

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EDUCATION SERVICES COMMITTEE

Monday, October 23, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Senators Ray Holmberg, Tim Flakoll, Pete Naaden, Rolland W. Redlin; Representatives Michael D. Brandenburg, Bruce A. Eckre, Lyle Hanson, RaeAnn G. Kelsch, David Monson, Darrell D. Nottestad, Dorvan Solberg, Laurel Thoreson

Members absent: Senators Layton Freborg, Jerome Kelsh, David O'Connell

Others present: See Appendix A

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

The committee reviewed the bill draft to rewrite those provisions of Title 15 of the North Dakota Century Code which pertain to elementary and secondary education.

EDUCATION STANDARDS AND PRACTICES BOARD

Section 15.1-13-15

Chairman Holmberg said since the last draft that the committee reviewed, Section 15.1-13-15 was added. He said it requires applicants for teaching licenses to take an oath or affirmation supporting the Constitution of the United States and the Constitution of North Dakota and to promise to faithfully discharge the duties of their positions. He said it is not new law. He said it is the rewrite of present Section 15-37-01.

SUPERINTENDENT AND DIRECTOR DISMISSAL

Section 15.1-14-03

Chairman Holmberg said in subsection 2 of Section 15.1-14-03 the committee's amendment was added requiring the board to place a copy of the evaluation report in the superintendent's file.

Section 15.1-14-05

Chairman Holmberg said Section 15.1-14-05 had provided that the board must conduct a hearing within 10 days of the notice date. He said the committee asked that the provision be removed and so it was.

Section 15.1-14-06

Chairman Holmberg said the North Dakota School Boards Association asked the committee to clarify that the superintendent of a school district may ask for a continuance, but it is the school board that decides for how long a continuance will be granted. He said the board is limited to a period of seven days or fewer. He said the board may grant a continuance in excess of seven days if there is a showing of good cause.

Section 15.1-14-08

Chairman Holmberg said Section 15.1-14-08 authorizes the board to determine the amount of compensation due a superintendent during the period of a suspension. He said the committee asked to add the phrase "if any." He said now the board is authorized to determine the amount of compensation, "if any," due a school district superintendent during the period of a suspension.

Section 15.1-14-10

Chairman Holmberg said Section 15.1-14-10 again addresses the granting of a continuance. He said since this section deals with nonrenewals, there is no provision for an extension upon a showing of good cause.

Chairman Holmberg said Section 15.1-14-10 is also the subject of an ongoing concern by the North Dakota School Boards Association. He said when the issue is a discharge for cause, present law provides that the witnesses may be cross-examined. He said when the issue is a nonrenewal, present law provides that the witnesses may be "questioned for purposes of clarification." He said when first drafted, the bill referenced cross-examination in the nonrenewal section as well. He said the committee looked at this the last time and chose not to change the wording. However, he said, since there is a concern, perhaps the committee needs to take another look at the wording.

Chairman Holmberg called on Ms. Bev Nielson, North Dakota School Boards Association, who said there is a difference between the terms "asking for clarification" and "cross-examination." She said it has to do with the tone of the situation. She said cross-examination would raise a nonrenewal hearing to the level of a discharge hearing. She said if the term

“cross-examination” is used, the North Dakota School Boards Association would have to recommend that the school boards have attorneys present at all nonrenewal hearings. She said the association would also oppose the use of the term during the legislative session.

Chairman Holmberg said if the committee wants to leave the language as cross-examination, the committee should do nothing.

Senator Redlin said he is concerned about the use of the phrase “cross-examination.” He said it is related to the attorneys in their work and not to the citizens.

It was moved by Senator Redlin and seconded by Representative Thoreson that the phrase “questioning for purposes of clarification” be used in the sections relating to nonrenewal hearings and that the phrase “cross-examination” be used in the sections relating to discharge.

Representative Monson said in a nonrenewal hearing, one is not trying to defend oneself as one would in a court of law.

The motion passed on a roll call vote. Senators Holmberg, Naaden, and Redlin and Representatives Eckre, Hanson, Kelsch, Monson, Solberg, and Thoreson voted “aye.” Senator Flakoll and Representatives Brandenburg and Nottestad voted “nay.”

Chairman Holmberg said Chapter 15.1-14 of the rewrite was literally split into three parts. He said one part now addresses school district superintendents, one part addresses directors of multidistrict special education units, and one part addresses directors of vocational technology centers. He said the changes noted in the first part were also made to the other two parts and the new changes requested by the committee will likewise be made.

Section 15.1-14-12

Chairman Holmberg said Section 15.1-14-12 addresses the nonrenewals of school district superintendents who are employed for less than two years. He said the rewrite had previously contained a sentence proposing that the notice of nonrenewal include the reasons for the nonrenewal. He said at the request of the committee, that sentence was removed.

TEACHER DISMISSAL

Section 15.1-15-01

Chairman Holmberg said in Section 15.1-15-01 there were a couple of places in which the employment positions to which this chapter refers were made consistent. He said those positions are a teacher, a principal, and an assistant or associate superintendent.

Chairman Holmberg said Section 15.1-15-01 used to have a subsection 3. He said it dealt with the applicability of the chapter with respect to a teacher, a principal, or an assistant or associate superintendent

who takes a leave of absence. He said this material is now found in the last section of the proposed chapter and will be dealt with in sequential order.

Section 15.1-15-03

Chairman Holmberg said Section 15.1-15-03 is old language placed in a new section. He said while present Section 15-47-26 limits the rights applicable to individuals employed after January 1 of a school year, it also provides that a “teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.” He said Section 15-47-27.1 was rewritten as Section 15.1-15-02 and deals with first-year teachers.

Chairman Holmberg said as in a number of instances in this revision, it is just not a good idea to draft a section that is applicable to “A” and then provide that, with certain adjustments, the section is also applicable to “B.” Consequently, he said, Section 15.1-15-02 is the section that applies to first-year teachers and Section 15.1-15-03 is the section that applies to teachers hired after January 1. He said the last subsection of Section 15.1-15-03 specifically states that its provisions are applicable only through the conclusion of the school year in which the individual was hired.

