

2015 SENATE EDUCATION

SB 2181

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
1/21/2015
Job # 22254 (24:04)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

INITIAL HEARING

Relating to the retention of school board minutes and the employment of a school district business manager

Minutes:

Attachments #1-3

Vice Chairman Rust called the committee to order at 9am with Chairman Flakoll absent for a separate hearing.

David Rust, District 2 Senator (*see attachment #1*)

Vice Chairman Rust: Over the years there have been times when we have been asked for information such as instances of teacher's fund for retirement or social security. We are asked about the amount of dollars that have been paid for a particular individual. There have been cases when we had to go back 40-50 years. We want to make sure we don't inadvertently allow for the destruction of some records that are crucial down the road.

Senator Oban: Do you feel like adding the language that was suggested after your conversation with Senator Heckaman would encompass everything that is necessary to keep?

Vice Chairman Rust: Page 3 of my hand out shows what the current law is in regards to what documents are required to keep.

(6) **Richard Marcellais**, District 10 Senator (*see attachment #2*)

(7:10) **Jon Martinson**, North Dakota School Board association (*see attachment #3*)

Martinson: We need clarity on the issue of authority between and among the school board, the Superintendent, and the Business Manager. The issue of payroll records is also not clear.

Senator Schaible: Schools are burdened with retaining the records. How can people access these records?

Martinson: Other than those 3 items that the schools cannot destroy, the districts can destroy records after 5 years. The public is welcome to come to any school district and look at open records given that the school has not in fact destroyed it after 5 years. If the state archivist has requested those, they would be at the historical society.

Senator Davison: Is there a legal format that they can save them in? Can they save them electronically or does it have to be a paper copy?

Martinson: They can store them electronically.

Senator Davison: Would for instance REA's business managers answer to their boards? Is that in Century Code?

Martinson: Up until the bill that this committee passed the other day, the State Law that applies to Business Managers in public schools also applies to businesses managers in the REA's based on Century Code.

Senator Oban: Have you had conversations with the schools that this will actually impact?

Martinson: Yes we have had conversations including discussion with business managers who work for the Superintendent. We work very closely with the Business Manager Board of Directors.

Vice Chairman Rust: I see this as 2 steps. One is you have some cases with administrators who feel it is a top down organization where school business managers can be in fear of losing their job if they approach a board with things that they think are not being handled as they should. On the other side, there have been business managers accused and convicted of taking money from the school district. It is also important that there is authority with the superintendent, so we don't have these issues. There needs to be a symbiotic relationship.

Martinson: Yes, the function of checks and balances is necessary. Years ago a business manager was a clerk, then a secretary, and now manger. This position has changed significantly with more responsibility and that is why this bill is necessary.

Senator Marcellais: There was a scenario in my district with a complaint against the superintendent. The business manager had to become the acting Superintendent for this complaint, so that is another scenario where this comes into effect.

Vice Chairman Rust: Would you be willing to work with someone in regard to the clarification of record storage?

Martinson: Absolutely. Our intent was not to circumvent or destroy files.

Vice Chairman Rust closes the hearing on SB 2181.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
1/21/2015
Job # 22268 (6:45)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee Work with **Anita Thomas**, Legislative Council

Minutes:

No attachments

Chairman Flakoll: Vice Chairman Rust has some amendments he may want you to draft, Ms. Thomas.

Vice Chairman Rust: When we repealed section 21-06-05, the concern we have is that we may have inadvertently allowed for the destruction of pay roll records and receipt and expenditure journals. As I recall as an administrator, I was asked on more than one occasion to go back sometimes many years to verify employment and amount of money paid, which can be a very important topic. It may not be the best language to guarantee that these significant documents are kept. We should clarify that within section 4 line 9. We may also deal with archivists as well.

Thomas: We can construct the language to reflect that.

Chairman Flakoll: If we don't adopt it, are we leaving some documents that aren't being preserved as they currently would be?

Thomas: I don't know what the federal government requires.

Chairman Flakoll ends discussion on SB 2181.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
2/3/2015
Job # 23070 (10:26)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE WORK

Minutes:

2 attachments

Chairman Flakoll: We have some proposed amendments offered by Vice Chairman Rust (*see attachment #1*)

Vice Chairman Rust: Anita Thomas did some legislative work on record retention. That is what this amendment is essentially about. I went to the Auditor's office. They sent me to ITD and ITD sent me to the School Boards Association. We found that federally, you need to keep records for 3 years not including the current year. For this reason we made this amendment by obligating them to permanently retain minutes of each school board meeting. The second is they should retain all other records for a period of 5 years and thereafter dispose of the records. The third is that they may consult the state archivist prior to disposing the records in order to determine whether the records may have any archival value.

Vice Chairman Rust moved the 15.0748.01003 amendments.

Senator Marcellais seconds the motion.

Senator Schaible: What is the definition of pay roll records?

Vice Chairman Rust: You keep everything for 5 years. Basically right now you would have pay roll records that you cannot dispose of them for 5 years, all of them.

Senator Schaible: What about if someone needs information for retirement? If they dispose of them after 5 years, they are out of luck?

Vice Chairman Rust: Yes.

Chairman Flakoll: These district records don't include every shred of paper or email you receive that is addressed to you correct?

Vice Chairman Rust: We didn't get into that.

Senator Oban: Why are we removing lines 13-31 on page 2? That is spelling out the duties of the district manager.

Chairman Flakoll: Most would remain current law. In the bill as introduced, lines 20 and 21 are new language. That would just not add that new language on those two lines. Where would those two lines be covered then?

Vice Chairman Rust: Item number 2 of the amendment

Senator Oban: Why in the proposed amendment, does it have it has us removing lines 13-31 on page 2 and lines 1-5 on page 3?

Chairman Flakoll: By removing it, you maintain current language. It is different than overstriking it.

Senator Schaible: Has the School Board Association looked at these minutes?

Vice Chairman Rust: I sent it to Jon Martinson.

Chairman Flakoll: print the email he sent you and add it to the record. (*see attachment #2*)

A vote was taken: Yes: 6, No: 0, Absent: 0

Vice Chairman Rust moves a do pass on SB 2181 as amended

Senator Marcellais seconds the motion.

A vote was taken: Yes: 6, No: 0, Absent: 0

Vice Chairman Rust will carry the bill.

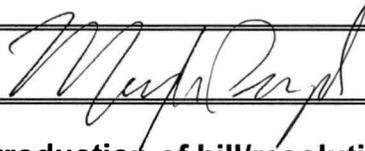
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
2/3/2015
Job # 23074 (7:28)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE WORK

Minutes:

No attachments

(3:45) **Vice Chairman Rust:** I am relooking at this bill and it says "all other records". That could be problematic. I should have had in the amendments "pay roll records and expenditure records."

Senator Marcellais: I think the pay roll records should be kept 7 years. That is what the IRS requires.

Chairman Flakoll: when Anita is down here, we will talk to her about this. If we have to, we will pull the bill back.

Vice Chairman Rust: I think we may need to do that. My concern is the language of "all other records" and what that would encompass. We were concerned only with payroll and expenditure records. I would feel more comfortable with that specific verbiage instead.

Chairman Flakoll closes the discussion on SB 2181.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
2/3/2015
Job # 23122 (18:08)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE WORK with **Anita Thomas**, Legislative Council

Minutes:

No attachments

Vice Chairman Rust: There didn't seem to be anything in law that stated that records needed to be kept for "x" number of years, so we drafted the amendment to say "or else otherwise provided by law" which then should take care of this confusion. Now the question is, did we inadvertently just force people keep more records than what was originally mandated?

Thomas: I believe that you clarified the law. If there was something in the law right now that said a specific period of time for specific records, we couldn't find it. We ended up picking a number of years so there will be consistency among the school districts.

Chairman Flakoll: There is a national archivist association that would have policies. My concern is that do they have to keep all of the mail they get without passing judgment of the value as deemed as records.

Thomas: I would want to look at what the open records requirements are in terms of their definition of a record in Century Code.

Vice Chairman Rust: Instead of having all other records, would it limit it and make it simpler by saying "all pay roll records and all records of revenue and expenditures for a period of 5 years?"

