

2025 SENATE WORKFORCE DEVELOPMENT

SB 2341

2025 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

SB 2341
2/7/2025

Relating to the adoption of the interstate compact for school psychologists.
--

10:31 a.m. Chairman Wobbema opened the hearing.

Members Present: Chairman Wobbema, Vice-Chairman Axtman, Senator Boschee, Senator Larson, Senator Powers.

Discussion Topics:

- Telehealth capabilities
- Duplication of licenses
- Other states licenses
- Cost of compact

10:31 a.m. Senator Axtman introduced the bill.

10:35 a.m. Jay Sheldon, Administrator of ND Military Commission, testified in favor and submitted testimony #35792 and #37431.

10:37 a.m. Rebecca Campbell, President of ND Association of School Psychologists, testified in favor and submitted testimony #35547.

10:43 a.m. Rebecca Pitkin, Executive Director of Education Standards and Practices Board, testified in opposition and submitted testimony #36027.

10:55 a.m. Adam Diersing, Senior Policy Analyst for the Council of State Governments, testified in neutral #35899.

Additional written testimony:

Brekka Kramer, President and CEO Minot Area Chamber EDC, submitted testimony in favor #36155.

Cale Dunwoody, Vice President of Public Policy for the Fargo Moorhead West Fargo Chamber of Commerce, submitted testimony in favor #36059.

Amber Fridley, School Psychologist, Dickinson Public Schools, submitted testimony in opposition #36074.

10:59 a.m. Chairman Wobbema closed the hearing.

Andrew Ficek, Committee Clerk



NORTH DAKOTA ASSOCIATION OF SCHOOL PSYCHOLOGISTS

01/23/2025

Senator Axtman
4010 Ridge Way
North Dakota Legislative Assembly
Bismarck, ND 58503

Dear Senator Axtman,

On behalf of the North Dakota Association of School Psychologists (NDASP), I am writing to express our support for Senate Bill 2341 which proposes the adoption of the Interstate Compact for School Psychologists (ICSP). This legislation represents a significant step forward in addressing the growing need for school psychological services across North Dakota and other member states by streamlining licensure processes and facilitating professional mobility.

The proposed Interstate Compact will allow specialist- or doctoral-level school psychologists licensed in North Dakota to practice in other compact member states and vice versa, without the burden of duplicative licensing requirements. By promoting this mobility, the compact directly addresses critical workforce shortages in school psychology, ensuring that all students—especially those in rural or underserved areas—have access to safe, reliable, and high-quality psychological services.

This compact also acknowledges the unique needs of military families by easing the relocation process for licensed school psychologists who are active-duty military members or their spouses. By simplifying the process to transfer licensure between states, this legislation demonstrates a commitment to supporting military families and maintaining continuity of care for students.

Additionally, the ICSP enhances inter-state cooperation, maintains high professional standards, and preserves the authority of individual states to regulate school psychology within their borders. It ensures that all practitioners meet rigorous qualifications while fostering collaboration and information-sharing among states, thereby protecting the public and enhancing the quality of services provided to students and families.

The ICSP aims to support the school psychology profession and state workforces by streamlining the licensure mobility system in member states. In a time when districts across the country face widespread shortages in education workforces, the ICSP provides a practical solution for school psychologists who relocate and struggle to become licensed in another state.

Benefits for School Psychologists:

- Eliminates barriers to school psychology licensure while maintaining a high level of professional practice.
- Prevents the need for reexamination, additional testing, and administrative fees immediately after a move.
- Expands opportunities for school psychologists to seek employment in a broader pool of schools and districts, ensuring the best fit for their experience and career.
- Supports the ability for school psychologists to work in multiple states through remote practice.
- Facilitates the careers of military spouses, enabling them to reenter the classroom and continue their school psychology career after a permanent change of station.

Benefits for State Education Licensing Authorities:

- Creates a compact information system to facilitate licensure and discipline information for relocating school psychologists.
- Provides a direct line of communication to peer agencies to collaborate on field-specific challenges and share information.
- Supports public safety efforts in the licensure of school psychologists by maintaining high standards.

Benefits for State Education Workforces:

- Increases the ability of states to attract school psychologists from across the country.
- Enables states to grant licenses efficiently and place school psychologists in schools to make an immediate impact.
- Fosters greater coordination and cooperation among state licensing authorities on matters such as discipline and licensure requirements.

The NDASP is committed to advocating for initiatives that strengthen the field of school psychology and increase access to essential services. The adoption of the ICSP aligns with our mission to promote the mental health and educational success of children and adolescents across North Dakota. This legislation has the potential to make a profound and positive impact on the lives of students, families, and educators.

We strongly urge the members of the North Dakota Legislative Assembly to support Senate Bill 2341. By passing this bill, North Dakota can take a leadership role in improving access to critical school psychological services while fostering professional growth and collaboration among states.

Thank you for considering this important legislation. Please do not hesitate to contact us if you require additional information or wish to discuss this matter further.

Sincerely,

Rebecca Campbell, on behalf of North Dakota Association of School Psychologists

President

ndasp.president@gmail.com

612-759-2886

TESTIMONY OF
LIEUTENANT COLONEL JAY SHELDON
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
SENATE WORKFORCE DEVELOPMENT COMMITTEE
07 FEBRUARY 2025
SENATE BILL 2341

Chair Wobbema and Members of the Committee,

My name is Jay Sheldon, and I am here representing the North Dakota Military Commission to express support for SB 2341, which would allow North Dakota to join an interstate licensing compact for school psychologists.

North Dakota is home to a significant number of military families that have some unique challenges that come with frequent relocations. For military spouses who are licensed school psychologists, moving to a new state can mean facing licensure requirements that may delay their ability to contribute to our schools and support our children's mental health needs.

By joining the school psychology licensing compact, North Dakota can facilitate a smoother transition for these professionals, allowing licensed school psychologists from other compact states to practice in our schools with greater ease.

Supporting this compact not only helps military families but also enhances our educational environment by providing access to highly qualified school psychologists who can offer critical support to students, teachers, and families. It will help ensure that North Dakota schools have the resources they need to foster a safe and supportive learning environment.

This legislation demonstrates North Dakota's commitment to being a military-friendly state and reflects our dedication to the mental health and educational success of all students. By reducing barriers for school psychologists, we can create a more effective and responsive educational system that meets the needs of our diverse student population.

On behalf of the North Dakota Military Commission, I ask you to support SB 2341.

Thank you for your time and consideration.



**National Center for
Interstate Compacts**
THE COUNCIL OF STATE GOVERNMENTS

Adam Diersing

The Council of State Governments

adiersing@csg.org

SB 2341: Interstate Compact for School Psychologists Informational Testimony

Senate Committee on Workforce Development

February 7, 2025

Thank you to Chair Wobbema and the members of this committee for holding this hearing on SB2341 to enact the Interstate Compact for School Psychologists. My name is Adam Diersing, Senior Policy Analyst for the Council of State Governments and primary staff member covering the ICSP development and enactment process. I am writing to provide informational testimony to this committee on the ICSP. This compact was developed as part of a cooperative agreement between the Department of Defense and The Council of State Governments, in partnership with the National Association of School Psychologists.

The development of this model legislation began in the Fall of 2022 with the assembly of a Technical Assistance group comprised of legislators, state education officials, members of professional associations, licensed school psychologists, and other education stakeholders. The group met over the course of several months to determine the needs of the profession and the model needed for school psychologist mobility patterns, opportunities for increasing virtual and remote practice, and licensure systems. A separate drafting team transitioned the recommendations and model from the Technical Assistance Group into a full draft of the Interstate Compact for School Psychologists model legislation. After several months of public comment and stakeholder review, the final draft of the model legislation was released in December 2023.

The ICSP most closely resembles the compact for teachers that reached activation in 2023. That Compact is currently in the process of being effectuated with the data system under construction and the early rulemaking procedures underway. The hope among the related partner organizations is that these compacts will work together and share resources, including the data system, lowering anticipated costs and time for the ICSP to be stood up fully.

Currently, 2 states are members of the ICSP with 10 additional states considering legislation to join the compact so far this session. The ICSP will be effectuated when the seventh state enacts the model legislation. Legislation across the country is actively being tracked at schoolpsychcompact.org.

I am available to answer any questions that may arise in this hearing on the ICSP. Thank you again for the opportunity to provide testimony on HB2596.

SB 2341

Senate Workforce Development Committee

January 6, 2025

Education Standards and Practices Board

Good afternoon, Chairman Wobbema and members of the Senate Workforce Development Committee. My name is Rebecca Pitkin, and I am the Executive Director of the Education Standards and Practices Board (ESPB). I represent our Board in opposition to SB 2341, relating to a School Psychologist Interstate Compact. The Board believes that an efficient and cost-effective pathway for out-of-state licensure for school psychologists is already in place in North Dakota, and that this bill seeks to remedy a problem that does not exist. This bill, in fact, may have the opposite effect, and may create a more costly and cumbersome licensure process for these prospective school psychologists. ESPB was part of a Board study (SB2249, 68th Legislative Assembly), which examined Board practices for out of state practitioners. The study revealed the following results:

1. Once materials are submitted, ESPB issues the license within 2 days
2. Our out of state educator license (OSEL) administrative rules make the transition very smooth and there is not burdensome red tape
3. ESPB waived fees for military members and their spouses in 2018.
4. ESPB promulgated rules to allow national certification to count for reeducation credits, thus raising the standards for our school psychologists.

