

2009 HOUSE EDUCATION

HB 1360

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1360

House Education Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7313 and 7360

Committee Clerk Signature

Carmen Hart

Minutes:

Vice Chair Lisa Meier called the meeting to order.

Chairman Kelsch, District 34 Representative from Mandan introduced this bill on behalf of the North Dakota School Board Association. She and Jon Martinson met before the session started and discussed what was one of the major issues that the REAs needed to be successful this session. During the interim they had discussions about what REAs were looking for, what were some of the specific areas that they needed to make them feel as though they were a little bit more successful. During the interim they did have a bill that was brought before the interim committee that met with a great deal of resistance. There were a lot of changes in there, probably more changes in there than were absolutely necessary, and actually did not go anywhere. Jon said that they just needed one key thing. Basically what the legislation does is mirrors the special education unit in the subsection they put into Code a couple of sessions ago where the district could hire and allow those employees to have the same rights as are currently afforded to the rights of the school district.

Jon Martinson, North Dakota School Boards Association, stated that this bill is important to them. Currently REAs have the authority to hire employees but they need to do the second part which is what the bill is about and allow REAs the opportunity to offer employees retirement benefits, unemployment insurance, and workers' compensation.

Rep. John Wall: Obviously an REA has many schools. How do you arrive at a reduction in force policy, salary schedule, things like this? They are all over the place. Some pay part of the insurance and some school districts pay all of the insurance.

Jon Martinson: To a large extent the REAs have the same authority as school districts. However, what this bill would help us do is to provide REAs a chance to hire their own employees. As a result of that, they would have their own salary schedules, and in terms of workers' compensation, etc. would parallel with what multidistrict special education units have the authority to do.

Rep. John Wall: How about bargaining agreements?

Jon Martinson: The negotiation rights that teachers have in school districts remain intact. Teachers, if they are hired by the REAs, have the same bargaining rights as teachers in any school district. This bill does not change that. It is not an attempt in any way to take away bargaining rights of teachers.

Chairman Kelsch: When we put in the multidistrict special education units or similar language into statute, when was that and how has that been working?

Jon Martinson: I don't know the year off the top of my head, but I think it is working just fine, and that is why we want to parallel that language.

Chairman Kelsch requested Pam Crawford, the law intern, to find that information out.

Rep. Phillip Mueller: The way the bill reads that all the benefits accorded to anyone in a multi area special ed. district would be accorded to the highers of an REA. Does that extend to dismissal provisions? Can they be represented by NDEA if they are members and all that sort of thing?

Jon Martinson: You are correct. It does not change that in any way. Whatever the multidistrict units do right now in terms of negotiating, hiring, firing, etc., it is parallel language. It would be the same.

Rep. Lyle Hanson: What's the qualifications to be employed by the REA—teaching certificate, administrator certificate, or both?

Jon Martinson: It depends upon the position, of course. If the REA hired a teacher, that teacher would have to have the teacher certificate just like they do in state law. This isn't changing that part. The administrator would have to be up to the REA whether they would be required to have a superintendent certificate. Potentially they would have similar authority in terms of oversight for their employees although they wouldn't have oversight for students.

Rep. Lyle Hanson: You would have to have a salary schedule for each one of those groups then?

Jon Martinson: The process for developing a salary schedule would be the same as the school district developed for their salary schedule. Instead of the history of school districts having theirs, they would be at the forefront of this. They would develop a new salary schedule that would be competitive to the small in your communities.

Rep. David Rust: Just to make sure I am understanding this correctly. Essentially, they would have to do in the REA the same thing as the public school. They would have to develop a salary schedule and policy with regard to riffs. They act almost identical to a public school. It is just that they don't have this policy already in place so they now have to do this.

Jon Martinson: That is exactly right.

Rep. John Wall: Do REA directors and fiscal employees all have to have a master's degree?

Jon Martinson: That was part of a bill that was heard during the interim—the requirements for that position. As you all know, you took testimony and that bill did not make out of committee.

It is not in state law that they would have to. As a result, it would be up to the folks in that REA to set their standards and requirements.

Tom Conlon, REA Coordinator, Missouri River group in Bismarck-Mandan, testified in favor of HB 1360. He gave a little history on this. When he took this position a couple years ago, it was a part-time position out of someone's home. Since that time they have grown. They have had some grants, and they are now in the basement of the Central Administration Building in Mandan. They have a half-time director that is in charge of their CTE grant. Their MREC thought that one of the ways that they could help their schools at best would be to hire a half-time person to look at data with their schools. There are a lot of smaller schools in their group that don't have expertise in that area, and so this person goes and works with the schools and their school improvement plans and conducts that kind of service. With that they also needed some secretarial help, so they have employees now that they did not have two years ago.

Right now they are looking at developing further programming. They have schools that are not meeting AYP so they are going to have some supplemental services outside of their school. They think they could provide that supplemental service. With growing they need the flexibility to hire their own people. Right now as they hire new people in their group, the Bismarck Public Schools is their fiscal agent, and Bismarck Public Schools salary schedule is higher than any of the other 39 schools in their MREC. The other schools are thinking they are not paying people at that level—can they do something about that? Can they save some money with the MREC, do more services, and not have those expenses? He provided a copy of the Attorney General's opinion from two years ago that basically said they could hire but they can't provide those other benefits. So they are really thinking that they can't hire. **(See Attachment 1.)**

Tom stated he was not speaking on behalf of other REAs, but that they are in support of this bill.

Rep. Phillip Mueller: One of the discussions in the interim had to do with establishing another political subdivision. Would this bill, should it pass, in any way, shape, or form, do that in your opinion?

Tom Conlon: I like the discussion that you folks have that you are going to parallel this with the special ed., and I am not an expert in that area so I don't want to try to comment and say that I am. I would like to have that same flexibility that those folks have as far as hiring.

Fern Pokorny, NDEA, appeared in support of HB 1360. HB 1360 helps with many of their concerns they have had in years past. If employing people that have the same responsibilities that they do in the public school system, they believe they should have the same thing.

There was no opposition.

The hearing was closed on HB 1360.

RECORDER JOB 7360

Chairman Kelsch reminded committee members that they needed to prioritize funding bills. They have to be out of committee by February 5.

Rep. Phillip Mueller: Do you have a sense from appropriations folks that they would be interested in our prioritizing them in terms of what they will do?

Chairman Kelsch: No.

Rep. Dennis Johnson stated it might be better to send them out with a little less money. They looked at HB 1360.

Rep. David Rust couldn't imagine why they would want to oppose this. He stated that if things went south for an individual in an REA, it is a lot easier to get rid of those people when you do not have those rights, but that isn't the right thing to do.

Rep. Lyle Hanson: Who would be responsible for the match in the retirement in an REA?

Chairman Kelsch: The REA.

Rep. Lyle Hanson: What if they don't have any money?

Chairman Kelsch: The way REAs are currently set up is the school districts that participate pay dues or fees into the REA. Additional money the state should have given them go to the REAs based on a per student payment and then each of the REAs receive a flat \$25,000. That was always done on contingency money. This session in the funding formula there will be a new line item that will specifically address REAs. Apparently the REAs believe they have the money to be able to do this. It was their number one priority to make sure that this happened during this session.

Rep. David Rust: One of the things done in the past in regard to personnel is that one of the school districts has held that contract and that school district has paid the matching FICA, matching TFFR, and their incentive for health insurance, etc. Then what that matching school district does is essentially bill the others that are getting services from that individual in proportion to the amount of time they get from that individual. I don't see this much different. Either it is going to be done through a school district and pay that or it is going to be done through a REA and they are going to give them an assessment. It is going to happen either way.

Rep. Lyle Hanson: Fees or whatever you call it—say a Class A school pays \$500. You have some little school out there with only 27 in the high school, do they pay \$500 dues too? Is it based on students?

