

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2226

2005 SENATE EDUCATION

SB 2226

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2226

Senate Education Committee

☐ Conference Committee

Hearing Date 1/26/05

Tape Number	Side A	Side B	Meter #
1		x	0-1700
Committee Clerk Signature <i>Patty Wilkins</i>			

**Minutes: Relates to the power of school boards to lease property and dismiss certain personnel.**

**Senator Layton Freborg**, Chairman called the meeting to order on SB 2226

**Testimony in support of the Bill:**

**Senator Espegard** introduced the bill, on power of school board leasing property for up to one yr. and also the authority to dismiss school district personnel.

**See attached: written testimony**

**Senator Flakoll** : In the first part about the lease, is there some examples.

**Senator Espegard** : Yes, typical office stuff, copiers, certain kinds of things used in the office.

Possibly some heavy equipment for lease.

**Senator G. Lee** : That line would deal with equipment, furniture supplies, that is what you are saying not leasing a building to house someone.

**Senator Espegard**, no this would just be equipment.

**Gary Thune** : spoke in support of SB 2226 appearing in behalf of the GF public school district.

Senator did address both changes accurately, let me address personal property, we have authority now to lease real property under subsection 6 of this law, for up to one yr. unless it is a vocational buildings. That could be up to 20 yrs. This bill would add the leasing of personal property and also up to one yr. the same as real property.

**See attached: written testimony.**

**Senator Seymour** : People should be let go without cause?

**Gary Thune** : I am not saying that but the bill was not intended to expand the for cause requirement and abolish employees at will, for people who are not protected by statute in school districts in this state or any other, but to restore that status. I do recommend school districts that they have an articulable reason so that it is not a discriminatory reason. That protection is there as well. The ND human rights act prohibits on the discrimination of age or gender or that origin. Those protections are still there, they don't have a contract can stop in superintendents office on Friday and say I have a new job and I won't be here Monday. There is no breach in contract. We do give a week or two notice to let them know that they won't be needed any longer, this is the law in ND. Unless there is a specific change.

**Senator G. Lee** : I was just thinking of a substitute teacher who may be employed through the school district for say a month, does this affect them at all?

**Gary Thune** : General practice with substitute teachers is at some point, it may be 20 consecutive days, or maybe a month in your example. They become long term subs and if they are there for the rest of the year, they will be issued a contract and have the same protection as the other teachers. If on the other hand it is short term it doesn't apply and if they are replacing a

teacher on a leave of absence, or sabbatical at the end of the yr. they would not be involved in that credit. A teacher who is issued a contract would then come under the provisions of the teacher discharge statute and could not be terminated without cause.

**Senator Flakoll :** With respect to sports, coaches would they qualify under this and if so how would it work if they had a joint appointment, if they are a good teacher but want to pull them away from coaching? How does that work?

**Gary Thune :** We offered an English teacher a contract to teach English and coach. She said I will teach but not coach, the supreme court said you have to do both or neither. By the same token in a case called (meter1050) our supreme court determined that coaches are not protected under the non renewal provision of ND law but they are protected for teaching. If we reduce their curricular salary we would have to go through a hearing process. The board can say to the coaches that they may not be coaching next yr. Once a coach is issue a contract weather part of their teaching contract or a separate contract. Once they have the contract for the season, then during that season we promise to pay or they promise to do the job for that season. We would need cause to dismiss them, because our contract with them changed employment at will status.

**Ken Astrep :** I serve on the school board at Jamestown, supported this bill, in response to the ? of types of things that we like to lease our board this yr. looked a leasing some ? (meter 1207) this past yr. and also in leasing a snow blower. When we got into the process and discovered that it wasn't allowable to do that, part of our feeling on the philosophy of leasing instead of purchasing was to try the equipment to see if that is what we wanted. When we discovered we couldn't do it, then we were forced to purchase the equipment.

**Nancy Sand :** NDEA, said we may be wondering why she is up there in support of the bill that says eliminate the words for cause. As I understand it, when we had to rewrite for school code, those words were placed in there and always been of the opinion in our association that education support personnel or at will employees. Would we like that to change, yes we would, we believe at the present time, they are at will employees. If one of our education support personnel members calls us because they are being notified that they are going to be terminated, we do work with those individuals, to find out what the reason is. We also understand that they are at will employees and remind that person, and work with that person in discussing the reasons for the termination to determine weather or not there may be any kind of discrimination. If so we will help that member work through the labor department.

