

# EDUCATION

## CHAPTER 154

### HOUSE BILL NO. 1381

(Representative Poolman)

(Senator St. Aubyn)

## HIGHER EDUCATION GRAND FORKS LAND CONVEYANCE

AN ACT to authorize the state board of higher education to convey certain land in Grand Forks, North Dakota; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

#### **SECTION 1. Transfer of land authorized.**

1. The state board of higher education may convey the land described in this section for the price and on the terms as determined by the state board of higher education. The land to be conveyed is known as the North Dakota delta upsilon fraternity house and the land upon which it is situated is described as follows:

Beginning at the Northeast corner of Lot 1, Block 13 of said University Place Addition; thence north along the west line of Princeton Street, a distance of 100 feet to a point; thence deflecting left at an angle of 89 degrees 59'08" in a westerly direction, a distance of 292.98 feet to a point; thence deflecting left at an angle of 143 degrees 24'30" in a southeasterly direction, a distance of 152.39 feet to a point; thence deflecting right at an angle of 53 degrees 05' in a southerly direction, a distance of 9.16 feet to a point on the north line of said Lot 1, Block 13; thence deflecting left at an angle of 89 degrees 40'30" in a easterly direction, a distance of 170.60 feet to the point of beginning.

2. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 25, 1997  
Filed March 26, 1997

## CHAPTER 155

### HOUSE BILL NO. 1312

(Representatives Martinson, Svedjan, Wentz, Keiser)  
(Senators Robinson, St. Aubyn)

## HIGHER EDUCATION BOARD COMPENSATION AND LOANS

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to authorization for board of higher education institutions to borrow from the Bank of North Dakota; and to amend and reenact sections 15-10-08 and 44-04-18.4 of the North Dakota Century Code, relating to compensation of state board of higher education members and confidentiality of information regarding grants and contracts of institutions of higher education.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>1</sup> **SECTION 1. AMENDMENT.** Section 15-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-08. Compensation of board members - Expenses - Legislative appropriations.** Each ~~appointive~~ member of the state board of higher education ~~shall, except the student member, is entitled to receive fifty dollars per day compensation per day in the same amount provided for members of the legislative council for the time each calendar day actually spent devoted to the duties of his office, and; in addition, shall receive his necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of his office. The legislative assembly shall provide adequate funds to carry out the functions and duties of the board. The compensation and expense payments provided by this section are retroactive to January 1, 1977.~~

**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Loans from Bank of North Dakota.** Institutions under the board of higher education are authorized to borrow, and the Bank of North Dakota is authorized to loan to those institutions, amounts not to exceed ninety percent of the value of an institution's certificate of deposit held by the Bank. The term of the loan may not exceed the term of the certificate of deposit offered as security for the loan. The loans are subject to such additional terms and conditions as may be established by the Bank.

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<sup>1</sup> Section 15-10-08 was also amended by section 11 of Senate Bill No. 2052, chapter 432.

<sup>2</sup> **SECTION 3. AMENDMENT.** Section 44-04-18.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial information.**

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. "Trade secret" includes:
  - a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and
  - b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any state agency, institution, department, or board which is the subject of efforts by the supplying person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.
3. "Proprietary information" includes information received from a sponsor of research conducted by an institution, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced at the institution which an employee, institution, or the board intends to commercialize.
4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
5. ~~An institution of higher education shall include justification for maintaining the confidentiality of information as to each grant or contract involving confidential information in the institution's regular~~

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<sup>2</sup> Section 44-04-18.4 was also amended by section 8 of Senate Bill No. 2228, chapter 381.

report to the board of higher education of grants and contracts received. The justification must contain general information required by the board and must include at least the following noneconfidential information:

- a. A general description of the nature of the information sought to be protected;
- b. A general explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
- c. A general explanation of why the information is not readily ascertainable through proper means by other persons;
- d. A general description of the persons or entities that would obtain economic value from disclosure or use of the information, and how they would obtain this value; and
- e. A general description of the efforts used to maintain the secrecy of the information.

The board of higher education shall review the justification at a public meeting of the board and shall decide if the confidential status should be maintained for the project. If the board decides against granting the confidential status, the justification may be resubmitted at the next meeting of the board and the confidential status may be maintained until that time. If the board again decides, upon reconsideration, not to grant confidentiality, the information becomes public.

Approved April 9, 1997  
Filed April 10, 1997

## CHAPTER 156

### HOUSE BILL NO. 1179

(Representative Dorso)  
(Senator G. Nelson)

### BUDGET SECTION APPROVAL OF CAMPUS IMPROVEMENTS

AN ACT to amend and reenact section 15-10-12.1 of the North Dakota Century Code, relating to budget section approval of the acceptance of buildings and campus improvements at the institutions of higher education.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 15-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12.1. Acceptance of buildings and campus improvements - Approval of budget section.** The state board of higher education may, with the approval of the budget section of the legislative council, authorize the use of land under the control of the board and construct buildings and campus improvements thereon which are financed by donations, gifts, grants, and bequests. The budget section approval must include a specific dollar limit for each building or campus improvement project. The budget section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the budget section based upon the financial impact of such construction projects upon the state of North Dakota. The state board of higher education may, with the approval of the budget section, authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The budget section may prescribe such conditions for the sale of the property as it deems necessary, including, but not limited to, requiring an appraisal and the advertisement for bids.

Approved April 4, 1997  
Filed April 4, 1997

## CHAPTER 157

### SENATE BILL NO. 2336

(Senators Holmberg, Freborg, Grindberg)  
(Representatives R. Kelsch, Monson)

## SUPERINTENDENT OF PUBLIC INSTRUCTION RULES

AN ACT to provide for the expiration of certain rules adopted by the superintendent of public instruction; and to amend and reenact sections 15-21-04.1, 15-21-07, 15-21-07.1, 15-21-07.2, 15-21.1-03, 15-21.1-04, 15-45-03, and subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to rulemaking by the superintendent of public instruction.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-04.1. Superintendent may adopt accreditation ~~standards~~ rules - Compliance not mandatory.** The superintendent of public instruction has the authority to adopt ~~standards~~ rules for the accreditation of the public and private schools of the state. Any public or private school which complies with ~~such standards~~ the rules must be deemed to be an accredited school.

**SECTION 2. AMENDMENT.** Section 15-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-07. Duties - To advise with county superintendents of schools and school boards - Appeals.** The superintendent of public instruction shall counsel with and advise county superintendents of schools and school boards upon all matters involving the welfare of schools; and on request; ~~he~~ shall give them written answers to all questions concerning school laws. ~~He~~ The superintendent of public instruction shall decide all appeals from decisions of county superintendents of schools, and, for the consideration of such appeals, ~~he~~ the superintendent of public instruction may require affidavits, verified statements, or testimony under oath as to the facts in issue, as provided in chapter 28-32. As an administrative agency under chapter 28-32 ~~and following provisions thereof,~~ he, the superintendent of public instruction shall ~~prescribe, and cause to be enforced,~~ adopt rules of practice and regulations pertaining to the hearing and determination of appeals ~~and such rules and regulations as may be necessary to render effective the school laws of the state.~~

**SECTION 3. AMENDMENT.** Section 15-21-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-07.1. Agreements with federal agencies and school districts.** The superintendent of public instruction in order to carry out the purposes of any federal statutes pertaining to public education may enter into agreements with any agency of the federal government and with the school board of any school district in the state, may make agreements with the federal government for and ~~in~~ on behalf of the public school districts of the state and may adopt ~~necessary~~ rules of administration to ensure the proper and efficient operation of ~~such~~ the agreements and to ~~comply with such conditions as may be necessary to obtain the full benefits of such the~~ federal statutes. Provided, however, that such contracts, agreements, or

arrangements shall in no way impair the rights, powers, duties, or authority of local school districts and school boards in the management and control of their local schools.

**SECTION 4. AMENDMENT.** Section 15-21-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-07.2. ~~Regulations prescribed~~ Rules for agreements with federal agencies.** All contracts, agreements, or arrangements affecting public tax supported schools or school systems under the supervision of the state superintendent of public instruction which may be made and entered into with agencies of the federal government must be entered into in accordance with ~~regulations~~ rules prescribed by the superintendent of public instruction ~~and in no other manner~~.

<sup>3</sup> **SECTION 5. AMENDMENT.** Section 15-21.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-21.1-03. Grants - Design - Coordination.** The state superintendent or designated staff ~~must establish guidelines~~ shall adopt rules for the school districts to implement a chemical abuse prevention program in North Dakota schools. The ~~guidelines~~ rules may ~~reflect~~ include the following ~~and other criteria~~ as may be appropriate:

1. Community involvement through a ~~citizens~~ citizens' advisory committee already in place or appointed by the school board.
2. Assessment of the current level of services and resources available within a community.
3. Assessment of student and staff needs.
4. Coordination of activities with public and private agencies whenever possible.
5. Development of an appropriate plan for implementation based upon assessed needs.
6. Evaluation of programs.
7. The budget to support implementation.

Based upon the criteria developed by the department of public instruction, the superintendent shall review the proposal and grant funds to the school districts.

The school districts may apply for funds independently or form a consortium for a more cost-effective program. The funding will be based upon the criteria and the merit of each program proposal.

The department shall develop a comprehensive plan to address the coordination of services with existing agencies. These agencies may include the

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<sup>3</sup> Section 15-21.1-03 was also amended by section 1 of House Bill No. 1130, chapter 158.

department of human services, state department of health, department of transportation, and law enforcement agencies. The purpose of coordination is to develop ~~state guidelines~~ rules and identify resources.

**SECTION 6. AMENDMENT.** Section 15-21.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-21.1-04. Staff.** The superintendent shall employ one permanent professional staff person for the purpose of coordinating this program. The project coordinator shall:

1. Develop ~~guidelines~~ rules in consultation with other private and public agencies.
2. Disseminate ~~guidelines~~ rules to local communities.
3. Provide technical assistance to communities through schools in planning and implementation of a chemical abuse and prevention program.
4. Collect pertinent data for reporting and program evaluation.
5. Facilitate coordination of this program with prevention and educational programs presently being conducted by other state agencies.
6. Provide written evaluation to the superintendent for a report to the ~~state legislature~~ legislative assembly.
7. Serve as a resource specialist to schools in the areas of policy, development, instructional programs, and identifying model programs.

**SECTION 7. AMENDMENT.** Section 15-45-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-45-03. Accreditation ~~standards~~ rules.** The superintendent of public instruction may adopt ~~standards~~ rules for the accreditation of all kindergartens operated in this state. All kindergartens that comply with these ~~standards~~ rules are accredited kindergartens.

<sup>4</sup> **SECTION 8. AMENDMENT.** Subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located

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<sup>4</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.



within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. ~~The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 and rules implementing chapter 15-22.~~
- r. The state fair association.

- s. r. The state department of health with respect to the state toxicologist.
- t. s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- u. t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- v. u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- w. v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.

**SECTION 9. Expiration of existing rules.** Any rule adopted by the superintendent of public instruction in a manner other than that set forth in chapter 28-32 is ineffective after October 31, 1999. For purposes of this section, "rule" includes any regulation, standard, guideline, statement, or policy that has the effect of law or which has either direct or indirect financial consequences for noncompliance.

