

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### EDUCATION SERVICES COMMITTEE

Wednesday, December 1, 1999  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Ray Holmberg, Jerome Kelsh, Rolland W. Redlin; Representatives Michael D. Brandenburg, Bruce A. Eckre, Lyle Hanson, Jon Martinson, David Monson, Darrell D. Nottestad, Dorvan Solberg, Laurel Thoreson

**Members absent:** Senators Tim Flakoll, Layton Freborg, Pete Naaden, David O'Connell; Representative RaeAnn G. Kelsch

**Others present:** See Appendix A

**It was moved by Representative Eckre, seconded by Representative Martinson, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

With the permission of Chairman Holmberg, committee counsel said the rewrite of the home education chapter, like present law, maintained two references to "a parent's school district of residence," whereas all other references both in current law and in the rewrite were to "a child's school district of residence." She said at the previous committee meeting concern was raised with respect to the appropriateness of referencing a child's school district of residence. She said a computer search of statutes from all other states located 25 states that reference a child's school district of residence. She said the only state in which a reference to a parent's district of residence was found was North Dakota. She said a review of appellate court cases revealed that courts in 20 states referenced the phrase "a child's school district of residence" with no discussion regarding its appropriateness. She said in reviewing both statutes and case law, the phrase is used to reference a child's location. She said it does not designate legal residency status, as would be held by an adult.

**It was moved by Representative Nottestad, seconded by Representative Thoreson, and carried on a voice vote that the bill draft containing proposed North Dakota Century Code (NDCC) Chapter 15.1-23, relating to home education, be amended to consistently reference a child's school district of residence rather than a parent's school district of residence.**

With the permission of Chairman Holmberg, Senator Kelsh said he thought the committee should

consider making some drastic changes to the home education chapter. He said he has heard from superintendents that the people who are home schooling their children are not cooperative in all cases. He said perhaps the state should take over the schooling of all children.

With the permission of Chairman Holmberg, Representative Eckre said he and several other legislators met with 14 school district superintendents after the last Education Services Committee meeting. He said the superintendents are concerned about the present home education law.

Chairman Holmberg said it would be appropriate for interested legislators to gather information regarding the present home education law. He said it would be up to the entire committee to determine whether it should address such substantive changes within the confines of its assigned study.

With the permission of Chairman Holmberg, committee counsel said during the 1999 legislative session amendments were made to the special education reimbursement formula. She said school districts are now responsible for up to two and one-half times the state average cost per student plus 20 percent of all remaining costs. She said that change was not placed in the open enrollment chapter during the legislative session. She said research showed no intent to forego application of the formula to students who are open-enrolled.

**It was moved by Representative Monson, seconded by Representative Eckre, and carried on a voice vote that proposed NDCC Section 15.1-34-04 be amended to include the special education reimbursement formula implemented during the 1999 legislative session.**

#### STATE TUITION FUND

The committee reviewed a bill draft that creates NDCC Chapter 15.1-28, relating to the state tuition fund.

#### Section 15.1-28-01

Chairman Holmberg said Section 15.1-28-01 is the proposed rewrite of present Section 15-44-01. He said the section again provides that the net proceeds of fines for the violation of state laws, payments for

school land leases, and interest and income from the common schools trust fund must be paid into the state treasury and constitute the state tuition fund. He said the only significant change is that the rewrite refers to the common schools trust fund, which is the constitutional name of the fund, rather than the colloquial permanent school fund.

### **Section 15.1-28-02**

Chairman Holmberg said Section 15.1-28-02 is the proposed rewrite of present Section 15-44-02. He said as does the present law, this section directs the county treasurer to collect the moneys referenced in Section 15.1-28-01 and forward a "detailed statement" of the moneys collected to the State Treasurer monthly. He said present law requires that the county treasurer forward a "detailed statement" of moneys so collected, "specifying the amount received from each source," to the State Treasurer by the fifteenth of each month. He said the rewrite omits the phrase "specifying the amount received from each source." He said a detailed statement, by its very nature, would require such information. He said to leave this language in the statute would be redundant.

### **Section 15.1-28-03**

Chairman Holmberg said Section 15.1-28-03 is the proposed rewrite of present Section 15-44-03. He said as does the present law, this section directs the Office of Management and Budget to certify to the Superintendent of Public Instruction, on or before the third Monday of each February, April, August, October, and December, the amount of the state tuition fund. He said the Superintendent is then directed to apportion the fund among the school districts in accordance with the latest census. He said no substantive changes were made to the section.