**Doug Johnson :** ND council of educational leaders and we supports both amendment changes to correct the problems that they have had. First I can testify to the leasing problems they have had. I leased photocopiers for at least 10 yrs. mainly because it was the least expensive way for me to get a photocopier. The only way we could do that is by going through the process so that we had the option to purchase that after a # of years. This bill would help us, so that we can go through those kind of contracts without any difficulty. Also with the change of taking out for cause in the language, this was the intent of the bill that helps administrators when they make decisions or working with individuals that are at will employees. Especially when you have part time people that are not going to be needed for a lengthy time. You would be able to remove the at will employee much easier.

**Testimony in opposition of the Bill:**

no opposition.

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Senate Education Committee

Bill/Resolution Number SB 2226

Hearing Date January 26, 2005

**Senator Freborg** : closed the hearing on SB 2226

**Senator Flakoll**, Made a motion for a do pass on SB 2226,

Seconded By, **Senator G. Lee**

There was no further discussion

**Senator Seymour** : I don't agree with this bill, It doesn't deal with people properly.

There being no other discussion roll call vote was taken. vote: 5 yea, 1 nay, 1 absent

**Senator Flakoll**, will carry the bill.

The meeting was adjourned.

Date: \_\_\_\_\_  
Roll Call Vote #: /

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 22246**

Senate SENATE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Sen. Flakoll Seconded By Sen. Lee

[illegible]

Total (Yes) 44 No 1

Absent Senator Taylor

Floor Assignment Hakoll

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



**REPORT OF STANDING COMMITTEE (410)**  
January 26, 2005 12:38 p.m.

**Module No: SR-17-1089**  
**Carrier: Flakoll**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2226: Education Committee (Sen. Freborg, Chairman) recommends DO PASS**  
(4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2226 was placed on the  
Eleventh order on the calendar.

2005 HOUSE EDUCATION

SB 2226

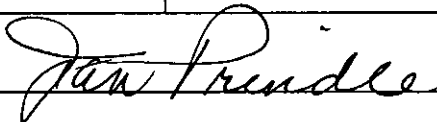
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2226

House Education Committee

☐ Conference Committee

Hearing Date **7 March 2005**

Tape Number	Side A	Side B	Meter #
1	X		715 - 1815
	X		3720 - 4530
Committee Clerk Signature 			

Minutes:

**Chairman Kelsch opened the hearing of SB 2226.**

**Gary Thune, representing the Grand Forks Public School District #1, (Lobbyist #93),** stated the bill was introduced on behalf of Grand Forks. He went over the bill. **(Testimony attached.)**

**Rep. Mueller:** Have there been issues or problems with that provision of the law?

**Thune:** To this point there have no issues raised, but rather than have it become a test issue in the courts we want to correct it. To my knowledge it has not been the subject of litigation at this point.

**Rep. Mueller:** Why do we need to exclude them from that "cause" kind of provision. It would seem they should have some of the same rights and employment benefits that anyone else in the school system would have.

**Thune:** The employment at will status is created by statute for most employees across the state of ND and for our custodians, bus drivers and people of that nature, we do not evaluations that

we do of our licensed personnel. Those evaluations are required by statute. There are protections for these people particularly in the ND Human Rights Act. The "for cause" requirement has never been a requirement for those people referred to as educational support staff in ND. It was not the intent of the legislature to increase that responsibility when the rewrite of 15.21 was done.

**Rep. Haas:** In the document you handed us, am I correct in saying that prior to that 1999 rewrite that the "for cause" only referred to teachers and there was no reference to other classified personnel.

**Thune:** The only language in the general powers of school board that I could find in Century Code prior to 1999 is quoted in subsection 10 of 15-29-08 and that refers to teachers which obviously also included administrators. Teachers had a broad definition. What used to be called certified personnel and now is licensed personnel had this protection before and this proposed legislation would not change that.

**Rep. Hanson:** You represent the Grand Forks school district? I don't see anyone from the school board association here.

**Thune:** I am legal counsel to the ND School Boards Association, their process is that the delegate assembly adopts resolutions then follows those through and appears. Bev Nielson did not choose to appear and told me the position of the ND School Boards Association is in support of this bill but I was retained specifically by the Grand Forks School District to bring this bill before you.

