

2015 HOUSE EDUCATION

HB 1251

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1251
1/26/2015
22491

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donna Whetstone

Explanation or reason for introduction of bill/resolution:

Relating to school district negotiations; and to amend relating to school district contract renewals and negotiations.

Attachment # 1-4

Minutes:

Chairman Nathe: opened the hearing on HB 1251

Representative Dave Monson: District 10. Introduced and in support of the HB 1251. This bill is from the school board association. They can give you the details better than I.

Jon Martinson: Executive Director North Dakota School Board Association, in support of HB 1251. (See Attachment # 1). (2:40- 8:37).

Chairman Nathe: Has this been a problem or has this been going on for quite some time?

Jon Martinson: Quite some time.

Vice Chairman Schatz: We don't have a final arbitration in North Dakota do we?

Jon Martinson: That is correct.

Vice Chairman Schatz: if the board decides on a salary that is the one given to the teachers, correct?

Chairman Nathe: It is a little more complicated. If the board is ready to issue a contract and there is a disagreement and they can't agree then they call in a fact finding commission. Then the commission has a hearing and hears both sides. The goal is to reach an agreement and help them settle. When it doesn't happen the commission will publish in the local newspaper indicating what the issues were and who is at fault for not

accepting the commissions recommendation. They also have the recourse to take it to district court.

Chairman Nathe: Who are on the commission?

Jon Martinson: There are three members. Who has various careers, one is selected by the Governor, one by the Attorney General and one by the State Superintendent.

Rep Hunskor: When there is a fact finding commission and they come up with a figure is accurate, is it always the teachers that create the issue or does the board say no also?

Jon Martinson: Yes, it can be the school board also.

Chairman Nathe: Have you seen schools experience free agents walking away?

Jon Martinson: To my knowledge they did not have teachers walk away in Dickinson but across the state I do not know.

Chairman Nathe: What is the status of the case in the supreme court?

Jon Martinson: That has been determined and they sided with the teachers in that.

Rep Kelsh: In your testimony you say there is nothing in law about when the salary has to start after it is negotiated, it doesn't have to go back to the beginning of the school year. But I see in the bill where it can't go back. Do you want to take that item off the table in negotiations? This says it starts a month after? Is this fair?

Jon Martinson: If we look to the commission the student and the board, it is fair (14:08)

Doug Sullivan: Superintendent of Dickinson Public schools, In Support of HB 1251. For Kris Fehr, President of the Dickinson School Board (14:12)-(15:46) (see Attachment #2)

Ben Schafer: Superintendent of Ray Public School. In Support of HB 1251(17:32) (See Attachment #3)

Chairman Nathe: We are aware of the teacher shortage how does that affect you?

Ben Schafer: It is quite a challenge.

Chairman Nathe: Have you ever hired any teachers without a teachers contract?

Ben Schafer: We are not supposed to but yes.

Chairman Nathe: Have you ever lost any teachers because negotiations are still going?

Ben Schafer: Sometimes it can happen. It has not happened to me at this time.

Chairman Nathe: But the drawn out negotiations can cost schools a chance at hiring teachers?

Ben Schafer: Yes, it could.

Vice Chairman Schatz: Administrators have a separate negotiation, do they have the same time lines as the teachers have?

Ben Schafer: Our teachers got really smart this year. I asked if can we negotiate before the session is over, against the school board and the NDEA recommendations. The reason I said that is so we can get first chance at those teacher. But they said we want you to negotiate first. So we will do that. It will take one night because we don't have the same restrictions, it is more open than the teachers are. Does that answer your question?

Vice Chairman Schatz: No it doesn't. Is it in law about their time lines?

Ben Schafer: Not that I am aware.

Rep Kelsh: Is there any detriment to the student by having negotiations drug out?

Ben Shafer: No.

Bob Tollefeson: ND Small Organized Schools. In support of HB 1251. Just because of the timelines. As far as administrators the timeline is May 1st. As far as the time constraints it is an issue, 14 days is probably more than enough time to do it. Those districts would be able to get the teachers signed in an appropriate amount of time. We want to have a good working relationship between the staff and the board. There will be contention when it comes to the retroactive pay. The impetus of this bill is obviously is to get things moving.

Chairman Nathe: Amongst the small school members with the long drawn out process, have you lost teachers because of that?

Bob Tollefeson: I have heard of some problems, but I cannot think of a specific example. We are seeing fewer and fewer applicants coming to us, so this would assist the process.

Rep Dennis Johnson: We have talked about the timeline and the concerns of executive session what is your thoughts on that as far as for administrators? The negotiation process and being able to go into executive session?

Bob Tollefeson: (27:37) I think it would be appropriate to go in to executive session. You can have a special meeting. It does have to be posted and give proper notice and then it can go into executive session. They may go out of it and go back into executive session. So it can happen. It does make it uncomfortable to try to talk.

Vice Chairman Schatz: You say the administrators get 30 days just like the teachers do. I don't see anywhere in this bill where the administrators has only 14 days to sign, is that part of this bill?

Bob Tollefson: I don't know.

Chairman Nathe: I think this is only pertaining to the teachers negotiations.

Vice Chairman Schatz: So they have two different ways of doing it 30 days for the administrators and 14 days for the teachers.

Bob Tollefson: Typically it is two different negotiation sessions.

Chairman Nathe: Is there any long drawn trying to get administrators signed?

Bob Tollefson: Not that I am aware of.

Annette Bendes: Legal Counsel for the School Board Association, to clarify, Under the Century Code for contract renewal notices, only applies to a teacher and principal and assistant or associate superintendent. Those are the only individuals under the Century Code that it applies to. The superintendent would have as many days as he needs.

Chairman Nathe: Any support? Seeing none. Opposition for HB 1251?

Nick Archuletta: President of North Dakota United, In opposition HB 1251.(31:00)-(33:35) I strongly urge a do not pass and I feel this is an unnecessary piece of legislation. In the last round of negotiations only 9 times have they called fact finders in and there is over 200 school districts. The negotiation system works and we don't need to change it.

Rep Hunsakor: In just the general principle we are talking about, why not have a deadline?

Nick Archuletta: Having a deadline can be detrimental you may be forcing a teacher to accept a contract. Our teachers are professional and the students come first.

Chairman Nathe: So what is so wrong with shortening it up from 30 to 14 days?

Nick Archuletta: The teachers like to take the time they need, it is quite a commitment when you dedicate your life to teaching.

Chairman Nathe: So walk me through the process?

Nick Archuletta: Contracts are issued to each individual teacher and it is up to those teachers to make the best decision.

Chairman Nathe: So each teacher makes their own individual decision. In Dickinson was that a group thing where they delayed?

Nick Archuletta: When you are in negotiations if you don't make any process, you can call in the fact finders. This system has worked well for 45 years.

Chairman Nathe: Is it common practice it takes longer than 30 days after they are recognized?

Nick Archuletta: To initiate, typically no.

Rep Ben Koppelman: I think the board does have incentives for a deadline. They want to get to a conclusion in the contract and the public expects prudent management. What I have found is a petition from the Association should have come in much, much earlier. Even if they were on pace to get it done prior to the school year beginning and that agreement cannot be reached, there certainly would not have been enough time to go into fact finding prior to the school year. I notice the school board does seem to get down to brass tacks before the Associations do. How do you disagree with me?

Nick Archuletta: I am just saying in this legislation there is no incentives for the school board, but there are other incentives that occur naturally. In relation to petitions we have seen an increase in school boards refusing petitions that is submitted by our education association.

Chairman Nathe: What was the average increase for teachers contracts approved over the last negotiation?

Nick Archuletta: 3 ½ Percent. (42:43)

Michael J. Geiermann, NDU Legal Counsel, (42:59- 50:53) In Opposition of HB 1251 (See Attachment #4)

Rep Ben Koppelman: I think there is a problem because of the time it takes for the process, if this bill isn't the solution what would be the solution?

Michael Geiermann: You make teachers offers they can't refuse, pay them what they are worth and you won't have any of these issues.