The Board articulated several other concerns with the bill:

1. Currently, out of state licensed individuals coming to North Dakota do not have to maintain their other state license as required in the bill; this is a cost to licensees (Article VII-1a)
2. Although we have received information of the estimated fiscal impact of membership from the Council of State Governments (CCGS), there are not clear details regarding financing of the commission, nor are there exact requirements of participation. There are also potential travel and attorney fees. Our Board believes without concrete financial information, it is not wise to use licensure fees for the unknown. In addition, fees would be assessed to the applicant as we are a fee funded agency, and this could be a significant new financial burden for the 82 school psychologists and eight interns in our state.
3. The language on page 11 and page 12, relating to closed meetings may conflict with our §44.04-17.1 statute relating to open meetings.

4. Article XIII states any laws, statutes, regulations, or other legal requirements in a member state in conflict with the compact are superseded to the extent of the compact. This is a Board concern.
5. Our Board wonders what the barriers currently are as ND has one of the nation's most flexible Out of State Educator licensing systems and the language in the bill will not create additional school psychologists.
6. A school psychologist moving to a compact state would still have to apply and pay for the license in that state.
7. We currently have a system in place to facilitate licensure and discipline information for relocating school psychologists. We have an interstate agreement with all 50 states and Canadian provinces. We also belong to the National Association of State Directors of Teacher Education and Certification and check every applicant with Clearinghouse which contains actions taken against the license of an educator by other states/jurisdictions U.S. Department of Defense Educational Opportunity School, and Guam.

ESPB has worked collaboratively with the North Dakota Association of School Psychologists (NDASP) to problem solve and the NDASP developed a scope of practice, now in our administrative rules. We also worked collaboratively to develop rules for a school psychologist intern. Our Board desires to continue the conversation about ways we can increase the number of school psychologists in North Dakota. Our Board believes the compact, as written, will create a burden to our current practices, additional fees will be imposed on current school psychologists, and potentially create problems which do not exist.

Enclosed in this testimony is a letter from the attorney general's office regarding the Interstate Teacher's Compact, as well as the response from the Interstate Teacher Mobility Compact legal counsel. Many of the concerns expressed in the letter also apply to SB 2341.

Working together to impact the school psychologist shortage is needed; SB 2141 is not the solution.

Rebecca Pitkin, PhD

Executive Director

701.590.1861

August 29, 2024

North Dakota Military Commission
c/o Administrator LTC Jay G. Sheldon
North Dakota National Guard
Strategy and Policy Officer

via email only jay.g.sheldon.mil@army.mil

Dear LTC Sheldon:

I serve as the General Counsel for the Education Standards and Practices Board (“ESPB” or “Board”). On July 11, 2024, you reached out to Dr. Rebecca Pitkin, Executive Director of ESPB and indicated that the North Dakota Military Commission (“NDMC”) intended to pursue the Interstate Teacher Mobility Compact (“Compact”) during the 2025 North Dakota Legislative Session, and requested any feedback on issues or concerns. ESPB appreciates the opportunity to submit additional information and follow up concerns regarding the Compact, and I submit this letter on the Board’s behalf.

First, I’d like to bring your attention to a constitutional concern regarding Article VII, Section C which creates a Commission that would subsequently implement vast regulations that would have “standing as statutory law” and have “the force of law and shall be binding in all Member States” without ever coming before the North Dakota Legislature for adoption or approval. The N.D. Supreme Court has recently held that only the North Dakota Legislature has the power to create statutory law and it may only delegate the authority to administer or execute law if the delegated power is “constrained by reasonably clear guidelines and sufficiently objective standards” with “procedural safeguards” against “arbitrary action” in place.¹ Only regulations promulgated through the Administrative Agency Practices Act, codified at N.D.C.C. ch. 28-32, may be adopted for use of regulatory purposes² and it is considered an unconstitutional delegation of legislative authority for statutes to adopt future laws, rules, or regulations.³ The concern is the Compact gives

¹ North Dakota Legislative Assembly v. Burgum, 2018 ND 189.

² Little v. Spaeth, 394 N.W.2d 700 (ND 1986).

³ State v. Julson, 202 N.W.2d 145 (ND 1972) (“statutes adopting laws or regulations of other states, the federal government, or any of its agencies, effective at the time of adoption are valid, but attempted adoption of future laws, rules or regulations of other states, or of the federal government, or of its commissions and agencies generally have been held unconstitutional as an unlawful delegation of legislative power.”); see also McCabe v. N.D. Worker’s Comp., 567 N.W.2d 201 (N.D. 1997) (a statute that attempts to incorporate future changes of another statute, code, regulation, standard, or guideline is an unconstitutional delegation of legislative power and thus courts will interpret “most recent” and “most current” as that in existence at the time of the statutory enactment). See also Weber v. Weber, 512 N.W.2d 723 (concurring opinion recognizing that a regulatory board may not use of version of an ethical code it has not legally adopted in North Dakota via the Administrative Agencies Practices Act).

the Commission authority to go beyond administering and executing the Compact enacted into statutory law without clear guidelines and standards, and no procedural safeguard to protect against arbitrary action. Under current North Dakota case law, it would be an unconstitutional delegation of legislative power to adopt unknown and unidentifiable future rules of the Commission. ESPB would therefore request the Compact language be amended to recognize any rules would be advisory only and would only have the force and effect of law if specifically adopted by Member States via the state's own administrative agencies practices act.

In addition, Article X on Oversight, Dispute Resolution, and Enforcement raises several concerns. The Compact provides that it does not waive the State's sovereign immunity, see Article VII(A)(2), but then contradicts itself by allowing the Commission to sue a member state for money damages, dictate venue, jurisdiction, and promulgate rules for mediation and binding dispute resolution. Unless otherwise specified by the North Dakota Legislature, North Dakota does not consent to jurisdiction and venue outside of the state.⁴ Since the Compact is silent on the specific venue, "rules" implemented by the Commission conflicting with our State Constitution and law regarding jurisdiction and venue would be unenforceable.⁵ Furthermore, North Dakota law requires the approval of the Attorney General and director of the Office of Management and Budget to consent to arbitration, and will only be given after a complaint has been made.⁶ Any such contradictory "rule" of the Commission would therefore, again, be unenforceable.⁷ Finally, the provision regarding the payment of costs and fees of an unknown, unspecified amount is void under N.D.C.C. § 28-26-04.

Finally, we also have the following general concerns, questions, and comments, which were discussed at the August 8, 2024, ESPB Meeting with a representative of NASDTEC, however a majority of the responses were dependent upon what the representative anticipated the Commission would adopt as rules and did not resolve the concerns:

- Article II- repeatedly refers to licensure of teachers of preschool children and licensure of teachers only in public educational settings. North Dakota does not regulate or license preschool educators in the same manner as teachers, and teaching licenses issued by ESPB apply to teachers in both public and private K-12 schools. Will private school teachers not be eligible for these Compact licenses?⁸
- Article II(R)- ESPB also issues licenses and certificates to individuals who provide services outside of those who are traditionally thought of as classroom teachers, including school psychologists who have their own Compact. Does this interfere with other Compacts?

⁴ N.D. Const. art. 1, § 9; N.D.C.C. § 54-01-18; N.D.C.C. § 32-12-02; N.D.C.C. § 32-12.2-10.

⁵ Amica Life Insurance Co. v. Wertz, 462 P.3d 51 (CO 2020).

⁶ N.D.C.C. § 32-12.2-05.

⁷ Amica Life Insurance Co. v. Wertz, 462 P.3d 51 (CO 2020).

⁸ See Art. II(D), (K), (R), and (S).

- Article III(C)- requires that a Receiving State grant a license to an applicant who holds an Unencumbered Eligible License issued by a Member State which is equivalent to the license held by the Teacher in any other Member State. Currently, there are statutes, such as N.D.C.C. § 15.1-13-26, which serve as a permanent denial of a teaching license. Other states may not have the same or similar statutes and may have issued a license. Is North Dakota going to retain the discretion to deny for reasons other than coursework, degrees, testing, etc.? What about CHRI?
- Article VII(D)(7)(c) – impose fees – There is no estimate of the fees the Member State will be responsible for. If this fee is high, it could impact licensure fees for teachers in the state.
- Article VII(D)(7)(d) – “except by and with the authority of the Member State.” There is no indication whose authority this is referring to-the delegate of the Member State? Legislature? ESPB?
- Article VII(D)(8) – the North Dakota Legislature cannot provide immunity from suit and liability for Commission employees without being politically accountable for and defining the contours of the scope of employment of Commission employees. The purported extension of this immunity to persons that possessed a mere reasonable belief they were acting within the scope of employment further fails to properly confine the classification to legislatively identified and limited activities.
- Article X(C) – (F) – only the North Dakota Legislature could repeal the Compact, therefore it is unclear what effect this “termination” would have.
- Article X(I) – the North Dakota Legislature can repeal the Compact during session and without a law in place, any sort of “enforcement” beyond the repeal date would be unenforceable.

