearing. He said this does not translate to dismissals or nonrenewals of multidistrict special education unit administrators or vocational and technology center administrators. He said the unit boards or the center boards have these duties, not a "school board."

Chairman Holmberg said in the interest of clear drafting, the staff literally repeated the provisions three times--once for the school district superintendents, once for multidistrict special education unit administrators, and once for vocational and technology center administrators.

At the request of Chairman Holmberg, Mr. Klundt said the bill draft reflects the conversation he had with the Legislative Council staff, and he would be happy to answer any questions.

In response to a question from Representative Thoreson, Mr. Klundt said the Education Standards and Practices Board keeps a file of the dismissals.

Ms. Bev Nielson, North Dakota School Boards Association, said she did not agree with the title administrator dismissal. She said at the very least the title of the chapter should reference chief administrators rather than simply administrators. She said without this change there would be confusion as to who is covered by the chapter.

Ms. Nielson said perhaps rather than repeat the sections, different definitions could be used and the chapter could be shorter.

Chairman Holmberg said that is what we have now and there is confusion about which entity is expected to do what.

Ms. Nielson said with respect to proposed Section 15.1-14-03(2), the board should be required to place a copy of the evaluation, together with any written responses, in the superintendent's file.

Chairman Holmberg said it is the wish of the committee that the Legislative Council staff make the change and present it to the committee for review at the next meeting.

Ms. Nielson said with respect to proposed Section 15.1-14-05, the committee should consider using the word "intends" rather than "wishes."

Representative Nottestad said we should state the intent of the board. He said if a board intends to dismiss a superintendent, that is a serious undertaking and we should call it what it is.

Representative Brandenburg said we should use the word "intent." He said if it is the intent of the board to dismiss a superintendent, the board should proceed to hold the required hearings.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff make the change and present it to the committee for review at the next meeting.

Ms. Nielson said with respect to Section 15.1-14-05, there is under present law no stated time period within which a board must conduct a hearing. She said 10 days might be too short a period of time. She said the North Dakota School Boards Association would prefer to provide that the hearing must take place after reasonable advance notice.

Mr. Klundt said there are no timelines in the law. He said since 1987 a superintendent has not gone through a dismissal. He said the law for teachers requires a hearing within 10 days. He said confusion results when you use language such as "reasonable" advance notice.

Representative Kelsch said she would prefer to have a time certain specified in the statute. She said a reasonable period means different things to different people.

Representative Thoreson said he agrees with the comments regarding a specific timeline, but he would prefer to have this issue dealt with as a separate bill.

In response to a question from Representative Nottestad, Ms. Nielson said she would prefer having a bill draft in January to further clarify this issue.

Chairman Holmberg said the section should use the current language, which does not reference the 10-day requirement. He said the interested parties should be encouraged to submit a bill draft in January to clarify the notice and hearing requirements.

Ms. Nielson said with respect to Section 15.1-14-08, it should be clarified that the provision of compensation is a board option. She said providing that the board may determine the amount of compensation due "if any" would alleviate the concerns of the North Dakota School Boards Association.

Ms. Nielson said Section 15.1-14-12 deals with notice requirements if a school board elects not to renew the contract of a superintendent who has been employed in that position for less than two years. She said such individuals do not receive all of the protections given to first-year teachers. She said consequently the reasons for nonrenewal are not required under present law. She said a notice of the nonrenewal is all that is required. She said she would prefer that any changes regarding notice requirements be placed in a separate bill.

Chairman Holmberg said the language currently in law should be kept. He said we should remove the language that requires a notice of the reasons for nonrenewal. He said we should also encourage the affected entities to clarify this provision with a separate bill in January.

Chairman Holmberg said with respect to the title of the chapter, perhaps all the individual positions it covers should be listed.

Representative Nottestad said rather than using the word "administrators," we should refer to directors of special education units and directors of multidistrict vocational and technology centers.

Representative Thoreson said we could call the chapter "Superintendent - Director Dismissals."

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff refer to the chapter as "Superintendent - Director Dismissals" and to refer to directors of special education units and directors of multidistrict vocational and technology centers rather than to administrators.

Ms. Nielson said with respect to Section 15.1-14-02, the maintenance of accurate financial records is within the purview of a school district business manager, not the superintendent. She said having the superintendent's bond conditioned on the faithful discharge of the superintendent's duties, including the maintenance of accurate financial records, might confuse the issue of who is responsible for the financial records of a school district.

Representative Nottestad said it is the superintendent who is responsible for everything in the district. He said a superintendent should be the overseer.

Ms. Nielson said she wanted to make sure this verbiage does not relieve the business manager of any duties.

Representative Eckre said the role of a business manager and that of a superintendent may be carried out by the same person in smaller school districts.

Mr. Klundt said the issue to be addressed is who is responsible in school districts for what goes on financially. He asked whether it is the business manager or the superintendent. He said the Council of Educational Leaders believes that a business manager reports to the school district superintendent and that the superintendent is responsible for all the records and for all the work done in the district. He said the North Dakota School Boards Association takes a different tack. He said there are a handful of superintendents who also serve as their district's business manager.

Mr. Klundt said he prefers language indicating that the superintendent is the one who needs to be responsible. He said the law provides that there is a bond to protect the district in case something happens to the money of the district.

In response to a question from Representative Eckre, Mr. Klundt said business managers are also bonded in this state. He said in past years there have been instances of superintendents who have taken funds from their districts and action on their bonds ensued.

Chairman Holmberg said the committee does not intend to make any changes to Section 15.1-14-02 at this time. He said, however, if staff of the North Dakota School Boards Association has some additional information, they can present it at the next meeting.

## **TEACHER DISMISSAL - CHAPTER 15.1-15**

Chairman Holmberg said when the Legislative Council staff began to work on this chapter, a draft with margin notes and questions was prepared. He said the draft was provided to the North Dakota Education Association for suggestions and clarification. He said based on the ensuing discussions, the bill draft regarding teacher dismissal was crafted. He said it tries to lend some order to what is presently a three-page section.

### **Section 15.1-15-01**

Chairman Holmberg said Section 15.1-15-01 begins with the requirement that a school district conduct two performance reviews of each individual employed as a teacher, a principal, or as an assistant or associate superintendent during each of the first three years the individual holds such a position. He said beginning with the fourth year, only one annual review is required.

Chairman Holmberg said present law refers only to "teachers," but a definition found in Section 15-47-26 extends this to principals and assistant superintendents. He said the term "associate superintendent" is included because it is being used by certain school districts in place of "assistant superintendent." He said that is what we were told with respect to the Education Standards and Practices Board chapter.

### **Section 15.1-15-02**

Chairman Holmberg said Section 15.1-15-02 sets forth the process for not renewing the contract of a first-year teacher. He said because of the old definition, it is questionable whether this section literally addressed just first-year teachers or whether it was meant to include individuals serving as principals for the first time. He said we were told that this section is literally for first-year teachers and consequently a definition of a first-year teacher has been added in subsection 6.

### **Section 15.1-15-03**

Chairman Holmberg said Section 15.1-15-03 governs contract renewal for teachers, principals, and assistant or associate superintendents. He said it sets forth the dates by which offers of renewal must be accepted or rejected. He said we were told that there is an understanding among the affected parties that this section is suspended during the bargaining process. He said since "understandings" do not make for good legislation, the committee might wish to determine whether this understanding should be included in the rewrite or whether the interested parties should see about having a bill introduced to articulate the understanding.

### **Section 15.1-15-04**

Chairman Holmberg said Section 15.1-15-04 governs contract nonrenewal for teachers, principals, and assistant or associate superintendents. He said it sets forth the dates by which notice must be given and a special school board meeting must be held. He said at the request of the North Dakota Education Association, the section clarifies that the notice must be given no earlier than March 1 nor later than April 15.

### **Section 15.1-15-05**

Chairman Holmberg said Section 15.1-15-05 sets forth what has to happen at the special school board meeting. He said on line 15 there is a reference to a hearing. He said that should be changed to a "meeting." He said as in the superintendent dismissal chapter, present law provides that "witnesses are subject to questioning for clarification." The rewrite provides for cross-examination.

### **Section 15.1-15-06**

Chairman Holmberg said Section 15.1-15-06 begins the discharge for cause provisions. He said as in present law, the grounds upon which a school board may dismiss an individual employed as a teacher, principal, or as an assistant superintendent are listed. He said we need to add "associate superintendent" on page 6, line 2.

### **Section 15.1-15-07**

Chairman Holmberg said Section 15.1-15-07 states that if there is to be a dismissal for cause, there must be notice of the charges and a hearing.

### **Section 15.1-15-08**

Chairman Holmberg said Section 15.1-15-08 provides that the board cannot discharge an individual or refuse to renew a contract simply because the individual is the subject of an investigation alleging child abuse or neglect. He said the board can, however, discharge an individual or refuse to renew the individual's contract once the individual has been convicted of child abuse or neglect. He said present law provides a citation to Section 50-25.1-05.1. He said he believes that the intended citation should be to Section 50-25.1-05. He said that change has been made.

### **Section 15.1-15-09**

Chairman Holmberg said Section 15.1-15-09 addresses compensation during the period of suspension. He said under present law it is not clear whether the board could pay an individual who is under suspension. He said the rewrite clarifies that the board may determine the compensation payable to the individual during the period of suspension.

### Section 15.1-15-10

Chairman Holmberg said Section 15.1-15-10 requires a school board that discharges an individual for cause to report that action to the Education Standards and Practices Board.

### Section 15.1-15-11

Chairman Holmberg said Section 15.1-15-11 is new. He said as in other chapters, this chapter also contains legislative intent language. He said present NDCC Section 15-47-38(1) 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.

Chairman Holmberg said the Legislative Council drafting manual provides that statements of legislative intent should not be used. He said a section is supposed to be drafted in such a manner that it is self-evident and consequently not in need of further explanation. He said statements of purpose and intent are appropriately made at the hearings and on the floor of the House and Senate. He said practically what happens is that when a bill is drafted with a statement of legislative intent, the body of the bill later gets amended, but the statement of intent does not. He said this can result in a statutory mess and oftentimes in the courts.

Chairman Holmberg said in this case the North Dakota Education Association asked the Legislative Council to look at the language in the intent section and see if something substantive could be pulled from

it and placed in a separate section. He said proposed Section 15.1-15-11 is such an attempt. He said it directs school boards to adopt policies that ensure the existence of channels of communication between the boards, supervisory personnel, and teachers. He said it also directs boards to pursue discharges in a manner that exudes fairness and dignity. He said the committee needs to determine whether this language should be maintained, amended, or removed.

Ms. Nielson said the definition of a teacher in Section 15-47-26 was more extensive than that now found in proposed Section 15.1-15-01.

Mr. Max Laird, President, North Dakota Education Association, said with respect to Section 15.1-15-01(3), the individual who replaces a teacher on leave of absence is given a noncontinuing contract. He said all other teachers employed by a school district are given continuing contracts.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff review the applicability of proposed Section 15.1-15-01(3) and, if necessary, place it in a separate section. He said the committee will consider any change at the upcoming meeting.

In response to a question from Representative Thoreson, Ms. Nielson said the reason that Section 15.1-15-01(3) is included is because we do not want to go through all the due process requirements for long-term substitutes.

Mr. Joe Westby, Executive Director, North Dakota Education Association, said it would add some clarification if there were language indicating that proposed Section 15.1-15-03 is suspended during the bargaining process. He said this matter can be taken care of now or perhaps it can be addressed in a bill introduced during the legislative session.

Ms. Nielson said the suspension of Section 15.1-15-03 during the bargaining process was addressed by the court in *Lefor Education Assn. v. Lefor Public School Dist. No. 27*, 285 N.W.2d 524 (1979). She said there would be no problem with codifying it. Chairman Holmberg said if that is the court ruling, the suspension should be noted in the statute.

Ms. Nielson asked why the North Dakota Education Association suggested the addition of the March 1 date in proposed Section 15.1-15-04. Mr. Westby said it is an understanding that the earliest one can issue a notice of nonrenewal is March 1. He said this is an understanding they have operated under for years.

Ms. Nielson said she does not know if it is an understanding among all parties. She said an understanding is one thing, but adding a date to the law is quite another. She said it offers no alternatives. Mr. Westby said March 1 is the earliest date on which one can issue an offer for a contract for the ensuing year.

In response to a question from Representative Thoreson, Mr. Klundt said the March 1 date is related to the March 1 issuing of contracts. He said the old law is found in Section 15-47-27.

Representative Eckre said he sees no reason to put the March 1 date in if there has not been a problem.

Mr. Westby said Section 15-47-27 references the March 1 date.

Senator Redlin said a timeline is necessary and the addition of this timeline makes sense.

Senator O'Connell said we should have some consistency among the dates.

Chairman Holmberg said it is the wish of this committee that the March 1 date be left in the rewrite.

Ms. Nielson said with respect to proposed Section 15.1-15-05, legal counsel for the North Dakota School Boards Association was concerned that the phrase "questioning for purposes of clarification" was a different concept from that of "cross-examination." She said their legal counsel believes that the change would require that legal counsel be present at every nonrenewal hearing.

In response to a question from Senator Holmberg, Ms. Nielson said the North Dakota School Boards Association tries not to require the presence of attorneys unless there is a particular reason. She said this is not a court case. She said this is a nonrenewal hearing.

In response to a question from Representative Brandenburg, Ms. Nielson said the North Dakota School Boards Association would prefer that a nonrenewal hearing not feel like a court case.

Mr. Westby said he would not anticipate changing the way things are conducted regardless of the wording used. He said in more cases than not there is an attorney present to represent the North Dakota School Boards Association or there are trained advocates.

Mr. Klundt said when he is involved in a nonrenewal hearing, attorneys have sometimes told him he cannot ask certain questions because they amount to cross-examination. He said if he prefaces his questions by the phrase "for purposes of clarification," it seems to work. He said he does not know what the difference is.

Chairman Holmberg said proposed Section 15.1-15-05(1) provides that the school district superintendent shall present testimony or documentary evidence regarding the reasons for the contemplated nonrenewal of the individual's contract. He said present law provides that the administrator will do this. However, he said, if the administrator is the subject of the nonrenewal, a problem exists. He said if people do not want to specifically require the district superintendent to present the testimony, perhaps we could require that the board or the board's representative present the testimony or evidence. He said the

remainder of the section has the board calling witnesses and the board reviewing testimony.

Mr. Westby said the old law requires the administrator to present the information unless the administrator is the subject of the nonrenewal, in which case the board will present the reasons.