Rep Ben Koppelman: That sounds good but what we have heard from other bills today is that there is limited resources. When you talk about 3 ½ percent of increase when it comes to dollars, it is at the base. It does not affect the salaries the same all the way up the scale. When a district is talking about trouble getting teachers it is not a percentage game. It is not as simple as making them an offer they can't refuse.

Michael Geiermann: It does bump every one up at the 3 ½ percent, it is very percentage driven. This bill makes a disproportionate bargaining law even more disproportionate. There are other ways to do this, it will hurt teacher /board relations.

Rep Hunsakor: Do you disagree with the whole bill?

Michael Geiermann : If I had to prioritize my concerns it is section three. The last section with the executive sessions , I have no problem with that. Both parties have equal

rights. Section 3 is subject to abuse, it takes unequal bargaining power and makes it worse.

Vice Chairman Schatz: After the 30 days and a teacher did not sign it can they lose their job?

Michael Geiermann: All the teachers in Bismarck get a contract offer on April 15th once negotiations are done they have 30 days to sign, if they don't sign them, that requirement of the school board to issue that contract is gone. That has been there since 1969 as well.

Rep Ben Koppelman: Would it be reasonable to change the date for nonrenewal notices to be based on the date an agreement is reached? So a school board may know what their financial picture is and say we may offer a better contract for so many teachers?

Michael Geiermann: The rights we are talking about here is a group right, what you just mentioned is a individual right.

Rep Kelsh: It is a small percentage where there is problem's with negotiations.

Chairman Nathe: Any other opposition? Seeing none. Closed the hearing on HB 1315.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1251
1/27/2015
22677

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donna Whetnam

Explanation or reason for introduction of bill/resolution:

Attachment # 1,2.

Minutes:

Chairman Nathe: reopened the hearing on HB 1251.

Rep. Kelsh: (Attachment #1) Explained the amendment.
I move to adopt the amendment ".02000."

Chairman Nathe: I would like to explain both amendments.

Rep. Kelsh: I will withdraw my motion.

Chairman Nathe: explained amendment to HB 1251 (See attachment #2) it would be a tool for the teachers to get retroactive pay in negotiations.

Rep. Kelsh: yours would make it a negotiable item in the contract.

Chairman Nathe: Correct. Just as it would be otherwise.

Rep. Mock: Would both parties have to agree to make it retroactive or to not make it retroactive?

Chairman Nathe: Both parties would agree to make it retroactive. This would give the board the authority to do it.

Rep. Zubke: My concern with making it retroactive you give them another point of contention. You are giving that school board too much authority.

Rep Ben Koppelman: There is no incentive to get done sooner on behalf of the teachers. The School board is not usually benefited by a delay, on the other hand a delay may help the association. We need to have an incentive to move the process along.

Rep. Kelsh: The board could have an incentive to drag their feet, they could say we can save money by dragging this out.

Rep. Zubke: The more tools you take away from the teachers the more you push them into a position is one of the only tools that they have is a strike and I don't think we want that either.

Rep. Olson: Do you know if under the present law is the teacher pay automatically retroactive under present law.

Chairman Nathe: I believe so.

Rep. Olson: It seems if back pay is off the table he has the option to accept or delay or potentially lose their retroactive pay. It seems we are giving the school board the ability to make them an offer they can't refuse if the retroactivity is taken out. Are we going too far to fix a problem?

Rep. Kelsh: State law is silent on the fact it has to go back to being retroactive, it is a negotiated process.

Rep Kelsh: Move to adopt "15.0532.02000."

Rep. Mock: Seconded

A Roll Call Vote was taken. Yes: 6 No: 6 Absent: 1

Motion failed due to lack of majority.

Rep. Ben Koppelman: do pass on amendment by Representative Nathe.

Rep. Alex Looyen: Seconded.

Rep. Ben Koppelman: I think this amendment does make the bill better, and the bill as it sits right now may be going too far, and I hope you support this amendment.

A Roll Call Vote was taken. Yes: 10 No: 1 Absent: 2

Rep. Kelsh: Moved Do Not Pass as Amended.

Rep Zubke: Seconded.

Rep. Olson: State law is silent on retroactive pay is included as part of a contract, this doesn't change the law as pertains to section three then, does it?

Rep. Kelsh: It does change law in that it was silent. This puts it in law as a negotiated item and it will give the board more authority to drag out the negotiations and then say no to the retroactive pay. We need to give the teachers the ability to make a good wage.

Chairman Nathe: I do support the bill, I like it because it moves the process along.

Rep Zubke: I do not support the bill, I do think the process is already working, and we need to support our teachers.

Rep. Kelsh: I think that is a detriment to the teacher's pay.

Rep. Ben Koppelman: Whatever we pay teachers it is the overwhelming drive of what education costs. If you want to get higher starter teacher pay we have to change the system.

Rep. Meier: With what the bill wants to do I am not sure it is needed.

A Roll Call Vote was taken. Yes: 8 No: 3 Absent: 2

Representative Johnson will carry the bill.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1251
1/28/2015
22763

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donna Whitham

Explanation or reason for introduction of bill/resolution:

Attachment # 1

Minutes:

Chairman Nathe: opened the hearing on HB 1251

Rep. Meier: I visited with a sponsor on this bill I would like to repropose Rep. Kelsh's amendment and take it up for a voice vote

Rep. Mock:

It would require a motion to reconsider by someone who is on the prevailing side.

Rep. Meier: Motion to reconsider HB 1251.

Rep. Mock: Seconded.

Voice vote motion carried

Rep. Meier: I think this bill would be another tool in the chest. We would remove on page 3 removing lines 13-17. (See Attachment #1)

Rep. Meier: motion to adopt amendment

Rep Ben Koppelman: Seconded.

Rep. Ben Koppelman: This last section of the bill sponsors says is pretty important, if this amendment is attached we could reconsider the vote of the bill as a whole.

Rep. Hunsakor: If Section 3 is taken out what is bad about the bill?

Chairman Nathe: I think the bill had issues because of the other amendment we put on yesterday which would have given retroactive pay as negotiating tool.

Rep. Hunsakor: That's not in the bill now?

Chairman Nathe: No we took that out with the amendment.

Voice Vote: 11 Ayes 2 Nays.

Motion Carries.

Rep. Kelsh: Moved Do Not Pass as amended on HB 1251 Because I think the teachers need that time to consider the contract.

Rep. Mock: seconded

Rep. Ben Koppelman: The reason the last section on executive session is important the board can also talk privately, the other thing the dates are moved sooner so that they would not be getting into the school year, so I am going to resist this motion.

Rep. Hunsakor: What was the stand by who spoke for the teachers?

Chairman Nathe: Nick Archuletta and Geiermann and it was they did not like the retroactive pay part.

Vice Chairman Schatz: I will support the motion because the superintendents are not in here, and 14 days. Maybe there isn't any jobs open yet at that time.

Chairman Nathe: In the private sector you don't get 14 days, I do like the bill better without section three. I will resist this motion.

Rep. Kelsh: The date required by the board or June 1st now goes to May 15th and they know what the funds will be available and that is a little tough.

A Roll Call Vote was taken for Do Not Pass. Yes: 6 No: 7 Absent: 0

Motion failed.

Rep Ben Koppelman: Moved Do Pass as amended on HB 1251.

Rep Looyesen: Seconded.

A Roll Call Vote was taken. Yes: 7 No: 6 Absent: 0

Rep. Alex Looyesen: will carry the bill.

