

FISCAL NOTE
Requested by Legislative Council
01/14/2015

Bill/Resolution No.: HB 1315

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

This bill allows a school district to increase the level of compensation for a vacant teacher position(s) when the district is unable to fill the vacant teaching position with a highly qualified teacher and that also meets other criteria as described by the district.

- 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.*

School Districts. The Department is unable to determine a fiscal impact as necessary data is not available and contingent upon local district circumstances. There is no state, county, city, or township fiscal impact. It is believed that the fiscal impact to districts would be minimal, but may vary from district to district. District impact is dependent on the number of vacant positions to be filled under the bill requirements and on the compensation/salary increase that a district would have to offer the candidate in order to fill the position.

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.*

No impact.

- 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.*

No impact.

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No impact.

Name: Robert V. Marthaller

Agency: Department of Public Instruction

Telephone: 328-2267

Date Prepared: 01/14/2015

FISCAL NOTE
Requested by Legislative Council
01/14/2015

Amendment to: HB 1315

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Agency: Department of Public Instruction

Telephone: 328-2267

Date Prepared: 01/14/2015

2015 HOUSE EDUCATION

HB 1315

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1315
1/26/2015
22492

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to salary increases for unfillable teaching positions.

Attachment # 1.

Minutes:

Chairman Nathe: opened the hearing on HB 1315

Representative Monson: District 10, Introduced the HB 1315, in support. I will let the School Board Association explain it.

Jon Martinson: Executive Director North Dakota School Boards Association, (1:36) - (7:54). In support of HB 1315. (See attachment #1).

Rep. Ben Koppelman: if an individual is hired off the salary scale because it is a hard to fill position, is the board mandated to assign a percentage increase from negotiations?

Jon Martinson: The superintendent is able to offer that person the job at the salary they will take.

Chairman Nathe: Once they are hired, they would stay at the higher salary beyond the current year, what happens when the negotiations happen down the road? So if there is a 3% increase he gets bumped up too.

Jon Martinson: Yes that is correct.

Chairman Nathe: Support for HB 1315. Seeing None. Any opposition for HB 1315?

Chairman Nathe: How often are schools hiring off the schedule?

Jon Martinson: Not very often, it is quite rare.

Michael Geiermann: Legal counsel for NDU. In opposition for HB 1315. Example of Kenmare negotiation. (10:55- 14:50) Any school board can negotiate with an individual teacher. The bill takes out the safety nets, it sets no timelines. Again I say if it is not broke don't fix it. There are more issues to deal with than what this bill covers. This bill is subject to abuse since the school board could hire off the schedule for teachers and pay more, I urge a do not pass on this bill.

Chairman Nathe: I think if they find a teacher off the schedule and they pay more, what is the problem?

Michael Geiermann: We want teachers and school board to get along. Sometimes problems develop where there might be other considerations or reasons. What the bargaining law really did was make sure teachers had input and school boards have input with the understanding at the end of the day school boards offer what they want and teachers have the decision to accept it or not. We are huge proponents of what is good for kids.

Chairman Nathe: What about the schools in the oil patch to fill the teachers positions?

Michael Geiermann: We have not had a mass exodus of teachers to go work in the oil field.

Rep. Hunsakor: Do you think the superintendents and school boards will misuse this language and pay above the salary schedule unless there is a sincere need?

Michael Geiermann: I do believe school boards and superintendents act in good faith. But the bill is subject for abuse, because they can stop looking by March or April, without looking yet. I like the old law.

Rep. Meier: Wouldn't you like to have a teacher in place rather than not for the school year?

Michael Geiermann: Yes.

Rep. Ben Koppelman: I understand your concern about the date, we could research what would be the right date, having a date is more advantageous? Do you think once that threshold is established that it makes sense that that teacher continue on year over year to negotiate with their district to stay?