Senator Redlin said he likes having the district superintendent present the information. He said the district superintendent is in fact the chief executive officer.

Chairman Holmberg said we could use "superintendent, or a designee of the board."

Senator Redlin said that would be a good compromise. He said, however, he does not want to remove the word "superintendent."

Representative Kelsch said with respect to the issue of cross-examination versus questioning for purposes of clarification, there are times when attorneys get a little too hung up on words. She said when one is trying to ask questions and one asks another question for purposes of clarification, that is in fact cross-examination.

In response to a question from Senator Holmberg, Mr. Westby said a witness is subject to being questioned by the teacher or the teacher's representative. He said questioning for clarification is in fact cross-examination.

Senator Redlin said the connotation of cross-examination is somewhat stronger than merely questioning for clarification. He said he is not certain that is the onus we want to put on this process.

Chairman Holmberg said if legal counsel for the North Dakota School Boards Association would like to present some information to the committee regarding this issue, he would be most welcome.

Ms. Janet Welk, Executive Director, Education Standards and Practices Board, said with respect to proposed Section 15.1-15-08, page 7, lines 29 and 30, should be deleted. She said under present law the Education Standards and Practices Board is required to immediately revoke the teaching license of an individual who has been found guilty of a crime against a child.

Chairman Holmberg said since proposed Section 15.1-15-09 also references the provision of compensation during suspension, we should add the phrase "if any" to clarify that compensation during suspension is optional, not mandatory.

With respect to proposed Section 15.1-15-11, Ms. Nielson said the North Dakota School Boards Association did not like the directive that the boards adopt policies.

Chairman Holmberg said under present law the Legislative Assembly urges the adoption of formal policies. He said the Legislative Council drafting manual states that a statement of legislative policy, purpose, or intent should not be used. He said the committee could try to put the content of present

legislative intent language into statute, leave the original intent language, or omit it altogether.

Representative Thoreson said we do not need to legislate how the various interest groups are going to communicate and we do not need to editorialize our intent. He said he does not see a need for the section. He said everyone has the message and it should be taken out.

Mr. Westby said the North Dakota Education Association likes the legislative intent section because they can fall back on the intent language in their representation of individuals who are up for nonrenewal. He said they would like to maintain some statement about the action needed to be taken with fairness and dignity.

Representative Thoreson said he has no doubt that it is the intent of school boards to treat all participants in the process with fairness and dignity.

**It was moved by Representative Thoreson, seconded by Senator O'Connell, and carried on a voice vote that proposed Section 15.1-15-11 be deleted and that subsection 1 of Section 15-47-38 be repealed.**

## **TEACHER EMPLOYMENT CONTRACTS - CHAPTER 15.1-16**

Chairman Holmberg said Chapter 15.1-16 was also prepared as a first draft with margin notes and questions. He said the draft was provided to the North Dakota Education Association for suggestions and clarification. He said based on their discussions, the bill draft as distributed was crafted.

### **Section 15.1-16-01**

Chairman Holmberg said Section 15.1-16-01 is the definition section. He said current law has two definitions of an appropriate negotiating unit, and teachers were defined as all public school employees licensed under Chapter 15-36 and employed primarily as classroom teachers. He said administrators were defined as all public school employees employed primarily for administration of the school or schools of a school district and devoting at least 50 percent of their time in any one year to the duties of administration of the school or schools of a school district.

Chairman Holmberg said what was attempted in this section was to add more specificity to the definition of a teacher and an administrator. He said it is not known, for instance, whether the current definition of teacher was intended to include special education teachers or counselors. He said there is also an attempt to parallel definitions used in other parts of the code, such as the Education Standards and Practices Board chapter.

Chairman Holmberg said the new definition of an administrator is an individual who holds an administrator's credential and is employed for the primary purpose of providing administrative services to the schools of the district. He said the term includes

superintendents, assistant or associate superintendents, principals, assistant or associate principals, directors of multidistrict special education units, directors of vocational technology centers, and athletic or activity directors.

Chairman Holmberg said the new definition of a teacher is an individual who is licensed or approved to teach by the Education Standards and Practices Board and who is under contract with the board of a district to provide classroom instruction or individualized instruction. He said the term includes social workers, school psychologists, and other professionally licensed individuals who meet the criteria of this section. He said the term does not include administrators, substitutes, or paraprofessionals.

Ms. Nielson said with respect to proposed Section 15.1-16-01, using the 50 percent rule generally helps determine whether an individual is a teacher or an administrator.

Mr. Westby said referencing an athletic or activity director is a concern because sometimes that is an appointed position.

Mr. Klundt said there are many elementary and secondary principals who do not meet the 50 percent rule. He said under the old 50 percent rule, they might have been excluded from the definition of an administrator. He said a phrase such as "includes, but is not limited to" is needed.

Representative Kelsch said the term "includes" implies "is not limited to."

Ms. Nielson said the definition of a negotiating unit as found in proposed Section 15.1-16-01(2) states that it is a group of administrators or teachers . . . who choose to be represented by a single organization in negotiations with a school board. She said she would prefer the phrase "whose position warrants representation by a single organization."

Mr. Westby said the word "choose" in proposed Section 15.1-16-01(2) is a good word. He said it is the right of an individual to "choose" the group to which they will belong.

Ms. Nielson said with respect to proposed Section 15.1-16-01(5), the North Dakota School Boards Association objects to the listing of social workers, school psychologists, etc. She said various boards have taken various positions regarding who qualifies as a teacher with respect to this section.

Mr. Westby said the North Dakota Education Association believes that those individuals listed in proposed Section 15.1-16-01(5) are entitled to choose to be part of the bargaining unit. He said if positions are going to be listed in proposed Section 15.1-16-01(1), they should be listed in subsection 5 as well. He said the inherent risk with lists is that you include some that should be excluded and you exclude some that should be included.

In response to a question from Representative Nottestad, Mr. Westby said he does not have with him the pay differences among the listed groups. He said

the reference to other professionally licensed individuals would include school counselors and social workers.

Representative Thoreson said if we are going to list school social workers, we should surely include school counselors.

Senator Redlin said he sees no reason to remove the word "choose" from proposed Section 15.1-16-01(2). He said being represented by an organization is a privilege that people exercise. He said the phrase "whose position warrants representation" leaves the individual with no option.

Representative Kelsch, serving as vice chairman, said it is the wish of this committee that the word "choose" be retained in proposed Section 15.1-16-01(2).

Dr. Gary Gronberg, Department of Public Instruction, said there is some confusion with respect to the definition of teacher and, in particular, with respect to licensing by the Education Standards and Practices Board.

Mr. Westby said perhaps other criteria should be added such as "who meet the requirements of their licensing board." He said he has the same concern in proposed Section 15.1-16-01(1) with respect to athletic directors.

Representative Nottestad said nurses who are hired by districts would have to meet the requirements of their licensing board, not the Education Standards and Practices Board.

Ms. Nielson said she does not have a good suggestion for listing all the people the North Dakota Education Association would like to represent for purposes of collective bargaining. She said school boards are required to collectively bargain with teachers. She said school boards would like this fairly narrow and the North Dakota Education Association would like this broadened. She said she would prefer that this be dealt with in January.

Representative Eckre said he would like to visit with people in his home district about the extent of the definition.

Senator Redlin said all the people listed in the proposed draft are involved in the education of children. He said there is a lot of commonality, and he can understand why they would want some voice in the negotiating process.

Representative Kelsch, serving as vice chairman, said since school counselors are licensed teachers, they would be included without a specific listing.

Ms. Welk said school counselors are licensed by the Education Standards and Practices Board, whereas social workers are not. She said sometimes social workers are employed as school counselors.

Representative Kelsch, serving as vice chairman, said perhaps lines 21 and 22 on page 1 need to be removed and addressed during the session. She said this area does call for further clarification.

### **Section 15.1-16-02**

Chairman Holmberg said Section 15.1-16-02 parallels current law regarding the Education Fact-finding Commission. He said this section covers the members' appointments, terms, and quorum requirements.

### **Section 15.1-16-03**

Chairman Holmberg said Section 15.1-16-03 covers the compensation of commission members.

### **Section 15.1-16-04**

Chairman Holmberg said Section 15.1-16-04 covers the compensation of education factfinders. He said both commission members and factfinders receive the standard \$62.50 per diem.

### **Section 15.1-16-05**

Chairman Holmberg said Section 15.1-16-05 provides that the Education Factfinding Commission may adopt rules. He said the Education Factfinding Commission is not an administrative agency for purposes of Chapter 28-32, so these rules do not have to be adopted according to Chapter 28-32 (the Administrative Agencies Practice Act) or published in the North Dakota Administrative Code.

### **Section 15.1-16-06**

Chairman Holmberg said Section 15.1-16-06 merely provides that if an impasse exists and the fact-finding commission is employed, the contending parties must share the cost equally.

### **Section 15.1-16-07**

Chairman Holmberg said Section 15.1-16-07 provides that a teacher may form, join, and participate in the activities of a representative organization, as may an administrator.

### **Section 15.1-16-08**

Chairman Holmberg said Section 15.1-16-08 is a rewrite of present Section 15-38.1-08. He said that section 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."

Chairman Holmberg said according to representatives of the North Dakota Education Association, there has been some confusion as to what precisely is meant by the "presentation of views." He said at their request the language in the rewrite provides that a teacher or an administrator may independently present the individual's views to a school board but may not enter into independent negotiations with the board.

Mr. Westby said an individual in Center got into a situation in which he independently negotiated a salary contract that was more than the bargained



contract. He said the North Dakota Education Association believes that current law does not allow an individual to pursue independent contract negotiations.

Mr. Klundt said there are several elementary and secondary principals who are 70 percent teachers and their contracts are written so that they are paid as teachers and then they need to negotiate the rest of their administrator pay.

Ms. Nielson said this is an issue that needs to be addressed, but it should be addressed in an independent bill.

Mr. Westby said the rate of pay for individuals with split duties should be handled through the different negotiating processes for administrators and teachers.

In response to a question from Representative Eckre, Mr. Westby said most negotiated agreements do not provide different salary levels for different teaching subjects. He said at the bargaining table one could have specific rates for teachers of different subjects.

Senator Freborg said, just for clarification, if the organization comprises 50 percent plus one of the people involved in the organization, the organization would represent the other 49+ percent.

Chairman Holmberg said under present law the negotiating unit is certified as negotiating for all the teachers. He said nonmembers do not have the option of negotiating for themselves.

Mr. Westby said some of the group's members may not be a part of the representative organization. He said the negotiating unit represents everyone in the group, whether they are members or not.

In response to a question from Senator Holmberg, Mr. Westby said any group of employee teachers can be the bargaining unit, but it must prove that it is representing a majority of the teachers.

#### **Section 15.1-16-09**

Chairman Holmberg said Section 15.1-16-09 cleans up present language regarding the scope of representation. He said it provides that a representative organization may provide representation regarding terms and conditions of employment and employer-employee relations, including salary and working hours.

#### **Section 15.1-16-10**

Chairman Holmberg said Section 15.1-16-10 governs the formation of a negotiating unit. He said this section covers the filing with the board of the description of job groupings or positions that would constitute the negotiating unit. He said upon receipt of the filing the board is to accept or reject the negotiating unit. He said if the board accepts the unit, a representative organization may be selected. He said present law does not give any indication of what happens if the board rejects the negotiating unit.

#### **Section 15.1-16-11**

Chairman Holmberg said Section 15.1-16-11 deals with the selection of a representative organization. He said it requires the filing of a petition asserting that the organization represents a majority of the teachers or administrators within the negotiating unit. He said the board must then post notice of its intent to consider the petition. He said the board must thereafter investigate the petition and post notice of its determination regarding the petition.

Chairman Holmberg said the section also covers the calling of an election if there is a request by at least 25 percent of the members of a negotiating unit. He said the election is to be held in the manner determined by the Education Factfinding Commission.

#### **Section 15.1-16-12**

Chairman Holmberg said Section 15.1-16-12 provides for the deduction of dues from a teacher's salary, if so requested by the teacher. He said the section says nothing about the deduction of dues from an administrator's salary.

#### **Section 15.1-16-13**

Chairman Holmberg said Section 15.1-16-13 requires both parties to meet at reasonable times and to negotiate in good faith regarding the terms and conditions of employment, employer-employee relations, and the formulation of an agreement, which may contain a provision for binding arbitration.

Mr. Westby said under present law it is understood that contract changes are effective on the annual anniversary date or whenever the contracting parties agree. He said this does not seem to be the case in proposed Section 15.1-16-13(3).

Chairman Holmberg said perhaps we could state "[u]nless otherwise agreed to, a modification is effective on the annual anniversary date of the contract." He said present law can be interpreted differently than what is the common understanding.

Mr. Westby said at least 60 days before the termination of the current contract, one has to notify the other party of the intent to enter into negotiations for a new contract. He said the new agreement is retroactive to July 1.

Chairman Holmberg said there appears to be some confusion as to the intent of this section. He asked the Legislative Council staff to work with the North Dakota Education Association and the North Dakota School Boards Association to clarify this section and then present the agreed-to changes to the committee for review at the next meeting.

#### **Section 15.1-16-14**

Chairman Holmberg said Section 15.1-16-14 attempts to clarify the conditions under which an impasse does exist and the conditions under which an impasse may exist. He said an impasse does exist if after a reasonable period of negotiation, an

agreement has not been formulated and a dispute exists or if both parties agree that an impasse exists.

Chairman Holmberg said an impasse may exist if a written contract entered into between the parties does not contain a procedure for resolving a dispute or if the contract contains an inadequate procedure for resolving a dispute.

#### **Section 15.1-16-15**

Chairman Holmberg said Section 15.1-16-15 sets forth the process by which an impasse may be resolved. He said the process may include mediation or intervention by the Education Factfinding Commission.

#### **Section 15.1-16-16**

Chairman Holmberg said Section 15.1-16-16, like present law, provides that no teacher, administrator, or representative organization may participate in a strike. He said present law provides that if a teacher engages in a strike, the teacher may be denied the full amount of wages during the period of violation. He said it says nothing about an administrator losing wages or being otherwise punished for violating the law. He said subject to committee approval, the rewrite provides that both a teacher and an administrator may be denied the full amount of wages during the period of violation. He said it should be noted that this says "may be denied wages," not "shall be denied wages."

