

2011 HOUSE EDUCATION

HB 1154

2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1154
02/01/11
13792

☐ Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1154.

Rep. Bette Grande: Sponsor. After some concern from constituents I asked Senator Grenberg about the ND scholarship program that had been passed last session dealing with ND students going on the ND colleges and the criteria needed to qualify for those scholarship. What I found was that you could attend the schools but if you were a ND resident and attended another school, for example a situation with a student attending school in Moorhead MN but residing in ND and having parents paying ND taxes, you were not qualified for that. This is significant to me because we all know we have wonderful public schools. We had our kids in school in Fargo we had a child that didn't fit into that public setting so we sent him to a private school. You find that there are relationships and a time when a student isn't public school material and that is why we have those other institutions like private schools. That doesn't change the fact that they are living in ND, paying ND taxes, and physically residing here. When it comes to the bill, all we added was line 23 C. I'll stand for questions.

Chairman RaeAnn Kelsch: Questions?

Rep. Brenda Heller: Will there be a limit on how far into the next state they can be going to school or is it that as long as you come back home and sleep in your bed?

Rep. Bette Grande: For me it was being back at home sleeping in their bed. The committee can do what they wish with that.

Chairman RaeAnn Kelsch: I understand what you're trying to do. Technically my kids when they go to college reside with me until they are off on their own. I may not have them at my house but a couple times a year. I think the concern here is that even though you have students that maybe are coming home every night, I'm not sure that the way that this is written is exactly the way you intended it. The way I read it is that you could still reside and use your house as your voting address and use it as your permanent address but you could be at that boarding school. If we pass this we need to make sure that language is very clear on what residing means. My question is if we are going to do this, what is to stop us from saying that I am a tax paying citizen that lives in the state of ND and lives in Fargo, and my child was going to attend Moorhead or Concordia and they come home every night

and are living in my house. So and argument could arise that why is the scholarship limited to ND campuses, and why can't it be those bordering campuses?

Rep. Bette Grande: It was my understanding was that we were trying to keep students in the universities in ND.

Chairman RaeAnn Kelsch: That is the intent; however, sometimes it can tend to broaden a bit.

Rep. Bette Grande: This scholarship is paid for at the university level not the high school level. This isn't to pay for their schooling in the high school level. You're talking about giving a scholarship and attending some place other than ND. This is for money that goes into the ND University System.

Chairman RaeAnn Kelsch: I understand. All I'm saying is if we decide this is what we want to do, because technically when we developed the scholarship it was for ND kids going to ND schools including the universities. Once you crack the door a little bit, now you have the opportunity to crack it some more. I'm not saying that is what your intention was, but next session we could have that problem.

Rep. Bette Grande: I do fall back to the point where we are looking at ND academic scholarships to the ND universities.

Vice Chair Lisa Meier: In regards to those kids attending school in MN but are ND residents, would qualify for MN scholarships then?

Rep. Bette Grande: I don't know what the MN scholarship programs are. They wouldn't be MN residents.

Rep. David Rust: Is item C probably in that bill as a result of item B being there?

Rep. Bette Grande: When we have schools and they fall on ND/SD border and there is no ND school to attend and you cross over and you attend one of those schools and they have that reciprocity set up. I look at that as the same situation. Yes there is a school to attend in Fargo but it may not meet the needs of the child and so they are attending elsewhere.

Rep. David Rust: The reason for item B is, for the most part, those children would probably have to go a long ways in ND or SD if I recall.

Rep. Bette Grande: Correct.

Rep. Mike Schatz: Let us say a special needs child had to cross the line and go over to MN because of a program that they had and ND didn't. Would they be someone that might qualify for this?

Rep. Bette Grande: I think our public schools are required to meet the needs of the special needs child. If that be the case, if they met all the criteria for the scholarship they could apply for it.

Rep. Brenda Heller: I know we have a lady here in the state that deals with working with the schools to make sure they understand the program and what the high school requirements are. So then those MN schools would have to be somehow briefed on this scholarship program on whether they are meeting all the requirements. How is that going to work?

Rep. Bette Grande: I believe that would fall under the parent needing to know if their child is taking the necessary course work to make sure he/she qualifies.

Chairman RaeAnn Kelsch: There is the possibility that the school may not offer the same classes. One of the requirements is a ND requirement; I believe ND Studies.

Rep. Bette Grande: With that I let it fall into parental responsibility.

Chairman RaeAnn Kelsch: Further questions? Support?

Jack McDonald – State Association of Nonpublic Schools: We would support the bill. If one of our ND kids wanted to go to school in one of those bordering schools I think they should be able to and be eligible for these scholarships. I don't think you are talking about a lot of students, you probably only have a handful here. I can't think of any other cities that have that problem in the state.

Chairman RaeAnn Kelsch: Questions?

Jack McDonald – State Association of Nonpublic Schools: I might add that you were talking about the residency issue. There has been a lot of case law on that mostly involving the colleges and especially that of Minot State College and UND, our two air force bases. It depends on if you are resident of the state or not and if you are living with your parents because often times in those situations the parents leave and the child will stay. A kid here may graduate from Grand Forks High School and start school at UND and then his/her parents are transferred out of ND. The question then rises if that student is a resident of ND anymore.

Chairman RaeAnn Kelsch: I think the point that Rep. Grande was making was that this is to be the child that comes home every night and spends the night with parents. How do you put that into law though? Residing is complex issue.

Jack McDonald – State Association of Nonpublic Schools: The issue has kind of already been decided because under paragraph B of existing law right now it doesn't say anything about residing with the parent. Presumably you could send your child elsewhere and be elsewhere under B.

Chairman RaeAnn Kelsch: If think if you look at the intent under 15.1-29 it says if there isn't another school within the area. It is servicing those students that have no choice. That is why we have that reciprocity agreement with those schools.

Jack McDonald – State Association of Nonpublic Schools: But under B they don't have to necessarily live with the parents.

Rep. Karen Rohr: We have Montana, South Dakota, Minnesota, Canada and Tribal schools that might cross the border. I'm just putting this out there for conversation.

Jack McDonald – State Association of Nonpublic Schools: This doesn't make a difference about the college this is just requiring you be a high school graduate to get this scholarship.

Chairman RaeAnn Kelsch: Further questions? Support?

Christopher Dodson – Executive Director, ND Catholic Conference: I'm here in support of this bill. This is a matter of justice in our eyes. We are talking about students that meet all the requirements for the academic requirements, they reside in the state, their parents are taxpayers in the state, and they choose to come and attend higher education in ND. One thing that disqualifies them is that the high school happens to be across the border. I think we could resolve the residency by maybe putting physically resides in the bill.

Chairman RaeAnn Kelsch: Support? Opposition? Neutral?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: Neutral. Testimony attachment.

Chairman RaeAnn Kelsch: So what about these students that are going across to the bordering public schools. Are those students taking the ACT in ND when we are offering it?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: We have one right now in Fairview, MT. I've been in contact with the principal there and he doesn't want anything to do with the mandated statewide ACT testing or the scholarship.

Chairman RaeAnn Kelsch: Could that student potentially go to another higher school and take the test or are they just flat out snubbing the program and saying we are not going to test the students?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: They are snubbing the program. We proposed an option to take the students to Williston for instance or to become a testing site themselves and we were met with refusal.

Rep. Brenda Heller: How do you handle this right now with the students that are going to a school out of state? How do you make sure those schools are offering what they are supposed to offer?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: Attachment 2. We did not have a student apply for the scholarship last year who was attending a school at a bordering state. I do have a document that goes over every high school in the state both public and private (refer to attachment 2).

Rep. Brenda Heller: You must have a plan in place for students that ay apply for this so what is that plan?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: I have come up with some plans. Number one regarding stars. Our management information system has told me that if a district applies and the district is out of state, a management system can grant authentic like to STARS to those neighboring districts. Once they're on stars, those districts are responsible to assign ND ID numbers. The second concern is the verification of the ACT. I asked ACT what our contract was. If I have a student attending a nonpublic school out of state will I get their scores and they were pretty doubtful. We can work through that however. Right now the students send the work key scores.

Chairman RaeAnn Kelsch: How many students do we have right now attending those bordering schools? It seemed to me that some of the families have gotten away from that.

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: I can look into that. That would be easier for me to determine because it would be a public and we could research the tuition agreement between ND the outlining states. Opening this up to the nonpublic, I don't know how I'd get any of that information.

Rep. Phillip Mueller: It seems to me that you have a system that will allow for those out of state students that reside in ND, and with the exception of the approval of accreditation process, there really isn't any reason you couldn't apply the principles for the public schools to the nonpublic schools that might be in a bordering state. Would that be correct?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: Yes that is correct. It will be difficult but it will be doable.

Chairman RaeAnn Kelsch: We have developed a state form that is used by all the school districts so we have buy-in from the school districts in the state. Getting a buy-in from a school district from out of state is going to be difficult. I'm not sure that ITE can work with the nonpublic schools in neighboring states to get this reciprocal agreement with STARS. That may be the biggest hurdle to overcome is not having that identifier in the STARS program just because they wouldn't be able to go into those schools.

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: I can't do anything until I identify that student.

Rep. Mike Schatz: What about homeschooling? How do you work with that? And if a student is a resident of the ND and gets a 24 on his Act wouldn't we want to give him a scholarship? I would think they earned it if they can score 24 on an ACT regardless of where they went to school.