## **PAYMENT OF TUITION**

The committee reviewed a bill draft that creates NDCC Chapter 15.1-29, relating to the payment of tuition.

### **Section 15.1-29-01**

Chairman Holmberg said Section 15.1-29-01 is the proposed rewrite of present Section 15-40.2-09. He said as does the present law, this section begins by providing that:

- ...
- a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state.
  - b. A student who has attended a school district in a bordering state since, and including, the 1990-91 school year must be permitted to continue

attending school in the district in the bordering state.

- c. A student, whose sibling attended an out-of-state school during or before the 1990-91 school year, must be permitted to attend school in the district the sibling attends in the bordering state.

...

Chairman Holmberg said subsection 2, the same as current law, establishes a right of parental appeal to a three-member committee if the school board of the district in which the student resides denies a request for the student's attendance in another state and the subsequent payment of tuition. He said subsection 3 received a minor change. He said present law provides that "foundation aid payments for students attending out-of-state schools must be made to the district of residence." He said the proposed rewrite specifies that the Superintendent of Public Instruction shall forward all per student payments and transportation aid payments for a student attending school out of state to the student's school district of residence. He said since the term "foundation aid" is not defined and since it sometimes seems to be given various meanings, depending on how and where it is used, the rewrite is attempting to be specific about the payments being referenced.

Chairman Holmberg said subsection 4 repeats current law, i.e., that the student's district of residence is not required to provide student transportation, or payments in lieu of transportation, for students attending out-of-state schools.

### **Section 15.1-29-02**

Chairman Holmberg said Section 15.1-29-02 is the proposed rewrite of present Section 15-40.2-10. He said present law requires that the Superintendent of Public Instruction enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states. He said unfortunately we cannot make other states enter into contracts with our Superintendent against their will. He said the rewrite therefore directs the Superintendent to "pursue" such contracts.

Chairman Holmberg said subsection 2, the same as current law, allows a school district to enter into its own contract provided that the tuition is not greater than the amount established under the reciprocal contract nor less than the per student payment plus the tuition apportionment in the student's school district of residence. He said subsection 3 segregates current language which provides that, for purposes of per student payments and tuition apportionment payments, a student attending school in a bordering state under this section is deemed to be in attendance in the student's school district of residence. He said subsection 4 provides that if the education agency of a bordering state does not enter into a reciprocal

contract with the Superintendent of Public Instruction, a school district may enter into its own contract with a school district in a bordering state.

Chairman Holmberg said the rewrite replaces the phrase "reciprocal master agreement" with the "superintendent's reciprocal contract." He said an "agreement" is a legal "contract" and it should be called that. He said although it sounds very special, important, and weighty, a "master contract" is in law simply a contract. He said it is no more or less important and it is no more or less enforceable than any other contract. He said consequently, the terminology is dropped in the rewrite.

Chairman Holmberg said the superintendent of a school district bordering Minnesota had complained that he was not aware of what was in the Superintendent of Public Instruction's reciprocal contract.

Chairman Holmberg called on Mr. Tom Decker, Director, School District Finance and Organization, Department of Public Instruction, who said as soon as the contract is signed it is sent to all school districts who have students attending school in another state.

Mr. Decker asked the committee to consider a minor amendment on page 2 of the bill draft. He said subsection 3(b) provides that the "student's district of residence may reduce any tuition payment it must make to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation if a student from the out-of-state district enrolled in its school." He said he would prefer to change the word "if" on line 17 to "for."

**It was moved by Representative Thoreson, seconded by Representative Martinson, and carried on a voice vote that subdivision b of subsection 3 of Section 15.1-29-01 be amended by replacing the word "if" on line 17 with the word "for."**

### **Section 15.1-29-03**

Chairman Holmberg said Section 15.1-29-03 is the proposed rewrite of present Section 15-40.2-01. He said present law provides that "[t]he school board of any district may send kindergarten, elementary, or high school students into another school district or to an accredited institution when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so. . . ." He said the 1997-98 interim Education Services Committee looked at this phraseology and indicated that, as a policy matter, it would be appropriate to take into account the interests of other parties as well, particularly the interests of the students. He said it was that committee's recommendation that the board of a school district be authorized to send its students into another school district or to an accredited institution if doing so is in the best interest of all affected parties.

