

2017 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1168

2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1168
1/19/2017
27127

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to restricting compensation and travel reimbursement for public employees for attendance at legislative meetings

Minutes:

Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9

Chairman Kasper opened the hearing on HB 1168.

Rep. Rick C. Becker appeared in support of HB 1168. There seems to me to be an incongruity when we have people coming, listening to bills, testifying, etc. The problem is that sometimes the interests of the taxpayers at large are in opposition to specific groups and in this case specific public entities who are funded by the taxpayer. You can have a number of people who benefit from a proposed legislation who are able to come here and be paid, and you have the taxpayers at large who have to try and somehow figure how to get off work and not be paid and forego any kind of salary for that day to be able to come and testify. The section and exemptions were pointed out. The parallel for a county or city, their budgets, etc. take place at the city and county commissions. That is why there is a difference in Subsection 2 for a state employee versus a non-state public employee. There are three reasons why a public employee would want to be here. They want to listen and they are curious as to how it is going to affect things at their particular department and their particular political subdivision. Much like the rest of the public, you can listen to tapes, go on legislative daily, or go on legis.nd.gov and you can get the information like all the rest of the citizens. You don't have to be here on the taxpayer dime because you are curious. The second reason would be if you want to be available for questions. You can still come because you are able to attend at the request of any legislator. That is 141 people that you can reach out to convince that you have something interesting to say about this bill that the committee would want to know. If none of those 141 people believe that what you have has value to the bill to the committee, you can still attend. You just can't be paid on the taxpayer dollar. The third reason why they may want to come is because they have a clear cut position on an issue and they want to make the case, or they want the presence in the room to indicate that there is a vast support to help put a sense of pressure on the committee. Those types of activities are called lobbying, and lobbying paid for by public funds, as I understand and in this Attorney General opinion, is not legal. Attachment 1.

Rep. Olson: As a cosponsor of this bill, I thought I was in favor of what you were doing. It appears that you may be granting new powers to public employees to testify through the provision of allowing any legislator to invite a public employee to expend public funds to come and promote the passage or defeat of legislation here. He read from 54-05, the legislative lobbying section of the code. I think much of what you are attempting to accomplish may already be in the law, and they may already need to be invited. In that case, what you may be doing with this bill is providing that they may be invited rather than by the committee itself that is hearing the bill, they could potentially be invited by any member of the legislative assembly to come and be authorized to promote passage or defeat of any bill. What do think about that?

Rep. Becker: You may be absolutely correct. This bill is addressing what is specifically occurring which is why we have significant opposition to the bill. Opposition doesn't want a restriction. They want to be able to come at will on the clock.

Rep. Laning: The way I read this, a small town would not be able to have that person on the payroll while they are down here. Am I correct that this would eliminate that as a paid person?

Rep. Becker: Yes, it would eliminate that for them to be on the clock. The question that you pose is if there is something that could affect a department in the city, I would think there would be citizens of the city that would be able to come and testify if indeed the auditor, for example, didn't want to take the unpaid time. What you bring up is one of the things this is addressing. The city auditor may want something and can come and testify for it but what about the people in the city? What if they have a different opinion?

Rep. Laning: It appears to me that it would be making it quite restrictive for a small political entity to have a voice. Most of the time, from my own experience, things are kind of last minute and to plan ahead of time to try to contact a legislator to have a representative from the city or county to come down and testify seems to be a big restriction as far as not getting a lot of information on particular bills.

Rep. Becker: I respect your opinion, but the only restriction is that the person wouldn't be paid by public funds to testify.

Rep. Dockter: I am on the Employee Benefits Committee, and I know that several agencies have their human resource person in attendance. They usually don't come and testify, but I assume that their department head requested them to be there to report anything, because a human resource person takes care of the employee benefits. Under this bill, unless they would testify to provide information, they would not be allowed to attend that meeting. Is that correct?

Rep. Becker: They would be allowed to attend at the request of any legislators the way I understand it.

Chairman Kasper: What about Lines 15-16? Would it not also apply at the request of the head of the state agency?

Rep. Becker: Yes, if they are a state employee, that is the other way to go.

Rep. Dockter: I am referring to Line 17, to provide information. All the human resource people that attend the Employee Benefits Committee never come up to the podium and give any information. I am just trying to clarify. I am sure their agency department head had them attend, but they are not going to give any information to the committee.

Rep. Becker: I understand your point. If they have nothing to provide and just curious, they can get the information when it is done. They are not compelled to testify.

Rep. Karls: We see some bills in this committee that deal with public county recorders. Wouldn't it make more sense for that group to have someone come and speak on their behalf rather than five or six take the day off, drive to Bismarck on their own dime, to testify on a bill that they might support or oppose?

Rep. Becker: If you have a bill on county recorders, it would be my hope and belief that it is highly likely that any county recorders that contacted a committee member would definitely be welcomed and not only that, the committee members would say to their particular county recorder that they have a bill about county recorders and would like him/her to be there. There is an abundant opportunity for county recorders to come and still be paid by public funds again assuming that Rep. Olson is referring to exists and is not adhered to.

Rep. Steiner: Your definition of public employee would be city, township, anybody working in a public capacity, not just state agency public employees?

Rep. Becker: Correct. If you have a W-4 with a political sub or state agency and if you are supposed to turn to your HR concerns in a state agency, you are a public employee.

Rep. Steiner: If an elected county official has a concern about a bill, he can come in on his own dime or he can be invited? Because he is an elected official, does he have the same standing that he can come in and represent his county as we do represent our districts? How do you draw the line where you have city councilmen who may want to come in also besides the city auditor? How would you define that?

Rep. Becker: This would apply to them if they are a public employee. If an elected official is considered a public employee, then this would apply.

Rep. Steiner: For example, a county may send a county commissioner because of a specific concern for that county, but he is performing his public duty, because not everybody from the county can take off work and come down and say we agree with our elected official. He is their representative. We are public employees in a sense that we represent our district, and we are paid by the state as well. To me, public employee is a broad term. I am concerned how we narrow and define it? How would you enforce that?

Rep. Becker: There are no penalties here. This is an understanding of how we view the proper role of public employees coming. Enforcement starts off with identifying if there is a concern. I can't imagine a legislator saying no to a request from a county commissioner to

come and possibly testify. This is a bill that tries to suppress the situation when the room is packed with taxpayer funded employees swaying the outcome of the bill.

Rep. Olson: I want to clarify something on enforcement. To expend public funds contrary to law is already a felony.

Dustin Gawrylow, ND Watchdog Network, appeared in support. For many years I have been involved in some discussion groups with other leaders of taxpayer advocacy groups around the country. This is a long standing issue. Many states address it in a statutory regulation approach. A lot of the remaining states address it in a transparency approach. ND doesn't address it at all. A lot of these issues need to be synced in with the corrupt practices statue. That states that elected officials are exempt as long as they are acting on behalf of the political subdivision as far as an official stance. A city commission could vote to give permission to the mayor or one of the commissioners to represent the city on the clock and be reimbursed for it. That could be in here as long as there is an accountability to elected officials piece. Many states have a badge system called blue badges. Each representative or senator or agency head has the ability to literally give them a blue badge to put on their shirt that states who gave them permission to come down, and when they testify or are in the room, they just sign a piece of paper saying they are here at the permission of X. As long as everybody knows who is giving the public employee permission to be there on the clock, that would be permissible. When it comes to the direct lobbying side of it, elected officials are allowed to give information and explain the ramifications of legislation, but they are not allowed to technically advocate a position with public funds. They can advocate a position in their role as a private citizen, but they are not allowed to send out flyers using the public dollar to do that.

Rep. Olson: Are you claiming that a political subdivision could make an official act to support or oppose any particular measure and then to thereafter expend public funds in pursuit of that goal?

Dustin Gawrylow: That is happening now. What I am saying is that we put into law an approach to insure transparency and accountability to create a paper trail as to who is giving permission to do that and how much it is costing the taxpayers.

Rep. Olson: I thought you stated that permission was given somewhere within code already for the subdivision to support or oppose a particular measure. Do they have to pass a resolution or make a motion to do that? Once that is done, are they then permitted to expend public funds to support or oppose a particular measure or bill?

Dustin Gawrylow: Right now corrupt practices statue states that an entity can take a stance but they cannot expend revenue outside of general operating revenue to do anything about it. All these things are happening now, so if we are not going to create regulation to prohibit them, the very least that we can do is create transparency and accountability and let the taxpayers know who is giving permission for their money to be spent either for or against their wishes.

Vice Chair Louser: If this were to pass, could a legislator make a blanket request for somebody to attend the full assembly?

Dustin Gawrylow: I suppose technically that could happen.

Vice Chair Louser: If this were to pass, would this create the opportunity for job descriptions to include that they are authorized to testify to the assembly and put that into the local budget?

Dustin Gawrylow: I think the prohibition on paying public employees to be lobbyists as part of their job description would probably cover that.

Chairman Kasper: Have you seen the AG's Opinion on October 29, 2015 that was given to Senator Wardner about lobbying? The law intern was asked to get copies of Attachment 2 for the committee.

Dustin Gawrylow: I have, but it has been awhile.

Rep. Rohr: What states have addressed accountability and transparency?

Dustin Gawrylow: The blue badge idea is out of South Dakota. Some states have it go through the Secretary of State. Some states have this process go through the Sargent of Arms or somebody at Legislative Council or equivalent. When money is spent, it is declared and put in a report just like you have to declare campaign finance contributions. That is where we should go with this. If public dollars are being used to influence and if we are not going to prohibit it flatly, let us at least create a paper trail.