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: We have a policy that home educated students do qualify if they satisfy the criteria which includes graduating from a ND high school. That student must receive a diploma from the local district. Whether a local district will grant a diploma to home educated student is up to that district. We do not have uniformity around the state among our home education. Our

stance is clear that a student must graduate from a ND high school. In regards to your second statement, if the law last year were still in effect, we really wouldn't have a problem with that. The difference is that this year we do have the additional curricular and grade requirements that the student has to meet and we are not quite sure if those nonpublic schools in bordering states would satisfy those requirements we have in ND.

Rep. David Rust: The numbers here where it says senior students that apply and are eligible scholarships, is that for both academic and career?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: Yes that is true. It was the senior enrollment at every high school in the state last year. I didn't differentiate it.

Rep. David Rust: If a student planned to go to Concordia College from that high school then they more than likely didn't apply?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: We told every school in the state, every counselor, and put an ad in the newspaper that if you were eligible to apply even if you plan to go out of state because the scholarship is deferrable for 6 years. We did have 1,589 students eligible last year and 92 indicated they were attending institutions out of ND so we have those in deferral. We did have the question asked if students could use the scholarship to attend Concordia and we said if you are fulltime enrolled at NDSU and there is a course agreement between the two universities you can surely attend the courses over there but the fulltime enrollment must be at a ND institution.

Rep. Mark Sanford: Do you know the number of each (inaudible)?

Connie Mittleider – Assistant Director, ACT/ND Scholarship Program for DPI: This is for Fall. 857 academic and 239 CTE, and that was in attendance not counting the deferral. It averages about 80% academic right now and 20% CTE.

Chairman RaeAnn Kelsch: Further questions? We will close on HB 1154.

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MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1154. This would open up the North Dakota scholarships to a student that was attending a nonpublic school in a bordering state.

Rep. Mike Schatz: I move a do pass.

Rep. Brenda Heller: Second.

Chairman RaeAnn Kelsch: The only question I have on this bill is I had written in physically residing. The reason is because residency by students for a long time is your parent's residence and you may not be residing there for nine months out of the year and an example would be college students. I understand they are still a North Dakota student but you have bordered them out. The intent was those students that were going to those schools in Moorhead and East Grand Forks for example. I don't think there are any nonpublic schools along the South Dakota or Montana border where a child can still live at home. This is exclusively for the Minnesota line.

Rep. David Rust: I don't know that I could support this bill. When you start talking about residency it becomes a moving a target. An example would be in our school district it actually got to be a special education issue. We were educating students that were a high dollar student. A mother was teaching school 90 miles away and the husband lived with her and sometimes they came home on weekends but that is where they claimed their residency. Residency is kind of where you think where you live. This can lend to some issues also.

Rep. Brenda Heller: Rep. David Rust how does it work with the public school student that resides in North Dakota and goes to a school across the border? The only difference is public and private. I think if we don't allow the private school students to have same advantage I think it is discrimination.

Rep. David Rust: Was your question if we have a public school student going across the border?

Rep. Brenda Heller: Yes. Right now there is a school where kids go across the border to attend the public school.

Rep. David Rust: We have reciprocal agreements with those and that is because there is no school on the other side. I'll give you an example of Fairview, Montana. There is a street called State Street and everybody on the east side are in East Fairview, North Dakota which does not have a high school, and everybody on the west side are in Fairview, Montana which has both an elementary and a high school. Since East Fairview doesn't have a high school, there is a reciprocal agreement with Montana. That is a significant difference because there really isn't a choice of whether those parents want to go to that school.

Chairman RaeAnn Kelsch: That is where the difference lies. The point is if that student didn't have the reciprocal agreement they would either have to board in another place which in this case would be Trenton, North Dakota which is about 35 miles away. That is why they have the reciprocal agreements. The different is there is a school option for the Grand Forks or Fargo student.

Rep. David Rust: Reciprocal agreements are between school districts where this looks to me like a personal choice.

Rep. Mike Schatz: I'm looking at the bill and this is about scholarships. This is about North Dakota kids getting North Dakota scholarships.

Chairman RaeAnn Kelsch: It is about North Dakota kids getting North Dakota scholarships. One issue will be verifying that the student has taken the required classes because Minnesota has a set of required classes that you have to take in order to receive a diploma. It will be more difficult for this student because they will have to meet Minnesota laws and the requirements to receive a diploma and also meet the requirements in North Dakota. It makes it more complicated and the reporting will be more complicated. It is DPI that receives all the applications for the scholarships. Can they and will they? I'm guessing they will if this passes. It is the difficulty in knowing whether those classes coincide. We can call it algebra here but it might not meet the state standards. It adds more complications.

Rep. John Wall: On line 23, how does this work if it is a public high school in a bordering state? I'm thinking in my situation students occasionally go to Breckenridge, Minnesota. Would they qualify for the scholarship?

Chairman RaeAnn Kelsch: It is my understanding that they would not because we don't have a reciprocal agreement with Breckenridge. Only where we have the reciprocal agreements between the schools and it is my understanding that we do not have a reciprocal agreement with Minnesota.

Rep. Dennis Johnson: A few sessions ago didn't we deal with Oslo, Minnesota and students going there?

Chairman RaeAnn Kelsch: Not that I recall.

Rep. John Wall: I question if we leave nonpublic in, I don't know why public would be there because that would affect a lot of students also. I realize Breckenridge in my case has different standards that they teach. I'm just asking if this bill would apply to public schools across the border.

Chairman RaeAnn Kelsch: It would only apply to nonpublic high schools. It specifically says nonpublic high schools. We have the bordering states legislation which if we would like we can get further clarification on that.

Rep. John Wall: Wouldn't this be discriminatory if I went home and told a parent if you sent your student to Hill Crest in Fergus Falls, Minnesota, which some do and they could even come home at night, they would be eligible for a North Dakota scholarship. If you send your child to high school in Breckenridge they would not qualify?

Chairman RaeAnn Kelsch: It is my understanding that the Breckenridge situation would not qualify because there is a North Dakota school option for those students right there. It goes back to family choice. I don't believe the reciprocal agreement addresses that.

Rep. Brenda Heller: How do you go through the reciprocal procedure? Do they have to go through that avenue first to try to figure out how to get a reciprocal agreement and then come back to our school? Then they would automatically get the scholarship but that is the step they're missing?

Chairman RaeAnn Kelsch: No the way the reciprocal works is that you can attend in a bordering state if the student lives within 40 miles of another state or the student lives in a county bordering on another state. So then yours would work. The student has received approval from the board of the student's school district of residence. So are they receiving approval to go over there?

Rep. John Wall: Yes and they are paying tuition.

Chairman RaeAnn Kelsch: Then they would qualify. No one ever talks about Minnesota reciprocal agreements so I don't know if they have a reciprocal agreement or not. The only ones that have ever been discussed are the ones in South Dakota and Montana. Rep. Dennis Johnson you think Oslo?

Rep. Dennis Johnson: I think so.

Chairman RaeAnn Kelsch: I don't remember Oslo ever coming into it.

Rep. David Rust: Does the law address who enters into those reciprocal agreements?

Chairman RaeAnn Kelsch: A school district may contract with a school district in a bordering state for the education of students. A contract between school districts must provide for the payment of tuition and agreed upon amount. The student who attends school in a bordering state under a contract provided by this section 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 of the bordering state for payments as provided in

the contract. A school district in this state may not agree to accept a student from a bordering state unless the tuition payable equals or exceeds the amount of state aid that the district would have received from this state for a student in the same grade if that student had been attending school in the bordering state. Cross border attendance contract with South Dakota.

Rep. David Rust: I had always thought that reciprocal agreements were between school districts. You don't get a reciprocal agreement from a parent standpoint. It is basically where school districts across the border from one another enter into an agreement to educate one another students because there isn't a school close enough for them to go to. It doesn't make sense to put a kid on a bus to go 40 miles when across the street maybe a mile or two away there is another high school they could to. There is an exchange of tuition in that process. That is my understanding.

Chairman RaeAnn Kelsch: The only one that it talks about a cross border with is a contract South Dakota.

Rep. Phillip Mueller: I think Rep. Brenda Heller made the point that if we are able to do it for out of state publics across the border how would it be any different for a student for nonpublics right across the border? And granted you have the issue with different sets of curriculum and so forth. We already are going to have to deal with that for the public that is over there. I don't know how we would see it any different in a nonpublic.

Rep. Mark Sanford: It seems to me that both instances would involve a tuition agreement. If I went to a nonpublic school in Minnesota I would have a tuition that I would pay. If elected to go to a public school in Minnesota, either I or my district would have a tuition agreement that would have to be paid. The Minnesota school could choose to waive that but there still is a tuition process.

Chairman RaeAnn Kelsch: The school board of the district of which a student resides can deny the request. One of the differences is that the student attending the out of state school is deemed to be enrolled in the student's school district of residence for determining average daily membership because of the tuition payments. I think we have more questions to work through. Can we withdraw the motion for the time being so we can get more discussion on this?

Rep. Mike Schatz: I withdraw the motion.

Rep. Brenda Heller: I withdraw my second.

Chairman RaeAnn Kelsch: We want to ask some questions regarding reciprocity agreements for cross border situations. So if we can have someone talk to us a little bit about that from the department. .