Chairman Holmberg called on Mr. Decker who said within the last month, the Superintendent of

Public Instruction signed a new reciprocal agreement with Minnesota. He said South Dakota has eliminated the statutes that allow for such an agreement. He said North Dakota school districts that border South Dakota are on their own to negotiate their contracts. He said Montana does not seem to know what it wants to do. He said the Superintendent of Public Instruction has consequently extended its contract with Montana for a third year. He said for a long time Montana allowed its districts to include North Dakota students as part of their average daily membership count. He said as a result, those districts received both Montana dollars and North Dakota dollars for each student.

In response to a question from Representative Eckre, Mr. Decker said this particular law has been changed almost every session. He said just about the time all states were satisfied with the arrangements, South Dakota dropped out of the process.

In response to a question from Senator Holmberg, Mr. Decker said there are about twice as many students going out as coming into North Dakota. He said there are about 200 students attending schools in bordering districts.

### **Section 15.1-29-04**

Chairman Holmberg said Section 15.1-29-04 is the proposed rewrite of present Section 15-40.2-13. He said it provides that if a school district approves the payment of tuition charges for a student attending school in another district or if a district is required to make tuition payments under this chapter, 50 percent must be paid at the end of each semester, and if a district is more than 30 days late, interest accrues at the rate of six percent per annum. He said this committee needs to consider whether the phrase "by the end of each semester" is clear and whether a six percent interest rate is still appropriate. He said school people know when semesters end. However, he said, the public also needs to understand when the payments must be made.

With the permission of Chairman Holmberg, Mr. Decker said there would not be a problem referencing the end of December and the end of May as payment due dates.

Chairman Holmberg asked the Legislative Council staff to draft for committee review an amendment that references the end of December and the end of May as payment due dates in proposed Section 15.1-29-04.

### **Section 15.1-29-05**

Chairman Holmberg said Section 15.1-29-05 is the proposed rewrite of a portion of present Section 15-40.2-05. He said the same as present law, it provides that a student's parent may petition the board of the student's school district of residence for the payment of tuition in order that the student can attend another school district. He said the school

board has 60 days within which to render a decision. He said if the petition is denied, the student's parent or guardian may file an appeal with the county superintendent of schools. He said the committee needs to look at the next section, which sets forth the role of the county superintendent, with an eye toward determining whether the county superintendent is the appropriate person with whom to file an appeal.

### **Section 15.1-29-06**

Chairman Holmberg said Section 15.1-29-06 is the proposed rewrite of a portion of present Section 15-40.2-05. He said it directs that the county superintendent of schools is to convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. He said the committee is to conduct a hearing that allows all parties to present arguments and responses. He said the section goes on to parallel present law with respect to the factors that must be considered by the committee depending on the grade in which the student is enrolled.

Chairman Holmberg said present law provides that if 25 percent or more of the taxable valuation of a student's school district of residence is located in another county, the committee must be expanded to include the county superintendent from any county having 25 percent or more of the school district's taxable valuation. He said present law goes on to provide that the "concurrence of a majority of the quorum of the joint committee is necessary to render a decision regarding the payment of tuition." He said if it is a four-member committee, a quorum would be three members and a binding decision could be made by two members. He said if it is a five-member committee, a quorum would be three members and a binding decision could be made by two members.

Chairman Holmberg said present law, as well as the rewrite, goes on to provide that if the student's district of residence does not comply with the decision requiring that tuition charges be paid, the board of the admitting district shall notify the county superintendent of schools for the county of the student's residence and the Superintendent of Public Instruction. He said upon verification by the county superintendent of schools that tuition payments are due the admitting district and are unpaid, the Superintendent of Public Instruction is to withhold all state payments to the student's school district of residence until any tuition due has been fully paid.

Chairman Holmberg said the committee needs to consider whether the county superintendent of schools should be required to verify that the tuition payments are due. He said this is perhaps a communication that could more efficiently take place between the school district business manager and Department of Public Instruction staff.

Chairman Holmberg said in Section 15.1-29-13(6) we again encounter reference to verification of payments. He said in that section the rewrite simply says "upon verification." He said it does not specify who or how. He said the Superintendent is then able to obtain the verification he deems necessary before withholding state payments from a school district.