Michael Geiermann: I read the law a little differently. Page one it says compensation to this individual may not be reduced in future years. Lines 23 and 24 on the bottom of page 1. So if the base salary is \$35,000 and I negotiated a salary of \$45,000, when the education association gets a 4% increase my \$45,000 goes up by the 4%. So that teacher is now on the schedule.

Rep Ben Koppelman: I am not sure if he would be subject to the increase in the new law. What about the concern on page 2 lines 14-18, that it could only be for the duration of the school year. Something would have to be done if the intent of what you said was to occur?

Michael Geiermann: That language might be troublesome that it is for the duration of the school year.

Chairman Nathe: You are worried some of the abuse by the districts, I think it would be in their best interest to keep salaries steady. Is it the language page 2 line 20, where it says 'reasonable criteria established by the board' is that the language there might be possible abuse?

Michael Geiermann: The language that concerns me is the removal of the 45 days.

Vice Chairman Schatz: When we look for a teacher, we list the job. They can choose to actively recruit or they can choose not to, is that correct?

Michael Geiermann: I believe that to be true.

Vice Chairman Schatz: It would be the word of the superintendent who reports to the board. The board didn't actively go out to recruit did they?

Michael Geiermann: No, it would be an administrative function. What I am saying is what is going to stop a school board from in February going and paying off the schedule.

Rep. Hunsakor: The Supreme Court has said we can pay off the schedule in certain situations where they cannot find a teacher. This bill says the same thing so there shouldn't be any issue.

Michael Geiermann: There is verification in the old law and not in the new law and that is all we are asking for.

Chairman Nathe: Any other opposition to HB 1315?

Rep. Kelsh: The school board has to use all reasonable efforts to fill the position before they hire, but the new law takes all the background into consideration too.

Bob Marthaller: Assistant Superintendent of NDPI, Neutral to HB 1315, Subsection 1 Line 7 page one it says 'after the conclusion of the school calendar' and then Subsection 2 page 2 of the bill it says 'if a teaching position comes open during a school year' if you look at those two they are different. The first case it is after the closing of the school calendar. I did seek advice from counsel in the second case the compensation could only exist until the end of the year.

Chairman Nathe: Subsection 2 when it comes vacant during the calendar year, so if you hire a person at \$40,000, that is only good for that year then the next school year he goes on schedule.

Bob Marthaller: I am not entirely sure but I think they go back on the schedule the next year. Since I have been at the department we have one or two a year so it is not much of a problem.

Chairman Nathe: Could you send us an e-mail to clarify Subsection 2

Vice Chairman Schatz: You are going from one school to another, is there anything in law that the new school would have you start at the step you left?

Bob Marthaller: I believe that varies from District to District, some will allow all years some only three.

Rep. Zubke: In regard to becoming vacant in the school calendar year, then they go back to the schedule for the next year, don't you have that same problem with having a position you can't fill then you can offer the person the higher salary again?

Bob Marthaller:

Rep. Meier: What are the harder to fill positions and are the requests coming from more rural area?

Bob Marthaller: The ones I recall are from smaller school districts.

Rep. Meier: What are the hard to fill positions you are getting?

Bob Marthaller: The one that brought this question to issue is a Career Tech Ed.

Rep. Kelsh: In the old language when the school board notified you used to have to solicit help to find a teacher, under the new law if they notify you, you just basically say ok. Isn't that true?

Bob Marthaller: Yes the departments responsibility would be much limited.

Chairman Nathe: Limited to what?

Bob Marthaller: As I read the bill I think the State Superintendent would have to be notified and that is it.

Chairman Nathe: closed the hearing on HB 1315

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1315
1/28/2015
22765

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whitham

Explanation or reason for introduction of bill/resolution:

Attachment #

Minutes:

Chairman Nathe: reopened the hearing on HB 1315.

Rep Ben Koppelman: Some portion of this bill is needed. My intent would be that once they met the criteria and they are a district employee that they are able to continue to employ that person without waiting until 45 days before. Is there any amendments proposed to this bill.

Chairman Nathe: No.