Chairman Flakoll: Our concern is "board minutes"

Vice Chairman Rust: the board minutes will be there permanently. The current law addresses pay roll records and records of expenditures and revenue. Would we be better off eliminating the word "all"? That is a matter of open interpretation and too vague.

Thomas: The reason we selected the phrase "all records" was because we could not find any consistency as to what pay roll records referred to on neither the state nor federal level.

Chairman Flakoll: Do we know what all records means?

Thomas: If in doubt, keep it. If somewhere else in law states that you don't have to, then you don't have to. If the open records requirement defines "records" differently, then that would prevail. If it is not in law then keep it for 5 years then toss it.

Chairman Flakoll: Whichever law is the longest essentially.

Senator Oban: We continually refer to things in this as financial reports. Does that suffice?

Chairman Flakoll: Financial reports are things that are more like balance sheets and year-to-date. Why do we have this bill?

Vice Chairman Rust: The school board association wants to know what they can throw away. The current law, which is 21-08-0605, says "after the documents have been offered to the state archivists for preservation as archival resources, the business managers may destroy by any suitable means determined by the school board its records after the records become 5 years old except the following must be retained as permanent records of the school district: school board proceedings, receipts and expenditures journals, and payroll records. Can we throw some of those?"

(9:20) **Thomas:** With the amendment that you passed, it would say unless there is a federal or state law to the contrary, now 5 years and then you can do with them with what you wish.

Chairman Flakoll: Should it be year-end so that it's not like every month's pay stub?

Vice Chairman Rust: What exactly does "pay roll record" mean? The School Board's Association needs some clarity. I agree with Anita that 5 years is a good amount of time.

Chairman Flakoll: You should visit with Jon Martinson and talk to other school finance workers. Tuesday we will come back to this.

Vice Chairman Rust: We've done that. We get differing answers from different folks

Thomas: Correct.

Chairman Flakoll: Perhaps you should send an official email to the auditor's office for their guidance. They are the ones who would write it up in many cases.

Thomas: I suggest the number of years is somewhat of an actionable amount. Pick a year, but at least everyone knows and there is consistency. In two years you are back here again.

Vice Chairman Rust: If we change "all other records" to "payroll records and records of receipts and expenditures" it would be somewhat better.

Thomas: If you can define what pay roll records are, that would be beneficial. If you can't find people who agree what that is, you need to assume that all records ought to be kept for a period of time until you can narrow that down substantially.

Vice Chairman Rust: Record means "recorded information of any kind regardless of the physical form or characteristic, by which the information is stored, recorded or reproduced which is in possession or custody of a public entity or its agent and which has been received or prepared for use of connection with public business or contains information relating to public business. Record does not include unrecorded thought processes but does include preliminary drafts and work papers. Records also does not include records in the possession of a court of the state.

Chairman Flakoll ends the discussion on SB 2181.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
2/4/2015
Job # 23193 (3:31)

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Bringing back the bill

Minutes:

No attachments

Chairman Flakoll entertains a motion to reconsider our actions by with which we passed out SB 2181 as amended.

Vice Chairman Rust makes the motion.

Senator Marcellais seconds the motion.

Vice Chairman Rust we can pass it out as is correct?

Chairman Flakoll: we have every option available if we bring it back.

A vote was taken: Yes: 6, No: 0, Absent: 0

The motion carries.

Chairman Flakoll ends discussion on SB 2181.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2181
2/9/2015
Job #23468 (5:44)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE ACTION

Minutes:

1 attachment

(see attachment #1)

Vice Chairman Rust: This amendment deals with replacing school board minutes with district records in item #2. If you look at this amendment, the only thing that has changed from the previous amendment is that we tried to address the question from the Chairman with regards to our having put in "all records" and in essence may have opened it up to a significantly wider field than what we had thought. We went back to what is currently in the law in which it retains school board minutes, pay roll records, and records of revenue and expenditure. We did an extensive search and talked to a number of people about records.

Vice Chairman Rust moves the adoption of the amendment.

Senator Oban seconds the motion.

Chairman Flakoll: This doesn't mean that they have to keep text messages and emails forever correct?

Vice Chairman Rust: correct.

A vote was taken: Yes: 6, No: 0, Absent: 0

Vice Chairman Rust motions for a do pass as amended.

Senator Oban seconds the motion.

A vote was taken: Yes: 6, No: 0, Absent: 0

Vice Chairman Rust will carry the bill.

January 29, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 1, line 2, replace "board minutes" with "district records"

Page 1, line 3, replace "sections" with "section"

Page 1, line 4, remove "and 15.1-07-21"

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 5

Page 3, line 8, replace "**board minutes**" with "**district records**"

Page 3, replace line 9 with:

- "1. A school district shall permanently retain the minutes of each school board meeting.
2. Except as otherwise provided by law, a school district shall retain all other records for a period of five years and may thereafter dispose of the records.
3. A school district may consult with the state archivist prior to disposing of records in order to determine whether the records may have any archival value."

Renumber accordingly

February 5, 2015

TD
2/9/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

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Page 1, line 3, replace "sections" with "section"

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Page 3, replace line 9 with:

- "1. A school district shall permanently retain the minutes of each school board meeting.
- "2. Unless otherwise provided by law, a school district shall retain payroll records and records of revenues and expenditures for a period of five years.
- "3. A school district may consult with the state archivist before disposing of records in order to determine whether the records may have any archival value."

Renumber accordingly

**2015 SENATE EDUCATION COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2181**

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 Marcellais

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) 6 No 0

Absent 0

Floor Assignment _____

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

**2015 SENATE EDUCATION COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2181**

Senate Education Committee

Subcommittee

Amendment LC# or Description: 15.0748.01004

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 Oban

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) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
 Replace "board minutes" with "district records"

REPORT OF STANDING COMMITTEE

SB 2181: Education Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2181 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "board minutes" with "district records"

Page 1, line 3, replace "sections" with "section"

Page 1, line 4, remove "and 15.1-07-21"

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Page 3, line 8, replace "**board minutes**" with "**district records**"

Page 3, replace line 9 with:

- "1. A school district shall permanently retain the minutes of each school board meeting.
2. Unless otherwise provided by law, a school district shall retain payroll records and records of revenues and expenditures for a period of five years.
3. A school district may consult with the state archivist before disposing of records in order to determine whether the records may have any archival value."

Renumber accordingly

2015 HOUSE EDUCATION

SB 2181

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2181
3/16/2015
24866

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to the retention of school district records and the employment of a school district business manager; to amend relating to school district business managers; and to repeal relating to the destruction of school district documents.

Attachment #1-3.

Minutes:

Chairman Nathe: opened the hearing on SB 2181.

Senator David Rust: District 2: introduced Engrossed SB 2181. (00:50-5:34) Offered a proposed amendment. I would urge a due pass as you would further amend SB 2181. (See Attachment # 1).

Rep Zubke: Why create the carve out for school districts exceeding 600 ADM. What about school districts that are 500, if it is good for one isn't it good for all?

Senator Rust: I think if you look at school districts enrollments there are some natural breaks. Then next break is probably 900. If you look at larger school districts they tend to be much more structurally oriented and have a procedure of how to do things. As you look at smaller school that is not quite as clear. In all the time I worked as a superintendent I always thought the Business manager answered to the board and not to me. I thought she was their agent. There are times in schools where you have conflicts between superintendents and business managers. Or you have a superintendent who wants to run things their way and sometimes boards are not given information that they need to be given in order to do what is right for their school district. This would clear that up.

Rep Meier: Page 2 line 16 where it states the "school district shall permanently retain the minutes of each school board meeting". In your opinion why would you want that?

Senator Rust: I think it is by law and it is imperative to keep those minutes for a long time every now and again you go back 20-25 years. Sometimes there are questions with

regards to annexation. Sometimes those minutes can contain some of the promises that were given to people and if you don't keep them there is nothing to hold you accountable for something that may be asked of you or if it would be "no" that was never decided upon. You just need to have them. You would be surprised how often you have to go back and see what is in the files for annexations. It is pretty crucial to have them.

