

2009 SENATE EDUCATION

SB 2183

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2183

Senate Education Committee

Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7169

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SB 2183. All members were present. Senator O'Connell stated he was invoking rule 502 and would be sitting in for Senator Taylor this week. Senator Judy Lee introduced the bill. She has become aware that administrators in a school district can only be dismissed for cause after a few years, much like what a lay person would call "tenure". She thinks their employment status should be more like the management staff in private industry. The administrators should answer to the school board. The board should be able to address problems, according to their policies, without this barrier. She recognizes the importance of the employment protection for teachers but those in positions of authority should have accountability to their elected boards. Sometimes it takes a year or two to determine if an individual is a good fit with a school district and the philosophies of a school board may evolve over time.

Senator Bakke said she understands removing the two year piece but asked for an explanation of the removal of the due process in section 7.

Senator Judy Lee said it was not her intention to remove their rights to having an appropriate hearing; her purpose is to make sure you are not limiting it to seven reasons for which a dismissal can be considered and all the documentation that is required for it.

Senator Flakoll asked if a school district can sign a superintendent to an initial three year contract.

Senator Judy Lee said that is what is happening already. The contracts are cleverly negotiated so that they overlap this two year period. This is a serious problem. This seemed like a good solution, there could be other solutions. She doesn't want to tie the hands of a school board. There was a big debate on this subject in Breckenridge, Minnesota that was a nightmare for that community. The buck should stop with the elected officials.

Bev Nielson, North Dakota School Board Association, testified in favor of the bill. See written testimony. In the first two years, the superintendents don't have the same non renewal rights, kind of like a first year teacher. By striking out two years, all superintendents will handled like two year superintendents were, the repealers do repeal the hearing section of the code. Gary

Thune, attorney for the North Dakota School Boards Association is present to answer questions if necessary.

Senator Bakke asked why the section of code is repealed in the bill. That section is meant to outline the course of action to protect the rights of the superintendents, why take it away?

Bev Nielson said it causes a problem if a board hasn't followed all of this. With this bill, the superintendent, at the end of their contract, would be an at will employee, like any other CEO. If the board wanted to nonrenew them and the superintendent wanted the reasons, the board would tell the reasons but there would be no hearing. Most of the people that work in this state don't have hearing rights. Education is different than other political subdivisions.

Senator O'Connell asked if we are gradually opening the door for this to filter down to teachers.

Bev Nielson said the North Dakota School Boards Association believes there is a different type of relationship with the board of directors and a CEO and that is how they view the school board and the superintendent, the trust factor that has to be present in order for the

management and administration of a school district to run well. They do not see that same CEO – Board relationship with teachers.

Senator Lee asked how widespread of a problem this section is.

Bev Nielson says she knows of a couple of incidents. Gary Thune probably knows of more.

The North Dakota School Boards Association believes the problem lies in what is expected of an evaluation in order to use that evaluation at a dismissal hearing.

Gary Thune, attorney for the North Dakota School Boards Association appeared before the committee to answer questions. He said Senator Judy Lee mentioned the seven reasons for dismissal, which is equated to discharge which is equated to firing someone during the term of their contract. All of the code sections in the bill deal with nonrenewal, non discharge. The biggest challenge for school boards is the evaluations standards are higher for

superintendents, evaluated by lay school boards, than what is used by superintendents who are trained to evaluate principals and principals who are trained to evaluate teachers because it has to be either satisfactory or unsatisfactory. He reviewed the three steps he recommends all school boards take before the nonrenewal of a superintendent (22:11).

Senator Lee asked if the bill passed, could these same items be covered in a contract with a superintendent.

Gary Thune said if he is asking if a contract could grant back rights that are released by this bill, he suspects so. The right to hire superintendents for three years makes him immune from the process currently in practice until the third year. Many school districts are using two or three year contracts with superintendents to attract stronger candidates.

Senator Lee asked if the bill passes as is, couldn't a contract replace what is here.