Rep Rohr: I wrote on this do we want to put into law that a report has to go to the committee to detect any potential for abuse problems Is there a potential for that in this one?

Chairman Nathe: I don't know this bill would give districts a tool to fill a specialty job that they need. I find it interesting that Mr. Geiermann wanted to bring the teacher back in line with everyone else's salary.

Rep. Meier: They thought only a couple positions a year and primarily for rural areas so this might be helpful tool.

Vice Chairman Schatz: The ability of a school board to hire someone at a higher rate is already there.

Chairman Nathe: But then you go down the second year to schedule.

Vice Chairman Schatz: I don't believe that. If they are placing you on the schedule they couldn't force you down. Is there a chance for abuse for this? Maybe.

Rep Rohr: It was in Mr. Geiermann's testimony. It takes out all the safety nets and it is subject to abuse and takes out the accountability of the school board.

Rep Ben Koppelman: Motion on the Koppleman amendment emergency clause.

Rep Looyen: Seconded.

Voice vote. All ayes. Motion carried.

Rep Hunskor: An email from Bob Marthaller says if this bill is passed compensation for a teacher hired could not be reduced in future years.

Rep Looyen: Do Pass as Amended.

Rep Schreiber Beck: Seconded.

Rep Olson: This doesn't give enough time for teachers and graduates to have a go at the position, and also it removes some of the tasks of DPI.

Chairman Nathe: As for approval requirements, I think it is part of the requirements on page 2 line 22.

Rep Ben Koppelman: I do think if they just notify it is ok, as for the 45 days is the problem you run into if you have to wait until July 15th every year to find someone that is hard to find in the first place. But if you put out the application in March or April and you may be able to offer at a higher pay to incentivize someone. I think it is the reason to take out the hard and fast 45 days. I think I will vote in favor of this.

Chairman Nathe: They start looking in March. There is such a shortage of teachers and teachers positions are hard to fill. I will support the motion.

Rep. Kelsh: I have a problem with the language taken out of the law, not only do they have to tell the DPI but the Department has to assist the board and this is all taken out of law. That's where accountability becomes a problem?

Rep Schreiber Beck: I am a teacher, there are those types that you can't fill, the 45 days would be a problem. So this bill, I don't think it can be abused because the school boards are not wanting to pay more.

Rep. Meier: With that I don't think it will be used that often, just in the critical areas.

Rep Hunskor: The idea of contacting DPI, they have more knowledge across America who might be available for a hard to fill position. It is important for the kids to have a teacher.

Chairman Nathe: There has been a question about a teacher hired off the schedule at a higher salary that the salary would last more than one year?

Kristen Baesler: Superintendent of DPI, There has been question if the salary will continue more than one year currently.

Chairman Nathe: Currently you can call DPI for assistance but the bill takes the language out, will you still provide assistance and how often have you provided assistance?

Kristen Baesler: There was administrative rule, we had a few situations we were working with this past year. All we had was a letter of guidance from Mr. Tom Decker. It sited some prescriptive things. We sent out a new letter and they would have to verify to me that they did due diligence trying to fill that position on their salary schedule and we do offer assistance to fill that position.

Chairman Nathe: But this bill would take this out.

Rep Ben Koppelman: On page 2 line 23, it just replaces that language, but the time constraint is gone but we still can still notify DPI and it doesn't say after they hire someone it is before they hire someone.

Kristen Baesler: They do it prior to hire, then at that time my letter of guidance would state they would have to provide evidence they did due diligence to hire.

Rep. Hunskor: If this passes all they have to do is notify you. You don't have to search or help check for applicants. Would you still do some checking to see if there was someone to hire that you would know of that they don't or does this take this off the table?

Kristen Baesler: I do had concern over the language on line 14 page 1 'Only when the superintendent determines that all attempts have been unsuccessful' that language has been struck now, but that is not the practice that is in place. The letter of guidance I send out that they do need to provide evidence and that they have done due diligence is out practice now. Once I receive that information, then I authorized it. I do believe the local board should have to provide evidence that they have done due diligence.