#### **Section 15.1-16-17**

Chairman Holmberg said Section 15.1-16-17 cleans up present language prohibiting discrimination by a board or an administrator against a teacher or an administrator who exercised rights available under this chapter.

#### **Section 15.1-16-18**

Chairman Holmberg said Section 15.1-16-18 states that a contract between the board of a school district and a representative organization bars any other representative organization from petitioning for recognition and bars the withdrawal of recognition from the representative organization for the duration of the contract or three years, whichever is less.

#### **Section 15.1-16-19**

Chairman Holmberg said Section 15.1-16-19 is one section that has been subject to several rewordings. He said everybody knows what this section is supposed to mean, but finding the right words is fairly challenging. He said as written the section provides that the board of a school district must allow a teacher to use at least 10 days of sick leave each year, without a loss of compensation. He said the board must also allow a teacher to accumulate unused sick leave and to carry over from year to year at least 30 days of accumulated unused sick leave.

#### **Section 15.1-16-20**

Chairman Holmberg said Section 15.1-16-20 is one that the Legislative Assembly worked on in 1995. He said it tries to set forth the personnel policies for state institutions such as the School for the Deaf, the School for the Blind, and the Youth Correctional Center. He said it covers the contracts of employment and the personnel policies that are to be developed for teachers at these institutions.

Chairman Holmberg said the rewrite omits present Section 15-38.1-01. He said that section states:

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.

Chairman Holmberg said this omission follows recommendations in the Legislative Council drafting manual.

Chairman Holmberg said present Section 15-47-28 is also omitted. He said that section provides:

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.

Chairman Holmberg said the issue of suspension is covered in proposed Section 15.1-13-24, which is in the Education Standards and Practices Board chapter. He said this omission is with the agreement of the Education Standards and Practices Board.

### **TEACHER QUALIFICATIONS - CHAPTER 15.1-18**

Chairman Holmberg said Chapter 15.1-18 is reflected in bill draft No. 10015.01.

#### **Section 15.1-18-01**

Chairman Holmberg said Section 15.1-18-01 is a verbatim replacement of the 1999 law regarding early childhood teaching certificates. He said it directs the Education Standards and Practices Board to develop and implement an optional early childhood teaching certificate and provides that the certificate may be

used in nonparental settings such as early childhood programs, preschool programs, and Head Start programs.

Chairman Holmberg said there is a question as to whether the Education Standards and Practices Board wanted the reference to a certificate to remain as is or should the reference be to a license.

Ms. Welk said the reference should be to a license. She said this bill went through last session. She said it should have been to a license as well.

#### **Section 15.1-18-02**

Chairman Holmberg said Section 15.1-18-02 sets forth the qualifications that are needed in order for an individual to teach in the following categories: kindergarten; grades 1 through 8; grades 5 through 8; and grade 7 or 8.

#### **Section 15.1-18-03**

Chairman Holmberg said Section 15.1-18-03 sets forth the qualifications that are needed in order for an individual to teach grades 9 through 12.

#### **Section 15.1-18-04**

Chairman Holmberg said Section 15.1-18-04 is likewise current law. He said it provides that an individual assigned as a student teacher or employed as an eminence-credentialed teacher has the same legal authority and status as a licensed teacher employed by a school district. He said such individuals are deemed licensed teachers with respect to acts performed at the direction of or with the consent of the district employees under whose supervision and control the individuals perform their duties.

### **SCHOOL FINANCE - CHAPTER 15.1-27**

Chairman Holmberg said at the last meeting of the committee looked at several sections of Chapter 15.1-27 and requested some amendments to the bill draft. He said, therefore, the committee will review the amendments and then go on to the sections that have not been considered.

#### **Section 15.1-27-01**

Chairman Holmberg said Section 15.1-27-01 is a verbatim replacement of present Section 15-40.1-05, with one small exception. He said at the request of this committee, the section now references total "state" payments instead of just total payments. He said we wanted to be sure of what was intended and Mr. Jerry Coleman, Department of Public Instruction, had indicated that the reference is intended to mean only total state dollars.

#### **Section 15.1-27-02**

Chairman Holmberg said Section 15.1-27-02 governs reports that are required of the school districts in order that they may receive state funds. He said present law provides that "no school district

may receive foundation payments beyond the October payment unless the following reports have been filed with the Superintendent of Public Instruction:

1. Annual average daily membership report.
2. Annual school district financial report.
3. The September 10 fall enrollment report.
4. The personnel report forms for certified and noncertified employees."

Chairman Holmberg said the rewrite avoids referring to "foundation aid" because it is not defined. He said sometimes the context seems to indicate that it means just per student payments and at other times it seems to mean per student and transportation aid payments. He said in this instance Mr. Tom Decker, Department of Public Instruction, indicated that the reference should be to "state aid payments." He said districts get one check for "state aid."

Chairman Holmberg said 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 Department of Public Instruction by December 15." He said the problem is if the school district files the information on December 16, a literal reading of this section would preclude the Superintendent of Public Instruction from forwarding the January payment to the district.

Chairman Holmberg said working from the assumption that such punitive measures were never intended, the Legislative Council staff was asked to rework this language. He said the rewrite now provides that on or before December 15, each district must file the required paperwork. He said if a district fails to meet the stated date, the Superintendent may not forward any state payments until the paperwork is on file.

#### **Section 15.1-27-03**

Chairman Holmberg said Section 15.1-27-03 provides that the Superintendent of Public Instruction shall determine the cost of education per student. He said it goes on to list those factors that the Superintendent may not use in making this determination. He said the exceptions are capital outlay for buildings, capital outlay for sites, capital outlay for debt service, expenditures for school activities, expenditures for school lunch programs, and expenditures for transportation costs, including schoolbuses. He said the Legislative Council staff was asked to work with Mr. Coleman to clarify the section.

#### **Section 15.1-27-04**

Chairman Holmberg said Section 15.1-27-04 places the per student payments in their own section. He said the per student payments are part of multi-topic Section 15-40.1-06.

### **Section 15.1-27-05**

Chairman Holmberg said Section 15.1-27-05 places the mill deduct in its own section. He said mill deducts are now part of the multitopic Section 15-40.1-06. He said present law provides that 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, specific amounts must be subtracted. He said this is one instance where "foundation aid" seems to mean just per student payments and that is what has been reflected in the rewrite.

### **Section 15.1-27-06**

Chairman Holmberg said Section 15.1-27-06 covers weighting factors applied to high school students. He said a list of who is eligible for enumeration is listed under this section; i.e., who qualifies as a high school student. He said the list is now found in subsection 6 on page 5. He said it provides that the student must have completed grade 8, must not have completed grade 12, and must be a resident of this state or a nonresident who is attending a school in this state under the auspices of a foreign exchange program.

In response to a question from Senator Holmberg, Dr. Gronberg said the counsel provided to school districts by the Department of Public Instruction is if the graduation ceremony is the terminating event in a special education student's school career, the district is not eligible to receive additional funds for the period between ages 18 and 21. He said if the district views graduation as a social event, the school district is still eligible to receive funding for the student until the completion of the school year in which the student turns 21.

### **Section 15.1-27-07**

Chairman Holmberg said Section 15.1-27-07 covers weighting factors applied to elementary school students. He said a change is needed on page 7, lines 9 and 19. He said the weighting factor for that particular category is applicable only to the first 25 students in average daily membership (ADM) in each classroom. He said present law provides that it is applicable only to the first 30 students. He said 25 students are referred to in subsection 2. He said subsections 3 and 4, however, should reference 30 students.

### **Section 15.1-27-08**

Chairman Holmberg said Section 15.1-27-08 is another provision found in present Section 15-40.1-06. He said it provides that if a high school becomes unaccredited, the school receives its per student payments but not any increases that would stem from the use of the weighting factors. He said each year thereafter that the school remains unaccredited, the per student payment is reduced by \$200.

### **Section 15.1-27-09**

Chairman Holmberg said Section 15.1-27-09 is another provision currently in Section 15-40.1-06. He said this one has to do with unaccredited elementary schools. He said like present law, it provides that if an elementary school becomes unaccredited, the school receives its per student payments plus any increases that would stem from the use of the weighting factors. He said each year thereafter that the school remains unaccredited, the per student payment is reduced by \$200.

In response to a question from Representative Eckre, Mr. Decker said there are rarely more than one or two schools a year that become unaccredited.

In response to a question from Representative Brandenburg, Mr. Decker said money has never been withheld from a school district. He said a district is placed on an accredited warned status until the problem is fixed.

### **Section 15.1-27-10**

Chairman Holmberg said Section 15.1-27-10 is the section that requires portions of the special education appropriation to be distributed on a per student basis. He said no substantive changes were made to this section.

### **Section 15.1-27-11**

Chairman Holmberg said Section 15.1-27-11 is the section that requires the Superintendent of Public Instruction to engage in mathematical calculations to determine whether a school district is eligible for supplemental payments and, if so, for how much. Again, he said, no substantive changes were made to this section.

### **Section 15.1-27-12**

Chairman Holmberg said Section 15.1-27-12 is the section that provides \$400 for each student who has been assessed as having negligible or very limited English language skills. He said \$400,000 was appropriated for this program during the last legislative session.

### **Section 15.1-27-13**

Chairman Holmberg said Section 15.1-27-13 provides that payments must be made under this chapter for students who are members of the North Dakota National Guard and who are absent as a result of being engaged in active duty or training within or outside the state. He said this applies only for a period of one semester.

### **Section 15.1-27-14**

Chairman Holmberg said Section 15.1-27-14 provides that the weighting factors must be increased by 20 percent for students attending school out of state in accordance with Section 15.1-29-01. He said

proposed Section 15.1-29-01 deals with the attendance of students in bordering states.

Chairman Holmberg said this section would appear to require the increase in the weighting factors even if the student's parent is paying the out-of-state tuition. He asked if this was accurate and whether some clarifying language is needed.

Mr. Decker said he does not believe that when this section was enacted any distinction was made regarding increased weighting factors for students whose tuition was being paid by their parents, as opposed to by their school district of residence. He said he also does not know of any instances in which parents are paying tuition to send their children out of state.

#### **Section 15.1-27-15**

Chairman Holmberg said Section 15.1-27-15 provides that the weighting factors used to calculate per student payments must be increased by 20 percent for elementary schools that have fewer than 50 students if 15 percent or more of the students would have to travel beyond a 15-mile radius from their residences in order to attend another school. He said this also applies to high schools that have fewer than 35 students, provided 15 percent or more would have to travel more than 20 miles to attend another school. He said the only change to be noted comes in the headnote. He said present law refers to this section as "per student payment for small but necessary schools." He said this is a problematic colloquialism. He said if this section is in fact a definition of a small but necessary school, we could then argue that an elementary school having 51 students and a high school having 35 students are either not small or not necessary.

Chairman Holmberg said in the Education Finance Committee the issue of what precisely is meant by a small but necessary school surfaces on occasion. He said until a definition is discussed and agreed upon, the committee may wish to reference "isolated" schools or use some comparable term. He said this avoids making a statement about a school's necessity.

Chairman Holmberg said it is the committee's wish that the section reference isolated schools.

#### **Section 15.1-27-16**

Chairman Holmberg said Section 15.1-27-16 provides that if a school district cooperates with another district for the joint provision of educational 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 school student as the district received prior to initiation of the cooperative plan.

#### **Section 15.1-27-17**

Chairman Holmberg said Section 15.1-27-17 provides that if one school district reorganizes with another district, the resulting new district is entitled to receive, for a period of four years, the same per student payment for each high school and elementary school student as each district received prior to the reorganization. He said weighting factors are adjusted proportionately over the following two years.

#### **Section 15.1-27-18**

Chairman Holmberg said Section 15.1-27-18 is taken from language found in the high school weighting section (15-40.1-07). He said present law is phrased as follows:

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. . . . [U]nits 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.

Chairman Holmberg said frankly we are not sure what this verbiage means. He asked what is "standard high school work." He said the current law references the employment of only licensed teachers. He said we need to amend this section to also reference others approved by the Education Standards and Practices Board to teach.

Chairman Holmberg asked why reference is made to courses earned by a student in another high school district as part of the courses offered by a district seeking payment under this chapter. He said with respect to the rewritten portion found in subsection 2, present law provides:

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.

Chairman Holmberg said the rewrite maintains the reference to enrollment for "specific courses." He asked whether there were other enrollment options such as for "nonspecific courses." He said subsection 3 appears to be understandable.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff work with staff from the Department of Public Instruction, make

whatever changes are necessary to lend clarity to this section, and present the changes to the committee for review at the next meeting.

#### **Section 15.1-27-19**

Chairman Holmberg said Section 15.1-27-19 is taken from Section 15-40.1-07.2. He said it provides for per student payments if students have dropped out of school, provided the students are in approved alternative education programs. He asked how this jives with the previous section. He said proposed Section 15.1-27-18 seems to be making per student payments available only to grade 12 students enrolled in alternative programs.

Chairman Holmberg said since there seems to be an inconsistency, perhaps the Legislative Council staff could work with staff from the Department of Public Instruction, make whatever changes are necessary to lend clarity and consistency to this section, and present the changes to the committee for review at the next meeting.

#### **Section 15.1-27-20**

Chairman Holmberg said Section 15.1-27-20 is taken from present Section 15-40.1-07.10. He said it deals with proportionate payments for summer school programs. He said a school district offering summer school courses at the high school level 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. He said a school district offering remedial elementary summer school programs is entitled to receive proportionate payments provided the programs comply with rules adopted by the Superintendent of Public Instruction.

Chairman Holmberg said the proportionate payments made under this section may not exceed 1.5 percent of the total amount appropriated for per student payments and transportation aid during the biennium, or \$8 million, whichever is less. He said no more than 75 percent of the amount made available under this subsection may be used to support summer school courses at the high school level and no more than 25 percent of the amount may be used to support remedial elementary summer school programs.

Chairman Holmberg said in subsection 4 of Section 15-40.1-07.10 there is a reference to foundation aid and transportation aid. He said this has been translated in subsection 4 of the rewrite as per student and transportation aid payments.

#### **Section 15.1-27-21**

Chairman Holmberg said Section 15.1-27-21 is one of the sections rewritten as present Section 15-40.1-09. He said present Section 15-40.1-09 is a

horrendously long paragraph. He said the challenge in rewriting it is to ensure that the intent is not missed or otherwise changed.

Chairman Holmberg said Section 15-40.1-09 begins with the following sentence:

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.