**Mary Wahl, ND Council of Educational Leaders**, testified in favor of the bill. This bill will in effect make law conform to practice with regard to the leasing provision. It will also make the law provide for the intent and the omission of forethought.

**Stan Hennenkemp, representing the North Dakota Education Association**, testified in favor of the bill. We understand that our educational support professionals do not have due process as the law currently has been applied. We do not oppose SB 2226, however I do need to make it clear that we do believe that in the best of worlds all school employees should have due process rights.

**There being no further testimony, Chairman Kelsch closed the hearing of SB 2226.**

**Later in the morning, Vice Chairman Johnson opened discussion of SB 2226.**

**Rep Hawken:** I move a **Do Pass**.

**Rep. Sitte:** I **Second**.

**Rep. Mueller:** I have no problem at all with the releasing aspect of the bill. I'm not sure why we want to single out the other folks in regard to this "show cause" issue. I am not convinced there is a need to do that.

**Rep. Hawken:** The reason is that we never had it in there and is unusual that we would make a mistake when review something, but the original language didn't ever include that and when it was rewritten it started out like our bill where we had where they put every year after the PE and Health, that was added incorrectly. There is still a process for any public employee but there is no listing like there is under "just cause" where it lists what they are. It was never in there until 1999 when they did the total rewrite.

**Rep. Mueller:** It was an oversight is what you are saying.

**Rep. Hawken:** It was an oversight. Here's the thing. There hasn't been a lawsuit over the years so I don't know that the process, whatever it has been, has been bad. I think they still use a process because it is public entity. They don't just fire them for the heck of it. I only know what the process is for our school district. There are written evaluations for bus drivers and administrative assistants by their supervisors so that is all there and they have a chance to make it better. It's just that it's a different class of employees. I'm not saying if that is right or wrong but I don't think the procedures have changed. The same ones are being used that were used before. There just is no list of what "just cause" is.

**Rep. Mueller:** I'm hearing you say is they have a process now that is somewhat similar so maybe it was inadvertent. In my opinion a case could be made that it was a good inadvertent. Why should they be treated differently in this area of employment or dismissal than anybody else. If you read through those seven items if nothing else it certainly guides one in that process of getting rid of non-classified employee. It says "here's what you better not be doing." I'm not sure it's not okay.

**Rep. Hanson:** I have a problem with why the School Board Association didn't come in and support this thing if it's a good deal. They just took a walk on it. So I'm going to vote against it.

**Rep. Haas:** There's all kinds of due process that comes from EEOC and ND Department of Labor. It's unending. I think to leave this in here, it should have a separate item by the Legislature if it was going to be added. I can remember instances when I was with the Dickinson School District where we had people that lost their jobs because of declining budget status, etc., etc., and some of them filed age discrimination complaints through EEOC and the

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House Education Committee

Bill/Resolution Number **SB 2226**

Hearing Date **7 Mar 05**

Dept. of Labor, handicapped discrimination and military status discrimination and it goes on and on. There are a tremendous number of protections for classified employees with regard to due process already. I think Rep. Hawken is right. I just don't think it's really needed either. It shouldn't be there. It was a substantive change that was added when the rewrite was done and that was not ever out intent ever to make substantive change in the rewrite.

**Rep. Norland:** I call for the question.

**A roll call vote was taken on the Do Pass of SB 2226.**

**Yes: 8 No: 5 Absent: 1 (Kelsch)**

**Rep. Sitte will carry the bill.**

Date: 7 Nov  
Roll Call Vote #: 1

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. ~~4786~~ 2226**

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Hawken Seconded By Sitte

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	<input type="checkbox"/>		Rep. Hanson		<input checked="" type="checkbox"/>
Vice Chairman Johnson	<input checked="" type="checkbox"/>		Rep. Hunsakor		<input checked="" type="checkbox"/>
Rep. Haas	<input checked="" type="checkbox"/>		Rep. Mueller		<input checked="" type="checkbox"/>
Rep. Hawken	<input checked="" type="checkbox"/>		Rep. Solberg		<input checked="" type="checkbox"/>
Rep. Herbel	<input checked="" type="checkbox"/>				
Rep. Horter	<input checked="" type="checkbox"/>				
Rep. Meier	<input checked="" type="checkbox"/>				
Rep. Norland	<input checked="" type="checkbox"/>				
Rep. Sitte	<input checked="" type="checkbox"/>				
Rep. Wall		<input checked="" type="checkbox"/>			

Total (Yes) 8 No 5

Absent 1 (Kelsch)

Floor Assignment Sitte

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



**REPORT OF STANDING COMMITTEE (410)**  
March 7, 2005 12:21 p.m.

**Module No: HR-41-4262**  
**Carrier: Sitte**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2226: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS**  
(8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SB 2226 was placed on the  
Fourteenth order on the calendar.

