

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1444

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1444
2/13/2015
23849

- Subcommittee
 Conference Committee

Chmonda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the early termination of contracts by state agencies and political subdivisions.

Minutes:

testimony cve

Chairman Klemin: Opened hearing on HB 1444.

Representative Schatz: (Testimony 1) My purpose is to put an end to unnecessary buyouts that are done by state funds. People get bought out by their contracts frequently but state contracts are different. They are the tax dollar and we shouldn't be giving that away because someone wants to let them go early. I think it should be the same for all contracts.

Representative Koppelman: Your amendment appears to have taken political subdivisions out of the amendment so it would only apply to state agencies and it also talks about severance payment may be provided in the events of early termination only as provided under this section. Is there another piece of law that talks about severance and how it works?

Representative Schatz: Yes I believe there is in this section and I don't have that in front of me but severance pay has a complete definition and I think what happens is it is kind of the end of the year type of thing but it is not for years on going.

Chairman Klemin: How would this effect the ability of state board of higher education to get higher position applicants for university presidents or chancellors?

Representative Schatz: I don't think it will affect them. I think that if a person applies for a job and knows the conditions of the contract. If there is something they disagree with they have the choice to not apply.

Chairman Klemin: I think what you are referring to is the golden parachute.

Representative Schatz: Yes.

Beadle: You have on here that it can be for either cause or convenience without occurring any obligation. Do we have references to what or convenience means? What is your intention?

Representative Schatz: I am not exactly sure. I think it gives them more latitude.

Representative Koppelman: We are an at will employment state so you can dismiss people for cause, but when we specify cause it creates a whole set of parameters that have to be met. One of the parameters listed, says that a state agency may, within the limits of its legislative appropriations provide financial incentives to encourage an employee to retire or resign, if the resulting departure will increase agency efficiencies or reduce expenses. It makes me wonder if at that agency an entity had money in their account they could do what they please even with this bill.

Representative Schatz: I am not sure, it is one of those things above my payrate.

Chairman Klemin: This amendment would say despite having a contract the employer could end the contract whenever without paying the employee. Is that what you meant?

Representative Schatz: Yes

Chairman Klemin: You don't think that will have an effect on getting people to apply to higher level jobs?

Representative Schatz: For teachers, they would have to have a clause but there is a settlement in there where you can get a year's worth of pay if they don't have a good reason. I don't think state money buyouts are a good use of money.

Chairman Klemin: This wouldn't apply to existing?

Representative Schatz: I don't think so.

Chairman Klemin: We have a law that says you can't make a law that would affect an existing contract.

Representative Hatlestad: Would this bill prohibit a multi-year contract?

Chairman Klemin: I don't think so.

Representative Zubke: In the sense it actually does, because it says it can be terminated for cause or convenience you could be cut half way through.

Chairman Klemin: Early ending terms could be negotiated. If they were fired they could negotiate if there was a cause or not.

Representative Beadle: We could work up some new language but I would move the amendments with some changes.

Representative Strinden: Second

Representative Becker: Might we want to keep their language?

Chairman Klemin: Legislative council will do anything someone asks, right or wrong.

Representative Koppelman: The sponsor didn't know what or for convenience meant either. My preference would be to eliminate both.

Chairman Klemin: That really leaves it vague which means we would not need it at all.

Representative Koppelman: Well then it would read differently and it would get at the main intent.

A Voice Vote Was Taken: All in favor

Motion carries

Representative Koppelman: I would move to further amend.

Representative Maragos: Second.

Representative Koppelman: I really think it does get at the intent this way.

Representative Kelsh: What would be the intent of having a contract then?

Representative Koppelman: I think if the amendment passes and the bill, it won't prohibit. What would be disallowed is the state giving the buyout.

Chairman Klemin: This does make a contract meaningless.

Representative Strinden: Can state agencies do this now?

Chairman Klemin: They can. This is a new subsection to the section.