15.0532.02000

January 26, 2015

Title.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 3, remove lines 11 through 17

Renumber accordingly.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 3, line 15, after "retroactively" insert "unless otherwise agreed to by the board of the school district and the representative organization"

Page 3, line 15, after "If" insert "retroactive pay"

Page 3, line 15, remove "a salary increase"

Page 3, line 15, after "is" insert "not"

Page 3, line 16, remove "on or after the first day of the school calendar"

Renumber accordingly

1-28-15

January 28, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 3, remove lines 11 through 17

Renumber accordingly

Date: 1-27-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

House Education Committee

☐ Subcommittee

Amendment LC# or Description: attachment 1 on 1/27/15 Kelsh amendment

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Kelsh Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunskor	✓	
Vice Chairman Schatz		✓	Rep. Kelsh	✓	
Rep. Dennis Johnson		✓	Rep. Mock	✓	
Rep. B. Koppelman		✓			
Rep. Looyesen		✓			
Rep. Meier		✓			
Rep. Olson	✓				
Rep. Rohr	A				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 6 No 6

Absent 1

Floor Assignment _____

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

*Motion fails.
lack of majority*

Date: 1/21/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

House Education Committee

☐ Subcommittee

Amendment LC# or Description: Amendment to 1251 - 15,0532.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Koppelman Seconded By Rep Loaysen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunsakor	A	
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Loaysen	✓				
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	A				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 10 No 1

Absent 2

Floor Assignment _____

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

*Nathe Amendment
Proposed amendment.*

Motion Passed

Date: 11/27/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

House Education Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Kelsh Seconded By Rep Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunsakor	A	
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman		✓			
Rep. Looysen		✓			
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	A				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 8 No 3

Absent 2

Floor Assignment Rep Johnson

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

Date: 1/28/15
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251**

House Education Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider ☐ _____

Motion Made By Rep Meier Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe			Rep. Hunsakor		
Vice Chairman Schatz			Rep. Kelsh		
Rep. Dennis Johnson			Rep. Mock		
Rep. B. Koppelman					
Rep. Looyesen					
Rep. Meier					
Rep. Olson					
Rep. Rohr					
Rep. Schreiber Beck					
Rep. Zubke					

Total (Yes) No _____

Absent _____

Floor Assignment _____

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

*Reconsider
Motion carried*

Date: 11/28/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0532.02002
Meier

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep Meier Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe			Rep. Hunsakor		
Vice Chairman Schatz			Rep. Kelsh		
Rep. Dennis Johnson			Rep. Mock		
Rep. B. Koppelman					
Rep. Looyesen					
Rep. Meier					
Rep. Olson					
Rep. Rohr					
Rep. Schreiber Beck					
Rep. Zubke					

Total (Yes) 11 No -2

Absent 0

Floor Assignment _____

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

Section three removed. Motion Carried

Date: 11/28/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

House Education Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Kelsh Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunsakor		✓
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman		✓			
Rep. Looyesen		✓			
Rep. Meier		✓			
Rep. Olson	✓				
Rep. Rohr		✓			
Rep. Schreiber Beck		✓			
Rep. Zubke	✓				

Total (Yes) 6 No 7

Absent 0

Floor Assignment _____

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

Motion fails.

Date: 11/28/15
Roll Call Vote #: 4

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0532.02002

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Koppelman Seconded By Rep Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz		✓	Rep. Kelsh		✓
Rep. Dennis Johnson		✓	Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Looyen	✓				
Rep. Meier	✓				
Rep. Olson		✓			
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke		✓			

Total (Yes) 7 No 6

Absent 0

Floor Assignment Rep. Looyen

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

REPORT OF STANDING COMMITTEE

HB 1251: Education Committee (Rep. Nathe, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1251 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 3, remove lines 11 through 17

Renumber accordingly

2015 SENATE EDUCATION

HB 1251

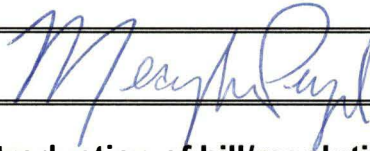
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

HB 1251 (Engrossed)
3/11/2015
Job # (1:20:30)

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

INITIAL HEARING

relating to school district contract renewals and negotiations

Minutes:

2 Attachments

Chairman Flakoll called the committee to order at 9:22am with all committee members present.

--SUPPORT--

Dave Monson, District 10 Representative

Representative Monson: I put in this bill for the School Boards Association.

(1:45) **Jon Martinson**, NDSBA (*see attachment #1*)

(11:05) **Senator Schaible:** Currently boards have the right to go into executive session when they discuss negotiations. This will only exempt the negotiating team or the board's representation during the actual negotiations, is that correct?

Martinson: Correct.

Senator Schaible: This changes the offering date to 14 days after the contract is signed. Is that the same thing for a 2 year contract or a multiple year contract?

Martinson: I do not know the answer to that.

Chairman Flakoll: We will defer that question to the attorney.

Vice Chairman Rust: I'm curious about the wording of the bill. Page one line 21 says "at least 14 days must pass". I wonder why it says "at least". You would think it should say "no more than 14 days".

Martinson: That is legislative council wording. It's a good point and I do not have an answer to that.

Senator Oban: You claim "negotiations in some districts become acrimonious and the ill will can fester the longer it gets drawn out." I believe there are cases when that is true. How often is that the case however? Is it really worthy of changing something that has probably worked for a very long time except in the 2 examples that you provide?

Martinson: I didn't want to spend all day with examples, so I chose some to exemplify what I am talking about. Most districts settle without acrimony fortunately. However when they do have difficulties, it is serious. The public gets involved and it affects everyone in the situation. If we can do something to shorten the timeline, it may have a positive impact on negotiations in those districts.

Senator Oban: Further down it says "the bill is introduced to serve the purpose of bringing both sides to the table to reach an agreement" except it is at an expense of one side, do you agree?

Martinson: No I do not.

(14:45) **Senator Marcellais:** In the subcommittee regarding executive session, they still need a quorum of the full board in order to make decisions on these contracts, correct?

Martinson: They do need a quorum to make an agreement to the contract that is offered. You know that the full board is not involved in negotiations; it selects people to negotiate at the table with the teachers. Consider a situation when you have a minority number of board members on one side and the teachers on the other side and they exchange proposals. If they need to talk about it alone, the teachers go to their room and the minority members of the board go to their room. This bill would allow that minority group of board members to go into an executive, closed session. Without this bill, when the board goes into that room, it is an open, public meeting which stifles the conversation. It has worked fairly well for a number of years until teachers started to follow the board members into their caucus room.

Senator Marcellais: They would still have to call a regular or special meeting which would still delay the negotiations.

Martinson: That is correct. That would take time, but this does away with the scenario whereby instead of the board members talking with each other in a closed session, they can't even make progress then if a teacher were to follow them in. No progress is made because they can't have a conversation and it delays it further.

Senator Marcellais: You are saying that the teacher's caucus is closed and not open to the public on the strategies?

Martinson: That is correct. It is closed because they are not a public entity and therefore not subject to the open meetings law.

Vice Chairman Rust: It is not uncommon for the teacher's union to say we will allow the board negotiators to caucus, so they do not follow that into the meeting. However sometimes the press does and in turn reports it in the paper is that correct? That is another factor that would be alleviated by this.

Martinson: That is correct.

Senator Oban: Don't you think that is the difference between being elected to serve versus having a contract to work? We are all subject to open meetings.

Martinson: I would agree that there is that difference. There are exceptions in the open records meeting law that provides for executive session. We are following that rationale in requesting that this also be an executive session for the purpose of speeding up the negotiations process.

Senator Davison: Wouldn't you agree that there is no quorum for the school board? I think that makes a difference.

Martinson: That does make a difference, and it does not make a quorum. We don't want it to be a quorum.

Vice Chairman Rust: There are instances where you have the entire school board negotiating and not just a representation of the board. I suppose in that case, they can go into executive session if they wanted to because that is allowed by law. This specific legislation is specifically for allowing that negotiating team from the board to go into executive session, correct?

Martinson: That is correct, or an authorized subcommittee of the board.

Chairman Flakoll: If we move up the timeline, do we run the risk of having this too much during the school year?

Martinson: Are you asking if teachers get fatigued?

Chairman Flakoll: We're moving from June to May in some this. Might we be changing some of the people's thoughts because it is at the end of the battle per say?

Martinson: Are you wondering that by changing the timeline and putting it earlier in the year, whether that would have an impact that it doesn't have if it is in June?

Chairman Flakoll: Right, they may be fresher in June.

Martinson: I have never heard that that is a factor in terms of fatigue or the decision not to return.

Chairman Flakoll: I would guess that salary and compensations are the biggest factors why people have trouble with negotiations or go to impasse. What would be the next factors? Have issues changed in the last few years?