Gary Thune said the bill removes the hearing process for nonrenewal. We have a set of areas of performance set out in the job description for superintendents. All this would continue but in the case of nonrenewal, there would be no hearing.

Senator Bakke said testimony has indicated the problem is with the evaluations and contracts. Why take away the due process? She has no problem removing the two year limit but she has a real problem with taking away a person's due process and right to a hearing.

Gary Thune said this bill doesn't affect dismissal or firing. This bill deals only with nonrenewal. The trade off for having a more stringent evaluation process for superintendents is they are considered to be probationary for the first two years and do not have hearing rights for nonrenewal. After that, it has to be tied to their evaluations. By striking the two years, you are extending the probationary period to the length of their employment. They still have all of the hearing rights for a discharge or firing.

Senator Flakoll said in reference to Gary Thune's previously mentioned three step process for a school board to nonrenew a superintendent, does the third step, an improvement plan, have a timeline that is less than a year?

Gary Thune said there is no timeline on it. He discussed the code and its requirements (31:03).

Senator Flakoll asked if there is a hearing, do the two parties work together or is an independent third party involved.

Gary Thune said in practice, no third party has been involved in nonrenewal. In discharge cases there is a third party involved, since there are more legal procedures involved. They are using administrative hearing officers.

Senator Flakoll asked if they can appeal a nonrenewal.

Gary Thune said there is no right to appeal granted for nonrenewals or discharge but there is certainly the right to go court. The "appeal" is the lawsuit.

Senator Flakoll asked if the appeal is an appeal of the process.

Gary Thune they look at whether or not the reasons are valid and whether or not the board followed the procedures.

Senator Flakoll asked if there is a state law that prohibits a contract from extending more than two years.

Gary Thune said with the exception of superintendents and buying buses, yes.

Senator Bakke clarified that if a superintendent is discharged for cause, he would have due process and a hearing. If they are nonrenewed, this bill would eliminate their right to a hearing.

Gary Thune said that is correct if this bill passes.

Senator Bakke said someone must have felt at some point that there was a need for a nonrenewal hearing. How often does this happen?

Gary Thune said the hearing process is required now for all nonrenewals, he doesn't know the number. Often, when the evaluations are done, an agreement to nonrenewal is negotiated which makes reemployment easier for the superintendent and eliminates the expense and need to go through with the hearing process.

Senator Bakke asked if our problem is more with evaluation process or the nonrenewal hearings.

Gary Thune said that is accurate. The trade off, when the administrators got this chapter passed, was a more stringent evaluation process but they waived in the first two years the

hearing rights. Evaluations are required twice a year, every year for the duration of their employment. For teachers, after their third year, they are evaluated only once per year.

The evaluation process for superintendents is a greater challenge, particularly since they are being done by a lay board in an open meeting.

Senator Flakoll asked if the North Dakota School Boards Association in full support of the bill as drafted or will there be some proposed amendments.

Bev Nielson said if the bill passes as it is, evaluations would not be such a problem if there is no requirement for a hearing, making it easier for boards to deal with a nonrenewal of a superintendent. If the hearing is more important to this committee or to the superintendents who have yet to make their case, the North Dakota School Boards Association would support working on language for the evaluations so the standard is not so high. She does not currently have amendment language; she could work on some suggested language for evaluations.

Doug Johnson, executive director of the North Dakota Council of Educational Leaders, testified against the bill. See written testimony.

Chairman Freborg closed the hearing on SB 2183.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2183

Senate Education Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7316, 7320

Committee Clerk Signature
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### Minutes:

Chairman Freborg opened the discussion on SB 2183. All members were present. Senator O'Connell is invoking rule 502 and is sitting in for Senator Taylor.

Senator Flakoll stated the legislative intern called Anita Thomas, as requested by Senator Freborg, and she said the bill is drafted incorrectly, in the bill description, it should say

nonrenewal instead of dismissed. Anita Thomas is going to come down and discuss this with the committee.