Chairman Kasper: Is it your opinion that this bill would prohibit any elected official to come to this legislative assembly and be paid by the political subdivision that they were elected to without action by that county commission as an example saying Joe, you can go or a request by a legislator for that person to come?

Dustin Gawrylow: I think that is something that needs to be looked at. We want to make sure that even if there are loopholes to get around the actual lobbying and testifying piece of it, that it is documented, disclosed, what it actually costs the public.

Chairman Kasper: For example, any county employee, regardless of status that would come to the legislature to testify or listen would have to provide a report to the county that would be kept on file, an open record, that would show the cost of that person going and coming. Is that what you are getting at?

Dustin Gawrylow: Yes. If a piece in there was even added to allow them to document how much of their own money they are using, let them show that as well so the public is seeing both sides of the ledger.

Chairman Kasper: If you want to go that far, then would we have to require every citizen in North Dakota who comes on their own dime to file the same report someplace?

Dustin Gawrylow: Only if they work for a level of government.

OPPOSITION:

Nick Archuleta, President of North Dakota United, appeared in opposition. Attachment 3. (36:00-38:40)

Chairman Kasper: The intern had been asked to look up the definition of public employee. Attachment 4. (39:00-39:10)

Rep. Olson: What are your thoughts on members being reimbursed for their travel expenses for the purpose of supporting or opposing any particular measure?

Nick Archuleta: Are you talking specifically about the ND United members?

Rep. Olson: Public employees being reimbursed by whichever branch of government they work for.

Nick Archuleta: Right now depending on which agency you are talking about, they would have, I assume, specific rules and protocol that would allow the employees to come and testify, and they would do that as part of their regular work day. In terms of a public employee taking some time off like someone working at Grafton, if they wanted to come here, I am not exactly sure what the protocol is. I would assume that the department head would see if they had people to cover the shift if that employee wants to go. I would assume those protocols are already in place.

Rep. Olson: What we are looking at is the public employee being reimbursed for expenses compensated by the public entity. To your knowledge is advocating for or against any particular measure being compensated by the public entity?

Nick Archuleta: Not to my knowledge. If you have public employees that come down to listen to a hearing, for example, on some new rules that would affect their workplace and the work that they do, is it considered advocating for a position to offer input and expertise in that field? I suppose that would be up to the discretion of the person listening to it.

Rep. P. Anderson: On our previous bill the Secretary of State came and said he didn't like that legislation. That has influence on me. Should he have taken personal leave to come and testify on the previous bill?

Nick Archuleta: No. I don't believe that public employees should take personal leave either if they are coming down to do something in support of their work that they do on behalf of the citizens of North Dakota.

Rep. Olson: Is the funding of North Dakota United through dues to its members or is it public funding?

Nick Archuleta: It is all members' money.

Dr. Aimee Copas, Executive Director for the ND Council of Educational Leaders, appeared in opposition. Attachment 5. (44:23-48:12)

Rep. Olson: Are you referring to on the job with public funds or public reimbursement for travel?

Dr. Aimee Copas: Typically when our superintendents come, it is at the request of their school boards because a certain issue that we are dealing with has a direct impact on their district. They will come typically during the school day because that is when we are in session. Because they are at the request of the boards to come and represent them, they do not take a vacation day that day.

Rep. Olson: Would you say it is neutral testimony or is it opposing or supporting particular bills?

Dr. Aimee Copas: It depends upon the bill. We believe very strongly that education is a nonpartisan issue. However, there often are partisan bills that come before us in the legislature. To maintain that moderate idea of thinking, we think about if in practice this bill came to play, how would this impact our kids? Sometimes that means that the bill may or may not be in the best interest of them.

Rep. Olson: This would be public funds providing for their expenditure in support or opposition of any particular measure, however qualified by the fact that it has been approved by a motion of the school board or some other governing body?

Dr. Aimee Copas: That is accurate. The governing body would be taking a stance on a particular issue and asking that person to come and represent them here.

Rep. Olson: In your case, you are fully member funded?

Dr. Aimee Copas: That is accurate.

Rep. Karls: Can you sense the frustration of a person who wants to come in and give their opinion about a bill and it might be opposite of what you think? They might not agree that you are the experts. They might have a righteous opinion on something, but they have to buy their gas, provide their transportation, and be here on their own money. I am not necessarily going to support this bill. I can sure see the reason why it came before us, because the common citizen has no relief.

Dr. Aimee Copas: I agree. That is why we have a locally elected board that are there to represent the people, and that board is accountable to those people that do sit at home. That is why we have the representative process.

Rep. Steiner: I have a question from yesterday at finance and tax. The question we were debating was what was good for the taxpayer. We didn't have any taxpayers come from that district, so there wasn't a balance. We did take a position as I remember. Is that your memory of it?

Dr. Aimee Copas: What they did show was how the impact of changing that would have an impact on the taxpayer where there might have been some tax inequity within that district. What we were attempting to get across is that if that passed, we would need to have some

fixing on the finance formula side, because there would be some inequities where we would see our local taxpayers paying not equal amounts. There is a protection level there. Most certainly we are not saying that is necessarily a bad idea, but if we fix that piece of statue, we have to fix another piece of statue. As it stood with that bill alone, it would negatively impact some of our taxpayers in the district. Our locally elected officials and local superintendents are very protective of their local taxpayers as well in wanting to insure taxpayer equity.

Rep. C. Johnson: Are there any actual state employees in your organization?

Dr. Aimee Copas: No. It gets to the heart of what Rep. Kasper said earlier where there is quite a bit of confusion within our state as to how that definition plays out. Often times because of the trickle-down effect, the schools are looked at as being that statewide public employee as well.

Rep. Schneider: This reference of public employee applies only to the section on public personnel records administration. This should not be the end of our inquiry into what the definition is.

Dr. Aimee Copas: There is some good information on the National Council of State Legislatures where they do a 50 state analysis on exactly what the law is on each one of these 50 states. I would be happy to forward that link. In that analysis it does provide the statue so that may help in finding the correct definition of public employee.

Chairman Kasper asked the law intern to check with the Legislative Council office to get the correct definition of public employee. Attachment 9 was given to the committee a little later that afternoon.

Jon Martinson, Executive Director, North Dakota School Boards Association, appeared in opposition. Attachment 6. (57:47-59:37)

Chairman Kasper: I applaud your concern on free speech and the constitution which guarantees it. The message I would give to you to take back to your association is please try to remember that when they are making decisions on what kids in schools can say under the amendment regarding free speech.

Rep. Olson: Is the North Dakota School Boards Association publicly funded or privately funded from members?

Jon Martinson: It is funded by our members who receive public funds to run schools. It is not private funding.

Rep. Olson: I understand that they are public funds when they receive them, but once they receive them, they become private funds. They are free to spend them in any way they choose. If the School Boards Association is not receiving as a direct appropriation of tax revenue to them, then that wouldn't be public funded. If it is income from a member that is then being paid as a form of a due, that is not a public fund.

Rep. Steiner: Don't they allocate that in the school budget to pay dues to your organization so it is public funds?

Jon Martinson: You are correct.

Rep. Olson: Is it a combination of public and private funds?

Jon Martinson: Our members do not reach into their own pockets and provide funding for us.

Terry Traynor, ND Association of Counties, appeared in opposition. In Chapter 54-05.1 it defines lobbying and it talks about who can lobby and what they need to do in order to lobby. It goes on to say this chapter does not apply to any person who is a legislator, a private citizen, and then it goes on to say an employee officer, board member, volunteer or agent of the state or its political subdivisions whether elected or appointed or whether or not compensated who is acting in their official capacity. Our hope is that this legislation would not have a chilling effect on people performing their duty in their official capacity.

Rep. Rohr: Does it go on in that statute and talk about the transparency or the documentation of that information?

Terry Traynor: I don't believe that it does.

Rep. Olson: The official capacity of, say, county employees, in your understanding, does it include lobbying for or against any particular measure?

Terry Traynor: My interpretation is that if they are there speaking for the county or the city, they aren't lobbying. They are doing what the voters elected them to do or doing what the governing board that was elected had told them to do. If you are telling someone this is going to cost our county taxpayers a lot more money, and we don't think they want that, that is influencing but it is influencing on behalf of the taxpayers.

Bill Wocken, ND League of Cities, appeared in opposition. I am not sure if the cities of the state are affected by this bill based on the definition. If they are, the League of Cities would have to oppose this bill. One of the major concerns that was stated for the reason we need to have this bill is because taxpayer funded employees are perhaps going to sway the outcome of a bill. That assumes a committee is in some way bound by the testimony that is given. There are many questions that have been asked this morning that need to be answered. Until those questions, including the definition of public employee, are answered we feel this bill poses a big disconnect between state and local government, and we urge you to give a do not pass recommendation.

Rep. Olson: Is the League of Cities funded by public dollars or private dollars?

Bill Wocken: A dues structure that is paid by the individual cities.

Chairman Kasper: The individual cities who provide their dues are collecting their money from the taxpayers?

Bill Wocken: There is an element of taxpayer money and city budgets. There are also other sources of income in city budgets.

Chairman Kasper: There would be some ND taxpayer dollars there?

Bill Wocken: That is correct.

Deb Birgen, Director of Legislative and Government Relations for Missouri River Energy Services, appeared in opposition. (1:09:40-1:14:18) Attachment 7.

Marcy Douglas, Energy Services Field Representative with Missouri River Energy Services, appeared in opposition. (1:14:32-1:17:50) Attachment 8.