**2005 TESTIMONY**

SB 2226

TESTIMONY BEFORE THE  
SENATE EDUCATION COMMITTEE  
SB 2226

January 26, 2005

Presented by: Gary R. Thune  
Representing: Grand Forks Public  
School District No. 1  
Lobbyist #93

*Same  
to  
House*

I. TWO CHANGES TO SCHOOL BOARD POWERS

- A. Add authority to lease personal property.
- B. Restore "employee-at-will" status to school district personnel not licensed by ESPB.  
[Both at p. 2 of this Bill]

II. LEASE PERSONAL PROPERTY [p. 2, lines 1-2]

- A. Real Property Leases: Permitted for decades [Subsection 6]
- B. Personal Property Leases: Added [Subsection 9]
  - 1. Authority to purchase - exists
  - 2. To lease - telecommunications systems, only [p. 2, line 8]
  - 3. For: Photocopy machines, computers, equipment
  - 4. For up to one year (same as real property)

III. BRIEF HISTORY OF DISMISSAL "FOR CAUSE"

- A. General Rule: "Employees-at-will"
- B. School Board Powers:
  - 1. Prior to 1999: "For Cause" - Applied only to suspension or dismissal of Teachers. [Section 15-29-08(10)]
  - 2. 1999: Repealed Section 15-29-08 - Replaced with §15.1-09-33(22) and (23)
    - (22) "Suspend school district personnel
    - (23) "Dismiss school district personnel  
for cause" [Over broad and not intended]
- C. THE SOLUTION: [p. 2, line 23]
  - 1. Teachers, administrators and Superintendents are protected by Chapters 15.1-15 and 15.1-14, respectively
  - 2. **Principle: Specific controls over general**
  - 3. Deleting "for cause" from subsection 23 (p. 2, line 23) restores the employee-at-will status to school district employees not licensed by ESPB [A non-intended, substantive change]

SB 2226  
Committee on Education  
Senator Layton Freeberg, Chairman

Chairman Freeberg and members of the committee, for the record my name is Duaine Espegard and I represent District 43 in Grand Forks. I am here to support SB 2226.

Senate Bill 2226 relates to power of school boards and in Section 1 of 15.1-09-33. You will recall that this section was reworked in the past session and this bill seeks to amend to code to clean up a couple of areas

The first change in the Powers of the school board is on line 1 of the second page and simply clarifies the language to allow school board to lease property for up to one year. It is my understanding that this is being done but some problem have arisen that this clarifies. It would allow for the leasing of equipment when the leasing would make sense.

The second change is on line 23 and it strikes the words FOR CAUSE from the authority to dismiss school district personal.

There is a process that must be followed when dismissing Teachers, and administration staff, but there are others that work within the district that do not have this process. They are known as "at will" employees, janitors, cooks and others, are and example of these employees, and for that purpose the words "for cause" be stricken.

I would be glad to take any question but there are others who I am sure will be able to answer your questions as well

Duaine Espegard

1997

**15-29-08. General powers and duties of school board.** The powers and duties of the school board of a public school district shall be as follows:

1. To establish for all children of legal school age residing within the district a system of free public schools which shall furnish school privileges equally and equitably.
2. To organize, establish, operate, and maintain such elementary and high schools as it may deem requisite and expedient, to acquire sites and construct buildings and other facilities in connection therewith, and to change the location of or discontinue such schools and liquidate the assets thereof in the manner prescribed by law; provided, that no site shall be acquired or building constructed, or no school shall be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.

10. To contract with, employ, and pay all teachers in the schools and, for cause, to dismiss or suspend any teacher when the interests of the school may require it. Except as provided in section 15-29-08.4, every teacher must hold a valid North Dakota teaching certificate issued by the education standards and practices board. No person who is related to any member of the board by blood or marriage may be employed as a teacher without the concurrence of two-thirds of the board.

28. To purchase equipment or lease a telecommunication system or network, or to participate with other school districts or other entities in the purchase of equipment or lease of a telecommunication system or network.