Anita Thomas, attorney, Legislative Council, appeared before the committee to answer questions.

Senator Bakke asked if lines 3 and 6 should say nonrenewal rather than dismissal.

Anita Thomas said yes.

Senator Bakke asked if section 7 is a repeal of the hearing process.

Anita Thomas said the point of the bill request was that the board would not have to go through the hearing process if they decided it was not a good fit with a superintendent. After the contract expired, the superintendent would be asked to leave.

Senator Bakke asked if the probationary period is still there.



Anita Thomas said now a superintendent who has been employed for less than two years has no right to a nonrenewal hearing.

Senator Freborg asked if a school board needs a reason to nonrenew a superintendent during the first two years.

Anita Thomas said it is a policy decision. In the private sector, there are no nonrenewal hearings. A contract would just not be extended.

Senator Lee asked what would happen if we did not repeat section 7.

Anita Thomas said then everyone would have a nonrenewal hearing.

Senator Flakoll asked about page 2 lines 1 and 2 that states the board shall meet with the "probationary" superintendent in the case of a nonrenewal and the meeting is open to the public.

Anita Thomas said she is not clear about that and has wondered about that section for years.

Senator Flakoll asked if the board is required to explain anything.

Anita Thomas said they convey a reason for the nonrenewal and the reason can be as detailed or vague as the board desires. She also said with one or two new members, a school board can change philosophies in a short time.

Senator Bakke asked if she sees this spreading to teachers.

Anita Thomas said nonrenewal hearings have been in place for teachers for a long time.

Senator Bakke confirmed that in terms of the bill, the repealer makes sense.

Anita Thomas said yes, that is her recommendation if that is the direction the committee wants to go.

Senator Bakke moved a Do Not Pass for SB 2183, seconded by Senator O'Connell. The

motion failed 3-2.

Senator Flakoll introduced an amendment that changes the word dismissal to nonrenewal.

Senator Flakoll moved the amendment, seconded by Senator Lee. The motion passed 5 – 0.

The Senate Education Committee moved on to other business.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2183

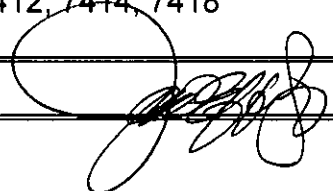
Senate Education Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7412, 7414, 7418

Committee Clerk Signature



Minutes:

Chairman Freborg opened the discussion on SB 2183. All members were present. Senator O'Connell is invoking rule 502 and is sitting in for Senator Taylor.

Senator Flakoll distributed amendment .0101. The amendment puts constraints on golden parachutes. If a person elects to resign or is deselected, the amount of the severance

package can be no more than 6 months' salary. He said sometimes, when there is a problem, a board will send good money after bad. There has been some discomfort with buyout packages that have occurred across the state, not necessarily in K-12.

There was considerable discussion about forced retirements, voluntary retirements, contracts, and the difficulty of doing evaluations in an open meeting. After the discussion, Senator Flakoll decided not to move the amendment. (job number 7412)

Senator Bakke moved a Do Not Pass for SB 2183, seconded by Senator Flakoll.

Senator Flakoll said he had heard the North Dakota School Boards Association had amendments but in talking to them, they do not.

Senator Bakke said the bill is muddied.

Senator Freborg said he had a question for Bev Nielson.

Bev Nielson, North Dakota School Boards Association, appeared for questions.

Senator Freborg asked if there is a problem out there.

Bev Nielson said it is not rampant. When it does occur, it is a disaster in the community, for the boards, for the teachers, for everybody.

Senator Flakoll asked if we can do anything to get more accurate documentation for school boards. They seem to not want to create any waves so give a nice review up until the point where they are ready to remove the superintendent. Because they haven't acted in the proper manner in terms of their evaluations, they have trouble with the nonrenewal.