Additionally, ESPB would note that it was the first regulatory board to, without legislative requirement, waive licensure fees for military members and spouses, and that ESPB maintains an extremely expedited licensure turnaround time. Therefore, it is unclear what North Dakota would gain from the entry into this Compact.

ESPB appreciates your dedication to our military members, and this opportunity to provide feedback on this Compact. Please reach out with any further questions.

Sincerely,

Allyson M. Hicks

LTC Jay Sheldon
August 29, 2024
Page 4

Assistant Attorney General
General Counsel
Education Standards and Practices Board

cc: Board of Occupational Therapy Practice`

November 21, 2024

Office of the Attorney General
General Counsel Division
ATTN: Allyson M. Hicks
600 E. Boulevard Ave Dept. 125
Bismarck, ND 58505-0040

RE: North Dakota Military Commission Interstate Teacher Mobility Compact

Ms. Hicks:

This letter is in response to the letter my client received dated September 6, 2024, regarding the constitutionality of the Interstate Teacher Mobility Compact ("ITMC"). While North Dakota's ESPB is a leader in Military Licensing fees, the Military Commission Interstate Teacher Mobility Compact aims to provide uniform mobility to individuals transitioning to the compact's member states. The U.S. Constitution (Art. 1, Sec. 10, Clause 3) grants states the right to enter into multistate agreements for their common benefit.

As you are aware, the Art. VII, Section 10 of the North Dakota Constitution, provides that:

Agreements, including those for cooperative or joint of administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

Furthermore, North Dakota law provides that the delegation of legislative power is subject to specific limitations:

1. The Legislature may not delegate its purely legislative powers unless expressly authorized by the State Constitution;
2. The Legislature can delegate the authority to execute laws it enacts, provided there are adequate standards and procedural safeguards;
3. The power to ascertain facts that bring a law to operation is not an unconstitutional delegation as long as the law sets forth clear guidelines; and
4. The Legislature may delegate even purely legislative powers to political subdivisions if authorized by the state constitution.

The North Dakota Supreme Court has consistently held that the Legislature may delegate certain powers, provided these delegations do not involve the creation of new laws but rather the execution of existing laws. This principle allows for the delegation of authority to enter into

RECEIVED

NOV 27 2024

ESPB

interstate compacts, as long as the compact's execution adheres to the provisions set by the Legislature.¹

The court has also recognized the necessity of delegating powers in complex areas, provided there are adequate standards and procedural safeguards. This modern view of the non-delegation doctrine is crucial for understanding the legality of interstate compacts, which often involve intricate and multi-jurisdictional issues.²

Regarding interstate compacts specifically, the North Dakota Supreme Court has upheld such delegations, provided they do not increase the political power of the states in a manner that encroaches upon or interferes with federal supremacy. This aligns with the U.S. Supreme Court's interpretation of the Compact Clause, which limits agreements that tend to increase the political power of the states at the expense of federal supremacy.³

Furthermore, the Legislature may delegate even purely legislative powers to political subdivisions if authorized by the state constitution. This provision supports the delegation of authority to enter into interstate compacts, as long as the delegation is within the constitutional framework.⁴

I. Article VII, Section C—Free Standing Commission

Even though the subject statute creates a commission, the Legislature is assenting to its creation. The North Dakota Legislature maintains the ability to delegate their regulatory authority to Compacts.⁵ North Dakota is a member of many interstate compacts, including those which the legislature have delegated state rulemaking authority: the Interstate Medical Licensure Compact, the Nurse Licensure Compact, the Physical Therapy Licensure Compact, the Counseling Compact, the Psychology Interjurisdictional Compact, the Emergency Medical Services Personnel Licensure Compact, the Interstate Compact for Adult Offender Supervision, the Interstate Compact for Juveniles, the Military Interstate Children's Compact, and others.⁶

A state has a "general right of sovereignty" to reach an agreement with a fellow state and enter a compact that "become[s] conclusive upon all the subjects and citizens thereof, and bind[s] their rights." *Pooler v. Lessee of Fleeger*, 36 U.S. 185, 209 (1837). Each state's "acceptance of the compact" is considered the "act of the people" of that state "in their sovereign character." *Green v. Biddle*, 21 U.S. 1, 88 (1823). Thus, by enacting a compact, member states are addressing a policy problem through shared or joint exercise of sovereignty. This is a sovereign choice by each state." Michael L. Buenger *et al.*, *The Evolving Law and Use of Interstate Compacts*, 50 (2d ed. 2016).

¹ *Ralston Purina Co. v. Hagemeister*, 188 N.W.2d 405 (N.D. 1971)

² *Trinity Medical Ctr. v. North Dakota Bd. of Nursing*, 399 N.W.2d 835 (N.D. 1987)

³ *Gray v. N.D. Game & Fish Dep't.*, 2005 ND 204 (N.D. 2005)

⁴ *County of Stutsman v. State Historical Soc'y*, 371 N.W.2d 321 (N.D. 1985)

⁵ See *Trinity Medical Ctr. v. North Dakota Bd. of Nursing*, *supra*.

⁶ See "North Dakota" National Center for Interstate Compacts, accessed via <https://compacts.csg.org/state/north-dakota/>. Last accessed on October 16, 2024.

And in compacting together, states may assign administrative or regulatory authority to an interstate commission created under the compact.⁷

The Teaching Compact presented does not promulgate or delegate any more authority than the compacts named above which the North Dakota Legislature have already joined.

II. Dispute Resolution

When the North Dakota Legislature adopts the compact, the legislature is authorizing the dispute resolution procedures as the compact would function as a statute. The compact would facially supersede the law but only to the extent of the conflict. Again, the compacts listed above to which North Dakota is a member state contain similar language regarding dispute resolution procedures.

III. General Concerns and Comments

Article II—Preschool and Private School Teachers

Inherently, the compact governs teacher licensure, exclusive of whether that teacher chooses to utilize their licensure in a public or private setting. Similar to the North Dakota statute⁸ on Teacher Licensure, there is no strict delineation between private and public schools within the compact. However, as long as the license held by a private school teacher grants the authority to teach in a public school, they would be deemed eligible for reciprocity under the compact. Current employment does not dictate eligibility—licensure does. Early education licenses would not be required to be eligible under the ITMC if the member state does not license them to the level of eligibility described in Art. II of the Compact.

Article II(R)—Licensure for Individuals who Provide Services Outside of Teaching

Succinctly, this compact will not interfere with other interstate compacts. The ITMC specifically covers teachers that provide instruction to a specific population, age or grade band, or on a subject area as the teacher of record. While other professionals in schools may hold a license issued by the same agency, they would not be eligible for the compact. The ITMC also would not

⁷ See also *U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978) (upholding a compact creating an interstate tax commission without congressional consent); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951) (upholding West Virginia's entry into a water-sanitation compact creating an interstate commission, against arguments that it violated the state's constitution by delegating legislative power and the police power and binding future legislatures to make appropriations) *rev'g* 134 W. VA. 278 (1950); *Scott v. Commonwealth*, 54 Va. App. 142, 147-50 (2009) (addressing arguments under the Interstate Compact for Adult Offender Supervision and rules promulgated by its Interstate Commission for Adult Offender Supervision); *Buenger et al.* at 128 (“neither the establishment of [compact commissions] nor their exercise of regulatory power is legally problematic with respect to constitutional prohibitions against the delegation of state authority”).

⁸ N.D. 67.1-02-02

interfere with any current or future compacts that deal with the licensure of other education professionals (including the ICSP).

Article III(C)—Denial Discretion

As stated in the following provisions of the ITMC model language, the licensing agency maintains broad authority to determine licensure issuance. Art. III(C): "Upon the receipt of an application for licensure by a Teacher holding an Unencumbered Eligible License, the Receiving State shall determine which of the Receiving State's Eligible Licenses the Teacher is qualified to hold and shall grant such a license or licenses to the applicant. Such a determination shall be made in the sole discretion of the Receiving State's Licensing Authority and may include a determination that the applicant is not eligible for any of the Receiving State's Eligible Licenses."

In addition to the denial discretion in Art. III, Art. VI(A) of the Model Language provides: "Nothing in this Compact shall be deemed or construed to limit the authority of a Member State to investigate or impose disciplinary measures on Teachers according to the State Practice Laws thereof."

Article VII (D)(7)(c)—Fees

The Compact has no direct mechanism to impose a licensing fee on applicants; that determination is left to the member State licensing authorities in their respective discretion. While there may be dues assessed to the state, the Compact statute itself is not an allocation of a State's budget or general funds.

Article VII(D)(7)(d)—Delegation of Authority

The ability to appropriate or earmark funds is state constitution dependent. In North Dakota, the appropriation power appears to be delegated to the Legislature. Thus, the language "except by and with the authority of the Member State" refers to the Legislature's earmark, appropriation, or other funding mechanism.

Article X(C)—(F)—Effect of Termination in Event of Default

North Dakota may be removed from the compact in the event of default. However, the compact contains language to place guardrails on licensees who are attempting to obtain a license from the Defaulting State. This includes a six (6) month "offboarding" window wherein pending applications may be processed by the state and provide opportunity to the individual such that they may explore stand alone licensure requirements.