Chairman Holmberg said the rewrite translates it in Section 15.1-27-21(1):

Upon the completion of student registration and in no event later than September tenth of each year, the business manager of a school district, within or outside this state, claiming payments from state funds under the provisions of this chapter, shall file a claim with the county superintendent of schools on a form prescribed by the superintendent of public instruction. The form must state the number of registered high school and elementary school students for whom payments are claimed and any other information requested by the superintendent of public instruction.

Chairman Holmberg said unless somebody sees something differently, this seems to be a pretty direct translation.

Chairman Holmberg said sections in this title encourage computer-based management of records and electronic communication but still refer to "forms" and require that these claim forms be filed with an entity that in many if not most counties no longer exists.

Chairman Holmberg said while the role of this committee is not to make substantive policy changes, it is appropriate to update the statute in a way that reflects how business is or should be conducted.

In response to a question from Senator Holmberg, Mr. Decker said a phrase such as "in a manner prescribed by the superintendent" could be used. Chairman Holmberg asked that this change be made.

In response to a question from Senator Holmberg, Mr. Decker said it seems unnecessary to reference business managers within or outside this state. Chairman Holmberg asked that the reference to "within or outside this state" be removed.

Chairman Holmberg said the second sentence of 15-40.1-09 is:

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.

Chairman Holmberg said as stated in the drafter's note, this sentence was omitted from the rewrite. He said during the 1999 legislative session, the Office of Management and Budget had introduced and the Legislative Assembly passed Senate Bill No. 2146. He said this bill removed the requirement that the Superintendent of Public Instruction certify payment amounts to the Office of Management and Budget. He said the bill removed the requirement from Sections 15-40.1-05 and 15-44-03 but missed this section.

Chairman Holmberg said the next sentence from Section 15-40.1-09 is:

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.

Chairman Holmberg said the rewrite provides:

The superintendent of public instruction shall compute the per student payments 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 greater total payment.

Chairman Holmberg said the next two sentences from Section 15-40.1-09 are:

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.

Chairman Holmberg said the rewrite provides:

The superintendent shall make adjustments 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 per student and transportation aid payments.

Chairman Holmberg said the last sentence refers to "foundation aid payments." He said the rewrite refers to "a district's per student and transportation aid payments." He asked if this was an accurate translation. He said perhaps staff from the Department of Public Instruction could check and make sure we mean both per student and transportation aid payments.

Chairman Holmberg said present Section 15-40.1-09 includes this definition of average daily membership:

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.

Chairman Holmberg said the definition is not yet in the rewrite, in part because we wanted to have a conversation about it. He asked rather than including it in this section, it should be a stand-alone section.

Chairman Holmberg said the definition references the total days all students in a given school are in attendance. He said since payment is sent out to a school district, he wondered whether the calculation should refer to students in a school district rather than in a school.

Chairman Holmberg said the definition still maintains a repealed reference. He said if we are going to include the definition, we need to reference the following language:

Two days for the attendance of teachers at the North Dakota education association instructional conference, three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers, and up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher

conferences held outside regular school hours, divided by one hundred eighty days.

Chairman Holmberg said this is the same language as that now found in Section 15.1-06-04.

Chairman Holmberg said it is the committee's wish that a definition of average daily membership be included as a separate section in this chapter.

Chairman Holmberg said the next sentence from Section 15-40.1-09 is as follows:

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.

Chairman Holmberg said the rewrite in subsection 3 on page 16 provides:

School districts educating children of agricultural migratory workers and school districts offering high school summer courses during the months of June, July, and August are not restricted to payments for a one hundred eighty-day school term.

Chairman Holmberg said the change was made from the redundant "high school summer school programs" to "high school summer courses." He said this language is consistent with earlier references in this chapter.

Chairman Holmberg said present law regarding verification of information provides:

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.

Chairman Holmberg said the rewrite provides the following:

Upon the termination of the school year and in no event later than July fifteenth, the business manager of each school district, within or outside 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 each student and the units of high school work taken by each student enrolled during the previous school year. 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 attest to the statement. On or before September first of each year, the county superintendent shall certify to the superintendent of public instruction the number of students enrolled in each district in the county for the previous school year upon which any adjustment may be based. If the county superintendent disallows any statement in whole or in part, the county superintendent shall provide notice of the disallowance, together with the names of the affected students, to the superintendent of public instruction and to the school district filing the statement.

Chairman Holmberg asked whether this is an accurate reflection of how business is being conducted or how it should be conducted.

Chairman Holmberg said present Section 15-40.1-09 provides:

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.

Chairman Holmberg said proposed Section 15.1-27-21(5) treats the final three sentences as follows:

A district may appeal the determination of the county superintendent to the superintendent of public instruction on or before September fifteenth of the year in which the determination is made. The superintendent of public instruction may modify the determination of the county superintendent if the evidence



submitted by the district justifies a modification. The judgment of the superintendent of public instruction is final.

#### **Section 15.1-27-22**

Chairman Holmberg said Section 15.1-27-22 is the rewrite of present Section 15-40.1-04.1. He said it provides that if the taxable valuation of property is diminished because real property is reclassified as personal property, the state payment to an affected school district must be based on the diminished valuation in the year in which it is paid to the school district. He said if the state payment to a school district is based upon a determination of property valuation that is later diminished by legislative or judicial action, the district has one year from the date of the final determination or adjudication of the property tax adjustment to apply to the Superintendent of Public Instruction for a supplemental state payment. He said the only change made was in the language that required the Superintendent of Public Instruction to certify the supplemental payment to the Office of Management and Budget. He said the change directs the Superintendent to pay the amounts due within the limits of legislative appropriations for per student and transportation aid payments.

#### **Section 15.1-27-23**

Chairman Holmberg said Section 15.1-27-23 deals with the problem of having insufficient state funds to make all statutory payments to school districts. He said like present Section 15-40.1-11, it provides that if the moneys in the state general fund are insufficient to make all payments to school districts, the payments must be prorated by the Superintendent of Public Instruction on a fractional basis. He asked what a "fractional" basis is. He asked whether this is clearly understood.

Mr. Decker said the Superintendent of Public Instruction has used this section before, and he said staff at the Department of Public Instruction understand how it is to work.

#### **Section 15.1-27-24**

Chairman Holmberg said Section 15.1-27-24 addresses school closures due to weather or other emergency conditions and the requisite makeup days. He said the Legislative Council staff worked closely with the Governor's office on this section during the last session, so no substantive changes were made. He said the section states that if a school or school district remains closed or provides less than a full day of instruction, the school or school district must make every effort to reschedule classes so that students receive at least 173 full days of instruction. He said if this creates undue hardship, the Governor may waive the rescheduling in whole or in part. He said the Governor may not grant a waiver for less than a full day of instruction.

#### **Section 15.1-27-25**

Chairman Holmberg said Section 15.1-27-25 covers distribution of Taylor Grazing Act payments.

#### **Section 15.1-27-26**

Chairman Holmberg said Section 15.1-27-26 covers the distribution of federal royalties. He said the only change is that the rewrite uses subsections to break up a very long paragraph.

Chairman Holmberg said the next part of this chapter deals with transportation payments.

#### **Section 15.1-27-27**

Chairman Holmberg said Section 15.1-27-27 provides for the same payment schedule as provided under Section 15-40.1-16. He said no alterations were made in the payment amounts. He said in the drafter's notes, one redundant sentence was removed. He said it provided that the payments must be made for transporting students to and from school. He said the requirement that the Superintendent develop and implement a uniform cost accounting system for transportation reimbursement was also removed. He said that matter is already addressed in Section 15.1-02-08.

#### **Section 15.1-27-28**

Chairman Holmberg said present law provides payment to school districts for transporting special education and vocational education students. He said both concepts are addressed in present Section 15-40.1-16.1. He said the rewrite places reimbursement for the transportation of special education students in Section 15.1-27-28.

#### **Section 15.1-27-29**

Chairman Holmberg said Section 15.1-27-29 contains provisions for the reimbursement of costs associated with the transportation of vocational education students.

#### **Section 15.1-27-30**

Chairman Holmberg said Section 15.1-27-30 is another certification section. He said the first portion of present Section 15-40.1-17 provides that on or before July 15 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:

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.

Chairman Holmberg said the rewrite provides that:

1. On or before July fifteenth of each year, the business manager of a school district shall certify to the county superintendent of schools the following information regarding the buses that transported students residing outside the incorporated limits of the city in which their school was located:
  - a. The number of buses operated on a contract basis or owned and operated by the district;
  - b. The manufacturer's listed passenger capacity of each bus; and
  - c. The daily mileage that each bus traveled in transporting students.

Chairman Holmberg said there are some minor word changes but nothing that should substantively change the requirements of this section.

Chairman Holmberg said present Section 15-40.1-17 goes on to provide that this information must also be certified by the school district business manager to the county superintendent:

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.

Chairman Holmberg said the rewrite provides that:

2. On or before July fifteenth of each year, the business manager of a school district shall certify to the county superintendent of schools the following information regarding the schoolbuses or commercial buses that transported students residing within the incorporated limits of the city in which their school was located:
  - a. A city plat indicating the location of each school building;
  - b. The route traveled by each bus;
  - c. The manufacturer's listed passenger capacity of each bus; and
  - d. The number of one-way bus trips taken during the school year by students residing within the city limits.

Chairman Holmberg said present law provides that:

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.

Chairman Holmberg said this is virtually paralleled in subsection 3 of Section 15.1-27-31.

Chairman Holmberg said present law then provides that:

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.

Chairman Holmberg said the rewrite in subsection 4 virtually parallels the concept. He said the only real difference is that in current law, all this verbiage is found in one paragraph, while in the rewrite, the attempt was made to make it a bit more visually pleasing by using sections and subsections.

Chairman Holmberg said present Section 15-40.1-17 goes on to state:

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.

Chairman Holmberg said the rewrite also closely follows the present law. He said one minor change that could be made is on page 23, line 14. He said the bill draft provides that the Superintendent of Public Instruction may "amend" the determination of the county superintendent. He said although there is nothing wrong with this word selection, in an earlier section there is a reference to "modifying" the determination of the county superintendent. He said we should continue using "modify" for purposes of consistency.

Chairman Holmberg said the rewrite contains a definition of "daily mileage." He said this was taken from present Section 15-40.1-15. He said the definition fits in this section. He said the other reason it was placed here is because the definition section--present Section 15-40.1-15--is being omitted. He said aside from daily mileage, it defines route, schoolbus, and school district. He said those seemed to be fairly self-explanatory.

### **Section 15.1-27-31**

Chairman Holmberg said Section 15.1-27-31 makes sure that transportation payments owed to a dissolved district follow the students into their new districts. He said the substantive portion was left alone, but old language was removed regarding certification of amounts payable to the Office of Management and Budget.

### **Section 15.1-27-32**

Chairman Holmberg said Section 15.1-27-32 is the rewrite of present Section 15-40.1-18. He said it requires the Superintendent of Public Instruction to forward transportation payments to school districts at the same time as other state payments to school districts. He said it also provides that a district may not receive more than 90 percent of the actual costs it incurs in providing transportation services.

### **Section 15.1-27-33**

Chairman Holmberg said Section 15.1-27-33 is the rewrite of present Section 15-40.1-07.9. He said this section makes sure that per student special education payments owed to a dissolved district follow the students into their new districts. He said aside from removing some outdated time-specific language, the section was left alone.

### **Section 15.1-27-34**

Chairman Holmberg said Section 15.1-27-34 is the rewrite of present Section 15-40.1-07.11. He said this 1999 legislation allowing a school district to become nonoperating provided:

1. The board of the district terminates the operation of all public schools in the district;
2. The board provides for the education in other school districts of all kindergarten, elementary, and secondary school students residing in the district; and
3. The board pays to other school districts educating its students the full per student cost of education in the receiving district.

Chairman Holmberg said a school district may be nonoperational for no more than three school years. He said 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. He said it may not revert to an independent operating district.

### **Section 15.1-27-35**

Chairman Holmberg said Section 15.1-27-35 is the rewrite of present Section 15-40.1-07.11. He said this was 1997 legislation that prohibited the Superintendent of Public Instruction from transferring any funds appropriated for foundation aid to the Youth Correctional Center to support the provision of educational services by the Youth Correctional Center. He said in the rewrite, the phrase "foundation aid" was replaced

with "per student payments and transportation aid." He asked whether this is accurate or whether the reference should be only to per student payments.

## **SPECIAL EDUCATION - CHAPTER 15.1-32**

Chairman Holmberg said Chapter 15.1-32 is reflected in bill draft No. 10025.01.

### **Section 15.1-32-01**

Chairman Holmberg said Section 15.1-32-01 is the definition section for the special education chapter. He said it parallels present law except that it includes a definition of "related services." He said the director of special education has some modifications he would like to suggest, including updated language.

Mr. Robert Rutten, Director of Special Education, Department of Public Instruction, said since present law has been written, the Individuals With Disabilities Education Act was reauthorized and consequently some definitional changes need to be made. He said there are 13 disability categories. He said only learning disability is defined.

Chairman Holmberg said perhaps the Superintendent of Public Instruction should introduce an agency bill that includes definitions of all the disabilities.

Mr. Rutten said the reference in Section 15.1-32-01(5) to "seriously emotionally disturbed" should be changed to "emotionally disturbed."

Dr. Gronberg said the history of the term "learning disability" dates back to the early 1970s. He said the term was defined in early federal law. He said North Dakota had not recognized the disability up to that point and therefore it was put into statute.

Dr. Gronberg said it would be appropriate to remove the definition of learning disability and to rely on the administrative rules for the descriptions of the 13 different disabilities categories.

Chairman Holmberg said the definition of learning disability should be deleted. He asked the Legislative Council staff to work with the director of special education to determine if any other definitional changes need to be made.

### **Section 15.1-32-02**

Chairman Holmberg said Section 15.1-32-02 is a partial rewrite of present Section 15-59-05. He said that section is captioned "Powers and duties of the director of special education," but it also includes directives for the Superintendent of Public Instruction. He said these include establishing general state policy regarding special education and ensuring a cooperative special education program coordinating all available services. He said the Superintendent of Public Instruction is also 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 special education programs.

**Section 15.1-32-03**

Chairman Holmberg said Section 15.1-32-03 directs the Superintendent of Public Instruction to develop and implement interagency agreements with the Department of Corrections and Rehabilitation, the Department of Human Services, the State Department of Health, and other public and private entities to maximize the state resources available for fulfilling the educationally related service requirements of the Individuals With Disabilities Education Act and Section 504 of the Rehabilitation Act.