Rep. Schneider: If public employees had to pay their own way, do you see a desperate impact on those who would have to take off from Northwood to have input as opposed to someone who comes from Bismarck or Mandan?

Marcy Douglas: Yes, we do belong to agencies and pay from public funds, member dues, to the ND League of Cities or Missouri River to come here and represent us. That is vastly different than say if I was representing Bismarck. It is easy for me to come over here and maybe take an off time lunch hour instead of having to take an entire day, the cost of travel to come this distance. Yes, that would be a disparity then.

Chairman Kasper closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1168
2/9/2017
28122

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to restricting compensation and travel reimbursement for public employees for attendance at legislative meetings

Minutes:

Attachments 1-2

Chairman Kasper opened the meeting on HB 1168.

Rep. Steiner: She presented amendments. Attachments 1-2. Rep. Becker's point of this bill was public money being spent by public groups coming in and getting reimbursed. He actually meant for it to be all public employees including local political subdivisions, but Legislative Council thought they wrote it for agency people. Rep. Becker is worried about how much public funding is spent to get more public funding while taxpayers are at work. Attachment 1 says that it does not apply to an elected official of the state, like the secretary of state or a political subdivision, like a mayor. They would be exempt. In Attachment 2 the public employee is limited to a state agency, department, or institution, so that you would find out within the agencies if their time is being paid to testify. Rep. Laning, this allows the auditor to come. They just have to put in the minutes that they went and spent whatever so that the public would become aware of how much the public dollar was being spent in this activity.

Chairman Kasper: Are you proposing Amendment 1 or Amendment 2?

Rep. Steiner: I would propose Amendment 2. If we put them both together, it will just make the bill stronger because then it clears up that elected officials and county commissioners can come in.

Chairman Kasper: Your second amendment is dealing with Page 1, Line 17, and you have a different 2 on one. The first amendment Subsection 1 does not apply, or do you need to add Subsection 1 does not apply based upon how you have the second amendment written?

Rep. Steiner: I would like to discuss it with the committee and see how you feel strongly about one way or the other. I think if we gave the public notice of how much was being spent, perhaps that gets at least part way to what his bill was trying to address. I move the second amendment (17.0189.02002).

Rep. Rohr seconded the motion.

Chairman Kasper: If we do not add on your first amendment that Subsection 2 to your second amendment, what will we be missing and what will it detract from the bill or add to the bill?

Rep. Steiner: Legislative Council said this section of law in the bill only applies to public employees as agencies. However, the counties felt that it did include them because there are conflicting definitions of public employee. I think it would be helpful to add to the amendment we have in front of us that it does not apply to elected officials of the state or a political subdivision for clarification only. I would like to further amend the amendment. It would also say that it does not apply to an elected official of the state or a political subdivision.

Rep. B. Koppelman seconded the motion.

Rep. Laning: We are adding from the first amendment Subsection 1 does not apply to elected officials if they were political subdivision?

Chairman Kasper: Yes.

Rep. Laning: Are we just adding that onto 2 or replacing that?

Chairman Kasper: It is an addition to Amendment 2. On Page 1 after Line 17, we would add 2 and 3 on the second amendment. If we are taking the 2 on the first amendment, we would renumber 1, 2, 3.

Rep. Laning: We are adding two sentences to Paragraph 2 on the original bill?

Chairman Kasper: The amendment is to add the entire Amendment 2 along with that one line on Amendment 1.

Rep. Steiner: I think there is going to be a conflict here because these were drawn at different times. If it doesn't apply to a political subdivision, then how can we expect them to publish the minutes?

Chairman Kasper: We need to withdraw our action on this bill, and let Rep. Steiner get with Legislative Council and resolve the issue.

Rep. Steiner withdrew the motion.

Rep. Rohr withdrew the second.

Rep. B. Koppelman: I do not think these have conflict. If we took what she initially proposed which was Page 1 after Line 17 from Amendment 1 and then place that in addition to the entire Number 2. Then he read what it would say. (:12:49-:13:44)

Rep. P. Anderson: This is just a comment. I appreciate all the people that can come in and give us information. From what I have seen, it has worked very well. I do not think we should handcuff anybody.

Rep. C. Johnson: North Dakota is an open records state. I am not really sure that there is an absolute need for this bill. The local political subdivisions are in charge of their employees, and I would lean toward a do not pass on this bill.

Chairman Kasper: I learned to try and get the bill in the best shape possible before we take action. We will certainly have the vote as to whether or not we give it a do pass or a do not pass after Rep. Steiner meets with the Legislative Council.

Rep. Rohr: I would recommend Rep. Steiner to visit with the sponsor of the bill regarding your amendment.

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Fort Union, State Capitol

HB 1168
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28225

- Subcommittee
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Committee Clerk Signature

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Relating to restricting compensation and travel reimbursement for public employees for attendance at legislative meetings

Minutes:

Chairman Kasper opened the meeting on HB 1168.

Rep. Steiner: I am going to decline to amend this bill, because after speaking to the sponsor of the bill, he certainly doesn't want the second amendment.

Rep. Laning made a motion for a DO NOT PASS on HB 1168.

Rep. Dockter seconded the motion.

Vice Chair Louser: I recall there was concern about the definition of public employee, and the intent of the bill sponsor was to limit it to state employee. Is that what we were discussing as far as what an amendment might be?

Rep. Steiner: Legislative Council actually didn't write the bill correctly in the sense of what the sponsor intended which was all state funded political subdivision public employees. He did intend that if the city auditor from Center was asked by the mayor to come down that she could not use public funds to come down. That is not what is in front of us. We could fix it to his intent, but I am worried about this number of definitions on public employees. Legislative Council told me this only applies to agency people, but that is not what he had requested. I did have an amendment about not letting it apply to elected officials of the state or a political subdivision which would be like a county commissioner. However, that doesn't take care of Rep. Laning's concern about the auditor coming down from Center. The fact that there was so many things with this bill, I started thinking about do we really take away the integrity of the bill of what he was trying to explain in this bill? We actually can take care of this in legislative management if we would choose to.

Rep. B. Koppelman: As a cosponsor, I was under the impression that it was intended to reach beyond the state employee as well. I don't know that it was pondered as to whether

or not be an elected official. I think it was geared toward unelected staff people. I do believe political subdivisions as well as state was intended to be in this bill.

Rep. C. Johnson: The relationship between the legislature and the state agencies and the political subdivisions is critical and to try to restrict that communication with how the political subdivisions pay for their lobbying doesn't make sense to me, so I am in favor of the do not pass.

Rep. Olson: It has already been ruled by attorney generals in the past that public funds being expended for lobbying is not legal unless it is a home rule county or city in which case they can adopt by ordinance the ability to do that. I am a cosponsor of this bill, but I have had a change of heart about this bill for several reasons. Right now expenditure of public funds for lobbying is not legal, and so the question boils down to what is lobbying? Lobbying is defined as any person who attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly. It says in the same chapter that this does not apply to any person who is a legislator, a private citizen appearing on their own behalf, an employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated who is acting in that person's official capacity. That is one of the key points that I think is surrounding this debate is whether we have employees and agents of subdivisions or agencies who are actually acting in their official capacity when it comes to supporting or opposing different bills. Another paragraph states also invited by the chairman of the legislative management and interim committee of the legislative management or standing committee of the legislative assembly to appear before any of those, they are exempt from this lobbying provision. We have a restriction against lobbying, and then that restriction is lifted if we invite, but it has to be invited by a committee. In the bill before us, that invitation can be extended by any member of the legislative assembly. I think the restrictions that the bill is looking for are already present in the law. Perhaps they are not being applied properly or being treated properly, and I think we should look at that. I don't think the bill is necessary. I think we already have remedies in place that we need to examine.

Vice Chair Louser: Based on Rep. Olson's explanation, passage of this bill would then restrict public employees from attending meetings and not testifying. This would end up restricting people from sitting in a meeting and observing because they are not lobbying.

Rep. B. Koppelman: Should people, who are on the payroll and not using annual leave, be able to sit here and observe if their job is to administer a department or something?

Vice Chair Louser: It depends on their job description, and if their job description is to report back to their supervisor or their political sub or whatever it is, that takes us down to micromanaging beyond my capacity to want to even deal with, so I would support a do not pass on this bill.

Rep. Steiner: That is where I go back to legislative management. We have complete control over whether or not you allow observation, because we manage the state. You could have them check in and out, because then you would have a record of is it a serious issue of wasted time or is it just not?

Rep. Rohr: We have attorney general opinions. We have control of legislative management to enforce some things in terms of badges and signing in. Is there an education process here that needs to occur?

Rep. P. Anderson: Under this bill could Kelly Schmidt come and watch us, or would she have had to take time off?

Rep. Dockter: Any elected official is the exception to the rule.

Rep. Steiner: I think it does get to be a serious concern when you look at changing the health plan, and the room is stacked with lots of people who come down from the tower because they are upset about changing their health plan, and the taxpayer is not stacking the room. They are on the public dime while they stand here for two hours. I don't think this bill is the vehicle.

A roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent.

Rep. Steiner will carry the bill.