Rep. Olson: With regards to the amendment, the number 600 perhaps being an arbitrary number, would you be comfortable if we simply adopted paragraph B and omitted paragraph A in that amendment?

Senator Rust: I don't have a problem with that. You might want to talk to Dr. Martinson and see what he thinks. I have great confidence in local school boards that they are going to set their governance structure the way they want it.

Rep. Kelsh: When you talk about retaining minutes are you talking about the minutes of the reorganization process or of all the school districts forever before that? They probably will become not pertinent after a while. Should all those be kept in perpetuity?

Senator Rust: In my opinion is yes. It won't take up that much space. You can probably have them in a binder. If you have school districts that consolidate you would want to keep those minutes. Most of the time they won't apply to anything, but a book of minutes doesn't take up much room and they should be kept.

Rep. Zubke: That is quite common in a lot of public institutions that minutes have to be kept permanently forever.

Jon Martinson: Executive Director North Dakota School Boards Association: in support of SB 2181. The point of this document is to show how all over the map the business position is. (12:25-15:20). (See Attachment # 2). Explains the bill. (15:21-19:01) (See Attachment # 3).

Rep. Kelsh: The bill does not say who is responsible for the storage of those minutes of a dissolved school district, is it the new school district or how would that work?

Jon Martinson: That is a good question and that is part of the nebulous nature of record retention. If you look at what Senator Rust was talking about you 21-06-05. That section says that a school district may destroy by any means determined by the school board its records after records become 5 years old except the following must be kept permanently: School board proceedings and receipt and expenditure journals and pay roll records. I don't know if it speaks to the issue you are addressing? That is current law.

Rep. B. Koppelman: on number 2 where Senator Rust had suggested some amendment language. That is your point you already made about how you would have liked it to have read. In West Fargo where I am from we have a model that loosely follows Fargo. The board has a direct relationship and oversight with the Business Manager. However, the superintendent can task the business manager with tasks and things of that nature so it is a sort of duo oversight. Could it say something like the business manager works for the board but the superintendent may exercise administrative oversight. Could we do it that

way or consider changing that? I only say this so when you talk about the amendment you can weigh in on that.

Rep Meier: Are school districts subject to audits and who does them if they are?

Jon Martinson: Yes, they are audited annually. They select an auditing firm, it is up to them.

Rep Meier: So it is completely up to the district to decide of what source they have do the audit.

Jon Martinson: It is up to the district to decide what firm but they must be audited annually.

Rep Meier: So that is annually and it is open to public view?

Jon Martinson: Yes and it is open public record.

Rep Rohr: On page 2 line 10, you have a statement here that says the district business manager has to present the financial reports. Is that not a ordinary part of the job of a business manager and who did it before?

Jon Martinson: Who did it before could be the business manager or the superintendent depending upon the relationship they have. We are trying to make it clear it is the responsibility of the business manager to make that report personally to the board.

Vice Chairman Schatz: Can a school district hire a firm to be their business manager?

Jon Martinson: Yes they can.

Chairman Nathe: When it comes to a business manager do they have to have a certain qualification?

Jon Martinson: They can just have a high school degree, we are proud of the fact we have initiated a business manager certification program and the courses are taught in finance, accounting and human resources etc. We have wonderful teachers for that and because of that education the questions have arisen where the business manager will call and say I don't think we have been doing it right in our district.

Rep Zubke: Could you address the carve out for the 600 ADM and why it isn't good for large institutions?

Chairman Nathe: One second, I want to get to the amendment.

Rep. Olson: With regards to the business manager who felt he could speak directly to the board, was that district larger than 600 ADM or did it have a clearly defined organizational structure to it?

Jon Martinson: It did not, it was under 600.

Vice Chairman Schatz: I noticed over the years there are fines for business manager if they are to break law. I don't think there are fines for superintendents or anybody else. For example, if they hire an unqualified unlicensed for a position and tells the business manager to pay them, it is the business manager that gets the fine. Is that correct?

Jon Martinson: I am not familiar with the fines. I am sorry.

Rep Schreiber Beck: Are there districts that have no business manager and a secretary does their books?

Jon Martinson: I can tell you that the position of the business manager has evolved over the years. They used to be the clerk, then the secretary and now as the business manager. I don't know if a certain school district doesn't have a business manager but I can tell you there is great variation among the job descriptions.

Rep Schreiber Beck: When we were talking about REA's they said they could offer those services to small districts, did I hear that correctly?

Jon Martinson: Yes, REA's can provide that service.

Rep. Olson: The question is if a firm or company can serve as a business manager for a district, is that correct?

Jon Martinson: Yes, they can.

Rep. Olson: In the amendment that we are doing here in section 1 is to strike serve as business manager of the school district under qualified elector. It seems as the law states right now it states you have to be a qualified elector, which to me would mean an individual who is a qualified elector. So how could we have a company or firm serve in that capacity?

Jon Martinson: That is a very good question. My comment on line 18 is not something that we were seeking that is done by legislative council to clean up the language. That is the best I can do to why that is out.

Chairman Nathe: We will have Anita Thomas answer that question.

Rep Hunsakor: On section 2 - 1 that applies to schools regardless of size and I am just not sure on section 2-2 when we talk about administrative oversight and the amendment goes in there. If the school is under 600 ADM so what happens with the administrative oversight with school boards in smaller schools?

Chairman Nathe: Let's just get to the amendment right now.

Jon Martinson: There is a section in code that deals with school boards duties and responsibilities and there are 34 items listed. Number 28 is "suspend or dismiss a school

district manager for cause without prior notice. Number 29 says "suspend or dismiss a school business manager without cause with 30 days notice". Our association has always viewed those two as that the business manager works for the board. I was questioned on that by a superintendent and he said it doesn't say it works for the board. That comment and the calls we received has led to this legislation. I needed to mention 28 and 29 because you are pointing out a possible discrepancy between lines 4-7 on page 2 and lines 8 & 9. I am up here thinking how ironic this is that you read lines 4-7 the way we have but district don't think that is clear. A month ago I would have thought there was a discrepancy there but since line 4-7 doesn't indicate the business manager works for the board. Apparently it is not I conflict with lines 8-9.

Rep Hunsakor: As I look at lines 8-9 I am thinking schools that are over 600 in the other part of the amendment are under administrative oversight but other schools are not?

Jon Martinson: Explained amendment. Only last week we heard from a member of a large school board that said we don't like this bill and we are going to fight this bill and we don't want to be in opposition our membership. Is there a compromise we can work out? The large districts like their organizational charts and we don't want to be in conflict with them. Our attempt to compromise with our membership was to separate the larger districts who have a clear organizational chart from those schools that do not. We are trying to clarify the role so we don't get in a fight with our membership. Our clarity is if you are under 600 you are this type and if you are over 600 you are this type. You are right, we are not treating them the same. Concerning the 600 and how we came up with that we worked with Mark Lemer, West Fargo. We came up with the number 600 based upon the review of a list of school districts and compared to the districts size and the weighting factors in the foundation aid formula. School districts at 600- 900 students are weighted at 1.01 in the formula and schools with 900 or more are weighted at 1.00. Either threshold will work for us because we are larger than that but I do think it makes some sense to tie the threshold to 600 backed by the size factors in the foundation aid formula, rather than just picking some arbitrary number. I do not want you to think the West Fargo supports this bill I think they are neutral. I don't want to overstate his help with us on this.

Chairman Nathe: The big schools feel their systems are working?

Jon Martinson: Yes, they do.

Chairman Nathe: Is the issue with the small schools and trying to bring consistency?

Jon Martinson: Yes it is with the small schools and it is not just the consistency but also it is the reporting requirements that we feel are very important especially in the smaller school districts. So those business managers don't feel that they are under the thumb of a superintendent that may not be approaching things the way he or she should.

Rep Kelsh: Some of the confusion could be coming in here because years ago in a small school district we hired a clerk, and that clerk signed the checks, helped develop the budget and didn't have any authority over the superintendent. That person has turned into the business manager for that school district. Most of us think of a business manager as someone that was separately hired and is there on a daily basis and reports to the

superintendent how things are going and probably includes the title of financial manager in that process. So I think that may be where some of the confusion is coming in. That may be some of the reason for the 600 because they may not be able to afford to hire a separate person to be the business manager.