Section 15.1-15-04

Chairman Holmberg said Section 15.1-15-04 deals with the manner in which renewal notices must be sent and the time period within which they must be accepted or rejected. He said over 20 years ago the North Dakota Supreme Court made a ruling regarding this section and that ruling was never codified. He said the court specifically said if negotiations are being carried on pursuant to Chapter 15-38.1, those provisions of Section 15-47-27 which require the board to give the teachers notice and which also require that the teachers respond to such notice are suspended until the negotiations are completed. He said this last statement in effect became the new subsection 4.

Section 15.1-15-05

Chairman Holmberg said Section 15.1-15-05 is still the subject of some disagreement among the interested parties regarding the insertion of a March 1 date. He said present Section 15-47-27 provides:

Any teacher who has been employed by any school district in this state during any school year, must be notified in writing by the school board not earlier than **March first and not later than May first** in the school year in which that teacher has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if the determination has been made; and failure to give written

notice on or before that date constitutes an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. (emphasis supplied)

Chairman Holmberg said subsection 5 of present Section 15-47-38 provides:

The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal **no later than April fifteenth**. The teacher must be informed in writing of the time, which may not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher must also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's overall performance. (emphasis supplied)

Chairman Holmberg said the North Dakota Education Association asked that the March 1 date be used in the second instance as well. He said this is found in subsection 1 of Section 15.1-15-05 of the rewrite. He said we were told that it reflects an understanding among the parties and should be added for clarification. He said the North Dakota School Boards Association told this committee that an understanding is one thing, but a statutory directive is quite another. He said this committee will now have to determine whether or not the change is merited.

Ms. Nielson said sometimes the groups might decide to give the notices before March 1. She said if it is known that there will be a reduction in force, it would be to everyone's benefit to notify teachers as early as possible. She said if the law says that notices cannot be given before March 1, the parties have to observe that, even if they might otherwise agree to do differently.

Mr. Joseph A. Westby, Executive Director, North Dakota Education Association, said he believes there is case law or a statutory reference to March 1.

Representative Nottestad said the March 1 date can and does cause problems in the classroom. He said nonrenewals are very nasty. He said sometimes teachers understand the situation and go on with their teaching duties. He said at other times, that does not happen and the losers are the students. He said the narrower the opportunity is, the better it is for the students.

Mr. Westby said Section 15-47-27 provides that any teacher who has been employed by any school district in this state during any school year must be

notified in writing by the school board not earlier than March 1 and not later than May 1 in the school year in which that teacher has been employed to teach of the determination not to renew the teacher's contract for the ensuing school year if the determination has been made, and failure to give written notice on or before that date constitutes an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the current year. He said in conversations with Ms. Nielson, they have agreed to leave in the March 1 date as it is presently in the rewrite. He said they believe that this issue has been resolved.

Section 15.1-15-06

Chairman Holmberg said Section 15.1-15-06 was subject to some minor changes and some not so minor changes. He said in the caption the rewrite now refers to the nonrenewal meeting, rather than the nonrenewal hearing. Colloquially, he said, we refer to a nonrenewal hearing, but it appears that, unlike a discharge hearing, the nonrenewal hearing is not of the same adversarial level.

Chairman Holmberg said in subsection 1 of Section 15.1-15-06, as this committee had requested, either the district superintendent or a designee of the board is authorized to present the testimony and documentary evidence regarding the reasons for a contemplated nonrenewal. He said there are times when the school principal might be the appropriate entity to present the case. He said there might also be other appropriate individuals, depending on the situation.

Chairman Holmberg said Section 15.1-15-06 again deals with the use of the phrase "cross-examination" of witnesses versus the questioning of witnesses for the purposes of clarification. He said the committee noted its intentions in its discussion regarding Section 15.1-14-10. He said the same changes should be made to Section 15.1-15-06.

Chairman Holmberg said subsection 7 of Section 15.1-15-06 deals with the request for a continuance. He said present law provides that at the meeting, if the teacher so requests, the teacher must be granted a continuance of not to exceed seven days. He said from this wording it is not clear whether the teacher can request a specific number of days, not to exceed seven, and upon that request, the board must grant the days or whether the teacher can request a continuance and the board determines how many days, up to seven, will be granted.

Chairman Holmberg said the North Dakota School Boards Association indicated that, in the earlier draft, the practice was not accurately reflected. He said they indicated the individual subject to the nonrenewal may ask for one continuance. He said if the individual asks for a continuance, the board must grant it, but the board determines the number of days that will be granted. Again, he said, the number of days may not

exceed seven. He said this is the procedure that is now set forth in subsection 7.

Chairman Holmberg said subsection 9 of Section 15.1-15-06 also contains a correction. He said the law provides that no cause for libel or slander may be brought regarding any communication made in an executive session of the board held for the purposes provided for in this chapter. He said the earlier draft did not reference the executive session.

Section 15.1-15-08

Chairman Holmberg said subsection 8 of Section 15.1-15-08 again addresses the continuance language. He said the same change was made as described in Section 15.1-15-06.

Section 15.1-15-12

Chairman Holmberg said Section 15.1-15-12 is kind of a catchall section. He said present law sets forth certain situations in which the provisions of current sections do not apply. He said since the current sections are now a stand-alone chapter, the provisions of the chapter specifically do not apply to individuals employed to teach in public institutions of higher education, individuals employed to teach at the Youth Correctional Center, the North Dakota School for the Blind, and the North Dakota School for the Deaf, and any individual who replaces a teacher, principal, or assistant or associate superintendent while that teacher, principal, or assistant or associate superintendent is on a leave of absence or on a sabbatical.

TEACHER EMPLOYMENT CONTRACTS

Section 15.1-16-01

Chairman Holmberg said subsection 1 of Section 15.1-16-01, attempts to reconcile the definition of an administrator. He said the definition parallels that used by the Education Standards and Practices Board. He said it defines an administrator as one who holds an administrator's credential and who is employed by the board of a school district for the primary purpose of providing administrative services to the schools of the district. He said the term includes a school district superintendent, an assistant or associate school district superintendent, a school principal, the director of a multidistrict special education unit, and the director of a vocational technology center. He said the term may include an athletic or activity director who meets the requirements of the subsection.