Approved March 21, 1997  
Filed March 21, 1997

## CHAPTER 158

### HOUSE BILL NO. 1130

(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOL CHEMICAL ABUSE PREVENTION GRANTS

AN ACT to amend and reenact section 15-21.1-03 of the North Dakota Century Code, relating to chemical abuse prevention program grants to school districts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>5</sup> **SECTION 1. AMENDMENT.** Section 15-21.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-21.1-03. Grants - Design - Coordination.** The state superintendent or designated staff ~~must~~ shall establish guidelines for ~~the~~ school districts to implement a chemical abuse prevention program in North Dakota schools. The guidelines may reflect the following and other criteria as may be appropriate:

1. Community involvement through a citizens advisory committee already in place or appointed by the school board.
2. Assessment of the current level of services and resources available within a community.
3. Assessment of student and staff needs.
4. Coordination of activities with public and private agencies whenever possible.
5. Development of an appropriate plan for implementation based upon assessed needs.
6. Evaluation of programs.
7. The budget to support implementation.

Based upon the criteria developed by the department of public instruction and when funds have been appropriated or otherwise made available to implement the program, the superintendent shall review ~~the proposal~~ proposals and grant funds to the school districts.

The school districts may apply for funds independently or form a consortium for a more cost-effective program. The funding ~~will~~ must be based upon the criteria and the merit of each program proposal.

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<sup>5</sup> Section 15-21.1-03 was also amended by section 5 of Senate Bill No. 2336, chapter 157.

The department shall develop a comprehensive plan to address the coordination of services with existing agencies. These agencies may include the department of human services, state department of health, department of transportation, and law enforcement agencies. The purpose of coordination is to develop state guidelines and identify resources.

Approved February 11, 1997

Filed February 11, 1997

## CHAPTER 159

### HOUSE BILL NO. 1154

(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT ANNEXATION, REORGANIZATION, AND DISSOLUTION

AN ACT to create and enact sections 15-27.3-07.5 and 15-27.3-13.5 of the North Dakota Century Code, relating to voting on the issuance of bonds by school districts contemplating reorganization; and to amend and reenact sections 15-27.1-10, 15-27.1-11, subsection 2 of section 15-27.2-01, sections 15-27.3-10, 15-27.3-12, 15-27.3-20, 15-27.4-02, and 15-47-39 of the North Dakota Century Code, relating to the annexation, reorganization, and dissolution of school districts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-27.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.1-10. Transfer of land upon annexation ~~or~~, reorganization, or dissolution.** The legal title to all land owned by an original school district which has been annexed to another district ~~or~~, included in a reorganized district, or dissolved which is not subject to a possibility of reverter or right of reentry if title is held by other than the original district, vests in the school board of the reorganized school district or the district to which the property is annexed or attached upon approval of the reorganization proposal by the electors or upon orders of the county superintendent of schools or the reorganization committee, as the case may be. If the reorganized district or district to which the property is annexed or attached includes less than the whole of the former district, legal title to the land of the former district vests in the school board of the district in which the land is situated after reorganization ~~or~~, chapter 15-27.2 annexation, or chapter 15-27.4 dissolution. A certificate prepared by the county superintendent of schools of the county wherein the land in question is located, stating the legal description of the land involved, and the fact that the school district formerly owning the land has become either annexed, attached, or reorganized with another school district, may be recorded in the office of the register of deeds of the county in which the land is located.

<sup>6</sup> **SECTION 2. AMENDMENT.** Section 15-27.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.1-11. Reorganization or dissolution of school district not operating a school - Transportation.** Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization or dissolution, part of a school district operating an approved elementary or high school. Any student who resides within a

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<sup>6</sup> Section 15-27.1-11 was also amended by section 1 of House Bill No. 1131, chapter 160.

school district which is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, ~~shall be permitted to~~ may attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09. The students residing within a school district that is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

~~The county committee of the county encompassing the major portion of any~~ If a school district affected by this section; which school district does ~~has~~ not reorganize with an operating school district been reorganized or dissolved within the time limit prescribed in this section, the school district shall dissolve be dissolved and attach the nonoperating school district attached to an operating school district in accordance with chapter 15-27.4.

This section does not apply to school districts established pursuant to chapter 15-27.5.

**SECTION 3. AMENDMENT.** Subsection 2 of section 15-27.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The annexation petition must:
  - a. Be obtained from the county superintendent;
  - b. Identify all of the territory to be annexed before it is circulated. The territory must constitute one land area, with no territory identified in the petition separate from other territory identified in the petition;
  - c. Identify one student who ~~resides~~ lives in the area to be annexed and who will attend a public school in the receiving school district during the school year following ~~approval~~ the effective date of the ~~petition~~ annexation if it is approved by the state board;
  - d. Be signed in the presence of the carrier of the petition; and
  - e. Be submitted to the county superintendent of the county in which the majority of land identified in the petition is located.

**SECTION 4.** Section 15-27.3-07.5 of the North Dakota Century Code is created and enacted as follows:

**15-27.3-07.5. Vote on issuance of bonds when voting on reorganization proposal.**

1. If the reorganization proposal contemplates the issuance of bonds pursuant to chapter 21-03, the question of the issuance of the bonds may be voted on at the same election as that for which approval of the reorganization is sought, provided:

- a. Each of the school boards involved in the reorganization adopts, by a majority vote, an identical initial resolution required by chapter 21-03; and
  - b. All of the terms of chapter 21-03 are complied with, except that if there is a conflict with section 15-27.3-08 regarding how the election will proceed, the terms of section 15-27.3-08 prevail.
2. If the reorganization is not approved, the result of the vote on the issuance of bonds is ineffective.

**SECTION 5. AMENDMENT.** Section 15-27.3-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-10. Transportation provisions effective until changed by majority vote.** Any provision in a reorganization proposal relating to the transportation of students ~~effective before August 4, 1995,~~ must remain in effect until changed in accordance with section 15-27.3-19.

**SECTION 6. AMENDMENT.** Section 15-27.3-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-12. School boards in reorganized and original districts.** After the establishment of any new school district, the school board for the new school district must be elected at the regular annual school district election or at a special election called by the county superintendent of schools for that purpose. The first election to elect a school board in a newly reorganized district is governed by chapter 15-28. Members of school boards elected in the newly reorganized districts may not enter upon the duties of office until the time specified in section 15-27.3-15 except as provided by ~~section~~ sections 15-27.3-13 and 15-27.3-13.5. School boards in original school districts included within a reorganized district continue and remain in existence until the time specified in section 15-27.3-15 at which time the new school board elected for the newly reorganized district as provided in this section becomes the governing body of ~~such~~ the school districts. Prior to the completion of the reorganization of any school district under this chapter, the existing school board of any school district may not contract or place the district under any obligation, except upon the recommendation of the county committee. Subsequent annual elections in the school district are governed by the laws pertaining to such elections.

**SECTION 7.** Section 15-27.3-13.5 of the North Dakota Century Code is created and enacted as follows:

**15-27.3-13.5. Board may proceed in accordance with chapter 21-03.** The school board for a new school district established pursuant to this chapter may, before the effective date of the reorganization, proceed in accordance with chapter 21-03 for the issuance of bonds for purposes specified in that chapter if the issuance of the bonds is contemplated by the approved reorganization proposal.

**SECTION 8. AMENDMENT.** Section 15-27.3-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-20. Powers of school board in reorganized district - Exceptions.** After five years from the effective date of the reorganization proposal, the school board of a reorganized district ~~shall~~ may exercise the powers granted to a school board by section 15-29-08 or any other provisions of law regardless of limitations contained in the reorganization proposal. ~~This~~ However, this section does not authorize the

school board of a reorganized district to ~~exercise any powers prohibited or limited by change geographic voting areas except in accordance with section 15-27.3-17 or 15-27.3-19 nor does it authorize a change in transportation except in accordance with section 15-27.3-10.~~

**SECTION 9. AMENDMENT.** Section 15-27.4-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.4-02. Notice of hearing - Order of attachment - Joint county action.**

1. The county superintendent of the county in which the administrative headquarters of the dissolving school district is located, upon order of the county committee, shall notify the business manager of each school district adjoining any district which is to be dissolved pursuant to section 15-27.4-01, and any unorganized territory recommended for attachment as provided by that section, that a hearing will be held and the time and the place of the hearing by the county committee, for the purpose of determining to which school district or districts the dissolved or unorganized territory will be attached.
2. The county committee shall receive testimony at the hearing for the purpose of determining and considering the factors listed in subsection 3 of section 15-27.2-04 as they relate to the dissolution proceeding. At the hearing, the school district to be dissolved may propose a particular manner of dissolution.
3. After the hearing, the county committee shall by resolution order the district dissolved and its territory attached, or the unorganized territory attached, to one or more adjoining school districts in such manner as will, in its judgment, provide the best educational opportunities for ~~pupils~~ students of the public schools and the wisest use of public funds for the support of the public school system in the school districts and attached territory. The county committee may not order the attachment of any territory unless a minor resides within the boundaries of the territory to be attached.
4. The district to be dissolved must be attached to a contiguous operating school district.
5. The order becomes effective July first following the date of the order or resolution and after approval by the state board, unless another effective date is provided for by the county committee, as provided in section 15-27.4-01.
6. If that portion of the order providing for attachment of the dissolved or unorganized territory is rendered ineffective or suspended for any reason, the portion of the order providing for the dissolution is suspended until such time as the attachment becomes effective.
7. ~~If any of the adjoining district is situated wholly or partly in a county other than that which included the district to be dissolved or the unorganized territory affected, any order attaching territory to the adjoining school district becomes effective only upon the adoption of a concurring resolution by the county committee of the other county in which it is situated.~~



8. If the school district to be dissolved is located in more than one county, the county committees of the counties in which twenty-five percent or more of the taxable valuation of the dissolving school district is located, shall hear the dissolution. After the hearing, if a majority of the county committees hearing the dissolution cannot agree upon an order attaching the territory to adjoining districts, the county superintendent of the county in which the majority administrative headquarters of the dissolving school district being dissolved is located, shall submit the dissolution and attachment to the state board, and in such instance the state board shall, after holding a hearing such as the one described in subsections 1 and 2, dissolve and attach the district to be dissolved, or the unorganized territory, in the manner as will, in its judgment, provide the best educational opportunities for pupils students of the public school system in the school districts and attached territories.
9. ~~The action of the state board has the same effect as approval by all county committees.~~

**SECTION 10. AMENDMENT.** Section 15-47-39 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-39. Agreements between school district and school district of adjoining states - Provisions - Election - Tax levy.** Notwithstanding any other ~~provisions~~ provision of law, subject to the provisions of this section, the board of any school district with boundaries touching upon a school district in another state may enter into a written agreement with the board of such school district for the joint operation and maintenance of school facilities and activities in either district. ~~Such~~ The agreement must be submitted to the superintendent of public instruction and, in approving or disapproving ~~such~~ the agreements, must take into consideration the enrollment, valuation of the district and future possibilities of the district and, if approved and endorsed by ~~him~~ the superintendent of public instruction, must be submitted to the electorate of the school district at any annual election or at a special election. There must be published by the school board in a newspaper having general circulation within the district, at least fourteen days next preceding ~~such~~ the election, a statement of the purpose of the election and the terms of the agreement. The question on the ballot must be:

Shall the proposed agreement between this school district and school district number \_\_\_\_\_ in \_\_\_\_\_ County, state of \_\_\_\_\_, as approved by the superintendent of public instruction by endorsement dated \_\_\_\_\_ be executed?