Martinson: There are a whole host of other things that boards and teachers negotiate under the realm of working conditions, such as when they need to show up in the day, the length of the day or any obligations towards the end of the day. There are all kinds of other issues negotiated, but it does largely come down to the contentious components of salary and compensation.

Vice Chairman Rust: On page 2 beginning on line 13, it basically says that the previous pieces are all suspended once you start negotiations. Those are suspended once you start negotiations, so unless you are into a 2 year contract, would you say that most of the time that date of May 15th doesn't usually enter into the picture?

Martinson: You are correct about your interpretation of the first part, when contracts are under negotiation, the rest go by the waist side until a contract is reached. Secondly yes, most districts do reach an agreement by May or June fortunately.

Chairman Flakoll: Last session when we got done around May 3rd, would that still allow enough time for all of this to come into play? Every school needs to figure out how much money might we receive next time. Will that provide enough time in your estimation to run the numbers and come up with a thoughtful proposal?

Martinson: Yes, we encourage boards to begin negotiations even during legislative session years on other issues in February and March so that the last remaining things they

need to calculate is the salary and compensation. Most districts have a computer program that they can type in numbers and it runs the entire spreadsheet, so that would take a day.

--OPPOSITION--

(28:50) **Fern Pokorny**, North Dakota United (*see attachment #2*)

(35:35) **Senator Davison**: If your argument is that the legislative session needs to finish before so they know how much money they have and can go through the bargaining process properly, are you in favor then of moving when schools can RIF their teachers until after the legislative session ends so if they know they don't have enough money, they can lay teachers off?

Pokorny: That has nothing to do with this.

Senator Davison: but would you be willing to do that?

Pokorny: It used to be later years ago.

Senator Davison: When are they required to let teachers know if they have a job for the next year, by what date?

Pokorny: The absolute last day is May 1st.

Senator Davison: so you would be willing to wait until the legislative session is over before? It is a similar thing, you are saying that we shouldn't pass this bill because we have wait until the legislation is over to negotiate the contract for pay raises because it's all about money, but isn't that what laying teachers off is too?

Pokorny: Yes but districts usually know that much earlier. If they are losing students, they know that before May 1st.

Senator Davison: I would suggest that is that is the argument for the bill.

Pokorny: This is about bargaining, forcing people to the table within 30 days of getting the petition there. I don't see how that helps the end of it.

Senator Davison: Would you agree that there are challenges within the bargaining process in North Dakota right now?

Pokorny: at times, yes, but generally not. This bill has worked since 1969.

Chairman Flakoll: How many went to impasse this past year or two?

Pokorny: usually it is only a couple.

Vice Chairman Rust: You stated that there are ground rules whereby the teachers don't follow the board representatives into their session. Would you agree there are times that the press does however?

Pokorny: I have not seen that personally, but that could happen. The board already has the right to close their meeting and plan their strategy. They already have done all of that.

Vice Chairman Rust: however the subgroup does not have that ability?

Pokorny: No, not at this point.

(39:30) **Senator Schaible**: What is the recourse on the teacher who does not live up to their contract and decide to go teach somewhere else and do not honor their contract?

Pokorny: Are you asking if I breach contract?

Senator Schaible: Yes, What is the school recourse they have?

Pokorny: There is a law in place now that says if a teacher breaches a contract, that must be reported by the district to ESPB. They look at taking the license of the teacher as a penalty.

Chairman Flakoll: Have they ever done that?

Pokorny: I will defer that to the NDU president.

Senator Schaible: That is recourse against the teacher. What is the recourse that the school would have? It could be a high profile position that you would have a trouble to fill. Maybe the board will pull the teacher's licenses up for one year, but what does the school do in that situation? They really don't have recourse in that case do they?

Pokorny: No, but this bill doesn't address this issue either.

Senator Schaible: That is the deal for the 14 days. Why is 14 days not enough to decide? Everyone knows the contract negotiations is an ongoing process. Most of our rules and regulations or laws are not needed when to go well. It's for the situations that don't go well and that is why we have 800 bills every session.

Pokorny: In the example I gave, when we issue contracts in March, we don't know about other openings. When I'm driving from New Salem to teach in Mott, if I have to sign within 14 days, you've tied me into a contract for 4 months earlier than when I am obligated to that agreement. If a position opens in New Salem where I actually live in early May, I either have to drive or I ask for a release from the contract. The board has the right to say no and this bill does not change that. However it doesn't change when those positions open in other districts either. We are going to have more and more teachers asking. It's easier if we keep the 30 days, like the administrators get.

Senator Schaible: If a school board offers a contract in March, I would suggest that the negotiations went really smooth. What if the contracts are issued in May, August or September? They still have 30 days. There again, we're saying if things go fine, it's okay, but these are situations that don't go fine even in May. Most positions that are open for teaching are open pretty much May on. Most people have a good idea of which positions are open. It is one sided that a teacher can look at the positions when the school has to wait that 30 days. You're right; if it's March it is a disadvantage for the teachers but if it is May or later it is a disadvantage for the school board. I think the 14 days would help that. Your arguments for that are just as valid as when you get passed that April 15th deadline. Doesn't it seem reasonable for 14 days when contracts go passed the May 1st deadline?

Pokorny: I'm confused what you are asking.

Senator Schaible: You use an example of March because you were worried about a teacher who was looking for a position in March that he or she would miss. Say your negotiations were done and you are off the contracts May, June or July 1st. There again, they have up to 30 days to sign that contract. If the contract is offered June 1st, they have until sometime in July. If that teacher is going to look somewhere else, the school can't even look until they decided the 30 days is up. The 14 days would be reasonable if your contract deadlines are later in the year rather than earlier. Don't you agree?

Pokorny: Generally teachers will not make you wait for the end of June. They will tell you as soon as they have that job that they won't be returning. That gives you time to find somebody else. Jon Martinson also told you that in Dickenson when they went past the school year, they didn't lose any teachers. We are trying to solve a problem that doesn't exist.

Senator Schaible: I disagree. Dickenson is one example and we know of several others. The point is the 30 days is an advantage for a teacher who is looking for a position. If they're not looking, this is not an issue because they will probably sign as soon as they are

done. The 30 days is an advantage for a teacher that is looking for a position and a disadvantage to the school. 14 days would be reasonable.

(48:05) **Senator Schaible:** In this executive order, this is a tactic that is used when things are bad. Most cases go well and this isn't used, but if things are bad, would you allow school board members or press to come into the teachers' caucus?

Pokorny: That is not an issue because we are not a government entity.

Senator Schaible: Would you allow it?

Pokorny: No.

Senator Schaible: Negotiations is a difficult process. Wouldn't a fair playing field would equal that process and make it easier? Wouldn't a fair process be better?

Pokorny: I would agree. The way the bargain is now, school boards have all of the say about what happens. This bill does not help it and it doesn't make it fair.

Senator Schaible: I would disagree. Eventually the school board has the final say and can offer contracts, but until that the process leans the other way.

Vice Chairman Rust: You talk about teachers being given a contract so early that they don't get a chance to look. What about a board that might come back to a teacher and fire them because they find a better candidate?

Pokorny: Once the contract is issued, it needs to be honored.

Vice Chairman Rust: That doesn't always happen. While you could do something to a staff member who wants to sign contract in the state of North Dakota, you could probably have a certificate lifted. When a teacher at the western edge of North Dakota decides to sign a contract in Montana, there is little a school board can do about that; is that correct?

Pokorny: I don't believe that is true. Our licensing board has reciprocity with 14-15 states. If I breach a contract here, that is reported through that channel. Not only will I probably lose my license in North Dakota, I would lose it in all of the other states because of the reciprocity.

Vice Chairman Rust: You would agree that that is true if they decide to leave that teaching profession and go to another job? There is very little that can be done by the school district.

Pokorny: We cannot control people completely. We encourage them to honor the contracts they sign, and that is all we can do.