Bev Nielson said the one thing that would really help would be to allow a private session with the board and the superintendent before going into the open meeting to review the evaluation. She doesn't have language to change the evaluation portion. Senator Flakoll hit the real issue on the head. They train and train and train school boards and they turn over every year and

there is very little that will change the human nature of people. At a public meeting with cameras rolling, people are not prone to get at the heart of the matter with the other individual sitting at the end of the table, its uncomfortable. She believes the evaluations should be public record, just as they are with teachers but we don't ask teachers to sit in front of a camera to receive their evaluation. A brief meeting in private would be helpful.

Senator Flakoll said the private time still won't change the need for documentation.

Bev Nielson said that is correct.

Senator Bakke said the problem is the evaluation. The bill does not address the issue.

Senator Freborg asked if there is any possibility we could do what Bev Nielson recommends?

Senator Bakke said it's up to the committee. She can't pass it the way it is.

Bev Nielson clarified that the North Dakota School Boards Association supports the bill as it is and it would help boards. They are willing to work on it to make it more palatable for our superintendents.

Senator Freborg said he is not sure this is the bill to do other things with. It is not too late to introduce another bill.

The motion failed 2 – 2- 1.

Senator Freborg said the committee needs to deal with the bill.

Senator Bakke moved a Do Not Pass as Amended on SB 2183, seconded by Senator O'Connell. The bill passed 4 – 1. Senator O'Connell will carry the bill.

Date: 1/20/09 :  
Roll Call Vote #: 1 :

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2182**

Senate Education Committee

Check here for Conference Committee

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

Action Taken Do Not Pass

Motion Made By Sen. Bakke Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	<del>Senator Taylor</del>		
Senator Gary Lee		✓	Senator Bakke	✓	
Senator Flakoll		✓	<u>Sen. O'Connell</u>	✓	

Total (Yes) 2 No 3

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Failed*

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2183**

Page 1, line 3, overstrike "dismissal" and insert immediately thereafter "nonrenewal"

Page 1, line 6, overstrike "dismissal" and insert immediately thereafter "nonrenewal"

Renumber accordingly

*"Flatcoll Amend"*  
*1/20/09*

Date: 1/20/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2183

Senate Education Committee

Check here for Conference Committee

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

Action Taken Move the Amendment

Motion Made By Sen. Flakoll Seconded By Sen Lee

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor		
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll	✓		<u>Sen O'Connell</u>	✓	

Total (Yes) 5 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

*change dismissal to nonrenewal*



Date: 1/21/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 213

Senate Education Committee

Check here for Conference Committee

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

Action Taken Do Not Pass

Motion Made By Sen. Bakke Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	Senator Taylor		
Senator Gary Lee		✓	Senator Bakke	✓	
Senator Flakoll		✓	<u>Sen. O'Connell</u>	✓	

Total (Yes) 2 No 3

Absent 0

Floor Assignment \_\_\_\_\_

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

Failed

Date: 1/21/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2183

Senate Education Committee

Check here for Conference Committee

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

Action Taken Do Not Pass

Motion Made By Sen. Bakke Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor		
Senator Gary Lee		✓	Senator Bakke	✓	
Senator Flakoll		✓	<u>Sen. Connell</u>	A	

Total (Yes) 2 No 2

Absent 1

Floor Assignment \_\_\_\_\_

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

Failed

Date: 1/21/09 :  
Roll Call Vote #: 3 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2183

Senate Education Committee

Check here for Conference Committee

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

Action Taken Do Not Pass As Amended

Motion Made By Sen. Bakke Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor		
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll		✓	Senator O'Connell	✓	

Total (Yes) 4 No 1

Absent 0

Floor Assignment Sen. O'Connell

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

**REPORT OF STANDING COMMITTEE**

**SB 2183: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2183 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "dismissal" with "nonrenewal"

Page 1, line 6, replace "dismissal" with "nonrenewal"

Renumber accordingly

2009 TESTIMONY

SB 2183



NORTH DAKOTA  
SCHOOL BOARDS  
ASSOCIATION  

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I N C O R P O R A T E D

Senate Education Committee  
Monday, January 19, 2009  
**S B 2 1 8 3**

Chairman Freborg and members of the Committee, for the record my name is Bev Nielson, Assistant to the Executive Director of the North Dakota School Boards Association.