In response to a question from Representative Eckre, Chairman Holmberg said many counties have reassigned the duties of their county superintendents.

With the permission of Chairman Holmberg, Senator Kelsh said many counties either share county superintendents or do not have them at all. He said we should reduce the number of references to county superintendents which are still found in the Century Code. He said in the section under discussion, the verification should be between a school district and the Superintendent of Public Instruction and it should not involve a county superintendent.

In response to a question from Senator Redlin, Mr. Decker said there are very few times when this section would even be used. He said it would be appropriate to reference the Superintendent of Public Instruction. He said in so doing we would then have something that is positive for the long haul.

Mr. Decker said on page 6 of the Chapter 15.1-29 rewrite, subsection 3 should be changed to provide that the county in which a majority of the district's land lies should be charged with having the hearing. He said joint committees are cumbersome especially when the county superintendent is not used to the process.

With the permission of Chairman Holmberg, Representative Nottestad said that verification should be by the Superintendent of Public Instruction not the county superintendent. He said Mr. Decker's suggestion regarding the elimination of the joint committee also makes sense.

Chairman Holmberg asked the Legislative Council staff to draft for committee review an amendment that references verification by the Superintendent of Public Instruction rather than by a county superintendent and which removes the reference to a joint committee in Section 15.1-29-06(3).

### **Section 15.1-29-07**

Chairman Holmberg said Section 15.1-29-07 is the proposed rewrite of present Section 15-40.2-06. He said this section authorizes the payment of tuition by the student's parent if the three-member committee denies the petition for payment of tuition. As in Section 15.1-29-04, reference is made to payment "on or before the first day of the second semester." He said the committee should consider clarification of this verbiage as well.

Chairman Holmberg asked the Legislative Council staff to draft for committee review an amendment that replaces the references to semester payments by

verbiage that specifies December and May dates in proposed Section 15.1-29-07.

#### **Section 15.1-29-08**

Chairman Holmberg said Section 15.1-29-08 is the proposed rewrite of present Section 15-40.2-07. He said this section provides that an admitting district may accept Title I payments as tuition if the student's parent is employed on a federal installation, resides on a federal installation, and if boards of the student's district of residence and the admitting district agree to accept the payment in lieu of other tuition for the nonresident student. He said no substantive changes were made to this section.

#### **Section 15.1-29-09**

Chairman Holmberg said Section 15.1-29-09 is the proposed rewrite of present Section 15-40.2-11. He said present Section 15-40.2-11 provides that a school board may make arrangements for the education of pupils in a federal school and contract with federal officials for such education. He said such contracts may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district.

Chairman Holmberg said the first sentence, when translated, states what you see in the rewrite, i.e., that a school board may contract with federal officials for the education of students in a federal school. He said the second sentence provides that contracts may be in several suggested forms or in any form acceptable to the school district. He said because of its all inclusive nature, the second sentence adds nothing substantive to the section and was therefore omitted.

#### **Section 15.1-29-10**

Chairman Holmberg said Section 15.1-29-10 is the proposed rewrite of present Section 15-40.2-02. He said this section requires one school district to admit students from another district if it can do so without overcrowding and if the board of the sending district and the board of the admitting district have entered into an agreement regarding the student's attendance, if tuition will be paid by the parents, or if a grade level is no longer being offered by the sending district.

Chairman Holmberg said committee counsel has suggested a couple of small changes to this section. He said line 4 should again reference a contract, rather than an agreement. He said as was stated earlier, an agreement is a legal contract and that would keep the language consistent. He said on line 6 it is provided that tuition will be paid by the parents. He said we should add "of the students from the sending district." He said this will clarify whose parents are to be paying the tuition.

**It was moved by Representative Brandenburg, seconded by Representative Monson, and carried on a voice vote that proposed Section 15.1-29-10**

**be amended by referencing a contract rather than an agreement and by adding the phrase "of the students from the sending district."**

#### **Section 15.1-29-11**

Chairman Holmberg said Section 15.1-29-11 is the proposed rewrite of present Section 15-40.2-03. He said as in the current law, it requires a school district that educates a student in another school district to pay the full cost of education incurred by the admitting district. He said it maintains current language regarding what constitutes the "full cost of education."