(53:15) **Nick Artuleta**, President of ND United

Artuleta: In the original legislation it was introduced, it was clearly a retaliatory piece of legislation designed to punish teachers for being successful in courts. We went to court in Dickinson to enforce a notion that they could not unilaterally impose a 2 year contract when a 1 year contract was negotiated. The district court agreed and the Supreme Court did as well with one dissenting vote. The same thing happened in Valley city that dealt with the removal of a piece of the contract that dealt with health care provision that wasn't negotiated. This original bill would have changed something that has been successful since 1979 and served teachers, administrators and school districts well. It takes the time a teacher has to consider their contract down.

There are some unintended consequences to consider as a result of this. People who want more time to consider their contract would drag out those negotiations. For example if the contracts were close to being negotiated for the completion date of March 15th, it is not until April that all of the job openings are posted online for college students and others. Only

having 14 days to consider their contracts would bind them into something that may or may not work for them and their families down the road. It is a rare occasion where we get into contracts that go into August or late spring that are not finished in time. This is a solution to a problem that does not exist.

Chairman Flakoll: What happens when someone violates their contract?

Artuleta: It has happened. There are teacher and administrator representatives on ESPB. There are cases where teachers have found their own replacements and their cases are dismissed. There was a case in Fort Yates where more than one teacher left in the middle of the school year. There was action taken against their licenses.

Senator Schaible: Every bill is retaliatory in nature to some side. This is a process to make things better. Even though we disagree, it is a process of making the negotiation process better. Why would you think it is just retaliatory? Even though it has been in since 1967, there have been a lot of law changes to this section of law.

Artuleta: Yes things have changed since 1969, but this is the first time that this particular law has changed in this fashion- the collective bargaining law. Does it make it better? Better for whom? It is better for school districts who want to lock teachers in sooner to contracts. Is it better for that teacher who might be looking to advance their career in another community? I would argue not.

Senator Marcellais: Are all teachers apart of the ND United?

Artuleta: No they are not. We represent about 11,300 public employee higher education members across the state, both retired and student. We do not represent all of them. However we are required by law to make sure that the contract is negotiated for the benefit of all teachers.

Senator Marcellais: What is the membership of your representing teachers?

Artuleta: We represent about 8,800 active teachers currently.

Senator Marcellais: Do you allow free agents for negotiations of the contracts?

Artuleta: When we negotiate a contract in a district, we negotiate that contract for every teacher in that district. All of the provisions of that apply to each teacher that is under contract.

(1:04:00) **Dr. Annette Bendish**, legal counsel for the NDSBA, called to the podium.

Senator Schaible: If you have a 2 year contract, and I would imagine you set the date in the second year of the contract which I believe is usually May 1st, this would change that so the contracts would only be given 14 days to the 30 days now. That position doesn't change is that correct?

Bendish: It is important to note the distinction between the master contract and the negotiated agreement. That is what the board and the teacher representatives come to the table to discuss. They come up with a master contract or negotiated agreement that can be one or 2 years if the parties are willing to negotiate a 2 year master agreement. Teachers are offered individual contracts and those are only for one academic year. If the board and the teachers would negotiate a two year master agreement, then in the second year of that agreement, they are not going to come to the table and will follow the deadlines within the bill and the century code. As to no earlier than March 1st and no later than May

1st, they can offer renewals of those contracts. If they are negotiating and coming up with a new master agreement, those deadlines are suspended and we don't issue contracts until we've reached that master agreement.

Senator Schaible: Is March and May 1st set in law or by the master agreement?

Bendish: They are in law on page one line 18 of the bill. That is the process that would be followed in the 2nd year of that negotiated agreement. On page 2 of the bill, the date is changed from June 1st to May 15th. It's just a consequence of shortening it from 30 days to 15 days. If contracts have to be issued by May 1st, then they need to be returned no later than May 15th. Previously if contracts had to be issued by May 1st, the 30 days would take us to June 1st.

(1:06:35) **Chairman Flakoll:** How does calling a special meeting work with the timeline and within law?

Bendish: For the board to approve the master contract or negotiated agreement yes, that will take full board action and have to be done at a regular or special board meeting. The process for that executive session for our caucuses allows those board representatives to go into a room to discuss where they are with proposals at that point based on the instructions they have from their board as to what their offers may be and what fiscally they can afford. Once that agreement is reached at the table, that will have to go back to the full board with a quorum for approval.

Senator Marcellais: Has there ever been a teacher's license taken away for not fulfilling their contract?

Bendish: When a teacher breaches contract under law, the school district is required to report it to ESPB, and then it is in their hands in what they determine to do. It has happened, but it isn't determined by the school board other than the reporting requirement.

Senator Marcellais: In my district we have the Bureau of Indian Education available for the teachers, so they could walk off the job one day and get a job the next. That has happened in the past both during and after negotiations. How is that 14 day window going to benefit both sides?

Bendish: It is a planning mechanism. It allows our school districts to know once they issue those contracts, do those teachers want those jobs back and are they coming back into the school year. Do teachers really need 30 days to decide if they want their job back? The feedback I get is that they finally reach an agreement in July. In the middle of the July, the business manager issues contracts, yet those contracts take 30 days to get back. Will this solve that teacher who wants to jump ship? No because no matter how many days they are given to return their contract, they can decide to leave that contract at any time or they can ask the board to approve a resignation at any time. This is just a mechanism to allow our districts to have a little more ability to plan.

Chairman Flakoll: Has there been discussion that we should have a provision so one district can't poach a teacher who is under contract of another district?

Bendish: We don't have those discussions and as a school boards association, we don't want to get in between those school districts.

Chairman Flakoll: What would happen if you would say it is against the law to hire a teacher who is under contract with another school district?

Bendish: The question I would get then is what would be the penalty?

Chairman Flakoll: We could hold money back.

Chairman Flakoll: Did you take note on our previous discussion on reductions and force rifting?

Bendish: I didn't take notes, but the reduction and force process follows the same non-renewals deadlines that are currently in statute. Under statute for non-renewal, a board has to notify the teacher of the non-renewal by April 15th. Senator Davison's concern was should that deadline be pushed out? I don't know the answer to that.

Chairman Flakoll: There was an estimated 9 situations with impasses?

Bendish: Last legislative year two years ago, there were 9 districts that went to impasses. Last year there were 4 or 5 that went to impasse.

Chairman Flakoll: We have K12 districts where 80% of the money comes from state and there are negotiations, whereas state employees have 25-40% of state money. They have more of a take it or leave it and don't necessarily sign anything. Explain the differences. There is some irony that on one hand we have a higher percentage of state dollars that go into it and yet there are seemingly different rules.

Bendish: Part of it is simply the negotiations process that is included in our law regarding our teachers that as you've heard has been in place since 1969. As a former state employee I can tell you that yes, I sat and waited for you to decide how much as a pay raise was going to be allocated to the public service commission and then it was up to the public service commissioners to decide how much of that pot I was going to get as an employee.

Chairman Flakoll: I understand different districts receive different amounts based upon formula. It's different but in some cases like Higher education, it's not that different.

Bendish: Our districts look at those dollars and they cost those proposals. Two years ago when the funding formula changes came out, most of our districts were looking at 3-4% raises. Through the negotiations process, they cost out those proposals and try to figure out what they can afford based on the dollars that they have been allocated.

(1:14:05) **Chairman Flakoll:** Salary and compensations are the biggest issues. Are there other issues that you are aware of?

Bendish: Salary and compensation/benefits packages are number one. The other points of contention are length of the school calendar, prep periods, how many hours in a day they are supposed to work and then those compensation periods for working parent-teacher conferences. It is more about leave and hours and the like.

Bendish: To clarify a previous statement I want to mention that superintendents do not get 30 days under the law to return their contracts. The law is silent to administrator contracts, and our boards offer them anywhere from 2-3 days to 15 days.

Chairman Flakoll: Should we add them to this?

Bendish: I don't think this is necessary. Our superintendents are the one exception in the law that they can have more than a 1 year contract; they can be offered up to a 3 year contract. I have not heard of an issue about a superintendent not returning their contract or wanted more time to consider. There is such a small pool of applicants for those positions, that I don't think we need to put a time frame on their contract return.

Senator Marcellais: I am hearing annual contracts. Maybe we need to go 2 year contracts during the off session legislation? It sounds like the monies is what is controlling the contracts. How would you feel about that?