Chairman Kelsch: It's based on students. It is prorated depending on the size of the school.

Rep. David Rust: Suppose you have somebody who has a 7 period day and we use that person 1 period or 2 periods. We could bill $\frac{2}{7}$ of the total cost.

Rep. Lyle Hanson: The REAs are all the same?

Chairman Kelsch: No, I don't think they are all the same. I think there is a general premise within the REAs, but I don't think each of the REAs operates exactly the same. That is what is in their discretion. We never set up in state law how the REAs should be compensated. The only thing that we have done is when they receive state monies, we have said how they are going to receive the state monies. Otherwise, we have never set up how they need to receive the monies from each of their other school districts or how they are going to manage their money because that is part of their joint powers agreement.

Rep. Phillip Mueller: In the \$25,000 you referenced a moment ago, that's a minimum, the least that one can get? Some may get more than that?

Chairman Kelsch: That is just a payment that each one of the REAs gets. They receive the per student payment based on the number of kids that are in the REA. Because some REAs were smaller than others or less students than that, we wanted to make sure there was a fairness. We said that each one of those REAs would receive \$25,000.

Rep. Phillip Mueller made a motion for a do pass on HB 1360. **Rep. Dennis Johnson** seconded the motion.

14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING. Rep. Corey Mock will be the carrier of the bill.

FISCAL NOTE
Requested by Legislative Council
04/28/2009

Amendment to: HB 1360

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill, with conference committee amendments, creates a new section to chapter 15.1-09.1 relating to the rights of REA employees and provides for certain other amendments related to TFFR, workforce safety and insurance premiums, and reconciles references to other education entities.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill defines the rights of regional education employees, including their right to participate in the teacher's fund for retirement and should have zero fiscal impact to cities, counties, the state, or school districts.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

HB 1360, with Conference Committee Amendments, does not require and does not provide for an appropriation.

Name:	Bob Marthaller	Agency:	Public Instruction
Phone Number:	328-2267	Date Prepared:	04/28/2009

Date: 1-20-09
Roll Call Vote #: 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1360

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep Mueller Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Mock

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

REPORT OF STANDING COMMITTEE

HB 1360: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1360 was placed on the
Eleventh order on the calendar.

2009 SENATE EDUCATION

HB 1360

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1360

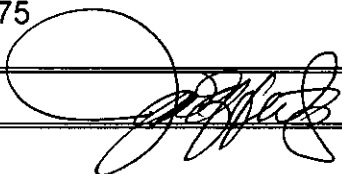
Senate Education Committee

☐ Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 10675

Committee Clerk Signature



Minutes:

Chairman Freborg opened the hearing on HB 1360. All members were present.

Representative RaeAnn Kelsch testified in favor of the bill. She introduced the bill after a conversation with Jon Martinson. The language mirrors the language in the multi district special education section of code dealing with the rights of their employees. It allows an REA to hire employees and offer unemployment benefits.

Jon Martinson, North Dakota School Boards Association, testified in favor of the bill. The bill would enable the REAs to offer retirement benefits, unemployment insurance and workers compensation to employees.

Senator Taylor asked how many employees the REAs have.

Jon Martinson said it varies considerably from REA to REA.

Senator Bakke asked if REA employees would now be their own bargaining unit.

Jon Martinson said yes, they would be their own bargaining unit. There is no attempt with the bill to circumvent the school board negotiation laws. They would negotiate with the board.

Tom Conlon, Coordinator for the Missouri River Educational Cooperative, testified in favor of the bill. See written testimony. He also distributed a brochure on the MREC which is attached.

¾ of their dollars are grant dollars. For example, they have a \$900,000 grant for after school programs which has 2 employees and several aids. They have a \$500,000 grant for Career and Technical Education programming and they have one employee for that program, the director.

Senator Bakke asked when this is set up, would their employees go through Department of Public Instruction for reporting of average salary, contract and negotiated agreement.

Tom Conlon said they will develop a salary schedule. They have to follow the legal ramifications.

Senator Taylor said they have 6 core employees on the Bismarck schedule, are they housed in Bismarck?

Tom Conlon said two years ago, their office was in his basement. Last year they were housed in a custodian's apartment in a Bismarck school, this year they are in the basement of the administration building in Mandan. They will probably always be in the Bismarck Mandan area. They are looking toward having more employees in the future. For schools in AYP, one of the options offered to the students is Sylvan. MREC thinks they can provide the same services for schools on AYP as Sylvan at 1/3 the cost. They would get the staff to those schools to provide the services after school.

Senator Bakke asked if those services would be provided at the cost of the parent or the school district.

Tom Conlon said just as it is now, when a school is placed on AYP, the school district pays for the program.

Fern Pokorny, North Dakota Education Association, testified in favor of the bill. They have always supported the same rights for the same job. Jon Martinson spent a lot of time testifying on this bill in House Education. He talked about the Attorney General's opinion in 2007 that

said REAs could hire and pay employees but they wouldn't necessarily be able to bond them or provide worker's compensation, unemployment or retirement benefits. This bill is meant to correct that.

Senator Bakke asked if the individuals hired by the REA would be their own bargaining unit or would they be a part of Bismarck.

Fern Pokorny said they would be their own bargaining unit, this mirrors the special ed units.

Warren Larson, North Dakota Council of Educational Leaders, testified in favor of the bill. He has watched the REAs grow. The Great Northwest REAs has a 5 year grant for training about 50 teachers from 15 school districts in US History. Experts from around the nation come in and train the teachers. The changes they have been able to make with educators are phenomenal. They also have a 21st Century grant for after school programs. The bill mirrors the special education units.

Senator Bakke said in reading the brochure it talks about counselors in service. Does he think, given the programs in HB 1400, will the REAs provide some of the counseling and career advising?

Warren Larson said yes. When he was still working as an administrator, they were working on the career counseling plan. The premise was mapped out with the idea of using the REA to provide career counselors to go around to the school districts and work with kids. When only 50 minutes of time is prescribed for one school district, the REAs are the answer to do it by working together.

Senator Bakke said if an REA has 6 employees and some are certified teachers and some are support staff, would they run two separate units?

Warren Larson said they would utilize both as the school districts do.

Senator Bakke asked about the salary schedules.

Warren Larson said it would be similar to a school district.

Chairman Freborg closed the hearing on HB 1360.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1360

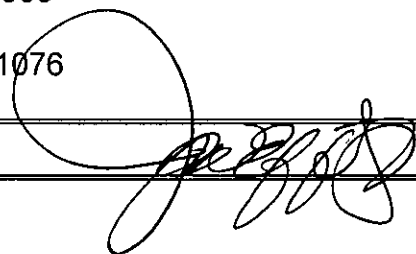
Senate Education Committee

☐ Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11076

Committee Clerk Signature



Minutes:

Chairman Freborg opened the discussion on HB 1360. All members were present.

Senator Bakke moved a Do Pass on HB 1360, seconded by Senator Taylor.

Senator Lee asked if this would allow the REAs to employ staff just as a school district. Could they hire and recruit and those employees would be subject to the rules the school districts play by in terms of negotiating with teachers.

Senator Freborg said he remembers someone asked if they would have their own bargaining unit and they would.

Senator Lee asked if they would establish their salary scale. It would be an independent business?

Senator Freborg said yes.

Senator Lee said there is some cause for concern; we are establishing another group of employees. He is feeling uneasy about it. This has been around for a while and it has presented issues for school districts.

Senator Taylor said it mirrors language from the multi district special education units. The school boards were supportive of the bill. Now the employee has to be channeled through a school district and sometimes, as in the case of the Bismarck area REA, Bismarck has a high

● salary schedule so it is taking a few more of the REA's dollars than if they could set their own schedule.

The motion passed 4 – 1. Senator Flakoll will carry the bill.