**Section 15.1-32-04**

Chairman Holmberg said Section 15.1-32-04 requires the Superintendent of Public Instruction to adopt rules governing special education programs in institutions that are wholly or partially supported by the state and which are not supervised by public school authorities. He said the section requires that these rules be similar to those established for the delivery of special education in a public school.

**Section 15.1-32-05**

Chairman Holmberg said Section 15.1-32-05 directs the Superintendent of Public Instruction, the State Department of Health, and the Department of Human Services cooperate in planning and coordinating early intervention programs for children under age 2. He said this language is found in the present statement of legislative intent. He said it is included in the rewrite so that the committee can review it and determine whether or not it should be retained.

Mr. Rutten said the reference should be to children under age 3.

Chairman Holmberg said it is the committee's wish that the section should remain in the bill draft, with the change suggested by Mr. Rutten.

**Section 15.1-32-06**

Chairman Holmberg said Section 15.1-32-06 directs the Superintendent of Public Instruction to employ a qualified director of special education and any necessary assistants. He said present Section 15.1-02-03 provides that the "superintendent of public instruction may appoint an assistant. The superintendent may also hire personnel or contract with other persons to perform the work of the department of public instruction."

Chairman Holmberg said the committee may wish to consider whether the authority granted to the Superintendent in Section 15.1-02-03 is sufficient or whether a statutorily created position known as a director of special education is needed.

Chairman Holmberg said it is the wish of the committee that this issue be left as it is for now and others be encouraged to offer amendments in the future if doing so is deemed necessary.

**Section 15.1-32-07**

Chairman Holmberg said Section 15.1-32-07 provides that the director of special education shall adopt rules for the provision of special education to students with disabilities and for the administration of this chapter. He said the director shall assist school districts with the development and administration of special education programs and provide a process for the certification of schools, teachers, facilities, and equipment. He said a concern with this section is that rules are normally adopted by agencies or by constitutional officers, such as the Superintendent of Public Instruction, and here an agency employee is authorized to adopt rules. He said options might include having the Superintendent of Public Instruction adopt the rules or having the director of special education propose rules for adoption by the Superintendent.

Dr. Gronberg said it would be appropriate to have the Superintendent of Public Instruction adopt the rules.

Chairman Holmberg asked the Legislative Council staff to make the requested change.

**Section 15.1-32-08**

Chairman Holmberg said Section 15.1-32-08 requires that each school district provide special education, singly or jointly with other districts, in accordance with the provisions of this chapter. He said it also requires that each school district cooperate with the director of special education and with the institutions of this state in the provision of special education. He said the committee may wish to clarify which entities are intended to be included within the phrase "institutions of this state."

Dr. Gronberg said this phraseology applied when entities such as the Developmental Center at Grafton and the institution at the State Hospital, etc., ran their own education programs separately from the local school districts. He said the School for the Deaf and the Youth Correctional Center receive their own funds to educate their students. He said all others operate programs through their local school districts. He said the words "entity providing special education services to students" should be used.

Representative Eckre said it would be appropriate to act on Dr. Gronberg's suggestion.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff use the phrase "entity providing special education services to students."

**Section 15.1-32-09**

Chairman Holmberg said Section 15.1-32-09, like present law, provides that a school district may provide special education to students who are gifted.

### **Section 15.1-32-10**

Chairman Holmberg said Section 15.1-32-10 requires each school district to make and keep current a record of all students with disabilities who are residents of the district.

### **Section 15.1-32-11**

Chairman Holmberg said Section 15.1-32-11 provides that if a student is suspected of having a disability, the student's principal, the principal's representative, or the director of special education shall convene a multidisciplinary team consisting of educational professionals, medical professionals, and the student's parent to share assessment information related to the student's suspected disability. He said if necessary, the team is to develop an individualized education plan and make recommendations for the delivery of special education and related services to the student.

Chairman Holmberg said this language is found in the present statement of legislative intent. He said it is retained in this rewrite as a separate section. He said the committee might wish to review it and determine whether or not it should be retained.

Representative Thoreson said he did not like the word "suspected."

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff redraft the section using a phrase such as "if there is evidence that a student has a disability," or something similar, and present it to the committee for review at the next meeting.

Chairman Holmberg said perhaps the child's school district should be required to convene a team rather than a list of possible persons who might be called upon to do this.

In response to a question from Representative Nottestad, Mr. Rutten said the child's school district of residence bears responsibility for the child, but the school district the child attends is responsible for ensuring that the individualized education plan process is followed.

### **Section 15.1-32-12**

Chairman Holmberg said Section 15.1-32-12 directs each school district to require that all family insurance options be exhausted in paying the costs of determining a student's medically related disability and in paying for the provision of related services to the student. He said this language is found in the present statement of legislative intent and is retained in this rewrite as a separate section. The committee might wish to review it and determine whether or not it should be retained.

Chairman Holmberg said it is the wish of this committee that this section be retained.

### **Section 15.1-32-13**

Chairman Holmberg said Section 15.1-32-13 provides that a student with disabilities who receives special education services is deemed to be enrolled in the student's school district of residence for purposes of calculating per student payments. He said it authorizes additional payments if the student attends a special education summer program. He said it provides for prorated payments if the student is enrolled in a nonpublic school but receives special education services in a public school.

Chairman Holmberg said the section authorizes the student's school district of residence to contract with another public school that does not belong to the same special education unit; is located in this state; is willing to admit the student; and which is able to provide appropriate services to the student if the multidisciplinary team determines the student cannot attend his or her own school or special education unit.

Chairman Holmberg said in the rewrite the following sentence is omitted: "The transportation must be furnished as provided by rules of the superintendent of public instruction." He said the sentence was omitted because the only thing it says is that transportation must be provided in accordance with existing law.

Chairman Holmberg said a sentence was also omitted that defines a normal schoolday as six hours. He said Section 15.1-06-04 already references a full day of instruction as 5.5 hours for elementary students and six hours for high school students.

Mr. Rutten said the phrase "plus twenty percent of all remaining costs" needs to be added to this section. He said this would make it consistent with other sections and with the changes implemented by the Legislative Assembly during the 1999 legislative session.

### **Section 15.1-32-14**

Chairman Holmberg said Section 15.1-32-14 provides that if in the opinion of a multidisciplinary team a student is unable to attend a public school in the student's school district of residence because of a physical disability, a mental disability, or a learning disability, and if no public school in the state will accept the student and provide the necessary services, the student's school district of residence shall contract with a private, accredited, nonsectarian, nonprofit institution, which is located within or outside this state, and which has the proper facilities for the education of the student; or with a public school located outside this state, which has proper facilities for the education of the student. He said the Superintendent of Public Instruction is to approve the contract. He said the contract must provide that the student's school district of residence will pay 2.5 times the state average per student elementary or high school cost, plus 20 percent of all remaining costs.

Chairman Holmberg said the Superintendent of Public Instruction is to provide to the student's school district of residence, within the limits of legislative appropriations, an amount equal to 80 percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.

#### **Section 15.1-32-15**

Chairman Holmberg said Section 15.1-32-15 requires the student's school district of residence to provide transportation services if required by the student's individualized education plan. He said the school district is entitled to state reimbursement for the provision of transportation services to the student. He said if the transportation is provided by a student's parent, the Superintendent may reimburse the school district only for mileage costs.

Chairman Holmberg said this language is included in the present statement of legislative intent. He said it is retained in this rewrite as a separate section in order that the committee might review it and make a determination regarding its retention.

Chairman Holmberg said it is the wish of this committee that this section be retained.

#### **Section 15.1-32-16**

Chairman Holmberg said Section 15.1-32-16 provides that a student with disabilities is entitled to an educational program in excess of 180 days per year if the student's individualized education program requires it. He said this language is included in the present statement of legislative intent. He said it is retained in this rewrite as a separate section in order that the committee might review it and make a determination regarding its retention.

Chairman Holmberg said it is the wish of this committee that this section be retained.

#### **Section 15.1-32-17**

Chairman Holmberg said Section 15.1-32-17 provides that if the cost of providing special education and related services to a student with disabilities exceeds the reimbursement provided by the state, the student's school district of residence is liable to pay an amount over the state reimbursement up to a maximum each school year of 2.5 times the state average per student cost of education, plus 20 percent of all remaining costs. He said the state is liable for 80 percent of the remaining cost of education and related services for each such student with disabilities within the limits of legislative appropriations.

#### **Section 15.1-32-18**

Chairman Holmberg said Section 15.1-32-18 provides that the Superintendent of Public Instruction, within the limits of legislative appropriations, shall reimburse a student's school district of residence an

amount equal to 80 percent of the room and board costs paid for a student with disabilities who is placed in a facility located outside the student's school district of residence in order to receive special education services not available within the student's school district of residence.

#### **Section 15.1-32-19**

Chairman Holmberg said Section 15.1-32-19 states that the board of a school district may budget an amount from the school district general fund for its special education program. He said the school board may levy a tax to carry out a special education program, separately or jointly with other school districts.

#### **Section 15.1-32-20**

Chairman Holmberg said Section 15.1-32-20 provides that the Superintendent of Public Instruction may apply for, receive, and administer federal aid available for the provision of special education services to students and that he may also expend any federal aid so received within the limits of legislative appropriations.

#### **Section 15.1-32-21**

Chairman Holmberg said Section 15.1-32-21 provides that in an administrative or judicial proceeding to enforce the rights of an individual with disabilities to receive educational services, the court or hearing officer may award reasonable attorneys' fees and costs to a prevailing parent or to the individual with disabilities. He said present Section 15-59-10 provides that each "parent or guardian of a child with disabilities 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." He said the sentence is omitted from the rewrite because it merely states a legally existing right.

Chairman Holmberg said this section 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." He said this sentence is omitted because it "encourages" rather than requires an action.

Chairman Holmberg said present law states "[i]n any administrative or judicial proceeding to enforce that right [to an education], 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." He said the problem is as follows: The sentence references both "administrative and judicial" proceedings, yet it goes on to

provide that "the court" may award reasonable attorneys' fees. He said the rewrite provides that "the court or hearing officer may award reasonable attorneys' fees." He said the initial intent of the section should be checked because it refers to both administrative and judicial proceedings and then authorizes only the court to award attorneys' fees. He said it should be determined if federal legislation places any parameters on which entities can award attorneys' fees. He questioned whether the state administrative hearing officer now awards attorneys' fees.

Mr. Rutten said a hearing officer may not award attorneys' fees under federal statute. He said awarding such fees may be possible under state law.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff work with staff from the Department of Public Instruction to draft an amendment to this section and present the amendment to the committee at its next meeting.

Chairman Holmberg said on page 9 of the bill draft, there is a reprint of present Section 15-59-02.1. He said that is the present legislative intent section. He said as it states in the drafter's note, the purpose of a properly drafted bill should be self-evident. He said an explanation of the law's purpose, its intent, or the policy behind it should be made part of its legislative history--at its committee hearing or during the floor action. He said it should not be part of the law itself. He said legislative intent statements are nebulous. He said it is not clear whether a statement of legislative intent means that something must be done, should be done, or may be done. He said that is why we are trying to remove intent statements that are presently in legislation.

Chairman Holmberg said that present Section 15-59-05.3 was also omitted from the rewrite. He said this section provides that the Superintendent of Public Instruction may not make changes to the credentialing process for special education teachers, as it existed on March 1, 1999, without first convening a meeting of affected parties. He said if any two of the affected entities object to proposed changes, the Superintendent may not make the changes until July 1, 2001. He said this section was adopted in response to a particular set of circumstances. He said the committee may wish to determine whether the section should be omitted or retained with a date change.

Representative Kelsch said this section should continue as part of this code at least through the next legislative session. She said perhaps we could change the sunset to 2003.

Dr. Gronberg said we now provide that all credentials go through the rulemaking process. He said any changes or objections would go before a legislative committee. He said he does not see why this particular credential should be segregated.

## MULTIDISTRICT SPECIAL EDUCATION UNITS - CHAPTER 15.1-33

Chairman Holmberg said Chapter 15.1-33 is reflected in bill draft No. 10026.01.

### Section 15.1-33-01

Chairman Holmberg said Section 15.1-33-01 provides that each multidistrict special education unit is a body corporate. He said the unit has all the powers of and is to perform all the duties usual to corporations for public purposes or as conferred upon it by law. He said the rewrite eliminates language that allows a multidistrict special education unit to be sued, to enter into contracts, to convey real and personal property, etc. He said those concepts are already covered by the statement that the unit is a body corporate. He said the rewrite also eliminates the reference to a corporate seal.

### Section 15.1-33-02

Chairman Holmberg said Section 15.1-33-02 provides that a school district may join a multidistrict special education unit or, together with other school districts, form a multidistrict special education unit. He said the rewrite eliminates language regarding the initial formation of the multidistrict units.

### Section 15.1-33-03

Chairman Holmberg said Section 15.1-33-03 requires each multidistrict special education unit to maintain an organizational plan on file with the Superintendent of Public Instruction. He said the organizational plan must include:

1. A list of the unit's board members.
2. A description of how each school district is represented on the board.
3. The method used to select officers.
4. The terms of office.
5. Scheduled meeting times.
6. Quorum requirements.
7. Any other items required through rule by the Superintendent of Public Instruction.

### Section 15.1-33-04

Chairman Holmberg said Section 15.1-33-04 provides that the board of each participating school district must appoint one or more representatives to the unit board, consistent with the organizational plan of the unit.

Chairman Holmberg said present Section 15-59.2-02 provides that "[r]epresentatives on the multidistrict board must be appointed by the school boards of the participating districts." He said this could be interpreted to require that each board member must be "approved" by the boards of the participating school districts. He said consequently the rewrite tries to clarify that each participating school board is responsible for the appointment of one or more representatives.

Chairman Holmberg said the phrase “on the . . . board” should be changed to “to the . . . board.”

#### **Section 15.1-33-05**

Chairman Holmberg said Section 15.1-33-05 requires that the board of each multidistrict special education unit set a level of compensation for services payable to its members, provided that no member may receive more than \$1,000 annually for this purpose. He said in addition to compensation for services, each member may be reimbursed for all necessary meals and lodging and travel expenses actually incurred while engaged in official business of the board at the same rate as provided for state officers and employees. He said any mileage claimed may not exceed the number of miles between the points traveled as measured by the most usual route.

Chairman Holmberg said present Section 15-59.2-02 provides that compensation “for board members must be the same as that allowed school board members pursuant to section 15.1-09-06.” He said rather than merely referencing the section, the rewrite reiterates the content of the section.