Bendish: I have a lot of concern with that. Our boards can negotiate a two year master agreement, which would cover the salary schedule for 2 years. The teacher's individual contract salary would be based on what is in that master agreement. I have big concerns about offering teachers individual two year contracts because under law the only way those contracts can be extinguished is by going through the non-renewal process related to ability competence or qualifications of the teacher or the discharge process and the 7 discharge criteria that are in law. If we would offer a teacher a 2 year individual contract and go through the nonrenewal process, which would essentially say that the end of those two years the teacher doesn't get that job back, we've now created a one year laying duck period for that teacher or the board will be forced to buy out that second year of that contract to pay them off and send them on their way. The current process we have for individual teacher one year contracts is appropriate.

Senator Marcellais: Law can be changed.

Bendish: If you want to change the non-renewal statute, I suppose we can discuss that another day.

Senator Marcellais: We have special education teachers. How does that work with sharing resources between districts? Is that specified in their contract and how would that affect the children in that particular district?

Bendish: Our regional special education units are generally the ones that hold those special education contracts if those teachers are providing services to more than one school district. It would be held by your regional special education association, and that teacher would provide services to the students in the district. They are not in this mix because their contracts are not being held by the individual school districts. Bigger schools do however contract with special education teachers to provide those services and they would fall within this.

Chairman Flakoll: Has there been any action between two school districts where there was a settlement agreement for taking employees under contract?

Bendish: not that I am aware of. In some school districts, they know they are competing against another district for a teacher. They realize that this teacher can get paid X amount of dollars from compensation per this district's master contract and if they come here, I can only pay this amount of dollars per a master contract. I don't think that has ever been litigated or that there has ever been any settlement agreement between them over those issues.

Chairman Flakoll closed the hearing on HB 1251.

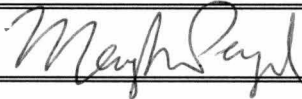
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

HB 1251
3/18/2015
Job # 25027 (4:49)

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

ACTION

Minutes:

No Attachments

Vice Chairman Rust motions for a DO PASS
Senator Schaible seconds the motion.

Senator Oban: I do not agree with the recommendation. When we were asked whom this makes negotiations better for, I think the answer was clear. I will continue to struggle to chip away at the few things teacher have in my opinion. I believe this is one of those things that chips away at it. I wish we spent as much time talking about how we get people into the profession than spending time on bills like this.

Vice Chairman Rust: With the number of provisions in this bill, essentially they get negated once the negotiations process starts. Those dates aren't really a factor in the year that school boards and staff are negotiated. Many places do it on an annual basis. Those dates hardly ever come to play. Another part is that schools that go into a 2 year contract many times have a gentleman's agreement between the school board and the association that they will not issue contracts until a date, and that is usually later than the date that is in the law.

A vote was taken: 4 yays, 2 nays, 0 absent
The motion carries 4-2.

Senator Schaible will carry the bill.

**2015 SENATE EDUCATION COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251**

Senate Education Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vice Chairman Rust Seconded By Senator Schaible

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais		X
Vice Chairman Rust	X		Senator Oban		X
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Schaible

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

REPORT OF STANDING COMMITTEE

HB 1251, as engrossed: Education Committee (Sen. Flakoll, Chairman) recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1251 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1251

#1
HB 1251
1/26/15

House Education Committee
January 26, 2015
Testimony by Jon Martinson, Executive Director
North Dakota School Boards Association
HB1251

The purpose of this bill is to tighten up the timeline for school board/teacher negotiations. While we understand that negotiations can be confrontational, negotiations in some districts become acrimonious and the ill will can fester the longer it gets drawn out. In those instances, no one wins--not teachers, school board members, students, or the community. School board members, school administrators, and teachers are supposed to be on the same side. That side is working for the best interest of students.

Former chair of the ND Fact Finding Commission, Kermit Lidstrom, was fond of saying that the purpose of the commission was to help both sides reach an agreement. It was that simple. This bill is introduced to serve that same purpose—to help both sides get to the table and reach an agreement.

This bill does the following things:

- It shortens the number of days that teachers have to return their contract from 30 days to 14 days. Rationale: We believe teachers can decide within two weeks if they intend to return to their jobs.
- Adds to current statute (page 3, lines 7-10) that negotiations must begin within 30 days after the “representative organization” is recognized by the board unless both the board and teachers agree to allow more time. Rationale: One tactic used by the union is delay, delay, delay with the purpose of wearing down the board. Consider this example from Dickinson:

2013-2014 School Year

- ✓ October 2, 2012: Petition by the teachers to be the “representative organization” was presented to the school board
- ✓ December 11, 2012: First negotiations session
- ✓ July 29, 2013: Contracts were sent to teachers allowing 30 days to sign and return
- ✓ August 21, 2013: First day of school

2014-2015 School Year

- ✓ September 16, 2014: Petition by teachers to be the “representative organization” was presented to the school board
 - ✓ October 14, 2014: First negotiations session
 - ✓ December 16, 2014: Contracts sent out to teachers allowing 30 days to sign and return
 - ✓ August 27, 2014: First day of school
- \

- The salary increase that has been negotiated takes effect the first day of the month following conclusion of negotiations. There is no provision in current statute that says pay is retroactive to the first day of the school calendar. Rationale: this serves as an incentive for boards and teachers to settle contracts.
- Allows a subcommittee of the board to meet in executive session to discuss strategy. Rationale: teachers now follow board negotiators into their caucus room to hear them discuss the most recent proposals by teachers. The result is board members stop their conversation and wait until either a special board meeting or the regular board meeting where they are permitted by state law to go into executive session for the purpose of discussing negotiation strategy. This slows down the process considerably.

Contract issuance is suspended during negotiations. During that time and until contracts are signed, administrators have no idea how many teachers will return to the district. Today in North Dakota, there is a statewide teacher shortage. The Education Standards and Practices Board designated every teaching area as "hard-to-fill." School districts around the state including Dickinson, Lisbon, North Border, Leeds, Bowman, Medina, Kenmare, Williston, Watford City, and Hettinger, to name a few, were looking for teachers late last summer. During the time teachers are not under contract, they are free to look elsewhere with no obligation to show up for work. After all, they are not under contract.

The Dickinson case was prolonged because it went to the Fact Finding Commission, to District Court, and to the North Dakota Supreme Court. However, those cases are the exception.

Consider Garrison. Tom Hesford, former chair of the ND Education Fact Finding Commission, published comments and observations in the *McLean County Independent* on September 3, 2009:

"According to state law, School Boards are allowed to act in the best interest of the children of the School District once the negotiations process has run its course. The language in the current contract between the Garrison School Board and the Education Association prevents that from happening, requiring that both sides ratify the contract before individual contracts can be issued to teachers. The language in the current contract shackles the school board; its only option is to risk litigation by disregarding this duration clause and issuing contracts to teachers. The teachers in the meantime retain the option to become 'free agents,' to walk away from the children of Garrison in pursuit of their own interests."

Consider Jamestown. Former chair of the Fact Finding Commission, Kermit Lidstrom, published comments and observations in the *Jamestown Sun* on February 13, 2003:

"Seven days after the hearing, the Commission submitted its report and recommendations to both parties. The School Board endorsed our recommendations. The teachers were not as wise. With scant concern for the economics of the district, the teachers rejected a 7.3% increase in total compensation. The Jamestown Board of Education has limited taxing authority and only about three months of cash reserves. These realistic restraints dictated that the best possible offer for enriching teacher compensation be set at 7.3%. The Commission has concluded that the Board's offer was fair, reasonable and prudent. It's heartbreaking to witness

the useless chaos and hard feelings that have resulted from the teachers' unfortunate response to the Commission's efforts. The Jamestown negotiations started in June—it is now February! These endless negotiations benefit neither party; and the teachers must accept full responsibility for creating the impasse and for resisting all honorable efforts to conclude a contract."

In summary, this bill takes a few small, but realistic steps to get the board and teachers to the table, encourage them to reach an agreement, and return contracts in a reasonable time so administrators can plan staffing for the upcoming school year.