Article X(I)—Repeal of the ITMC

The issue raised in the initial letter is largely similar to that of the concern surrounding Art. X (c)-(f). While there are no real damages for repealing the compact, the Compact aims to provide an "off ramp" to states to follow so that individuals pursuing licensure under the Compact have opportunity to explore alternative avenues for licensure in the event of repeal.

It is my hope that the foregoing explanation serves to assuage concerns regarding the model legislation for the ITMC. Please feel free to reach out with any additional questions or concerns or to discuss further.

Sincerely,

A handwritten signature in cursive script that reads "Samantha T. Nance".

Samantha T. Nance
Counsel, Interstate Teacher Mobility Compact

RECEIVED
NOV 27 2024
ESPB



Letter of Support– SB 2341

Friday, February 7, 2025

Chairman Wobbema and Members of the Senate Workforce Development Committee,

For the record, my name is Cale Dunwoody, and I have the distinct pleasure of serving as the Vice President of Public Policy for the Fargo Moorhead West Fargo Chamber of Commerce (FMWF Chamber). On behalf of our more than 1,700 members, I respectfully offer testimony in opposition to Senate Bill 2341.

At the FMWF Chamber, our mission is to protect and promote business, inspire individuals, cultivate communities, and influence action. Adoption of the Interstate Compact for School Psychologists (ICSP) offers North Dakota opportunities for economic and workforce development.

- The ICSP offers support to military spouses. North Dakotan membership facilitates a smoother transition for these professionals, allowing licensed school psychologists from other compact states to practice in our schools. For those subject to relocation and frequent moves, the administrative burden and wait time of gaining proper licensing in each new state can be a barrier to workforce participation. Easing this process increases our military friendliness and supports our workforce.
- The proposed Interstate Compact will allow specialist or doctoral-level school psychologists licensed in North Dakota to practice in other compact member states and vice versa. This means students will have access to a high level of care and a greater number of providers – establishing a safe and supportive learning environment which is critical to their growth and development.

The economic, workforce, and educational benefits of this compact are why we urge the committee to give this bill a DO PASS recommendation.

Sincerely,

Cale Dunwoody
Vice President of Public Policy
Fargo Moorhead West Fargo Chamber of Commerce

Amber Fridley

School Psychologist, Dickinson Public Schools
Education Standards and Practices Board Teacher Representative
afridley@rocketmail.com

February 6, 2025

Senate Workforce Development Committee
North Dakota Legislative Assembly
600 E Boulevard Ave
Bismarck, ND 58505

Re: Opposition to SB 2341

Dear Members of the Senate Workforce Development Committee,

I am writing to express my opposition to SB 2341 as currently written. As a practicing school psychologist and a member of the Education Standards and Practices Board (ESPB), I have concerns regarding the impact of this legislation on our profession and the students we serve. While addressing the shortage of school psychologists is a critical issue, I do not believe this compact provides a viable solution for North Dakota.

ESPB has a long-standing record of efficiently processing licensure applications, including those from out-of-state applicants, ensuring that qualified professionals can enter the workforce without unnecessary delays. Additionally, ESPB has already taken proactive steps to support military families by waiving licensure fees for military members and their spouses. These existing measures demonstrate our state's commitment to reducing barriers for incoming professionals while maintaining high standards of practice.

Furthermore, ESPB's recertification requirements allow school psychologists to maintain national certification, ensuring that those serving in our schools meet rigorous professional standards. The current compact language raises concerns that it could supersede North Dakota's state laws and regulations, potentially compromising the quality and oversight of school psychology services within our schools. As a board member, I find this particularly troubling, as our state's ability to regulate the profession should remain under the authority of state agencies that understand our local needs and priorities.

From my perspective as a practicing school psychologist, I do not anticipate this compact bringing a significant increase in school psychologists to our districts. Many of my colleagues were born and raised in North Dakota and chose to work here because of their connection to the community, not because of licensure barriers. Instead of adopting an interstate compact that may not address the root causes of our workforce challenges, we should focus on strategies that directly support the recruitment and retention of school psychologists in our state, such as loan forgiveness programs, competitive salaries, and incentives for professionals to serve in rural areas.

Additionally, if the compact is adopted, there is concern regarding the financial impact on licensure costs. ESPB is a fee-funded agency, meaning any additional costs associated with joining and maintaining

participation in the compact would likely be passed on to license holders. This could result in increased fees for school psychologists without providing a meaningful benefit in addressing the workforce shortage.

North Dakota's schools need qualified school psychologists to support the growing needs of our students, but SB 2341 does not offer a meaningful solution to this challenge. I urge the committee to carefully consider the implications of this legislation and explore alternative approaches that better address the needs of our schools while preserving the integrity of our state's licensure process.

Thank you for your time and consideration.

Sincerely,

Amber Fridley
School Psychologist, Dickinson Public Schools
Education Standards and Practices Board Teacher Representative



Support for SB 2341
Senate Workforce Development Committee
Chairman Wobbema
February 6, 2025

Chairman Wobbema and Members of the Senate Workforce Development Committee,

My name is Brekka Kramer, President | CEO of the [Minot Area Chamber EDC](#) (MACEDC) and Executive Committee Member of the North Dakota Military Commission. On behalf of MACEDC and our over 600 member investors, I offer testimony in favor of Senate Bill 2341 to adopt the interstate compact for school psychologists.

The mission of MACEDC is to advocate for and invest in business activity by being a collaborative partner in the community, focused on improving quality of life for all. MACEDC has five key strategic pillars, which include workforce development and military support. We believe that Senate Bill 2341 as proposed would have a positive impact on the workforce environment of our great state by supporting school psychologists, specifically military spouses, in their endeavor to continue work during their relocation.

Making the licensing transition easier personally benefits the school psychologist by allowing them easier access to join the workforce and provide their services, ultimately improving the health and wellbeing of North Dakota citizens.

I am a proud member of the North Dakota Military Commission, which has a vision to make North Dakota the most military friendly state in the nation. As a long-term advocate for improved licensure and career portability for military service members and their spouses, I ask for your support of Senate Bill 2341 and am available for any questions you may have.

Thank you,

Brekka Kramer
Minot Area Chamber EDC President | CEO
North Dakota Military Commission Executive Committee Member



MANPOWER AND
RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1500

February 7, 2025

Senate Workforce Development Committee
Chairman Wobbema
Fort Lincoln Room
Bismarck, ND 58505

RE: SB 2341 – Adoption of the Interstate Compact for School Psychologists

Dear Chairman Wobbema and Members of the Committee:

On behalf of military families and the Department of Defense, I am writing in support of the policy changes expressed in SB 2141, a bill that addresses licensing issues affecting our Service members and their families and a measure to reduce barriers for employment in North Dakota. I would like to thank you for considering this issue during the 2025 session.

My name is Michelle Richart and I am the Midwest Region Liaison for the Defense-State Liaison Office, operating under the direction of Under Secretary of Defense for Personnel and Readiness, and the Deputy Assistant Secretary for Military Community and Family Policy. We represent the Department and work with state leaders across the country who are concerned for troops and their families' welfare by harmonizing state and federal law and regulation on policy problems of national significance. These are identified by the Office of the Secretary of Defense, the Military Departments, and the National Guard Bureau as areas where states can play a crucial role.

The Department of Defense has advocated for improved licensure and career portability for military Service members and their spouses for several years. Military spouses are disproportionately affected by state-specific professional licensing requirements that can cause delays and gaps in employment, with thirty-six percent requiring a state license to practice in their professions and an annual cross-state relocation rate more than ten times higher than their civilian counterparts. Accordingly, military spouses experience unemployment and underemployment at significantly higher rates than their civilian peers.

As our military members and their families move from state-to-state, obtaining licenses in order to obtain employment is very important. These compacts will serve to relieve one of the many stressors of a military move and support military families' financial and personal well-being.

We are grateful for the tremendous effort that North Dakota has historically made to support our military members and their families and appreciate the opportunity to support the Interstate Compact for School Psychologists. Again, thank you for your support of this issue and thank you to Senator Axtman, Senator Boschee, and Senator Roers for introducing this policy change. Please feel free to contact me with any questions you might have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michelle Richart".

MICHELLE RICHART
Midwest Region Liaison
Defense-State Liaison Office

2025 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

SB 2341
2/20/2025
10:15 a.m.

Relating to the adoption of the interstate compact for school psychologist.

10:14 a.m. Chairman Wobbema called the meeting to order.

Members Present: Chairman Wobbema, Vice-Chairman Axtman, Senator Boschee, Senator Larson, Senator Powers.

Discussion Topics:

- Considerations for compact participation

10:18 a.m. Senator Boschee moved Do Pass.

10:18 a.m. Axtman seconded the motion.

Senators	Vote
Senator Mike Wobbema	Y
Senator Michelle Axtman	Y
Senator Josh Boschee	Y
Senator Diane Larson	Y
Senator Michelle Powers	Y

Motion passed 5-0-0.

Senator Boschee will carry the bill.

10:20 a.m. Chairman Wobbema closed the hearing.

Andrew Ficek, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2341 ([25.0984.01000](#))

Workforce Development Committee (Sen. Wobbema, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2341 was placed on the Eleventh order on the calendar. This bill affects workforce development.

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2341

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2341
3/24/2025

A BILL for an Act to create and enact a new chapter to title 15.1 of the North Dakota Century Code, relating to the adoption of the interstate compact for school psychologists.