Representative Koppelman: I disagree that this makes things ample contracts. You could make contracts say anything and they could be litigated.

Representative Hatlestad: I get the feeling if it says you must have a provision for early termination, there will be a provision and you're gone.

Representative Koppelman: We are trying to avoid someone signing a contract for a month and still getting paid for that period without working.

Representative Beadle: I am leaning towards Hatlestad's opinion. The must without any obligation would preclude that but I don't know if striking or cause might make it hard to pass.

Chairman Klemin: We don't have any evidence of them abusing their powers.

A Voice Vote Was Taken: Not many in favor

Motion fails

House Political Subdivisions Committee
HB 1444
2/13/2015
Page 4

Representative Zubke: Do not pass. This is a reactionary bill and we don't know the consequences.

Representative Kelsh: Second

A Roll Call Vote Was Taken: Yes 9, No 5, Absent 0

Motion carries

Representative Hatlestad will carry the bill

February 13, 2015

Handwritten:
2-13-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1444

Page 1, line 1, replace the remainder of the bill with "for an Act to create and enact a new subsection to section 54-14-04.3 of the North Dakota Century Code, relating to the termination of employment and personal service contracts."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

"**SECTION 1.** A new subsection to section 54-14-04.3 of the North Dakota Century Code is created and enacted as follows:

Every employment or personal services contract of a definite term with any state agency, including the state board of higher education and institutions under the control of the state board, must contain a provision that allows for early termination for cause, without incurring any obligation for payment through the end of the term of the contract. Severance payment may be provided, in the event of early termination, only as provided under this section."

Renumber accordingly

Date: 2/13/2015
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1444**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: Beadle / Schatz amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Beadle Seconded By Strindlen

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

*motion carries
 voice vote*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1444**

House Political Subdivisions Committee

- Subcommittee Conference Committee

Amendment LC# or Description: Koppelman amendments

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Koppelman Seconded By Maragos

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

*motion fails
 voice vote*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1444

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0929.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider

Motion Made By Zubke Seconded By Kelsh

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen		X
Rep. Rich S. Becker		X	Rep. Marie Strinden		X
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman		X			
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Hatlestad

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

motion carries

REPORT OF STANDING COMMITTEE

HB 1444: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1444 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the remainder of the bill with "for an Act to create and enact a new subsection to section 54-14-04.3 of the North Dakota Century Code, relating to the termination of employment and personal service contracts."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

"**SECTION 1.** A new subsection to section 54-14-04.3 of the North Dakota Century Code is created and enacted as follows:

Every employment or personal services contract of a definite term with any state agency, including the state board of higher education and institutions under the control of the state board, must contain a provision that allows for early termination for cause, without incurring any obligation for payment through the end of the term of the contract. Severance payment may be provided, in the event of early termination, only as provided under this section."

Renumber accordingly

2015 SENATE POLITICAL SUBDIVISIONS

HB 1444

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1444
3/27/2015
Job Number 25529

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the termination of employment and personal service contracts

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the hearing on HB 1444. All senators were present.

Rep. Mike Schatz The purpose of HB 1444 is to stop the buy outs with state funds. I was a teacher for 27 years and I got a one year contract when I was a teacher. If I was non-renewed I was gone. There was no ongoing pay. I feel that should be the same for all contracted employees of the state or government employees. (He displayed an article from the Bismarck tribune for reference but didn't hand it out to the committee) So, many of our executives seem to be so delicate, that they need multi-year contracts when the rest of us get a one year contract. I am hoping to weed out the applicants so they're not so, concerned about themselves as they are concerned about us or the state. It would say something about us if we weren't going to allow money to be wasted on golden parachutes. Besides this I prefer to hire locally with people who know the value of a dollar. I hope that you can give this a yes vote.

Senator Anderson You of course are familiar with the sports environment and we're competing somewhat with the private sector here when we are hiring executives to run our colleges. The sports environment every coach is hired he gets a multi-year contract with a buy out provision and so does every athlete who goes to work. The top level people seem like there the ones who command those kind of things. How do you think hiring people at the top level for the state of North Dakota is different than in the private environment?