Yes \_\_\_\_\_  
No \_\_\_\_\_

Upon approval by the electorate, the board of the school district may levy and collect taxes to carry out the provisions of the agreement pursuant to chapters 15-48 and 57-16 and sections 57-15-13 and 57-15-14. In the event that a school district which has entered into an agreement with an out-of-state district is ~~annexed~~ dissolved and attached to or reorganized into another school district, the school board of the attaching or reorganized ~~or annexing~~ district shall have all powers, duties, and responsibilities of the board of the district which executed the agreement in effect at the time of the ~~annexation~~ dissolution or reorganization.

Approved March 19, 1997  
Filed March 19, 1997

## CHAPTER 160

### HOUSE BILL NO. 1131

(Education Committee)

(At the request of the Superintendent of Public Instruction)

### OUT-OF-STATE SCHOOL ATTENDANCE

AN ACT to amend and reenact section 15-27.1-11, subsection 1 of section 15-40.2-01, sections 15-40.2-09, and 15-40.2-10 of the North Dakota Century Code, relating to attendance of students in out-of-state schools.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>7</sup> **SECTION 1. AMENDMENT.** Section 15-27.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.1-11. Reorganization or dissolution of school district not operating a school - Transportation.** Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization or dissolution, part of a school district operating an approved elementary or high school. ~~Any student who resides within a school district which is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09.~~ The students residing within a school district that is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by this section, which school district does not reorganize with an operating school district within the time limit prescribed in this section, shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4.

This section does not apply to school districts established pursuant to chapter 15-27.5.

<sup>8</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 15-40.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>7</sup> Section 15-27.1-11 was also amended by section 2 of House Bill No. 1154, chapter 159.

<sup>8</sup> Section 15-40.2-01 was also amended by section 3 of House Bill No. 1146, chapter 175.

1. The school board of any district may send kindergarten, elementary, or high school pupils into another school district or to an accredited institution ~~of another state~~ when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of ~~such the~~ pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to ~~such the~~ other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from ~~such the~~ other schools or institutions.

**SECTION 3. AMENDMENT.** Section 15-40.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance ~~when district annexed or reorganized~~ under certain circumstances.**

1. Students may attend a school in a bordering state in accordance with section 15-40.2-10 under the following circumstances:
  - a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state; ~~and the school board of the school district within which the student resides may contract with the bordering state for the education of the student.~~
  - b. A student who resides ~~within a school district that is annexed to or reorganized with another district or districts, and who has~~ attended a school district in a bordering state ~~during since, and including,~~ the 1990-91 school year, must be permitted to ~~attend or~~ continue attending school in the district in the bordering state.
  - c. A student ~~who resides within a school district that is annexed to or reorganized with another district or districts, and whose sibling~~ attended an out-of-state school during or before the 1990-91 school year, must be permitted to attend school in the district the sibling attends in the bordering state.
2. If the school board of the district in which the student resides denies a request for attendance and payment of tuition in another state, an appeal may be made to the three-member committee ~~referred to~~ in accordance with section 15-40.2-05. If the three-member committee determines that the student falls within the terms of subdivision b or c of subsection 1, then the student may attend in the bordering state and the school district of residence shall pay the tuition. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15-40.2-05. For kindergarten students, the three-member committee shall use the criteria specified for elementary students in section 15-40.2-05. Subsection 3 of section 15-40.2-05 does not apply to an appeal for out-of-state attendance and payment of tuition. Regardless of the provisions of this section, if the

school district of residence does not provide for the education of kindergarten students, it may not pay tuition for a kindergarten student to attend school in a bordering state. The decision of the committee regarding payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision is final.

3. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.
4. This section does not require the district of residence to provide student transportation, or payments in lieu thereof, for students attending out-of-state schools.

**SECTION 4. AMENDMENT.** Section 15-40.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-10. Reciprocal master agreements for student attendance in other states - School district agreements - Procedure when bordering state does not enter into reciprocal master agreement.**

1. The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school students in the public schools or institutions in such bordering states. A school district may either comply with the terms of the reciprocal master agreement or, upon notification to the superintendent of public instruction, may enter into an agreement with a school district in a bordering state for the education of elementary and high school students. The agreement, which replaces the provisions of the master reciprocal agreement, ~~may~~ must provide for the payment of tuition at an amount agreed upon by the school district of residence and the school district of the bordering state. However, the tuition may not exceed the amount established under the reciprocal master agreement, nor may it be less than the per student foundation aid plus tuition apportionment in the student's school district of residence. For purposes of foundation aid, a student attending school in a bordering state under such an agreement is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district in the bordering state for payments as provided in the agreement.

2. If the state educational agency or officer of the bordering state is not authorized to or declines to enter into a reciprocal master agreement with the superintendent of public instruction, a school district may negotiate with a school district of that bordering state an amount of tuition it is willing to pay to that other state's school district for the education of pupils in that state. The school district of residence is liable to the school district in the bordering state for the payments it agrees to make under this subsection. However, if the school district accepts students from that bordering state, it may not agree to accept those nonresident students for an amount of tuition less than the foundation aid plus tuition apportionment it would have received from this state for one of its students in the same grade if its student had been attending in that bordering state.

Approved March 20, 1997

Filed March 20, 1997

## CHAPTER 161

### HOUSE BILL NO. 1366

(Representative Mickelson)

## SCHOOL DISTRICT ANNEXATION PROCEEDINGS

AN ACT to amend and reenact section 15-27.2-04 of the North Dakota Century Code, relating to school district annexation proceedings.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 15-27.2-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.2-04. Annexation hearings - Equalization - Notice of hearings.**

1. Before detaching territory from one school district or annexing territory to another school district, the county committee shall hold a hearing on the annexation.
2. At least fourteen days prior to the time the hearing is to be held, the committee shall cause notice of such hearing to be published in the official newspaper of the county in which the school district is located, or if no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in this state.
3. At such hearing the committee shall consider testimony and documentary evidence with respect to any of the following factors:
  - a. The value and amount of all school property and all bonded and other indebtedness of each school district affected by a change in boundaries.
  - b. The amount of all outstanding indebtedness of each district and that which would constitute an equitable adjustment of all property, assets, debts, and liabilities among the districts involved.
  - c. The taxable valuation of existing districts and the differences in such valuation which would accrue under the proposed annexation.
  - d. The size, geographical features, and boundaries of the districts.
  - e. The number of pupils attending school and the population of the districts.
  - f. The location and condition of the districts' school buildings and their accessibility to affected pupils.
  - g. The location and condition of roads, highways, and natural barriers within the respective districts.
  - h. The school centers where children residing in the districts attend high school.

- i. Conditions affecting the welfare of the pupils in the land area that is the subject of the annexation petition.
  - j. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
  - k. The educational needs of local communities in the involved districts.
  - l. An objective in economizing in the use of transportation and administrative services.
  - m. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.
  - n. A reduction in disparities in per student valuation between school districts and the objective of equalization of educational opportunities for pupils.
  - o. Any other relevant factors which, in the judgment of the committee, are of importance.
4. Following the committee's consideration of testimony and documentary evidence with respect to any of the factors listed in subsection 3, the committee shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed.
  5. ~~All~~ Except as provided in this subsection, all proposed annexations must be given final approval by the state board following a hearing conducted by the board at which testimony and documentary evidence shall be considered with respect to any of the factors listed in subsection 3. The state board shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed. If the county committee approves an annexation after receiving no opposition at the hearing, the state board may review the record of the county hearing and give final approval to the annexation without holding a hearing.
  6. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. If the annexation is approved by a majority of the members of one of the two county committees, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees.
  7. Whenever a petition for annexation has failed to be approved by any county committee, a petition involving any of the same area may not be submitted to the county committee for a period of three months after the filing of the original petition with the county. The petition may not be considered by the county committee more than twice in twelve consecutive months.



8. Whenever a petition for annexation has failed to be approved by the state board, a petition involving any of the same area may not be submitted to the county committee for a period of three months after the state board's determination not to approve the annexation. The petition may not be considered by the state board more than twice in twelve consecutive months.
9. If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of such county shall consider the matter.
10. Any determination made by a single county committee with respect to an annexation proposed under this section may be appealed to the state board. A decision of the state board with respect to a proposed annexation may in turn be appealed to the district court of the judicial district in which the territory proposed is located in accordance with chapter 28-32.

Approved March 13, 1997  
Filed March 13, 1997

## CHAPTER 162

### HOUSE BILL NO. 1127

(Political Subdivisions Committee)  
(At the request of the Secretary of State)

## COMBINED ELECTION NOTICES

AN ACT to amend and reenact subsection 5 of section 15-28-03, and sections 15-28-06 and 40-21-02 of the North Dakota Century Code, relating to election notices in combined county, city, or school district elections.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 5 of section 15-28-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. If the school election is held in conjunction with the primary election, the school board may enter into an agreement with the governing body of the county or counties in which the district lies concerning use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses.

**SECTION 2. AMENDMENT.** Section 15-28-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-28-06. Annual and special elections - Notice.** Notice of the annual school district election and notice of special school elections must be given by the school board. At least fourteen days before the date the election is to be held the school board must cause to be published, in the official newspaper of the school district, notice of the election. ~~Such~~ The notice must be signed by the business manager of the school district, or in the business manager's absence by the president of the school board, and must state the time and place of holding the election, and the matter to be voted upon. When a school district enters into an agreement with the county to hold the school district election in conjunction with the primary election pursuant to section 15-28-03, the deadline for giving notice of the school district election along with the matter to be voted upon may be adjusted in order to meet the publishing requirements of the county.

**SECTION 3. AMENDMENT.** Section 40-21-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors.** Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at ~~such~~ the election must be given by the city auditor by publication in the official newspaper of the city as

provided by section 40-01-09. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. For city elections that are not held under an agreement with any county the governing body of the city shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge. When a city enters into an agreement with the county to hold the city election in conjunction with the county election, the deadline for giving notice of the city election along with the offices to be filled at the election may be adjusted in order to meet the publishing requirements of the county.

Approved March 5, 1997

Filed March 6, 1997

## CHAPTER 163

### HOUSE BILL NO. 1368

(Representatives Grande, Belter, Boehm)  
(Senators Schobinger, Wanzek)

### HOME EDUCATION

AN ACT to amend and reenact subsection 1 of section 15-34.1-00.1, subsection 5 of section 15-34.1-03, sections 15-34.1-06, 15-34.1-07, 15-34.1-08, 15-34.1-09, 15-34.1-10, and 15-34.1-11 of the North Dakota Century Code, relating to home education.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 15-34.1-00.1 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Home-based instruction~~" "Home education" means an educational program for ~~students~~ a child, based in the child's home and supervised by the child's parent or parents wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

**SECTION 2. AMENDMENT.** Subsection 5 of section 15-34.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. That the child, not including a child with developmental disabilities as defined by subsection 1 of section 25-01.2-01, is receiving ~~home-based instruction~~ home education in accordance with the provisions of this chapter.

**SECTION 3. AMENDMENT.** Section 15-34.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-06. ~~Home-based instruction~~ Home education.**

1. ~~Home based instruction~~ Home education is an educational program for ~~students~~ a child. It is based in the child's home and supervised by the child's parent or parents. ~~A parent who provides home-based instruction may only invoke the home-based instruction exception to compulsory attendance.~~
2.
  - a. A parent is qualified to supervise a program of ~~home-based instruction~~ home education if the parent is certified to teach in North Dakota; has a baccalaureate degree; or has met or exceeded the cut-off score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test.
  - b. A parent who has a high school diploma or a general education development certificate is qualified to supervise ~~home-based instruction~~ home education but must be monitored by a certificated

teacher during the first two years the parent supervises ~~that instruction, and if home education~~ or until the child being instructed completes the third grade, whichever is later. If the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile. If testing is not required by section 15-34.1-07 in either of the first two years of monitoring, the time of monitoring may not be extended except upon the mutual consent of the parent and the monitor. Once a parent has completed the monitoring requirements for one child, the parent may not be monitored with respect to other children being educated at home.