Chairman Holmberg said there is still a disagreement regarding subsection 2 of Section 15.1-16-01. He said present law provides the following definitions:

2. "Appropriate negotiating unit" means a group of administrators having common interests, common problems, a common employer, or a history of common representation, **which warrants** that group

being represented by a single representative organization in negotiations with a school board.

3. "Appropriate negotiating unit" means a group of teachers having common interests, common problems, a common employer, or a history of common representation, **which warrants** that group being represented by a single representative organization in negotiations with a school board. (emphasis supplied)

Chairman Holmberg said subsection 2 of the rewrite defines a negotiating unit as a group of administrators or a group of teachers who, because of common interests, common problems, a common employer, or a history of common representation, choose to be represented by a single organization in negotiations with a school board.

Chairman Holmberg said the North Dakota Education Association prefers the wording as it is in the rewrite. He said the North Dakota School Boards Association would prefer to retain the word "warrant" rather than the word "choose." He said the School Boards Association believes that the commonalities "warrant" the group being represented in negotiations, as opposed to having a group, which because of its commonalities, "chooses" to be represented by a single organization in negotiations. He said the committee needs to make a determination regarding the choice of words to be retained in the rewrite.

Ms. Nielson said not all the teachers may choose to get the unit recognized. She said those who do not sign on, if they are in the minority, are represented by the group anyway. She said some may choose to be in the group. She said others do not choose to do so but are part of the group anyway. She said the issue is to whom the contract applies when it is finished.

In response to a question from Representative Nottestad, Ms. Nielson said if the elementary principals wanted to be in a unit and some of the counselors wanted to join the elementary principals, rather than the teachers, the board should have the right to say the counselors belong in one group rather than another.

Representative Nottestad said switching from one group to another is a problem, but so is denying groups the right to negotiate.

Ms. Nielson said there are certain requirements that need to exist before there is a right to negotiate as a group. She said the board needs the authority to recognize groups with whom they will negotiate.

In response to a question from Representative Thoreson, Ms. Nielson said the phrase "which warrants" recognizes the commonalities of the group. The phrase "choose to be" is misleading because not everyone may have chosen to be represented.

In response to a question from Representative Monson, Ms. Nielson said the professionals choose whether or not they want to be represented and if they

choose to be represented, the board still has to warrant that they will negotiate with the group. She said if the committee chooses to leave the word "choose" in and it causes problems, they will be back.

Senator Redlin said he sees no problem with the word "choose." He said the choosing of a representative is a right. He said the word "warrant" implies that the people do not have a choice.

Mr. Westby said he agreed with Senator Redlin. He said at the last meeting the committee decided to leave in the word "choose." He said the people who are affected by this statute should be able to choose their bargaining unit.

Section 15.1-16-13(3)

Chairman Holmberg said present law provides that either party to a contract negotiated under this section may modify or terminate the contract on its annual anniversary date by giving notice of its desire to modify or terminate to the other party not less than 60 days prior to the annual anniversary date. He said subsection 3 of Section 15.1-16-13 provides that either the board of a school district or the representative organization may modify or terminate a contract negotiated under this section by notifying the other party of its intent to modify or terminate the contract at least 60 days before the anniversary date. He said a modification or termination made under this subsection is effective on the annual anniversary date of the contract.

Chairman Holmberg said apparently the North Dakota Education Association and the North Dakota School Boards Association believe the present law means different things. He said the Legislative Council staff had checked the legislative history of this section and unfortunately there is nothing in the record which would give any guidance as to the Legislative Assembly's original intent.

Chairman Holmberg said in a pure world this would be the basic scenario: Smith and Jones have a contract. The contract is to expire on July 1. Smith notifies Jones at least 60 days before July 1, i.e., on or before May 1, that he would like to make a small change in the contract. The change is agreed upon. The change becomes effective on July 1, the anniversary date of the contract.

Chairman Holmberg said in our world, however, we have school boards and teachers involved in contracts. He said the teachers might notify their school board, at least 60 days before the contract is due to expire, that they wish to modify the contract. Unfortunately, he said, the negotiations may not be completed before July 1. He said perhaps the negotiations may not be completed until October 1. He said the question then is whether the new contract should take effect on October 1 or on the contract's anniversary date, July 1. He said the law is not clear and we have no legislative history to assist us.

Mr. Westby said, historically, regardless of when a settlement is reached and ratified, the contract becomes retroactive to July 1. He said if there is a different interpretation, we may have people wondering whether or not they should go back to work. He said he is comfortable with the language as it appears in the rewrite.

In response to a question from Representative Eckre, Mr. Westby said this is generally the way it has been interpreted.

Ms. Nielson said retroactivity for salary purposes was an issue at the last Fargo negotiation in which she was involved. She said if teachers know the end result is retroactive, there is no incentive to hurry up. She said the effective date was a negotiable item in the Fargo situation.

Ms. Nielson said if everything is going to be retroactive, regardless of how protracted the negotiations become, we might have to look at deadlines for the negotiating process.

Representative Hanson said it is to the advantage of the school board to drag out the negotiations and not pay the higher salary for as long as possible.

Ms. Nielson said the boards would prefer to be done with the process and not drag it out any more than is absolutely necessary.

Representative Monson said it would appear that a school board would never want to settle.

Chairman Holmberg said present law provides that either party to a contract negotiated under this section may modify or terminate the contract on its annual anniversary date by giving notice of its desire to modify or terminate to the other party not less than 60 days prior to the annual anniversary date.

In response to a question from Representative Eckre, Mr. Westby said we may have four to six impasses during each year. He said even if contracts are not settled, teachers still report for work.

Representative Monson said this whole section raises questions. He asked what would happen if a board just terminated contracts. He said there is enough material in this section to think about for a long time. He said we should just leave it as it is in the rewrite and go on.

TEACHER QUALIFICATIONS

Section 15.1-18-01

Chairman Holmberg said Section 15.1-18-01 still had a reference to an early childhood education teaching certificate, and Ms. Janet Welk, Executive Director, Education Standards and Practices Board, indicated the reference should be to an early childhood education teaching license.