Rep. Mike Schatz I am assuming you're talking about the NFL or any professional sporting activities, not colleges? I mean because if it colleges you can do whatever want to. We don't have any trouble getting coaches in North Dakota. We have some of the best coaches right now and they are all home- grown. You're not going to have any trouble hiring any of these people locally. Now I admit you may have trouble drawing somebody from California out here without this golden parachute. But to honest with you, I wish we would quit drawing them from California or someplace else and hire locally.

Senator Dotzenrod I was just going to ask Rep. Schatz it says on line 10, severance payment maybe provided in the event of early termination only as provided under this section. So, what would be the provisions under this section that would guide that?

Rep. Mike Schatz I believe severance pay sometimes deals with the end of the year if you have a one year contract and something happens. I mean there are circumstances that could happen where they would pay your contract to the end of that year I believe. I think that it is in law. What this bill does is stop you from doing it beyond the one year.

Senator Judy Lee I don't think that all the college coaches are from North Dakota as least not the ones that are kind in my part of the state. Don't you see a difference between the workers in a General Motors construction facility, which would be what most of us are as far as the working level is concerned and the person who is going to be the CEO of the company and is going to have not only higher responsibilities and is accountable to a board, but also is going to have to be someone who is really extraordinarily capable. Why would they take a job to run this risky business, the Board of Higher Education? Because this is pretty much what this you're talking about here. Why would we not want to have, I don't want it to be a center of mediocrity, I want it to be a center of excellence. I want to have the best person we can have and take that position. It doesn't mean the highest paid necessarily, but I don't see this as being so unusual and the second part of it is, help to explain how you feel about that part because its different between the workers the faculty members in the college and obviously we're not talking about colleges because we all know that college students, athletes don't get paid in one way or another. The other thing is do you think that there is some merit pay termination at ending it because otherwise we could be sending at least as much money in a long drawn out lawsuit, which also is going to cost taxpayers money and just continues to pain a whole lot longer.

Rep. Mike Schatz There is quite a few questions in there and my mind was racing when you were saying that, because I thought of so many different things. But, I do not see the advantage in paying. What I am looking at and if you come to work in North Dakota we give you a job, we give you a one year contract, are you here to do the best job you possibly can, or are you here for yourself to make sure that you get the most out of this job that you can? As a teacher, or as somebody who is concerned about the state of North Dakota, I guess being here and living here, all my life, I am willing to take that risk, that if I do a poor job and I get fired I am gone. So that is the answer. I guess I am trying to answer several parts to this question. **Senator Judy Lee** Lets follow up that one if we may. I get that part. Teachers' salaries for a year, a business contract for an employee in a business for a year, I am talking about the big guns, the big kahuna. Initially it is somebody who is going to be coming in for more than a year in order to develop a plan and if is just doesn't work for whatever reason, perhaps the business and the university system are both better off if they move on. I read the Wall Street Journal religiously and there are CEO's that come and go as time moves forward. But, isn't it better to end it and move on rather than spending the money on a prolonged lawsuit?

Rep. Mike Schatz I don't believe it is. First of all if you come in with a five year contract, and were dissatisfied with you, we should fire you. Okay. Now if you don't want to take the contact under those circumstances, you know, that is your business. So if we weed out some people who aren't willing to work under those conditions well that is the way it goes.

All of us in politics know that every 4 years we're going to be maybe weeded out and so the Governor and everybody who is elected. Their higher level people too and so are we. But, you know that is the risk you take and so I look at these people. First of all their making the biggest salaries by far, nobody is even close and probably their retirement is much better for them as well. To give them a golden parachute for the people of North Dakota have to pay \$1Million dollars when that, million dollars could be going for something else that is what I am against. So I want to end that.