Connie Mittleider – DPI: In North Dakota Century Code it allows public districts in bordering states to send our students to a public school in another district outside of our state as long as there is a tuition agreement between the two public districts. The law requires that you have to be within 40 miles of that border and you have to be in a county

that affects the other state line. North Dakota Century Code does not relate to any nonpublic schools. This is public only for the tuition agreement between the respected districts.

Chairman RaeAnn Kelsch: Questions?

Rep. Brenda Heller: In order to fulfill what this bill wants to do, they would have to introduce a bill to change the century code to have a reciprocity agreement with a private school. Is the route they would have to take then? How did this get in the code?

Connie Mittleider – DPI: This covers public schools only. The scholarship is a whole separate thing. You could still pass this law and have the students participate in the scholarship program. The way the law is written for the academic and career and tech scholarships is it says the North Dakota resident, a graduate from a North Dakota high school, or a high school under Century Code does list that so they are covered. This law would just add the nonpublic schools.

Chairman RaeAnn Kelsch: We already have the nonpublics in there. So the nonpublics do qualify or are you talking about the cross border?

Connie Mittleider – DPI: The cross border are eligible publics but not nonpublics.

Chairman RaeAnn Kelsch: The different is we have a tuition agreement with those schools. The situation that Rep. John Wall brought up this morning is relatively the same as what this bill addresses. That is if you reside in North Dakota but you chose to send your child to a bordering state school and pay that tuition yourself. So we have a situation in Wahpeton where the parents send their kids to Breckenridge for hockey and they pay the tuition. That is not considered part of a bordering state because it doesn't meet the qualifications. So those parents are paying the tuition at those schools and sending them to those schools. This would be exactly the same as that because it would be paying to go to a nonpublic school and the parent is paying the tuition. There is a difference between the law as it is currently written with cross border states where the tuition is reciprocal. It goes back and forth.

Connie Mittleider – DPI: That is correct. The way the law is written is that the tuition is an agreement between the two districts and not paid by the family and so the circumstance you just described is different.

Rep. David Rust: Are you telling me with the example Rep. John Wall gave that they would not be eligible for the scholarship because it is a parent paid tuition as opposed to a reciprocal agreement. Is that student eligible or not eligible?

Connie Mittleider – DPI: That student is not eligible.

Chairman RaeAnn Kelsch: That would be the same for any student whose parents in North Dakota but they send them off to a boarding school where they pay the tuition. Those students are not eligible as well.

Connie Mittleider – DPI: Even those students that do qualify under the current law, this year they will have to meet the minimum North Dakota 22 unit diploma even though they are attending a school out of state. So there will definitely be some transcript review.

Chairman RaeAnn Kelsch: If you can explain how you plan on doing that. Are you going to have to validate each of those forms that are submitted by the form that was developed by CTE and that the school districts are using? Do you have to validate the transcripts as well?

Connie Mittleider – DPI: The process this year is when the students apply, automatically the names go into the STARS system. So starting on May 15th, the principals are going to log into STARS and they will see a list of all their students, from their school, that have applied for the scholarship. I will do verification for ACT scores. The principal will have to click on the names and do the verification. Electronically we will do as much as we can because we have our state course codes and we know them. Those will be pre-populated. We are pulling that from their power school. Anything we don't have then the principal will have to verify that for us. I will randomly request official transcripts and do spot checks this year.

Rep. Mark Sanford: If we pass this bill it says that those living at home and going to a nonpublic school in another state, if they meet all the qualifications they would get a scholarship. I would assume if we are going to do that for nonpublic students it would make sense to me to do the same for public school students. Talk about what this could mean?

Connie Mittleider – DPI: You are opening Pandora's Box if may speak bluntly. I would recommend if you pass this legislation, then equity wise you should include those students that are attending the public school out of state where the parents are paying tuition. For us they will have no state IDs which we could probably assign. The verification could not be done electronically. That would require individual transcript approval and verification. ACT scores wouldn't be on my disc. I could require that the student pay and send me their scores. We will do it if we have to. It will be tough.

Rep. Phillip Mueller: Do you have any sense of how many students we are talking about here if we do both publics and nonpublics? How many in addition to those reciprocal agreements should this law be changed to include both?

Connie Mittleider – DPI: First I want to say that we did not have an applicant last year from a student under a reciprocal agreement. I think we are looking at about 60.

Jerry Coleman – DPI: We know the ones that are involved the cross border agreements. We wouldn't have a count in what you are talking about allowing here. We wouldn't have a count on those.

Chairman RaeAnn Kelsch: The reason you have cross border ones is because they are counted in this state's ADM.

Jerry Coleman – DPI: The grand total is probably 150-180 students. Those that are living along the border and are going out of state.

Rep. Dennis Johnson: I have that question if we have someone going to Oslo.

Chairman RaeAnn Kelsch: When did we put together the agreement with Oslo, Minnesota?

Jerry Coleman – DPI: I am not connecting with that.

Rep. Mike Schatz: You can't really estimate how many nonpublics that there might be and there is none right now. Is that correct?

Connie Mittleider – DPI: There are none outside of North Dakota. The nonpublics in North Dakota are included.

Chairman RaeAnn Kelsch: All of the nonpublic schools in North Dakota are able to qualify for the North Dakota scholarship.

Rep. Mike Schatz: The ones in Fargo that go over to Minnesota and come back.

Chairman RaeAnn Kelsch: We don't have any of those because technically they are not North Dakota students as we count students here.

Rep. Mike Schatz: There are the ones that would be applying for the scholarship.

Chairman RaeAnn Kelsch: If this law passes they would be the ones that would be allowed to qualify or apply for the scholarships.

Rep. Mike Schatz: So this number we don't know. Do you think it would be a big number?

Connie Mittleider – DPI: We estimate very small.

Jack McDonald – State Association of Nonpublic Schools: The parent that initiated this bill in the first place it involved just two students. There are also three other students in Grand Forks that are going over. We are talking about 3 to 6 students. Of that small number they also have to be seniors to apply for this. I was looking at the law and one section says it is any student who is eligible who graduates from high school and the other says just a high school during an academic year. But both talk about resident students. I think it is a question of residency more than the school itself. The numbers will be very small.

Chairman RaeAnn Kelsch: The intent of the legislation was for high school students residing in North Dakota because that is the only way we have control over their curriculum. It was just because of controlling the requirements that are currently in law.

Jack McDonald – State Association of Nonpublic Schools: I think the word resident would help a lot because the further you go away you are no longer considered a resident. But there are also a lot of court cases that dealt with this issue when parents move away and children remain in the town. I think the transcript issues and the issues of the ACT

scores and those things can be settled easily. I think if these parents apply and DPI says we need something it won't be a problem.

Rep. Joe Heilman: Fergus Falls was mentioned earlier. Is that in the same county as Breckenridge?

Rep. John Wall: It is not a bordering county.

Rep. Joe Heilman: Do we need to put in language that has the neighboring county so we aren't opening it up?

Rep. Phillip Mueller: We do have something about having to be within 40 miles? Does that play into this scenario? If you are outside 40 miles you are stretching it out? How does 40 miles play into this scenario?

Bob Marthaller - DPI: The 40 miles has to do with the tuition agreements. Only the tuition agreements that are within the 40 miles are eligible.

Rep. Phillip Mueller: The point is there is no rule of 40 miles for this situation. So someone in Wahpeton could send their student to Minneapolis providing they could determine they were still a resident of Wahpeton. If this passes that student could be eligible for a scholarship.

Bob Marthaller - DPI: If we are trying to qualify the students that are identified in 5C, and we are worried about where they are at, we were wondering if we could use the similar language in 15.1-29 because it has in it that it has to be bordering, 40 miles, and contiguous.

Chairman RaeAnn Kelsch: It would be A and 1 and 2 in 15.1-29-01?

Bob Marthaller - DPI: Yes.

Chairman RaeAnn Kelsch: That would be that the student lives within 40 miles of another state or a student lives in a county bordering another state. I think if you are opening it up for nonpublic you need to open it up for the public kids as well. I don't think you can be biased and that is opening up a bigger can of worms when it comes to parents that are sending their kids to Minnesota to play sports and not for their quality of education.

Rep. Phillip Mueller: There is a fairly simple solution and that is to kill the bill.

Chairman RaeAnn Kelsch: Committee members you have to decide which way you want to go on this. I think that it was an innocent enough request but I think that there are further complications. If you think you can add in that language, I don't know what the effects of adding that language in would be.

Connie Mittleider - DPI: The difference is that if the family is paying tuition it is a choice. I look at this as a geography issue. Politically I think if you open this up and say you are in 40 miles or are in a contiguous county. Then you have that parent coming to you next session

and saying I live in Bismarck, I have rights, and my sister who happens to live in Fargo has a son that is eligible for this scholarship because he is going to a private school in Moorhead. I pay taxes and I live in Bismarck so why can't my kid be eligible? It just is opening it up.

Rep. Phillip Mueller: I can see the potential for some games being played here about residencies and taking advantage of our scholarship program that might not be so good.

Rep. Dennis Johnson: I think we I can think of 4 different families in the central part of the state whose children all went to Hill Crest in Fergus Falls, Minnesota. The cam home on weekends and such and they were residents but they are not 40 miles or contiguous.