While our Association is not responsible for the introduction of **SB 2183**, we believe it calls attention to a difficult process that can cause school boards, as well as the public, confusion and frustration. As a matter of fact, the process is so prescriptive that boards often have to pay for legal assistance.

Problems arise because of the wording and interpretations of the requirements for superintendent evaluations [NDCC 15.1-14-03, see attachment]. If any part of these requirements is not met—to the letter—boards can find themselves unable to nonrenew or in court for trying. For example: 1) Completed the evaluation “on” December 15 instead of “before” December 15. 2) Indicated a 3 out of 5 on a performance scale instead of using the word “unsatisfactory.”

While these examples may sound trivial to you, they are exactly the type of technicalities that can prevent a board from nonrenewing. It has always seemed strange to me that lay board members are held to a higher standard in evaluating superintendents than trained superintendents are held to in evaluating principles or trained principles are held to in evaluating teachers.

NDSBA Legal Counsel Gary Thune is here and will be available throughout the hearing to answer your specific questions about evaluations and the process for nonrenewal of superintendents.

School boards and superintendents across the state have excellent working relationships. Those relationships are based on mutual trust. But if that trust is lost or a board no longer has confidence in the superintendent, it makes it very difficult to continue the relationship. In this case, the situation may or may not rise to the standard required in law for nonrenewal and leaves the board with little recourse.

We are more than willing to work with the Committee, NDCEL, and others for a satisfactory solution to this sensitive issue, as the problem may ultimately be in the evaluation section of code.

## **CHAPTER 15.1-14 ADMINISTRATORS**

**15.1-14-01. School district superintendent - Duties.** A school district superintendent shall:

1. Supervise the general operation of the school district.
2. Supervise the provision of education to students.
3. Visit the schools of the district.
4. Supervise school personnel.
5. Prepare and deliver reports requested by the board of the district.
6. Perform any other duties requested by the board.

**15.1-14-02. School district superintendent - Bond.** A school district superintendent shall furnish to the school district a bond in an amount fixed by the board of the school district and equal to at least the maximum amount of money that may be subject to the superintendent's control at any one time. The bond must be conditioned for the faithful discharge of the superintendent's duties, including the maintenance of accurate financial records and the safekeeping and deliverance of all school property and funds that come under the superintendent's control. The bond must be written through the state bonding fund and must be obtained at the expense of the school district.

**15.1-14-03. School district superintendent - Evaluation.**

1. Before December fifteenth of each year, the board of a school district shall conduct a formative evaluation of the superintendent's performance.
2. Before March fifteenth of each year, the board shall conduct a formal evaluation of the superintendent's performance. The board shall place a copy of the evaluation report in the superintendent's file and shall provide a copy of the evaluation report to the superintendent.
3. If the board finds the superintendent's performance to be unsatisfactory in any area, the board shall detail its findings regarding the superintendent's performance in the report and shall make recommendations.
4. Upon receiving the report, the superintendent may provide a written response to the board. The board shall place the superintendent's written response in the superintendent's personnel file.
5. The board shall meet with the superintendent to discuss the evaluation.

**15.1-14-04. School district superintendent - Grounds for dismissal.** The board of a school district may dismiss a school district superintendent prior to the expiration of the individual's contract for any of the following causes:

1. Immoral conduct.
2. Insubordination.
3. Conviction of a felony.
4. Conduct unbecoming the position of superintendent.



5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the superintendent has failed to correct after written notice.
7. Continuing physical or mental disability that renders the superintendent unfit or unable to perform the superintendent's duties.