2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1360

Senate Education Committee

☐ Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11206

Committee Clerk Signature



Minutes:

Senator Freborg opens HB 1360 for discussion.

Senator Flakoll asked Anita Thomas to explain some of the unresolved issues surrounding HB 1360.

Anita Thomas I am not here as an opponent or an opponent to the bill. I am here because 1360 raises questions and I need your help in answering those questions. The bill states very simply any individual employed by the board of an REA has the same statutory rights as those accorded to an individual employed by a public school district. My question is what is a right? It is not define in the code. I started to look through the code for sections that might be applicable and I found an awful lot of them that pertain to school district employees. The bottom line is if you don't clearly articulate what you mean by statutory rights and which rights are to be accorded others in time are going to determine that and those determinations may not be what you intend. That is the concern I have about this bill.

Senator Bakke asks if the REA employees would be their own bargaining unit would it make the situation easier or more difficult to figure out.

Anita Thomas replies as I have explained the TFFR specifically mentions the Special Ed units.

It doesn't make it any easier because then you are dealing with the legal concept of the

general versus the specific. It is easier if we put it right into the code and then everyone knows that was your intent. My legal recommendation is to figure out what legal rights you want REAs to have and then systematically put them into the code.

Senator Flakoll I move we reconsider our action to which we passed out HB 1360.

Senator Taylor seconds the motion.

Roll call was taken and the motion passed.

Senator Flakoll I have an amendment and it is a mandated study on the issue of various complexities that were brought forward by Legislative Council with respect to HB 1360. I move to adopt the amendment 90618.0101 to HB 1360.

Senator Bakke seconds the motion.

Roll call was taken and the motion passed.

Senator Flakoll I move a do pass as amended on HB 1360.

Senator Taylor seconds the motion.

Roll call was taken and the bill received a do pass as amended on a vote of 5 to 0.

Date: 3/17/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1360

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Bakke Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor	✓	
Senator Gary Lee		✓	Senator Bakke	✓	
Senator Flakoll	✓				

Total (Yes) 4 No 1

Absent _____

Floor Assignment Sen. Flakoll

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

REPORT OF STANDING COMMITTEE (410)
March 17, 2009 11:11 a.m.

Module No: SR-48-5073
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1360: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1360 was placed on the
Fourteenth order on the calendar.

Date: March 18, 2009 :
Roll Call Vote #: #1 1360 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider previous actions

Motion Made By Senator Flakoll Seconded By Senator Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg	/		Senator Taylor	/	
Senator Gary Lee	/		Senator Bakke	/	
Senator Flakoll	/				

Total (Yes) 5 No 0

Absent _____

Floor Assignment _____

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

March 17, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1360

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to a legislative council study of the rights of regional education association employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - RIGHTS OF REGIONAL EDUCATION ASSOCIATION EMPLOYEES. During the 2009-10 interim, the legislative council shall study whether the rights accorded to an individual employed by a regional education association should be the same as the rights accorded to an individual employed by the board of a school district for the same purpose. The study must define or otherwise delineate the specific "rights" to be accorded to ensure a clear and uniform interpretation of any statutory or regulatory duties and obligations. The study must address criminal history background checks, access to loan forgiveness programs, participation in the public employees retirement system or the teachers' fund for retirement, the observance of certain holidays, obligations for professional development, conflicts of interest, bonding, open records exceptions, signing bonuses, bidding procedures for employee group health plans, employment contracting and dismissal of administrators and teachers, evaluations, suspensions, proceedings governing a discharge for cause, presentation of teaching licenses, grounds for revocation of a teaching license, negotiations and conflicts of interest in representation, impasse procedures, the accumulation of sick leave, personnel files, eligibility for national board certification scholarships, policy requirements governing contagious diseases, and obligations under the workforce safety and insurance provisions, as well as any other rights found to be applicable to employees of school districts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: March 18, 2009 :
Roll Call Vote #: #2 1360 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass on Amendment

Motion Made By Senator Flakoll Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Senator Freborg	/		Senator Taylor	/	
Senator Gary Lee	/		Senator Bakke	/	
Senator Flakoll	/				

Total (Yes) 5 No 0

Absent _____

Floor Assignment _____

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

Date: March 18, 2009 :
Roll Call Vote #: # 3 1360 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Senator Flakoll Seconded By Senator Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg	/		Senator Taylor	/	
Senator Gary Lee	/		Senator Bakke	/	
Senator Flakoll	/				

Total (Yes) 5 No 0

Absent _____

Floor Assignment Senator Flakoll

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

REPORT OF STANDING COMMITTEE

HB 1360: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1360 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to a legislative council study of the rights of regional education association employees."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - RIGHTS OF REGIONAL EDUCATION ASSOCIATION EMPLOYEES. During the 2009-10 interim, the legislative council shall study whether the rights accorded to an individual employed by a regional education association should be the same as the rights accorded to an individual employed by the board of a school district for the same purpose. The study must define or otherwise delineate the specific "rights" to be accorded to ensure a clear and uniform interpretation of any statutory or regulatory duties and obligations. The study must address criminal history background checks, access to loan forgiveness programs, participation in the public employees retirement system or the teachers' fund for retirement, the observance of certain holidays, obligations for professional development, conflicts of interest, bonding, open records exceptions, signing bonuses, bidding procedures for employee group health plans, employment contracting and dismissal of administrators and teachers, evaluations, suspensions, proceedings governing a discharge for cause, presentation of teaching licenses, grounds for revocation of a teaching license, negotiations and conflicts of interest in representation, impasse procedures, the accumulation of sick leave, personnel files, eligibility for national board certification scholarships, policy requirements governing contagious diseases, and obligations under the workforce safety and insurance provisions, as well as any other rights found to be applicable to employees of school districts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

2009 HOUSE EDUCATION

CONFERENCE COMMITTEE

HB 1360

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1360

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 15, 2009

Recorder Job Number: 11870

Committee Clerk Signature



Minutes:

Chairman John Wall asked one of the senators to explain the changes in the House version of 1360.

Senator Tim Flakoll: There were a number of issues that the bill may be silent as it came to us from the House. We should at least get some more information before we move aggressively forward and that may come in the form of a study. I talked to the chair of the House Education Committee prior to the passage of the bill and noted it on the floor saying that we weren't comfortable in the passing the house bill as it came to us. We didn't have all the solutions under the time constraints which we needed to act and get it out of committee to meet with chamber rules. We asked the House Education Committee chair to not concur on the bill. I don't know that any of the senate members are necessarily opposed to having some of these provisions afforded to employees of a REA, but I think there were a number of unanswered issues that have been brought forward. What is a right? How does it work with respect to retirement? Can they go to impasse and if they do go to impasse, can they incorporate the Fact Finding Commission? There were a number of issues in terms of due process, almost like tenure situations. We didn't want to come back in two years and try to fix a whole bunch of mistakes that have occurred that are already in place.

Senator Gary Lee: Senator Flakoll has really covered the interest we had in putting it into a study. He mentioned the term rights, and I think Legislative Council conveyed to us what he had mentioned, the 60 page bill, and what are the rights that we want to put into the bill rather than just making a single statement and everyone then beginning to develop their own set of rights, if you will, and if we want to have some play in what those factors would be that each of them should be able to develop or not be able to pass on to employees. That list seemed to be important for us to be able to generate some way.

Senator Ryan Taylor: There wasn't a lot of differentiation on the committee as we amended this bill. We were unanimous in our consent of the amendment and wanting to do right by the employees of the REAs but didn't want to over commit ourselves without knowing the devil being in all those details. As you make one relatively simple statement and the down must begin to fall without having any control of where they go. That was from the minority side of the committee.