Chairman RaeAnn Kelsch: There are a lot of questions. I think when we set up the scholarships initially we were thinking North Dakota students in North Dakota schools.

Rep. David Rust: I move a do not pass.

Vice Chair Lisa Meier: Second.

Rep. Mike Schatz: Your do not pass means a North Dakota kid cannot get a North Dakota scholarship.

Rep. David Rust: A North Dakota kid can't get a North Dakota scholarship if they are going to a nonpublic school outside of this state or a public school outside of the state.

Chairman RaeAnn Kelsch: When they are paying their own tution.

Rep. David Rust: Correct. Currently it does cover those students that are going to a high school outside the state if there is a reciprocal agreement. This is parental, which is a choice. I think that is another set of circumstances.

Rep. Mike Schatz: I'm going to oppose the do not pass. When we stop denying scholarships to North Dakota residents I think we are making a mistake. I don't care if it is public, nonpublic, and I don't care if it's 42 miles away from the state border. If they live here I think they should be eligible.

Chairman RaeAnn Kelsch: Just to let you know the conversation when were developing this scholarship. There was a lot of discussion as to whether or not we would even include nonpublic students to have them qualify for the scholarships in the first place and wanting it to be open to the nonpublic students that attend school in North Dakota was important to a number of people that said it needed to be included in the bill. Always in the conversations it was for students attending North Dakota schools. Anyone of us can choose to send our kids wherever we choose but if we want our kids to qualify for a North Dakota scholarship they need to be attending a North Dakota school. Periodically there are things we do where you can't necessarily appease everyone. It is the same thing with the universities. It is your choice. This was an incentive to keep North Dakota kids in North Dakota going to North Dakota campuses.

Rep. Corey Mock: If a student is home schooled. Are they eligible?

Connie Mittleider – DPI: Home school students are eligible as long as they receive a diploma from their local district.

Rep. Corey Mock: I know where Rep. Grande comes in. This is a difficult issue because there are a lot of concerns. Grand Forks is in a unique situation where we don't have a nonpublic school in Grand Forks. It is in East Grand Forks. There are parents that live in Grand Forks and chose to have their kids go to Sacred Heart in East Grand Forks, Minnesota. Because of that they are not eligible. It is difficult and I think there are a lot of concerns but I will oppose the do not pass. I do think this is a difficult issue though.

Chairman RaeAnn Kelsch: Further discussion? Hearing none we will take the roll on a do not pass on HB 1154. We will close on HB 1154.

9 YEAS 6 NAYS 0 ABSENT
CARRIER: Rep. Phillip Mueller

DO NOT PASS

FISCAL NOTE

Requested by Legislative Council
01/07/2011

Bill/Resolution No.: HB 1154

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Expands scholarship eligibility of \$1,500 per year or \$6,000 maximum to a nonpublic high school graduate in a bordering state while residing with a custodial parent in ND.

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

Section 5 expands program eligibility.

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Minimal

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

Name:	Laura Glatt	Agency:	ND University System
Phone Number:	701-328-4116	Date Prepared:	01/07/2011

Date: 02-15-11
Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1154

House EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By REP. RUST Seconded By VICE CHAIR MEIER

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	<input checked="" type="checkbox"/>		Rep. Hanson	<input checked="" type="checkbox"/>	
Vice Chairman Meier	<input checked="" type="checkbox"/>		Rep. Hunsakor	<input checked="" type="checkbox"/>	
Rep. Heilman		<input checked="" type="checkbox"/>	Rep. Mock		<input checked="" type="checkbox"/>
Rep. Heller		<input checked="" type="checkbox"/>	Rep. Mueller	<input checked="" type="checkbox"/>	
Rep. Johnson	<input checked="" type="checkbox"/>				
Rep. Karls		<input checked="" type="checkbox"/>			
Rep. Rohr		<input checked="" type="checkbox"/>			
Rep. Rust	<input checked="" type="checkbox"/>				
Rep. Sanford	<input checked="" type="checkbox"/>				
Rep. Schatz		<input checked="" type="checkbox"/>			
Rep. Wall	<input checked="" type="checkbox"/>				

Total (Yes) 9 No 6

Absent 0

Floor Assignment REP. MUELLER

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

REPORT OF STANDING COMMITTEE

HB 1154: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO NOT PASS** (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1154 was placed on the Eleventh order on the calendar.

2011 SENATE EDUCATION

HB 1154

2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1154
March 23, 2011
15904

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eligibility for North Dakota scholarships.

Minutes:

See "attached testimony."

Chairman Freborg opened the hearing on HB 1154; fiscal note attached.

Jack McDonald, State Association of Non-Public Schools explained the bill. Representative Grande introduced the bill on behalf of a few parents of North Dakota students; live in North Dakota, one set in Fargo and the other in Grand Forks. The bill addresses the fact that parents are North Dakota residents, the students live at home and go to school in private schools in Minnesota. The state law concerning North Dakota Scholarship has two sections; one of the sections provides that the scholarship should go to a graduate of a high school. The second section says of a North Dakota high school. This bill makes those students eligible for the North Dakota Scholarship.

Senator Gary Lee: You say a few students, how many do you think there are? Is it only these two schools? **Jack McDonald:** Representative Grande may know specifically; he believes there are just these two parents. Testimony in the House side noted some Wahpeton residents going to school in Breckenridge. Would say less than ten total.

Senator Gary Lee: How do you view this in regard to the agreements the state has with kids from North Dakota going to school in Montana and South Dakota high schools? **Jack McDonald:** He understands there are provisions in the law that covers that. Those are done between agreements in school districts. Believe there are provisions that cover this.

Senator Flakoll: The students in Wahpeton/Breckenridge that are moving from one to the other to play hockey. Are those students then eligible under this bill? Or is it because the bill addresses non-public they would not be eligible. **Jack McDonald:** His understanding is they would be eligible as well. The intent would be to make them eligible.

Representative Grande, District 41: She brought the bill forward for some constituents that want their children to be eligible for the North Dakota Scholarship. Parents want students to go to a school that was a better "fit". These are not boarding students, but living at home and going to school over the state border. There may be a number of students, but they still have to qualify before applying. There could be 5-6 students that

actually meet those qualifications. Was looking at fairness to North Dakota taxpayers. Students are looking at attending NDSU; it all fits every scenario except their classroom is across the river.

Senator Gary Lee: Does Park Christian have a campus in Fargo as well?
Representative Grande: She thinks they are K-12 in Moorhead now; had their elementary school in Fargo and high school in Moorhead. Thinks they have expanded the MN school to meet the needs of all students in one area.

Christopher Dodson, Executive Director, North Dakota Catholic Conference supports the bill; in fairness to those that live and pay taxes in North Dakota and the student graduates outside the state.

Tom Freier, North Dakota Family Alliance lives in Fargo; had a number of parents from Fargo with students attending Park Christian and some in Grand Forks that asked him to support this effort.

No further testimony in favor; no opposition.

Connie Mittleider, Assistant Director, ACT/North Dakota Scholarship Program, DPI provided information how this will affect her office and management of the scholarship program. (#1 Testimony)

Senator Heckaman: How do you verify students in MN, SD, and MT public schools? Do they use the same data system North Dakota uses? **Connie Mittleider:** No; none of those students applied last year. The application process opened March 1st and right now has one applicant from Fairview. If they do apply, she has to do all of it by hand. **Senator Heckaman:** Can the same thing be done for private schools? **Connie Mittleider:** Yes; her concern is that there were 16 students attending public school out of state. This legislation as it is opens it up and concerns her. She can verify a handful of transcripts and ACT/WorkKeys scores; given a month can verify ten. This is definitely opening it up. We have courses in North Dakota that are legislatively mandated, content. Personal Finance is a requirement for North Dakota. Don't know and won't be able to verify those things on another transcript.

No further testimony. Hearing closed.

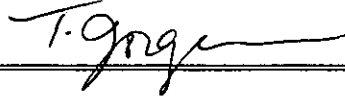
2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

Committee Work on HB 1154
March 28, 2011
16043

☐ Conference Committee

Committee Clerk Signature



Minutes:

No "attached testimony."

Senator Flakoll: Thought a lot about this bill; not about the money but philosophical in nature for him. Move a Do Pass to HB 1154; second by **Senator Heckaman**.

Senator Flakoll: A couple of concerns and maybe should have looked at amending it as preemptive action but do worry if starts hearing about situations where people are going to school in a situation that circumvents the intent—in places like some hockey, etc. Thought should we put a limitation of 10+ miles, but there is some practical nature to this. In theory supposed to be living at home; we are not doing bed checks here so that can be a bit of a challenge. Had a change of heart after reading a book about the 2009 flood. If it weren't for the students a lot of cities/land would have been lost. Maybe need to dissolve barriers rather than build up walls. No one cared where you were from; it was about doing what was best. Mind and spirit saved the day. If family feels that a different educational opportunity is best for them, has chosen to not stand in the way.

Senator Heckaman: Looks at it from a little different perspective; the schools of choice for non-public schools in the Fargo area are based on two specific denominations. If you are not of those denominations and wish to have child go to a non-public school, there is no other choice other than going to Moorhead to the school referenced in testimony on this bill. For that reason supports the bill.