3. ~~Home-based instruction~~ Home education must include instruction in those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 ~~and~~. Instruction must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year.
4. Every parent supervising ~~home-based instruction~~ home education shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise ~~home-based instruction~~ home education for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least ~~thirty~~ fourteen days prior to the beginning of ~~the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of home education or within~~ fourteen days of establishing the child's residency within the district. The statement must include:
  1. a. The names and addresses of the parent who will supervise and the child who will receive ~~home-based instruction~~ home education;
  2. b. The date of birth and grade level of each child receiving home education;
  3. c. The intention of the parent to supervise ~~home-based instruction~~ home education;
  4. d. The qualifications of the parent who will supervise ~~the home-based instruction~~ home education;
  5. e. A list of courses or extracurricular activities in which the child intends to participate in the public school district;
  6. f. Proof of an immunization record as it relates to section 23-07-16; and

7. g. Proof of identity as it relates to section 54-23.2-04.2; and
8. An oath or affirmation that the parent will comply with all provisions of this chapter.

**SECTION 4. AMENDMENT.** Section 15-34.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-07. ~~Students receiving home-based instruction~~ Home education - Quality assurance.** ~~In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the~~ The following minimum indices of quality education are established:

1. A standardized achievement test used by the public school in the school district in which the parent resides or, if requested by the parent, a nationally normed standardized achievement test ~~used by a state-approved nonpublic school~~ must be given to each child receiving ~~home-based instruction~~ home education in grades three, four, six, eight, and eleven. The test must be given in the child's learning environment or, at the option of the child's parent, in the public school and must be administered by a ~~certified~~ certificated teacher. The cost of ~~such testing must be borne by the test~~ is the responsibility of the local school district in which the parent resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is a nationally normed standardized achievement test requested by the parent, if it is a test used by the district. The cost of administering the test is the responsibility of the local school if it is district administered by a certificated teacher employed by the district. The cost of the test is the responsibility of the parent if the test requested is not used by the local school district and the cost of having the test administered is the responsibility of the parent if it is administered by a certificated teacher secured by the parent. Results of such testing must be filed with the local public school superintendent. If the parent resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the parent's residence.
2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem by a multidisciplinary assessment team according to guidelines established by the superintendent of public instruction. If the multidisciplinary assessment team evaluation determines that the child is not ~~handicapped disabled~~ disabled according to the eligibility criteria ~~of the department~~ established by the superintendent of public instruction and the child does not require specially designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to ~~provide home-based instruction~~ conduct home education, upon filing with the superintendent of ~~the public instruction~~ a statement school district, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03 or county superintendent if there is no local superintendent, a plan of remediation to address the academic deficiencies of the child. An annual determination of reasonable

academic progress conducted by the local school district superintendent must be based on the child's plan of remediation. If such a plan is not filed, the parent is deemed to be in violation of the compulsory attendance requirement of section 15-34.1-01 and the child no longer qualifies for home education. Such plan of remediation must be developed in consultation with and with the approval of a state-certificated teacher selected by the parent. Costs associated with the consultation are the responsibility of the parent. The plan of remediation must remain in effect until such time as the child demonstrates reasonable academic progress by achieving a basic composite score on a standardized achievement test at or above the thirtieth percentile or a score indicating one year of academic progress as compared to a score on a test from the previous school year. The test may be one required by this section or one administered in an additional grade level, at the option of the parent. The plan of remediation may be amended from time to time in consultation with and with the approval of the state-certificated teacher in order to accommodate the academic needs of the child. If a plan of remediation is no longer in effect and the child fails to demonstrate reasonable academic progress on a subsequent test required by this section, a plan of remediation must again be developed and instituted. If the evaluation of the multidisciplinary assessment team determines that the child is handicapped, but not developmentally disabled, but does not have a developmental disability, according to the eligibility criteria of the department established by the superintendent of public instruction, and that the student child requires specially designed instruction due to the handicap disability, and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction home education, upon filing with the superintendent of the public instruction school district an individualized education program plan, formulated within rules adopted by the department of public instruction developed privately or through the local school district, indicating that the child's needs need for special education are is being appropriately addressed by persons qualified to provide special education or related services. An annual determination of reasonable academic progress conducted by the local school district superintendent must be based on the child's individualized education plan. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03 is deemed to be in violation of the compulsory attendance requirements of section 15-34.1-01, and the child no longer qualifies for home education. A child who is once evaluated by a multidisciplinary team need not be reevaluated for a potential learning problem upon scoring below the thirtieth percentile on a subsequent standardized achievement test unless the reevaluation is performed pursuant to the provision of special education and related services.

3. Any ~~certified~~ certificated teacher monitoring ~~home-based instruction~~ home education shall spend, at a minimum, an average of one hour per week in contact with the first student and in conjunction with the parent. With two or more children under supervision, the teacher shall ~~monitor~~ spend, at a minimum, an additional one-half hour per month for each child under the teacher's supervision who is receiving home-based instruction home education. The time may be reduced proportionately if the child is in attendance in a public school or an approved ~~private~~ nonpublic school. The teacher shall evaluate the student's progress and

report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.

4. ~~If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress. If a monitor is required by section 15-34.1-06, the school district shall, at the request of the parent, provide the monitor at school district expense. A monitor retained by the parent must be compensated by the parent.~~

**SECTION 5. AMENDMENT.** Section 15-34.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-08. State aid.** For purposes of allocating foundation aid and other state assistance to local school districts, a student receiving ~~home-based instruction~~ home education is deemed enrolled in the school district in which the student resides if the student is monitored by a certificated teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the ~~per-pupil~~ per student payment provided in section 15-40.1-06 times the appropriate factor in section 15-40.1-07 or 15-40.1-08 for each such student. When a student is supervised ~~through home-based instruction~~ in home education and is enrolled in classes in the public school, proportionate payments must be made as provided in sections 15-40.1-07 and 15-40.1-08. The total amount may not exceed the equivalent of one full foundation aid payment.

**SECTION 6. AMENDMENT.** Section 15-34.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-09. Monitoring or administration by a ~~certified~~ certificated teacher.** Any ~~certified~~ certificated teacher who monitors ~~home-based instruction~~ a child receiving home education or who administers a standardized achievement test to ~~children receiving home-based instruction~~ a child receiving home education must notify the child's public school district of residence that the teacher is providing such monitoring or administration. The parent of any ~~student receiving home-based instruction~~ that child receiving home education who is monitored by or taking a test administered by a ~~certified~~ certificated teacher not employed by a public school district is responsible for ~~any the costs charged for such~~ of the monitoring or test administration.

**SECTION 7. AMENDMENT.** Section 15-34.1-10 of the North Dakota Century Code is amended and reenacted as follows:



**15-34.1-10. ~~Home-based instruction~~ Home education - Liability.** No state agency, public school district, or county superintendent may be found liable for accepting as correct the information on the statement of intent or for any damages resulting from the parent's failure to educate the child.

<sup>9</sup> **SECTION 8. AMENDMENT.** Section 15-34.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.1-11. ~~Home-based instruction~~ Home education - High school diploma - Fee.** The superintendent of public instruction shall issue to a student who has completed the requirements for high school graduation through ~~home-based instruction~~ home education a diploma that clearly indicates that the requirements for graduation have been met through ~~home-based instruction~~ home education. The superintendent may charge a fee for issuing the diploma.

Approved April 3, 1997  
Filed April 3, 1997

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<sup>9</sup> Section 15-34.1-11 was repealed by section 2 of House Bill No. 1456, chapter 164.

## CHAPTER 164

### HOUSE BILL NO. 1456

(Representatives Koppelman, Torgerson, Grumbo)  
(Senators Christmann, Lee, Nalewaja)

### HOME EDUCATION DIPLOMAS

AN ACT to create and enact a new section to chapter 15-34.1 of the North Dakota Century Code, relating to the issuance of high school diplomas to home education students; and to repeal section 15-34.1-11 of the North Dakota Century Code, relating to the issuance of high school diplomas by the superintendent of public instruction.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

#### **High school diplomas - Issuance to home education students.**

1. A high school diploma may be issued to a student by the student's school district of residence, a state-approved nonpublic high school, or the North Dakota division of independent study if the student, through home education, has met the issuing entity's requirements for high school graduation and the student's parent or legal guardian provides the issuing entity with a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the student's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued to a student by the student's school district of residence, a state-approved nonpublic high school, or the North Dakota division of independent study if the student, through home education, has completed at least seventeen units of high school coursework from the minimum required curriculum offerings established for public and private schools in section 15-41-24 and the student's parent or legal guardian provides the issuing entity with a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the student's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the student has received home education.
3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the student has met the applicable requirements for high school graduation.

<sup>10</sup> **SECTION 2. REPEAL.** Section 15-34.1-11 of the North Dakota Century Code is repealed.

Approved April 9, 1997  
Filed April 10, 1997

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<sup>10</sup> Section 15-34.1-11 was amended by section 8 of House Bill No. 1368, chapter 163.

## CHAPTER 165

### SENATE BILL NO. 2032 (Legislative Council) (Education Finance Committee)

## SCHOOL FIRE INSPECTIONS

AN ACT to create and enact a new section to chapter 15-35 of the North Dakota Century Code, relating to the inspection of schools by the state fire marshal or the state fire marshal's designee; and to amend and reenact sections 15-35-01.1 and 18-01-02 of the North Dakota Century Code, relating to required approval for school district construction projects and the duties of the state fire marshal.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-35-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

##### **15-35-01.1. Approval required for certain school district construction projects.**

1. Notwithstanding the powers and duties of school boards of public school districts otherwise provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars may not be commenced unless approved by the superintendent of public instruction. No such construction, purchase, repair, improvement, renovation, or modernization of any school building or facility may be approved unless the school district proposing the project demonstrates the need, the educational utility of the project, fiscal need, and the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
2. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.
3. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 2 of this Act, unless the cost of the improvements exceeds seventy-five thousand dollars.

**SECTION 2.** A new section to chapter 15-35 of the North Dakota Century Code is created and enacted as follows:

**Inspection of schools - Submission of inspection report - Correction of deficiencies.**

1. The state fire marshal or the state fire marshal's designee shall inspect each public and private elementary and secondary school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the superintendent of the school district and the superintendent of public instruction.
2. a. If a deficiency is noted, the superintendent of the school district shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee and the local school board affected by the deficiency, but not later than the next budget period.
  - b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the school district board, the superintendent of the school district, and the superintendent of public instruction of the hazard. Upon the recommendation by the superintendent of public instruction for immediate closure, the school district board and the superintendent of the school district may immediately close some or all of the school, until the fire hazard is eliminated. In the case of a closure, the superintendent of the school district in which the public school is located, or the administrator of the private school shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

**SECTION 3. AMENDMENT.** Section 18-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**18-01-02. Duties of state fire marshal and deputy state fire marshals.** The state fire marshal and deputy state fire marshals may enforce all the laws of the state providing for:

1. The prevention of fires.
2. The storage, sale, and use of combustibles and explosives.
3. The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment.
4. The means and adequacy of exits in case of fires from all public and private elementary and secondary schools, from all public places, and from all other places in which fifty or more persons congregate from time to time for any purpose.
5. The suppression of arson and the investigation of the cause and origin of fires.
6. The education of the citizens of North Dakota on the hazards of fire, through organized programs.