Section 15.1-18-02

Chairman Holmberg said earlier versions of the rewrite frequently used the phrase "be licensed or approved to teach by the education standards and practices board." He said the committee was

concerned that somebody could read this to mean that in order to teach a specific grade, one had only to be "licensed" and not necessarily by the Education Standards and Practices Board. He said to avoid any confusion down the road, the phrase "licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board" is used. He said if any of the audience members intend to draft their own bills this year, it would be good to remember that phrase. He said it is a little wordy but a lot clearer.

COMPULSORY ATTENDANCE

Section 15.1-20-02

Chairman Holmberg said present Section 15.1-34.1-03 provides that the "parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law, that one of the following reasons exists" He said the reasons are then listed. He said the present law indicates the school board's decision is appealable. He said at the last meeting, the question was raised as "to whom or what." He said the rewrite added subsection 2, which provides that a decision by a school board under subsection 1 is appealable to the district court.

HOME EDUCATION

Sections 15.1-23-03, 15.1-23-07, and 15.1-23-11

Chairman Holmberg said Sections 15.1-23-03, 15.1-23-07, and 15.1-23-11 had a requirement that the parent must hold a North Dakota teaching certificate or license. He said as has been provided in other sections of the title, the parent must be licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board.

Sections 15.1-23-13 - 15.1-23-15

Chairman Holmberg said the reauthorization of the Individuals With Disabilities Education Act draws distinctions between services provided in a public school and services provided in a nonpublic school setting. He said the law used to refer to individualized education programs (IEPs) in both settings. He said now we are told that since an IEP is linked to the concept of a free, appropriate public education, it is inappropriate to refer to an IEP in a nonpublic education setting. Consequently, he said, references are made to a "services plan" and to a "services plan team" rather than to an IEP team.

SCHOOL FINANCE

Section 15.1-27-07

Chairman Holmberg said Section 15.1-27-07 contains the elementary school weighting factors. He said in both subsections 3 and 4, an earlier draft had contained the statement that the payment provided for in the respective subsection was applicable only to the first 25 students in average daily membership per classroom or per teacher. He said the correct number should have been 30 students and this change was subsequently made.

Section 15.1-27-18

Chairman Holmberg said Section 15.1-27-18 addresses eligibility for per student payments. He said subsection 1 of Section 15.1-27-18 states that a high school district is not entitled to any payments provided for by this chapter unless the district offers four or more units of standard high school work, all teachers hold valid teaching licenses, and all other standards have been met. He said this in effect defines an approved school. He said since an approved school is already defined in Section 15.1-06-06, the committee should consider removing the subsection.

Mr. Larry Klundt, Executive Director, North Dakota Council of Educational Leaders, said he believes this section provides that if a student is registered for four or more courses, the student is eligible for payment.

With the permission of Chairman Holmberg, committee counsel said the section provides that the district has to offer four or more units in order to be eligible for payment. She said it does not provide that a student needs to take four or more units. She said this initiates the discussion regarding some of the difficulties that have been encountered in this section.

Representative Monson said this section is very confusing and needs to be rewritten.

In response to a question from Senator Holmberg, committee counsel said the section can be amended to provide that in order to be counted for purposes of per student payments, a student must be enrolled in a minimum of four units. She said it can be provided that the courses may be taken in another school district.

In response to a question from Representative Hanson, Mr. Jerry Coleman, Department of Public Instruction, said if a senior takes only three units, even though he loaded up more during his three years in high school, the school district would not get paid.

In response to a question from Representative Eckre, Mr. Coleman said under dual enrollment, a student is deemed to be in attendance at the student's school district of residence for purposes of calculating per student payments.

In response to a question from Senator Holmberg, Dr. Gary Gronberg, Department of Public Instruction, said four or more units of "standard high school work"

is a phrase no longer used. He said it is interpreted to mean the minimum statutory curriculum, i.e., four or more high school units, as set forth in Section 15.1-21-02.

Chairman Holmberg said it is the wish of this committee that the Legislative Council staff amend subsection 1 of Section 15.1-27-18 to provide that in order to be counted for purposes of per student payments, a high school student must be enrolled in four or more high school units. He said since the committee will not have a chance to review the amendment, the Legislative Council staff is requested to contact him, in his capacity as chairman, if any problems arise with the amendment.

In response to a question from Senator Redlin, Dr. Gronberg said the state provides standards and frameworks that suggest which material and information should be taught or presented in the specific content areas and at particular grade levels. He said how it will be taught or presented is a local decision.

Mr. Coleman said subsection 2 of Section 15.1-27-18 provides that if a grade 12 student is taking fewer than four units and is enrolled in an approved alternative high school program, the school district in which the student is enrolled is entitled to receive proportionate payments. He said Section 15.1-27-19 restricts it to high schoolers who are in grade 12 and enrolled in alternative education. He said Section 15.1-27-19 could be eliminated if the reference to grade 12 is removed from the sentence "[i]f a student is enrolled for graduation in a nonpublic school or if a grade twelve student is taking fewer than four units of standard high school work and is enrolled in an approved alternative high school education program, the school district in which the student is enrolled for specific courses is entitled to receive proportionate payments."

Chairman Holmberg said the section should be so amended.

Section 15.1-27-21

Chairman Holmberg said Section 15.1-27-21 deals with the filing of payment claims. He said the earlier version provided that the business manager of a school district, within or outside this state, claiming payments from state funds under the provisions of this chapter, shall file a claim with the county superintendent of schools on a form prescribed by the Superintendent of Public Instruction. He said in order to accommodate electronic filings, the committee suggested different wording, and now the section provides that the business manager of a school district claiming payments from state funds under the provisions of this chapter shall file a claim in the manner prescribed by the Superintendent of Public Instruction.

Section 15.1-27-25

Chairman Holmberg said Section 15.1-27-25 addresses Taylor Grazing Act funds. He said there were not any requested changes, but there was a request for information. He said Representative Hanson had asked which counties receive Taylor Grazing Act funds. He distributed a document prepared by the State Treasurer, attached as Appendix B, which lists the recipient counties together with their allocations. He said the list also shows forest and flood control dollars received by the counties. He said the January 2000 total for all three distributions is \$67,954.85.