Senator Flakoll: Do have some concern; have to be vigilant to this but have no control over their "rigor". Have to take the same classes required for this but tentacles don't stretch across the border—is an Algebra II the same there as in West Fargo, for example. Has been to that school and know that they take their work seriously, but this is something to monitor on a go forward basis. Also mindful that there are provisions in here in the case of the Morristown/Lemmon situation and other cases where North Dakota students are meeting their academic objectives in South Dakota or Montana to meet the requirements in the best, most economical, etc. In some respects this aligns with those situations too.

Motion carried 7-0-0; **Senator Flakoll** will carry the bill.

Date: 3/28/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1154

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Flakoll Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	<input checked="" type="checkbox"/>		Senator Joan Heckaman	<input checked="" type="checkbox"/>	
Vice Chair Donald Schaible	<input checked="" type="checkbox"/>		Senator Richard Marcellais	<input checked="" type="checkbox"/>	
Senator Tim Flakoll	<input checked="" type="checkbox"/>				
Senator Gary A. Lee	<input checked="" type="checkbox"/>				
Senator Larry Luick	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Flakoll

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

REPORT OF STANDING COMMITTEE

HB 1154: Education Committee (Sen. Freborg, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1154 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1154

TESTIMONY ATTACHMENT

**TESTIMONY ON HB 1154
HOUSE EDUCATION COMMITTEE
February 1, 2011
Connie Mittleider, Assistant Director
701-328-2755
Department of Public Instruction**

Madam Chair and Members of the Committee:

My name is Connie Mittleider and I am the Assistant Director, ACT/ND Scholarship Program for the North Dakota Department of Public Instruction. I oversee the statewide ACT and WorkKeys testing for all high school juniors and administer the North Dakota Scholarship program. I am here to speak about HB 1154 and provide information regarding how this bill could impact the administration of the North Dakota Scholarship Program. The Department is neither in support of, nor in opposition to, this bill but wants the members of the Committee to understand the concerns we have relative to the management of the directive provided in this legislation.

The 2009 North Dakota Legislative Assembly established two merit scholarships, the North Dakota Academic Scholarship and the North Dakota Career and Technical Education Scholarship, for students attending institutions of higher education in this state. The first two eligibility requirements are:

1. The student is a North Dakota resident, and

2. The student graduates from a high school in this state or from a high school in a bordering state under chapter 15.1-29.

The Century Code referenced in current law provides for the inclusion of high schools in public districts in bordering states for which there is a tuition agreement between the public district in North Dakota and the public district in the bordering state. It does not provide for the inclusion of nonpublic high schools in bordering states.

Subsection 5 adds the nonpublic high schools in bordering states to the list of high schools from which a student may graduate to be scholarship eligible. The Department's concerns relate to the difficulty in verifying scholarship eligibility for students attending a nonpublic school in another state.

1. The first step in the scholarship application process requires the student complete an online application. Once a student submits an application, I go into the data base and "search" for the student to match the student with his or her unique North Dakota state ID number. Students attending schools out of state will not have a ND student ID number. This number is assigned through STARS, the State Automated Reporting System. This system is available to all public and non-public schools in the state and it is through this system that schools assign state ID numbers to our students. If students attending out-of-state private institutions are to be considered for scholarship eligibility, a plan would need to be developed to address this issue.

2. The second step in the process requires the verification of all ACT and WorkKeys scores. For verification of the WorkKeys scores, students must send me copies of their score reports. For verification of the ACT scores, I receive a disk from ACT containing a list of North Dakota seniors and their ACT scores. Using the disk, I verify the ACT score for all applicants. The Department may not have the ACT scores for students attending institutions out of state. The Department would need to develop a process to verify the ACT scores of the out-of-state students.

3. The verification of graduation and the fulfillment of the curricular and grade requirements is done via STARS by each high school principal, with Department oversight. The students must complete the 22 units specified as the minimum diploma requirements for North Dakota graduates in addition to the additional curricular and grade requirements established for each respective scholarship. For students graduating from a high school in North Dakota, we know the student has earned the units specified in North Dakota law. Students graduating from high schools out of state would take the courses and earn the units of credit mandated by each of their respective states. We must establish a verification process to ensure out-of-state students meet the diploma requirements established in this state.

Within a year or two, the verification process for the curricular and grade requirements will be done electronically through our Student Longitudinal Data System. Each course taught in a North Dakota high school is linked to a state course

code and the content for each course is uniform, based upon a state course description and the state content standards. Using these codes, we will verify the completion of the courses required for scholarship eligibility. This electronic verification will not be possible for students attending out-of-state institutions.

4. Private institutions in North Dakota are under the oversight of the Approval and Accreditation Unit in the Department. The nonpublic institutions in North Dakota must satisfy the same approval requirements as the public schools and be granted “approval” for operating in the state. In checking with the Departments of Education in Montana, Minnesota, and South Dakota, those departments oversee accreditation of public schools but do not engage in an approval process of all schools as we do in North Dakota. This may or may not be an issue, but under current law, we know the students applying for the scholarship attend schools in North Dakota that have been approved for operation and satisfy consistent and uniform standards for operation.

In conclusion, the Department has concerns over the management of the North Dakota Scholarship Program with the inclusion of students who attend nonpublic institutions out of state.

Madam Chair, this concludes my testimony. I will address any questions put forth by the committee.

Thank you.

CHAPTER 15.1-29
NONRESIDENT TUITION AND RECIPROCITY

15.1-29-01. Education of students in bordering states - Payment of tuition.

1. A student may attend school in a bordering state in accordance with section 15.1-29-02 provided:
 - a. (1) The student lives within forty miles [64.37 kilometers] of another state; or
 - (2) The student lives in a county bordering on another state; and
 - b. The student has received approval from the board of the student's school district of residence.
2. If the school board of the district in which the student resides denies a request for a student's attendance in and payment of tuition to another state, the student's parent may appeal the decision to the three-member committee referenced in section 15.1-29-06.
 - a. If the three-member committee determines that the student meets the terms of subsection 1, the student may attend school in the bordering state and the board of the student's school district of residence shall pay the tuition.
 - b. 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 15.1-29-06.
 - c. Notwithstanding the provisions of this section, if a student's school district of residence does not provide for the education of kindergarten students, the district may not pay tuition for a kindergarten student to attend school in a bordering state.
 - d. Any decision by the three-member committee regarding the payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board or by the student's parent to the state board of public school education. A decision by the state board is final.
3. A student attending an out-of-state school under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership. The student's district of residence may reduce any tuition payment it must make 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.
4. Nothing in this section requires that a school district of residence provide student transportation or payments in lieu of transportation for students attending out-of-state schools.

15.1-29-02. Education of students in bordering states - Contract - Tuition.

1. A school district may contract with a school district in a bordering state for the education of students. A contract between school districts must provide for the payment of tuition at an agreed-upon amount.
2. A student who attends school in a bordering state under a contract provided for by this section 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 of the bordering state for payments as provided in the contract.

3. A school district in this state may not agree to accept a student from a bordering state unless the tuition payable equals or exceeds the amount of state aid that the district would have received from this state for a student in the same grade if that student had been attending school in the bordering state.

15.1-29-02.1. Cross-border attendance - Contract with South Dakota.

1. A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota, provided the superintendent of public instruction has entered into a contract with the secretary of the South Dakota department of education for the cross-border attendance of eligible students.
2. A contract entered under subsection 1 must set forth:
 - a. An application procedure;
 - b. Causes for denial of an application; and
 - c. The manner and notification of acceptance.
3. A contract entered under subsection 1 must authorize the superintendent of public instruction to count any South Dakota student participating in cross-border attendance under this section for the purposes of determining the amount of state aid to which a school district in this state is entitled. The superintendent of public instruction may not count a North Dakota student participating in cross-border attendance in accordance with the contract for purposes of determining the amount of state aid to which a school district in this state is entitled.
4. A contract entered under subsection 1 must provide that if there are more students from North Dakota than South Dakota participating in cross-border attendance under this section, the superintendent of public instruction shall forward to the secretary of the South Dakota department of education, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The contract must also provide that if there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.
5. The superintendent of public instruction shall annually reconcile the number of students from each school district in this state who participate in cross-border attendance under this section with the number of students from school districts in South Dakota who participate in cross-border attendance under this section. The superintendent of public instruction shall withhold from each school district's state aid an amount equal to the cost incurred by the state on the part of the school district in permitting the cross-border attendance of students under this section.
6. A student who requires special education services may participate in cross-border attendance under this section, provided the contract entered under subsection 1 sets forth each school district's and each state's responsibilities for payment of any excess costs incurred as a result of providing the services to the student.

7. Each school district may provide transportation to students participating in cross-border attendance under this section. However, the superintendent of public instruction may include only transportation provided within this state for purposes of determining the state transportation aid to which a district is entitled.
8. Sections 15.1-29-01 through 15.1-29-13 do not apply to students participating in cross-border attendance under this section.

15.1-29-03. Education of students in other districts - Payment of tuition and transportation.

1. After taking into account the best interests of all affected parties, the board of a school district may elect to send its students to another school district. In this instance, the board shall pay for the students' tuition and transportation. The board may arrange, and when petitioned to do so by qualified electors of the district equal in number to at least a majority of those who voted in the most recent annual school district election shall arrange, with other boards to send students to the other districts and to pay for their tuition and transportation.
2. If a district does not provide educational services to an entire grade level, the students in that grade level may attend a public school of their choice outside their district of residence without going through the procedures outlined in section 15.1-29-05. The board of the students' school district of residence shall pay for the students' tuition and transportation. For purposes of determining whether educational services are provided to an entire grade level, districts cooperating with each other in the joint provision of educational services under a plan approved by the superintendent of public instruction are considered to be a single district.