Chairman Holmberg said the rewrite tried to clarify the section using subsections and subdivisions. However, he said, the section still seems rather complex, and he would welcome suggestions regarding further simplification or clarification.

With the permission of Chairman Holmberg, Mr. Jerry Coleman, Department of Public Instruction, said the current practice regarding the calculation of educational costs is not accurately reflected in the Century Code, and he would like to see the appropriate changes made in the rewrite.

Mr. Coleman distributed a document entitled *Worksheet for Calculating Tuition*. It is attached as Appendix B. He said school districts are to calculate their average cost per student and add to it the state average capital outlay. He said from that number the state aid per student, the mill deduct per student, and the net state aid per student are subtracted. He said he would appreciate an opportunity to work with the Legislative Council staff so this section can be drafted in a manner that reflects current practice.

Chairman Holmberg asked the Legislative Council staff to work with Mr. Coleman and draft for committee review an amendment that accurately reflects the manner in which tuition is calculated.

#### **Section 15.1-29-12**

Chairman Holmberg said Section 15.1-29-12 is the proposed rewrite of present Section 15-40.2-04. He said it states that, except as otherwise provided, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. He said the tuition must then be paid by the sending district or by the student's parent. He said if the district fails to charge and collect tuition for nonresident students, the district forfeits per student and transportation aid payments.

Chairman Holmberg said present law refers to the forfeiture of foundation aid payments. He said the rewrite clarifies that this means per student payments and transportation aid. He said as in present law, a school district may not charge or collect from a nonresident student, the student's parent, or the student's district of residence any fees or charges not otherwise assessed to all resident students.

### Section 15.1-29-13

Chairman Holmberg said Section 15.1-29-13 is the proposed rewrite of present Section 15-40.2-08. He said current law begins "[f]or purposes of applying this chapter, the school district in which a child resides must be construed to be the district of residence of such child . . . ." He said the rewrite clarifies this verbiage in subsection 1 by stating:

For purposes of applying this chapter, a child's school district of residence is the district in which the child resides:

- a. At the time an order of a state court, tribal court, or juvenile supervisor requires the child to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
- b. At the time of placement for a prescribed period by a county or state social service agency at a state-licensed foster home or at a state-licensed child care home or facility, with the consent of the child's parent or guardian;
- c. At the time of placement to or from a state-operated institution; or
- d. At the time of a voluntary admission to a state-licensed child care home or facility or to a state-operated institution.

Chairman Holmberg said the current reference to a "child" rather than to a "student" was retained because it was not clear if this section includes children who are not "students." He said it would be appreciated if anyone can shed light on this. He said if the word "students" can be used instead of the word "children," at least there would be consistency. He said in the rewrite, the reference to a "guardian" is removed from the frequently used phrase "parent or legal guardian" but on page 10, line 27, of the proposed rewrite of Chapter 15.1-29, the word is retained because removing the reference to a guardian could cause confusion. He said it is left the way it is in current law pending advice from the committee or other parties. He said advice would also be welcome regarding the rewrite of subsections 3 and 4.

Chairman Holmberg said current law provides:

Where the guardian, parent, or parents of the child were residents of the district at the time of placement under subdivisions a through d of subsection 1, but such guardian, parent, or both parents have subsequently moved to another school district within North Dakota, then the tuition due the admitting district must be paid by the district of residence of the guardian, parent, or parents. If the guardian, parent, or parents have moved to another state, or if parental rights have been terminated, then the

tuition due the admitting district must be paid by the state from funds appropriated by the legislative assembly for the foundation aid program.

Chairman Holmberg said it is possible a child's parent could move to another district or out of state but the legal guardian does not move. He said this section is confusing as to what the outcome of this scenario would be. He said perhaps someone who is intimately familiar with this area could work with the Legislative Council staff to clarify the language.

Chairman Holmberg called on Mr. Coleman, who said he works quite extensively with this section and he would be willing to work with Legislative Council staff to make this section comprehensible. He said trying to determine which is a student's resident school district is often very difficult.

Chairman Holmberg asked the Legislative Council staff to work with Mr. Coleman and draft for committee review an amendment that clarifies the provisions of proposed Section 15.1-29-13.

## STUDENT TRANSPORTATION

The committee reviewed a bill draft that creates NDCC Chapter 15.1-30, relating to student transportation.