Date: 2-10-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1168

House Government and Veterans Affairs 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 Laning Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Jim Kasper-Chairman	X		Pamela Anderson	X	
Scott Louser-Vice Chairman	X		Mary Schneider	X	
Jason Dockter	X				
Craig A. Johnson	X				
Daniel Johnston	X				
Karen Karls	X				
Ben Koppelman	X				
Vernon Laning	X				
Christopher D. Olson	X				
Karen M. Rohr	X				
Vicky Steiner	X				
Steve Vetter	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Steiner

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

REPORT OF STANDING COMMITTEE

HB 1168: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1168 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1168

Attachment 1
1168
1-19-17

LETTER OPINION
98-L-152

September 30, 1998

Honorable Shirley Meyer
State Representative
HC-03, Box 78
Watford City, ND 58854

Dear Representative Meyer:

Thank you for your letter asking whether the Clerks of Court Association and the North Dakota Registers of Deeds Association may lawfully hire a lobbyist and whether Senate Bill 2002 passed by the 1997 Legislature is a mandate to the North Dakota judiciary to devise a clerk of court consolidation plan.

I will first address whether the Clerks of Court Association and the North Dakota Registers of Deeds Association may lawfully hire a lobbyist. According to the records of the North Dakota Secretary of State's office, the Clerks of Court Association has registered individuals as lobbyists for that organization in 1995 and 1993. There apparently is no record of the North Dakota Registers of Deeds Association having registered any lobbyists.

As a general matter, there is no legal impediment for organizations such as those you listed from hiring lobbyists to represent their interests in the Legislature, provided that N.D.C.C. ch. 54-05.1, concerning regulation of lobbyists, is followed. Where a legal problem does arise, however, is if a lobbyist is paid with public funds. As noted by former Attorney General Helgi Johanneson:

Serious doubt exists as to the legality of creating a committee . . . where such committee acknowledgedly proposes to expend or actually expends public funds to engage in political activity in the form of lobbying for or against certain measures or any other form. However, if a nongovernmental committee were created and complied with the existing laws pertaining to lobbying, etc., and otherwise complied with the law, no legal objections would be raised.

Letter from Attorney General Helgi Johanneson to LeRoy H. Ernst (December 6, 1972). In a later opinion issued by this office on a related issue of whether a board of county commissioners could expend tax money for the purpose of hiring a lobbyist, it was noted:

Honorable Shirley Meyer
September 30, 1998
Page 2

This office issued an opinion on January 17, 1951, . . .
". . .as to whether it is legal for a county to hire a lobbyist to be registered for a legislative session and to use taxpayers money for the same".

That 1951 opinion noted that there was no statute which granted the county commissioners such powers and went on to emphasize that the counties have only those powers expressly granted by statute. Therefore this office took the position that ". . .it would be illegal for the county to employ a person such as you mentioned in your letter even though the same was not classified as a lobbyist".

This office has not reversed nor modified this position with respect to the power of county commissioners to hire lobbyists since the issuance of the 1951 opinion noted above. . . . It is therefore the continuing position and opinion of the Attorney General's Office that such activities would not be an allowable expenditure of tax dollars under present law.

Letter from Attorney General Allen I. Olson to Oscar Solberg (January 24, 1977). If a county may not lawfully use public funds to hire a lobbyist, it logically follows that associations of county officials also may not use public funds to hire a lobbyist.

The term "public funds" is defined in N.D.C.C. § 21-04-01(5) as follows:

5. "Public funds" includes all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody. The term includes funds of which any board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose. The term does not include funds of

Honorable Shirley Meyer
September 30, 1998
Page 3

students or student organizations deposited in a student financial institution approved by and under the control of the school board.

The public corporation referred to in this definition of public funds includes a county, city, township, school district, and any body corporate except a private corporation. Id. Although this definition appears in the public depository chapter of North Dakota law, the North Dakota Supreme Court has recently quoted this definition of public funds with approval in Adams County Record v. Greater North Dakota Ass'n, 529 N.W.2d 830, 834 (N.D. 1995), and made it applicable to other situations.

As is apparent, this definition is quite broad; thus, any public moneys channeled to either the Clerks of Court Association or the North Dakota Registers of Deeds Association by a county or other public entity could not be used for the purpose of paying a lobbyist to appear before the North Dakota Legislative Assembly in the absence of a statute specifically permitting such an expenditure, and only then if such an expenditure otherwise conformed to other relevant provisions of North Dakota statutory and constitutional law. However, because it is my understanding that these organizations are nongovernmental entities,¹ they may utilize funds other than public funds to hire a lobbyist. For example, the individual members could contribute their own funds to be used for the payment of a lobbyist.

In view of the foregoing, and because there is no statute which would permit either a county or a nongovernmental association of county officials to use public money to hire a lobbyist, it is my opinion that the use of public funds for such activities is not lawful. However, such nongovernmental associations are free to use other unrestricted private funds for that purpose.

You also ask whether Senate Bill 2002 as passed by the 1997 Legislature mandates that the North Dakota judiciary devise a clerk of court consolidation plan. I found no provision in Senate Bill 2002 which explicitly mandates, orders, directs, or decrees that the

¹ These organizations are not mentioned or referred to in the North Dakota Century Code, unlike the North Dakota Association of Counties. See N.D.C.C. § 11-10-24. The Secretary of State's records indicate that the North Dakota Registers of Deeds Association is a nonprofit corporation. The Clerks of Court Association does not appear in the Secretary of State's records as a nonprofit corporation or other registrable entity; it presumably is an unincorporated association.

Honorable Shirley Meyer
September 30, 1998
Page 4

judicial branch devise a clerk of court consolidation plan. There are three provisions which somewhat touch on the question you raise. Section 1 of the bill appropriates \$100,000 for "[c]lerk of court consolidation funding" but does not mandate a consolidation plan. Section 6 of Senate Bill 2002 provides that

It is the intent of the fifty-fifth legislative assembly that counties use the provisions of chapters 11-10.2, 11-10.3, and 54-40.3 to combine or share the services of clerks of district court and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts.

Section 7 of the bill amends N.D.C.C. § 11-10-02 to provide, in part:

In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election.

(Emphasis supplied.)

The primary purpose of statutory construction is to determine the intent of the Legislature, which must initially be sought from the language of the statute. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). "It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears, but any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. Kinney Shoe Corp. v. State, 552 N.W.2d 788, 790 (N.D. 1996).

The statement of legislative intent contained in Section 6 merely provides that the judicial branch budget for the next and succeeding bienniums include funding necessary to efficiently fund administration of the district courts. While it may be advisable for the judicial branch to devise a clerk of court consolidation plan,

Honorable Shirley Meyer
September 30, 1998
Page 5

and while one might even reasonably infer that such a consolidation plan would assist the judiciary in establishing future budgets to efficiently fund administration of the district courts, the language in question falls far short of that which would be necessary to mandate a consolidation plan.

Similarly, the reference in Section 7 of Senate Bill 2002 cannot be reasonably construed to require a clerk consolidation plan. All the language of the statute provides is that in a county having a population of more than 6,000, the offices may be combined into a single register of deeds office if the county commissioners adopt a resolution combining the offices in consultation with the Supreme Court. Again, while it may be useful or appropriate for the Supreme Court to have a clerk of court consolidation plan in place to assist in consultations with such counties, the plain wording of the statute does not mandate such a plan.

Consequently, it is my opinion, based on a plain reading of Senate Bill 2002, that it does not mandate the judicial branch devise a clerk of court consolidation plan.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg

Attachment 2
1168
1-19-17

LETTER OPINION
2015-L-07

October 29, 2015

The Honorable Rich Wardner
State Senator
1042 12th Ave W
Dickinson, ND 58601-3654

Dear Senator Wardner:

Thank you for asking whether a public entity, specifically the North Dakota State Board of Dental Examiners, may hire a lobbyist with public funds if the authority to hire a lobbyist is not specifically provided by law. It is my opinion that a state agency or political subdivision may not use public funds to hire a lobbyist unless such authority is specifically provided for by statute or if the state agency or political subdivision has authority to promote or advocate in specific subject areas. Also, certain home rule counties and cities may hire a lobbyist if authorized by their home rule charter and implemented by ordinance. Public employees are exempt from the requirement to register as a lobbyist, and may testify before the Legislature on matters within their official capacities.

ANALYSIS

Regarding public funds, the North Dakota Supreme Court has held:

The people and the legislature, through the constitution and laws of this State, have delineated the parameters of the appropriate expenditure of public funds, and any expenditure in violation of those provisions by definition creates a loss to the government.¹

In 1998, this office opined that public moneys provided by a county or other public entities could not be used to pay a lobbyist to appear before the Legislative Assembly in the absence of a statute specifically permitting such an expenditure, and only then if such an expenditure otherwise conformed to the relevant provisions of statutory and constitutional law.² However, this office has also indicated that it might be possible to hire a lobbyist if the state agency or political subdivision has statutory authority to promote or advocate in specific subject areas. For example, in 2002, this office determined that the North Dakota Wheat Commission, which

¹ State v. Blunt, 751 N.W.2d 692, 700 (N.D. 2008).

² N.D.A.G. 98-L-152. See also N.D.A.G. 64-177.

had the statutory authority to promote wheat-related issues, could use wheat checkoff monies to contract with other wheat organizations for lobbying services.³ Also, a county or city with home rule authority allowing it to control its finances and fiscal affairs may pass an ordinance determining that it will hire a lobbyist.⁴

A complete answer to your question must also examine the general laws regarding legislative lobbying found in N.D.C.C. ch. 54-05.1. This chapter requires registration and reporting by any person who attempts to secure the passage, amendment, or defeat of any legislation or the approval or veto of any legislation by the Governor, and also by anyone who attempts to influence decisions made by Legislative Management or an interim committee of the Legislature.⁵ The chapter does not apply to any person who is “[a]n employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person’s official capacity.”⁶

Also, state laws allow counties, cities, and school districts to expend public funds for the purpose of participating in organizations of counties, cities, or school districts.⁷ Under certain conditions, these organizations’ employees and officers are not required to be registered as lobbyists.⁸ As the law prefers substance over form,⁹ these individuals must be bona fide employees, officers, volunteers, or agents, and not hired lobbyists masquerading as employees, officers, volunteers, or agents.¹⁰

³ N.D.A.G. 2002-L-63 (N.D. Wheat Comm’n contracting with other wheat organizations for lobbying services). See also N.D.A.G. 93-L-187 (N.D. Council on the Arts contracting for lobbying services); N.D.A.G. 93-L-357 (N.D. Dep’t of Human Services’ Div. of Aging Services contracting with the Silver Haired Educ. Ass’n for lobbying services); and N.D.A.G. 94-L-49 (Garrison Diversion Conservancy Dist. paying membership fees to the Greater N.D. Assoc. for lobbying services).