Rep Hunskor: As part of your process to actually help them find a teacher.

Kristen Baesler: Yes we do teacher and teacher search and we connect them to national bases.

Chairman Nathe: The passage of this bill would not block that.

Kristen Baesler: No.

Rep. Meier: Will you still be continuing the previous process if this bill passes?

Kristen Baesler: Yes.

Vice Chairman Schatz: Is there a deadline for the schools to contact you?

Kristen Baesler: If the vacancy would cause the board to be in violation of the school approval requirements. That the all the teachers are highly qualified in their areas and all teachers are licensed in the state of North Dakota, those are the two criteria. If they didn't have a highly qualified teacher before the start of school. We actually had some hires a day or two before school started.

Vice Chairman Schatz: I don't feel very comfortable with a lot of this especially the quick hires is not well accepted in the smaller areas because of the issue of fairness. Opening a position and having applicants is very important.

Kirsten Baesler: I have never seen the off the salary schedule requested unless it is just a few days before school when they need a teacher in place or a math teacher left in Oct.

Rep. Kelsh: In line 22 and 23 in the new language, after the other language is deleted, would you say if you told a board that they had to prove they have done due diligence, they could say all we have to do is notify you.

Kristen Baesler: I am uncomfortable with line 14 page 2 being struck "when the superintendent determines all reasonable efforts have been unsuccessful". I believe that is an important step to insure that I have the authority to continue the present practice.

Chairman Nathe: Starting with line 14 to line 18, so keep that in the language, except for the duration of this year.

Kristen Baesler: on line 23 include what is struck on line 14-18.

Rep Looyesen: ine 26 and 27

Chairman Nathe: we unstruck

Rep Looyesen: **Withdraws the Motion for Do Pass as Amended.**

Rep Schreiber Beck withdraws the second.

Rep Looyesen: I move that we propose we amend the bill on line 14 where it says "when the superintendent determines all reasonable efforts have been unsuccessful" and insert it on page 2 line 23.

Rep. Schreiber Beck: Seconded.

Voice Vote taken: All Ayes. Motion carried.

Rep. Looyesen: Do Pass as Amended.

Rep. Schreiber Beck: seconded.

House Education Committee

HB 1315

1/28/2015

Page 5

A Roll Call Vote was taken. Yes: 8 No: 4 Absent: 1.

Rep. Koppleman: will carry the bill.

sf-29-15

January 29, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1315

Page 1, line 2, after "positions" insert "; and to declare an emergency"

Page 2, line 23, replace the first "and" with ". If the superintendent determines that all reasonable efforts have been unsuccessful, the superintendent may authorize the board to increase the level of compensation for the vacant position in order to attract a suitable and highly qualified individual"

Page 2, line 24, remove ", may increase the level of compensation for the vacant"

Page 2, line 25, remove "position in order to attract a suitable and highly qualified individual"

Page 3, after line 5, insert:

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

Renumber accordingly

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

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1315

House Education Committee

Subcommittee

Amendment LC# or Description: Koppelman 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. Koppelman Seconded By Rep. Looyzen

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. _____

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

*amended -
Emergency clause on - Motion Carried*

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

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1315

House Education Committee

Subcommittee

Amendment LC# or Description: Looyen 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 Looyen Seconded By Rep Schreiber Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe			Rep. Hunsakor		
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) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Change language in line 14 and on Pg 2 line 23 motion carried to amend

Date: 1-28-15
 Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1315**

House Education Committee

Subcommittee

Amendment LC# or Description: 15.0530.01001

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 Looyen Seconded By Rep Schreiber Beck

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

Total (Yes) 8 No 4

Absent 1

Floor Assignment Rep Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1315: Education Committee (Rep. Nathe, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1315 was placed on the Sixth order on the calendar.