15.1-29-04. Payment of tuition and transportation by sending districts - Interest on late payments - Notification. If the board of a school district agrees to pay tuition under this chapter, if it is required to pay tuition under this chapter, or if it is required to pay tuition and transportation under this chapter, the board of the sending district shall pay at least fifty percent of the annual charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due. If payment is not received by the admitting district within sixty days after the date on which payment is due, the admitting district shall notify the superintendent of public instruction.

15.1-29-05. Payment of tuition - Petition by parent. A student's parent may file a written petition with the board of the student's school district of residence for the payment of tuition in order that the student can attend another school district. Within sixty days after receiving the petition, the board shall meet with the student's parent and render a decision regarding the payment of tuition. If the board does not render a contrary decision within the sixty-day period, the petition is deemed approved. If the petition is approved, the board shall pay the tuition charges. If the petition is denied, the student's parent may file an appeal with the county superintendent of schools.

15.1-29-06. Payment of tuition for grades one through twelve - Appeal - Withholding of state payments.

1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and

responses. The committee shall base its decision regarding the payment of tuition on the grade in which the student is enrolled.

- b. If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's school district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition may be for any fixed number of school years, up to the completion of the student's high school education, unless open enrollment is an available option. The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.
 - c. If the student is or during the following school year will be enrolled in any grade from kindergarten through eight and the committee finds that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition is limited to one school year. The student's parent may make subsequent applications for the payment of tuition. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
2. If a student's school district of residence consists of land situated in more than one county, the three-member committee established under subsection 1 must consist of the county superintendent of schools and the state's attorney from the county in which the greatest portion of the school district's land is situated, and an individual appointed for a term of three years by the board of county commissioners representing the county in which the greatest portion of the school district's land is situated.
3. If the student's school district of residence does not comply with the decision requiring that tuition charges be paid, the board of the admitting district shall notify the superintendent of public instruction. Upon verifying that tuition payments are due the admitting district and are unpaid, the superintendent of public instruction shall withhold all state payments to the student's school district of residence until any tuition due has been fully paid.
4. A school district of residence may provide transportation to a student for whom tuition is paid under this section. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district.

15.1-29-07. Payment of tuition by parent - Content of tuition contract.

1. If the board of a student's school district of residence refuses to pay the tuition for the student to attend school in another district and if the committee established under section 15.1-29-06 denies the petition on appeal, the student's parent may pay the tuition.
2. If the parent chooses to pay the tuition, the parent shall:
 - a. Submit at least fifty percent of the total amount due on the day of enrollment; and

- b. Provide the board of the admitting district with a written contract agreeing to pay any remaining balance on or before December thirty-first.

15.1-29-08. Payment of tuition - Kindergarten student. Repealed by S.L. 2001, ch. 193, § 5.

15.1-29-09. Payment of tuition by federal government. An admitting district may accept payments under title 1 of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] as tuition for a nonresident student if:

1. The student's parent is employed on an installation owned by the federal government;
2. The student's parent resides on an installation owned by the federal government; and
3. The boards of the student's school district of residence and the admitting district agree to accept the payments in lieu of other tuition for the nonresident student.

15.1-29-10. Tuition contracts - Agreement with federal officials. A school board may contract with federal officials for the education of students in a federal school.

15.1-29-11. Admission of students - Conditions. The board of a school district shall admit students from other districts to its schools if:

1. The admission does not create overcrowding; and
2.
 - a. The board of the sending district has entered into a contract with the board of the admitting district regarding the students' attendance;
 - b. Tuition will be paid by the parents of the students from the sending district; or
 - c. The grade level required by the students is not offered by the sending district.

15.1-29-12. Tuition payments - Determination.

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education per student incurred by the admitting district.
2.
 - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
 - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
 - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
 - (1) The per student payment multiplied by the admitting district's school size weighting factor; and

- (2) Any credit for taxes paid to the admitting district by the student's parent.
- d. The amount remaining is the full cost of education per student incurred by the admitting district. The tuition amount payable for the individual student is the lesser of:
 - (1) The full cost of education per student incurred by the admitting district; or
 - (2) One hundred fifty percent of the state average full cost of education per student.
- 3. This section does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

15.1-29-13. Tuition payments - Nonresident students.

- 1.
 - a. Except as provided in this subsection, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. Either the student's district of residence shall pay the tuition to the admitting district in accordance with section 15.1-29-12 or the student's parent shall pay the tuition to the admitting district in accordance with section 15.1-29-07.
 - b. A board may charge tuition for nonresident students enrolled in an approved alternative education program.
 - c. Except as otherwise provided, if a school district fails to charge and collect tuition for a nonresident student, the districts shall forfeit any state aid otherwise payable for the nonresident student.
- 2.
 - a. The board of a school district may admit a nonresident student from another district in this state offering the same grade level as that in which the student is enrolled without a charge and collection of tuition if the sending and admitting districts have entered into a written contract regarding the student's admission.
 - b. For purposes of determining whether the same grade level is offered, two or more 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.
 - c. The contract 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.
 - d. A contract is not necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.
 - e. A school district may admit a nonresident student described in section 15.1-31-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
- 3. A school district may not charge or collect from a nonresident student, the student's parent, or the student's district of residence any fees or charges not otherwise assessed to all resident students.

15.1-29-14. Student placement for noneducational purposes - Residency determination - Payment of tuition and tutoring charges.

1. a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
 - (1) At the time that a state court, tribal court, director of juvenile court, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
 - (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
 - (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
 - (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
- b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.
2. The student's school district of residence is obligated to pay:
 - a. All charges for tuition upon claim of the admitting district; and
 - b. All charges for tutoring services upon claim of an admitting facility, provided that the tutoring services are delivered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
3. The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for state aid to schools if, on the September fifteenth after a student placement is made as provided for under subsection 1:
 - a. The student's custodial parent or legal guardian establishes residency outside this state;
 - b. A court orders a termination of parental rights with respect to the student's parents;
 - c. The student no longer has a custodial parent; or
 - d. The superintendent of public instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.

4. If the student is voluntarily admitted to a state-licensed child care home or facility, or to a state-operated institution, the student's parent or, if one has been appointed, the student's legal guardian may appeal a determination under section 15.1-29-05 regarding the payment of tuition by filing a petition with the county superintendent of schools. Within fifteen days of receiving the petition, the three-member committee established under section 15.1-29-06 shall consult with the boards of the affected school districts and with the student's parent or legal guardian and render a decision regarding responsibility for the payment of tuition charges.
5. If the student's district of residence does not pay the required tuition and tutoring charges, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition and tutoring charges are due and unpaid, the superintendent shall withhold all state aid otherwise payable to the student's school district of residence until the total amount due has been fully paid.
6.
 - a. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility.
 - b. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for the payment of special education contract charges in the case of a student with disabilities or from state aid payments to schools in all other cases. For purposes of this subdivision, "actual costs" includes the cost of a summer program if the program is a condition of placement at a residential facility that has been determined by a placing agency or entity to be an appropriate placement for a student.
7. If a student with disabilities placed in accordance with this section reaches age eighteen and continues to receive special education and related services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. The obligations of the student's school district of residence as provided in subsection 2 and the obligations of the state as provided in subsection 3 are applicable to all students described in this subsection.
8.
 - a. The placing agency or entity funding the student's placement shall provide written or electronic notice regarding an initial placement and all subsequent placements of a student to the superintendent of the student's school district of residence and to the superintendent of the admitting district:
 - (1) Within five working days after a placement is made under court order;
 - (2) Within five working days after an emergency placement is made; or
 - (3) At least ten working days prior to any other placement.
 - b. If, however, the student's parent or legal guardian voluntarily places the student in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1, and if the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this section.
 - c. The notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.

- d. The placing agency shall afford the student's school district of residence reasonable opportunity to participate in permanency planning for the student.
9. Notwithstanding this section, educational services provided to a student by the youth correctional center are not subject to the payment of tuition and tutoring charges by either the student's school district of residence or the superintendent of public instruction.
10. For purposes of this section, "custodial parent" means the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides. If the student resides with both parents, then both are custodial parents.

15.1-29-14.1. Placement of student by out-of-state agency or entity - Provision of services - Contract - Responsibility for tuition and charges. A school district in this state may not enroll a student who is placed in the district for purposes other than education by an out-of-state agency or entity and whose school district of residence is located in another state, unless:

1. This state and the student's state or school district of residence have entered a contract that addresses responsibility for the payment of all tuition and tutoring charges; or
2. Other contractual arrangements exist governing responsibility for the payment of all tuition and tutoring charges.

15.1-29-15. Levy for tuition payments. If the board of a school district approves tuition payments for students in grades seven through twelve or if the board is required to make tuition or tutoring payments under this chapter, the board may levy an amount sufficient to meet such payments, pursuant to subdivision c of subsection 1 of section 57-15-14.2.