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

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

**15.1-14-06. School district superintendent - Discharge for cause - Hearing.**

1. At the hearing, the superintendent may produce evidence and witnesses to rebut any reasons given by the board of the school district for its discharge of the superintendent.
2. The hearing must be conducted in accordance with chapter 28-32.
3. All witnesses are subject to cross-examination.
4. Unless otherwise agreed to by the board and the superintendent, the hearing must be conducted as an executive session of the board, except that:
  - a. The superintendent may invite to the hearing any two representatives to speak on behalf of the superintendent and may invite the superintendent's spouse or one other family member.
  - b. The board may invite to the hearing any two representatives to speak on behalf of the board and may invite the school district business manager.
5. If a continuance is requested by the superintendent, the board shall grant a continuance for a period not in excess of seven days. The board may grant a continuance in excess of seven days upon a showing of good cause.
6. No cause of action for libel or slander may be brought regarding any communication made at an executive session held by the board for the purposes provided in this section.

**15.1-14-07. School district superintendent - Discharge for cause - Report to the education standards and practices board.** If the board of a school district discharges a superintendent for cause, the board shall report the discharge to the education standards and practices board.

**15.1-14-08. School district superintendent - Suspension during discharge proceeding - Compensation.** The board of a school district may suspend a superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued. If the superintendent is ultimately discharged for cause,

the board may determine the amount of compensation, if any, due the superintendent during the period of suspension. If the superintendent is ultimately not discharged, the board may not apply any reduction to the superintendent's salary for the period of suspension.

**15.1-14-09. School district superintendent - Nonrenewal of contract - Reasons - Notice.**

1. If the board of a school district contemplates not renewing the contract of a superintendent who has been employed by the board in that position for at least two consecutive years, the board shall on or before April fifteenth:
  - a. Provide written notification of the contemplated nonrenewal to the superintendent.
  - b. Schedule a hearing to be held on or before April twenty-first for the purpose of discussing and acting upon the contemplated nonrenewal.
  - c. Provide written notification of the date, time, and place for the hearing to the superintendent.
  - d. Provide written notification of the reasons for the contemplated nonrenewal to the superintendent.
2. a. The reasons for the contemplated nonrenewal of the superintendent's contract must:
  - (1) Be sufficient to justify the contemplated nonrenewal;
  - (2) Relate to the ability, competence, or qualifications of the superintendent; and
  - (3) Originate from specific findings documented in the formal evaluation of the superintendent's performance required by section 15.1-14-03.
- b. The provisions of this section do not apply if the contemplated nonrenewal is based on a necessary reduction in personnel.

**15.1-14-10. School district superintendent - Nonrenewal of contract - Hearing.**

1. At the hearing required by section 15.1-14-09, the board of the school district shall present testimony or documentary evidence to substantiate the reasons for the contemplated nonrenewal of a superintendent who has been employed by the board in that position for at least two consecutive years.
2. The superintendent may call witnesses and present evidence necessary to refute the reasons for nonrenewal.
3. Each witness appearing on behalf of the board of the school district or the superintendent may be questioned for the purpose of clarification.
4. Unless otherwise agreed to by the board and the superintendent, the hearing must be conducted as an executive session of the board, except that:
  - a. The superintendent may invite to the hearing any two representatives to speak on behalf of the superintendent and may invite the superintendent's spouse or one other family member.
  - b. The board may invite to the hearing any two representatives to speak on behalf of the board and may invite the school district business manager.

5. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation are the responsibility of the superintendent.
6. If a continuance is requested by the superintendent, the board shall grant a continuance for a period not to exceed seven days.
7. No cause of action for libel or slander may be brought regarding any communication made at an executive session held by the board for the purposes provided in this section.
8. If, after considering the testimony and evidence presented at the hearing, the board chooses not to renew the contract of the superintendent, the board shall provide written notice of its decision to the superintendent on or before May first.