## CHAPTER 166

### HOUSE BILL NO. 1337

(Representatives Clark, Huether, Torgerson)  
(Senators Andrist, Grindberg, Wanzek)

## SCHOOL GUIDANCE AND COUNSELING SERVICES

AN ACT relating to the provision of guidance and counseling services at the elementary and secondary school level.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

### **SECTION 1. School guidance and counseling services - Providers.**

Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a valid North Dakota teaching certificate or will obtain one within seven years from the date of first employment under the provisions of this section. The education standards and practices board shall adopt rules relating to the background check of a person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The education standards and practices board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a teaching certificate as determined on the date of first employment under this section.

Approved April 10, 1997  
Filed April 10, 1997

## CHAPTER 167

### HOUSE BILL NO. 1216

(Representatives Wardner, Aarsvold, Drovdal)  
(Senators Freborg, Kelsh)

### TEACHER CERTIFICATION

AN ACT to create and enact a new section to chapter 15-38 of the North Dakota Century Code, relating to the initial certification of teachers.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15-38 of the North Dakota Century Code is created and enacted as follows:

**Education standards and practices board - Initial certification of teachers -**

**Background.** The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial certification as a teacher. The board shall require each applicant for certification to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 168

### SENATE BILL NO. 2095

(Education Committee)

(At the request of the Education Standards and Practices Board)

## TEACHER AND SCHOOL ADMINISTRATOR COMPLAINTS

AN ACT to amend and reenact section 15-38-19 of the North Dakota Century Code, relating to complaints against teachers and school administrators.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 15-38-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-38-19. Complaints against teachers and school administrators.** The education standards and practices board or the administrator's professional practices board shall accept complaints against any member of the teaching profession engaged in teaching or administration alleging a violation ~~or violations~~ of rules ~~promulgated~~ adopted in accordance with section 15-38-18 or alleging grounds as set forth in section 15-36-15. The complainant shall prepare and file a clear and concise complaint with the appropriate board. The complaint must contain a concise statement of the claims or charges upon which the complainant relies ~~including references to the statute or rule allegedly violated~~. The complaint must be signed and may include supporting affidavits documentation. Upon the filing of the complaint with the appropriate board, that board shall serve a copy of the complaint and any supporting affidavits documentation upon the teacher or administrator personally or by certified mail. Within twenty days of the receipt of the complaint by the teacher or administrator, the teacher or administrator may file with the appropriate board a clear and concise answer to the complaint. The answer may include supporting affidavits documentation. If the teacher or administrator fails to file an answer with the appropriate board, the allegations in the complaint will be deemed admitted and the appropriate board shall proceed to hold a hearing pursuant to section 15-36-16. If an answer is submitted by the teacher or administrator, the appropriate board shall hold a hearing meeting for the purpose of reviewing and discussing the documentation submitted by the respective parties. No testimony by any witnesses may be permitted at this hearing meeting. Following the hearing meeting, the board may dismiss a complaint as unfounded, issue a written warning and reprimand, or, upon the determination that sufficient evidence exists to sustain the charges, order a hearing pursuant to section 15-36-16.

Approved March 19, 1997

Filed March 19, 1997



## CHAPTER 169

### HOUSE BILL NO. 1143

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

### TFFR ADMINISTRATION

AN ACT to create and enact two new sections to chapter 15-39.1 of the North Dakota Century Code, relating to correction of errors in teachers' fund for retirement benefit calculations; to amend and reenact subsections 10 and 11 of section 15-39.1-04, sections 15-39.1-08, 15-39.1-14, 15-39.1-15, 15-39.1-19.1, 15-39.1-20, 15-39.1-23, and 15-39.1-24 of the North Dakota Century Code, relating to definitions, compensation of board members, mandatory retirement, return to teaching, withdrawal, failure to make required reports and payments, military service credit, and acceptance of rollovers from other qualified plans under the teachers' fund for retirement; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 10 and 11 of section 15-39.1-04 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. "State institution" includes the school for the blind, the school for the deaf, ~~the developmental center at westwood park, Grafton,~~ and the North Dakota youth correctional center.
11. "Teacher" means:
  - a. All persons certified to teach in this state by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state.
  - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the state board for vocational and technical education, the professional staff of the division of independent study, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
  - c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on

July 1, 1995, and certified staff of teachers centers, but only if the person was previously a member of and has credits in the fund.

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

**SECTION 2. AMENDMENT.** Section 15-39.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-08. Compensation of members.** Members of the board, excluding ex officio members, ~~must be compensated for attendance at meetings from the fund at the rate of fifty dollars per day, plus expenses of travel, food, and lodging as allowed by law for state employees are entitled to receive sixty-two dollars and fifty cents as compensation per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the board.~~ No member of the board may lose regular salary, vacation pay, vacation or any personal leave, or be denied right of attendance by the state or political subdivision thereof while serving on official business of the fund.

**SECTION 3. AMENDMENT.** Section 15-39.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-14. Retirement not mandatory - ~~When retirement occurs.~~** Nothing in this chapter may be construed as requiring retirement at any specific age. If the teacher elects to teach beyond age sixty-five ~~and is permitted to do so by the body for whom he works, he shall continue, the teacher continues~~ to earn credits at the same rate as prior to the age of sixty-five. ~~Retirement must be deemed to have occurred and benefits are payable from the date of last teaching prior to the filing of a written application for retirement benefits, except in the case of a teacher whose rights in the fund have become vested but who chooses not to retire prior to age sixty five, in which case the benefits must be paid from the date such teacher attains the age of sixty five.~~

**SECTION 4. AMENDMENT.** Section 15-39.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-15. Withdrawal from fund - Return to teaching.** Any teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach ~~one full school year~~ in a public school or state institution of this state, regain credit for prior teaching by making the required payment. The required payment, if made within five years of ~~initial eligibility~~ returning to teach, is the amount that was ~~returned to the teacher on withdrawal~~ withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. The fund may accept rollovers from other qualified plans under rules adopted by the board for the repurchase of refunds previously taken, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.

**SECTION 5. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. Annuities discontinued on resumption of teaching.** ~~The benefits payable to any retired person who has retired from teaching under chapter 15-39, 15-39.1, or 15-39.2 and who again returns to teaching in a public school or state institution in this state must be discontinued when the retired person's earnings~~

during the fund's fiscal year exceed the maximum earnings allowed by the federal Social Security Act. Such person shall immediately notify the office of the fund in writing when the retired person's earnings have exceeded such maximum. Failure to notify the fund results in the loss of one month's annuity benefits when the payment of the annuity is resumed upon further retirement, in addition to the discontinuance of benefits paid after reaching such maximum. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until sixty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment for a maximum of ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations.

Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office will result in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ninety-day maximum.

Any retired ~~person~~ member who returns to teaching shall pay the required assessments on those earnings received ~~after the maximum has been exceeded in the fiscal year and the~~ by the retired member after the ninety-day maximum. The employer shall pay the required contributions in a like manner.

Upon the teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. If the teacher subsequently retires with less than two years of additional credited service, the teacher's assessments paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is ~~not~~ entitled to receive the discontinued annuity ~~for those months of the fiscal year during which the earnings were in excess of the maximum earnings so established~~ the first day of the month following the teacher's re-retirement.
2. If the teacher subsequently retires with more than two years of additional credited service, the retired person's annuity ~~must be~~ is the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during ~~such~~ the period of reemployment. The new annuity is payable the first day of the month following the member's re-retirement.

**SECTION 6. AMENDMENT.** Section 15-39.1-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before accumulating five years of service credit must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned ~~during the month of January next~~ in the fiscal year

following the date of termination. The automatic refund must be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases. For distributions made after January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise limit a member's refund election under this chapter, a member may elect, at the time and under rules established by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member.

**SECTION 7. AMENDMENT.** Section 15-39.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-23. Penalties for failure to make required reports and payments.** ~~At~~ Except for unintentional reporting errors, an employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter, is subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the report was required to be filed or the payment became due. The board, if satisfied the delay or underpayment was unintentional and excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty and may reduce the interest rate charge to the investment return rate used in the most recent actuarial valuation, compounded annually, but may not waive the entire amount of the interest. The penalty must be paid to the fund and deposited in the same manner as other receipts under this chapter.

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

**SECTION 8. AMENDMENT.** Section 15-39.1-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-24. Purchase of additional credit.** Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota. However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching service do not qualify for credit in this state if the years claimed also qualify for retirement benefits from an out-of-state retirement system.
2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with

the board and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the Veterans' Reemployment Rights Act Uniformed Services Employment and Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.

3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving the teacher's qualifications in the teaching profession is entitled to have such periods while in attendance at that college, university, or school credited, not to exceed three years of teaching service, under this chapter. To be eligible for purchasing credit under this subsection, the teacher must have taught at least one full school year in North Dakota immediately preceding entrance into the college, university, or school, or, immediately following such training, the teacher must have taught not less than one full school year in a public school or state institution of this state.
4. A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.
5. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.
6. An active teacher who is elected president of a professional educational organization recognized by the board and who serves in a full-time capacity in lieu of teaching may purchase service credit for the time spent serving as president. The service credit must be purchased within one year after the teacher leaves the position. As an alternative to purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement under which payment for service credit for the time spent as president of the professional educational organization is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary as president.

7. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.
8. Except as provided in subsections 2, 4, and 6, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

**SECTION 9.** Two new sections to chapter 15-39.1 of the North Dakota Century Code are created and enacted as follows:

**Correction of errors - Adjustment to actuarial equivalent.** If any change or error in the records of the fund or any participating employer or error in any calculation results in any person receiving from the fund more than that person would have been entitled to receive had the records been correct, the board shall correct the error and, as far as practicable, adjust the payment in such a manner that the actuarial equivalent of the benefit to which the person was entitled is paid or the board may offset the amount of the overpayment from the amount of future retirement benefit payments. However, if the person agrees to repay the fund for the cost of the error upon terms acceptable to the board, no actuarial adjustment to the person's retirement benefit need be made.

**Correction of errors - Lump sum payment.** If any change or error in the records of the fund or any participating employer or any error in calculation results in any person receiving less from the fund than that person would have been entitled to receive had the records been correct, the board shall correct the error and adjust the payment in such a manner that the benefit to which the person was correctly entitled is paid. In addition, the board shall remit payment to the person in a lump sum to compensate that person for the difference between what was paid and what should have been paid. No interest may be assessed against the fund for providing payment for the correction of any loss of benefits.

Approved March 19, 1997  
Filed March 19, 1997

## CHAPTER 170

### HOUSE BILL NO. 1142

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

### TFFR BOARD COMPOSITION

AN ACT to create and enact two new sections to chapter 15-39.1 of the North Dakota Century Code, relating to the composition and administrative authority of the teachers' fund for retirement board; to amend and reenact subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to appointments to the teachers' fund for retirement board; and to repeal section 15-39.1-05 of the North Dakota Century Code, relating to management of the teachers' fund for retirement.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

#### Board composition - Terms - Voting.

1. The authority to set policy for the fund rests in a board of trustees composed as follows:
  - a. The governor shall appoint from a list of three nominees submitted to the governor by the North Dakota education association two board members who are actively employed in full-time positions not classified as school administrators. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.
  - b. The governor shall appoint from a list of three nominees submitted to the governor by the North Dakota council of educational leaders one board member who is actively employed as a full-time school administrator. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.
  - c. The governor shall appoint from a list of three nominees submitted to the governor by the North Dakota retired teachers association two board members who are the retired members of the fund.
  - d. The state treasurer and the superintendent of public instruction.
2. All current appointees of the board shall serve the remainder of their term as members of the board until their terms expire and their successors are appointed. The first newly appointed board member under subdivision a of subsection 1 must be appointed to serve an initial term of four years. The first newly appointed board member under subdivision c of subsection 1 must be elected to serve an initial term of five years. Newly appointed board members shall serve a term of five years. Each newly appointed term begins on July first.