Vice Chairman Schatz: How many schools have about 600 ADM?

Jon Martinson: I don't know.

Vice Chairman Schatz: 20 or somewhere in there? If we use the number 20 I have the feeling that you would have 20 different opinions about both the amendments and the bill and I don't feel that all the large schools want the amendments. That is how I feel but I know that there are 1 or 2 that do.

Rep Hunskor: Does section 2-1 establish a chain of command, board, superintendent, business manager?

Jon Martinson: Section 2 lines 4-7. That language currently exists in state law and I referenced that. I used to think it did until I got a call about it from a superintendent. Apparently it does not determine the chain of command.

Rep Hunskor: If that is not true, then where in here does it say it will be the line of authority in smaller schools?

Jon Martinson: Lines 8-9 is where it talks about lines of authority when it says "shall exercise administrative oversight" and in smaller schools is where we need the amendment.

Rep Hunskor: That is coming?

Chairman Nathe: You are right, lines 8 & 9 are where the chain of command is and that the amendment would define who falls under that.

Rep B. Koppelman: I am not sure the amendment in Senator Rust's testimony are the only way you could arrive at that. I wonder if something like this "the business manager is supervised by the board and the superintendent may exercise limited administrative oversight of the business manager delegated by the board". What you are saying that is different than part B of those amendments were is rather than having a fancy floor chart with a bunch of arrow that are hard to follow you could simply say "yes the business manager works for the board" but the board can also say "for the daily operations they answer to the superintendent, however they always answer to the board when the board wants them to". Does that make sense? I read testimony from Mark Lemer and from Broc Lietz in Fargo. It seems like that type of language would treat all school districts the same and it wouldn't require a smaller school district to have a bubble graph with all the names put on it like that. This would put it in verbiage instead of pictorially. It would allow a school district that has 400 students and want to honor that authority delegation. I think you could do it without having a fancy chart that you showed us from the large districts. Would you agree with that?

Jon Martinson: We thought about the language that you are talking about, it sort of delegates authority and that would give some wiggle room. Here is why we don't like that language. That kind of wiggle room, that delegation of authority on the part of the superintendent to the business manager does work in the big school districts. But here is where it doesn't work, that very school district and that very wiggle room would be abused by the very superintendent that has his or her thumb on the business manager. That is why we didn't propose that language.

Rep B. Koppelman: I understand there is a unique circumstance there, but with that said and by saying that the superintendent has limited administrative authority over the business manager and recognizing that they ultimately answer to the board. Not through the superintendent but directly. If you still have that circumstance like you are saying, I think the board would have plenty of reason and law behind them to deal with that. If the idea is here to make something ironclad for a certain size school district in a certain part of the state than I think this is the wrong way to achieve that policy. If we are going to write that gives them some tools to deal with the circumstance then I think that is good. But if we are going to make sure that arbitrary line is high enough to include that school district, I think that is a little parochial in nature for the policy. This is more of a comment but feel free to respond.

Rep Schreiber Beck: We had that provision that exists in 15.1-09-33 when we looked at school boards giving the authority for superintendents to suspend employees. I don't think we need any of this except if you want to revise your record retention. If item B was adopted as an amendment you are just saying it doesn't matter anybody can do what you want and it is a local policy. I think this demands some education by your Association to the superintendent administrators that say 15.1-09-33 says that particular individual is under the control of the board and therefore they should know that and the board should know that as well. We are almost creating more of a headache than you would solve. Since it exists and if there has been legal interpretation that that is what 15.1-09-33 means than maybe that statement needs to be revised if it is not interpreted properly.

Chairman Nathe: The existing language section 2 lines 4-7. As you have said a couple times, it is being misinterpreted both ways. How whatever they feel like, they are misinterpreting it both ways and what you are looking for is clarified language, and that is what lines 8 and 9 do.

Jon Martinson: Yes that is absolutely correct, and it has not been legally interpreted. It would be nice if our association would be able to interpret it for everybody and it would be convincing but in fact that is not the case and that is why we are here today.

Rep Schreiber Beck: Can it be interpreted legally? Let's get some interpretation on that before we decide this.

Rep. Olson: With lines 8 and 9 requiring the board to exercise the administrative oversight of the business manager, it is a hard and fast rule right now even with the amendment it is still going to be for anyone with an ADM than less than 600. Shouldn't the board have the authority to delegate that administrative oversight? What if the board

doesn't want the administrative oversight? It sound like you asking us to take away the board's ability to do that because of this particular district where the superintendent has so much clout that he could get the board to delegate anything. Should we really be taking away the power from everyone just to solve the power issue in one particular district? That is my concern.

Jon Martinson: I have a different view of this, we are not taking away power from the board we are giving them the power of administrative oversight.

Chairman Nathe: That's the boards, they don't want to take away power.

Rep. Olson: I understand, but here we are saying they shall exercise administrative oversight. They have no option to delegate. So we have taken away from them through lines 8 & 9 the ability to delegate.

Jon Martinson: I understand your point.

Rep. Olson: So my point is why would we want to take away that power simply because there is a power struggle in one particular district and now we are going to tell every district you all have to have administrative oversight. We don't think you can be trusted with that power unless you have more than 600 ADM.

Jon Martinson: My response to your question is exactly the same as it was to Rep B. Koppelman. If you have that delegation authority and have that wiggle room, this issue you deal with not just in one district, but you will have that issue in a number of districts that it currently exists in and it is going to continue. We think we need to do something about that.

Rep. Olson: But we are going to retain the ability to delegate if you have more than 600 ADM. If we adopt those amendments and without those amendments there is a lot of opposition with this bill as it stands. So I am assuming you are going to want us to adopt the amendments. Clearly the board does have the power to hire or fire the business manager and in the end he is going to answer to them unless they delegate that, which the bill we passed earlier gives them the ability. In the end this is a chain of command issue. Education needs to be made to the business managers to say listen you work for the superintendent day in and day out and do what he says but if you have a real problem in the end you can come to the board. It is kind of like whistle blower protection, we need to state that. I don't know if we need to take away everyones ability to delegate because there are a few business managers that are under somebodies thumb.

Jon Martinson: Your conversation is the exact one we have had with these school districts. Here is the irony of this, the board can hire them and fire the business manager s but they don't work directly for the board. So there is a little disconnect in our mind for that. The other thing you have said is the business managers need to be educated and that is exactly what we have been providing for them which is why this issue has come up. We are in fact educating them, the issue comes down to this 600 and below and 600 above and we have tried to say in amendment part B "as long as the board has established this alternate supervisory structure" such as the one I handed out in Fargo.

That structure helps provide clarity to the difference between the below and above 600. If you are hung up on the 600 piece maybe you think part B of the amendment is adequate. They sure can try that. My purpose would be not to lose the bill because of the 600 in the amendment. Think about that if you would.

Vice Chairman Schatz: I really like the bill, I am not too sure about the amendments. If we did pass the amendments we have this 600 threshold would then the schools below 600 say "we can draw a chart too and we like it that way too". Would we be fixing it the next session?

Jon Martinson: Actually we would like them to develop a better organizational chart. If they all start doing that we may very well be back here saying you know the 600 part isn't needed. People come back session after session with changes. There are number of things missing in those smaller districts that cause some problems for them.

Chairman Nathe: Are you wanting the chart look like Leads, they report right to the school board?

Jon Martinson: That was original intent before the amendment.

Chairman Nathe: If we would pass it with the amendment all the schools would be under that chart.

Jon Martinson: Correct, yes.

Rep B. Koppelman: Regardless if we passed the whole amendment or just the second part are we going to be running the risk that someday they could by policy completely take the authority away from the board to directly work with the business manager?

Jon Martinson: They couldn't take away authority through policy if the law says something different because our policies are based on the law.

Rep B. Koppelman: If they set a policy that says all supervising role of the business manager is by the superintendent. Then have a chart that looks like school district number 8 in West Fargo, then the only way the board member could work with the business manager is if they undid their policy, is that a risk?