TESTIMONY ON HB 1154
SENATE EDUCATION COMMITTEE
Connie Mittleider, Assistant Director
701-328-2755
Department of Public Instruction

Mister Chairman and Members of the Committee:

My name is Connie Mittleider and I am the Assistant Director, ACT/ND Scholarship Program for the North Dakota Department of Public Instruction. I oversee the statewide ACT and WorkKeys testing for all high school juniors and administer the North Dakota Scholarship program. I am here to speak about HB 1154 and provide information regarding how this bill could impact the administration of the North Dakota Scholarship Program. The Department has concerns relative to the management of the directive provided in this legislation.

The 2009 North Dakota Legislative Assembly established two merit scholarships, the North Dakota Academic Scholarship and the North Dakota Career and Technical Education Scholarship, for students attending institutions of higher education in this state. The first two eligibility requirements for the scholarship are:

1. The student is a North Dakota resident, and
2. The student graduates from a high school in this state or from a high school in a bordering state under chapter 15.1-29.

The Century Code referenced in current law is provided as Attachment 1. North Dakota resident students may attend a public school in a bordering state if the student lives

within forty miles of another state or the student lives in a county bordering another state. For these students, there is a tuition agreement between the public district in North Dakota and the public district in the bordering state. For the last school year, this agreement pertained to 69 North Dakota high school students who attended a public high school in a bordering state. Of these, 16 were seniors. The law establishing the scholarship eligibility criteria does not provide for the inclusion of students attending nonpublic high schools in bordering states. This Century Code provides for students living closer to a school in a bordering state than to one in North Dakota. It provides for out-of-state attendance as a matter of geography, not as a matter of choice as is the case with attendance in a nonpublic school.

Subsection 5 adds the nonpublic high schools in bordering states to the list of high schools from which a student may graduate to be scholarship eligible. We have five concerns with this bill. One concern relates to the vague language relating to geography and four concerns relate to the difficulty in verifying scholarship eligibility for students attending a nonpublic school in another state.

First, this bill, as written, does not limit attendance in a nonpublic school within a designated geographic region. As mentioned previously, current legislation extends scholarship eligibility to North Dakota resident students attending a public school in a bordering state who reside within forty miles of a bordering state or within a county bordering another state. This proposed bill provides scholarship eligibility to a student living anywhere in the state of North Dakota who chooses to attend a nonpublic high school anywhere in a bordering state. Even if this issue is addressed, the Department has four

additional concerns relative to the verification of scholarship eligibility for students attending a nonpublic high school in a bordering state.

1. The first step in the scholarship application process requires the student complete an online application. Once a student submits an application, I go into the data base and "search" for the student to match the student with his or her unique North Dakota state ID number. Students attending nonpublic schools out of state will not have a ND student ID number. This number is assigned through STARS, the State Automated Reporting System. This system is available to all public and non-public schools in the state and it is through this system that schools assign state ID numbers to our students. If students attending out-of-state nonpublic institutions are to be considered for scholarship eligibility, a plan would need to be developed to address this issue.
2. The second step in the process requires the verification of all ACT and WorkKeys scores. For verification of the ACT scores, I receive a disk from ACT containing a list of North Dakota seniors and their ACT scores. Using the disk, I verify the ACT score for all applicants. The Department may not have the ACT scores for students attending institutions out of state. The Department would need to develop a process to verify the ACT scores of the out-of-state students.
3. The verification of graduation and the fulfillment of the curricular and grade requirements are done via STARS by each high school principal, with Department oversight. The students must complete the 22 units specified as the minimum diploma requirements for North Dakota graduates in addition to the additional curricular and grade requirements established for each respective scholarship. For students graduating from a high school in North Dakota, we know the student has earned the units specified in North

Dakota law. Students graduating from nonpublic high schools out of state would take the courses and earn the units of credit mandated by each of their respective states, with no guarantee of alignment with our diploma requirements. Within a year or two, the verification process for the curricular and grade requirements will be done electronically through our Student Longitudinal Data System. Each course taught in a North Dakota high school is linked to a state course code and the content for each course is uniform, based upon a state course description and the state content standards. Using these codes, we will verify the completion of the courses required for scholarship eligibility. This electronic verification will not be possible for students attending nonpublic high school in bordering states.

4. Nonpublic institutions in North Dakota are under the oversight of the Approval and Accreditation Unit in the Department. The nonpublic institutions in North Dakota must satisfy the same approval requirements as the public schools and be granted "approval" for operating in the state. In checking with the Departments of Education in Montana, Minnesota, and South Dakota, those departments oversee accreditation of public schools but do not engage in an approval process of all schools as we do in North Dakota. Under current law, we know the students applying for the scholarship attend schools in North Dakota that have been approved for operation and satisfy consistent and uniform standards for operation.

This bill received a Do Not Pass recommendation from the House Education Committee. On the House floor, the bill passed with a 52-41 vote. Immediately prior to the vote, a representative serving on the House Education Committee addressed the floor. She stated that a representative from the Department of Public Instruction said in Committee

testimony that "The number of students would be small and it would be easy to do." I was the representative to whom she was referring. My testimony to the House Committee was the same as I am presenting here and it reflects the difficulty in scholarship verification if this bill is passed.

In conclusion, the Department has concerns over the management of the North Dakota Scholarship Program with the inclusion of students who attend nonpublic institutions out of state.

Mister Chairman, this concludes my testimony. I will address any questions put forth by the committee.

Thank you.

CHAPTER 15.1-29
NONRESIDENT TUITION AND RECIPROCITY

15.1-29-01. Education of students in bordering states - Payment of tuition.

1. A student may attend school in a bordering state in accordance with section 15.1-29-02 provided:
 - a. (1) The student lives within forty miles [64.37 kilometers] of another state; or
(2) The student lives in a county bordering on another state; and
 - b. The student has received approval from the board of the student's school district of residence.
2. If the school board of the district in which the student resides denies a request for a student's attendance in and payment of tuition to another state, the student's parent may appeal the decision to the three-member committee referenced in section 15.1-29-06.
 - a. If the three-member committee determines that the student meets the terms of subsection 1, the student may attend school in the bordering state and the board of the student's school district of residence shall pay the tuition.
 - b. 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 15.1-29-06.
 - c. Notwithstanding the provisions of this section, if a student's school district of residence does not provide for the education of kindergarten students, the district may not pay tuition for a kindergarten student to attend school in a bordering state.
 - d. Any decision by the three-member committee regarding the payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board or by the student's parent to the state board of public school education. A decision by the state board is final.
3. A student attending an out-of-state school under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership. The student's district of residence may reduce any tuition payment it must make 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.
4. Nothing in this section requires that a school district of residence provide student transportation or payments in lieu of transportation for students attending out-of-state schools.

15.1-29-02. Education of students in bordering states - Contract - Tuition.

1. A school district may contract with a school district in a bordering state for the education of students. A contract between school districts must provide for the payment of tuition at an agreed-upon amount.
2. A student who attends school in a bordering state under a contract provided for by this section 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 of the bordering state for payments as provided in the contract.

3. A school district in this state may not agree to accept a student from a bordering state unless the tuition payable equals or exceeds the amount of state aid that the district would have received from this state for a student in the same grade if that student had been attending school in the bordering state.

15.1-29-02.1. Cross-border attendance - Contract with South Dakota.

1. A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota, provided the superintendent of public instruction has entered into a contract with the secretary of the South Dakota department of education for the cross-border attendance of eligible students.
2. A contract entered under subsection 1 must set forth:
 - a. An application procedure;
 - b. Causes for denial of an application; and
 - c. The manner and notification of acceptance.
3. A contract entered under subsection 1 must authorize the superintendent of public instruction to count any South Dakota student participating in cross-border attendance under this section for the purposes of determining the amount of state aid to which a school district in this state is entitled. The superintendent of public instruction may not count a North Dakota student participating in cross-border attendance in accordance with the contract for purposes of determining the amount of state aid to which a school district in this state is entitled.
4. A contract entered under subsection 1 must provide that if there are more students from North Dakota than South Dakota participating in cross-border attendance under this section, the superintendent of public instruction shall forward to the secretary of the South Dakota department of education, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The contract must also provide that if there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.
5. The superintendent of public instruction shall annually reconcile the number of students from each school district in this state who participate in cross-border attendance under this section with the number of students from school districts in South Dakota who participate in cross-border attendance under this section. The superintendent of public instruction shall withhold from each school district's state aid an amount equal to the cost incurred by the state on the part of the school district in permitting the cross-border attendance of students under this section.
6. A student who requires special education services may participate in cross-border attendance under this section, provided the contract entered under subsection 1 sets forth each school district's and each state's responsibilities for payment of any excess costs incurred as a result of providing the services to the student.

7. Each school district may provide transportation to students participating in cross-border attendance under this section. However, the superintendent of public instruction may include only transportation provided within this state for purposes of determining the state transportation aid to which a district is entitled.
8. Sections 15.1-29-01 through 15.1-29-13 do not apply to students participating in cross-border attendance under this section.

15.1-29-03. Education of students in other districts - Payment of tuition and transportation.