#### **Section 15.1-33-06**

Chairman Holmberg said Section 15.1-33-06 provides that in order for a school district to withdraw from a multidistrict special education unit, the board of the withdrawing school district must approve the withdrawal, it must inform the board of the multidistrict special education unit that it has elected to withdraw from the unit, and it must submit a plan to the Superintendent of Public Instruction regarding the provision of services to students with disabilities.

#### **Section 15.1-33-07**

Chairman Holmberg said Section 15.1-33-07 requires that the board of a multidistrict special education unit prepare an annual plan regarding the provision of special education and related services and submit the plan to the Superintendent of Public Instruction for approval.

#### **Section 15.1-33-08**

Chairman Holmberg said Section 15.1-33-08 sets forth the powers of a multidistrict special education unit. These include receiving state and federal funds and distributing them to each participating school district, employing personnel, receiving and expending private and public funds, and contracting for the provision of special education and related services.

#### **Section 15.1-33-09**

Chairman Holmberg said Section 15.1-33-09 requires the board of a multidistrict special education unit to plan and coordinate the transportation of each

student receiving special education services within the unit.

Chairman Holmberg said there should also be a Section 15.1-33-10 in this chapter. He said the section should appear as follows:

**15.1-33-10. Multidistrict board - Rights of employees.** Any individual employed by the board has the same statutory rights as those accorded to an individual employed by a school district for the same purpose.

**NOTE:** Present Section 15-59.2-05(3).

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff add Section 15.1-33-10.

### **BOARDING HOME CARE FOR STUDENTS WITH DISABILITIES - CHAPTER 15.1-34**

Chairman Holmberg said Chapter 15.1-34 is reflected in bill draft No. 10027.01.

#### **Section 15.1-34-01**

Chairman Holmberg said Section 15.1-34-01 begins the chapter with definitions of boarding home care, family boarding home, registration, registration certificate, and relative. He said these definitions are found in present Section 15-59.3-01.

#### **Section 15.1-34-02**

Chairman Holmberg said Section 15.1-34-02 provides that a person may not establish or operate a family boarding home unless the person first obtains a registration certificate from the department. He said present law provides that no person, partnership, voluntary organization, corporation, or limited liability company may establish or operate a family boarding home unless the entity first obtains a registration certificate. He said in legalese, the term “person” includes all such entities as well as individuals.

#### **Section 15.1-34-03**

Chairman Holmberg said Section 15.1-34-03 addresses the manner in which registration certificates are obtained. He said an application must first be filled out. He said the Department of Human Services may investigate the applicant's activities and may inspect the home for which the registration is sought. He said the department must grant the registration certificate if it finds that the home is in sanitary condition; the home is properly equipped to provide for the health and safety of student boarders; and if the individual in charge of the home and all assistants are qualified to fulfill the duties required of them under this chapter and under any rules or standards prescribed by the department. He said a registration certificate issued under this section is effective for up to two years.

Chairman Holmberg said present Section 15-59.3-04 provides that the department must grant the registration certificate if the home is in sanitary



condition, if the persons are qualified, and if the "home will be maintained according to the standards prescribed for its conduct by the rules of the department." He said the obvious difficulty with this provision is that there is no way to determine whether or not a home "will be" maintained according to certain standards. In the rewrite, this provision is therefore omitted.

#### **Section 15.1-34-04**

Chairman Holmberg said Section 15.1-34-04 requires that the State Department of Health, the State Fire Marshal, or a designee of the State Fire Marshal inspect any home for which a registration certificate is sought, if requested to do so by the Department of Human Services. The entity conducting the inspection is required to prepare an inspection report and present the report to the department. He said this section is a rewrite of present Section 15-59.3-07, which contains multiple concepts, including the fire inspection of homes in which care is provided, the maintenance of records, and record confidentiality. He said these concepts have been placed in separate sections.

#### **Section 15.1-34-05**

Chairman Holmberg said Section 15.1-34-05 also stems from present Section 15-59.3-07. He said it provides that, at any time, the Department of Human Services or an authorized agent of the department may inspect the conditions of a family boarding home and investigate the qualifications of the owner or operator.

#### **Section 15.1-34-06**

Chairman Holmberg said Section 15.1-34-06 provides that a person who has been convicted of an offense may not be disqualified from registration under this chapter unless the department determines that the offense has a direct bearing upon the person's ability to serve the public as an owner or operator of a boarding home or unless the department believes that the person is not sufficiently rehabilitated under Section 12.1-33-02.1.

Chairman Holmberg said Section 12.1-33-02.1, like this section, provides that a person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. He said it goes on to provide that a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession. He said in determining whether or not there has been sufficient

rehabilitation, a state agency, board, commission, or department is to consider the nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession. He said it is to consider information pertaining to the degree of rehabilitation of the convicted person and it is to consider the time elapsed since the conviction or release.

Chairman Holmberg said completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or imprisonment, without subsequent conviction, is evidence of sufficient rehabilitation.

#### **Section 15.1-34-07**

Chairman Holmberg said Section 15.1-34-07 is a due process provision. He said if after reviewing a person's application for a registration certificate the department denies the application, the department must serve the applicant with notice of the denial and with the reasons for the denial. He said the department is to hold an administrative hearing under Chapter 28-32 regarding the person's application and its subsequent denial if it is requested to do so by the applicant within 10 days.

#### **Section 15.1-34-08**

Chairman Holmberg said Section 15.1-34-08 states what information must appear on the registration certificate; i.e., the name of the owner or operator, the location of the home, and the maximum number of boarders.

#### **Section 15.1-34-09**

Chairman Holmberg said Section 15.1-34-09 requires any person to whom a registration certificate has been issued to maintain records regarding each student for whom care is provided, as directed by the department. He said the person must also submit requisite forms and information, as directed by the department, and allow for the examination of all books, records, and reports.

#### **Section 15.1-34-10**

Chairman Holmberg said Section 15.1-34-10 provides that all records and information regarding a student for whom care is provided are confidential. He said disclosure is permitted if the records are part of a judicial proceeding and if the records are given to law enforcement officers, to representatives of a governmental entity, or to parents of a student for whom care is provided under this chapter. He said disclosure is also permitted 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.

Chairman Holmberg said this last phrase is a slight departure from the present language. He said present Section 15-59.3-07(3) provides that the

records may 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."

Chairman Holmberg said because this language appeared to contain fairly fluid criteria, the rewrite provides that the records may be made available 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."

#### **Section 15.1-34-11**

Chairman Holmberg said Section 15.1-34-11 sets forth the conditions under which the department may revoke a registration certificate. He said these conditions include:

- The home is in an unsanitary condition.
- The home is not properly equipped to provide for the health and safety of the students.
- The individual in charge of the home and all assistants are not qualified to fulfill their duties.
- The owner or operator does not comply with departmental standards.
- The application for a registration certificate contained fraudulent information or an untrue representation.
- The person to whom the registration certificate was issued violated a departmental rule.
- The person to whom the registration certificate was issued is found guilty of an offense which, in the determination of the department, has a direct bearing upon the person's ability to serve the public as an owner or operator of a boarding home for students with disabilities.
- The person to whom the registration certificate was issued is found guilty of any offense and the department determines that the person is not sufficiently rehabilitated under Section 12.1-33-02.1.

#### **Section 15.1-34-12**

Chairman Holmberg said Section 15.1-34-12 requires the department to provide the holder of the registration certificate with notice of revocation and with grounds for the revocation. He said if requested by the person, the department must hold an administrative hearing under Chapter 28-32 regarding the revocation.

#### **Section 15.1-34-13**

Chairman Holmberg said Section 15.1-34-13 states that a governmental entity may not provide for the placement of a student with disabilities in a family boarding home unless the person operating the home has obtained a registration certificate or is exempt from the registration requirement under Section 15.1-34-02 and complies with all applicable standards and rules adopted by the department.

#### **Section 15.1-34-14**

Chairman Holmberg said Section 15.1-34-14 authorizes the Department of Human Services to:

1. Establish standards for the registration and operation of a family boarding home;
2. Allow for the application of alternate standards;
3. Adopt rules; and
4. Inspect and certify homes.

#### **Section 15.1-34-15**

Chairman Holmberg said Section 15.1-34-15 provides that a person who violates any provision of this chapter is guilty of a Class B misdemeanor. He said a Class B misdemeanor involves a maximum penalty of 30 days' imprisonment, a fine of \$1,000, or both.

In response to a question from Representative Nottestad, Dr. Gronberg said proposed Section 15.1-23-15 refers to any records that the home maintains regarding the child and the services it provides. He said the schools are still responsible for keeping any of the student's school records.

Dr. Gronberg said this is a boarding home, not a foster home. He said the parent is still responsible for the child. He said boarding homes are used when the daily transportation might be too long to be practicable.

### **TEXTBOOK PURCHASES - CHAPTER 15.1-35**

Chairman Holmberg said Chapter 15.1-35 is reflected in bill draft No. 10028.01.

#### **Section 15.1-35-01**

Chairman Holmberg said Section 15.1-35-01 goes through the steps that a person must take before that person is eligible to offer textbooks for sale in this state. He said those steps include filing a sworn statement with the Superintendent of Public Instruction. He said the statement must set forth the textbook's list price, the lowest wholesale price at which the textbook is sold to any school board, and the lowest price at which the book may be exchanged. He said the person must also file a bond in an amount determined by the Superintendent. This may be no less than \$2,000 nor more than \$10,000.

#### **Section 15.1-35-02**

Chairman Holmberg said Section 15.1-35-02 provides that the bond must be approved by the Attorney General and that thereafter the person may be licensed by the Superintendent of Public Instruction to sell textbooks at the price set forth in the sworn statement.

### Section 15.1-35-03

Chairman Holmberg said Section 15.1-35-03 provides that if a person who is so bonded supplies textbooks to a district at a higher price than that set forth in the sworn statement, the board must file a complaint with the county superintendent. He said the county superintendent must inform the Superintendent of Public Instruction. He said the Superintendent of Public Instruction must then notify the bonded entity of the problem. He said if the entity ignores the problem, the Superintendent must ask the Attorney General to collect on the bond.

Chairman Holmberg said the committee may wish to review whether or not it is still appropriate to have a school district notify its county superintendent and then have the county superintendent notify the Superintendent of Public Instruction that there is a problem with the textbook pricing.

Representative Kelsch said perhaps a school board could just notify the Superintendent of Public Instruction and leave out the county superintendent.

Chairman Holmberg said it is the wish of this committee that the section be amended to delete the role of the county superintendent.

Dr. Gronberg said this chapter is so antiquated that it should simply be repealed. He said districts have shopped at their own risk for years. He said we do not have districts inquiring as to the bonded status of sellers. He said this chapter is no longer useful.

**It was moved by Senator O'Connell, seconded by Representative Eckre, and carried on a voice vote that proposed Chapter 15.1-35, relating to textbook purchases, be deleted from the rewrite and that the applicable sections of NDCC Chapter 15-43 be repealed.**

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff should consolidate all the rewrite bill drafts and present them as one to the committee at its next meeting.

**It was moved by Representative Kelsch, seconded by Senator O'Connell, and carried on a voice vote that the Legislative Council staff be requested to prepare a resolution draft directing the Legislative Council to review the rewrite of the education title and the subsequent creation of NDCC Title 15.1 and to propose any corrections that need to be considered as a result.**

## EDUCATION STANDARDS AND PRACTICES BOARD - CHAPTER 15.1-13

Chairman Holmberg said Chapter 15.1-13 is reflected in bill draft No. 10010.04.

Chairman Holmberg called on Ms. Welk who said on May 4, 2000, the Education Standards and Practices Board signed the National Association of State Directors of Teacher Education and Certification Interstate Contract. She said present Section 15-36-11.1, the interim reciprocal license provision, was attached. She said licensed teachers from other states are

permitted to teach in North Dakota and are given four years to meet all North Dakota requirements.

Ms. Welk said she has reviewed the latest version of the bill draft and she has absolutely no concerns about it.

### Section 15.1-13-01

Chairman Holmberg said at the last meeting, the committee was still trying to define who qualifies as an administrator and who qualifies as a teacher. He said what was suggested is now found in proposed Section 15.1-13-01. He said that section now defines an administrator as a school district superintendent, an assistant or associate school district superintendent, a school principal, an assistant or associate school principal, an athletic or activity director, a director of a multidistrict special education unit, and a director of a vocational technology center.

Chairman Holmberg said if there is an issue regarding any of their teaching licenses, the issue would be heard by a subcommittee of the Education Standards and Practices Board, consisting of the two Education Standards and Practices Board members who are administrators, the Education Standards and Practices Board member who is a school board member, and two Education Standards and Practices Board members who are teachers and who have been appointed to this subcommittee by the Education Standards and Practices Board.

### Section 15.1-13-07

Chairman Holmberg said under present law a majority of the Education Standards and Practices Board constitutes a quorum and a majority of the quorum has the authority to act upon any matter properly before the board. He said put another way, five members of the nine-member Education Standards and Practices Board constitute a quorum and three members--a majority of the quorum--can act upon any matter properly before the board.

Chairman Holmberg said this committee thought that that situation was fine when day-to-day matters are considered (such as ordering more letterhead), but when it came to the revocation of an individual's teaching license, the committee believed that at least a majority should be in consent.

Chairman Holmberg said the new language is found on page 2, lines 23 and 24. He said it provides literally that at least five members of the board must consent to the revocation of an individual's teaching license. He said the committee had also asked that this be paralleled in the administrator's subcommittee.

Chairman Holmberg said the administrator's subcommittee consists of five individuals. He said as with the full Education Standards and Practices Board, a majority of the committee constitutes a quorum and a majority of the quorum has the authority to act. He said the new language, which is

found on lines 8 and 9 of page 13, similarly provides that it takes three members of the five-member subcommittee to consent to the revocation of an administrator's teaching license.

#### **Section 15.1-13-09**

Chairman Holmberg said the Attorney General's office has apparently decided that in order for rules to be valid, a board must have specific rulemaking authority. He said this is causing some consternation for the Administrative Rules Committee. He said just to be on the safe side, however, specific rulemaking authority was provided for the Education Standards and Practices Board. He said that authority can be found on page 3, line 17.

#### **Section 15.1-13-12**

Chairman Holmberg said Section 15.1-13-12 provides that a teaching license issued by the Education Standards and Practices Board is effective for at least one year. He said the committee added an amendment that states that the section is not applicable if the Education Standards and Practices Board suspends or revokes a license. He said the amended language is found on page 4, lines 21 and 22.