### Section 15.1-30-01

Chairman Holmberg said Section 15.1-30-01 is the proposed rewrite of present Section 15-34.2-01. He said current law states that a school board may furnish to each family living in the district:

1. Vehicular transportation; or
2. The equivalent of the payments received from the state as determined under subsection 2 of Section 15-40.1-16, in lodging at some other public school if the same is acceptable to the family.

Chairman Holmberg said the language that the school board may furnish vehicular transportation to each family living in the district essentially says that the board may provide transportation services to each family in the school district, regardless of whether or not the family has a student attending the local school. He said since vehicular transportation is not defined, it could even be taken to authorize the provision of a car or truck, i.e., vehicular transportation, to each family residing within the boundaries of the district.

Chairman Holmberg said the proposed rewrite consequently authorizes the school board to provide for the transportation of a student to school. He said with respect to subsection 2, wherein current law authorizes a school board to provide the "equivalent of the payments . . . in lodging at some other public school," the rewrite changed that to provide parents with reimbursement for expenses incurred in lodging the student outside of the student's home. He said he does not know of any cases in which lodging is provided at our public schools.

Chairman Holmberg said the committee should examine the use of the word "lodging." He said it is assumed the intent is to assist with housing expenses but not with meals. He said if this assumption is correct, the committee needs to ensure that the language is clear.

Chairman Holmberg said current law also provides that if a "board elects to furnish vehicular transportation by public conveyance, the distance that each student must reside from the school in order to be entitled to such transportation may be determined by the school board in each district, but all students in the district must be treated on the same basis in accordance with such determination." He said the rewrite left in the reference to "vehicular transportation by public conveyance" because we are not sure what is meant by the phrase. He asked is a public conveyance a schoolbus? A city bus? He asked if a public conveyance is a schoolbus, one could argue that any citizen would then have the right to catch a ride on it, and that is clearly not the case. He said it is being left up to the committee to clarify the intent of this phrase.

With the permission of Chairman Holmberg, Ms. Barbara Norby, North Dakota School Boards Association, said the phrase "public conveyance" was put in at the request of the Grand Forks School District so that their students could ride the city buses.

**It was moved by Senator Redlin, seconded by Representative Brandenburg, and carried on a voice vote that subsection 3 of proposed Section 15.1-30-01 be amended by referencing public transit rather than public conveyance.**

In response to a question from Representative Monson, Mr. Decker said the only students for whom a district has to provide transportation are the district's own students living in the district. He said in other circumstances a district may choose to provide transportation or reimbursement, but it is not obligated to do so by statute.

Senator Redlin said he would like to see a situation in which districts can pay for board and lodging, not just lodging.

Representative Monson said he can see the need for that, but he can also see some horrendous costs unless the expenditures are limited.

Chairman Holmberg called on Mr. Decker, who said he assumed that the payment was one made in lieu of transportation and that the word "lodging" is not strictly interpreted. He said proposed Section 15.1-30-01(1)(b), as does present law, includes a cap on the payments.

Mr. Decker said the word "lodging" is interpreted to mean board and lodging.

**It was moved by Representative Thoreson, seconded by Representative Eckre, and carried on a voice vote that proposed Section 15.1-30-01 be amended to replace the word "lodging" with a phrase that clearly allows reimbursement for board and lodging.**

### **Section 15.1-30-02**

Chairman Holmberg said Section 15.1-30-02 is the proposed rewrite of present Section 15-34.2-03. He said current law provides that a school board may pay to each family living more than two miles [3.22 kilometers] from a school a reasonable sum per day for each day's attendance of a student when the student is transported by an adult member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school. He said the committee might wish to look at the conditions for payment and determine whether or not those conditions are still appropriate.

Chairman Holmberg said the law provides that the student must be transported to school by an adult member of the student's family or the student's transportation may be provided in a vehicle furnished by the student's parent. He said in this instance the student could transport himself or herself or could be transported by an older sibling who is not yet an adult member of the family, as long as the parents furnish the car. He said if, however, the student works after school and has purchased the student's own car, there would be no reimbursement under this section.

Chairman Holmberg said subsection 1(c) provides the scenario that the student's transportation is paid for by the student's parent and the assumption is that this covers transportation for pay arrangements, i.e., if the parent pays a neighbor to take the student to school.

Chairman Holmberg said the committee needs to take another look at proposed Section 15.1-30-02.