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Renumber accordingly

2015 SENATE EDUCATION

HB 1315

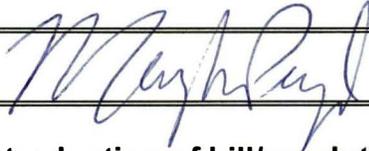
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

HB 1315
3/16/2015
Job # 24845 (35:12)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

INITIAL HEARING

relating to salary increases for unfillable teaching positions

Minutes:

2 Attachments

Chairman Flakoll called the committee to order at 9:05am with all committee members present.

--SUPPORT--

Jon Martinson, NDSBA Executive Director (see attachment #1)

(8:20) **Vice Chairman Rust:** Do you know how many schools have taken advantage of having to hire off of their schedule?

Martinson: It doesn't happen very often. However just last week there was a case with Superintendent Underwood. He needs to hire someone off of the salary schedule. He was hoping this bill would pass with the emergency clause, but it was taken off in the House. It is not often but when it does happen, they need to hire a teacher. Students in North Dakota deserve to have a teacher.

Senator Schaible: Are they on the master contract but on a prorated level then? How do they figure their raises or increases in the following years?

Martinson: they are not on the salary schedule. In the cases where this has happened, they have offered that person the salary increase that other faculty who are on the salary schedule have received, but they are not bound to that. It's a free market for that particular employee

Senator Schaible: so they are negotiating with that individual also?

Martinson: Correct.

Senator Marcellais: Have any of the districts considered sharing resources?

Martinson: the current law says that the state superintendent has to make sure that all reasonable efforts have been made first before they hire someone off the salary schedule. It is reasonable to think that they have in fact tried all other efforts first.

(11:10) **Vice Chairman Rust:** With every position at the secondary now being deemed a critical area, this could almost apply to any secondary teacher, correct?

Martinson: It could apply but it only has happened occasionally. With the increased demand for teachers and the hard-to-fill positions, I am more inclined to think that there can be negotiations with a potential teacher in a district among districts than there is for this to happen. Different districts pay different amounts for their salaries. I would think that would be the occurrence rather than this.

Vice Chairman Rust: On page 3, why has subsection 4 been crossed out?

Martinson: It is crossed out specifically due to the lack of teachers and the designation by ESPB of the hard to fill positions that permeate North Dakota. The idea that you couldn't hire a teacher off of the salary schedule if they taught before in the state is stricken out because we might need them.

Senator Marcellais: You mention that ESPB identifies the hard to fill positions. How do they determine that?

Martinson: I am not familiar with that research.

Chairman Flakoll: but there is a list?

Martinson: correct. Every teaching position in North Dakota is now designated as "hard to fill". There used to be some two years ago that weren't hard to fill like athletics and elementary education; however those two are now on the list.

Chairman Flakoll: On page 2 lines 27 and 28, is compensation relating to salary and benefits?

Martinson: Yes.

Chairman Flakoll: If we change insurance providers and get a better carrier with a better rate, would that create problems?

Martinson: It is up to the local district.

Chairman Flakoll: If they are a teacher but also coach or drive a bus, is that bundled together in terms of how this bill looks at compensation?

Martinson: No, that is a separate contract.

Senator Marcellais: Is there a cap on the salaries?

Martinson: There is not a cap on the salary.

Chairman Flakoll: The emergency clause is no longer on the bill?

Martinson: Correct.

--OPPOSITION--

(16:15) **Fern Pokorny,** North Dakota United (see attachment #2)

Vice Chairman Rust: As I read the bill on page 2, it says that if a vacancy occurs, the board shall notify the superintendent of public instruction. If the superintendent determines

that all reasonable efforts have been unsuccessful, the superintendent may authorize the board to increase the level. It appears that there is something of a failsafe. Isn't there already in this bill to take care of what you are talking about?

Pokorny: It does say notify the superintendent of public instruction while the old bill had that they verified and then the Department of Public Instruction also helped them try to locate. There is a difference between notification and verification.

Senator Marcellais: How would you recommend to fill these hard to fill positions?