Senator Tim Flakoll: We weren't sure what some of the state funded initiatives would be either. There were some grants in HB 1400 that would apply to national teacher certification. Would these employees be eligible for that? Do they come under the Education Standards and Practices Board in the event that there was a criminal or near criminal violation on something? Are they subject to open records laws? The deeper we got into it, the stickier it got.

Rep. Corey Mock: I certainly think there is a way that we can address all those concerns without an amendment without having to go forward to a study.

Chairman John Wall: I would certainly admit HB 1360 is very open ended and can see why you have concerns. I am prepared to offer a couple amendments that I think contain provisions that you are most concerned with that are agreeable to the conference committee.

Attachments A&B were distributed. Amendment .0102 primarily deals with language that includes how Teachers Fund for Retirement will be handled. Amendment .0103 addresses many of the concerns you had with the original bill. It is basically asking REAs to put together a policy manual which contains the long list of various things and report back to Legislative Council and give to Legislative Council this particular handout so they can look at it, so we can make changes to it if necessary, etc.

Senator Tim Flakoll: These are not competing amendments? Your intent would be that they would be forwarded together?

Chairman John Wall: That is correct. There would have to be some reconciliation, and I have talked to Anita Thomas from Legislative Council and that would be no problem for her to do.

Senator Tim Flakoll: I would officially like to request some time to look at the amendments. Maybe it would be appropriate that I would also find the checklist of concerns that were drafted for us.

Chairman John Wall: Our intent was to incorporate your ideas into this, but if we miss something, this will give us all time to look at what is missed or discovered elsewhere.

Rep. Corey Mock: The intent of the original bill was to insure that teachers were able to be hired by REAs and have the rights that teachers hired through a school district have including negotiating and bargaining rights. Amendment .0103 is the amendment that would extend those rights to REAs to hire, negotiate salaries, and the sort. Does this require contract negotiations? Does it work with bargaining rights or does that leave it up to the REA to decide if there are negotiations?

Chairman John Wall: Rep. Mock, you pose a good question. I assume that those rights were inherent here but that is something we better check.

Rep. Karen Karls: From my recollection it seems to me if we are dealing with a special education unit, don't they have separate negotiations with the school board? In the case of a REA where there are many school districts involved I am wondering how that works? Do they negotiate with each?

Anita Thomas: They are separate.

Senator Tim Flakoll: I believe in some cases, too, the special education unit is comprised of more than one school district. In this case the REA employee would not really negotiate with a school district but their board of the REA. For example, there would be one representative from each of the school districts involved and they would negotiate with that REA. We focused mostly on teachers. Is there anything that we are missing in terms of the administrative folks that are in REAs? We may want to have some discussions outside the committee and check into that if we are okay in terms of their administrator type person that they hired to do that. If they have a shared appointment so they are 50% administrative and 50% in some kind of teaching capacity, how those things work out?

Chairman John Wall: With the committee's approval, I will call on Anita Thomas if she is willing to answer a couple of questions. I assume each REA would be able to do their own bargaining with the employees as far as carrying on negotiations, etc. Is that inherent in our language in .0103? Does that have to be added?

Anita Thomas: The concept behind amendment .0103 is that the REAs get a chance to determine how they see their world. We have REAs that are small. We have REAs that are very large and within that they have small districts and large districts. What we had talked about initially rather than you as legislators trying to decide the one size fits all theme for each of these REAs, let them have a shot at putting together their personnel manuals, their policy manuals. If an REA wishes to engage in negotiations with the teachers which very much

happens now with the school districts, they can set up what those perimeters are. They would put that in their policy manual. The second part of the amendment says that if you are to ___ policy personnel manuals ___ so the committee would have a chance to look over what they have addressed and not addressed. If the REA in putting together the manuals find things that they want or if they are finding things that they have come to agreement on that would be communicated collectively to the interim committee and the interim committee could look at whether or not legislation would be appropriate to cover that.

Chairman John Wall: Does this cover administrators and administrators that are half time teacher and half time administration?

Anita Thomas: Licensed and non licensed covers the entire gamut.

Senator Gary Lee: As a timeline with these two amendments—if we pass the one that dealt with the TFFR and the second one—they can employ teachers now. This would allow them to pay the TFFR. Would they be able to do all that prior to having their plans and manuals in place outlining what they were going to do? If they chose not to do that, could they still do the other in terms of employment?

Anita Thomas: The law right now is the REAs' authority to employ personnel. The amendment .0102 would allow the teacher retirement issue to be addressed. Policy manuals of different school districts are available on the internet. The REA would not have to recreate procedure manuals.

Senator Ryan Taylor: As we visited about the .0103 amendment, we still aren't making any statutory changes until the next session. It almost seems to me rather than a Legislative Council study, we are asking the REAs to study it and put in their own manuals which are then submitted to Council on this date. There won't be any effective changes made until we come

back in the next session based on Council's suggestions based on these eight manuals as to what we need to be done legislatively?

Anita Thomas: That would be correct. It wouldn't be Council making decisions, it would be whoever sits on the interim committee reviewing the manuals.

Rep. Corey Mock: I am concerned that amendment .0103 does precisely the opposite of what the original bill intended to insure that REAs were able to hire and teachers and school boards were able to, and in this case REAs, negotiate contracts and identify needs in areas in turn that all people at the party sitting at the table would cover. This leaves that up to the local REA. I think passing the amendment .0103 is initially the same as not passing 1360 as written. It leaves everything up to interpretation by the REA and they get to determine whether or not contract negotiations or sharing of staff, etc. All of those criteria apply for them. I think we need to review .0103 and make sure that we are sending the rights employees as teachers, making sure that they have all the same rights whether they are hired by a school board or by a REA, multi districts, etc. We really need to go back to the drawing board on them.

Chairman John Wall: Are you inferring that we need to add to amendment .0103 specific language dealing with bargaining?

Rep. Corey Mock: Perhaps. It may not necessarily mean adding language but altering language. I think we are going to have sit down and work with Legislative Council and address the concerns that were brought up in testimony with the original bill as written and cross apply it to these amendments.

Rep. Karen Karls: I have a concern too about the size of a REA that has a large school district in it. I was reading over the minutes from both sides, and that seemed to be a concern when say Bismarck is the lead school in the REA, does their salary schedule prevail? I know that the REA school districts' members pay dues to the REA. It is just another issue.

Chairman John Wall: It would be my understanding the directors of the REA would determine the salary whether it is a median salary based on all schools, but they have the people in place to make that determination.

The meeting was adjourned.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1360

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 17, 2009

Recorder Job Number: 11949

Committee Clerk Signature

Carmen Hart

Minutes:

Chairman John Wall: Any comments on the amendments .0102 and .0103 that were handed out at the previous meeting?

Senator Ryan Taylor: With the language here we are not only dealing with REAs, we are also at an area in career and tech centers. Obviously what have the career and tech center employees done in the past for TFFR or have they been freelancing?

Chairman John Wall: I do know it is cleanup language to take care of what wasn't in code before.

Anita Thomas: What we did was work with Jeff Nelson who is the legal counsel at our office that handles TFFR, and he in turn worked with the TFFR staff. Apparently, there has not been a disagreement that special education and the career and tech ed. are included in TFFR. I am not sure quite how they interpreted the language in the past, but when we suggested that since we were specifically putting REAs in here so there would be no question about intent that it would probably be appropriate to officially and finally list the others as well and they view that as cleanup language and are most supportive of it.

Senator Tim Flakoll: The effective date of this would be August 1, 2009?

Anita Thomas: As of right now, that is where it stands.

Chairman John Wall: The one we had a lot of conversation on in our last meeting, .0103—
this one deals with the policy manual and its contents.

Senator Tim Flakoll: One of my questions would be if the timeline would be such that this would be deemed acceptable? I would be curious what Mr. Martinson's organization's opinion on this would be or not.