3. Each board member is entitled to one vote, and four members constitute a quorum. Four votes are required for resolution or action by the board.

**SECTION 2.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

**Board authority - Continuing appropriation.** The board:

1. Has the powers and privileges of a corporation, including the right to sue and be sued in its own name. The venue of all actions to which the board is a party must be Burleigh County.
2. Shall establish investment policy for the trust fund under section 21-10-02.1. The investment policy must include:
  - a. Acceptable rates of return, liquidity, and levels of risk; and
  - b. Long-range asset allocation targets.
3. Shall arrange for actuarial and medical consultants. The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall:
  - a. Make a valuation of the liabilities and reserves of the fund and a determination of the contributions required by the fund to discharge its liabilities and pay administrative costs;
  - b. Recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost or other accepted actuarial method, to maintain the fund on an actuarial reserve basis;
  - c. Once every five years make a general investigation of the actuarial experience under the fund including mortality, retirement, employment turnover, and other items required by the board;
  - d. Recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on the investigation provided for in subdivision c; and
  - e. Perform other duties assigned by the board.
4. May pay benefits and consultant fees as necessary which are hereby appropriated from the fund.
5. Shall submit to the legislative council's employee benefits programs committee any necessary or desirable changes in statutes relating to the administration of the fund.
6. Shall determine appropriate levels of service to be provided to members, including benefits counseling and preretirement programs.
7. Shall, through resolution, inform the state investment board, which is the administrative board of the retirement and investment office, the levels of



services, goals, and objectives expected to be provided through the retirement and investment office.

<sup>11</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, ~~45-39.1-05~~ section 1 of this Act, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk marketing board.
  - c. The dairy promotion commission.
  - d. The state banking board.
  - e. The state credit union board.
  - f. The advisory board of directors to the Bank of North Dakota.
  - g. The board of pardons.
  - h. The state parole board.
  - i. The state board of public school education.
  - j. The education standards and practices board and the administrator's professional practices board.
  - k. The board of trustees for the teachers' fund for retirement.
  - l. The educational telecommunications council.
  - m. The state game and fish advisory board.
  - n. The health council.
  - o. The air pollution control advisory council.
  - p. The board of animal health.
  - q. The administrative committee on veterans' affairs.

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<sup>11</sup> Section 54-07-01.2 was also amended by section 7 of Senate Bill No. 2045, chapter 115.

- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

**SECTION 4. REPEAL.** Section 15-39.1-05 of the North Dakota Century Code is repealed.

Approved April 1, 1997

Filed April 2, 1997

## CHAPTER 171

### SENATE BILL NO. 2139

(Senators C. Nelson, Krebsbach)  
(Representatives Sabby, Wardner)

### TFFR ASSESSMENTS AND BENEFITS

AN ACT to amend and reenact subsection 1 of section 15-39.1-09 and subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to assessments and computation of benefits under the teachers' fund for retirement; to provide for application; and to provide a statement of legislative intent.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2 of section 15-39.1-10.3, every teacher is a member of the fund and must be assessed upon the teacher's salary ~~six~~ seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund ~~six~~ seven and seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

<sup>12</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 15-39.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is one and ~~fifty-five~~ seventy-five hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

**SECTION 3. APPLICATION OF ACT.** Section 1 of this Act does not apply to existing contracts between school districts and their employees under which the school district pays the teacher contribution pursuant to subsection 2 of section 15-39.1-09. Section 2 of this Act applies only to individuals who begin receiving benefits from the fund under chapter 15-39.1 after June 30, 1997, and applies to those benefits payable after June 30, 1997.

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<sup>12</sup> Section 15-39.1-10 was also amended by section 1 of House Bill No. 1144, chapter 172.

**SECTION 4. INTENT.** It is the intent of the legislative assembly that the one percent increase in the employer contribution contained in subsection 1 of section 15-39.1-09 be considered during the 1997-98 school district-employee salary negotiations.

Approved April 1, 1997

Filed April 2, 1997

## CHAPTER 172

### HOUSE BILL NO. 1144

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

### TFFR BENEFITS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to the computation of benefits under the teachers' fund for retirement; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>13</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 15-39.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is one and ~~fifty-five~~ sixty-one hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

**SECTION 2.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

**Postretirement adjustment.** An individual who on June 30, 1997, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive an increase of thirty dollars per month.

**SECTION 3. APPLICATION OF ACT.** Section 1 of this Act applies only to individuals who begin receiving benefits from the fund under chapter 15-39.1 after June 30, 1997, and applies to those benefits payable after June 30, 1997. Section 2 of this Act applies to benefits payable after June 30, 1997.

Approved March 10, 1997  
Filed March 10, 1997

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<sup>13</sup> Section 15-39.1-10 was also amended by section 2 of Senate Bill No. 2139, chapter 171.

**CHAPTER 173****HOUSE BILL NO. 1051**  
(Legislative Council)  
(Education Finance Committee)**ALTERNATIVE HIGH SCHOOL REIMBURSEMENT**

AN ACT to provide for the reimbursement of certain school districts having alternative high schools; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. REIMBURSEMENT OF SCHOOL DISTRICTS WITH ALTERNATIVE HIGH SCHOOLS.**

1. If any funds appropriated to the grants - foundation aid and transportation program for the 1995-97 biennium in section 1 of chapter 35 of the 1995 Session Laws remain after completion of the April 1, 1997, distribution provided for by section 15-40.1-05, the superintendent of public instruction shall distribute the funds to the Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, and Minot school districts in amounts equal to the payment shortages incurred by these districts during the 1993-95 biennium as a result of a miscalculation in the number of students in average daily membership in alternative high schools.
2. If sufficient funds are not available for the distribution provided in subsection 1, the superintendent of public instruction shall prorate the distribution required by that subsection.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 174

### SENATE BILL NO. 2338

(Senators Freborg, G. Nelson)

## PER STUDENT PAYMENTS AND EQUALIZATION FACTOR

AN ACT to amend and reenact sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 of the North Dakota Century Code, relating to per student payments and the school district equalization factor; to provide for a legislative council study; and to provide an appropriation.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **15-40.1-06. Declaration of legislative intent - Educational support per student - School district equalization factor - Limitations.**

1. It is the intent of the legislative assembly, not considering any separate and supplemental payments as may be provided by law, to support elementary and secondary education in this state from state funds based on the educational cost per student. In determining the educational cost per student, the following criteria may not be used:
  - a. Expenditures for capital outlay for buildings and sites, or debt service.
  - b. Expenditures from school activities and school lunch programs.
  - c. Expenditures for the cost of transportation, including the cost of schoolbuses.
2.
  - a. The educational support per student during the first year of the ~~1995-97~~ 1997-99 biennium must be one thousand ~~seven~~ nine hundred ~~fifty-seven~~ fifty-four dollars and for the second year of the 1997-99 biennium the educational support per student must be ~~one~~ two thousand ~~eight hundred sixty-two~~ thirty-two dollars and is the basis for calculating grants-in-aid on a per student basis as provided in sections 15-40.1-07 and 15-40.1-08.
  - b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of two hundred twenty dollars, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07.
  - c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become

unaccredited in any succeeding school year must be supported for the 1991-92 school year or for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of students in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per student in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

- d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the 1992-93 school year or for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.
3. In determining the amount of payments due school districts for tuition apportionment provided in section 15-44-03, and per student aid under this section, the amount of tuition apportionment, foundation aid, special education aid, and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted:
    - a. The product of ~~twenty-eight~~ thirty-two mills for the ~~1995-96~~ school year and ~~thirty-two~~ mills for the ~~1996-97~~ school year times the latest available net assessed and equalized valuation of property of the school district. ~~For succeeding school years, the number of mills to be used in the computation must be determined as follows:~~
      - (1) ~~The superintendent of public instruction shall determine the percentage resulting from dividing the number of mills used in the computation the previous year by the state average school district general fund mill levy.~~
      - (2) ~~The superintendent of public instruction shall determine the amount of foundation aid estimated to be distributed during the current year and subtract from that the amount of foundation aid that was distributed during the prior year, and~~



divide the result by the amount of foundation aid distributed during the prior year.

- (3) The superintendent of public instruction shall multiply the quotient determined under paragraph 2 by forty percent and shall add this product to the percentage obtained in paragraph 4. This sum shall be multiplied times the state average school district general fund mill levy to determine the number of mills to be used in the computation provided in subdivision a. However, the number of mills used may not fall below thirty-two mills, nor rise above twenty-five percent of the state average school district general fund mill levy.
- b. The amount that the unobligated general fund balance of a school district on the preceding June thirtieth is in excess of three-fourths of the actual expenditures, plus an additional twenty thousand dollars.
4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:
- Annual average daily membership report.
  - Annual school district financial report.
  - The September tenth fall enrollment report.
  - The personnel report forms for certified and noncertified employees.
5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

**SECTION 2. AMENDMENT.** Section 15-40.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-07. High school per student payments - Amount - Proportionate payments.** Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school students in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

- For each high school district having under seventy-five students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.625 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student as provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.625 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

2. For each high school district having seventy-five or more, but less than one hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.335 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.335 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
3. For each high school district having one hundred fifty or more, but less than five hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.24 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.24 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
4. For each high school district having a total high school enrollment of five hundred fifty or more students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.14 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.14 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:
  - a. Subsection 1 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has less than seventy-five students in average daily membership.
  - b. Subsection 2 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty students in average daily membership.

- c. Subsection 3 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has one hundred fifty or more, but less than five hundred fifty students in average daily membership.
- d. Subsection 4 times the number of students registered in the alternative education program times the educational support per student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more students in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of students in the next lower category. Payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which the student is enrolled for specific courses. School districts offering high school summer school programs are eligible for proportionate payments provided each course offered satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for summer education programs. The proportionate payment made under this section during the biennium for high school summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium.

**SECTION 3. AMENDMENT.** Section 15-40.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-08. Elementary per student payments - Amount.** Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary students in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural school, the amount of money resulting from multiplying the factor 1.28 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.28 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through eight in average daily membership, up to a maximum of sixteen students, times the educational support per student provided in section 15-40.1-06. There must be paid .9 times each additional student in its school in grades one through eight in average daily membership times the educational support per student provided in

section 15-40.1-06, except that no payment may be made for more than twenty students in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the students in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has students in grade seven or eight, the weighting factor for the students in grade seven or eight must be the same as that provided for in subsection 5. Beginning July 1, ~~1996~~ 1998, the factor is 1.28 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.28 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

2. For each elementary school in school districts having under one hundred students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.09 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher, times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is 1.09 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.09 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
3. For each elementary school in school districts having one hundred or more students in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary students in grades one through six, the amount of money resulting from multiplying the factor .905 adjusted by ~~fifty~~ sixty-five percent of the difference between .905 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is .905 adjusted by ~~sixty-five~~ seventy-five percent of the difference between .905 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
4. For each elementary school in school districts having an average daily membership of one thousand or more elementary students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by ~~fifty~~ sixty-five percent of the difference between .95 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each

teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is .95 adjusted by ~~sixty-five~~ seventy-five percent of the difference between .95 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.01 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is 1.01 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
6. For each elementary school having students under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor 1.01 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of special education students in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.01 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, the amount of money resulting from multiplying the factor .50 adjusted by ~~fifty~~ sixty-five percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period must receive a proportionately smaller per student payment. Beginning July 1, ~~1996~~ 1998, the factor is .50 adjusted by

~~sixty five~~ seventy-five percent of the difference between .50 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools.