⁴ N.D.A.G. 2011-L-06.

⁵ N.D.C.C. §§ 54-05.1-01, 54-05.1-02(1).

⁶ N.D.C.C. § 54-05.1-02(2)(c). See also N.D.A.G. 2002-L-63; N.D.A.G. 77-58.

⁷ N.D.C.C. §§ 11-11-14(15); 40-05-01(74); 15.1-09-33(18), (33).

⁸ See N.D.A.G. 77-58 (citing Bradley v. Saxbe, 388 F.Supp. 53 (D.C.D.C.1974)).

⁹ N.D.C.C. § 31-11-05(19).

¹⁰ The exception for an agent does not imply that an agent may be hired for lobbying where the state agency is not authorized to directly hire a lobbyist. It has long been held that “the law does not permit by indirection what cannot be accomplished directly.” Langenes v. Bullinger, 328 N.W.2d 241, 246 (N.D. 1982). Cf., N. States Power Co. v. Hagen, 314 N.W.2d 32, 38 (N.D.1981); State v. Skar, 313 N.W.2d 746, 748 (N.D.1981); Paluck v. Bd. of Cnty. Comm’rs, Stark Cnty., 307 N.W.2d 852, 857 (N.D.1981). Further, exceptions to statutes are strictly construed “so as not to extend the exception beyond the ordinary and literal meaning of its language.” Midwest Fed. Sav. Bank v. Symington, 423 N.W.2d 797, 798 (N.D.1988) (citing Knoepfle v. Suko, 108 N.W.2d 456, 458, syl. 3 (N.D.1961)). The exception would nullify the general rule against hiring a lobbyist if it were interpreted as authority, in itself, to hire a lobbyist.

LETTER OPINION 2015-L-07

October 29, 2015

Page 3

In conclusion, it is my opinion that a state agency or political subdivision generally may not use public funds to hire a lobbyist unless such authority is specifically provided for by statute. However, it might be possible to hire a lobbyist if the state agency or political subdivision has authority to promote or advocate in specific subject areas. Also, certain home rule counties and cities may hire a lobbyist if authorized by their home rule charter and implemented by ordinance.

You specifically asked about the authority of the State Board of Dental Examiners to hire a lobbyist. That board has authority to hire an executive director, attorneys,¹¹ investigative staff, and clerical assistants.¹² A diligent search of all chapters in the Century Code concerning the State Board of Dental Examiners did not reveal any specific authority authorizing that Board to employ a lobbyist. Also, the Board does not have authority to promote or advocate on any particular issues. Thus, only board members and bona fide employees, officers, volunteers, or agents of the State Board of Dental Examiners may lobby the Legislative Assembly or the Governor on the Board's behalf.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹³

¹¹ This power is subject to my constitutional and statutory authority to appoint assistant attorneys general and special assistant attorneys general to represent state agencies. N.D.C.C. § 54-12-08. I have not authorized the State Board of Dental Examiners to hire an outside attorney.

¹² N.D.C.C. § 43-28-06(5).

¹³ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).



*Great Public Schools**Great Public Service*

Testimony before the House Government and Veterans Affairs Committee

HB 1168

January 19, 2017

Good Morning Chairman Kasper and members of the Committee. For the record, my name is Nick Archuleta and I am the president of North Dakota United. On behalf of our 11,500 members across the state, I rise to encourage a DO NOT PASS recommendation on HB 1168.

One issue our members have with HB 1168 is that it appears to raise more questions than it answers and seems to be a solution for a problem that is not readily apparent. The term, "public employees" covers a great many people. These dedicated men and women work a variety of jobs in numerous venues across the state. They work for the state of North Dakota, for counties, for townships, for school districts, and for municipalities from Bowman to Pembina, from Williston to Wahpeton, and from Beach to Fargo. Given the number of public employees in these entities, I would suggest to this Committee that relatively few of them ever attend legislative sessions, legislative standing committee meetings, or interim legislative management committee meetings.

Another area of concern is that this legislation, if enacted into law, may have the unintended consequence of impeding a public employee's ability to more efficiently do her job. The public employees who, on occasion, attend legislative functions have told me that they do so to learn more about policies that direct their work, to learn about legislative intent of legislation that governs their work, and to hear how the agencies with whom they interact interpret their shared mission. Higher education faculty and researchers attend hearings occasionally to better understand the legislature's views related to budgets, research, and other issues that may affect their campuses. I can assure the Committee that no one I have talked to attends these important sessions in order to find a quiet place to sit and reflect.

Finally, Chairman Kasper and members of the committee, there is no mechanism for enforcement of this legislation should it become law. It is not immediately clear just who in this room today are public employees, and even if it were, it would take some time and effort to determine their employer, if they were on personal leave for that hour, or if they were in violation of the law.

Mr. Chairman, state agencies and political subdivisions all have agency heads and other professionals to manage their personnel. ND United believes that they should be allowed to do continue to do so.

With that, Chairman Kasper and Members of the Committee, my testimony is concluded and I'll stand for any questions.

close of the fiscal year in which the funds are distributed or received or until audited, whichever is sooner.

54-06-21. Public employee personnel records - Administration - Access.

The official personnel file on each employee is the file maintained under the supervision of the agency head or the agency head's designated representative.

1. No documents that address an employee's character or performance may be placed in the file unless the employee has had the opportunity to read the material. The employee must acknowledge that the employee has read the material by signing the actual copy to be filed or an attachment to the actual copy to be filed, with the understanding that the signature merely signifies that the employee has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign the copy to be filed, the agency head or the agency head's designated representative shall indicate on the copy that the employee was shown the material, was requested to sign the material to verify that the material had been read, and that the employee refused to sign the copy to be filed. In the presence of the employee and a witness, the agency head or the agency head's designated representative shall sign and date a statement verifying the refusal of the employee to sign the copy to be filed. The material must then be placed in the file.
2. The employee has the right to answer any material filed and any answer must be attached to the file copy. The employee's answer to material filed may not be used as the basis for any subsequent adverse personnel action. If any material is found to be without merit or unfounded through an established grievance procedure, it must be immediately removed from the file and may not be used in any subsequent actions or proceedings against the employee.
3. The employee or the employee's designated representative must be permitted to examine the employee's official personnel file by appointment during normal business hours.
4. No anonymous letters or materials may be placed in the employee's file.
5. The employee must be permitted to reproduce at the employee's expense any material in the employee's file.
6. An employee may file a grievance regarding nonevaluation material placed in the employee's personnel file. A grievance is limited to an internal agency grievance unless such material is merged into a disciplinary proceeding.
7. This section does not prohibit administrators from maintaining written notes or records of an employee's performance separate from the personnel file for the purpose of preparing evaluations or possible disciplinary action.
8. Administrators are encouraged to place in the employee's file information of a positive nature, including any such material received from outside competent and responsible sources, indicating special competencies, achievements, performances, or contributions of a professional or civic nature.

Except when the employing agency inserts only salary, insurance, medical, tax, workforce safety and insurance, pretax benefits, or deferred compensation information or employment forms, a record of access must be maintained by the employing agency and must be provided to the employee when the employee examines the employee's file. As used in this section, the term "public employee" means any person employed by the state and does not include persons employed by any political subdivision of the state.

54-06-22. Crime victims' account - Administration.

The agency designated by the governor to administer the victims' assistance grants under the federal Victims of Crime Act of 1984 [42 U.S.C. 10601 et seq.] shall administer a crime victims' account in the state treasury. The moneys in the account must be distributed through grants to the crime victims' compensation program; private, nonprofit domestic violence or sexual assault programs; and to victim and witness advocacy programs whose primary function is to provide direct services to victims of and witnesses to crimes. The administering agency shall establish procedures for the distribution of grants.

Attachment 5
1168
1-19-17



Testimony in Opposition to HB 1168
NDCEL
Dr. Aimee Copas - Executive Director
1/19/2017

Good morning Chair Headland, Vice Chair Dockter and members of the committee. My name is Dr. Aimee Copas and I serve as the Executive Director for the North Dakota Council of Educational Leaders which represents our school's leaders including the Superintendents, Principals, County Superintendents, Business Officials, Career and Technical Education Directors, Tech Ed Directors, Special Ed Directors, Athletic Directors and REA Directors. We come to you in opposition to HB 1168 which limits the ability of state employees or public employees to participate in the legislative process and to be reimbursed for such time i.e. inability to participate while on the job.

The reality of the world today in many ways, the direction and function of an organization is directed by our local or state government. In a state like North Dakota, which is a citizen led legislature, we have a wide expanse of experiences that make up the body that leads our state. As a natural consequence, it is rare to have a large group of individuals serving in a specific area of government that have an extremely high or as close of a level of experience in a specific area as those who serve in that department or entity.