Jon Martinson: Can you rephrase that in a different way?

Rep B. Koppelman: West Fargo's chart, where it says the board to the superintendent directly to the business manager where there is no arrow from the school board to the business manager at all. So if they said this is our policy in West Fargo now, would there be unintended consequences 5- 10 year down the road if the board is changed and a board member sees problems and wants to do right but they have the policy in place. Is that a risk? Are they going to be able to tie their own hands more than we would like them to? I think I am in agreement with you about how the relationship should be but if we don't have anything specific we might be going the other way from the intent of number 2 if we simply say they can do it differently as long as they have a policy. That is where I was trying to get

at with the original language which it says "the business manager does answer to the board but he may also answer to the superintendent for a certain role" that is different than if we adopt your amendment s.

Jon Martinson: That is right, it is different than if we adopt our amendments. You are talking about this organizational chart and you reference West Fargo. We do not recommend this, it is due to the amendment that we have this. So we are trying to work with your school district.

Chairman Nathe: Any other support of SB 2181? Any opposition of SB 2181? Seeing none. Closed the hearing on SB 2181.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2181
3/16/2015
24914 (1:59-6:58)

Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to the retention of school district records and the employment of a school district business manager; to amend relating to school district business managers; and to repeal relating to the destruction of school district documents.

Minutes:

Chairman Nathe: reopened the hearing on SB 2181. Rep. Olson did you have a question on SB 2181.

Rep. Olson: Yes. On line 18 page one of the engrossed SB 2181 we are striking from "qualified elector to serve as business manager of a school district and one of the questions asked of the School board association as well as the bill sponsor was whether or not a company or firm could serve as business manager for a school district rather than an individual under current law? Do you know if that is currently permissible for such a firm and what was the reasoning for striking the language? They didn't have an answer why line 18 was being struck.

Anita Thomas: When we were first asked to do this bill draft it was suggested that the reference to the business manager be removed. There wasn't any conversation other than what I would suggest is it really doesn't make sense in a section dealing with who is a qualified elector. It does not need to be in there. The other question, whether or not you need an actual person. The current law the school boards are authorized to employ an individual to serve as the school district business manager or to contract with any person and that would be an individual or another entity to perform the duties prescribed to a school district manager by law. So an accounting firm or something like that would be appropriate as well. i

Rep. Olson: This is not really changing that right that they have, what we are doing on line 18?

Anita Thomas: No.

Vice Chairman Schatz: However on line 11 and individual who is a qualified elector of this state, that was something. If you had a firm from Moorhead come over and do your business managing would that be legal?

Anita Thomas: As I look at it we could say that an individual of the state may serve as the business manager, it does not require that it be an elector of the state to serve as the business manager. It is very odd language and I am quite confident it goes back many, many years.

Rep Schreiber Beck: Can you interpret the reference on page 2 lines 4-7. It is referencing in code 15.1-09-33? Concerning the legality of those lines as they exist in that section of code, whether or not they have been legally interpreted to say that the school board does have control of the business manager?

Anita Thomas: The language you see on page 2 lines 4-7 could best be described as 'we really mean it language'. If you go into 15.1-09-33 which are the powers of the school board there are several that pertain to business managers. The first would authorize the school board to contract with, employ and compensate school personnel in general. The second the school board is authorized to suspend school district personnel, to dismiss, employ an individual as a school district business manager or contract with any person to perform the duties assigned to a school district business manager by law. The board is authorized to suspend or dismiss a school business manager, for cause or without cause given 30 days. That is all in the powers of the school board so this is just reiterating it.

Chairman Nathe: Any other questions? Seeing none. Closed the hearing on SB 2181.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2181
3/23/2015
25235

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whelham

Explanation or reason for introduction of bill/resolution:

Relating to the retention of school district records and the employment of a school district business manager; to amend relating to school district business managers; and to repeal relating to the destruction of school district documents.

Attachments # 1.

Minutes:

Chairman Nathe: opened the hearing on SB 2181. This bill is in regards to school district business managers. The bill would define who a business manager reports too and the structure. Rep B. Koppelman has amendments to propose.

Rep B. Koppelman: Senator Rust had some amendments in his testimony that started on page 2 line 9 and after "manager" inserts then there is an A and B category. That was in discussion to what the school districts have done particularly the larger ones like Fargo and West Fargo. There were examples of flow charts where the business manager had a relationship in terms of supervision with both the school board and the superintendent. I can see the merits in leaving the bill as is I wanted to work with the School Association to see what common ground we could find. What we determined was that we would not propose the part of the amendment that Senator Rust had presented that talked about school districts in excess of 600 as that seemed to be an arbitrary number, but rather write policy that would work for any school district. Instead of offering part B of Senator Rust amendment I handed out what I would propose. (See Attachment #1). Because this language paired with other language in this bill and other sections of code, the belief is that the school board would never be able to completely delegate away their relationship with the board manager. They are always in charge of hiring and firing the board manager but for any purposes they need to need to know numbers too on the district, the board would have access to that manager uninhibited by the superintendent.

Chairman Nathe: Did you talk to the School Board Association about this?

Rep B. Koppelman: This actually came from Jon Martinson in the System.

Rep Zubke: I will move the amendment on page 2, line 9 to SB 2181.

Rep D. Johnson: seconded.

Voice vote taken. Motion carried.

Rep Schreiber Beck: As Anita came in and we referenced the question does the school board have control over the business manager, and she pointed out 7 or 8 places. This section of the bill is related to one incident as I understand it. I don't know, but if we continue to fix every problem I am afraid we are going to have problems. To me it involves educating your boards and I would like to see that section removed from this bill.

Rep Zubke: I do agree that it looks like this all came from a single incident but I do think they identified a murky area that needs to be cleaned up and I think this bill does that.

Rep Schreiber Beck: I move to amend to remove Section 2 out of SB 2181.

Rep Mock: Seconded.

Rep B. Koppelman: One concern I have with amending out Section 2 is, now that this has come to light, this might draw a parallel to what we talked about with the preschoolers. Where the state didn't say they could use public funds for it. This is a similar scenario where school districts have found a way to operate in many cases to be as effective as they can they allow the superintendent to supervise the business manager in day to day operations, which in my mind is fine. This is how my own school district does this. However there was a circumstance when I was on the school board where the superintendent would not allow the business manager to share unvarnished information with the school board. The information had to be edited and it had to be manipulated to the way superintendent wanted it to be handled. Even if we take out Section 2 one of two things has to happen, if we take it out all the school districts who allow the superintendent to directly supervise day to day operations really should cease. We are sending the message we are aware of it now and we said no we like how the law was written. That is going to have a wide effect. If you are worried about having legislation about a single incident the cure for that is going to be widespread. Whereas if we leave the bill the way it is with the amendment I propose that will allow most school districts to be unhindered by the change but definitely clears it up in the way we codify it and we accept that way of management.

Rep Schreiber Beck: I don't dislike this amendment but it gives the school boards permission to do whatever they want to do anyway.

Rep. Olson: Rep Schreiber Beck I am on board with what you are saying 100%. I think this is a big misunderstanding and confusion of chain of command and there is a lack of education although it does put some clarity in the code. I think I will support the bill as amended because it establishes a default method of management in code which can be changed should the board decide to adopt it. Everything is clear from the point in the beginning the business manager works for the board and that is the default unless the board has adopted some kind of a modification of that arrangement which must be voted on and adopted. We are legislating on a single incident but it also part of the reason we

are here is to help these people. I don't think the change is going to substantially affect any other district. It adds clarity and creates a default role at this point which they are free to change.

Vice Chairman Schatz: So if we have an election and an new board, one board decides to put the business manager and put him under the superintendent and the new board comes in and says no he is going to come back to us. Can we get that, is that possible with this bill?

Chairman Nathe: Yes.

Rep B. Koppelman: With the way this is drafted along with the parallel sections of law that give the board its authority, this would assure the board would never give away all its authority. The business manager still has to directly give the reports and the board can demand something without the permission of the superintendent, that was the key to the amendments.

Chairman Nathe: Any other question on SB 2181? Seeing none. We have a motion to amend SB 2181 and remove Section 2. Clerk will take the roll.