Chairman John Wall: I am very open to that. I will mention that I have talked to one REA director and asked that question specifically and not a problem. He asked Mr. Martinson to come up to the podium.

Senator Tim Flakoll: Have you seen the .0103 amendment?

Jon Martinson: Yes, I have.

Senator Tim Flakoll: To what extent does this fulfill the needs out in the country with the REAs?

Jon Martinson: To be blunt, there isn't anything about this amendment that I like. I would be glad to go into details including the idea of putting all of this thing into policy. I just don't see how it moves us forward. Even though we had Gary Thune involved in drafting the initial language that Rep. Kelsch had drafted by Legislative Council and given that language relates to current state law with multidistrict special ed. units and there has been no concern with that language, why we can't go back to that.

Rep. Karen Karls: Jon, were you referring to the very original bill or the House version?

Jon Martinson: I was referring to the version passed by the House.

Rep. Corey Mock: I am really curious what is brewing on the other side of this committee. I am wondering what the Senate feels with the version that passed the House and where we are going with the amendments.

Senator Tim Flakoll: I think we know where we are going. We just don't know how to get there.

Senator Ryan Taylor: It seems like in discussion what we hear the most about is the concern about the employment provisions of the law whether it would be bargaining negotiation and impasse. If we could clarify those specific issues concretely and there may be some things here within the policy manual that could be left to interim—criminal background checks, etc.—but it seems to me what the parties are asking for and there is general agreement out there that they want to have this piece in place and as Senator Flakoll mentioned, we are just kind of struggling of how we get there. If we could put those pieces in place about the employment relationship in particular we would be doing a pretty fair job.

Chairman John Wall presented amendment .0104. **(Attachment A.)** It deals with employment contracts. It can be reconciled with .0103 and some of the things found in .0103 because of redundancy would no doubt have to be removed. It could be added to. That would be at the discretion of this committee. Senator Taylor, I don't know if this addresses your concerns.

Rep. Karen Karls: I would like to see what the School Board Association and a few other people would think about this.

Senator Tim Flakoll: Anita, with respect to the sticky situation we have ourselves in, can you kind of quickly explain how these employment situations are handled with special education units that are multidistrict and/or CTEs that are in many cases multidistrict?

Anita Thomas: I can't answer that question. The law requires that those employees be treated the same way as school districts. I have no more direction as to what that means, what was originally conceived to be in that broad concept or what is legally within that concept today. Apparently what we have is practice. We do not have that practice translated into law.

Senator Ryan Taylor: Have those ambiguities been troublesome? Is there any case law that has popped up in the last number of years that would play that out?

Anita Thomas: You have heard people say a number of times it has worked just fine. That is not necessarily to be viewed as a tribute to what is in the law now. It is to be viewed as a set of circumstances that have not been problematic. Should they become problematic, we will be here having a conversation about what that little sentence bragging rights means, what rights are to be included. That one sentence is vague which causes the courts issues with respect to constitutionality.

Senator Tim Flakoll: If we lay out those specific rights and say same statutory rights as afforded an individual employed by public school and we list them including and then list the whole number that are found in .0101, does that address the concern about what rights are or are not included?

Anita Thomas: If there would be a discussion about what those rights are and how they work and when a school board and its configuration is mentioned if that translates accurately to a REA, that would be perfectly fine. The difficulty that you get into is when there is lack of specificity. There is no room in a statute to add another line that says oh, by the way if you folks run into difficulty go ask fill in the blank. When you look at the version that came out from the House that is exactly what it is. It is a broad generalization. It is legislative intent. There is no definition in the North Dakota Century Code of a right.

Senator Tim Flakoll: Do you still have in your possession those talking points that you had put together when you visited with us with respect to the conversation you had?

Anita Thomas: I don't know that I still have my notes from that but largely translated they ended up in the Senate study. I am sorry I thought you were working off of the Senate study

list. (Senator Flakoll indicated he could not find that, and it was used for his floor speech when he was the carrier.) I am sure that could be recreated for you.

Senator Gary Lee: Looking at the House version that includes that statutory rights language, if that portion of it was taken out and just said that the REAs could employ and compensate personnel, would that satisfy it by taking that rights language out of it?

Anita Thomas: That is the language that is in the law right now. The issue, as it started out, was that particular language did not give the REA the rights to have employees participate in TFFR. Even though that was the intent of the House language, the intent itself would I believe would not have put its employees under TFFR. There are very specific statutes in the North Dakota Century Code that address how participation and TFFR has to happen. Intent language alone would not do it. That is why you have that one particular amendment in front of you.

Senator Gary Lee: If we took out the rights language in 1360 and added that TFFR amendment, would that satisfy what we are looking to do?

Anita Thomas: If you consider the TFFR amendment the recommendation, then REAs could employ personnel and the licensed personnel could participate in TFFR. Other issues in terms of how the negotiations are to take place, how the dismissal of an employee is to take place, those would be left up to the future. The REAs could configure that within the confines of their current employment contracts. If you wanted a law that applied statewide, then that would be a project for another day.

Senator Ryan Taylor: We have a TFFR piece that is fairly thorough. The .0104 amendment talks about employment contracts. It mentions contract may include items and references a chapter of code, 15.1-16. Is that detailed enough?

Anita Thomas: One of the things I looked at after the last committee meeting was could we take the negotiation section and do some work on it and meet the various needs that you have heard about. What became evident was that the current negotiation section is set up for an existing school and existing teachers. It doesn't address what happens when you start off with no employees. One of the things we were trying to get out with this amendment was when an REA hires its first teacher or would like to go forth and hire its first teacher, what are those conversations. The language that you have in the .0104 amendment puts the onus on that individual being considered for employment. If that individual would like to have representation whether it would be an organization such as the NDEA or whether it would be an attorney or a friend, that individual would have some support in negotiating employment contract at that point. It references the initial contract. The assumption on my part was that over the course of the next few months, there would be a bill that would then take care of all the other machinations as part of that.

Senator Tim Flakoll: How does it work with respect to them hiring their administrator? Is there any language in place?

Anita Thomas: The only thing we have in code right now is the authorization for a REA to employ personnel. It does not indicate anything about whether it is a teacher, an administrator, or a non-licensed individual.

The meeting was adjourned.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1360

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12137

Committee Clerk Signature	<i>Carmen Hart</i>
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Minutes:

Chairman John Wall: Before we move forward today, I will recap some of our past actions in an attempt to reach resolution in the issues which face the conference committee. 1360 was designed to allow employees of REAs of the same rights as those afforded like entities such as multidistrict special ed. units and area career and technology centers. The Senate amended HB 1360 into a study and outlined areas which needed to be studied. In conference committee we have examined amendment .0101 which transformed HB 1360 into a bill again and listed numerous rights of regional education association employees. A further amendment .0102 relates to the inclusion of teachers employed by REAs in the teachers' fund for retirement, provides a date by which workforce safety and insurance premiums paid by regional education associations are due, and reconciles references to other education entities such as multidistrict special ed. districts and area career and technology centers. The further amendment offered .0103 called for REAs to prepare a policy manual and to provide for a Legislative Council study. The last amendment .0104 relates to the negotiations of employment contracts. Where do we want to go?

Rep. Karen Karls: I would like to move amendment .0102 which would involve the TFFR portion.

Rep. Corey Mock: Second.

Senator Gary Lee: Give a brief explanation of this amendment.

Chairman John Wall: The amendment was drafted in part by the teachers fund for retirement and Anita Thomas had a part in this too.

Senator Gary Lee: This provides that the REAs would be allowed to pay a portion that saw fit into the TFFR and workers' comp.?

Chairman Wall: That is correct.

Senator Gary Lee: It just updates the language for the special ed. and the career and tech to put them up to current code?

Chairman John Wall: I believe Anita Thomas' words were to reconcile and clean up some current language because I believe they were excluded in previous statute concerning TFFR and also employment.