#### **Section 15.1-13-15**

Chairman Holmberg said previously Section 15.1-13-15 provided that a student who has met all the criteria necessary to receive a 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. He said within 10 days the college or university is to mail a copy of the transcript to the Education Standards and Practices Board.

Chairman Holmberg said the committee thought this worked just fine if the student was seeking licensure in North Dakota, but it was no help at all if the student was seeking licensure elsewhere. He said the committee consequently amended the language to provide that upon the student's request, the college or university could mail the completed transcript to the Education Standards and Practices Board or to a comparable entity in another state.

Chairman Holmberg said this section still refers to the mailing of a transcript and perhaps the committee would like to consider the phrase "shall provide a transcript" rather than "shall mail a transcript." He said if a courier service such as United Parcel Service or Federal Express is used, that is not technically "mailing" something.

Chairman Holmberg said it is the wish of this committee that the phrase "shall provide a transcript" be used instead of the phrase "shall mail."

#### **Section 15.1-13-22**

Chairman Holmberg said Section 15.1-13-22 has to do with school guidance and counseling providers.

He said the amendment was a simple one. He said another reference to a "valid" teaching license was deleted. He said one either holds a teaching license or one does not. He said if one's license is invalid, one does not hold a teaching license.

#### **Section 15.1-13-23**

Chairman Holmberg said if a complaint is filed with the Education Standards and Practices Board, the board must serve a copy of the complaint on the individual teacher or administrator. He said the individual has 20 days within which to respond. He said present law provides that if "the teacher or administrator fails to file an answer . . . the allegations in the complaint will be deemed admitted and the . . . board shall proceed to hold a hearing."

Chairman Holmberg said the committee was concerned that a failure to respond constituted an automatic admission of the complaint. He said perhaps the individual had left the state and because of no forwarding address did not receive the complaint. He said perhaps the individual is hospitalized and incapable of responding.

Consequently, Chairman Holmberg said, alternative language was drafted. He said that language is found on page 9, beginning on line 20. He said it provides that if an individual fails to file a timely response, the board shall determine whether the individual's failure to file a timely response constitutes an admission of the allegations and whether the individual's teaching license should be subject to board action.

Chairman Holmberg said if the board determines that the individual's failure to file a timely response is an admission of the allegations and that the individual's teaching license should be subject to board action, the board shall hold a hearing under Chapter 28-32 to take any appropriate action.

Mr. Klundt asked if the definition of an administrator could provide that it "includes" rather than "means."

Representative Nottestad said there are certainly administrative positions that are not covered in the list.

Representative Kelsch said it is probably okay to use "includes."

Mr. Westby said in most school districts athletic directors are not full-time administrators. He said the language would appear to make them administrators regardless of the amount of time spent in the position. He said adding "full time" to athletic or activity director's designation would solve the problem as far as he is concerned.

Mr. Klundt said he is concerned about using terms such as "mostly" or "a majority of the time."

Representative Thoreson said special education directors should be listed as administrators.

Ms. Welk said it is present practice that anyone who holds an administrative credential is considered an administrator.

In response to a question from Representative Hanson, Ms. Welk said some cases have to be judged on a case-by-case basis. She said sometimes it depends on which hat the individual is wearing at the time of the complaint.

Mr. Klundt said special education directors should be included.

Chairman Holmberg said it is the wish of this committee that special education directors and vocational education directors be included in the definition of an administrator.

Representative Kelsch said we should require that all the positions have administrator credentials.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff work with Ms. Welk on the definition of an administrator and present any suggested changes to the committee at its next meeting.

### **COMPULSORY ATTENDANCE - CHAPTER 15.1-20**

Chairman Holmberg said Chapter 15.1-20 is reflected in bill draft No. 10016.02.

#### **Section 15.1-20-03**

Chairman Holmberg said present law provides that the board of a school district having more than 500 residents may employ a truant officer to assist in the enforcement of compulsory attendance. He said the committee wondered if this would preclude other school districts from employing truant officers and even if truant officers still existed.

He said Section 15.1-09-33(20) authorizes school districts to contract with, employ, and compensate school district personnel. He said the committee determined that this language would allow school districts of any size to hire personnel for the purposes they felt necessary. He said the committee therefore asked that the sentence referencing the hiring of truant officers be deleted.

#### **Section 15.1-20-04**

Chairman Holmberg said the law presently places the compulsory attendance provisions and the home education provisions in a single chapter. He said that chapter contains a definition of home education. He said the definition was not initially put in the compulsory attendance chapter. He said the committee asked that it be so placed and therefore it is in Section 15.1-20-04. He said home education is defined as an educational program for a child provided in accordance with Chapter 15.1-23 by the child's parent in the child's home.

In response to a question from Senator Holmberg, Dr. Gronberg said the appeal referenced in proposed

Section 15.1-20-02 is an appeal to the local school district superintendent.

Chairman Holmberg asked that that be clarified in the rewrite.

### **COURSES AND CURRICULA - CHAPTER 15.1-21**

Chairman Holmberg said Chapter 15.1-21 is reflected in bill draft No. 10017.02.

#### **Section 15.1-21-01**

Chairman Holmberg said, as the drafter's note states, present Section 15-38-07 purports to set forth required subjects. He said at the last meeting the committee determined that the section lists both courses and subject matter in a fairly convoluted fashion. He said the Legislative Council staff and personnel from the Department of Public Instruction were asked to bring a proposed version for the committee's consideration.

Chairman Holmberg said under the proposed version, the Superintendent of Public Instruction is to ensure that students receive education in:

1. English language arts, which includes reading, composition, creative writing, English grammar, and spelling.
2. Mathematics.
3. Social studies, including United States history, geography, government, and the constitution.
4. Science, including agriculture.
5. Physical education.
6. Health, including physiology, hygiene, disease control, and the nature and effects of alcohol, tobacco, and narcotics.

Chairman Holmberg said neither the Legislative Council staff nor personnel from the Department of Public Instruction were certain of what to do with present Section 15-38-10. He said that section provides that "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." He said the language made it into the code in 1890 as part of a section regarding the reading of the Bible. In 1911 it received its own section.

Chairman Holmberg said it does not fit the parameters of a course such as science or mathematics and it is not a component of a particular course. He said pending further instruction, it is not included in the rewrite.

#### **Section 15.1-21-02**

Chairman Holmberg said Section 15.1-21-02 is the rewrite of Section 15-41-24. He said as directed by the committee, we provided that in order to be approved by the Superintendent of Public Instruction,

each public and nonpublic school has to make available to each student the requisite units of English, mathematics, etc. He said the list of vocational courses has been modernized. He said home economics is now called family and consumer science. He said office education is business and office technology. He said distributive education is marketing. He said health occupations is health careers. He said diversified occupations are school-based programs offering a student the chance to attend school and work part time at a job related to his or her stated career objective.

### **Section 15.1-21-03**

Chairman Holmberg said Section 15.1-21-03 defines a high school unit. He said the definition is currently buried among the multiple concepts found in present Section 15-41-06. He said the committee had asked that it stand alone.

Chairman Holmberg said present law provides that a unit course "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."

Chairman Holmberg said the reference to 120 hours and 150 hours is found in the state accreditation rules. He said 40 minutes x 173 days = 6,920 minutes = 115.3 hours. He said 40 minutes x 180 days = 7,200 minutes = 120 hours. He said 150 hours = 9,000 minutes = 173 days @ 52 minutes and 180 days @ 50 minutes.

In response to a question from Senator Holmberg, Representative Nottestad said the draft needs to mention that the hour requirements are subject to the requirements of Section 15.1-06-04.

Ms. Nielson said she is very concerned about proposed Section 15.1-21-08. She said the required reading of the Bible, as stated in the drafter's note, has the potential to raise some serious First Amendment concerns. She said the Bible can be used in literature courses and in comparative religion courses. She said the problem with proposed Section 15.1-21-08 is that it gives the option of Bible reading to the teacher. She said a school board will end up in court on this issue. She said she understands that a student does not have to be present when the Bible is being read. She said it is also not right that a student should have to be singled out and stand in the hall while the reading is taking place.

Representative Eckre said you could have teachers doing this in every class period during the schoolday.

Representative Nottestad said when it was placed in the statute, it was probably part of the opening exercises of a country school. He said such things were common practice. He said as written it could be construed that the Bible could be read for up to

10 minutes during each class period. He said the school boards could throw in a bill to repeal this section, but they have not done so since 1913.

Senator Redlin said this is another effort on the part of well-meaning people to ensure that the schools teach religion. He said in humanities courses we do an excellent job of teaching the Bible as an historical document. However, he said, this section as written is an unreasonable request for an unreasonable privilege.

Representative Solberg said the study of religion should be optional. He said we do not need to force this on people.

**It was moved by Representative Thoreson and seconded by Senator Redlin that proposed Section 15.1-21-08 be deleted from the rewrite and that present Section 15-38-12 be repealed.**

Representative Eckre said he is a Christian, but he believes that we are giving somebody a lot of leeway here with 10 minutes a period. He said if you are in high school, you have seven periods a day. He said the Bible is an excellent book for moral as well as literature purposes, but it should be read more in a family setting or in a church setting rather than in a public school setting.

Senator O'Connell said he believes in what Representative Eckre just said. He said at the same time, if the North Dakota School Boards Association wants to challenge it, they can take it to court and fight it that way.

**The motion carried on a roll call vote. Senator Redlin and Representatives Eckre, Hanson, Nottestad, Solberg, and Thoreson voted "aye." Senators Holmberg and O'Connell and Representative Kelsch voted "nay."**

## **KINDERGARTENS - CHAPTER 15.1-22**

Chairman Holmberg said Chapter 15.1-22 is reflected in bill draft No. 10018.02.

### **Section 15.1-22-02**

Chairman Holmberg said present Section 15-45-02 provides that "[a]ll kindergarten teachers must hold valid licenses issued under rules adopted by the education standards and practices board."

Chairman Holmberg said the committee determined that since the Education Standards and Practices Board has the authority to grant provisional teaching licenses and interim reciprocal teaching licenses, the law needed to be appropriately broadened. He said the amended language provides that a school district may not employ an individual as a kindergarten teacher unless the individual is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board.

Ms. Nielson said with respect to proposed Section 15.1-22-01(2), it is virtually impossible for a board to

determine how many individuals are needed to constitute five percent of qualified electors. She said this state does not have registered voters. She said sometimes when we have referenced school board election voting, we have raised the requirement to 20 percent because the turnouts are sometimes quite low.

Chairman Holmberg said this is just a method to get the issue on the ballot.

Representative Eckre said anyone over 18 is a qualified elector in North Dakota.

Ms. Nielson said she has no problem with 20 percent of the individuals who voted in the last school district election.

Chairman Holmberg said it is the wish of the committee that proposed Section 15.1-22-01(2) be changed to reference 20 percent of the individuals who voted in the last school district election.

## **HOME EDUCATION - CHAPTER 15.1-23**

Chairman Holmberg said Chapter 15.1-23 is reflected in bill draft No. 10019.04.

### **Section 15.1-23-01**

Chairman Holmberg said under present law home education provisions are found in the compulsory attendance chapter. He said that chapter has a section that defines a nonpublic school, a parent, a school, and home education. He said in the first draft, the committee deemed those to be self-evident and therefore omitted the section. He said other parties indicated that they would prefer to see the definition of home education maintained. He said therefore this section was added. He said it defines home education as a program of education supervised by a child's parent, in the child's home, in accordance with the requirements of Chapter 15.1-23.

### **Section 15.1-23-09**

Chairman Holmberg said under present law children receiving home education must be given a standardized achievement test in grades 3, 4, 6, 8, and 11. He said in order to standardize this with the administration of tests in the public school system, the committee asked that we amend the language so that the tests be given to children receiving home education in grades 4, 6, 8, and 10.

### **Section 15.1-23-06**

Chairman Holmberg said because the grade requirements for administering standardized achievement tests was changed in Section 15.1-23-09, a subsequent change was needed in this section. He said current law provides that a parent who has a high school diploma or a general equivalency diploma may supervise home education, but that parent must be monitored for the first two years or until the child being instructed completes the third grade, whichever is

later. He said it goes on to provide that if the child receives a composite standardized test score below the 50th percentile, the monitoring must continue for at least one additional school year. He said since the third grade test was removed from Section 15.1-23-09, the language of this section was changed. He said now the section requires that a parent having a high school diploma or general equivalency diploma must be monitored for two years.

### **Section 15.1-23-07**

Chairman Holmberg said at the last meeting there was discussion about monitors, the school district role in assigning monitors, and the compensation of such individuals. He said the committee's conclusion was that the present law was not clear and that the Legislative Council staff should work with the Home Education Association to rectify the language. He said this section now provides:

1. If a monitor is required, the school district must assign and compensate the monitor unless the parent notifies the school district that the parent intends to select and compensate the monitor.
2. The monitor, whether assigned by the school district or selected by the parent, must hold a North Dakota teaching license.
3. The monitor must report the child's progress twice each year to the school district superintendent or to the county superintendent of schools if the school district does not employ a superintendent.
4. If one child receives home education, the monitor must spend an average of one hour per week with the child and the child's parent. If two or more children receive home education, the monitor must spend one-half hour per month for each additional child.

In subsection 2, the monitor is required to hold a North Dakota teaching license. Chairman Holmberg said provisions should be made for individuals who are approved to teach by the Education Standards and Practices Board, as we do in other instances.

Chairman Holmberg said it is the wish of this committee that references to teaching licenses include approval to teach by the Education Standards and Practices Board.

Chairman Holmberg said the issue of semantics also came up at the last meeting. He said the committee was questioning whether the section should say that a parent "provides" home education or "supervises" education. He said since the home educators prefer to think of themselves as "supervising" education, that word was used.

### Section 15.1-23-11

Chairman Holmberg said Section 15.1-23-11 had one old reference to the parent's school district of residence. He said the section was amended so that it refers to the child's school district of residence. He said that makes it consistent with the other sections in this chapter.