Senator Bekkedahl The part I can get is Line A where it says must contain a provision that allows for early termination. I am not familiar with the contract issues that we're there with the previous chancellor but, don't we have those provisions in contract for anything we do in the state? I don't know, I am asking the question?

Rep. Mike Schatz Is it line 9, **Senator Bekkedahl** replied line 8, must contain a provision that allows for early termination for cause. Don't we already have that language in these high level contracts or didn't the State Board of Higher Education put that in there? You're seeking to have it put in because it doesn't exist now in these contracts?

Rep. Mike Schatz you said line 8? I bet there was an amendment on there and it got changed. Basically that is what it is saying. **Senator Bekkedahl** my point don't we already have that in these high level contracts or maybe you don't even know that? **Rep. Mike Schatz** I don't believe we have it now. We obviously didn't with this, with Shirvani, we didn't have with Potts. Potts got a quarter of a million dollars. I am not sure about Chapman, what did he get? I don't know about all of the times we've bought out, I don't I just know about 3 of them. Now maybe you guys know more and if you do, tell me because I would like to know more. **Senator Bekkedahl** I don't know how much of these contracts issues are public available information or private, I have never dealt with the Board of Higher Education so what they do and maybe the oversight is imperative, but I am looking at this and thinking I have a lot of good friends who are attorneys and I don't know that any attorney would have you doing this without this language already in there, is my question? I'll do some research and find out more Mike.

Senator Anderson There are different ways that we go about this in North Dakota we don't have really strong union so getting to be a member of the Teacher's Union doesn't really get you much in North Dakota. However, whenever we hire a department head at one of our universities or we hire a dean or whatever, one of the first things he negotiates as part of his contract is tenure. That means we're stuck with him unless he really screws up and does some bad things. So many times what happens is the president asks that person to step down and what happens is they get reassigned someplace else within the university. But they are still there. I think at one college I know of we were paying 3 pro bono sets for the 3 at the same time. So it isn't only the mechanism of what you're talking about the Golden Parachute here, that we end up paying these people down the road but there are other mechanisms as well that we do that, so what I am saying is it's not that uncommon.

Rep. Mike Schatz The tenured situations in colleges are guess unique in education because like I say in K-12 education you get a one year contract and you have to sign a new one every year. To be honest with you I am not in favor of tenure. I would get rid of tenure if that were the case. I don't know why they cannot be on the same plane. Our high

school system works without tenure. Now, here's what happens or at least it did when I was teaching, that if you were fired unjustly, you felt and you sued, you got what one year's pay. That was all that you could get in ND, is the one year pay. You don't get your job back but you do can sue the school district for one year's pay. As far as expensive lawsuits Senator Lee I am trying to remember the last expensive lawsuit that the state went on with, a situation like this. I don't even know of any, but maybe it would cost us millions of dollars to get rid of somebody one time but I have never heard of it. So a lot of times lawsuits are brought up as a threat and a how many times have they actually happen, not very often.

Chairman Burckhard Just for a clarification purposes, according to our LAWS software .02000 is the most recent version of this bill. **Rep. Mike Schatz** I think you have the right one and I have the wrong one.

Chairman Burckhard Do you think we would get the high quality candidates if it was just a one year position? Do you think we would still attract good quality leadership? **Rep. Mike Schatz** yes I do. In fact I think we would get better candidates. Because you would get candidates that aren't coming in with this presumption of making a bunch of money, isn't it sweet to come in and say well whatever I do I am going to walk away. But that is not a good working relationship, that's all on your side.

Senator Anderson Do we have some research on what our university presidents get paid if they have these kinds of contracts now other than the three anecdotal stories that we've been talking about?

Rep. Mike Schatz How much do they get paid? **Senator Anderson** What kind of contracts and what they get paid, do you have that information? **Rep. Mike Schatz** We can get it. It is public information since these are all public jobs and so, I am not exactly sure what they are getting. I thought it \$350,000, I can't remember. NDSU and UND and then the Chancellor all got the same thing. I think that was a bill in the last thing and this article that I had here it says that Chapman in 1999, was paid \$413,000, so these are big numbers.