**15.1-14-11. School district superintendent - Contract - Failure to provide notice of nonrenewal.** The contract of a school district superintendent is deemed to be renewed for a period of one year from its termination date if:

1. On or before April fifteenth, the board of a school district has not provided written notification to the superintendent regarding a contemplated nonrenewal of the superintendent's contract; and
2. On or before June first, the superintendent has not provided to the board a written resignation.

**15.1-14-12. School district superintendent - Employed for less than two years - Notification of nonrenewal.** If the board of a school district elects not to renew the contract of a superintendent who has been employed by the board in that position for less than two years, the board shall provide written notice of the nonrenewal to the superintendent before May first. At the request of the superintendent, the board shall meet with the superintendent to convey the reasons for the nonrenewal.

**15.1-14-13. Multidistrict special education unit - Director - Evaluation.**

1. Before December fifteenth of each year, the board of a multidistrict special education unit shall conduct a formative evaluation of the director's performance.
2. Before March fifteenth of each year, the board shall conduct a formal evaluation of the director's performance. The board shall place a copy of the evaluation report in the director's file and shall provide a copy of the evaluation report to the director.
3. If the board finds the director's performance to be unsatisfactory in any area, the board shall detail its findings regarding the director's performance in the report and shall make recommendations.
4. Upon receiving the report, the director may provide a written response to the board. The board shall place the director's written response in the director's personnel file.
5. The board shall meet with the director to discuss the evaluation.

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

1. Immoral conduct.
2. Insubordination.
3. Conviction of a felony.

# Testimony on SB 2183

By

Dr. M. Douglas Johnson, Executive Director—NDCEL

Chairman Freeborg and members of the Committee, for the record my name is Doug Johnson and I am the executive director of the ND Council of Educational Leaders which represents North Dakota's school leaders. I am here to testify in opposition to **SB2183** which will remove the reason of notice and the right to a nonrenewal hearing for superintendents, directors of special education and career and technology centers who have successfully completed a two year probationary contract with a school district.

The passage of **SB2183** would have a significant impact on the ability of school district boards, especially smaller ones, and the boards of regional special education and career and technology to attract and retain quality superintendents. Our professional educational leaders ~~willing~~ are willing take these challenging positions because they are committed to do the very best job for the students and community that they serve. In addition, these educational leaders are willing to move to a new community, put down roots by purchasing a home, and work hard to build a positive and lasting relationship with the community and the education community which they serve.

The current law allows these dedicated individuals, after successfully completing a two year "probationary" contract, to be given a reason for notice of for the nonrenewal of their contract as well as the right to a hearing. This is a small but important concession for a board to give to their educational leaders. This gives these individuals the interest and desire to maintain a strong connection to the community they've chosen to serve for years well beyond the two year probationary contract. The only obligation to the school board is to justify the reason for dismissal which can be documented through the annual formative and summative evaluations that still will be required by law.

Other states have recently done away with the right to notice of nonrenewal and hearing for their educational leaders. Most notable is the state of Minnesota. The end result was that those educational leaders who took on these high profile leadership positions would not do so unless they were given multi-year contracts. The net effect was to create a shortage of applicants for these positions which ultimately increased the salaries of these individuals by nearly 30%. I am of the opinion that it is much less expensive to dismiss a superintendent or director of special education or

career and technical education using the current law than to buy out the last year or two of a multi-year contract.

Finally, most if not all of these professional leaders will make difficult decisions which are the right decisions for the child, school district, and community. These are decisions which will make some of the constituents in their communities upset and perhaps downright angry. The passage of **SB2183** would allow these individuals to unduly influence the opinion of board members and allow the board to "fire" an educational leader with a simple notice of nonrenewal and the right to know the reasons for being "fired" if it is requested.

You may not know this, but the term "fired" according to the Clevedon, Somerset, Civic Society Newsletter for Summer 1996 was that:

The word 'fired', meaning discharged from a job originated on Mendip. It comes from Item 6 of the Laws of Mendip Miners.