A roll vote was taken. 6 Yeas, 0 Nays. Motion carries. This amendment is adopted.

Rep. Karen Karls: This is a hog house. Are we going to do anything with the old language from the bill as it came from the Senate or the House?

Chairman John Wall: I think I may call on Anita. I believe we can put this amendment on other versions also.

Anita Thomas, Legislative Council, appeared. The single sentence bill as it came out of the House provided all rights. In testimony it indicates the intent was to have TFFR be one of those rights. The bottom line is that the North Dakota Century Code has specific hoops that have to be jumped through in order to access TFFR. Consequently, this amendment that you just passed goes through those hoops. This amendment is what would get the REA employees into the TFFR. How that works with the other two amendments that you have in front of you and again the single sentence 1360 that would be up to you to discuss. We can join them up in any which way.

Chairman John Wall: We have separate issues with the other amendments, the other bills.

Rep. Karen Karls: I move to attach the language of version .0100 of HB 1360 to amendment 90618.0102.

Senator Ryan Taylor: Second.

A roll call vote was taken. Motion fails. 4 Yeas, 2 Nays.

Chairman John Wall: We are back to discussion. To attempt to facilitate things does anyone want to discuss their problems with the bill we just defeated?

Senator Ryan Taylor: We had the .0102 amendment which was a hog house amendment which is now our bill. Then we had a motion to essentially our bill, the hog house, to an old version of the bill which failed. So what do we have right now? We have the hog house amendment. Right now we have a bill that is TFFR only.

Chairman John Wall: That is correct. At this point it addresses some of the concerns of what we were attempting to do in 1360, but the vast majority of things that we wanted to encompass are left out. It does not address the major concerns found in the original 1360 that being giving the REAs the ability to hire and offer employees the same rights extended to multidistrict special ed. and career and vocational people.

Senator Ryan Taylor: As a matter of course, let us say we were interested in a .0104 amendment that went into contracts and negotiation which is also a hog house amendment, the motion would actually be to maybe just, rather than the hog house portion of it, we would move to add Section 1 on down to our current bill.

Chairman John Wall: Yes. We need more of a vehicle, I believe, to carry the water here. We will think it over. We will be adjourned for the day.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1360

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 24, 2009

Recorder Job Number: 12202

Committee Clerk Signature

Carmen Hart

Minutes:

Chairman John Wall: At our last conference committee we passed .0102 amendment to HB 1360.

Rep. Karen Karls: I notice you have some red envelopes.

Chairman John Wall: I have some but I may not use them.

Senator Ryan Taylor: With the hog house we passed, we essentially have language that allows REA employees to participate in TFFR. Mechanically, how would that work within an REA? Is it likely that they would actually—would anyone want to be hired by a REA with only the provision that they can participate in the retirement plan if this was the bill that we passed just as it is today? Would all these REAs still continue to employ their administrators through a member school district? Have we really moved the ball very far?

Chairman John Wall: My observation and my observation only is we would not have moved the ball forward very far. I believe many of the facets that the REAs want in a bill we have excluded there.

Rep. Karen Karls: If we went HB 1360 as it came from the House, could we amend the TFFR parcel onto this? No? (Someone had answered no to her question.)

Senator Tim Flakoll: If you wish to have that happen, I think you would need to amend the language as it came out of the House onto the TFFR amendment which has been adopted.

Chairman John Wall: It would have to be amended onto .0102 because that is the bill that we passed and is in front of us again. We would have to further amend .0102.

Rep. Karen Karls: I will make the motion.

Chairman John Wall: The motion is made to amend .0102 with .0100 version.

Senator Ryan Taylor: Second.

Rep. Corey Mock: I certainly intend on supporting the amendment. We have tossed this around plenty. The language we have in HB 1360 as amended in the last meeting essentially creates from what I understand a large loophole in that the major reason why teachers haven't been hired in a large scale through REAs is because they haven't had access to TFFR.

Without statutory protections, we create the possibility that teachers can be hired through REAs and essentially contracted to schools circumventing the process we have for teachers and school boards and current law. That is a concern that I have. I hope that we can come out with some language that if we are going to keep the TFFR amendment on HB 1360 that we have language, a section there that extends statutory protections that exist in current code to teachers that would be hired through REAs, also multi districts, special ed., CTEs, and the sort. If it means working in the interim on a better, more comprehensive section of law to fully encompass and answer all the concerns, I suppose our committees are going to have to take that step.

A roll call vote was taken. Motion carries. 6 Yeas, 0 Nays.

Senator Tim Flakoll: I move that the Senate recede from the Senate amendments and that we further amend to include the .0100 and .0102 amendments to HB 1360 and that be our committee report.

Rep. Corey Mock: Second.

A roll call vote was taken. 6 Yeas, 0 Nays. The meeting was adjourned.

Attendance

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1360 (, as (re)engrossed):

Date: 4-15-09

Your Conference Committee House Education

For the Senate:

YES / NO

For the House:

YES / NO

☒	☒	☒	☒	☒	☒	☒	☒	☒	☒
☒	☒	☒	☒	☒	☒	☒	☒	☒	☒
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recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the
Seventh order:

_____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

April 7, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1360

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

11. "Teacher" means:
 - a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. For purposes of this subdivision, "teacher" includes persons contractually employed by one of the above employers to provide teaching, supervisory, administrative, or extracurricular services to a separate state institution, state agency, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state under a third-party contract.
 - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
 - c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
 - d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

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

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

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

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

SECTION 3. AMENDMENT. Subsection 17 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

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

k. An area career and technology center.

l. A regional education association.

SECTION 4. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has no employees for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section."

Renumber accordingly

1

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

 Bill Number 1360 (, as (re)engrossed):

 Date: 4-22-09

 Your Conference Committee House Education

For the Senate:

For the House:

	YES/	NO		YES/	NO
Senator G. Lee	✓		Chm. J. Wall	✓	
Senator T. Flakoll	✓		Rep. K. Kauls	✓	
Senator R. Taylor	✓		Rep. C. Mock	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>906R .0102</u>	

 MOTION MADE BY: Rep Kauls

 SECONDED BY: Rep Mock
Amendment is adopted.

 VOTE COUNT 6 YES 0 NO 0 ABSENT

2

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1360 (, as (re)engrossed):

Date: 4-22-09

Your Conference Committee House Education

For the Senate:

YES / NO

For the House:

YES / NO

Senator G. Lee		✓	Chm. J. Wall	✓
Senator T. Flakoll		✓	Rep. K. Kauls	✓
Senator R. Taylor	✓		Rep. C. Mock	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>0102 Attach Amendment</u>	

MOTION MADE BY: Rep. Kauls

SECONDED BY: Sen. Taylor

VOTE COUNT 4 YES 2 NO 0 ABSENT

Revised 4/1/05

attach version
0100 of
HB 1360 to
amendment
90618.0102
motion failed

VR
4/25/09
1083

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1360

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

11. "Teacher" means:

- a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. For purposes of this subdivision, "teacher" includes persons contractually employed by one of the above employers to provide teaching, supervisory, administrative, or extracurricular services to a separate state institution, state agency, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state under a third-party contract.
- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
- c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

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

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

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

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

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

Rights of employees. Any individual employed by the board of a regional education association has the same statutory rights as those accorded to an individual employed by a public school district for the same purpose.

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

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

- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
- j. A multidistrict special education unit.
- k. An area career and technology center.
- l. A regional education association.

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

65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has no employees for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section."