I will use the area of education as an example. Even the most innocent or seemingly simple bills can have an extensive butterfly effect sometimes causing unintended negative consequences. Education is a tremendously complicated field where often the breadth of experience of an individual is limited to their own attendance in school. Having the experience and expertise of educational professionals in the process helps to provide the best opportunity for the legislature to be as informed

as possible and most certainly helps direct our state toward a more positive outcome than would likely exist without this participation. Specifically to the area of education as that is the group I am here to represent, it is clear that the best decisions are made when the “boots on the ground”, when the field is here to assist with that decision. Educators are a solutions focused group of individuals. At the core of who we are, we are individuals who have an intense desire to do what is right to ensure that our student receive the best possible experience. We do that within the structure of law, and sometimes within the confines of law. When our educators do make the trip to meetings to visit face to face with their legislators, it is when the decisions and topics are not light ones. We are either trying to bring to your attention a problem that is occurring and we are seeking the help of the legislature, or we are here to share with you how your suggested change could either positively or negatively impact what we do for kids. Our students are our most precious commodity we have in this great state. We must do right by them. To do that, we must ensure that the opportunity still remains to have our Superintendents, Principals, Teachers and other administrators fully participate in the process – even when that means that they come to you during session. If we are truly a democratic republic who wishes to be by the people for the people, we must listen to the people. We ask that you not make decisions that impact education without the input of the Superintendents, the Principals, or the Teachers.

We respectfully request your recommendation of Do Not Pass of HB1688.

Attachment ✓
1168
1-19-17

HB 1168 – Testimony

Jon Martinson, Executive Director
North Dakota School Boards Association
January 19, 2017

While our association anticipated a number of topics that might come up during this legislative session, I must admit that we never anticipated a bill that would attempt to regulate free speech by putting controls on spending.

Citizens in North Dakota strongly favor local control. Except apparently when some of our citizens become legislators. Now they want to deny the right of political subdivisions to decide when it is in their best interest to have their employees participate in committee hearings. Apparently, some legislators prefer testimony by public employees to be by invitation only.

If the North Dakota Legislature can prohibit spending by school districts for this targeted purpose, what's next? More political mischief.

Offering testimony during the legislative session is part of the responsibility of school administrators, and at times teachers, counselors, and others who have specific expertise. We think their experience, insight, and knowledge make for better legislation. This bill would create a hardship for public employees because now they would be required to take time off to come here.

The effect of this bill will be to decrease the number of people participating in the democratic process and how is that a good thing?

North Dakota legislators should be champions of the freedoms granted to citizens in the Bill of Rights. Instead, this bill attempts to make it more difficult for public employees to participate in the legislative process.

We request a DO NOT PASS vote on HB 1168.

Attachment 7
1168
1-19-17

Testimony on HB 1168
House Government and Veterans Affairs
January 19, 2017

Good morning, Chairman Kasper, Members of the House Government and Veterans Affairs Committee, my name is Deb Birgen. I serve as the Director of Legislative and Government Relations for Missouri River Energy Services (MRES). I am speaking to you on behalf of Missouri River which is a municipal power agency that provides wholesale electricity to six member communities in this state, including Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City. MRES appears before you today to voice opposition to HB 1168.

First, as municipal power agency, MRES serves supplement power and other electric services to 60 member municipal electric utilities in 4 states, North Dakota, Iowa, Minnesota and South Dakota. As a result, we are also politically active in all four of those states. In the past fifteen years at MRES, I have seen many bills introduced that had an effect, sometimes positive, sometimes negative on either MRES or its member cities. Often MRES weighs in with legislators on those bills; additionally we have asked our members to weigh in on those bills directly as well. Marcy Douglas is here with me today, and as a former North Dakota city Administrator and Auditor, she will speak directly to this bill from the perspective of a MRES member community.

Rather unusually, I'd like to start with two examples of how this bill could fail to protect the public from unintended consequences. Right now in Ohio, there is a state law that has been passed which states instead of plywood to board up a foreclosed or abandoned home, clear plastic boarding is to be used. When I heard the story, I personally thought it was a great idea. Neighbors don't have to look at the ugly boards and it's not an invitation for graffiti. Then I heard concerns expressed by firefighters. Instead of an axe, it would take an electric saw to cut through the polycarbonate sheeting. It could significantly delay getting into a structure, possibly

losing opportunities to get access quick to control a fire. Also, if you did have squatters sneak into an abandoned home, and are trapped by a fire and the only exit has the polycarbonate board that can't be broken...is that a risk to life? Here is an issue that arose after the fact, because the firefighters' views were not recognized earlier.

Second, I point to Minnesota's Next Generation Energy Act. Although not successful in getting lawmakers to abandon the bill, MRES and our municipal electric community members came to the capitol and spoke to legislators personally and testified against the bill. A portion of the bill interfered with Interstate Commerce and this was pointed out by MRES and several others. Yet, the bill was passed and eventually, after thousands of dollars spent in litigation, the state of North Dakota won its lawsuit having part of the Minnesota law ruled unconstitutional. Incidentally, MRES was one of the named plaintiffs in the lawsuit on the side of North Dakota.

In these examples, the persons speaking up were public employees. They spoke up because they had the expertise.

In all four states we have members. lawmakers propose measures to resolve problems or provide opportunities for constituents, with the best of intentions. However, whether the measure appears on its face to affect only non-public entities or not, it is not possible to know all of the potential incidental problems a bill can create. Right now in Minnesota, I am working with a Representative on a bill he proposed which would allow the hydro-power of the dams of the Missouri to count toward Minnesota's Renewable Energy Standard. Without going into a lot of unnecessary details here, there are some problems with his proposal, including an unintentional result that it would mean MRES and its members would be required to build renewables on top of renewables already built. This is a perfect example of a bill written to assist an investor owned utility in Northern Minnesota, had implications for many of the 126 municipal electric utilities in Minnesota—implications that the legislator would have no way of knowing about until

approached by municipal representatives. A measure that may appear to only have implications for the private sector may, instead, jeopardize public financing if bonds have been issued for capital projects that do not appear – on the face of the bill – to even be implicated.

Even measures backed by one or more public entities can possibly have vastly different effects on other public entities because there is such a wide diversity in a state as vast as ND. What works for the 3 biggest counties, or the 10 largest cities or school districts, could have a catastrophic impact on the average or smallest entities.

This bill also brings up legal ramifications. In each of the examples I gave—it is the duty of a firefighter to speak up if a state law has safety implications, it is the duty of a municipal electric utility director to speak up if a bill will impact city rate-payers. If city employees must lobby on their own time and pay their own expenses, cities (and other political subdivisions) will be forced to decide whether to break this state law or the federal Fair Labor Standards Act to participate in the public lawmaking process. It would force city employees to use their own vacation or other leave benefits and pay their own expenses to inform or lobby – in short, forbidding cities to pay for the hours and expenses of non-exempt employees who are working on the city's behalf violates the FLSA.

MRES is also concerned over whether this is a first amendment violation. It forbids public entities from having someone present at a committee hearing to better understand the impacts of a bill on its city; it forbids informing lawmakers of problems in an open hearing unless invited. It is settled jurisprudence that laws that impose costs for the exercise of a fundamental right are impermissible and unconstitutional burdens that federal courts will strike down.

City employees live and work in the community they serve. These are the people who pave our streets, assure safe drinking water, and patrol our streets. They need to know they are welcome at the capitol. If nothing else, this bill says that while protesters from out of state may

attend any hearing they chose on pipeline siting or other issues, citizens of North Dakota who have the interest of their community as heart are not.

In conclusion, I would request that this committee give **HB 1168** a **Do Not Pass** recommendation. At this time, I would be happy to answer any questions, otherwise I would like to introduce you to Marcy Douglas and have her cover some additional information that she can present regarding HB 1168.

Attachment 8
1168
2-19-17

Testimony on HB 1168
House Government and Veterans Affairs
January 19, 2017

Good morning, Chairman Kasper, Members of the House Government and Veterans Affairs Committee, my name is Marcy Douglas. I am an Energy Services Field Representative with MRES. Prior to that, I served as the City Administrator and Auditor for the city of Northwood, North Dakota for almost 15 years. During that time, I appeared on behalf of the city of Northwood and MRES here at the state legislature. I spoke on issues related to deregulation, on taxes, and other issues. I also attended various legislative meetings after the Northwood tornado. It was important to express our needs and concerns directly to the legislators in response to our response issues.

One of my concerns regarding this bill is that if public employees are not allowed to attend legislative hearings, even to listen—and on their own dime, it is possible that issues impacting the city will be missed. As city Administrator and Auditor, I was not just an employee of the city, but a member of the community. I was acutely aware that a bill that impacts the city utility also impacts my friends and neighbors who are served by that utility and those friends and neighbors will pay the costs if a bill is not crafted correctly or if something is overlooked.

When a public employee is here testifying or talking to legislators they are not here on personal interests. They are here to protect the rights of their entire community—thousands of individuals. It is not their personal agenda; they are there representing ALL of the citizens. For example, it was in my job description to follow legislative issues that impacted the city and do what I could to address any adverse impact. Also, if a city employee is at a hearing listening, or talking to individual legislators that affect the city, or testifying; it is usually because the Mayor, the City Council or the citizenry has requested they do so on behalf of the city and its residents.

I have also found that if I just send an email or phone, things can be misinterpreted or nuances missed. After the tornado, I had many, many phone and email communications. Trust me when I say that even simple information can get garbled or forwarded incorrectly. Public employees need to know that they are welcome at the capitol to listen to committee meetings to determine how a proposal will affect their city, utility or community.