Section 15.1-27-36

Chairman Holmberg said Section 15.1-27-36 defines average daily membership (ADM). He said presently a definition of ADM is found in the middle of a section that is over a page long in the North Dakota Century Code supplement. He said this committee thought since the definition of ADM applies to the whole finance chapter, it deserves its own section. He said the language was also in need of a small correction. He said several sessions ago the section was amended and the result is a definition of average daily attendance, rather than average daily membership.

Chairman Holmberg said ADM, as set forth in Section 15.1-27-36, is the total number of days that each student in a given classroom, school, or school district is in attendance during a school calendar plus the total number of days each student is absent, divided by 180. He said all students are deemed to be in attendance on the seven statutory noncontact days.

PAYMENT OF TUITION

Section 15.1-29-03

Chairman Holmberg said Section 15.1-29-03 previously provided that the "board may arrange, and when petitioned to do so by a majority of the district's qualified electors shall arrange, with other boards or with other institutions to send students to other districts or institutions and to pay for their tuition and transportation." He said the North Dakota School Boards Association indicated that because we do not have voter registration, there is no way of knowing what number is intended by the phrase "a majority of the district's qualified electors." Consequently, he said, the School Boards Association suggested the statute provide that the "board may arrange, and when petitioned to do so by qualified electors of the district, equal in number to at least a majority of those who voted in the most recent annual school district election, shall arrange, with other boards or with other institutions to send student to other districts or institutions and to pay for their tuition and transportation."

Chairman Holmberg said the committee needs to make an additional change in this section. He said

the committee had, in other sections of this chapter, removed the reference to "institutions in other states." He said no one seemed to have any idea as to what was meant by the phrase. He said the committee should therefore remove the references to institutions in subsection 1 of this section as well.

Section 15.1-29-06

Chairman Holmberg said Section 15.1-29-06 covers appeals from decisions regarding the payment of tuition for students in grades 1 through 12. He said present law also has a section regarding kindergartens and specifically states that there is no appeal of a board's decision when it comes to the payment of tuition for a kindergarten student. He said since there is no appeal, the language regarding kindergarten students was moved out of the appeal section and placed in its own section--15.1-29-08.

Section 15.1-29-14

Chairman Holmberg said Section 15.1-29-14 deals with the payment of tuition when students are placed for noneducational purposes. He said personnel from the Department of Public Instruction and the Legislative Council staff have worked on this section numerous times to ensure that it adequately addresses responsibility. He said the section provides that a student's school district of residence is the district in which the student resides:

1. At the time a state court, tribal court, juvenile supervisor, or the Department of Juvenile Services places the student in a state-licensed foster home or at a state-licensed child care home or facility;
2. At the time a county or state social service agency places the student, with the consent of the student's parent, in a state-licensed foster home or at a state-licensed child care home or facility;
3. At the time the student is initially placed in a state-operated institution, even if the student is later placed in a state-licensed foster home or at a state-licensed child care home or facility; or
4. At the time the student is voluntarily admitted to a state-operated institution or to a state-licensed child care home or facility.

Chairman Holmberg said if after the initial placement is made the student's custodial parent establishes residency in another school district, the school district in which the custodial parent established residency becomes the student's school district of residence for purposes of paying tuition. He said tuition is the state's responsibility if the custodial parent moves out of state or if the court orders a termination of parental rights.

Chairman Holmberg said subsection 7 of Section 15.1-29-14 deals with the situation of a student with

disabilities reaching the age of 18 and continuing to receive special education and related services. He said for purposes of tuition, the student's school district of residence is the same as that of the student's custodial parent. He said tuition is the state's responsibility if the custodial parent moves out of state or if the court orders a termination of parental rights.

SPECIAL EDUCATION

Section 15.1-32-01

Chairman Holmberg said in current law the definition section applicable to this chapter contained a definition of "learning disability," but did not define any of the other disabilities. He said this committee thought it would be more appropriate if the term "learning disability" was not singled out for definition.

Section 15.1-32-07

Chairman Holmberg said in current law the director of special education is given the authority to adopt rules. He said this committee determined such a power was appropriately placed with the constitutional officer and not with an agency employee. He said consequently the power to adopt rules was removed from this section and a new section was created--15.1-32-09--which gave the Superintendent of Public Instruction the authority to adopt special education rules.

Ms. Welk said Section 15.1-32-07 states that the director of special education shall provide a process for the certification of schools, teachers, facilities, and equipment. She said the Education Standards and Practices Board licenses teachers. She said the Superintendent of Public Instruction does not certify schools, teachers, facilities, or equipment.

Chairman Holmberg said this section should be amended by deleting the phrase "and provide a process for the certification of schools, teachers, facilities, and equipment."

Section 15.1-32-12

Chairman Holmberg said this section and several following it make reference to IEPs or services plans. He said as was indicated when the committee was addressing the home education chapter, the reauthorization of the Individuals With Disabilities Education Act draws distinctions between services provided in a public school and services provided in a nonpublic school setting. He said the law used to refer to IEPs in both settings. He said now we are told that since an IEP is linked to the concept of a free, appropriate public education, it is inappropriate to refer to an IEP in a nonpublic education setting. He said in chapters such as this, where we could be dealing with a student in either a public or a nonpublic setting, we have had to refer to an "individualized education program or services plan."

Section 15.1-32-14

Chairman Holmberg said Section 15.1-32-14 deals with payments for special education students who receive summer programs. He said as in current law, the earlier version of the rewrite provided that prorated payments may be made if a student with disabilities attends a special education summer program, provided the student's IEP is written during the last quarter of the school calendar and specifically requires that the student attend a special education summer program. Because the requirement that the IEP be written during the last quarter of the school calendar is not a requirement of federal law, this version of the rewrite omits that requirement. He said as now written, payment may be made available if the student's IEP or services plan requires that the student attend a special education summer program. He said it would be a horrendous burden to write all those IEPs during the last three months of a school year.