2:30 p. m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, C. Brown, T. Brown, Finley-DeVile, Grindberg, Kasper, D. Ruby, Schauer, Vollmer

Members Absent: Representatives Koppelman, Schatz

Discussion Topics:

- Licensure mobility
- Drafting the formal compact
- Military family's portability

2:30 p.m. Senator Michelle Axtman, District 7, Bismarck, ND, introduced, testified and submitted testimony #43637.

2:37 p.m. Lieutenant Colonel Jay Sheldon, Administrator, ND Military Commission, North Dakota National Guard, testified in favor and submitted testimony #43333 and #43677.

2:43 p.m. Rebecca Pitkin, Executive Director, North Dakota Education Standards and Practices Board, testified in opposition and submitted testimony #43536.

Additional Written Testimony:

Michelle Richart, Midwest Region Liaison, United States Department of Defense, submitted testimony in favor #43423.

Cale Dunwoody, Fargo Moorhead West Fargo Chamber of Commerce, submitted testimony in favor #43556.

Sammi Weber, President, North Dakota Student Association, submitted testimony in favor #43640.

2:56 p.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

TESTIMONY OF
LIEUTENANT COLONEL JAY SHELDON
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
HOUSE INDUSTRY, BUSINESS, AND LABOR COMMITTEE
24 MARCH 2025
SENATE BILL 2341

Chair Warrey and Members of the Committee,

My name is Jay Sheldon, and I am here representing the North Dakota Military Commission to express support for SB 2341, which would allow North Dakota to join an interstate licensing compact for school psychologists.

North Dakota is home to a significant number of military families that have some unique challenges that come with frequent relocations. For military spouses who are licensed school psychologists, moving to a new state can mean facing licensure requirements that may delay their ability to contribute to our schools and support our children's mental health needs.

By joining the school psychology licensing compact, North Dakota can facilitate a smoother transition for these professionals, allowing licensed school psychologists from other compact states to practice in our schools with greater ease.

Supporting this compact not only helps military families but also enhances our educational environment by providing access to highly qualified school psychologists who can offer critical support to students, teachers, and families. It will help ensure that North Dakota schools have the resources they need to foster a safe and supportive learning environment.

This legislation demonstrates North Dakota's commitment to being a military-friendly state and reflects our dedication to the mental health and educational success of all students. By reducing barriers for school psychologists, we can create a more effective and responsive educational system that meets the needs of our diverse student population.

On behalf of the North Dakota Military Commission, I ask you to support SB 2341.

Thank you for your time and consideration.



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1500

March 24, 2025

The Honorable Representative Warrey
Chair, House Industry, Business and Labor Committee

Remarks of
Michelle Richart
Midwest Regional Liaison
United States Department of Defense-State Liaison Office

Support of: SB 2341 – Interstate Compact for School Psychologists

Testimony

The Department of Defense is grateful for the opportunity to support policy changes proposed in North Dakota SB 2341, regarding the Interstate Compact for School Psychologists, a measure to reduce barriers to social work licensing and employment in North Dakota.

My name is Michelle Richart and I am the Midwest Regional Liaison for the Defense-State Liaison Office, operating under the direction of Under Secretary of Defense for Personnel and Readiness. We represent the Department and work with state leaders across the country who are concerned for troops and their families' welfare by harmonizing state and federal law and regulation on policy problems of national significance. These are identified by the Office of the Secretary of Defense, the Military Departments, and the National Guard Bureau as areas where states can play a crucial role.

The Department of Defense has advocated for improved licensure and career portability for military Service members and their spouses for several years. Military spouses are disproportionately affected by state-specific professional licensing requirements that can cause delays and gaps in employment, with thirty-six percent requiring a state license to practice in their professions and an annual cross-state relocation rate more than ten times higher than their civilian counterparts. Accordingly, military spouses experience unemployment and underemployment at significantly higher rates than their civilian peers.

State policies enacting interstate licensure compacts, such as the Interstate Compact for School Psychologists, relieve one of the many stressors of frequent military moves by enabling military spouses to transfer their licenses more quickly across state lines and obtain employment as soon as they relocate to a new state. These policies facilitate greater career sustainability for military spouses, improving their families' financial security and overall resilience.

Interstate licensure compacts benefit not only military spouses, but also apply to all eligible professionals to include active-duty Service members, members of the reserve components, veterans, and civilians. By continuing to enact these beneficial policies, North Dakota can expand the opportunity to increase its workforce available to serve the local community while

continuing in its great tradition of providing an extraordinary degree of support to our military families as they move into and out of the state.

In closing, the Department of Defense is very appreciative of North Dakota's ongoing commitment and efforts to support members of the military and their families who sacrifice much in service to our country. Thank you for providing me the opportunity to provide comments in support of this policy proposal.

Please feel free to contact me with any questions you might have.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Michelle Richart", written in a cursive style.

MICHELLE RICHART
Midwest Regional Liaison
Defense-State Liaison Office

SB 2341
House Industry, Business, and Labor Committee
March 24, 2025
Education Standards and Practices Board

Good afternoon, Chairman Warrey and members of the Committee. My name is Rebecca Pitkin, and I am the Executive Director of the Education Standards and Practices Board (ESPB). I represent our Board in opposition to SB 2341, relating to a School Psychologist Interstate Compact. The Board does not believe that this bill is the solution to establishing a timely and efficient pathway to licensure for school psychologists. ESPB was part of a Board study (SB2249, 68th Legislative Assembly), which examined Board practices for out of state practitioners and you heard testimony last week regarding Senate Bill 2341. The study revealed the following results:

1. Once materials are submitted, ESPB issues the license within 2 days.
2. Our out of state educator license (OSEL) administrative rules make the transition very smooth and there is not burdensome red tape.
3. ESPB waived fees for military members and their spouses in 2018. To date, no school psychologist has applied.
4. ESPB promulgated rules to allow national certification to count for reeducation credits, thus raising the standards for our school psychologists.

The Board articulated several other concerns with the bill:

1. Out of state licensed individuals coming to North Dakota do not have to maintain their other state license as required in the bill; this is a cost to licensees (Article VII-1a). ESPB does not require an applicant coming to our state maintain their other state license. Page 6, line 3 states a member state can set and collect a fee for an equivalent license so there is not a "compact" license that can be taken from state to state. Each state also requires a background check which is no different from our current practices. The bill also states an individual who wants to renew a license under the compact must complete a background check. ESPB does not require a complete background check for renewal but instead, self-reporting and we review the Clearinghouse.
2. Although we have received information of the estimated fiscal impact of membership from the Council of State Governments (CCGS), there are not clear details regarding financing of the commission, nor are there exact requirements of participation. There are also potential travel and attorney fees. Our Board believes without concrete financial information, it is not wise to use licensure fees for the unknown. In addition, fees would be assessed to the applicant as we are a fee funded agency, and this could be a significant new financial burden for the 82 school psychologists and eight interns practicing in our state.

3. Article XIII states any laws, statutes, regulations, or other legal requirements in a member state in conflict with the compact are superseded to the extent of the compact. This is a Board concern.
4. The language on page 11, line 15 relating to closed meetings conflicts with our §44.04-17.1 statute relating to open meetings.
5. The language in the bill increases licensing requirements; it does not reduce them.
6. Our Board wonders what the barriers currently are, as ND has one of the nation's most flexible Out of State Educator licensing systems and the language in the bill will not create additional school psychologists.
7. ESPB requires no administrative fees immediately after a move.
8. A school psychologist moving to a compact state would still have to apply and pay for the license in that state.

ESPB has worked collaboratively with the North Dakota Association of School Psychologists (NDASP) to problem solve and the NDASP developed a scope of practice, now in our administrative rules. We also worked collaboratively with NDASP to develop rules for school psychologist interns; this allows interns to be in schools assisting school psychologists, to assist the shortage, something not prevalent in other states. Our Board desires to continue the conversation about ways we can increase the number of school psychologists in North Dakota. Our Board believes the compact, as written, will create a burden to our current practices, and potentially create problems which do not exist. There are currently 157 licensed school psychologists. Not all of them are practicing in schools as some work in private settings. Two practice out of state, and we currently have 8 individuals from out of state practicing in North Dakota.

Enclosed in this testimony is a letter from the attorney general's office regarding the Interstate Teacher's Compact, as well as the response from the Interstate Teacher Mobility Compact legal counsel. Many of the concerns expressed in the letter also apply to SB 2341. Although this letter was submitted when our board reviewed the Interstate Teacher Compact, the statements are relevant and according to Jimmy Adams, the executive director of the National Association of State Directors of Teacher Education and Certification (NASDTEC), no state has adopted the School Psychologist Compact without first adopting the Teacher Compact. In the Senate we heard testimony from Adam Diersling, who indicated NASDTEC would house some of the data, thus reducing the cost, and we appreciate this, as we are a member of NASDTEC, but there are still too many unknowns to become a member of the Compact at this point in time. Working together to impact the teacher shortage is needed; SB 2141 in its current format is not the solution. I am happy to respond to any questions.