January 24, 2015

Dear Chairman Nathe, Vice Chairman Schatz, and members of the House Education Committee,

I am writing in support of HB 1251, relating to school district contract renewals and negotiations.

I have been a member of the Dickinson Public School Board since 2001 and currently serve on the teacher contract negotiations team for the school district.


In Dickinson, contracts for the current school year (2014-2015) were not settled until December 2014. In effect, teachers were not under contract for four months and could leave during the school year. This caused great concern for our administration and the school district. In the past two years we have hired about 100 licensed staff; at times, it has been difficult to find and hire that many teachers. Should a teacher leave after the school year has started, it has been challenging to find applicants. More importantly it is disruptive and detrimental to the educational process and to the learners in that class or classroom.

On the item of retroactive pay: it is a bookkeeping nightmare. Not only is the pay raise calculated teacher by teacher, the retroactive pay is also individually calculated. During this school year, to deal with retroactive pay Dickinson Public Schools issued "catch up" checks – the difference between salaries from the beginning of the school year until an individual teacher returned his or her signed contract. In a district with hundreds of teachers, this is a very time consuming process.

With retroactive pay, no matter when the contract is settled, teachers receive a pay raise back to the beginning of the school year. This bill would provide an extra incentive for both school boards and teachers to settle the contract sooner rather than later.

Thank you for your time. Please contact me if you have any questions.

Sincerely,


Kris Fehr
School Board President

HB 1251

January 26, 2015

House Education Committee

3
HB 1251
1/26/15

My name is Ben Schafer, I am the Superintendent of Ray Public School in Ray, ND. I am here in support of HB 1251. I will share with you just one example of where 14 days to sign a contract would be beneficial to students. This is what happened in Ray, ND but I am certain there were similar situations in other parts of the state.

After the last legislation we had a Science teacher who was looking to get to Wisconsin or Illinois. By the time our school board reached an agreement it was June 2nd. After the teacher contemplated his life for 30 days, he decided he did not want to return to our school. At that time we advertised the job for a period of 2 weeks. We gave our leading candidate (of 2) 3 days to come and interview. Offered him a contract, which we gave him 3 days to sign. He decided against it. When we went to contact the other candidate he had taken a different position... We now had one week left in July, no candidates, and teachers due back in three weeks. Luckily, our teacher did not find a job and agreed to come back but this could have been a dire situation for our students.

This bill will not solve all of our problems, but it will give us much needed assistance in this process of finding qualified educators for our students... The best thing we can do for them.

Thank You, I will now stand for any questions.

--

Benjamin L. Schafer
Superintendent, Nesson Public School District #2
224 2nd Ave. West
Ray, ND 58849
701.568.3301

#4
HB 1251
1/26/15

TESTIMONY OF MICHAEL J. GEIERMANN NDU
LEGAL COUNSEL IN OPPOSITION TO

HOUSE BILL 1251

Dear Mr. Chairman:

Thank you for giving me the opportunity to testify on House Bill 1251. This Bill will have an adverse impact upon teachers and education associations that negotiate with school boards.

In 1969, in the wake of the Minot teachers' strike, this Legislature passed a teacher negotiations law which allowed teachers to negotiate with school boards. Over the next 45 years, school boards and teachers have bargained numerous negotiated agreements which have provided for the terms and conditions of employment for those teachers in those school districts. The law, as indicated, which was passed in 1969 has remained virtually unchanged. Both school boards and teachers have learned to live with it. The law balances the districts' need to control the operation of the school district with the teachers' need to be involved in the process by allowing them a voice in the process of setting up their terms and conditions of employment.

This bargaining process clearly favors school boards. The unequal bargaining power between school boards and teachers has been recognized by the Supreme Court on three different occasions. The Supreme Court has recognized that school boards hold the ultimate "trump card" which allows school boards to unilaterally issue contracts at the conclusion of the good faith negotiation process.

Since this law has remained virtually unchanged for 45 years, it is interesting that there are drastic changes which have been proposed to the statutes. It is contrary of the old saying, "If it ain't broke, don't fix it".

The first change that I would turn your attention to which is objectionable to NDU and its teacher members is found on page 1 of the Bill at paragraph 2(d). Since 1969, when teachers are offered contracts, they are given 30 days in which to accept or reject those contracts. In most instances, this is not a major decision for teachers. However, it does allow them an opportunity to review the negotiation process which has taken place, allows them to determine whether it is in their best interest to continue teaching in that particular school district or to remain in the profession as a whole. Shortening that particular time simply puts unneeded pressure on teachers to make a decision. As a matter of fact, most teachers turn in their contracts as soon as they get them. However, there are teachers who do want that 30 day time limit to think about the contract and think about their future. The thirty day time limit does not interfere with the operation of the school and certainly does not deny any children the right to an education.

The second change which is very concerning to NDU and its members is found in Section 3 of the Bill under "Negotiated salary increase – effective date." While there is

tremendous and unequal bargaining power between school boards and teachers, the one item of leverage the teachers have is time and garnering community support for their position. Most negotiations take place over the spring and summer. Sometimes it is very difficult to deal with negotiation issues during the end of school and in the summer as most school boards, administrators and teachers are very busy. In addition, teachers believe that the public has a right to know what is going on in the negotiation process and often informs the public of the current negotiation positions of both parties. By allowing teachers time to work with the process over a period of time, teachers can make good decisions about their employment.

Over the last 45 years there have been numerous occasions when the negotiation process has gone beyond the beginning of school. There is not one single occasion where children in North Dakota schools have been disadvantaged in any way, shape or form by the delay in the negotiation process. Teachers have always showed up for school, children have always attended school and the process of educating children continued while after hours negotiations took place. There is no reason to believe that the same will not happen in the future without the changes proposed in this bill. More importantly, the teachers who have seen negotiations go beyond the beginning of the school year have not been penalized for extending the negotiation process for the good of both parties. While there have been numerous court cases between school boards and education associations over the negotiation process, there has never been a court case over the issue of retroactive pay earned by teachers because of a delay in the negotiation process. There was always an understanding between school boards and teachers that teachers' hard work during the school day, even in the absence of a negotiated agreement, should be compensated at the correct rate. This bill penalizes teachers for participating in the negotiation process.

Section 3 of the bill places teachers in a no-win situation. It is very reasonable to expect that teachers will simply agree to unfair offers by school boards in August so they will not lose money if negotiations go beyond the start of school. It will require them to make concessions to poor offers by school boards when they would otherwise not do so. Furthermore, this bill, as drafted, is clearly subject to abuse by school boards. There is nothing to prevent the school board from delaying the negotiation process until right before school starts and then provide teachers with an unfair or substandard offer which the teachers will feel forced to take because they don't want to lose money.

This bill clearly punishes teachers for participating in the process of negotiations with school boards; a process of negotiations that has served both teachers and school districts since 1969. The negotiation process in North Dakota is not perfect but House Bill 1251 does not improve it. I strongly urge a "do not pass" recommendation from this committee.

#1 HB1251

1/27/15

15.0532.02000

January 26, 2015

Title.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 3, remove lines 11 through 17

Renumber accordingly.

HB 1251

#2 1/27/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 3, line 15, after "retroactively" insert "unless otherwise agreed to by the board of the school district and the representative organization"

Page 3, line 15, after "If" insert "retroactive pay"

Page 3, line 15, remove "a salary increase"

Page 3, line 15, after "is" insert "not"

Page 3, line 16, remove "on or after the first day of the school calendar"

Renumber accordingly

15.0532.02002
Title.04000

Adopted by the Education Committee

January 28, 2015

1 HB 1251
1/28/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 3, remove lines 11 through 17

Renumber accordingly

#1
3/11/2015

Senate Education Committee

March 11, 2015

Testimony by Jon Martinson, Executive Director

North Dakota School Boards Association

HB1251

The purpose of this bill is to tighten up the timeline for school board/teacher negotiations. While we understand that negotiations can be confrontational, negotiations in some districts become acrimonious and the ill will can fester the longer it gets drawn out. In those instances, no one wins--not teachers, school board members, students, or the community. School board members, school administrators, and teachers are supposed to be on the same side. That side is working for the best interest of students.