I also point out a unique project that I am working on at MRES. At the municipal level, it is getting more and more difficult to attract and keep qualified personnel. Everything from city auditor, to utility engineer, to line workers—younger people are not going into these fields and are not staying in these smaller communities. On top of that, these jobs are getting ever more complicated. For example, Water and Waste Water managers are sorting through state and federal laws on water treatment and are hearing the complaints from customers on the costs of keeping in compliance. Electric utility directors are dealing with the complexities of cyber security concerns.

In order to help city employees address these complexities, I have assisted in developing a Mentorship Program to provide utility and city managers who are new to their position with knowledge, insight, guidance, and support related to their position. Experienced mentors are matched with new public employees. If HB 1168 were to pass, it would place another burden on these new managers. In addition to the overwhelming complexities and changes in state and federal laws they must comply with, they now see this bill. Whether intended or not, it can be seen as a message that they are not appreciated nor is their opinion wanted at the capitol. I can see utility managers sitting back and watching with frustration as private sector employees are sent in droves to the Capitol to express interest on a bill—or to watch paid environmental lobbyists push for a water quality bill that the utility manager knows is not needed and will cost ratepayers money—while being told they can only come to the Capitol on their own dime—or

wait for an invitation from the Capitol. Sure, a utility manager could email and call and ASK if they may testify. But do we really want our public employees to wait for permission from a third party to do their job to protect the safety and needs of the community. And even if they ask, they are not allowed to show up and just listen at a hearing, unless on their own time. Again, the frustration of watching paid protestors fill a room, knowing that the person who cares for the ratepayer and knows the ratepayer is not welcome.

With that I would urge a **Do Not Pass** recommendation for **HB 1168** and I would be open for questions.

Attachment 9

1168

1-19-17

Re: HB 11168

NDLA, Intern 09 - Gordon, Megan

From: Ness, Claire J.
Date: Thursday, January 19, 2017 1:03 PM
To: Kasper, Jim M.
Cc: NDLA, Intern 09 - Gordon, Megan
Subject: Definition of public employee
Attachments: scan.pdf

Rep. Kasper,

I understand you requested research on the definition of "public employee" and, in particular, whether that phrase was defined for chapter 44-08 of the Century Code. The phrases "public employee" and "state employee" are used in that chapter but are not defined. I also did not find a generally applicable definition of "public employee" or "state employee" in the code. However, there are several definitions of those terms throughout the code that are limited to particular sections or chapters. If you would like, we could create a new definition for 44-08 based on one of them. I have attached a document containing sections of the code with those definitions marked for you.

Please feel free to call, email or stop by my office if you have any questions or need anything else.

Kind regards,
Claire

Claire J. Ness
Legislative Council
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 328-3208

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's North Dakota Century Code Annotated
Title 44. Offices and Officers
Chapter 44-04. Duties, Records, and Meetings

NDCC, 44-04-18.1

§ 44-04-18.1. Public employee personal, medical, and employee assistance records--
Confidentiality--Personal information maintained by state entities--Exempt

Currentness

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

← *

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 is exempt.

4. Except as otherwise specifically provided by law, personal information regarding a licensee maintained by an occupational or professional board, association, state agency, or commission created by law is exempt. As used in this section, "licensee" means an individual who has applied for, holds, or has held in the past an occupational or professional license, certificate, credential, permit, or registration issued by a state occupational or professional board, association, agency, or commission.

5. Information relating directly to persons engaged in an organized public safety peer counseling or a public safety peer debriefing is exempt.

Credits

S.L. 1987, ch. 538, § 1; S.L. 1997, ch. 381, § 6; S.L. 1999, ch. 396, § 1; S.L. 2001, ch. 393, § 7; S.L. 2003, ch. 211, § 24; S.L. 2003, ch. 381, § 1; S.L. 2003, ch. 382, § 8; S.L. 2005, ch. 15, § 38; S.L. 2005, ch. 377, § 5; S.L. 2011, ch. 332, § 4, eff. April 11, 2011; S.L. 2013, ch. 337, § 1, eff. Aug. 1, 2013.

West's North Dakota Century Code Annotated
Title 26.1. Insurance
Chapter 26.1-21. State Bonding Fund

NDCC, 26.1-21-01

§ 26.1-21-01. Definitions

Currentness

In this chapter, unless the context otherwise requires:

1. "Blanket bond" means a bond that covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.
2. "Fund" means the state bonding fund.
3. "International peace garden" means an entity located upon the international boundary line between the United States and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States and Canada and to further international peace among the nations of the world.
4. "Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.
5. "Public employee" means an individual employed by a state agency or any political subdivision, an officer or employee eligible under section 57-15-56, an employee under section 61-16.1-05, and an officer or employee of an international peace garden. "Public employee" does not include an individual employed by an occupational and professional board or commission under title 43 or by the state bar association. ← *
6. "Public official" means an elected or appointed officer or deputy of a state agency or a political subdivision, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.
7. "State agency" means a state board, bureau, commission, department, agency, industry, and institution and the international peace garden.

Credits

S.L. 1983, ch. 341, § 1; S.L. 1985, ch. 82, § 39; S.L. 1989, ch. 356, § 1; S.L. 1993, ch. 285, § 2; S.L. 2005, ch. 261, § 6.

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West's North Dakota Century Code Annotated
Title 54. State Government
Chapter 54-06. General Provisions

NDCC, 54-06-21

§ 54-06-21. Public employee personnel records--Administration--Access

Currentness

The official personnel file on each employee is the file maintained under the supervision of the agency head or the agency head's designated representative.

1. No documents that address an employee's character or performance may be placed in the file unless the employee has had the opportunity to read the material. The employee must acknowledge that the employee has read the material by signing the actual copy to be filed or an attachment to the actual copy to be filed, with the understanding that the signature merely signifies that the employee has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign the copy to be filed, the agency head or the agency head's designated representative shall indicate on the copy that the employee was shown the material, was requested to sign the material to verify that the material had been read, and that the employee refused to sign the copy to be filed. In the presence of the employee and a witness, the agency head or the agency head's designated representative shall sign and date a statement verifying the refusal of the employee to sign the copy to be filed. The material must then be placed in the file.
2. The employee has the right to answer any material filed and any answer must be attached to the file copy. The employee's answer to material filed may not be used as the basis for any subsequent adverse personnel action. If any material is found to be without merit or unfounded through an established grievance procedure, it must be immediately removed from the file and may not be used in any subsequent actions or proceedings against the employee.
3. The employee or the employee's designated representative must be permitted to examine the employee's official personnel file by appointment during normal business hours.
4. No anonymous letters or materials may be placed in the employee's file.
5. The employee must be permitted to reproduce at the employee's expense any material in the employee's file.
6. An employee may file a grievance regarding nonevaluation material placed in the employee's personnel file. A grievance is limited to an internal agency grievance unless such material is merged into a disciplinary proceeding.
7. This section does not prohibit administrators from maintaining written notes or records of an employee's performance separate from the personnel file for the purpose of preparing evaluations or possible disciplinary action.

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8. Administrators are encouraged to place in the employee's file information of a positive nature, including any such material received from outside competent and responsible sources, indicating special competencies, achievements, performances, or contributions of a professional or civic nature.

Except when the employing agency inserts only salary, insurance, medical, tax, workforce safety and insurance, pretax benefits, or deferred compensation information or employment forms, a record of access must be maintained by the employing agency and must be provided to the employee when the employee examines the employee's file. As used in this section, the term "public employee" means any person employed by the state and does not include persons employed by any political subdivision of the state. ← *

Credits

S.L. 1991, ch. 571, §§ 1-3; S.L. 1995, ch. 500, § 1; S.L. 2003, ch. 561, § 3.

NDCC 54-06-21, ND ST 54-06-21

Current through the 2016 Special Session of the 64th Legislative Assembly and measures passed in the November 8, 2016 election.

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§ 54-52-01. Definition of terms, ND ST 54-52-01

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's North Dakota Century Code Annotated
Title 54. State Government
Chapter 54-52. Public **Employees** Retirement System

NDCC, 54-52-01

§ 54-52-01. Definition of terms

Currentness

As used in this chapter, unless the context otherwise requires:

1. "Account balance" means the total contributions made by the **employee**, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.

<Text of subsection effective through July 31, 2017>

4. "Eligible employee" means all permanent **employees** who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching **employees** of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public **employees** retirement system under section 54-52-02.13, and **employees** of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public **employees** retirement system under section 54-52-02.14. Eligible **employee** does not include state **employees** who elect to become members of the retirement plan established under chapter 54-52.6.

← *

<Text of subsection effective after July 31, 2017>

4. "Eligible employee" means all permanent **employees** who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching **employees** of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public **employees** retirement system under section 54-52-02.13, and **employees** of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public **employees** retirement system under section 54-52-02.14. Eligible **employee** does not include nonclassified state **employees** who elect to become members of the

← *

Also see definition of "Employee" on next page.

retirement plan established under chapter 54-52.6 but does include **employees** of the judicial branch and **employees** of the board of higher education and **state** institutions under the jurisdiction of the board.

5. **"Employee" means** any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed **employees** of a school district means those **employees** eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible **employees** under this chapter. ← *

6. **"Employer" means** a governmental unit.

7. **"Funding agent" or "agents" means** an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

8. **"Governmental unit" means** the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.

9. **"National guard security officer or firefighter" means** a participating member who is:

- a. A security police **employee** of the North Dakota national guard; or
- b. A firefighter **employee** of the North Dakota national guard.

10. **"Participating member" means** all eligible **employees** who through payment into the plan have established a claim against the plan.

11. **"Peace officer" means** a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public **employees** retirement system.