Senator Judy Lee Just so I like to know the source of the information because I always ask that question when it's appropriate and the other thing is does that \$400,000 include only his salary from the Higher Ed system or is that include the additional quirks and benefits that were provided by the Foundation which is not taxpayer money. It is privately contributed.

Rep. Mike Schatz It comes out of the Bismarck Tribune in October 14, 2009. It said he was paid \$75,000 by the Development Foundation so it was contributed, so that was more.

Senator Grabinger I am going to go back to the bill here and talk about that because the way I read this, you kind of left it all open here. You're asking for a provision to be placed in their contract and the way I am reading it, and that could simply be something to the effect that if you're convicted of a felony, boom, you don't get nothing. But otherwise, you're allowing for a severance pay and it may be provided. So, I don't know if you're getting everything you want here. You could be opening the door and make it worse. I can see an easy way for them to get around this if they wanted too, do you?

Rep. Mike Schatz To me it limits them to the one year thing, but I can't remember who did this. Was it the opinion of a one of the attorneys or what, that the severance would be on a one year contract, would be for the determination of the, that year.

Senator Grabinger It also states, provided under this section. I don't see where it's clarified or the reasons spelled out how they can get that severance as it is not spelled out at in here. It is in the other section, I see it there.

Senator Dotzenrod On line 8 says allows for early termination for cause, so yes want this provision added, so the Board or the employer here would have to identify a cause. So, could the board say you know, Mr. New, Director or Head the Chancellor System you got everybody really mad, really upset, that's our cause. You're fired! Is that the "firing for cause"?

Rep. Mike Schatz You can't have where they are just really mad at you but we say that there is difference of opinion. We have philosophical differences. There is a phrase there that says you're allowed to "you're not fulfilling the contract in the way that we wanted".

Senator Dotzenrod Would the cause then be, we hired you with the lofty expectations that you've not met, therefore you're fired!

Rep. Mike Schatz If I could think of the reason there. **Chairman Burckhard** I think part of the drama is, is this position given a performance evaluation from his Board of Higher Education? They probably gave him a good evaluation. Then it turns out that everybody else in the state thought he was doing less than adequate job and that was the impetus for getting or terminating that position.

Rep. Mike Schatz It used to be that you didn't have to have a reason. I know for Superintendents of Public Schools they could fire them just because they wanted to make a change. They didn't feel that they were doing the district any good.

Senator Dotzenrod I guess the point that I am trying to get in this termination of the causes, is there any standards that the board would have to meet to be able to say that they've met the criteria for cause. Or can they just make stuff up and just say well we're really just feel that it's not working out, and it's time to just end this. Is that a reasonable and is there any criteria for it or do they have some where're in administrative rules or somewhere where they can't do it, or is just so open that it really kind of just depends on whatever they want?

Rep. Mike Schatz I believe depending on what kind of contract they drew up for them, I cannot remember the phrase that where they can just terminate because we have a difference of opinion and that they feel that they are not running their department the way they are supposed to be doing it. So, they can do it that way. It is called the loss of confidence.

Chairman Burckhard, Failure to lead and the loss of confidence.

Senator Anderson It is kind of like the Supreme Court here where we fired out the questions for you to answer. I don't think any of us are happy about paying people when we lose them, but the concern of course is that we can be competitive in hiring people and so forth and that's what we're trying to get to the bottom of here.

Rep. Mike Schatz You bet, I might add that I don't think there has ever been a spot that has gone one in Higher Ed that didn't have somebody apply that was qualified. I would like to know where those happen. There are lots of qualified people out there.

Senator Judy Lee You talked about wanting people from North Dakota. You want people who were born in North Dakota, and have stayed here. Do you want people who were born in North Dakota left and came back, you want people who were born in another state, and now are in North Dakota when you're talking about North Dakota's candidates for these positions?