A Roll Call Vote was taken. Yes: 3 No: 9 Absent: 1. Motion fails.

Rep Zubke: Do Pass as Amended. on SB 2181.

Rep Meier: seconded.

Chairman Nathe: Any other discussion? Seeing none.

A Roll Call Vote was taken. Yes: 12 No: 0 Absent: 1.

Vice Chairman Schatz: will carry the bill.

March 23, 2015

JK
3/23/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2181

Page 2, line 9, after "manager" insert "unless the board has established an alternate supervisory structure that is clearly defined in the board's policy and is represented in the school district's organizational chart, and through board action delegates to the superintendent supervisory responsibility of the business manager's daily operations"

Renumber accordingly

Date: 3/23/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2181**

House Education Committee

Subcommittee

Amendment LC# or Description: proposed amendment on Page 2 line 9

- 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. Zubke Seconded By Rep. Johnson

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					

Vote

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

amendment on page 2 line line

motion carried

Date: 3/23/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2181

House Education Committee

Subcommittee

Amendment LC# or Description: Remove Section 2 from the Bill

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. Schreiber Beck 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		A			
Rep. Meier		✓			
Rep. Olson		✓			
Rep. Rohr		✓			
Rep. Schreiber Beck	✓				
Rep. Zubke		✓			

Total (Yes) 3 No 9

Absent 1

Floor Assignment _____

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

"to remove Sect. 2"

motion fails

Date: 3/23/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2181

House Education Committee

Subcommittee

Amendment LC# or Description: 15.0748.03001

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

Motion Made By Rep. Zubke Seconded By Rep. Meier

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	A				
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Schatz

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

REPORT OF STANDING COMMITTEE

SB 2181, as engrossed: Education Committee (Rep. Nathe, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2181 was placed on the Sixth order on the calendar.

Page 2, line 9, after "manager" insert "unless the board has established an alternate supervisory structure that is clearly defined in the board's policy and is represented in the school district's organizational chart, and through board action delegates to the superintendent supervisory responsibility of the business manager's daily operations"

Renumber accordingly

2015 TESTIMONY

SB 2181

Mr. Chairman and Members of the Senate Education Committee:

For the record I'm David Rust, Senator from District 2 of NW ND.

SB 2181 is a bill that deals with the employment of a school business manager, the destruction of school district records, and the retention of school district minutes.

Section 2 clearly puts into law the following:

- 1) The selection, employment, suspension, and dismissal of a school district business manager belong to the school board,
- 2) Administrative oversight of the business manager is the board's responsibility, and
- 3) The business manager shall present all written or oral financial reports to the board.

There have been instances where school business managers aren't sure just "who" it is they "answer to" and/or "work for." Is it the superintendent or is it the board? This clearly states--the board.

Section 3, subsection 3 states that one of the duties of the school business manager is to "Dispose of school district records in accordance with federal law, state law, and school district record retention policies."

1

Section 4 creates a new section of the NDCC stating, "Minutes of each school board meeting must be permanently retained by the school district."

I was asked to introduce this bill by the NDSBA. Their executive director, Jon Martinson, is here and will give their rationale on why this bill is needed.

The bill also repeals Sections 21-06-05 and 21-06-06 of the NDCC. For your perusal, I've included those sections of the law at the end of my testimony.

Upon further reflection and after the questioning by Senator Heckaman, it is possible that an amendment may be in order with regards to the "exact" school district records that must be retained.

It may be as easy as to insert in Section 4 after "Minutes of each school board meeting" a comma, along with the words, "receipt and expenditure journals, and payroll records".

I urge a "Do Pass" on SB 2181 and will try to answer any questions you may have or will defer them to Mr. Martinson.

Thank you.

21-06-05. Documents which may be destroyed - When.

After the documents have been offered to the state archivist for preservation as archival resources, the business manager of a school district may destroy, by any suitable means determined by the school board, its records after the records become five years old except the following must be retained as permanent records of the school district:

1. School board proceedings.
2. Receipt and expenditure journals.
3. Payroll records.

21-06-06. Procedure for destruction of documents.

The school board of any school district desiring to destroy any documents under section 21-06-05, at its first meeting in January of each year, shall procure from the business manager of the school district a list of those documents paid more than five years prior to that time and against which the period within which an action might be commenced to determine the validity of such documents has expired. The list must contain a full statement and description of the documents to be destroyed, and the school board shall check the documents with the list. If the list is correct, the school board by resolution shall order the documents destroyed and in the resolution shall provide the manner of destruction. The list must be filed in the office of the business manager of the school district and retained as a permanent record.

2
1/21



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Richard Marcellais
District 9
RR 1, Box 267A
Belcourt, ND 58316-9787
rmarcellais@nd.gov

COMMITTEES:
Education
Government and Veterans Affairs

Testimony for SB 2181 Relating to the destruction of school district documents January 21, 2015

Chairman Flakoll, members of the Senate Education Committee, for the record my name is Richard Marcellais, Senator from District 9, Rolette County.

As a school board member since 1998, I feel its important for the district school board to have oversight over the school district business manager so all financial reports are available to make sound decisions.

School district records should be disposed in accordance with federal law, state law and in accordance with district school retention polices.

All school district board minutes should be permanently retained.

That concludes my testimony in support of SB 2181. I will try an answer any questions. Thank You

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#3
1/21

Senate Education Committee

January 21, 2015

Testimony by Jon Martinson, Executive Director

North Dakota School Boards Association

SB2181

I am Jon Martinson with the North Dakota School Boards Association. I am here to testify in support of Senate Bill 2181. This bill does the following:

Page 1, line 18: is removed because it is not needed. This section of the law does not list other jobs that qualified electors can hold in schools such as school superintendent, principal, teachers, and bus driver.

Page 2, lines 3-12: is new language to clarify that decisions regarding selection, employment, suspension, dismissal, and oversight of a business manager belong with the school board.

Page 2, line 20-21: ensures what happens to school district records given the repeal at the end of the bill.

Page 3, line 9: ensures that minutes of the school board meetings are retained permanently by the school district and those minutes include the very items being repealed in Section 21-06-05 because minutes of school board meetings include the very items that must be preserved:

- 1. School board proceedings
- 2. Receipts and expenditures
- 3. Payroll records

Page 3, lines 10-11: repeals Sections 21-06-05 and 21-06-06

Reasons for the recommendation to repeal these sections:

- 1. These two sections are in the government finance Title of code and this bill places school district record retention requirements in the elementary and secondary education Title.
- 2. Section 21-06-05 is not clear. For example, what exactly are payroll records?
- 3. Section 21-06-06 allows school districts to destroy certain documents at the board's first meeting in January of each year. But:
 - a. The January deadline does not coincide with the fiscal year
 - b. Does not take into account other record retention deadlines and audit record retention requirements.

We thought all bases were covered. However, after the bill came out, we received email correspondence from the state archivist who pointed out that section 21-06-05 requires that the documents first be offered to the state archivist for preservation as archival resources.

NDSBA believes this is covered by new language in this bill:

Dispose of school district records in accordance with federal law, state law and school district record retention policies; and

Minutes of each school board meeting must be permanently retained by the school district.

We are open to an amendment by the state archivist and certainly want to work with the state Historical Society.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 1, line 2, replace "board minutes" with "district records"

Page 1, line 3, replace "sections" with "section"

Page 1, line 4, remove "and 15.1-07-21"

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 5

Page 3, line 8, replace "**board minutes**" with "**district records**"

Page 3, replace line 9 with:

- "1. A school district shall permanently retain the minutes of each school board meeting.
2. Except as otherwise provided by law, a school district shall retain all other records for a period of five years and may thereafter dispose of the records.
3. A school district may consult with the state archivist prior to disposing of records in order to determine whether the records may have any archival value."

Renumber accordingly

NDLA, Intern 04 - Grossman, Tiffany

2
2/3/15

From: Rust, David S.
Sent: Tuesday, February 03, 2015 11:17 AM
To: NDLA, Intern 04 - Grossman, Tiffany
Subject: Fwd: School Records

SB 2181

David S. Rust
Sent from my iPhone

Begin forwarded message:

From: Jon Martinson <jon.martinson@ndsba.org>
Date: January 29, 2015 at 8:09:42 AM CST
To: "Rust, David S." <drust@nd.gov>
Subject: RE: School Records

My thanks to you David for all your effort on this. You are very much appreciated!