Section 15.1-32-23

Chairman Holmberg said the content of Section 15.1-32-23 is in current law. He said it provides that the Superintendent of Public Instruction may not change the credentialing process for special education teachers without first convening a meeting of interested parties. He said if within 30 days after the date of the meeting members of any two parties present at the meeting object in writing to the proposed changes, the Superintendent may not implement the changes prior to July 1, 2001. He said the rewrite extends the effective date of the section through July 1, 2003.

Dr. Gronberg said Section 15.1-32-23 is a sunset for a problem that occurred in 1995. He said the problem was corrected in the rulemaking process. He said the rulemaking process is the manner in which all credentials are now changed or added. He said this section is consequently no longer necessary.

Chairman Holmberg said the Superintendent may wish to introduce an agency bill to eliminate this section.

MULTIDISTRICT SPECIAL EDUCATION UNITS

Section 15.1-33-02

Chairman Holmberg said this chapter of the rewrite, like present law, addresses the steps that need to be taken if a school district wishes to withdraw from a multidistrict special education unit. He said those provisions are found in proposed Section 15.1-33-06. He said Section 15.1-33-02 as first drafted had attempted to include language setting forth the process for a school district to join an existing unit. He said that language was not working and consequently the language in current law was used. He said the law lacks a simple, clear process by which a school district can join an existing unit.

Chairman Holmberg said Mr. Bob Rutten, Director of Special Education, Department of Public Instruction, suggested that he would bring this issue up with the multidistrict special education unit directors, and once they determine what needs to be in statute perhaps they could have a bill drafted and introduced in January.

Section 15.1-33-04

Chairman Holmberg said Section 15.1-33-04 deals with appointments to the board of a multidistrict special education unit. He said present law provides that "[r]epresentatives on the multidistrict board must be appointed by the school boards of the participating districts." He said unfortunately this does not tell whether the board of each participating school district gets to appoint one member or whether all members have to be appointed by the participating boards. He said according to the North Dakota School Boards Association, it also does not help clarify the appointment process when seven participating districts choose to have a five-member board. Consequently, he said, the North Dakota School Boards Association recommended the concept embodied in the rewrite, i.e., that the organizational plan of each unit must provide for the manner in which board members are appointed.

CHILD NUTRITION AND FOOD DISTRIBUTION PROGRAMS

Section 15.1-35-01

Chairman Holmberg said Section 15.1-35-01 is the definition section. He said the rewrite eliminates the definition of a school board and the definition of a state educational agency. He said the latter is a federal term and in this state, when needed, the statutes just refer to the Superintendent of Public Instruction.

Section 15.1-35-02

Chairman Holmberg said Section 15.1-35-02 authorizes the Superintendent of Public Instruction to administer federal funds and enter into contracts for child nutrition and food distribution programs.

Section 15.1-35-03

Chairman Holmberg said Section 15.1-35-03 provides that the Superintendent of Public Instruction may enter into contracts, adopt rules, employ personnel, provide advice and assistance, assist in training, disburse funds, and take any other necessary action. He said present law also allows the Superintendent to accept gifts for use in the program. He said Ms. Kathryn Grafsgaard, Director of Child Nutrition and Food Distribution Programs, Department of Public Instruction, indicated this was not something likely to happen and therefore recommended the removal of the language.

Section 15.1-35-04

Chairman Holmberg said Section 15.1-35-04 authorizes a school board to expend any funds it receives from the state for child nutrition and food distribution programs.

Section 15.1-35-05

Chairman Holmberg said Section 15.1-35-05 directs the Superintendent of Public Instruction to adopt rules regarding recordkeeping, accounting, and reporting by program participants. He said present law provides that the Superintendent of Public Instruction shall prescribe the period of time for which records must be maintained. He said the period of time is not to exceed five years. He said at the request of Ms. Grafsgaard, the reference to the five-year maximum was deleted. He said a review of the North Dakota Century Code revealed that record retention schedules are not uniform but appear to be established within each agency based on need.

Section 15.1-35-06

Chairman Holmberg said Section 15.1-35-06 provides that the Superintendent of Public Instruction may participate in various studies and appraisals. He said if the Superintendent does so participate, he is to forward the findings and recommendations to the Governor.

Section 15.1-35-07

Chairman Holmberg said Section 15.1-35-07 was added last session. He said it requires individuals who manage food service operations covered by this chapter to undergo both initial and continuing training regarding the safe handling, preparation, and service of food. He said the Superintendent of Public Instruction is to establish the nature, scope, and frequency of the training by rule.

MOTION ON TITLE REVISION

It was moved by Representative Kelsch, seconded by Representative Nottestad, and carried on a roll call vote that the bill draft relating to the rewrite of those provisions of Title 15 of the North Dakota Century Code which pertain to elementary and secondary education, as amended, be approved and recommended to the Legislative Council. Voting in favor of the motion were Senators Holmberg, Flakoll, Naaden, and Redlin and Representatives Brandenburg, Eckre, Hanson, Kelsch, Monson, Nottestad, Solberg, and Thoreson voted "aye." There were no negative votes.

RECONCILIATION BILL DRAFT

The committee reviewed a bill draft to reconcile the sections in proposed Title 15.1 with those in other sections of the North Dakota Century Code.

Section 1

Chairman Holmberg said Section 1 amends subsection 1 of Section 6-09.4-23. He said the section deals with evidences of indebtedness. He said this draft only reconciles section numbers. He said the section contains a reference to the finance chapter, 15-40.1. He said that chapter, if the title rewrite passes, will be Chapter 15.1-27.

Section 2

Chairman Holmberg said Section 2 deals with oaths or affirmations by higher education faculty members. He said it is presented as a new section to Chapter 15-10, which deals with higher education. He said the wording exists in present law. However, he said, it is found in the kindergarten through grade 12 section. He said it does not belong in the kindergarten through grade 12 section and therefore was moved to the higher education chapter.

Section 3

Chairman Holmberg said Section 3 deals with oaths or affirmations by higher education faculty members who are not citizens of the United States. He said it requires such individuals to support the institutions and policies of the United States. He said as with the previous section, it is presented as a new section to Chapter 15-10, the higher education chapter. He said the wording exists in present law, but again it is placed in the kindergarten through grade 12 section. He said it does not belong in the kindergarten through grade 12 section and therefore was moved to the higher education chapter.