Rep. Mike Schatz When I speak of North Dakota I guess I speak of the region. Minnesota, the Midwest people with values similar to ours in North Dakota would be a better statement rather than saying we're just from North Dakota.

Senator Judy Lee So I was born in California, and I am in North Dakota. I have been here a long time so. I was the first.

Senator Grabinger In lieu of the situation that we have at our Higher Education, I mean I struggle with this because I agree that I don't like paying people off like that either. But I lieu of the situation we've had with our last ones and what's gone on, for somebody to leave a very qualified person and the best person we could get, to leave a good position somewhere else to come here and take that under leading circumstances. I think this could tie our hand and I think that is where the concern is. Are we going to tie our hands by doing this so these people won't even apply? Yes we had 19 people apply, this time and it's the kind of job that I mean we're all looking for the super person to come in and take care of it. But, are we going to find that and if we tie their hands, I can't see these people leaving another position throughout the country to come here and take that.

Rep. Mike Schatz I can because when I guess when you say we got the best that we could get. How do you prove somebody is the best you can get? It's like saying that's the best English teacher, best of best, and I can understand the football coaches or whatever when they win the National Championships and you can say that's the best coach, because he won all the games. That is a way to prove that. But as far as a lot of these other things, are you proving that is the best person for the job or could somebody have come in operated the place at the same high level but for a lot less money or had less controversy. I mean you know, who is to say who is the best person and when you say there is 19 people that applied, there is probably another 119 that would like to apply but no their never even going to get a chance because they know that these qualifications are so high the people on the Board will never have or give them a look. So, I like to give the little guy a look because a lot of times, they can do a better job than you think.

Chairman Burckhard I think in business we've all see where someone who interviews very well and is not always the best person for the job.

Senator Judy Lee Back to your best football analogy. The best coach in some people's view might be the one who wins all the games, but he might not or she might not be the best coach as far as the way that individual that coach has interacted with the students in order to make them do their very best and motivate them. That was the situation in my opinion with Shirvani. He would interview well, he was very well spoken, he had some great ideas actually but the way he interacted with people was awful. I personally saw that kind of thing going on. Since that is what you're talking about let's talk about Shirvani. But as Senator Burckhard has said, that is something that isn't easy to really discover and evaluations never talk about that because if it's somebody who is really hard to work with they want to get them out of there and they just assume that we hire him. We've all seen those nasty situations too. So, I think this and Human Resources are a complex and not very scientific thing. There is a little gut in there some times and I don't know we legislate gut. I know where you're going and I agree, also with Senator Grabinger now of us like seeing those kinds of payouts. As someone who is trying to get \$5 for the Human Services budget, it bothers me a lot. I think it is really not a simple thing. Joe Menchin "said for every complex question there is a simple solution which is clear and wrong and sometimes we got to think about that too".

Senator Dotzenrod On line 6, definite it's a contract of a definite term with any state agency, would that include the football coach at NDSU?

Rep. Mike Schatz Yes it would, it would include all state employees. So, I don't know other buy-outs that have gone on in our government here in the capital or anyplace else. I just know I want it to end.

Chairman Burckhard asked if there was any opposition or neutral testimony for this bill. He then closed the hearing on HB 1444.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1444
3/27/2015
Job Number 25530

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the termination of employment and personal service contracts

Minutes:

"Click to enter attachment information."

Chairman Burckhard asked the committee to come together and discuss HB 1444. All senators were present.

Senator Anderson This is a good idea. What happens if we pass this I haven't seen enough information about what goes on now, what the motivation is behind the decisions that have been made to even feel like there is enough to make a decision? Now we have the emotional issue where nobody likes to pay somebody \$1 Million dollars for 4 years or whatever if their gone, but now maybe we should just pass it and then the people who have to live with the decision they can complain later because they didn't show up but on the other hand we haven't asked them to specifically either. But.