Pokorny: We have made good inroads and the bargaining process to raise salaries so that it is much more reasonable. With continued help in increasing the salary in our salary schedules and fair treatment and respect our teachers deserve, they are willing to fill those positions in our state.

Senator Marcellais: If you can't find individuals, how are going to fill them?

Pokorny: I cannot answer that question.

Senator Davison: I think that is what this bill is trying to do. Do you think with the three tiered retirement system creates a morale issue with new teachers and teachers who didn't make the grandfather clause?

Pokorny: Yes I agree with that. This bill is attempting to create a scenario where we can find more teachers; however if you can't find them, this bill does not change that.

Senator Davison: I would disagree. This example happened to be a speech language pathologist that Dr. Martinson used. You can get them out of the private sector. Do you think we are competing against the private sector in these positions for special education?

Pokorny: I know a speech pathologist who works in the Mandan district. She was frustrated with some of the things happening in her district so she pursued the private area but learned that it is a different kind of therapy that she would be doing and it wouldn't be just with children. So yes we are competing but we also have the advantage. The people we interest are the people who are interested in working with children.

Senator Schaible: On your signing bonus, how often is that used and is it working?

Pokorny: I cannot answer that question.

(26:35) **Bob Marthaller**, the Department of Public Instruction, called to the podium

Chairman Flakoll: There was a reference to your testimony in the House with respect to the Attorney General's decision.

Marthaller: We do get calls from school districts to interpret this section in the law. I pursued advice from both the AG's office as well as legislative council. They agree with our interpretation of this bill that the two sections of the current law and what is proposed in the bill were contradictory. From the Department's point of view, we support that section of the bill. It clarifies our interpretation. However just to clarify, the opinion that we received was not formal. It is simply a conversation between the Department and upper designated attorneys.

Senator Oban: Do you believe we can amend the law to clarify any misinterpretation without completely changing the structure?

Marthaller: Without analyzing the entire bill, we essentially support this interpretation with the rest of the bill. I would rather leave that to the school boards association and the teacher representative organizations.

Senator Oban: Do you see another way we can fix the misinterpretations that have been coming to your office?

Marthaller: I suppose you could just change the language in lines 17 and 18.

(30:40) **Senator Marcellais:** How many calls do you get on hard to fill positions?

Marthaller: Not many, probably 1-2 each year. Most recently they've been Science or Math.

Marthaller: I believe there were about 27 special education positions and 20 other positions throughout the state that were unfilled at the beginning of the school year.

Senator Marcellais: do you know how ESPB determines what an unfillable position is?

Marthaller: I believe that the take a survey and see how many positions are unfilled and interpret the answers that way.

Senator Marcellais: Does it go by supply and demand?

Marthaller: I am not involved in that, I do not know.

Senator Davison: Typically you put your job openings out in April I assume. Would you find that in June you have an idea of whether or not you can fill that position?

Marthaller: Depending on how negotiations are set up, teachers are making the decisions to come back or transferring to another district. I suspect by June or mid-July you are facing a crisis in terms of positions that need to be filled.

Senator Davison: Does not having the 45 days in there give you a greater opportunity to hire a more qualified teacher?

Marthaller: As a former superintendent of 14 years, yes it would give the local school district administration more flexibility to fill those positions.

Chairman Flakoll closes the hearing on HB 1315.

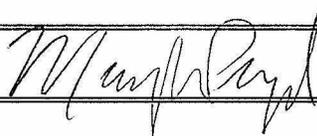
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

HB 1315
3/24/2015
Job # 25311(11:50)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE ACTION

Minutes:

1 Attachment

(see attachment #1)

Senator Oban: There is not much explanation needed for this amendment; it simply removes the word "not". It is my understanding the language that was removed and then written on page 2 lines 19-28 actually make it much easier to understand. However the problem lies in the word "may not be reduced in future years". It's not that I want anybody's pay reduced; however I also understand what it is like to be a teacher and how you are all in that together. Putting them off of the pay schedule is not a wise move. That is why we have bonuses that can be used to incentivize people to come to high-need areas. This is not fixing the problem that the school board association is trying to fix.