Every school district must receive at least as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.

#### **SECTION 4. LEGISLATIVE COUNCIL STUDY OF EDUCATION**

**FINANCE.** The legislative council shall appoint a committee to study the financing of elementary and secondary schools and the availability of state support for school construction. The legislative council shall ensure that the committee contains a balanced representation. During the 1997-98 interim, the committee shall review the formulas used to equalize state aid including formulas for student transportation and special education, funding sources that would be alternatives to property tax, and any other issues related to the financing of elementary and secondary schools. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-sixth legislative assembly.

**SECTION 5. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of developing data envelopment analysis for North Dakota school districts, integrating the data envelopment analysis into the schoolmaps system, and updating the profiles of North Dakota school districts, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997  
Filed April 8, 1997

## CHAPTER 175

### HOUSE BILL NO. 1146

(Education Committee)

(At the request of the Superintendent of Public Instruction)

## SCHOOL AID IN COOPERATING AND REORGANIZED DISTRICTS

AN ACT to amend and reenact sections 15-40.1-07.3, 15-40.1-07.4, 15-40.2-01, 15-40.2-04, 15-40.3-01, 57-15-13, and 57-15-14.5 of the North Dakota Century Code and section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota and by section 26 of chapter 3 of the 1993 Session Laws of North Dakota, relating to per student payments for cooperating and reorganized school districts, open enrollment procedures, school district tax levies, education technology supervisors, and special reserve fund withdrawals; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.1-07.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-07.3. ~~High school per~~ Per student payments - Reorganization of school districts.**

1. If any school district receiving per student payments calculated under section 15-40.1-07 reorganizes with another school district under chapter 15-27.3 or 15-27.6 before August 1, 1997, the school district resulting from the reorganization is entitled to receive the same ~~per-pupil~~ per student payments for each high school ~~pupil~~ student as each separate school district received for each high school ~~pupil~~ student prior to the reorganization, for a period of four years.
2. If any school district receiving per student payments calculated under this chapter reorganizes with another school district under chapter 15-27.3 or 15-27.6 after July 31, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school and elementary student as each separate school district received for each high school and elementary student prior to the reorganization, for a period of four years.
3. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1 or 2, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the reorganization.

**SECTION 2. AMENDMENT.** Section 15-40.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-07.4. ~~High school per~~ Per student payments - Cooperating districts.**

1. If any school district receiving payments under section 15-40.1-07 cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction and effective before July 1, 1997, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school student as the district received prior to initiation of the cooperative plan.
2. If, on or after July 1, 1997, any school district receiving payments under this chapter cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school and elementary student as the district received prior to initiation of the cooperative plan.

<sup>14</sup> **SECTION 3. AMENDMENT.** Section 15-40.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-01. Transfer of ~~pupils~~ students to other districts or institutions - Tuition agreements - Student discretion upon cessation of educational services.**

1. The school board of any district may send kindergarten, elementary, or high school ~~pupils~~ students into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of ~~such pupils~~ the students to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send ~~pupils~~ students to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.
2. If a school district does not provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall pay tuition to the admitting school district. ~~A student may exercise the provisions of this subsection whether the school district of residence ceased to provide the required grade level before or after August 1, 1995.~~ For purposes of determining whether educational services are provided to an entire grade level, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district.

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<sup>14</sup> Section 15-40.2-01 was also amended by section 2 of House Bill No. 1131, chapter 160.



**SECTION 4. AMENDMENT.** Section 15-40.2-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive.**

1. a. Except as provided in this subsection, any school district that admits nonresident students to its schools, as provided by this chapter, shall charge tuition for those students. School districts have the option of charging tuition for nonresident students enrolled in an approved alternative education program. The whole amount of the tuition must be paid by the district from which the student is admitted, in accordance with section 15-40.2-03, or by the student's parent or guardian, in accordance with section 15-40.2-06.
  - b. Except as otherwise provided, any school district that fails to charge and collect tuition for nonresident students as provided for in section 15-40.2-03 and this section shall forfeit foundation payments for those nonresident students for whom tuition is not paid. A school district may accept a nonresident student from another school district in this state which offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. For purposes of determining whether the same grade level is offered, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district. The written agreement must specify whether transportation is to be provided and if so, by which district. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged. A school district may accept a nonresident student described in section 15-40.3-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
  - c. No school district may charge or collect from any nonresident student, parent or guardian of a nonresident student, or the district of the student's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident students.
2. For purposes of subsection 1 and all statutory provisions relating to open enrollment, the member districts of a consortium must be treated as a single school district.

**SECTION 5. AMENDMENT.** Section 15-40.3-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.3-01. Open enrollment - Procedure.** A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than February first of the school year preceding the year of enrollment, apply to the school board of the

student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By March first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By April first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which a student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section. The school board of a school district of residence and of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent or legal guardian, moves from the student's school district of residence to another school district ~~after February first~~ and who wishes to enroll in a school district, other than the district to which the student moved; ~~for the following year.~~

**SECTION 6. AMENDMENT.** Section 57-15-13 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-13. School district tax levies.** School district taxes must be levied by the governing body of each school district on or before the ~~last~~ fifteenth day of ~~July~~ August of each year. The governing body of the school district may amend its tax levy and budget for the current fiscal year on or before the tenth day of October of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1. Taxes for school district purposes must be based upon an itemized budget statement which must show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The school board of each public school district, in levying taxes, is limited by the amount necessary to be raised for the purpose of meeting the appropriations included in the school budget of the current fiscal year, and the sum necessary to be provided as an interim fund, together with a tax sufficient in amount to pay the interest on the bonded debt of the district and to provide a sinking fund to pay and discharge the principal thereof at maturity.

<sup>15</sup> **SECTION 7. AMENDMENT.** Section 57-15-14.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>15</sup> Section 57-15-14.5 was also amended by section 38 of House Bill No. 1299, chapter 108.

**57-15-14.5. Long-distance learning and educational technology levy - Voter approval.**

1. The school board of a public school district may, upon approval by a majority vote of the electors of the school district at any regular or special election, dedicate a tax levy for purposes of this section not to exceed five mills on the dollar of taxable valuation of property within the district.
2. All revenue accruing from the levy under this section must be used only for purposes of establishing and maintaining long-distance learning and purchasing and maintaining educational technology. For purposes of this section, educational technology includes computer software, computers and computer networks, ~~and~~ other computerized equipment, which must be used for student instruction, and the salary of a staff person to supervise the use and maintenance of educational technology.
3. If the need for the fund terminates, the governing board of the public school district shall order the termination of the levy and shall transfer the remaining balance to the general fund of the school district.

<sup>16</sup> **SECTION 8. AMENDMENT.** Section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota and by section 26 of chapter 3 of the 1993 Session Laws of North Dakota, is amended and reenacted as follows:

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, ~~1997~~ 2001, and after that date is ineffective.

**SECTION 9. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 27, 1997  
Filed March 27, 1997

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<sup>16</sup> Section 57-19-06 was repealed by section 4 of House Bill No. 1292, chapter 489.

## CHAPTER 176

### HOUSE BILL NO. 1246

(Representatives Drovdal, R. Kelsch, Monson)  
(Senators Freborg, Goetz)

## SPECIAL EDUCATION PER STUDENT PAYMENTS

AN ACT to amend and reenact section 15-40.1-07.6 of the North Dakota Century Code, relating to special education per student payments.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.1-07.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **15-40.1-07.6. Per student payments - Special education.**

1. ~~Each~~ Except as provided in subsection 2, each biennium; the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under subsection 3 of section 15-40.1-06, to eligible school districts in the same manner and at the same time that the superintendent distributes foundation aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
2. The superintendent of public instruction may, upon the written request of a school district, forward all or a portion of the moneys for which the school district is eligible under this section directly to the special education unit of which the school district is a member.

Approved March 23, 1997  
Filed March 24, 1997

## CHAPTER 177

### SENATE BILL NO. 2029

(Legislative Council)  
(Budget Committee on Human Services)  
(Senators Nalewaja, Thane, Lips)  
(Representatives Carlisle, Thoreson, Clark)

### LIMITED ENGLISH STUDENT ASSISTANCE PAYMENTS

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to payments for students having limited English language skills.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

**Per student payments - Limited English proficient students.**

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive three hundred dollars for each student who has been assessed by the student's school district and determined to have negligible or very limited English language skills as evidenced by a classification of level I or II using the Woodcock-Munoz language survey.
2. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before October first of each school year. The superintendent shall distribute the payments no later than May thirtieth of each school year. The superintendent shall prorate payments under this section for any students registering in the school district after October first or departing the school district prior to the completion of the school year.

**SECTION 2. PAYMENTS FOR STUDENTS HAVING LIMITED ENGLISH LANGUAGE SKILLS.** For the purpose of providing payments to school districts educating students qualifying under section 1 of this Act for the biennium beginning July 1, 1997, and ending June 30, 1999, the superintendent of public instruction shall use up to \$300,000 of any moneys appropriated in House Bill No.1013, as approved by the fifty-fifth legislative assembly, for equity payments to school districts.

Approved April 17, 1997  
Filed April 17, 1997

## CHAPTER 178

### HOUSE BILL NO. 1393

(Representatives Dalrymple, Hausauer, Byerly)  
(Senators Freborg, Goetz)

## HIGH SCHOOL SUPPLEMENTAL PAYMENTS

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to supplemental payments to high school districts.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

**Supplemental payment to high school districts.** The superintendent of public instruction shall calculate the average valuation of property per student by dividing the number of students in average daily membership in grades one through twelve in a high school district into the district's latest available net assessed and equalized taxable valuation of property. If the quotient is less than the latest available statewide average taxable valuation per student and if the district's educational expenditure per student is below the most recent available statewide average cost of education per student, the superintendent of public instruction shall:

1. Determine the difference between the latest available statewide average taxable valuation per student and the average valuation per student in the high school district;
2. Multiply the result determined under subsection 1 by the number of students in average daily membership in grades one through twelve in the high school district;
3. Multiply the result determined under subsection 2 by the number of general fund mills levied by the district in excess of one hundred fifty, provided that any mills levied by the district which are in excess of two hundred ten may not be used in this calculation; and
4. Multiply the result determined under subsection 3 by thirty percent. The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15-40.1.

Approved April 8, 1997  
Filed April 8, 1997

## CHAPTER 179

### SENATE BILL NO. 2173 (Senators Freborg, Andrist, O'Connell) (Representatives Grosz, Monson)

### SCHOOL TERM LENGTH

AN ACT to amend and reenact sections 15-40.1-09, 15-47-04, and 15-47-33 of the North Dakota Century Code, relating to the length of the school term; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal.** Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the business manager of each school district within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever provides the greatest payment, for all current grade levels. Adjustments must be made in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. For purposes of this chapter, "average daily membership" ~~shall mean~~ means the total days all students in a given school are in attendance, including two days set aside for the North Dakota education association ~~convention, plus any instructional conference, three holidays selected from those~~ listed in subsections 2 through 10 of section 15-38-04.1 which have been ~~decided upon after~~ selected by the school board in consultation with the teachers, the total days all students are absent, and the up to two full days during which parent-teacher conference days authorized in section 15-47-33 conferences are held, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one hundred eighty-day school term.