Renumber accordingly

#1

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1360 (, as (re)engrossed):

Date: 4-24-09

Your Conference Committee House Education

For the Senate:

For the House:

	YES / NO			YES / NO	
Senator G. Lee	✓		Chm. J. Wall	✓	
Senator T. Flakoll	✓		Rep. K. Karls	✓	
Senator R. Taylor	✓		Rep. C. Mock	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>amend .0102 w .0100</u>	

MOTION MADE BY: Rep. Karls

SECONDED BY: Senator Taylor

VOTE COUNT 6 YES 0 NO 0 ABSENT

2

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1360 (, as (re)engrossed):

Date: 4-24-09

Your Conference Committee House Education

For the Senate:

For the House:

YES / NO			YES / NO		
Senator G. Lee	✓		Chm. J. Wall	✓	
Senator T. Flakoll	✓		Rep. K. Karl	✓	
Senator R. Taylor	✓		Rep. C. Mock	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/H) page(s) 1089 -

and place 1360 on the Seventh order.

✓ (adopt) (further) amendments as follows, and place 1360 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1360 was placed on the Seventh order of business on the calendar.

DATE: 4-24-09

CARRIER: Senator Flakoll, Rep. Wall

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>further amendments to exclude</u>	

MOTION MADE BY: Senator Flakoll

SECONDED BY: Rep. Mock

the .0100
& .0102
amendments

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1360: Your conference committee (Sens. G. Lee, Flakoll, Taylor and Reps. Wall, Karls, Mock) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1089, adopt amendments as follows, and place HB 1360 on the Seventh order:

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

11. "Teacher" means:

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

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

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

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

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 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.

- f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
- g. The managers of a limited liability company.
- h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
- j. A multidistrict special education unit.
- k. An area career and technology center.
- l. A regional education association.

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

65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has no employees for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section."

Renumber accordingly

HB 1360 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1360

Attachment 1
HB 1360

**LETTER OPINION
2007-L-14**

September 6, 2007

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
Department of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter raising several questions regarding regional education associations.¹ For the reasons stated below, it is my opinion that regional education associations may employ and compensate staff, but it is up to the Legislature to determine whether those employees may be treated as political subdivision employees for purposes of bonding, workers compensation, unemployment coverage, and retirement benefits. It is my further opinion that the creation of a regional education association by a joint powers agreement among political subdivisions does not automatically result in the regional education association itself being a political subdivision.

ANALYSIS

A regional education association is "a group of school districts that have entered a joint powers agreement that has been reviewed by the superintendent of public instruction and verified as meeting the requirements of section 15.1-09.1-02."² A regional education association is governed by a board, and the joint powers agreement must require that all voting members of the board or their designees be individuals currently serving on the boards of the participating school districts.³ The joint powers agreement of a regional

¹ The 2007 Legislature repealed the laws referring to "educational associations," i.e., N.D.C.C. §§ 15.1-07-28, 15.1-07-30, and 15.1-27-40, and enacted similar laws that refer to "regional education associations," i.e., N.D.C.C. ch. 15.1-09.1. See S.B. 2030, 2007 N.D. Leg.

² N.D.C.C. § 15.1-09.1-01.

³ N.D.C.C. § 15.1-09.1-02(7).

education association must also provide for "the employment and compensation of staff."⁴ The Attorney General's office has long held that "implicit in the power to . . . hire is the power to fire."⁵ Thus, the governing board of a regional education association may hire and fire employees, but whether those employees may be bonded, and provided workers compensation, unemployment coverage, and retirement benefits like political subdivision employees is not addressed in state law.

A joint powers agreement may provide for "[t]he precise organization, composition, and nature of any separate administrative or legal entity, including . . . a joint board . . . responsible for administering the cooperative or joint undertaking."⁶ There are no North Dakota court cases that address whether this separate administrative or legal entity formed by political subdivisions through a joint powers agreement is itself a political subdivision. Previous North Dakota Attorney General opinions have discouraged such entities from employing staff because it would be questionable whether such employees are eligible for bonding under the state bonding fund, entitled to a defense and indemnification as an employee of a political subdivision, entitled to pension and group insurance benefits, or entitled to workers or unemployment compensation.⁷

Other states have laws similar to N.D.C.C. ch. 54-40.3, regarding joint powers agreements. State laws interpreted in court cases in Utah and Iowa provided that the specific entity created under the joint powers agreement was a political subdivision. Thus, the Utah Supreme Court determined that the entity and its employees were protected by the state's immunity act,⁸ and the Iowa Supreme Court determined that because the entity was a political subdivision separate from the political subdivisions that formed it, the forming political subdivisions were not liable on the entity's contract with a third party.⁹

Other states have determined that the entity created under the joint powers agreement was not a political subdivision. In a Wyoming case,¹⁰ the Weston County Hospital Joint Powers Board was determined to be a governmental entity, but not a political subdivision, even though the Board was created by two towns and a county. The Board made the

⁴ N.D.C.C. § 15.1-09.1-02(6).

⁵ N.D.A.G. 93-L-261.

⁶ N.D.C.C. § 54-40.3-01(1)(c).

⁷ See N.D.A.G. Letter to Kautzmann (July 13, 1992) and N.D.A.G. 2002-L-22.

⁸ Davis v. Central Utah Counseling Center, 147 P.3d 390 (Utah 2006).

⁹ Allis-Chalmers Corporation v. Emmet County Council of Governments, 355 N.W.2d 586 (Iowa 1984).

¹⁰ Weston County Hospital Joint Powers Board v. Westates Construction Company, 841 P.2d 841 (Wyo. 1992).

argument that because political subdivisions joined together to form the Board, the Board inherently must be recognized as a political subdivision.¹¹ The Wyoming court stated:

The fallacy in this contention is the assumption that, by the creation of a joint powers board, the participating entities in some manner merge so as to form a body that is essentially the equivalent of their individual entities. This is not the case. The participating entities, whatever they may be, do not merge. Instead, they simply agree to create and support a different and independently managed organization that exists and functions for their mutual benefit.¹²

Also, in a Nebraska case,¹³ an entity created by cooperating counties under a joint powers agreement was determined to be a state agency rather than a political subdivision, and in a Texas case,¹⁴ an entity created by a city and other political subdivisions under a joint powers agreement was not a political subdivision; it was an "interlocal agency." These court cases from Wyoming, Nebraska, and Texas indicate that it is far from clear that the entity created by political subdivisions under a joint powers agreement is itself a political subdivision.

The North Dakota Legislature has specified occasionally that an entity created by a group of political subdivisions is itself a political subdivision. A joint water resource board created by two or more water resource districts is a political subdivision.¹⁵ One or more political subdivisions may form a commerce authority which the Legislature has specified is a political subdivision.¹⁶ These examples indicate that the Legislature will specify that an entity created by a group of political subdivisions is a political subdivision if the Legislature wants it to be treated as a political subdivision.

The 2007 Legislature, in the bill it passed relating to regional education associations, stated:

LEGISLATIVE COUNCIL STUDY - REGIONAL EDUCATION ASSOCIATIONS. The legislative council shall consider studying, during the 2007-08 interim, the short-term and long-term evolvement of regional

¹¹ Id. at 846.

¹² Id. at 846-47.

¹³ Roggasch v. Region IV Office of Developmental Disabilities, 423 N.W.2d 771 (Neb. 1988).

¹⁴ Texas Municipal League Intergovernmental Risk Pool v. Burns, 209 S.W.3d 806 (Tex. App. 2006).

¹⁵ See N.D.C.C. § 61-16.1-11(1).