Former chair of the ND Fact Finding Commission, Kermit Lidstrom, was fond of saying that the purpose of the commission was to help both sides reach an agreement. It was that simple. This bill is introduced to serve that same purpose—to help both sides get to the table and reach an agreement.

This bill does the following things:

- It shortens the number of days that teachers have to return their contract from 30 days to 14 days. Rationale: We believe teachers can decide within two weeks if they intend to return to their jobs.
- Adds to current statute (page 3, lines 7-10) that negotiations must begin within 30 days after the “representative organization” is recognized by the board unless both the board and teachers agree to allow more time. Rationale: One tactic used by the union is delay, delay, delay with the purpose of wearing down the board. Consider this example from Dickinson:

2013-2014 School Year

- ✓ October 2, 2012: Petition by the teachers to be the “representative organization” was presented to the school board
- ✓ December 11, 2012: First negotiations session
- ✓ July 29, 2013: Contracts were sent to teachers allowing 30 days to sign and return
- ✓ August 21, 2013: First day of school

2014-2015 School Year

- ✓ September 16, 2014: Petition by teachers to be the “representative organization” was presented to the school board
- ✓ October 14, 2014: First negotiations session
- ✓ December 16, 2014: Contracts sent out to teachers allowing 30 days to sign and return
- ✓ August 27, 2014: First day of school

1/3

- Allows a subcommittee of the board to meet in executive session to discuss strategy. Rationale: teachers now follow board negotiators into their caucus room to hear them discuss the most recent proposals by teachers. The result is board members stop their conversation and wait until either a special board meeting or the regular board meeting where they are permitted by state law to go into executive session for the purpose of discussing negotiation strategy. This slows down the process considerably.

Contract issuance is suspended during negotiations. During that time and until contracts are signed, administrators have no idea how many teachers will return to the district. Today in North Dakota, there is a statewide teacher shortage. The Education Standards and Practices Board designated every teaching area as "hard-to-fill." School districts around the state including Dickinson, Lisbon, North Border, Leeds, Bowman, Medina, Kenmare, Williston, Watford City, and Hettinger, to name a few, were looking for teachers late last summer. During the time teachers are not under contract, they are free to look elsewhere with no obligation to show up for work. After all, they are not under contract.

The Dickinson case was prolonged because it went to the Fact Finding Commission, to District Court, and to the North Dakota Supreme Court. However, those cases are the exception.

Consider Garrison. Tom Hesford, former chair of the ND Education Fact Finding Commission, published comments and observations in the *McLean County Independent* on September 3, 2009:

"According to state law, School Boards are allowed to act in the best interest of the children of the School District once the negotiations process has run its course. The language in the current contract between the Garrison School Board and the Education Association prevents that from happening, requiring that both sides ratify the contract before individual contracts can be issued to teachers. The language in the current contract shackles the school board; its only option is to risk litigation by disregarding this duration clause and issuing contracts to teachers. The teachers in the meantime retain the option to become 'free agents,' to walk away from the children of Garrison in pursuit of their own interests."

Consider Jamestown. Former chair of the Fact Finding Commission, Kermit Lidstrom, published comments and observations in the *Jamestown Sun* on February 13, 2003:

"Seven days after the hearing, the Commission submitted its report and recommendations to both parties. The School Board endorsed our recommendations. The teachers were not as wise. With scant concern for the economics of the district, the teachers rejected a 7.3% increase in total compensation. The Jamestown Board of Education has limited taxing authority and only about three months of cash reserves. These realistic restraints dictated that the best possible offer for enriching teacher compensation be set at 7.3%. The Commission has concluded that the Board's offer was fair, reasonable and prudent. It's heartbreaking to witness the useless chaos and hard feelings that have resulted from the teachers' unfortunate response to the Commission's efforts. The Jamestown negotiations started in June—it is now February! These endless negotiations benefit neither party; and the teachers must accept full

responsibility for creating the impasse and for resisting all honorable efforts to conclude a contract."

In summary, this bill takes a few small, but realistic steps to get the board and teachers to the table, encourage them to reach an agreement, and return contracts in a reasonable time so administrators can plan staffing for the upcoming school year.



Great Public Schools

Great Public Service

Testimony of Fern Pokorny
Opposition to HB 1251
March 11, 2015

Good morning Mr. Chairman Flakoll and Members of the Senate Education Committee. For the record my name is Fern Pokorny, representing North Dakota United. I am here to voice NDU's opposition to HB 1251.

Although the worst part of this bill, no retroactive pay after the school year begins, was taken out in the House Education Committee, it's still a punitive bill and does not rectify the concerns of the School Boards. Several years ago Mandan issued contracts March 15; the teachers had 30 days to sign their individual contracts and then were either recruited or applied for a position in the Bismarck District. So they asked to be released from their contract. At that time, Mandan had a "liquidated damages policy" so teachers were asked to pay a fee to be released from their individual contract. If this bill passes and they are required to sign their individual contracts in 14 days, it would not fix this problem. It may even become more expensive if the hiring district pays the liquidated damages assessed. In Kenmare last year, teachers signed their contracts, but a science position opened in Berthold more than 30 days after signing her contract. This teacher found a good candidate who could teach science, asked for a release and left the district. Again, it would not have mattered if this science teacher had signed her contract in 14 days or 30. And, yes, we as a Union do recommend to our members to honor the contracts they sign. There are situations that arise. Life just happens! There have been several cases of teachers whose spouse was transferred by their company in July. So the Board then needs to determine if they are willing to split a family because they don't want to recruit. The Superintendent from Ray testified in the House Education Committee that out-of-staters would agree to take the position but wouldn't show. Again, changing the law to force teachers to sign contracts in 14 days would not fix the problem.

As we've all heard many times, we lose the newer members of our teaching profession in the first five years of their career and it's almost always because they don't receive the support they need to be successful in the classroom. More often teachers tell us they leave a district because they don't feel respected and they are not treated fairly.

This bill also requires negotiations to begin no later than the 30th day after the representative organization is recognized by the board of the school district. They can already do this and often do. We recommend our local's petition to bargain with their Board in February. If it's a legislative year like this one, what would be the point in starting to bargain this early? The Fargo Negotiated Agreement mandates the bargain must begin by January 15th which means the FEA must submit their petition to the School Board in December. Again, what would be the point if the legislature hasn't completed its work? Teachers have curriculum to learn, classes to attend, summer school to teach, activities to coach so they don't want negotiations to run long into the summer either. Our teachers are working during their supposed "off time". They would prefer to have the bargain completed as well. As many calls the School Boards Association claim they

get because teachers won't come to the table, we as NDU get at least that many asking how they can get the School Board to the table.

Let's turn our attention to Dickinson because their bargain seems to be the impetus for this bill. The bargain for the 2013-14 school year went to District court, the DEA won and the Dickinson School Board appealed the decision. The Supreme Court Decision was issued in July with the teachers again winning. The DEA had agreed the previous February not to force the Board to deal with their negotiations petition because the court decision would impact whether they were able to bargain or not. So, in August, the Board was concerned with some of the signatures and denied the petition. DEA had their members resign and resubmitted the petition. The School Board finally approved the petition in their regular October meeting.

Then the last part of this bill asks you to make the Board caucus during the bargaining sessions an executive session so no one can attend. Many of the ground rules I have seen, have that provision in them. So, how many times has a teacher gone into the Board's caucus? I've only heard of it once. Do we change laws for one incident? The NDCC 44-04-19.2 already gives the Board the right to plan negotiating strategy in executive session. This appears to be an extreme solution to a problem that doesn't really exist.

The NDSBA told you they need to force teachers to sign their individual contracts within 14 days so they know who is returning. This is not a solution to the concern they shared, rather it is a punitive action. They want to force teachers to the negotiations table within 30 days but changing the law doesn't help change a few days or a week and they want you to change the law because a teacher attended their bargaining caucus once.

North Dakota United does not agree with the North Dakota School Boards Association about whether or not the issues addressed in this bill are, in fact, problems that require solving by the Legislature. But, even if one does see these issues as problems, we would hope that this committee can see this bill doesn't solve them. We would respectfully ask for a "do not pass" recommendation.