1. After taking into account the best interests of all affected parties, the board of a school district may elect to send its students to another school district. In this instance, the board shall pay for the students' tuition and transportation. The board may arrange, and when petitioned to do so by qualified electors of the district equal in number to at least a majority of those who voted in the most recent annual school district election shall arrange, with other boards to send students to the other districts and to pay for their tuition and transportation.
2. If a district does not provide educational services to an entire grade level, the students in that grade level may attend a public school of their choice outside their district of residence without going through the procedures outlined in section 15.1-29-05. The board of the students' school district of residence shall pay for the students' tuition and transportation. For purposes of determining whether educational services are provided to an entire grade level, districts cooperating with each other in the joint provision of educational services under a plan approved by the superintendent of public instruction are considered to be a single district.

15.1-29-04. Payment of tuition and transportation by sending districts - Interest on late payments - Notification. If the board of a school district agrees to pay tuition under this chapter, if it is required to pay tuition under this chapter, or if it is required to pay tuition and transportation under this chapter, the board of the sending district shall pay at least fifty percent of the annual charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due. If payment is not received by the admitting district within sixty days after the date on which payment is due, the admitting district shall notify the superintendent of public instruction.

15.1-29-05. Payment of tuition - Petition by parent. A student's parent may file a written petition with the board of the student's school district of residence for the payment of tuition in order that the student can attend another school district. Within sixty days after receiving the petition, the board shall meet with the student's parent and render a decision regarding the payment of tuition. If the board does not render a contrary decision within the sixty-day period, the petition is deemed approved. If the petition is approved, the board shall pay the tuition charges. If the petition is denied, the student's parent may file an appeal with the county superintendent of schools.

15.1-29-06. Payment of tuition for grades one through twelve - Appeal - Withholding of state payments.

1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and

responses. The committee shall base its decision regarding the payment of tuition on the grade in which the student is enrolled.

- b. If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's school district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition may be for any fixed number of school years, up to the completion of the student's high school education, unless open enrollment is an available option. The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.
 - c. If the student is or during the following school year will be enrolled in any grade from kindergarten through eight and the committee finds that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition is limited to one school year. The student's parent may make subsequent applications for the payment of tuition. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
2. If a student's school district of residence consists of land situated in more than one county, the three-member committee established under subsection 1 must consist of the county superintendent of schools and the state's attorney from the county in which the greatest portion of the school district's land is situated, and an individual appointed for a term of three years by the board of county commissioners representing the county in which the greatest portion of the school district's land is situated.
 3. If the student's school district of residence does not comply with the decision requiring that tuition charges be paid, the board of the admitting district shall notify the superintendent of public instruction. Upon verifying that tuition payments are due the admitting district and are unpaid, the superintendent of public instruction shall withhold all state payments to the student's school district of residence until any tuition due has been fully paid.
 4. A school district of residence may provide transportation to a student for whom tuition is paid under this section. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district.

15.1-29-07. Payment of tuition by parent - Content of tuition contract.

1. If the board of a student's school district of residence refuses to pay the tuition for the student to attend school in another district and if the committee established under section 15.1-29-06 denies the petition on appeal, the student's parent may pay the tuition.
2. If the parent chooses to pay the tuition, the parent shall:
 - a. Submit at least fifty percent of the total amount due on the day of enrollment; and

- b. Provide the board of the admitting district with a written contract agreeing to pay any remaining balance on or before December thirty-first.

15.1-29-08. Payment of tuition - Kindergarten student. Repealed by S.L. 2001, ch. 193, § 5.

15.1-29-09. Payment of tuition by federal government. An admitting district may accept payments under title 1 of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] as tuition for a nonresident student if:

1. The student's parent is employed on an installation owned by the federal government;
2. The student's parent resides on an installation owned by the federal government; and
3. The boards of the student's school district of residence and the admitting district agree to accept the payments in lieu of other tuition for the nonresident student.

15.1-29-10. Tuition contracts - Agreement with federal officials. A school board may contract with federal officials for the education of students in a federal school.

15.1-29-11. Admission of students - Conditions. The board of a school district shall admit students from other districts to its schools if:

1. The admission does not create overcrowding; and
2.
 - a. The board of the sending district has entered into a contract with the board of the admitting district regarding the students' attendance;
 - b. Tuition will be paid by the parents of the students from the sending district; or
 - c. The grade level required by the students is not offered by the sending district.

15.1-29-12. Tuition payments - Determination.

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education per student incurred by the admitting district.
2.
 - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
 - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
 - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
 - (1) The per student payment multiplied by the admitting district's school size weighting factor; and

- (2) Any credit for taxes paid to the admitting district by the student's parent.
- d. The amount remaining is the full cost of education per student incurred by the admitting district. The tuition amount payable for the individual student is the lesser of:
 - (1) The full cost of education per student incurred by the admitting district; or
 - (2) One hundred fifty percent of the state average full cost of education per student.
- 3. This section does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

15.1-29-13. Tuition payments - Nonresident students.

- 1.
 - a. Except as provided in this subsection, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. Either the student's district of residence shall pay the tuition to the admitting district in accordance with section 15.1-29-12 or the student's parent shall pay the tuition to the admitting district in accordance with section 15.1-29-07.
 - b. A board may charge tuition for nonresident students enrolled in an approved alternative education program.
 - c. Except as otherwise provided, if a school district fails to charge and collect tuition for a nonresident student, the districts shall forfeit any state aid otherwise payable for the nonresident student.
- 2.
 - a. The board of a school district may admit a nonresident student from another district in this state offering the same grade level as that in which the student is enrolled without a charge and collection of tuition if the sending and admitting districts have entered into a written contract regarding the student's admission.
 - b. For purposes of determining whether the same grade level is offered, two or more 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.
 - c. The contract 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.
 - d. A contract is not necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.
 - e. A school district may admit a nonresident student described in section 15.1-31-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
- 3. A school district may not charge or collect from a nonresident student, the student's parent, or the student's district of residence any fees or charges not otherwise assessed to all resident students.

15.1-29-14. Student placement for noneducational purposes - Residency determination - Payment of tuition and tutoring charges.

1. a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
 - (1) At the time that a state court, tribal court, director of juvenile court, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
 - (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
 - (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
 - (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
- b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.
2. The student's school district of residence is obligated to pay:
 - a. All charges for tuition upon claim of the admitting district; and
 - b. All charges for tutoring services upon claim of an admitting facility, provided that the tutoring services are delivered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
3. The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for state aid to schools if, on the September fifteenth after a student placement is made as provided for under subsection 1:
 - a. The student's custodial parent or legal guardian establishes residency outside this state;
 - b. A court orders a termination of parental rights with respect to the student's parents;
 - c. The student no longer has a custodial parent; or
 - d. The superintendent of public instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.

4. If the student is voluntarily admitted to a state-licensed child care home or facility, or to a state-operated institution, the student's parent or, if one has been appointed, the student's legal guardian may appeal a determination under section 15.1-29-05 regarding the payment of tuition by filing a petition with the county superintendent of schools. Within fifteen days of receiving the petition, the three-member committee established under section 15.1-29-06 shall consult with the boards of the affected school districts and with the student's parent or legal guardian and render a decision regarding responsibility for the payment of tuition charges.
5. If the student's district of residence does not pay the required tuition and tutoring charges, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition and tutoring charges are due and unpaid, the superintendent shall withhold all state aid otherwise payable to the student's school district of residence until the total amount due has been fully paid.
6.
 - a. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility.
 - b. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for the payment of special education contract charges in the case of a student with disabilities or from state aid payments to schools in all other cases. For purposes of this subdivision, "actual costs" includes the cost of a summer program if the program is a condition of placement at a residential facility that has been determined by a placing agency or entity to be an appropriate placement for a student.
7. If a student with disabilities placed in accordance with this section reaches age eighteen and continues to receive special education and related services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. The obligations of the student's school district of residence as provided in subsection 2 and the obligations of the state as provided in subsection 3 are applicable to all students described in this subsection.
8.
 - a. The placing agency or entity funding the student's placement shall provide written or electronic notice regarding an initial placement and all subsequent placements of a student to the superintendent of the student's school district of residence and to the superintendent of the admitting district:
 - (1) Within five working days after a placement is made under court order;
 - (2) Within five working days after an emergency placement is made; or
 - (3) At least ten working days prior to any other placement.
 - b. If, however, the student's parent or legal guardian voluntarily places the student in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1, and if the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this section.
 - c. The notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.

- d. The placing agency shall afford the student's school district of residence reasonable opportunity to participate in permanency planning for the student.
9. Notwithstanding this section, educational services provided to a student by the youth correctional center are not subject to the payment of tuition and tutoring charges by either the student's school district of residence or the superintendent of public instruction.
10. For purposes of this section, "custodial parent" means the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides. If the student resides with both parents, then both are custodial parents.

15.1-29-14.1. Placement of student by out-of-state agency or entity - Provision of services - Contract - Responsibility for tuition and charges. A school district in this state may not enroll a student who is placed in the district for purposes other than education by an out-of-state agency or entity and whose school district of residence is located in another state, unless:

1. This state and the student's state or school district of residence have entered a contract that addresses responsibility for the payment of all tuition and tutoring charges; or
2. Other contractual arrangements exist governing responsibility for the payment of all tuition and tutoring charges.

15.1-29-15. Levy for tuition payments. If the board of a school district approves tuition payments for students in grades seven through twelve or if the board is required to make tuition or tutoring payments under this chapter, the board may levy an amount sufficient to meet such payments, pursuant to subdivision c of subsection 1 of section 57-15-14.2.