12. **"Permanent employee" means** a governmental unit **employee** whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

13. **"Prior service" means** service or employment prior to July 1, 1966.

14. **"Prior service credit" means** such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

15. "Public employees retirement system" means the retirement plan and program established by this chapter.
16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.
17. "Retirement board" or "board" means the governing authority created under section 54-52-03.
18. "Seasonal employee" means a participating member who does not work twelve months a year.
19. "Service" means employment on or after July 1, 1966.
20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.
22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

Credits

S.L. 1965, ch. 361, § 1; S.L. 1969, ch. 456, § 4; S.L. 1969, ch. 457, § 3; S.L. 1971, ch. 515, § 1; S.L. 1973, ch. 120, § 60; S.L. 1973, ch. 246, §§ 4 to 6; S.L. 1977, ch. 499, § 1; S.L. 1979, ch. 570, § 1; S.L. 1979, ch. 572, § 2; S.L. 1981, ch. 545, § 1; S.L. 1983, ch. 572, § 1; S.L. 1983, ch. 573, § 1; S.L. 1985, ch. 222, § 4; R.M. disapproved Dec. 5, 1989; S.L. 1991, ch. 740; S.L. 1989, ch. 662, § 1; S.L. 1989, ch. 663, § 1; S.L. 1989, ch. 664, § 1; S.L. 1991, ch. 626, § 2; S.L. 1993, ch. 532, § 1; S.L. 1995, ch. 527, § 1; S.L. 1995, ch. 528, § 1; S.L. 1995, ch. 529, § 1; S.L. 1999, ch. 162, § 46; S.L. 1999, ch. 478, § 1; S.L. 1999, ch. 482, § 1; S.L. 2003, ch. 34, § 15; S.L. 2003, ch. 497, § 1; S.L. 2003, ch. 498, § 2; S.L. 2003, ch. 561, § 3; S.L. 2005, ch. 531, § 7; S.L. 2007, ch. 483, § 2, eff. July 1, 2007; S.L. 2009, ch. 512, § 1, eff. July 1, 2009; S.L. 2013, ch. 431, § 4, eff. Oct. 1, 2013; S.L. 2015, ch. 56, § 4, eff. July 1, 2015.

NDCC 54-52-01, ND ST 54-52-01

Current through the 2016 Special Session of the 64th Legislative Assembly and measures passed in the November 8, 2016 election.

West's North Dakota Century Code Annotated
Title 54. State Government
Chapter 54-52.6. Defined Contribution Retirement Plan

NDCC, 54-52.6-01

§ 54-52.6-01. Definition of terms

Currentness

As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement system board.
2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.

<Text of subsection effective until August 1, 2017>

3. "Eligible employee" means a permanent state employee who elects to participate in the retirement plan under this chapter.

← *

<Text of subsection effective August 1, 2017 >

3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan.

← *

4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.

← *

5. "Employer" means the state of North Dakota.

6. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.

7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

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§ 54-52.6-01. Definition of terms, ND ST 54-52.6-01

8. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an **employee** and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

Credits

S.L. 1999, ch. 482, § 5; S.L. 2003, ch. 493, § 11; S.L. 2003, ch. 561, § 3; S.L. 2005, ch. 531, § 15; S.L. 2013, ch. 431, § 12, eff. Oct. 1, 2013.

NDCC 54-52.6-01, ND ST 54-52.6-01

Current through the 2016 Special Session of the 64th Legislative Assembly and measures passed in the November 8, 2016 election.

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West's North Dakota Century Code Annotated
Title 32. Judicial Remedies
Chapter 32-12.2. Claims Against the State

NDCC, 32-12.2-01

§ 32-12.2-01. Definitions

Currentness

As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim for money damages brought against the state or a state employee for an injury caused by the state or a state employee acting within the scope of the employee's employment whether in the state or outside the state.
2. "Injury" means personal injury, death, or property damage.
3. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
4. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
5. "Property damage" includes injury to or destruction of tangible or intangible property.
6. "Scope of employment" means the state employee was acting on behalf of the state in the performance of duties or tasks of the employee's office or employment lawfully assigned to the employee by competent authority or law.
7. "State" includes an agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state.
8. "State employee" means every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor. ← *
9. "State institution" means the state hospital, the life skills and transition center, the state penitentiary, the Missouri River correctional center, the North Dakota youth correctional center, the North Dakota vision services--school for the blind, the school for the deaf, and similar facilities providing care, custody, or treatment for individuals.

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West's North Dakota Century Code Annotated
Title 54. State Government
Chapter 54-06. General Provisions

NDCC, 54-06-14.1

§ 54-06-14.1. State leave sharing program

Currentness

1. As used in this section:

a. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term includes foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.

b. "Relative of the employee" is limited to the spouse, child, stepchild, grandchild, grandparent, stepparent, or parent of an employee.

c. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.

d. "State employee" means a permanent employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.

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2. A state employee may donate annual leave to a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.

3. A state employee is eligible to receive shared leave pursuant to the following conditions:

a. The chief administrative officer of the employee determines that the employee meets the criteria described in this section.

b. The employee has abided by state policies regarding the use of sick leave.

c. The employee's use of shared leave, including both annual and sick leave, does not exceed four months in any twelve-month period.

4. A state employee may donate annual leave to another state employee only pursuant to the following conditions:

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- a. The receiving **employee** has exhausted, or will exhaust, all annual leave, sick leave, and compensatory time off due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature, and involves the **employee**, a relative of the **employee**, or a household member of the **employee**;
 - b. The condition has caused, or is likely to cause, the receiving **employee** to go on leave without pay or terminate employment; and
 - c. The donating **employee** donates leave in full-hour increments and retains a leave balance of at least forty hours.
5. The chief administrative officer of the **state employee** shall require the **employee** to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.
 6. Donated annual leave is transferable between **employees** in different **state** entities.
 7. One hour of donated annual leave must be regarded as one hour of shared leave for the recipient.
 8. Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.
 9. All forms of paid leave available for use by the recipient must be used prior to using shared leave.
 10. Any shared leave not used by the recipient during each occurrence as determined by the chief administrative officer of the **employee** may be retained by the recipient.
 11. All donated leave must be given voluntarily. No **state employee** may be coerced, threatened, intimidated, or financially induced into donating annual leave for purposes of the leave sharing program.

Credits

S.L. 1993, ch. 509, § 1; S.L. 1995, ch. 499, § 1.

NDCC 54-06-14.1, ND ST 54-06-14.1

Current through the 2016 Special Session of the 64th Legislative Assembly and measures passed in the November 8, 2016 election.

West's North Dakota Century Code Annotated
Title 54. State Government
Chapter 54-06. General Provisions

NDCC, 54-06-14.2

§ 54-06-14.2. State sick leave sharing program

Currentness

1. As used in this section:

a. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.

b. "State employee" means a permanent employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.

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2. A state employee may donate sick leave to a fellow state employee who is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.

3. A state employee may be eligible to receive shared leave pursuant to the following conditions:

a. The chief administrative officer of the employee determines that the employee meets the criteria described in this section.

b. The employee has abided by state policies regarding the use of sick leave.

c. The employee's use of shared leave, including both sick and annual leave, does not exceed four months in any twelve-month period.

4. A state employee may donate sick leave to another state employee only pursuant to the following conditions:

a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory leave due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature;

b. The condition has caused, or is likely to cause, the receiving employee to go on leave without pay or terminate employment; and

§ 54-06-14.2. State sick leave sharing program, ND ST 54-06-14.2

- c. The **employee** may not donate more than five percent of the **employee's** accrued leave hours, and all leave must be donated in full-hour increments.

- 5. The chief administrative officer of the **state employee** shall require the **employee** to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the **employee's** condition.

- 6. Donated sick leave is transferable between **employees** in different **state** entities.

- 7. One hour of donated sick leave must be regarded as one hour of shared leave for the recipient.

- 8. Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.

- 9. All forms of paid leave available for use by the recipient must be used prior to using shared leave.

- 10. Any shared leave not used by the recipient during each occurrence as determined by the chief administrative officer of the **employee** may be retained by the recipient.

- 11. All donated leave must be given voluntarily. No **state employee** may be coerced, threatened, intimidated, or financially induced into donating sick leave for purposes of the leave sharing program.

Credits

S.L. 1993, ch. 510, § 1; S.L. 1995, ch. 499, § 2.

NDCC 54-06-14.2, ND ST 54-06-14.2

Current through the 2016 Special Session of the 64th Legislative Assembly and measures passed in the November 8, 2016 election.

17.0189.02001
Title.

Prepared by the Legislative Council staff for
Representative Steiner
January 11, 2017

Attachment 1

1168

2-9-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1168

Page 1, after line 8 insert "1."

Page 1, line 13, replace "1." with "a."

Page 1, line 15, replace "2." with "b."

Page 1, after line 17, insert:

"2. Subsection 1 does not apply to an elected official of the state or of a political subdivision."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1168

Page 1, after line 8, insert:

"1."

Page 1, line 13, replace "1." with "a."

Page 1, line 15, replace "2." with "b."

Page 1, line 15, replace "employee is a state employee who" with "public employee"

Page 1, after line 17, insert:

- "2. Public employee as used in this section means an individual employed by a state agency, department, or institution.

- "3. Each political subdivision shall include in the published minutes of the political subdivision the amount of time, travel expenses, and other expenditures incurred by an employee of the political subdivision for attendance on behalf of the political subdivision at any session of the legislative assembly or any legislative standing committee or interim legislative management committee meeting."

Renumber accordingly