Chairman Flakoll: When you were a teacher, were you on the negotiation team?

Senator Oban: I was in a private school.

Senator Schaible: I agree with everything you said, but with the amendment, after a teacher comes into an unfillable position and they offer them \$5,000 over the contract, how will that happen the second year?

Senator Oban: That \$5,000 should be offered as a bonus.

Senator Schaible: The second year of this teacher's contract, they would go back to the slot of one year of experience. Whatever that was was just a one time slot and they would fall into the second year slot of the contract?

Senator Oban: Right now it is supposed to be structured as a bonus program just like a private business would provide a signing bonus.

Senator Davison: Is the language on page 1 line 23-24 current law?

Senator Oban: Correct. In my discussions with the Department of Public Instruction, they feel that the language that was in place in code before was confusing. The new language

being proposed in this bill is easier to understand and they are not taking a position on whether or not that compensation should be reduced or not in future years.

Senator Schaible: I don't think is in current law now.

Senator Oban: it actually says it two different ways in the current code. That was causing the confusion that the School Board Association was trying to fix; however in doing that, they are also putting in code that that compensation may not be reduced in future years.

Senator Davison: I have been communicating with ND United suggesting to kill the bill.

Senator Oban: That is another option.

Senator Oban moves the proposed amendments.

Senator Marcellais seconds the motion.

Senator Schaible: I have to agree with Senator Davison with this. I will not support the amendment or the bill.

A vote was taken: 2 yays, 4 nays, 0 absent

The motion fails: 2-4

Vice Chairman Rust motions a DO NOT PASS.

Senator Davison seconds the motion.

Senator Schaible: I don't this is going to accomplish what the sponsor is trying to do. It would be a short-term fix and also provide competition from other school districts looking for teachers. I empathize what they are trying to do, but I don't think this is a solution.

Vice Chairman Rust: I agree. I also don't like that it removes the 45 days.

A vote was taken: 6 yays, 0 nays, 0 absent

The motion carries 6-0.

Senator Marcellais will carry the bill.

REPORT OF STANDING COMMITTEE

**HB 1315, as engrossed: Education Committee (Sen. Flakoll, Chairman) recommends
DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).**
Engrossed HB 1315 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1315

1

HB 1315

1/26/15

House Education Committee

January 26, 2015

Testimony by Jon Martinson, Executive Director
North Dakota School Boards Association

HB1315

This section of code went into effect August 1, 2007, and addressed salary increases for unfilled positions.

It came about as a result of a situation in Kenmare in 2005 in which the school district needed to hire a Speech Language Pathologist. They were unable to hire one using their salary schedule and proposed during negotiations that the board be allowed to offer enriched compensation to individuals who were applying for hard-to-fill positions. The teachers rejected the proposal and the district declared an impasse.

The North Dakota Education Fact Finding Commission was called in to offer a resolution and they sided with the school district. The Commission's report was printed in the *Kenmare News* on July 20, 2005. In the Comments and Observations section of the report, Kermit Lidstrom, Chair of the Commission wrote:

"The teachers disappointed the Commission when they repeatedly rejected our solution to the impasse. The Commission's plan for resolution of the Kenmare impasse was reasonable, rational, responsible and affordable. Our recommendations resolved the dilemma of how to recruit a much needed Speech Language Pathologist and we also outlined a sensible set of options for securing hard-to-hire faculty in the future. The teacher's refusal to participate in the resolution of this impasse was both cavalier and foolish. The Kenmare Board of Education has clearly documented the vital need for a Speech Language Pathologist; while on the other hand, the teachers chose to ignore the reality of today's complex hiring environment. Change is hard, it's always hard; however, when it comes to the needs of the Kenmare children the teachers must accept that their traditional procedures cannot, and must not, trump timely reform. Nothing—nothing whatsoever is more important than the children, and the Commission's proposal was carefully crafted to best serve the special children of The Kenmare School System. The teachers were wrong when they refused to accept the profoundly logical recommendations of The Fact Finding Commission."