Section 4

Chairman Holmberg said Section 4 relates to correspondence courses. He said some section numbers had to be reconciled. He said wording was also reconciled, such as referring to "students" rather than "pupils" and referring to licensed teachers as "licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board."

Section 5

Chairman Holmberg said Section 5 deals with the approval of correspondence courses and again reconciles section numbers. He said the existing references are to Title 15 and the new references are to sections in Title 15.1.

Section 6

Chairman Holmberg said Section 6 deals with the age at which a student may be enrolled in school. He said last interim when this section was rewritten the provisions about early admission to grade 1 were included, but the provisions regarding the early admission to kindergarten were inadvertently omitted.

He said this section puts the language back in the law.

Section 7

Chairman Holmberg said Section 7 requires that a petition regarding the placement on a ballot of a school district name change must be signed by one-third of the qualified electors of the district. He said because North Dakota does not have voter registration, the North Dakota School Boards Association has suggested that it is not in a position to determine how many signatures are required by the phrase "one-third of the qualified electors of the district." He said the association's suggestion is that the section reference "one-third of those who voted at the most recent annual school district election."

Section 8

Chairman Holmberg said Section 8 requires the ballot placement of a petition regarding an increase in a district's limit of indebtedness if the petition is signed by one-third of the qualified electors of the district. He said because North Dakota does not have voter registration, the North Dakota School Boards Association has suggested that it is not in a position to determine how many signatures are required by the phrase "one-third of the qualified electors of the district." He said the association's suggestion is that the section reference "one-third of those who voted at the most recent annual school district election."

Section 9

Chairman Holmberg said Section 9 relates to school board members or other school officers who have conflicts of interest in any contracts that require the expenditure of school funds. He said last session the interested parties agreed that an individual in this situation should disclose the conflict to the board and may not participate in any discussions or votes regarding that contract without the consent of all other board members. He said it was the intent that former subsection 3 be removed. Unfortunately, he said, the 1999 amendment did not include the removal. He said this amendment now includes the subsection that was to have been overstruck.

Section 10

Chairman Holmberg said Section 10 deals with military school districts and the provisions of the regular school district chapter which are applicable. He said at the recommendation of the North Dakota School Boards Association, the section provides that the business manager of a military installation school district must also comply with Sections 15.1-07-21 (duties of a business manager), 15.1-07-23 (bonding of a business manager), and 15.1-07-24 (business manager responsible for safekeeping of funds), and that Sections 15.1-07-10 through 15.1-07-13 and Section 15.1-07-25 are applicable to military

installation school districts. He said these latter sections deal with activities funds, incidental revolving funds, payment of negotiable instruments, and which school district records are open records.

Section 11

Chairman Holmberg said under present law it appears that a petition to change the size of a board must be signed by one-third of the qualified voters in the district. He said the section had originally required that the petition be signed by one-third of those qualified electors who voted in the last annual school district election. He said the amendment clarifies the original intent of the section.

Section 12

Chairman Holmberg said at the request of representatives from the North Dakota School Boards Association, subsection 4 of Section 12 is amended to specifically provide that a vacancy occurs if an individual refuses to serve or fails to qualify for the office of a school board member, e.g., if an individual wins on a write-in ballot but has no intention of serving as a member. Again, he said, this was something that the School Boards Association had worked on last session and even discussed with the interim committee. He said the association got the language into a bill which, as we will see, was repealed because it was not double drafted to include amendments to current law and the new Title 15.1.

Section 13

Chairman Holmberg said 1999 House Bill No. 1181, which was introduced at the request of the Secretary of State, contained the following amendment:

15-47-08. Oath of office of school district officers. Each person elected or appointed as a member of the school board or as a business manager of the school district, before entering upon the duties of his office, shall take and file with the business manager of the school district the oath prescribed for civil officers within ten days after notice of the person's election or appointment. Refusal to take the oath of office, as required by this section, must also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to section 44-02-01.

Chairman Holmberg said Section 15-47-08 was, however, repealed as part of the Title 15 rewrite. He said because House Bill No. 1181 did not amend the succeeding section in Title 15.1 (15.1-09-25), the intent of the Secretary of State's amendment was not codified.

Section 14

Chairman Holmberg said Section 15.1-09-26, as proposed, would provide that any member of a school board may administer an affirmation or oath of office required of school board members, required of school district personnel, or required in any school-related matter. He said present law provides that an "elected" member of a school board may administer an oath or affirmation. He said this leaves some doubt regarding the authority of an "appointed" board member to administer an oath or affirmation. He said the North Dakota School Boards Association therefore recommended that the rewrite authorize any member of a school board to administer an oath or affirmation. He said the North Dakota School Boards Association also recommended that the authority to administer oaths or affirmations be extended to any school-related matter. He said this reflects the law prior to the 1999 enactment.

Section 15

Vice Chairman Monson said Section 15.1-09-31 provides that every two years a determination must be made by the voters regarding whether the school board minutes must be published in the official newspaper of the district. He said at the request of the North Dakota School Boards Association, the language directing the business manager to request that the proceedings be identified as being published "subject to review and revision by the board" is strengthened. He said prior to the rewrite, a passive voice was used and no responsibility was indicated in the statute.

Section 16

Vice Chairman Monson said Section 16 provides that the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than \$25,000 unless the school board has given 10 days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. He said it goes on to list exceptions to the stated requirement. He said at the request of the North Dakota School Boards Association, cross-references were added to subdivisions g through i of subsection 1. He said the intent was to provide notice that while contracts for the purchase of school transportation services, vehicle fuel, and heating fuel do not fall under this section, they are governed by the provisions of Section 15.1-30-06 and Section 17 of this Act, respectively.

In response to a question from Representative Eckre, Ms. Nielson said some school boards designate their official newspaper. She said in other districts, the people designate the official newspaper.

Section 17

Chairman Holmberg said Section 17 provides that at least once each year the board of a school district shall publish in the official newspaper of the district information regarding the registration of vehicle fuel vendors and heating fuel vendors. He said except as otherwise provided in this section, the board is to purchase vehicle fuel and heating fuel only after seeking written quotes from all vendors who registered with the district for that school year. He said this section, which is a rewrite of present Section 15-34.2-07.2, was located in the chapter regarding student transportation. He said this committee asked that it be relocated in Chapter 15.1-09, which relates to school boards.