Immediately upon the termination of the school ~~term~~ year, and in no event later than July fifteenth of each year, the business manager of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. The statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement. The county superintendent shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in the county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice of the disallowance and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

**SECTION 2. AMENDMENT.** Section 15-47-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-04. "School year"; ~~"month", and "week"~~ defined.** The school year must begin on the first day of July and must close on the thirtieth day of June of the following year. ~~A school month consists of twenty days, and a school week consists of five days.~~

<sup>17</sup> **SECTION 3. AMENDMENT.** Section 15-47-33 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-33. Length of elementary and secondary school year term.**

1. All elementary and secondary schools in this state shall provide for a school term of at least one hundred eighty days of classroom instruction during each school term. Any three apportioned as follows:
  - a. One hundred seventy-three full days of instruction;
  - b. Three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after selected by the school board in consultation with the district teachers; any two days, or fractions of days not to exceed a total of two days, which are devoted to;
  - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and

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<sup>17</sup> Section 15-47-33 was also amended by section 1 of House Bill No. 1055, chapter 183.



- d. Up to two full days during which parent-teacher conferences and which are selected by the local school board after consultation with the teachers, and any day in which classes cannot be held because of acts of God, epidemic, or failure of physical facilities must be included in the one hundred eighty days provided for in this section and teachers must be paid therefor are held.
2. A full day of instruction:
- a. Consists of at least five and one-half hours of instruction time for elementary students; and
- b. Consists of at least six hours of instruction time for high school students.

**SECTION 4. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved April 8, 1997  
Filed April 8, 1997

**CHAPTER 180****SENATE BILL NO. 2031**  
(Legislative Council)  
(Education Finance Committee)**SCHOOL TRANSPORTATION AID**

AN ACT to amend and reenact section 15-40.1-18 of the North Dakota Century Code, relating to state transportation payments to school districts.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 15-40.1-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.1-18. State transportation payments to school districts.** The superintendent of public instruction shall determine the total amount of payments to be made to the school districts for transportation aid. The office of management and budget shall pay the sum certified by the superintendent of public instruction to each school district. Payments must be made in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05. No school district may receive more than ninety percent of the actual costs it incurs in the provision of transportation services. For purposes of this section, actual costs include the transportation operating expenditures reported to the superintendent of public instruction for the most recent year plus the eight-year average cost of transportation equipment determined by the superintendent of public instruction. Any district that has contracted for transportation services, however, may determine its actual costs for the first year it provides its own transportation services by using the statewide average cost of transportation during that first year.

Approved March 21, 1997  
Filed March 21, 1997

## CHAPTER 181

### HOUSE BILL NO. 1169

(Representatives Clark, Kunkel, Wardner)  
(Senators Nalewaja, O'Connell, Wogsland)

### SIGN LANGUAGE HIGH SCHOOL ELECTIVE

AN ACT relating to American sign language as an elective at the high school level.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. American sign language - High school elective.** American sign language may be offered as an elective at the high school level, in accordance with rules adopted by the superintendent of public instruction.

Approved March 23, 1997  
Filed March 24, 1997

## CHAPTER 182

### SENATE BILL NO. 2033 (Legislative Council) (Education Services Committee)

## POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

AN ACT to provide for a postsecondary enrollment options program; and to amend and reenact subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the rulemaking authority of the superintendent of public instruction.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Postsecondary enrollment options program.** Any North Dakota student enrolled in grade eleven or twelve in a public high school is eligible to receive high school and postsecondary credit for the successful completion of an academic course offered by any postsecondary institution accredited by a regional accrediting organization or a vocational course offered by a postsecondary institution in a program accredited by a national or regional accrediting organization recognized by the United States department of education.

**SECTION 2. Permission to enroll - Notification - Credits.** Before enrolling in a course for credit under section 1 of this Act, the student must obtain written permission from the student's school district superintendent. The student's school district superintendent shall determine the number of credits for which the student is eligible and shall include the number on the permission document granting permission required by this section. For purposes of determining credit, a three-semester hour course offered by a postsecondary institution is equivalent to a full semester high school course. Upon the student's successful completion of the course, the postsecondary institution shall notify the student's school district superintendent of that fact.

**SECTION 3. Costs of attendance - Responsibility of student.** The student and the student's parent or legal guardian are responsible for all costs of attendance at a postsecondary institution under sections 1 through 6 of this Act. For purposes of this section, "costs" include tuition, fees, textbooks, materials, equipment, and other necessary charges related to the course in which the student has enrolled.

**SECTION 4. Transportation - Responsibility of student.** The student and the student's parent or legal guardian are responsible for transportation arrangements and all costs of transportation associated with a student's attendance at a postsecondary institution under sections 1 through 6 of this Act.

**SECTION 5. Foundation aid - Extracurricular activities.** A student attending a postsecondary institution under sections 1 through 6 of this Act is deemed to be in attendance at the student's school district of residence for purposes of calculating foundation aid and for purposes relating to the student's eligibility to participate in high school extracurricular activities.

**SECTION 6. Courses - Statutory and regulatory exemption.** The courses for which dual high school and postsecondary credit are available under sections 1 through 6 of this Act are postsecondary courses and are exempt from any statutory or regulatory provisions otherwise applicable to high school courses and to the persons by whom high school courses are taught.

<sup>18</sup> **SECTION 7. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- q. The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 ~~and~~, rules implementing chapter 15-22, and rules relating to sections 1 through 6 of this Act.

Approved March 19, 1997

Filed March 19, 1997

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<sup>18</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

## CHAPTER 183

### HOUSE BILL NO. 1055

(Legislative Council)  
(Education Services Committee)  
(Representative Oban)

### TEACHER CONFERENCE COMPENSATORY TIME

AN ACT to amend and reenact section 15-47-33 of the North Dakota Century Code, relating to compensatory time for parent-teacher conferences; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>19</sup> **SECTION 1. AMENDMENT.** Section 15-47-33 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-33. Length of elementary and secondary school year term.** All elementary and secondary schools in this state shall provide at least one hundred eighty days of classroom instruction during each school term. Any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers; <sup>1</sup> any two days, or fractions of days not to exceed a total of two days, which are devoted to parent-teacher conferences or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside normal school hours and which are selected by the local school board after consultation with the teachers; <sup>2</sup> and any day in which classes cannot be held because of acts of God, epidemic, or failure of physical facilities must be included in the one hundred eighty days provided for in this section and teachers must be paid therefor.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 4, 1997

Filed April 4, 1997

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<sup>19</sup> Section 15-47-33 was also amended by section 3 of Senate Bill No. 2173, chapter 179.

## CHAPTER 184

### HOUSE BILL NO. 1402

(Representatives Christenson, Maragos, Oban)

### ELEMENTARY TEACHER QUALIFICATIONS

AN ACT to amend and reenact subsection 4 of section 15-47-46 of the North Dakota Century Code, relating to the qualifications of persons teaching kindergarten through grade eight.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

<sup>20</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 15-47-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A teacher who holds a teaching certificate and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, business education, and computer education in kindergarten through grade eight.

Approved March 23, 1997

Filed March 24, 1997

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<sup>20</sup> Section 15-47-46 was also amended by section 10 of Senate Bill No. 2046, chapter 51.

## CHAPTER 185

### SENATE BILL NO. 2312

(Senators Holmberg, C. Nelson, W. Stenehjem)  
(Representatives Berg, Kliniske, Poolman)

## POSTSECONDARY STUDENT SCHOLARSHIPS

AN ACT to amend and reenact sections 15-62.2-00.1 and 15-62.2-03.3 of the North Dakota Century Code, relating to scholarships for postsecondary students.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 15-62.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-00.1. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Eligible candidate" means a graduate of a high school in this state or a resident of this state for tuition purposes whose assessment composite scores on the test of academic achievement administered by the American college testing program place the student in at least the ninety-fifth percentile of all students taking the test ~~for~~ by November first of the year preceding January first of the year in which the student is applying for a scholarship, and who ranks in the upper twentieth percentile of the student's high school class.
2. "Eligible institution" means an accredited public or nonprofit private postsecondary institution in this state.
3. "Full-time resident student" means a person who is a graduate of a high school in this state or who is a resident of this state for tuition purposes and who is enrolled at an eligible institution carrying a course of study which is "full time" as defined by the eligible institution.
4. "High school class rank" means the position a scholarship candidate holds in the candidate's graduating class, ~~as of the seventh semester of the candidate's high school program~~ determined by the state board of higher education.
5. "Scholar" means a full-time resident student who is awarded a scholarship or who has previously received a scholarship.
6. "Scholarship" means a financial award granted to a state scholar as determined by this chapter.

**SECTION 2. AMENDMENT.** Section 15-62.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:



**15-62.2-03.3. Selection of scholars.** All eligible candidates must be ranked by their composite scores on the test of academic achievement administered by the American college testing program. If two or more eligible students have the same scores, they must be ranked by their high school class rank calculated on a percentile basis. Scholarships must be offered to students in descending order according to this ranking until available funds have been expended, or until the pool of eligible applicants has been exhausted. Scholarships must be awarded in ~~April~~ January of each year for the following academic year, or as soon thereafter as practical.

Approved March 21, 1997

Filed March 21, 1997

## CHAPTER 186

### HOUSE BILL NO. 1315

(Representatives Wilkie, Nichols, Warner, D. Johnson)  
(Senators DeMers, LaFountain)

### INDIAN SCHOLARSHIP ELIGIBILITY

AN ACT to amend and reenact sections 15-63-02, 15-63-03, and 15-63-04 of the North Dakota Century Code, relating to eligibility of candidates for scholarships awarded by the state board for Indian scholarships.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-63-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-02. Duties of board.** The state board for Indian scholarships shall:

1. Award scholarship grants as provided in this chapter.
2. Make necessary rules ~~and regulations~~ and establish standards, requirements, and procedures for the administration of this chapter.
3. Encourage ~~persons of Indian blood~~ members of Indian tribes to attend and be graduated from any institution of higher learning or state vocational education program within ~~North Dakota~~ this state, and to make application for scholarships.

**SECTION 2. AMENDMENT.** Section 15-63-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-03. Number and nature of scholarships.** The state board for Indian scholarships shall provide scholarships each year for resident ~~persons of at least one-fourth degree of Indian blood or for enrolled members of federally recognized Indian tribes now resident in North Dakota~~ members of federally recognized Indian tribes to entitle persons so selected to enter and attend any institution of higher learning or state vocational education program within ~~North Dakota~~ this state upon compliance with all requirements for admission and to pursue any course or courses offered in such institutions or programs.

**SECTION 3. AMENDMENT.** Section 15-63-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-04. Eligibility of candidates - Determination.** The initial and continuing scholarship eligibility of ~~resident persons of one-fourth degree of Indian blood or state residents who are enrolled members of federally recognized Indian tribes now resident in North Dakota~~ enrolled members of federally recognized Indian tribes must be determined by the state board for Indian

scholarships after the candidate has gained admission to any institution of higher learning or state vocational education program within ~~North Dakota~~ this state and has had this fact certified to the board. Factors to be considered in the award of these scholarships are the candidate's ~~health, character,~~ financial need, and probable and continuing success as a student.

Approved March 23, 1997

Filed March 24, 1997