Senator Judy Lee I don't think the Board can come and tell us they don't like it for example or any of the other state agencies. I don't think they can do that. I think somebody from the Board of Higher Education maybe could, but I don't think that anybody from the tower could come down and do that. I don't like paying that anymore that anybody else does, I really hate it. But I think I am very concerned about the caliber of candidates that we would have. Why would a family move and why would a spouse give up a job, why would kids transfer school, for a one year deal. Honestly, it sounds like a little salary envy to me.

Senator Bekkedahl Sometimes they are not just giving up a job, they are giving up a career where their at. Senator Judy Lee Well maybe they had something to say then.

Chairman Burckhard Your timing is great, gentleman. We are discussing HB 1444 are you familiar that it is relating to the termination of employment and personal service contracts. Do you have a question for Maurry Savqeen?

Senator Anderson Maybe we could ask why we do things the way that we do now and why is Rep. Schatz complaining about all this and what is he see in it that you need at the Board of Higher Education?

Maurry Sagsveen Chief of staff in the University system office and I was here just. The other hearing ran too late and I wasn't quite sure why the bill had been introduced.

Chairman Burckhard Mr. Schatz introduced it and he was the only person that testified in favor of it. There was no opposition to the bill. He seemed pretty set on the fact that no state employees should have more than one year contract, period or severance pay.

Senator Grabinger Yes, that was the key. He didn't like the severance pay or the package that was given to Dr. Shirvani.

Maurry Sasqueen Fortunately, I was not there when Mr. Shirvani was given the severance package and there's been a considerable amount of criticism about that and I can't speak on behalf of that. But, the last sentence of that bill, the severance payments may be provided in the event of early termination as provided under this section. Sometimes in a organization early termination benefits the entire organization. I've been the Director of State Agency and am now the Chief of State of a state agency and sometimes things just don't go as their hoped or planned. I think there has to be some provision for severance and early retirement. Sometimes of course that can be perceived as being abused. I think that agency directors need a certain amount of flexibility to do things that need to be done.

Senator Anderson Do you have information on how many for example of our university presidents now have similar contracts that say, we're going to pay you if we fire you and what the general practice is for the Board of Higher Education and seeking a cash settlement for example. Do we just go out there and pay whatever we or make whatever agreements they ask us to or do we have some standards? How is that done?

Maurry Sagsveen The Board has a fairly specific policy about hiring presidents and the term that the presidents have and I think it might be helpful, as long as I know that you're focusing on presidents I can provide that information in summarize that in a memorandum to the chair explaining the policies, explain the termination policies, explain early retirement. We do have one president right now that is in an early retirement program and I can explain how that works and if that would be helpful to the committee.

Senator Bekkedahl I am going to focus on two questions. One on the bill line 8 where it says "must contain the provision that allows for early termination for cause". My question to the bill sponsor was, don't we already have that in some contractual language when we hire people at this level and that would be my question to you. I would just assume attorneys would say we should put this into the contract somewhere, so. Maybe you could speak to that first, then I have a follow up if you could.

Maurry Sagsveen I don't recall that provision is in a contract but there is a specific provision of policy that allows for termination for cause. The contracts that are written are subject to the Board policies. There are not written into the policies, they are not in the contract, they are incorporated by reference into the contract.

Senator Bekkedahl Reading on the severance pay, of 54-14-04.3 the summoners' pay definition settlements, on paragraph 3, is what I highlighted because I thought it was

material to what we are discussing. A state agency may within the limits of its legislative appropriations provide financial incentives to encourage an employee to retire or resign if the resulting departure will increase agency efficiencies or reduce expenses. I think that is the clause really that deals with what's been happening in my mind. If I can do anything to improve this language I would take the last line and say "increase agency efficiencies, reduce expenses, or improve operations", which tells me if communications break down and operations aren't running smoothly the Board could use that language in some capacity. I am not trying to rewrite legislation here, but to me it would add something to that.