Section 18

Chairman Holmberg said Section 18 provides that in addition to the powers granted to all school boards, the Fargo School Board has certain specific powers and duties. He said this amendment does not change those powers or duties but merely corrects a cross-reference.

Section 19

Chairman Holmberg said Section 19 now provides that to become effective, a reorganization plan must meet all statutory requirements and must receive approval by both the state board and a majority of electors residing within each school district. He said this section is being amended because it used to require approval by electors residing within the boundaries of the proposed new district while Section 15.1-12-11(6) provided that approval was required by a majority of electors residing within each school district.

Section 20

Chairman Holmberg said Section 20 clarifies that the due process hearing requirement applies only in the case of an expulsion and not in the case of a suspension. He said it also removes the reference to expulsion for violation of a school district weapons policy. He said if left in this section, an expulsion for violation of a weapons policy would appear to terminate at the end of the current school year. He said this would create a conflict with Section 15.1-19-10, which parallels federal requirements and calls for an expulsion of at least one year.

Section 21

Chairman Holmberg said Section 21 looks like new law, but it is not. He said it was the only section retained in Chapter 15-21.1. He said the 1997-98 Education Services Committee was not certain of the chapter into which it should be placed. He said the suggested placement is in Chapter 15.1-19, which relates to students.

Section 22

Chairman Holmberg said Section 22 pertains to the issuance of bonds. He said references to Sections 15-51-11 and 15-51-13, which address the taxing authority of the Fargo School Board, were recodified as Sections 15.1-09-47 and 15.1-09-49.

Section 23

Chairman Holmberg said Section 23 references the use of public funds or property for nonprofit education foundations. He said it references a school district established under Chapter 15-47 or a board of education established under Chapter 15-51. He said neither of those statutory references are needed, so in the interest of reconciliation, the statutory references were removed.

Section 24

Chairman Holmberg said Section 24 provides that every developmentally disabled child is entitled to a free and appropriate education in the least restrictive appropriate setting in accordance with Chapter 15-59. He said Chapter 15-59 will now be known as Chapter 15.1-32.

Section 25

Chairman Holmberg said Section 25 deals with the employment of a minor. Again, he said, cross-references are reconciled.

Section 26

Chairman Holmberg said Section 26 likewise pertains to the employment of a minor and, as the previous section, it reconciles cross-references.

Section 27

Chairman Holmberg said Section 27 defines "early childhood services" and reconciles cross-references.

Section 28

Chairman Holmberg said Section 28 deals with the membership of various boards and commissions. Again, he said, the change involves reconciling a cross-reference.

Section 29

Chairman Holmberg said Section 29 deals with child identification requirements. He said it still references home-based instruction whereas we now refer to home education. He said since it also includes a definition of home-based instruction, it was replaced with the definition of home education, as it is set forth in Title 15.1.

Section 30

Chairman Holmberg said Section 30 addresses tax levy limitations in school districts. He said, as in the previous sections, the existing statutory

references have been reconciled with the new Title 15.1 numbers.

Section 31

Chairman Holmberg said Section 31 addresses mill levies requiring board action. He said here too, the existing statutory references have been reconciled with the new Title 15.1 numbers.

Section 32

Chairman Holmberg said Section 32 addresses tax levies for the transportation of students. Again, he said, the existing statutory references have been reconciled with the new Title 15.1 numbers.

Section 33

Chairman Holmberg said Section 33 addresses excess tax levies. He said the existing statutory references have been reconciled with the new Title 15.1 numbers.

Section 34

Chairman Holmberg said Section 34 sets forth the intent of the voters to fund kindergarten through grade 12 education in North Dakota at the 70 percent level. He said the only part of this that is addressed is the reconciliation of section numbers.

Section 35

Chairman Holmberg said Section 35 reconciles numbers in the portion of law dealing with the coal development trust fund.

Section 36

Chairman Holmberg said there are two sections that are being recommended for repeal. He said Section 15.1-07-22 states:

School district business manager - Affirmation or oath of office. An individual appointed as a school district business manager shall take and file an affirmation or oath of office before commencing duties.

Chairman Holmberg said representatives of the North Dakota School Boards Association have indicated that since business managers are bonded, it is no longer a common practice to require that they also take an oath or affirmation.

Chairman Holmberg said Section 15.1-09-37 states:

Duties of school board - Postsecondary instructional programs - Fees. A school board may charge reasonable fees for goods, including textbooks, and services provided in connection with any postsecondary instructional program, including vocational and technical programs, adult or continuing education programs, and similar education programs beyond grade

twelve or outside of established elementary, middle school, and secondary education programs.

Chairman Holmberg said this is a duplication of subdivision i of subsection 1 of Section 15.1-09-36.

It was moved by Representative Eckre, seconded by Senator Redlin, and carried on a voice vote that the bill draft relating to the reconciliation of sections in proposed North Dakota Century Code Title 15.1 with those in other sections of the North Dakota Century Code be approved and recommended to the Legislative Council.

RESOLUTION DRAFT

Chairman Holmberg asked the committee to consider a resolution draft to study the completed version of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education for the purpose of reconciling any inconsistencies or irregularities.

It was moved by Representative Kelsch, seconded by Representative Nottestad, and carried on a voice vote that the resolution draft to study the completed version of those provisions of Title 15 of the North Dakota Century Code, which relate to elementary and secondary

education for the purpose of reconciling any inconsistencies or irregularities, be approved and recommended to the Legislative Council.

OTHER BUSINESS

It was moved by Representative Solberg, seconded by Representative Monson, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council. Senators Holmberg, Flakoll, Naaden, and Redlin and Representatives Brandenburg, Eckre, Hanson, Kelsch, Monson, Nottestad, Solberg, and Thoreson voted "aye." No negative votes were cast.

It was moved by Senator Redlin, seconded by Senator Naaden, and carried on a voice vote that the meeting be adjourned sine die.

L. Anita Thomas
Committee Counsel

ATTACH:2