Rebecca Pitkin, PhD

Executive Director

701.590.1861

August 29, 2024

North Dakota Military Commission
c/o Administrator LTC Jay G. Sheldon
North Dakota National Guard
Strategy and Policy Officer

via email only jay.g.sheldon.mil@army.mil

Dear LTC Sheldon:

I serve as the General Counsel for the Education Standards and Practices Board (“ESPB” or “Board”). On July 11, 2024, you reached out to Dr. Rebecca Pitkin, Executive Director of ESPB and indicated that the North Dakota Military Commission (“NDMC”) intended to pursue the Interstate Teacher Mobility Compact (“Compact”) during the 2025 North Dakota Legislative Session, and requested any feedback on issues or concerns. ESPB appreciates the opportunity to submit additional information and follow up concerns regarding the Compact, and I submit this letter on the Board’s behalf.

First, I’d like to bring your attention to a constitutional concern regarding Article VII, Section C which creates a Commission that would subsequently implement vast regulations that would have “standing as statutory law” and have “the force of law and shall be binding in all Member States” without ever coming before the North Dakota Legislature for adoption or approval. The N.D. Supreme Court has recently held that only the North Dakota Legislature has the power to create statutory law and it may only delegate the authority to administer or execute law if the delegated power is “constrained by reasonably clear guidelines and sufficiently objective standards” with “procedural safeguards” against “arbitrary action” in place.¹ Only regulations promulgated through the Administrative Agency Practices Act, codified at N.D.C.C. ch. 28-32, may be adopted for use of regulatory purposes² and it is considered an unconstitutional delegation of legislative authority for statutes to adopt future laws, rules, or regulations.³ The concern is the Compact gives

¹ North Dakota Legislative Assembly v. Burgum, 2018 ND 189.

² Little v. Spaeth, 394 N.W.2d 700 (ND 1986).

³ State v. Julson, 202 N.W.2d 145 (ND 1972) (“statutes adopting laws or regulations of other states, the federal government, or any of its agencies, effective at the time of adoption are valid, but attempted adoption of future laws, rules or regulations of other states, or of the federal government, or of its commissions and agencies generally have been held unconstitutional as an unlawful delegation of legislative power.”); see also McCabe v. N.D. Worker’s Comp., 567 N.W.2d 201 (N.D. 1997) (a statute that attempts to incorporate future changes of another statute, code, regulation, standard, or guideline is an unconstitutional delegation of legislative power and thus courts will interpret “most recent” and “most current” as that in existence at the time of the statutory enactment). See also Weber v. Weber, 512 N.W.2d 723 (concurring opinion recognizing that a regulatory board may not use of version of an ethical code it has not legally adopted in North Dakota via the Administrative Agencies Practices Act).

the Commission authority to go beyond administering and executing the Compact enacted into statutory law without clear guidelines and standards, and no procedural safeguard to protect against arbitrary action. Under current North Dakota case law, it would be an unconstitutional delegation of legislative power to adopt unknown and unidentifiable future rules of the Commission. ESPB would therefore request the Compact language be amended to recognize any rules would be advisory only and would only have the force and effect of law if specifically adopted by Member States via the state's own administrative agencies practices act.

In addition, Article X on Oversight, Dispute Resolution, and Enforcement raises several concerns. The Compact provides that it does not waive the State's sovereign immunity, see Article VII(A)(2), but then contradicts itself by allowing the Commission to sue a member state for money damages, dictate venue, jurisdiction, and promulgate rules for mediation and binding dispute resolution. Unless otherwise specified by the North Dakota Legislature, North Dakota does not consent to jurisdiction and venue outside of the state.⁴ Since the Compact is silent on the specific venue, "rules" implemented by the Commission conflicting with our State Constitution and law regarding jurisdiction and venue would be unenforceable.⁵ Furthermore, North Dakota law requires the approval of the Attorney General and director of the Office of Management and Budget to consent to arbitration, and will only be given after a complaint has been made.⁶ Any such contradictory "rule" of the Commission would therefore, again, be unenforceable.⁷ Finally, the provision regarding the payment of costs and fees of an unknown, unspecified amount is void under N.D.C.C. § 28-26-04.

Finally, we also have the following general concerns, questions, and comments, which were discussed at the August 8, 2024, ESPB Meeting with a representative of NASDTEC, however a majority of the responses were dependent upon what the representative anticipated the Commission would adopt as rules and did not resolve the concerns:

- Article II- repeatedly refers to licensure of teachers of preschool children and licensure of teachers only in public educational settings. North Dakota does not regulate or license preschool educators in the same manner as teachers, and teaching licenses issued by ESPB apply to teachers in both public and private K-12 schools. Will private school teachers not be eligible for these Compact licenses?⁸
- Article II(R)- ESPB also issues licenses and certificates to individuals who provide services outside of those who are traditionally thought of as classroom teachers, including school psychologists who have their own Compact. Does this interfere with other Compacts?

⁴ N.D. Const. art. 1, § 9; N.D.C.C. § 54-01-18; N.D.C.C. § 32-12-02; N.D.C.C. § 32-12.2-10.

⁵ Amica Life Insurance Co. v. Wertz, 462 P.3d 51 (CO 2020).

⁶ N.D.C.C. § 32-12.2-05.

⁷ Amica Life Insurance Co. v. Wertz, 462 P.3d 51 (CO 2020).

⁸ See Art. II(D), (K), (R), and (S).

- Article III(C)- requires that a Receiving State grant a license to an applicant who holds an Unencumbered Eligible License issued by a Member State which is equivalent to the license held by the Teacher in any other Member State. Currently, there are statutes, such as N.D.C.C. § 15.1-13-26, which serve as a permanent denial of a teaching license. Other states may not have the same or similar statutes and may have issued a license. Is North Dakota going to retain the discretion to deny for reasons other than coursework, degrees, testing, etc.? What about CHRI?
- Article VII(D)(7)(c) – impose fees – There is no estimate of the fees the Member State will be responsible for. If this fee is high, it could impact licensure fees for teachers in the state.
- Article VII(D)(7)(d) – “except by and with the authority of the Member State.” There is no indication whose authority this is referring to-the delegate of the Member State? Legislature? ESPB?
- Article VII(D)(8) – the North Dakota Legislature cannot provide immunity from suit and liability for Commission employees without being politically accountable for and defining the contours of the scope of employment of Commission employees. The purported extension of this immunity to persons that possessed a mere reasonable belief they were acting within the scope of employment further fails to properly confine the classification to legislatively identified and limited activities.
- Article X(C) – (F) – only the North Dakota Legislature could repeal the Compact, therefore it is unclear what effect this “termination” would have.
- Article X(I) – the North Dakota Legislature can repeal the Compact during session and without a law in place, any sort of “enforcement” beyond the repeal date would be unenforceable.

Additionally, ESPB would note that it was the first regulatory board to, without legislative requirement, waive licensure fees for military members and spouses, and that ESPB maintains an extremely expedited licensure turnaround time. Therefore, it is unclear what North Dakota would gain from the entry into this Compact.

ESPB appreciates your dedication to our military members, and this opportunity to provide feedback on this Compact. Please reach out with any further questions.

Sincerely,

Allyson M. Hicks

LTC Jay Sheldon
August 29, 2024
Page 4

Assistant Attorney General
General Counsel
Education Standards and Practices Board

cc: Board of Occupational Therapy Practice'

November 21, 2024

Office of the Attorney General
General Counsel Division
ATTN: Allyson M. Hicks
600 E. Boulevard Ave Dept. 125
Bismarck, ND 58505-0040

RE: North Dakota Military Commission Interstate Teacher Mobility Compact

Ms. Hicks:

This letter is in response to the letter my client received dated September 6, 2024, regarding the constitutionality of the Interstate Teacher Mobility Compact ("ITMC"). While North Dakota's ESPB is a leader in Military Licensing fees, the Military Commission Interstate Teacher Mobility Compact aims to provide uniform mobility to individuals transitioning to the compact's member states. The U.S. Constitution (Art. 1, Sec. 10, Clause 3) grants states the right to enter into multistate agreements for their common benefit.

As you are aware, the Art. VII, Section 10 of the North Dakota Constitution, provides that:

Agreements, including those for cooperative or joint of administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

Furthermore, North Dakota law provides that the delegation of legislative power is subject to specific limitations:

1. The Legislature may not delegate its purely legislative powers unless expressly authorized by the State Constitution;
2. The Legislature can delegate the authority to execute laws it enacts, provided there are adequate standards and procedural safeguards;
3. The power to ascertain facts that bring a law to operation is not an unconstitutional delegation as long as the law sets forth clear guidelines; and
4. The Legislature may delegate even purely legislative powers to political subdivisions if authorized by the state constitution.