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Rust, David S." <drust@nd.gov>
Date: 01/29/2015 7:45 AM (GMT-06:00)
To: Jon Martinson <jon.martinson@ndsba.org>
Cc: "Rust, David S." <drust@nd.gov>
Subject: School Records

Jon:

I've been talking with Anita Thomas on school records retention.

She has checked federal laws: the requirement is to keep records 3 years.

She has talked to several people in the state and can't find anything on length of time or what needs to be kept.

We decided on writing the amendment that payroll records and revenue and expenditure records must be kept five (5) years.

That would mean keeping all of those records for five years and then they could be disposed of.

When I get the amendment, I will present it to the Education Committee for passage.

The above may not be exactly what you wanted, but it appears to be the best I can get.

Thanks for your patience and understanding.

February 5, 2015

#1
2/9/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 1, line 2, replace "board minutes" with "district records"

Page 1, line 3, replace "sections" with "section"

Page 1, line 4, remove "and 15.1-07-21"

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 5

Page 3, line 8, replace "**board minutes**" with "**district records**"

Page 3, replace line 9 with:

- "1. A school district shall permanently retain the minutes of each school board meeting.
2. Unless otherwise provided by law, a school district shall retain payroll records and records of revenues and expenditures for a period of five years.
3. A school district may consult with the state archivist prior to disposing of records in order to determine whether the records may have any archival value."

Renumber accordingly

#1
SB 2181
3/16/15

Mr. Chairman and Members of the House Education Committee:

For the record I'm David Rust, Senator from District 2 of NW ND.

Engrossed SB 2181 addresses the employment of a school business manager and the retention and destruction of school district records.

There have been instances where school business managers aren't sure just "who" it is they "answer to" and/or "work for." Is it the superintendent or is it the board? This bill should clear that up for the school board, the business manager, and the superintendent.

Section 1 removes the statement that the business manager of a school district must be a qualified elector of this state.

Section 2 provides the following:

- 1) Decisions regarding selection, employment, suspension, and dismissal of a business manager belong to the school board.
- 2) Administrative oversight of the business manager belong to the school board.
- 3) Written or oral financial reports must be personally presented to the board by the business manager.

Section 3 provides school board's with direction in regards to school district records:

- 1) A school district shall permanently retain the minutes of each school board meeting,
- 2) Unless otherwise provided by law, payroll records and records of revenue and expenditures must be kept for five years, and
- 3) A school district may consult with the state archivist prior to disposing of records to determine archival value.

Section 4 also repeals Sections 21-06-05 and 21-06-06 of the NDCC. For your perusal, I've included those sections of the law at the end of my testimony.

Since the passage of this bill by the Senate, there have been some discussions with some of the larger school districts concerning their governance structure and board policies. As such, I would offer to you an amendment which is attached to your handout.

It essentially creates an exception to board supervision of the business manager. On page 2, line 9 after the word "manager" insert two conditions:

- 1) if a school district exceeds 600 in ADM, and

- 2) if the board has established an alternate supervisory structure that is clearly defined in its policy and is stated in the school district's organizational chart.

I was asked to introduce this bill by the NDSBA. Their executive director, Jon Martinson, is here and will give their rationale on why this bill is needed.

I urge a "Do Pass" on a further amended SB 2181 and will try to answer any questions you may have or will defer them to Mr. Martinson.

Thank you.

21-06-05. Documents which may be destroyed - When.

After the documents have been offered to the state archivist for preservation as archival resources, the business manager of a school district may destroy, by any suitable means determined by the school board, its records after the records become five years old except the following must be retained as permanent records of the school district:

1. School board proceedings.
2. Receipt and expenditure journals.
3. Payroll records.

21-06-06. Procedure for destruction of documents.

The school board of any school district desiring to destroy any documents under section 21-06-05, at its first meeting in January of each year, shall procure from the business manager of the school district a list of those documents paid more than five years prior to that time and against which the period within which an action might be commenced to determine the validity of such documents has expired. The list must contain a full statement and description of the documents to be destroyed, and the school board shall check the documents with the list. If the list is correct, the school board by resolution shall order the documents destroyed and in the resolution shall provide the manner of destruction. The list must be filed in the office of the business manager of the school district and retained as a permanent record.

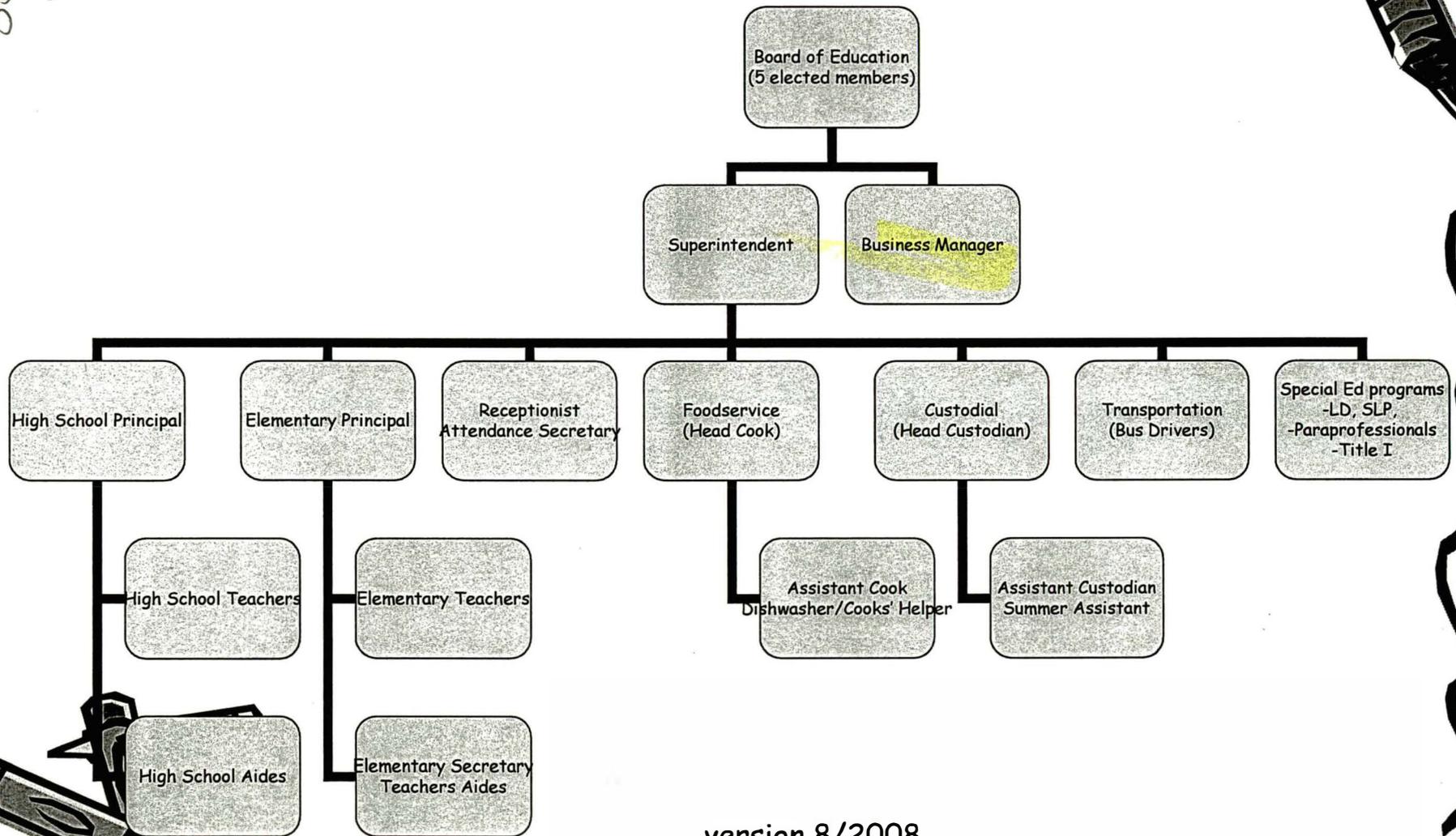
PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 2, Line 9, after "manager" insert "unless:

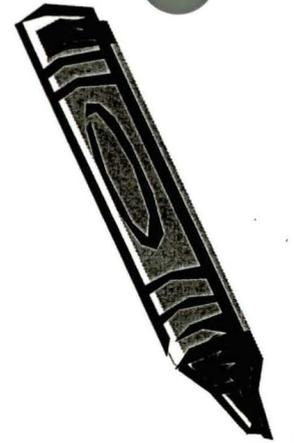
- a. the number of students in average daily membership of the school district number exceeds 600; and
- b. the board has established an alternate supervisory structure that is clearly defined in policy and is represented in the school district's organizational chart

#2
SB 2181
3/16/15

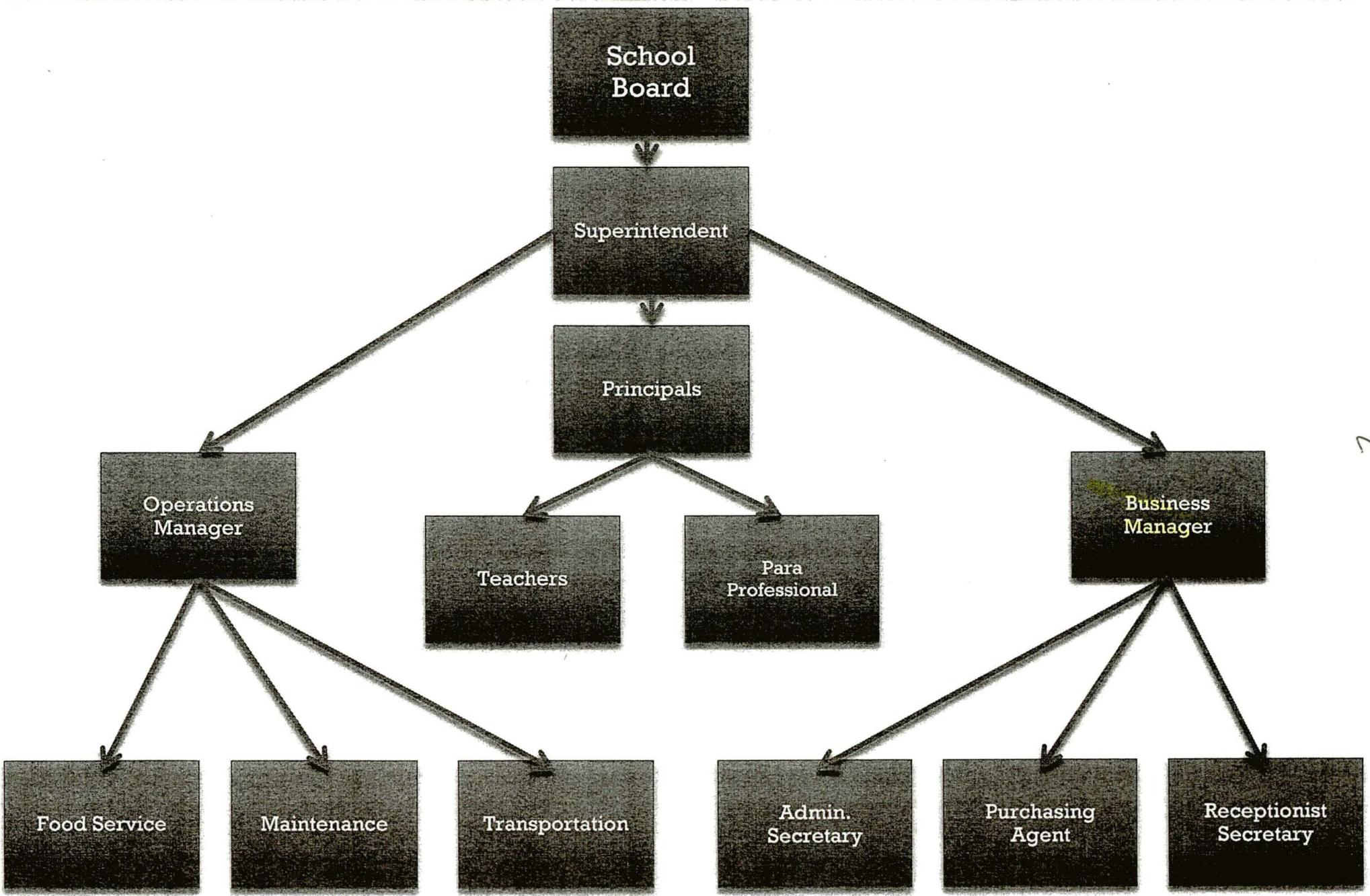
Leeds Public School Dist 6



version 8/2008



New Public School District #8 Organizational Chart



2

Fargo Public School District Patrons

Board of Education

FPS Foundation

Alumni Office

Dr. Jeffrey M. Schatz
Superintendent

Activities

Information Technology

Trollwood Performing Arts School

Todd Olson
Activities Director

Bill Westrick
Director of IT

Kathy Anderson
Executive Director

Assistant to the
Activities Director for
the Performing Arts

Building Activity
Directors

Broc Lietz
Business Manager

Dr. Robert Grosz
Associate Sup.

Dr. Rachael Agre
Assist. Sup.

AnnMarie Campbell
Exec. Assist.

Superintendent's Cabinet

Accounting

Secondary
Schools &
Principals

Elementary
Schools &
Principals

Community
Relations

Facilities

Curriculum &
Professional
Development

Curriculum &
Professional
Development

Transportation

Student Support
Services/Special
Education

Creative Arts
Studio

Nutrition
Services

Standards Based
Education

Standards Based
Education

Print
Services

Data
Analysis

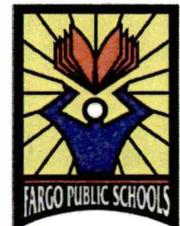
Mentor
Program

Emergency
Management &
Security

Career & Tech Ed

Human
Resources

Alternative
Education



Organizational Chart
Cabinet Level

3
SB2181
3/16/15

House Education Committee

March 16, 2015

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

SB2181

NDSBA supports Senate Bill 2181. This bill deals with two issues:

- (1) The role of the school business manager, and
- (2) School district record retention

Page 1, line 18: is removed because it is not needed. This section of the law does not list other jobs that qualified electors can hold in schools such as school superintendent, principal, teachers, and bus driver.

Page 2, lines 4-7 is not new language--it currently exists in state statute now (15.1-09-33) but it is underlined in this bill because will also appear in this section of law.

Page 2, lines 8-9 is new language to clarify that the school board shall exercise **oversight** of the business manager

Page 2, lines 10-12: is new language that financial reports must be presented to the board by the business manager.

Page 2, lines 16-20: ensures that minutes of the school board meetings are retained permanently by the school district and that unless otherwise provided by law, payroll records and records of revenue and expenditures are kept for 5 years.

Page 2, lines 21-22: repeals Sections 21-06-05 and 21-06-06

Reasons for the recommendation to repeal these sections:

1. These two sections are in the government finance Title of code and this bill places school district record retention requirements in the elementary and secondary education Title.
2. Section 21-06-06 allows school districts to destroy certain documents at the board's first meeting in January of each year. But:
 - a. The January deadline does not coincide with the fiscal year
 - b. January does not coincide with the school year cycle
 - c. It restricts destruction of records to one time per year
 - d. It would make more sense for administrators and business managers to work on retention records over summer months when school is not in session because they have more time to dedicate to this task
 - e. If a school district forgets to place records retention on the January board agenda, the process could be delayed another year.

#1
SB 2181
3/23/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 2, Line 9, after “manager” insert “unless the board has established an alternate supervisory structure that is clearly defined in policy and is represented in the school district’s organizational chart, and through board action, delegates to the superintendent supervisory responsibility of the business manager’s day to day operations.”

Renumber accordingly.