Maurry Sagsveen Sometimes, separation agreements and severance agreements are a calculated means to reduce the costs to an agency because I've been in litigation working in state agencies where litigation can get very expensive and not only the cost of hiring council but distracting everybody from the operations of the agency because of depositions and interrogatories, and things like that. Sometimes it is just a cost decision to have a separation agreement because it costs far less than going through litigation. I've made those decisions myself.

Senator Bekkedahl So it may be helpful if you could look at that section, paragraph 3, of 54:14-04 and if you see that there would be any verbiage that could be added to that that may address some of the concerns of the original bill sponsor in 1444 and provide them to him. I would like to have your input. If you don't think it needs any changing or couldn't be improved at all, relative to this then, I accept that as well.

Maurry Sagsveen I'll provide that background memo to you and I will talk to Senator Bekkedahl to try to focus on exactly what you're looking for.

Chairman Burckhard closed the discussion on HB 1444.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1444
3/27/2015
Job Number 25549

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the termination of employment and personal service contracts

Minutes:

"Click to enter attachment information."

Chairman Burckhard brought the committee together for a discussion on HB 1444. All senators were present.

Senator Dotzenrod You know this bill, if you read line 8&9 it says 'it must not may, it must contain a provision that allows for the early termination without incurring any obligation for payment', to the end of the term. Okay, that is in the bill. Then the next sentence says, "severance payment may be provided in the event of early termination", only as provided in this section. So you go to that section and it says "the state agency may provide financial incentives to encourage an employment to retire or resign". So, I think that we're putting into the Century Code two sentences that say exactly the opposite. I don't understand how you can by law, can run or say these things that are basically saying "You can't do this but then the next sentence says you can". I think there is a problem with this bill.

Chairman Burckhard How are we going to take care of the problem, do we want to move on anything here?

Senator Judy Lee I move do not pass
2nd Senator Grabinger

Committee Discussion

Senator Dotzenrod If we take this to the floor with a do not pass, is there an answer to the critics who would say you know we are getting tired of paying out these big payments to these people. We have to fix that. How do you answer that?

Senator Bekkedahl The answer is just what you stated earlier. This committee does not want to put language in statute; that conflicts or poses as a conflict to the existing language and that is the message. We're not here to make conflicting language. I think in as much as

you abhor what has happened in the past, the current statute on severance deals with this already. I thought it did.

Senator Dotzenrod I think in addition to what Maurry Sagsveen said is that sometimes you can actually achieve a certain level of higher productivity and move the organization to move again. If you do this it's a cost, but if you try to save and not incur that cost, and get bogged down in some unattractive legal fight that is going to go on and on, you might be better just to have a system that makes a payment and then you can start and keep things moving. I got that out of what he said.

Senator Judy Lee Mr. Sagsveen said early termination sometimes benefits the entire organization and I think that is really important because sometimes it does. Actually Senator Burckhard you made some very good points that you made in the conversation about where in the business climate world in order to get good people and all so I think those would be good points to make on the floor as well.

Senator Anderson Rep. Schatz did point out like with superintendents of schools and I know even their own school district I know of a couple incidents when the superintendent comes without his family because his statement is sometimes with a school board you can never tell. Without a multi-year contract, it's hard to get somebody from Texas to North Dakota to take the job. Rep. Schatz would say get somebody from North Dakota then.

Roll call vote:

6-0-0 Do not pass

Carrier: Senator Burckhard

REPORT OF STANDING COMMITTEE

HB 1444, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1444 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1444

HB 1444
2/13/2015 1.1

15.0929.01001
Title.

Prepared by the Legislative Council staff for
Representative Schatz
February 12, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1444

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 54-14-04.3 of the North Dakota Century Code, relating to the termination of employment and personal service contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-14-04.3 of the North Dakota Century Code is created and enacted as follows:

Every employment or personal services contract of a definite term with any state agency, including the state board of higher education and institutions under its control, must contain a provision that allows for early termination for cause or for convenience without incurring any obligation for payment through the end of the term of the contract. Severance payment may be provided, in the event of early termination, only as provided under this section."

Renumber accordingly