The North Dakota Supreme Court has consistently held that the Legislature may delegate certain powers, provided these delegations do not involve the creation of new laws but rather the execution of existing laws. This principle allows for the delegation of authority to enter into

RECEIVED

NOV 27 2024

ESPB

interstate compacts, as long as the compact's execution adheres to the provisions set by the Legislature.¹

The court has also recognized the necessity of delegating powers in complex areas, provided there are adequate standards and procedural safeguards. This modern view of the non-delegation doctrine is crucial for understanding the legality of interstate compacts, which often involve intricate and multi-jurisdictional issues.²

Regarding interstate compacts specifically, the North Dakota Supreme Court has upheld such delegations, provided they do not increase the political power of the states in a manner that encroaches upon or interferes with federal supremacy. This aligns with the U.S. Supreme Court's interpretation of the Compact Clause, which limits agreements that tend to increase the political power of the states at the expense of federal supremacy.³

Furthermore, the Legislature may delegate even purely legislative powers to political subdivisions if authorized by the state constitution. This provision supports the delegation of authority to enter into interstate compacts, as long as the delegation is within the constitutional framework.⁴

I. Article VII, Section C—Free Standing Commission

Even though the subject statute creates a commission, the Legislature is assenting to its creation. The North Dakota Legislature maintains the ability to delegate their regulatory authority to Compacts.⁵ North Dakota is a member of many interstate compacts, including those which the legislature have delegated state rulemaking authority: the Interstate Medical Licensure Compact, the Nurse Licensure Compact, the Physical Therapy Licensure Compact, the Counseling Compact, the Psychology Interjurisdictional Compact, the Emergency Medical Services Personnel Licensure Compact, the Interstate Compact for Adult Offender Supervision, the Interstate Compact for Juveniles, the Military Interstate Children's Compact, and others.⁶

A state has a "general right of sovereignty" to reach an agreement with a fellow state and enter a compact that "become[s] conclusive upon all the subjects and citizens thereof, and bind[s] their rights." *Pooler v. Lessee of Fleeger*, 36 U.S. 185, 209 (1837). Each state's "acceptance of the compact" is considered the "act of the people" of that state "in their sovereign character." *Green v. Biddle*, 21 U.S. 1, 88 (1823). Thus, by enacting a compact, member states are addressing a policy problem through shared or joint exercise of sovereignty. This is a sovereign choice by each state." Michael L. Buenger *et al.*, *The Evolving Law and Use of Interstate Compacts*, 50 (2d ed. 2016).

¹ *Ralston Purina Co. v. Hagemeister*, 188 N.W.2d 405 (N.D. 1971)

² *Trinity Medical Ctr. v. North Dakota Bd. of Nursing*, 399 N.W.2d 835 (N.D. 1987)

³ *Gray v. N.D. Game & Fish Dep't.*, 2005 ND 204 (N.D. 2005)

⁴ *County of Stutsman v. State Historical Soc'y*, 371 N.W.2d 321 (N.D. 1985)

⁵ See *Trinity Medical Ctr. v. North Dakota Bd. of Nursing*, *supra*.

⁶ See "North Dakota" National Center for Interstate Compacts, accessed via <https://compacts.csg.org/state/north-dakota/>. Last accessed on October 16, 2024.

And in compacting together, states may assign administrative or regulatory authority to an interstate commission created under the compact.⁷

The Teaching Compact presented does not promulgate or delegate any more authority than the compacts named above which the North Dakota Legislature have already joined.

II. Dispute Resolution

When the North Dakota Legislature adopts the compact, the legislature is authorizing the dispute resolution procedures as the compact would function as a statute. The compact would facially supersede the law but only to the extent of the conflict. Again, the compacts listed above to which North Dakota is a member state contain similar language regarding dispute resolution procedures.

III. General Concerns and Comments

Article II—Preschool and Private School Teachers

Inherently, the compact governs teacher licensure, exclusive of whether that teacher chooses to utilize their licensure in a public or private setting. Similar to the North Dakota statute⁸ on Teacher Licensure, there is no strict delineation between private and public schools within the compact. However, as long as the license held by a private school teacher grants the authority to teach in a public school, they would be deemed eligible for reciprocity under the compact. Current employment does not dictate eligibility—licensure does. Early education licenses would not be required to be eligible under the ITMC if the member state does not license them to the level of eligibility described in Art. II of the Compact.

Article II(R)—Licensure for Individuals who Provide Services Outside of Teaching

Succinctly, this compact will not interfere with other interstate compacts. The ITMC specifically covers teachers that provide instruction to a specific population, age or grade band, or on a subject area as the teacher of record. While other professionals in schools may hold a license issued by the same agency, they would not be eligible for the compact. The ITMC also would not

⁷ See also *U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978) (upholding a compact creating an interstate tax commission without congressional consent); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951) (upholding West Virginia's entry into a water-sanitation compact creating an interstate commission, against arguments that it violated the state's constitution by delegating legislative power and the police power and binding future legislatures to make appropriations) *rev'g* 134 W. VA. 278 (1950); *Scott v. Commonwealth*, 54 Va. App. 142, 147-50 (2009) (addressing arguments under the Interstate Compact for Adult Offender Supervision and rules promulgated by its Interstate Commission for Adult Offender Supervision); *Buenger et al.* at 128 ("neither the establishment of [compact commissions] nor their exercise of regulatory power is legally problematic with respect to constitutional prohibitions against the delegation of state authority").

⁸ N.D. 67.1-02-02

interfere with any current or future compacts that deal with the licensure of other education professionals (including the ICSP).

Article III(C)—Denial Discretion

As stated in the following provisions of the ITMC model language, the licensing agency maintains broad authority to determine licensure issuance. Art. III(C): "Upon the receipt of an application for licensure by a Teacher holding an Unencumbered Eligible License, the Receiving State shall determine which of the Receiving State's Eligible Licenses the Teacher is qualified to hold and shall grant such a license or licenses to the applicant. Such a determination shall be made in the sole discretion of the Receiving State's Licensing Authority and may include a determination that the applicant is not eligible for any of the Receiving State's Eligible Licenses."

In addition to the denial discretion in Art. III, Art. VI(A) of the Model Language provides: "Nothing in this Compact shall be deemed or construed to limit the authority of a Member State to investigate or impose disciplinary measures on Teachers according to the State Practice Laws thereof."

Article VII (D)(7)(c)—Fees

The Compact has no direct mechanism to impose a licensing fee on applicants; that determination is left to the member State licensing authorities in their respective discretion. While there may be dues assessed to the state, the Compact statute itself is not an allocation of a State's budget or general funds.

Article VII(D)(7)(d)—Delegation of Authority

The ability to appropriate or earmark funds is state constitution dependent. In North Dakota, the appropriation power appears to be delegated to the Legislature. Thus, the language "except by and with the authority of the Member State" refers to the Legislature's earmark, appropriation, or other funding mechanism.

Article X(C)—(F)—Effect of Termination in Event of Default

North Dakota may be removed from the compact in the event of default. However, the compact contains language to place guardrails on licensees who are attempting to obtain a license from the Defaulting State. This includes a six (6) month "offboarding" window wherein pending applications may be processed by the state and provide opportunity to the individual such that they may explore stand alone licensure requirements.

Article X(I)—Repeal of the ITMC

The issue raised in the initial letter is largely similar to that of the concern surrounding Art. X (c)-(f). While there are no real damages for repealing the compact, the Compact aims to provide an "off ramp" to states to follow so that individuals pursuing licensure under the Compact have opportunity to explore alternative avenues for licensure in the event of repeal.

It is my hope that the foregoing explanation serves to assuage concerns regarding the model legislation for the ITMC. Please feel free to reach out with any additional questions or concerns or to discuss further.

Sincerely,

A handwritten signature in cursive script, appearing to read "Samantha T. Nance".

Samantha T. Nance

Counsel, Interstate Teacher Mobility Compact

RECEIVED

NOV 27 2024

ESPB



Letter of Support– SB 2341

Monday, March 24, 2025

Chairman Warrey and Members of the House industry, Business and Labor Committee

For the record, my name is Cale Dunwoody, and I have the distinct pleasure of serving as the Vice President of Public Policy for the Fargo Moorhead West Fargo Chamber of Commerce (FMWF Chamber). On behalf of our more than 1,700 members, I respectfully offer testimony in opposition to Senate Bill 2341.

At the FMWF Chamber, our mission is to protect and promote business, inspire individuals, cultivate communities, and influence action. Adoption of the Interstate Compact for School Psychologists (ICSP) offers North Dakota opportunities for economic and workforce development.

- The ICSP offers support to military spouses. North Dakotan membership facilitates a smoother transition for these professionals, allowing licensed school psychologists from other compact states to practice in our schools. For those subject to relocation and frequent moves, the administrative burden and wait time of gaining proper licensing in each new state can be a barrier to workforce participation. Easing this process increases our military friendliness and supports our workforce.
- The proposed Interstate Compact will allow specialist or doctoral-level school psychologists licensed in North Dakota to practice in other compact member states and vice versa. This means students will have access to a high level of care and a greater number of providers – establishing a safe and supportive learning environment which is critical to their growth and development.

The economic, workforce, and educational benefits of this compact are why we urge the committee to give this bill a DO PASS recommendation.

Sincerely,

Cale Dunwoody
Vice President of Public Policy
Fargo Moorhead West Fargo Chamber of Commerce

Senate Bill 2341
Sen. Michelle Axtman
House Industry, Business, and Labor Committee
March 24, 2025

In May, 2022, the National Association of School Psychologists was notified of its selection for a grant to receive technical assistance and support in developing an interstate compact by the Department of Defense in partnership with the Council of State Governments (CSG). This represents an enormous milestone in efforts to improve licensure portability and the ability of school psychologists to more easily work across state lines.