¹⁶ See N.D.C.C. §§ 11-37-03, 11-37-04.

education associations and shall include the feasibility and desirability of regional education associations becoming political subdivisions; whether teachers should be employed directly by regional education associations, and whether that employment should include bargaining rights, contract renewal and nonrenewal provisions, participation in the teachers' fund for retirement, and participation in the state's uniform group insurance program; the impact that allowing regional education associations to hire teachers directly would have on the recruitment and retention of teachers currently employed by school districts and on teacher salary levels; whether teacher employment contracts, if offered by regional education associations, would have to parallel those of participating school districts with respect to common school calendars, annual or personal leave provisions, and other contractual benefits; the conduct of evaluations, if teachers are employed directly by regional education associations, including who will conduct the evaluations, their frequency, and the criteria upon which the evaluations are based; the organizational structure of regional education associations, including the qualifications of administrative or supervisory personnel; the governance structure of regional education associations; and state level oversight. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.¹⁷

Thus, the Legislature is aware of the importance of determining whether regional education associations are political subdivisions. As the proposed Legislative Council study indicates, it is up to the Legislature to decide whether employees of regional education associations should be treated as political subdivision employees for purposes of bonding, workers compensation, unemployment coverage, and retirement benefits.

During the 2007 Legislative Session, the Legislature amended the definition of "political subdivision," in N.D.C.C. ch. 32-12.1 dealing with governmental liability to include "administrative or legal entities responsible for administration of joint powers agreements."¹⁸ Thus, since state law now provides that an entity created under a joint powers agreement is a political subdivision for purposes of N.D.C.C. ch. 32-12.1, employees of such an entity will be provided a defense if sued.¹⁹

¹⁷ S.B. 2030, 2007 N.D. Leg., § 16 (emphasis added).

¹⁸ S.B. 2244, 2007 N.D. Leg.

¹⁹ See N.D.C.C. §§ 32-12.1-02(3), (6), and 32-12.1-04.

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September 6, 2007
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In conclusion, it is my opinion that regional education associations may employ and compensate staff, but whether those employees may be treated as political subdivision employees for purposes of bonding, workers compensation, unemployment coverage, and retirement benefits must be determined by the Legislature. It is my further opinion that the creation of a regional education association by a joint powers agreement among political subdivisions does not automatically result in the regional education association itself being a political subdivision.

Sincerely,

Wayne Stenehjem
Attorney General

las/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.²⁰

²⁰ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).



March 11, 2009

HB 1360

My name is Tom Conlon and I am the coordinator for the Missouri River Educational Cooperative (MREC) one of eight REAs in the state, and I am testifying I favor of this bill.

Presently the MREC employs six employees that are paid using the Bismarck Public Schools salary schedule as Bismarck Schools is our fiscal agent. Bismarck School District has the highest salary scale out of all forty school districts that belong to the MREC and so are paid salaries that are much higher than that of MREC member schools. It would be helpful to be able to develop a MREC salary schedule to pay our employees. This schedule would reflect salaries that our MREC could afford and would be similar to other school district salaries within our REA. It would also give employees the same worker's compensation, unemployment and retirement benefits.

We currently employ six employees but we are thinking about employing more staff to provide additional services to our member schools. The need for REA employees to have the same rights as those employed by public schools is necessary today and will be more necessary in the future as there becomes more REA employees.

I urge you to vote in favor of HB 1360.

Cost Savings

Most of the efficiencies mentioned are difficult to assess a specific cost saving amount to, however some of the cost savings include:

- Group Purchasing
 - The MREC purchased Smart-Board equivalent equipment (43 mimios for many schools) at a savings of \$4,300.
- NWEA Set up and Training saved participating schools \$38,500.
- Math League saved participating schools \$1,287.
- Survey Monkey saved participating schools \$11,700.

Please feel free to contact the MREC anytime with questions.

MREC Office
Central Administration Building (CAB)
309 Collins Avenue
Mandan, ND 58554

701-751-4041 Office
701-751-4043 Fax
www.mrec.k12.nd.us

Member Schools and

Cooperating Partners

Member Schools

- Apple Creek
- Ashley
- Baldwin
- Beulah
- Bismarck
- Center-Stanton
- Elgin-New Leipzig
- Flasher
- Ft. Yates/
- Standing Rock
- Garrison
- Gackle-Streeter
- Goodrich
- Hazelton-Moffit-
- Braddock
- Hazen
- Kidder County
- Linton
- Little Heart
- Mandan
- Manning
- McClusky
- Menoken
- Montefiore (Wilton)
- Napoleon
- Naughton
- New Salem
- Pleasant Valley (Hurdfield)
- Robinson
- Roosevelt (Carson)
- Selfridge
- Solen-Cannon Ball
- Sterling
- Strasburg
- Sweet Briar
- Turtle Lake-Mercer
- Underwood
- Washburn
- Wing
- White Shield
- Wishek
- Zeeland

Cooperating Partners

- Bismarck State College
- Dickinson State University
- University of Mary
- University of ND
- St. Mary's Central High School
- Theodore Jamerson Elementary



**Working together to achieve
academic excellence**

40 School Districts
2 Private Schools
4 Colleges/Universities



One of eight North Dakota
Regional Education
Associations (REA)

Mission

The Missouri River Educational Cooperative (MREC) seeks to provide the best educational opportunities to its member students, delivered in the most economical fashion.

Vision

By 2013, the MREC will be a collection of individual school districts where every student has the same education opportunity that provides financial stewardship while preserving our diversity.



Adequacy Opportunities

The MREC strives to offer the same educational opportunities for all MREC students no matter the size of the school. Some examples of expanded access to educational opportunities include:

- NWEA Assessment
- Welding Program
- IT Essentials Program
- Medical Related Careers Program
- Dual Credit Courses
- Summer Fine Arts
- Student Council Days
- College Visitations
- ELL Evaluation and Programming
- ESP Programming



Providing Efficiencies

Most every service whether it is a student service or an administrative service the MREC offers is completed more efficiently than what would occur as a single school district. Perhaps the best illustration of these efficiencies may be illustrated by the many quality professional development opportunities offered by the MREC. Many of these opportunities would be cost prohibitive without the cooperation the schools enjoy with their membership to the MREC. Some examples include:

- NWEA Assessment
- School Improvement Technical Assistance
- Data Driven Decision Making
- Professional Development
- Grade Level Meetings
- Principals In-Service
- ND Studies Workshop
- Music State Standard Workshop
- Counselor In-Service
- Response to Intervention (RTI) Workshop
- Differentiated Instruction Workshop
- Professional Learning Communities Workshop



April 13, 2009

Attachment B

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1360

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

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-09.1 of the North Dakota Century Code, relating to personnel policy manuals; and to provide for a legislative council report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

Policy manual - Practices and procedures. Each regional education association shall prepare a policy manual governing the employment and dismissal of licensed and nonlicensed personnel. The policy manual may include practices and procedures pertaining to employee representation; negotiations; impasse procedures; salaries; advancement; fringe benefits; other compensation guidelines; job descriptions; evaluations; length of workdays; observance of holidays; criminal history background checks; health examinations; signing bonuses; probationary periods; personnel records; personal, medical, and family leave; substance abuse; employee assistance; substitute teachers; use of technology; conflicts of interest; sexual harassment; and professional development. A regional education association shall provide a copy of the policy manual to each employee.

SECTION 2. POLICY MANUAL - REPORT TO LEGISLATIVE COUNCIL.

1. Before July 1, 2010, each regional education association shall provide a copy of the policy manual required by section 1 of this Act to the legislative council.
2. Before July 1, 2010, the regional education associations shall provide a report to the legislative council governing their employment of licensed and nonlicensed personnel and collectively recommend any statutory changes related to their employment of personnel."

Renumber accordingly

April 16, 2009

Attachment
A

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1360

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

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-09.1 of the North Dakota Century Code, relating to the negotiation of employment contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

Employment contracts - Representation - Negotiation.

1. An individual considering the acceptance of employment with a regional education association may enlist another individual or organization to serve as a representative for purposes of negotiating the terms of an initial employment contract.
2. The initial employment contract must include the individual's compensation and terms governing renewal of the contract and dismissal of the employee. The contract may include any other terms or address any other items commonly found in an employment contract negotiated between a representative organization and the board of a school district under chapter 15.1-16."

Renumber accordingly