The Kenmare Education Association (KEA) took this issue to District Court and lost. They appealed the case to the North Dakota Supreme Court and lost again. Both the District Court

and ND Supreme Court decisions were very narrow and spoke to this specific hiring issue in Kenmare.

The section of code we are discussing today results from efforts by the North Dakota School Boards Association to have a law that allows school boards to hire teachers off the salary schedule for unfillable positions and up until last year, we thought the bill was clear.

However, it is not:

Page 1, lines 23-24: The compensation paid to a successful applicant under this section **may not be reduced in future years.**

Page 2, lines 14-18: Only when the superintendent determines that all reasonable efforts have been unsuccessful may the superintendent authorize the board, notwithstanding the terms of any agreement negotiated under this chapter, to offer the level of compensation it deems necessary in order to attract a suitable and highly qualified individual **for the duration of the school calendar.**

Given that the Education Standards and Practices Board has identified every teaching position as hard-to-fill, we ask for your support in clarifying current statute so once an applicant is hired off the salary schedule, that higher salary continues beyond the current year.

#1

3/16/15

Senate Education Committee

March 16, 2015

Testimony by Jon Martinson, Executive Director
North Dakota School Boards Association

HB1315

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1/2

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Opposition Testimony HB 1315

By Fern Pokorny

March 16, 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's opposition to HB 1315.

This piece of legislation was first passed in 2007 with some safeguards such as the 45 days prior to school starting. One safeguard is noted on page one lines 9 and 10, and again on page 2, lines 1 and 2. We believe the 45 day rule should remain to avoid abuse. It is conceivable a science teacher would retire; the Superintendent of a district would not receive any applications for that position and through some connection hear about one possible candidate. Then would call that candidate and offer a higher salary than the negotiated agreement would allow in February or March before attempting finding any other highly qualified teacher. Students haven't even graduated from our university system yet. 45 days prior to school starting is reasonable and we think it should stay in the law.

It is conceivable the relationship between a beginning teacher and experienced colleagues with the passage of this bill could be jeopardized. It is crucial for our beginning teachers to have a collaborative relationship with their colleagues. For nearly all teachers, the most challenging year of their career is their first year. The number of teachers that don't return for a second year is much higher than that of a third, or fourth, or fifteenth. While going off the salary schedule may, conceivably, aid in recruiting a new teacher to the district, it is perhaps just as likely to increase the likelihood that s/he will not stay in the district long term. As a specialist, it was important for me to participate in the same contract as my colleagues. It was easier to collaborate and provide the best educational opportunity for our students.

The NDCC 15.1-09-33.1 already allows districts to pay signing bonuses. This approach is already in place and provides payment over three years. So, if a board needs to pay an additional \$3,000 to recruit someone from out-of-state, they can offer a \$9,000 signing bonus and \$3,000 can be paid each year of the 3 years. The new hire then goes onto the salary schedule and we save the morale of the teaching staff and the integrity of the salary schedule we worked so hard to bargain. It's also another tool for the School Board to retain these folks more than one year.

Martinson

Mr. ~~Marthaller~~ stated in the House Education Committee, there is an Attorney General's decision, so no changes need to be made to fix the language of this law because the NDSBA has a clear understanding. It works so it doesn't need to change. Mr. Martinson also stated paying folks off schedule due to this law is rare, so, no changes are really needed if it's rarely used.

Although we too are concerned about hiring qualified individuals to teach our students, it should not be at the expense of our members who have dedicated their lives to this profession. We should all be paid a better wage so we stay in the school district and this scenario isn't needed. There are unintentional consequences to passing this bill. This bill disrespects the integrity of the salary schedule that the School Board and the Local Education Association spent time bargaining. Please give this bill a DNP recommendation.

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#1
3/24/15

PROPOSED AMENDMENTS TO HB 1315

Page 2, line 28 remove "not"

Renumber accordingly