(Incidentally, The Mendip Hills are about 50km south of Bristol, England. They are beautiful in summer, but can be a bit bleak in winter. In the past various types of mining took place there and the Law below, as judged by the language used, is several 100 years old. Apologies to the non native English speakers, but that's the way it's written).

"If any man... do pick or steale any lead or ore to the value of xiiid, the Lord or his Officer may arrest all his lead and Oare House or hearthes with his Grooves and Workes and keep them in forfeit... and shall take the person that hath soe affeended and bring him where his house or worke and all his tooles and instruments are... and put him into his house or worke and set fire in all together about him and banish him..."

There are many superintendents, special education directors, and career and technical education directors who will make tough decisions during the tenure. And there are who in carrying out their jobs and members of the community who wanted to have that individual "fired." Let's not allow a bill which would allow our educational leaders to be "fired" with out having a reason and the right to hearing for those reasons to be "fired."

Chairman Freborg and members of the Senate Education Committee, this concludes my testimony. I encourage your committee to give **SB2183** a do not pass vote. At this time I would be happy to answer any questions that you have in regard to my testimony.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2183

Page 1, line 1, after "to" insert "create and enact three new sections to chapter 15.1-14 of the North Dakota Century Code, relating to severance packages for superintendents and directors; to"

Page 1, line 4, remove the second "and"

Page 1, line 7, after "centers" insert "; and to declare an emergency"

Page 2, after line 2, insert:

**"SECTION 3.** A new section to chapter 15.1-14 of the North Dakota Century Code is created and enacted as follows:

**School district superintendent - Severance package - Limitation.**

1. If the board of a school district agrees to provide a severance package to a school district superintendent, that package may not exceed the equivalent of the superintendent's gross salary for a period of six months. This provision applies to severance packages:
  - a. Articulated in contracts of employment that are entered into between the board of a school district and a school district superintendent after June 30, 2009;
  - b. Articulated in contracts of employment that are subject to automatic renewal after June 30, 2009; and
  - c. Provided as a result of a motion placed before the board.
2. This section is applicable to any severance package, regardless of its purpose, and includes packages resulting from a superintendent's retirement, voluntary resignation, nonrenewal, discharge, or contract buyout."

Page 2, after line 21, insert:

**"SECTION 6.** A new section to chapter 15.1-14 of the North Dakota Century Code is created and enacted as follows:

**Multidistrict special education unit director - Severance package - Limitation.**

1. If the board of a multidistrict special education unit agrees to provide a severance package to a multidistrict special education unit director, that package may not exceed the equivalent of the director's gross salary for a period of six months. This provision applies to severance packages:
  - a. Articulated in contracts of employment that are entered into between the board of a multidistrict special education unit and a director after June 30, 2009;

- b. Articulated in contracts of employment that are subject to automatic renewal after June 30, 2009; and
  - c. Provided as a result of a motion placed before the board.
2. This section is applicable to any severance package, regardless of its purpose, and includes packages resulting from a director's retirement, voluntary resignation, nonrenewal, discharge, or contract buyout."

Page 3, after line 8, insert:

**"SECTION 9.** A new section to chapter 15.1-14 of the North Dakota Century Code is created and enacted as follows:

**Area career and technology center director - Severance package - Limitation.**

- 1. If the board of an area career and technology center agrees to provide a severance package to an area career and technology center director, that package may not exceed the equivalent of the director's gross salary for a period of six months. This provision applies to severance packages:
  - a. Articulated in contracts of employment that are entered into between the board of an area career and technology center and a director after June 30, 2009;
  - b. Articulated in contracts of employment that are subject to automatic renewal after June 30, 2009; and
  - c. Provided as a result of a motion placed before the board.
- 2. This section is applicable to any severance package, regardless of its purpose, and includes packages resulting from a director's retirement, voluntary resignation, nonrenewal, discharge, or contract buyout."

Page 3, after line 10, insert:

**"SECTION 11. EMERGENCY.** Sections 3, 6, and 9 of this Act are declared to be an emergency measure."

Renumber accordingly