### **Section 15.1-30-03**

Chairman Holmberg said Section 15.1-30-03 is the proposed rewrite of present Section 15-34.2-04. He said current law provides that "[d]emand for any payments authorized by a school board under the provisions of this chapter must be made by the family entitled thereto before the close of the school year, or the same must be deemed to be waived. Any payment which has not been made within one year following the date of the demand must be deemed to have been refused and the claim to have expired." He said the committee may wish to determine whether it would be preferable to provide for requests or applications for payment rather than "demands." He said regardless of the terminology used, it should be established whether an oral request is adequate or whether there should be a written application for payment.

**It was moved by Representative Thoreson, seconded by Representative Eckre, and carried on a voice vote that proposed Section 15.1-30-03 be amended by replacing the demand for payment with a written request for payment.**

### Section 15.1-30-04

Chairman Holmberg said Section 15.1-30-04 is the proposed rewrite of present Section 15-34.2-06. He said this section authorizes a school board to pay a "reasonable allowance" to the student's parent for costs incurred in the provision of board and lodging for the student at a location other than the student's residence. The committee may wish to determine whether the phrase "board and lodging" should be replaced with more commonly used terminology such as "room and board" or "meals and accommodations."

Chairman Holmberg asked the Legislative Council staff to use terminology consistent with the proposed amendment to Section 15.1-30-01 throughout the rewrite.

With the permission of Chairman Holmberg, Senator Redlin said the reference on page 2, line 11, should be made clearer than "housing." He said he would like to see a reference to "room and board" or similar consistent language.

Chairman Holmberg asked the Legislative Council staff to draft for committee review an amendment to Section 15.1-30-04 that replaces the reference to "housing" with "room and board" or similar consistent language.

### Section 15.1-30-05

Chairman Holmberg said Section 15.1-30-05 is the proposed rewrite of present Section 15-34.2-06.1. He said current law provides that the board of a school district which has not been reorganized may charge a fee for schoolbus service provided to anyone riding on buses provided by the school district. He said for schoolbus service that was started prior to July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the state average cost for transportation or the local school district's cost, whichever is the lesser amount. He said for schoolbus service started on or after July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the local school district's cost for transportation during the preceding school year.

Chairman Holmberg said the maximum amount to be charged for schoolbus service initiated prior to July 1, 1981, is "an amount equal to the difference between the state transportation payment and the state average cost for transportation or the local school district's cost, whichever is the lesser amount." Unfortunately, he said, the current law provides no timeframe. He said the rewrite applied the same timeframe as that used for schoolbus service initiated after July 1, 1981, i.e., "during the preceding school year."

### Section 15.1-30-06

Chairman Holmberg said Section 15.1-30-06 is the proposed rewrite of present Section 15-34.2-07. He said the same as current law, this section provides

that a school board which provides transportation shall contract for the provision of transportation services during the school year. He said the board is to provide notice of its intent to contract and the time and place for submission of sealed bids. He said the section goes on to state that the notice must:

...

- a. Include the route to be covered by each contract;
- b. Provide that the board reserves the right to reject any and all bids;
- c. Provide that each successful bidder must submit in a separate envelope a bond in an amount set by the board, provided that the amount of the bond must be at least five hundred dollars;
- d. Provide that the bond must be conditioned for the faithful performance of the duties set forth in the contract; and
- e. Provide that any bids submitted name the individual who will operate the vehicle and describe the vehicle.

...

Chairman Holmberg said if the vehicle to be used in the provision of transportation is privately owned, the duration of the contract may not exceed seven years. He said the committee may wish to determine if a base amount of \$500 for the bid is still appropriate. He said that amount has not changed since the section was enacted in 1971. He said the committee may also wish to determine whether a seven-year contract is an appropriate length of time, given the fact that one board is binding future boards.

In response to a question from Representative Eckre, Mr. Decker said a contractor might purchase a significant amount of equipment in order to fulfill the contract and therefore an extended period of time was put in the law.

Representative Nottestad said a school board has the ability to raise the bond beyond \$500.

### Section 15.1-30-07

Chairman Holmberg said Section 15.1-30-07 is one of several sections rewriting the contents of present Section 15-34.2-09. He said Section 15.1-30-07 directs the Superintendent of Public Instruction to prepare a standard transportation contract and provide copies, upon request, to school districts.