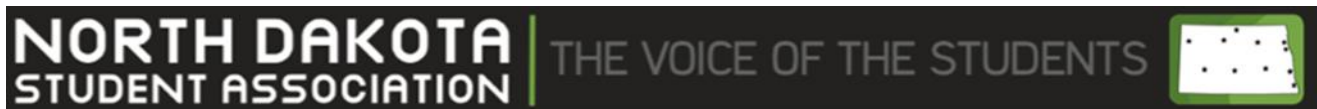
The introduction of the Interstate Compact for School Psychologists (ICSP) will **facilitate licensure mobility for the profession**, which can improve access to services and care for school-age children. Schools are facing a national shortage of school psychologists.

The ICSP will allow school psychologists to use an eligible license held in a compact member state to be granted an equivalent license in another compact member state, **lowering barriers to licensure mobility, and increasing access to practice across state lines.**

The interstate compact has no impact on scope of practice, and state laws related to practice remain unaffected. Furthermore, states that eventually join the compact retain authority to regulate the profession as they do currently. However, the ICSP significantly reduces many of the logistical burdens for obtaining authority to work across state lines.

A few additional points:

- benefits of being an early adopter
- availability of grants for early fees
- opt in license option
- increased visibility to attract tele services

**SB 2341**

March 24, 2025

Sammi Weber, North Dakota Student Association

Sammi.Weber@und.edu

Chair Warrey and Members of the Committee,

My name is Sammi Weber, and I am the President of the North Dakota Student Association. I am writing to express my support for Senate Bill 2341 on behalf of the NDSA.

The North Dakota Student Association (NDSA) is a student organization established in 1969 that is dedicated to ensuring that students have a voice in policy that affects Higher Education. The NDSA consists of delegates from each of the 11 public institutions that meet monthly to engage students in Higher Education policy in North Dakota. Our mission is to empower students, foster collaboration between students across campuses in the North Dakota University System (NDUS), and to advocate on issues of higher education in support of access, affordability, quality, and the student experience.

The NDSA has been long committed to advocating for student mental health and well-being. On October 26, 2024, the NDSA General Assembly passed [NDSA-01-2425](#): A Resolution in Support of the NDSA's Legislative Priorities for the 25-27 Biennium. One of our priorities outlined in the resolution states is "expanding mental health resources on NDUS campuses." A critical step toward achieving this goal is North Dakota's participation in the interstate compact for school psychologists, which would help increase access to qualified mental health professionals for students across the state.

The North Dakota University System has faced significant challenges in staffing counselors and psychologists—not due to a lack of effort by institutions of the state, but because of a nationwide shortage. According to U.S. Department of Labor, the occupation growth rate for psychologists

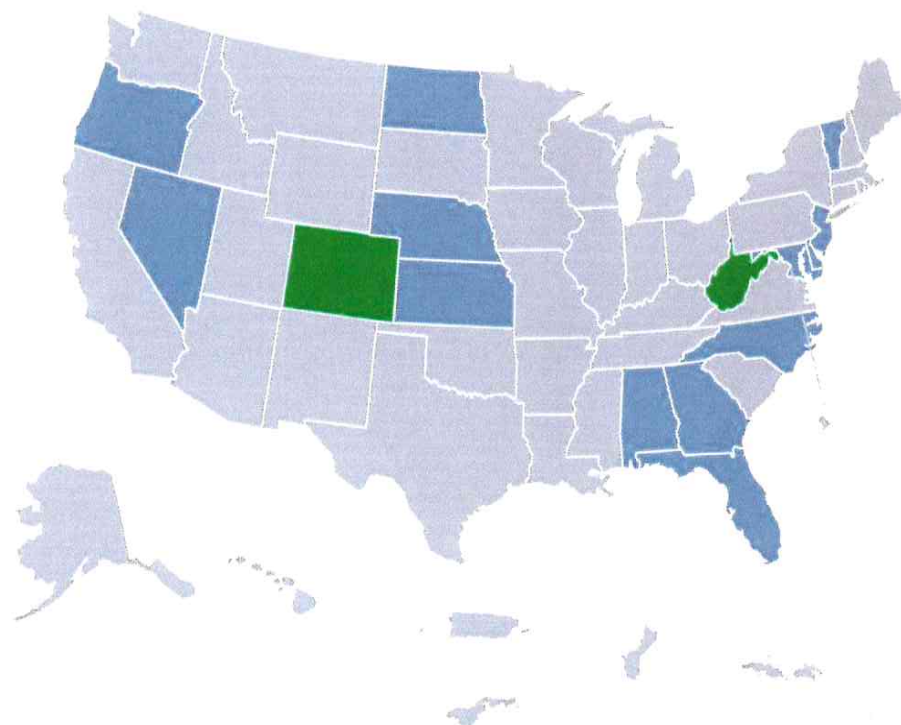
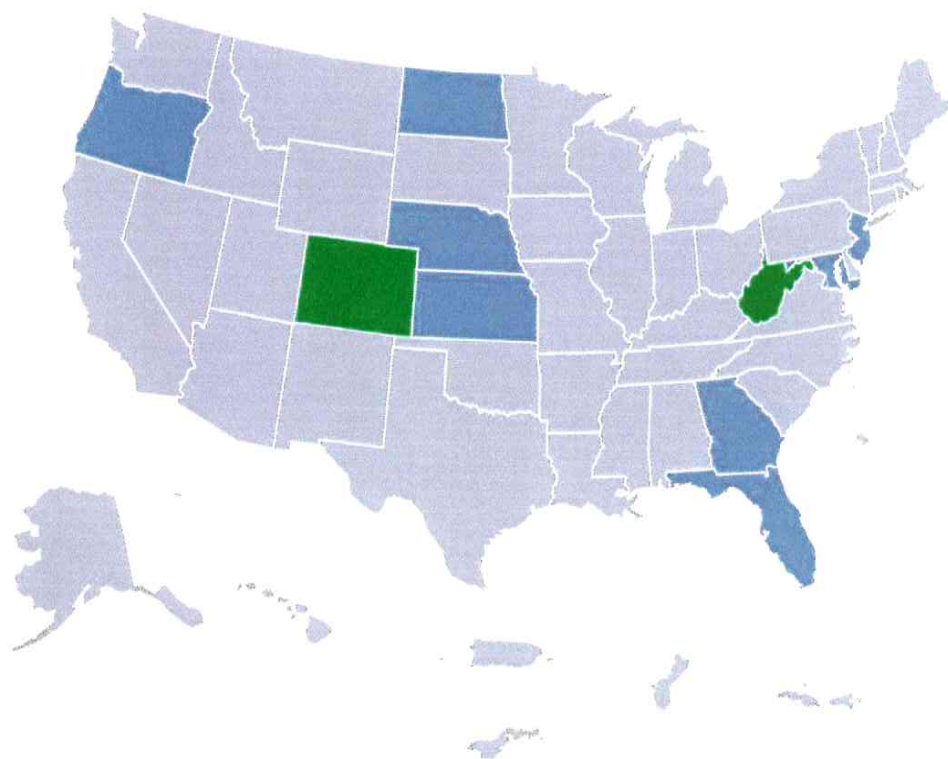
from 2023 to 2033 is projected to be 7%, which is 3% higher than the average growth rate across all occupations (U.S. Bureau of Labor). As the need for school psychologists continues to rise, North Dakota must take proactive steps to attract these essential professionals. SB 2341 offers a solution by easing licensure requirements for school psychologists transferring from other states. By eliminating barriers to equivalent licensure, North Dakota can become a more attractive place for mental health professionals, ultimately strengthening support systems for students.

Increased access to school psychologists and mental health resources, students will receive the support they need more quickly and effectively. This will lead to a decline in mental health issues, reducing crises on NDUS campuses and improving student well-being. By prioritizing initiatives like SB 2341, North Dakota can create a healthier, more supportive environment where students can thrive academically and personally.

On behalf of the NDSA, I respectfully ask the committee for a DO PASS recommendation on SB 2341.

References

“Psychologists.” *U.S. Bureau of Labor Statistics*, U.S. Bureau of Labor Statistics, 29 Aug. 2024, www.bls.gov/ooh/life-physical-and-social-science/psychologists.htm.



2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2341
4/2/2025

A BILL for an Act to create and enact a new chapter to title 15.1 of the North Dakota Century Code, relating to the adoption of the interstate compact for school psychologists.

9:35 a. m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives T. Brown, Grindberg, Kasper, Koppelman, D. Ruby, Schauer, Schatz, Vollmer

Members Absent: Representatives Bahl, C. Brown, Finley-DeVille

Discussion Topics:

- Early adopter benefits
- Contracted services

9:36 a.m. Senator Michelle Axtman, District 7, Bismarck, ND, available for questions.

9:52 a.m. Representative Koppelman moved Do Not Pass.

9:52 a.m. Representative Schatz seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	N
Representative Landon Bahl	AB
Representative Collette Brown	N
Representative Timothy Brown	Y
Representative Lisa Finley-DeVille	AB
Representative Karen Grindberg	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Mike Schatz	Y
Representative Austin Schauer	AB
Representative Daniel R. Vollmer	Y

Motion passed 9-2-3

9:54 a.m. Representative Grindberg will carry the bill.

House Industry, Business and Labor Committee

SB 2341

04/02/25

Page 2

9:54 a.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2341 ([25.0984.01000](#))

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **DO NOT PASS** (9 YEAS, 2 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). SB 2341 was placed on the Fourteenth order on the calendar.