### Section 15.1-23-10

Chairman Holmberg said Section 15.1-23-10 needs to be amended again. He said at the time this section was drafted, there was some miscommunication about who pays for standardized tests and their administration. He said the Home Education Association worked out some new language with the Legislative Council staff. He said what they are proposing is:

1. If a child receiving home education takes the standardized achievement test used by the school district in which the child resides, the school district is responsible for the cost of the test and for the cost of administering the test. The school district shall ensure that the test is administered by an individual who is employed by the district and who is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board.
2.
  - a. If the child takes a nationally normed standardized achievement test not used by the school district in which the child resides, the child's parent is responsible for the cost of the test.
  - b. The cost of administering a test under this subsection is the responsibility of the child's parent if the test is administered by an individual who is selected by the parent. An individual selected by the child's parent to administer a test under this subsection must be licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board.
  - c. The cost of administering a test under this subsection is the responsibility of the school district if, at the request of the child's parent, the school district administers the test. The school district shall ensure that the test is administered by an individual who is employed by the district and who is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board.

### Section 15.1-23-08

Chairman Holmberg said Section 15.1-23-08 would also have to be changed. He said in its present

form it requires that an individual 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 school district of residence. He said it then provides that if "the individual is not assigned by a school district under subsection 1 of proposed section 15.1-23-07, the parent supervising home education is responsible for any costs associated with the monitoring or test administration." He said it seems this last sentence can be deleted. He said proposed Section 15.1-23-07 already addresses the cost of the monitor and Section 15.1-23-10 deals with the cost of test administration.

Mr. Rutten said there is need for a minor change in verbiage as a result of the federal reauthorization of the Individuals With Disabilities Education Act. He said the preferred verbiage is now service plan, not an individualized education plan.

In response to a question from Representative Nottestad, Mr. Rutten said the terminology is consistent for both public and nonpublic schools.

Dr. Gronberg said the change in proposed Section 15.1-23-06 creates a gap. He said there might be a gap if a parent is monitored for only two years.

Ms. Cam Leedahl, home educator, Leonard, said there is no achievement test required until grade 3. She said if parents are monitored for only two years, there exists a gap now between the end of monitoring and the first standardized testing in the third grade.

## PAYMENT OF TUITION - CHAPTER 15.1-29

Chairman Holmberg said Chapter 15.1-29 is reflected in bill draft No. 10022.03.

### Section 15.1-29-03

Chairman Holmberg said present Section 15-40.2-01 provides that 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 in 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."

Chairman Holmberg said when the 1997-98 interim Education Services Committee looked at this section, it indicated that, as a policy matter, it would be appropriate for the school board to address more than just its own best interests. He said an earlier version of the rewrite provided that the board may send its students to another district . . . if doing so is in the best interests of all affected parties.

Chairman Holmberg said at the last meeting representatives of the North Dakota School Boards Association indicated that sometimes a board has to make a decision that is not necessarily in the best interests of all affected parties. He said the language was



consequently tempered to provide that the board must take into account the best interests of all affected parties.

Chairman Holmberg said another issue in that opening sentence has to do with the provision that a board may send its students into another school district or to an accredited institution if doing so is in the best interests of affected parties. He said the committee was curious as to what was meant by the phrase "accredited institution."

Chairman Holmberg said when this section was enacted in 1971, it provided that a board could send its students to another school district if, because of shorter distances or other conveniences, it is in the best interests of the school district to do so. He said in 1973 this was changed to provide that a board could send its students to another school district or to an accredited institution of another state.

Chairman Holmberg said in 1997 the words "of another state" were removed. He said that same legislation amended the sections dealing with reciprocal agreements and the attendance of students in bordering states.

Chairman Holmberg said as the drafter's note indicates, provisions exist for the attendance of students in bordering states. He said no provisions exist to indicate that the Legislative Assembly intended to pay for the attendance of students at nonpublic schools. He said consequently staff from both the Department of Public Instruction and the Attorney General's office recommended that the reference to an "accredited institution" be removed from the statute.

Chairman Holmberg said the removal is subject to review by this committee.

### **Section 15.1-29-13**

Chairman Holmberg said Section 15.1-29-13 is the section that tries to outline who must pay when a student is placed in a particular school district for purposes other than education. He said at the committee's direction, the Legislative Council staff worked with staff from the Department of Public Instruction, the Attorney General's office, and the Division of Juvenile Services, with a view to crafting a section that both reflects how business is conducted and clarifies responsibility for payment. He said there is still some concern about the mechanics of the section. He said perhaps the individuals who have been working on this section could meet again, make the necessary changes, and then present the changes to this committee at its next meeting.

## **STUDENT TRANSPORTATION - CHAPTER 15.1-30**

Chairman Holmberg said Chapter 15.1-30 is reflected in bill draft No. 10023.03.

### **Section 15.1-30-02**

Chairman Holmberg said present law references the cost of housing a student. He said the committee had previously discussed the fact that the term "housing" is not clear. He said it is not clear whether the term means meals or lodging or both. He said staff from the Department of Public Instruction had indicated that it is interpreted as meaning both and therefore the committee requested that the phrase "meals and lodging" be used in place of the term "housing."

## **OPEN ENROLLMENT - CHAPTER 15.1-31**

Chairman Holmberg said Chapter 15.1-31 is reflected in bill draft No. 10024.03.

### **Section 15.1-31-01**

Chairman Holmberg said as it was written, proposed Section 15.1-31-01 sounded like the applications for open enrollment were to be obtained from the Superintendent of Public Instruction. He said we were asked to make clear that the open enrollment forms are available from the local school districts. He said the Superintendent of Public Instruction is responsible for supplying the forms to the school districts.

### **Section 15.1-31-06**

Chairman Holmberg said as it was written, proposed Section 15.1-31-06 directed that the board of each school district must set standards for the acceptance and denial of open enrollment applications. He said at the request of the North Dakota School Boards Association, this was changed to provide that the board of each school district must set standards for the acceptance and denial of applications for admittance under open enrollment.

### **Section 15.1-31-06(3)**

Chairman Holmberg said as it was written, proposed Section 15.1-31-06(3) provided that a school district participating in open enrollment may not give or offer to give a student any 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 athletic activities. He said at the request of the committee, the phrase "for the purpose of having the student participate in varsity athletic activities" was deleted. He said the intent is to prohibit a school district from giving remuneration or exerting influence in order to encourage a student's participation in open enrollment for any purpose.

In response to a question from Representative Hanson, Chairman Holmberg said this does not deal with a school district advertising for students.

Mr. Decker said there are indications that districts are and will continue to compete for other districts'

students. He said he would prefer stronger language to ensure that the competition will not take place.

Representative Kelsch said it is her recollection that when the section was first enacted, it was not intended to preclude advertising. She said the present reference to exerting indirect influences seems to include advertising.

Senator Redlin said using public funds to advertise is a highly questionable use of public moneys.

Representative Thoreson said it appears that if it is the intent of a district to recruit students from a neighboring school, there is a big problem. He said we should preclude that from happening.

Chairman Holmberg said if we do not want school districts to advertise, we need to review the language to ensure that our intentions are clear.

Mr. Decker said the key issue is one of policy regarding open enrollment. He said the original intent was to allow parents and students to choose their district of attendance. He said it was a one-way set of options. He said the intention never was to allow districts to recruit students. He said the transportation issue came into being to assist parents in selecting their school districts.

Ms. Nielson said if the committee wants to ensure that there is no advertising, then that issue should be addressed in a separate bill. She said school districts have been encouraged to participate in school report cards and share the information. She said it is unknown what information is for public consumption. She said the old law precluded recruitment for athletics. She said that was clear. She said the issue of recruitment for other purposes has a variety of attached issues.

Representative Eckre said the schools in the Wahpeton district try to promote themselves to corporations and other entities who are thinking about situating in Wahpeton. He said the families who take jobs with a corporation want to ensure that their children will receive an appropriate education.

Chairman Holmberg said the present law addresses only recruitment for varsity athletics. He said there is a question regarding advertising or more indirect influences.

Representative Hanson said we should probably leave it as it is in current law and if there are any major violations between now and the legislative session, we could look at a separate bill to address the issue.

## **RECONCILIATION BILL DRAFT**

Chairman Holmberg said this bill draft is reflected in bill draft No. 10068.01.

### **Section 1**

Chairman Holmberg said Section 1 amends Section 15.1-07-17, which relates to conflicts of interest in school district contracts. He said during the 1999 legislative session, the Senate Education

Committee had proposed an amendment to this section. He said the intent was that if a school board member or other school officer has a conflict of interest in a contract, the individual must disclose the conflict to the board. He said only if the board unanimously consents may the individual participate in any discussions or votes regarding the contract. He said in the rush of the legislative session, we needed to delete the language in old subsection 3 and it did not get done. He said this change now reflects what the committee had initially intended.

### **Section 2**

Chairman Holmberg said Section 2 amends Section 15.1-07-22, which deals with affirmations or oaths of office to be taken by school district business managers. He said it provides that a person hired as a school district business manager has 10 days within which to take an affirmation or oath of office. He said if the person refuses to do so, the action is deemed as a refusal to serve and a failure to qualify for the office.

Chairman Holmberg said the North Dakota School Boards Association and the Secretary of State's office had worked together to pass 1999 House Bill No. 1181, with the amendment printed in the drafter's notes. He said during the last legislative session we double-drafted the education bills. One version was to the language in Title 15, and the second version was to the language in Title 15.1.

Chairman Holmberg said because this was not an education bill, it did not get the special treatment. He said the bottom line was it amended a section that was later repealed by House Bill No. 1034, the title rewrite bill. He said with this amendment, we are restoring the original intent.

Chairman Holmberg said there is one question. He said present Section 15-47-08 provides that the business manager shall take the oath and file it with the business manager. He said the committee may wish to determine if the business manager is the entity with whom the business manager's oath should be filed. He said the committee may also wish to determine if this section should be maintained. He said business managers are bonded as required by Section 15.1-07-23. He said apparently the taking and the filing of an oath or affirmation are no longer common practice.

Chairman Holmberg said the Legislative Council staff should work with staff from the North Dakota School Boards Association to review this section, make any necessary changes, and present the changes to this committee at its next meeting.

### **Section 3**

Chairman Holmberg said Section 3 amends present Section 15.1-08-06. He said it provides that sections dealing with school activities funds, incidental revolving funds, negotiable instruments, school

district business manager bonds, and school district records are also applicable to military installation school districts. He said there were a couple of cross-references that needed to be changed.

#### **Section 4**

Chairman Holmberg said Section 4 amends present Section 15.1-09-01. He said this section has to do with the number of voters who must sign a petition to change the size of a school district. He said the old law required that the petition be signed by at least one-third of the qualified voters in the district who voted at the most recent annual school district election. He said the rewrite required that the petition be signed by at least one-third of the qualified voters in the district. He said clearly that is a very different number.

Chairman Holmberg said since the new language was not intended, the amendment returns the section to the old law.

#### **Section 5**

Chairman Holmberg said Section 5 amends present Section 15.1-09-25. He said like Section 2, this section deals with oaths or affirmations of school board members. He said old law addressed the oaths or affirmations of school district business managers and school board members in the same section. He said the rewrite placed them in separate chapters. He said that is why there are two sections. Again, he said, this section provides that an individual elected as a member of or appointed to a school board must take and file with the school district business manager an affirmation or oath of office within 10 days after receiving notice of the election or appointment and before commencing duties. He said if the individual refuses to take the affirmation or oath of office required by this section, the individual's action is deemed to be a refusal to serve and a failure to qualify for the office pursuant to Section 44-02-01.

#### **Section 6**

Chairman Holmberg said Section 6 amends present Section 15.1-09-34. He said this section provides that the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than \$25,000 unless the school board has given 10 days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. He said this section does not apply to contracts for:

1. The personal services of district employees.
2. Textbooks and reference books.
3. Articles not sold on the open market.
4. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.

5. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
6. Building construction projects under Chapters 48-01.1 and 48-02.
7. School transportation services purchased under Section 15.1-30-11.
8. Vehicle fuel purchased under Section 7 of this Act.
9. Heating fuel purchased under Section 7 of this Act.
10. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.

Chairman Holmberg said, as stated in the drafter's note, the North Dakota School Boards Association requested that cross-references be added to subdivisions g through i of subsection 1. He said the intent was to provide notice that while contracts for the purchase of school transportation services, vehicle fuel, and heating fuel do not fall under this section, they are governed by the provisions of Section 15.1-30-06 and Section 7 of this Act, respectively.

#### **Section 7**

Chairman Holmberg said Section 7 is a new section for purposes of this draft, but it is not really new language. He said it provides that at least once each year a school board must publish information regarding the registration of vehicle fuel vendors and heating fuel vendors. He said the board must purchase vehicle fuel and heating fuel only after seeking written quotes from all vendors who registered with the district for that school year.

Chairman Holmberg said this section, which is a rewrite of present Section 15-34.2-07.2, was located in the chapter regarding student transportation. He said this committee decided at an earlier meeting that the section should be relocated in Chapter 15.1-09, which relates to school boards.

#### **Section 8**

Chairman Holmberg said Section 8 amends present Section 15.1-09-50. He said the section deals with special powers granted to the Fargo School Board. He said these special powers are in addition to the powers granted to all school districts under Section 15.1-09-33. He said current law contains a typographical error. He said it references Section 15.1-09-32 instead of Section 15.1-09-33.

#### **Section 9**

Chairman Holmberg said Section 9 amends subsection 9 of present Section 15.1-12-10. He said this is in the reorganization section. He said there were two conflicting subsections. He said one required that a reorganization plan be approved by a majority of electors residing within the boundaries of

the proposed new school district. He said the other maintained the old law which required that a reorganization plan be approved by a majority of electors residing in each school district. He said since we had no evidence that there was an intent to change the old requirement, we restored the old language.

### **Section 10**

Chairman Holmberg said Section 10 amends subsection 7 of present Section 21-03-07. He said this section pertains to the issuance of bonds. He said when the Fargo chapter was redrafted, updating a couple of cross-references were missed in Title 21. He said this section takes care of that.

Chairman Holmberg said if anyone has any other sections that need to be cleaned up, they should contact the Legislative Council staff as soon as possible so the suggestions can be incorporated in the final bill draft.

Mr. Westby said as we look at petition requirements we should try to be consistent about the percentages throughout the education title.

Ms. Nielson said the committee should go back to look at proposed Section 15.1-30-12. She said the phrase "lowest responsible bidder" was changed to "lowest and best bidder." She said there is a court case that defines "lowest responsible bidder." She said she knows of no comparable case defining the "lowest and best bidder."

Chairman Holmberg said the committee should go back to using "lowest responsible bidder" unless there is a compelling reason to change it.

Chairman Holmberg adjourned the meeting at 12:00 noon.

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L. Anita Thomas  
Committee Counsel

ATTACH:1