Source: S.L. 1890, ch. 62, §§ 181, 184, 185; R.C. 1895, §§ 797, 800, 801; S.L. 1897, ch. 75; R.C. 1899, §§ 797, 800, 801; R.C. 1905, §§ 960, 963, 964; S.L. 1911, ch. 266, §§ 144, 150, 151; C.L. 1913, §§ 1251, 1257, 1258; S.L. 1915, ch. 144, § 1; 1925 Supp., § 1258; S.L. 1929, ch. 212, § 1; 1937, ch. 223, § 1; R.C. 1943, § 15-2908; S.L. 1949, ch. 143, § 1; 1957, ch. 130, § 3; 1957 Supp., § 15-2908; S.L. 1959, ch. 155, § 2; 1959, ch. 175, § 4; 1961, ch. 146, § 1; 1961, ch. 158, § 1; 1963, ch. 149, § 1; 1963, ch. 158, § 1; 1965, ch. 135, § 1; 1965, ch. 136, § 1; 1965, ch. 146, § 1; 1967, ch. 134, § 1; 1969, ch. 176, § 1; 1969, ch. 177, § 1; 1969, ch. 178, § 1; 1971, ch. 158, §§ 14 to 17; 1973, ch. 120, § 15; 1973, ch. 145, § 1; 1973, ch. 146, § 1; 1975, ch. 146, § 1; 1975, ch. 387, § 1; 1979, ch. 228, § 1; 1983, ch. 210, § 1; 1985, ch. 215, § 3; 1985, ch. 317, § 3; 1987, ch. 218, § 5; 1989, ch. 209, §§ 3, 4; 1989, 211, § 1; 1991, ch. 174, § 4; 1991, ch. 178, § 1; 1991, ch. 179, § 1; 1993, ch. 54, § 106; 1993, ch. 186, § 2; 1995, ch. 186, § 1; 1995, ch. 203, § 3; 1997, ch. 51, § 6.

1999

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

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a vocational education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.
9. Purchase, sell, exchange, and if appropriate, improve school equipment, furniture, supplies, and textbooks.
22. Suspend school district personnel.
23. Dismiss school district personnel for cause.
28. Suspend or dismiss a school district business manager for cause without prior notice.
29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay membership dues to county and state associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

Source: S.L. 1999, ch. 196, § 9.

THE  
PROBLEM

# Discharge for Cause of ESPB-Licensed School District Employees

## 15.1-14-05. School district superintendent — Discharge for cause — Notice of hearing — Legal expenses.

1. If the board of a school district intends to discharge a superintendent for cause prior to the expiration of the superintendent's contract, the board shall:
  - a. Provide the superintendent with a written description of the reasons for the discharge; and
  - b. Provide the superintendent with written notice specifying the date and time at which the board will conduct a hearing regarding the discharge.
2. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation are the responsibility of the superintendent.

Source: S.L. 2001, ch. 181, § 2.

## 15.1-14-14. Multidistrict special education unit — Director — Grounds for dismissal. The board of a multidistrict special education unit may dismiss a director prior to the expiration of the individual's contract for any of the following causes:

1. Immoral conduct.
2. Insubordination.
3. Conviction of a felony.
4. Conduct unbecoming the position of a director.
5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the director has failed to correct after written notice.
7. Continuing physical or mental disability that renders the director unfit or unable to perform the director's duties.

Source: S.L. 2001, ch. 181, § 2.

## 15.1-14-24. Area vocational and technology center — Director — Grounds for dismissal. The board of an area vocational and technology center may dismiss a director prior to the expiration of the individual's contract for any of the following causes:

1. Immoral conduct.
2. Insubordination.
3. Conviction of a felony.
4. Conduct unbecoming the position of a director.
5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the director has failed to correct after written notice.
7. Continuing physical or mental disability that renders the director unfit or unable to perform the director's duties.

Source: S.L. 2001, ch. 181, § 2.

## 15.1-15-07. Discharge for cause — Grounds. The board of a school district may dismiss an individual employed as a teacher, a principal, or as an assistant or associate superintendent prior to the expiration of the individual's contract for any of the following causes:

1. Immoral conduct.
2. Insubordination.
3. Conviction of a felony.
4. Conduct unbecoming the position held by the individual.
5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the individual has failed to correct after written notice.
7. Continuing physical or mental disability that renders the individual unfit or unable to perform the individual's duties.

Source: S.L. 2001, ch. 181, § 3.