### Section 15.1-30-08

Chairman Holmberg said Section 15.1-30-08 is one of several sections rewriting the contents of present Section 15-34.2-09. He said the previous section directed the Superintendent of Public Instruction to prepare a standard transportation contract and provide copies, upon request, to school districts. He

said this section addresses those provisions which must be in the contract, i.e.:

1. That no vehicle other than that described in the contract may be used to transport students, unless otherwise authorized by the board;
2. That only the individual named in the contract may operate the vehicle used to transport students, unless authorized by the board;
3. That the transportation routes must be included;
4. That compensation must be included; and
5. That there be a process for determining an equitable adjustment of compensation if changes are needed in the established transportation routes.

Chairman Holmberg said subsection 5, regarding the equitable adjustment of compensation in the case of route changes, is taken from present Section 15-34.2-10.

Chairman Holmberg said Section 15-34.2-10 provides that if there is a change in the route and the school board and the contractholder fail to agree on an adjustment of the compensation, the matter must be submitted to arbitration. One arbitrator must be appointed by the board and one must be appointed by the contractholder. The two arbitrators thus appointed shall appoint a third arbitrator. The award of the arbitrators must adjust the compensation of the contractholder to meet the changed situation and is binding upon the district and the contractholder. He said when the 1997-98 Education Services Committee looked at this section, the committee determined that the contract should simply provide for the manner in which an equitable adjustment of compensation would be made if there is a change in the transportation route.

#### **Section 15.1-30-09**

Chairman Holmberg said Section 15.1-30-09 is also one of several sections rewriting the contents of present Section 15-34.2-09. He said it provides that in the case of an emergency or other unforeseen event, the school board president may waive transportation contract provisions requiring that only vehicles described in the contract be used and that the vehicles be operated only by individuals named in the contract. He said if the bus's front window is broken and needs replacement, or if the usual driver has a stroke, there may be some need for contract flexibility. He said the section does go on to provide that the waiver is only good until the next regular or special meeting of the school board.

#### **Section 15.1-30-10**

Chairman Holmberg said Section 15.1-30-10 is the last of the sections rewriting the contents of present Section 15-34.2-09. He said it provides simply that

the transportation contract is assignable only upon the written approval of the board.

#### **Section 15.1-30-11**

Chairman Holmberg said Section 15.1-30-11 is the proposed rewrite of present Section 15-34.2-07.1. He said it provides that a contract for the transportation of students, originally bid by and let to a contractor, may be renewed through direct negotiation between the board of a school district and the contractor or upon sealed bids.

If the contract is to be renewed through direct negotiation, current law requires that the board obtain "two or more written quotations . . . when possible." Because the phrase "when possible" raises questions concerning enforceability, Chairman Holmberg said, it was omitted from the rewrite.

Chairman Holmberg asked the Legislative Council staff to work with the North Dakota School Boards Association and determine whether this section as written is workable. He said if the North Dakota School Boards Association has recommendations regarding changes to the section, perhaps the staff could prepare them in draft version for committee review at the next meeting.

#### **Section 15.1-30-12**

Chairman Holmberg said Section 15.1-30-12 is the proposed rewrite of present Section 15-34.2-08. He said the same as present law, the rewrite of this section provides that the school board shall let the contract to the lowest responsible bidder who furnishes the appropriate bond; who agrees to use a vehicle that meets standards imposed by the Superintendent of Public Instruction and which is safe, comfortable, and suitable for the purpose; and who identifies competent and responsible drivers.

Chairman Holmberg said there is concern over use of the phrase "lowest responsible bidder." He said if a school board rejects a low bidder on the basis that the bidder is "not responsible" that could certainly raise the possibility of lawsuits. He said, traditionally, the phrase used is "lowest and best bid." He said the committee may wish to consider making this change.

**It was moved by Representative Eckre, seconded by Senator Redlin, and carried on a voice vote that Section 15.1-30-12 be amended to reference the "lowest and best bid."**

#### **Section 15.1-30-13**

Chairman Holmberg said Section 15.1-30-13 is the proposed rewrite of present Section 15-34.2-07.2. He said present Section 15-34.2-07.2 provides that a school board may purchase transportation fuel or heating fuel as needed by obtaining written quotes from all vendors who have registered with the school district for that school year. He said school districts must publish registration information at least once

each year and may register interested vendors throughout the year. He said it is unclear whether the section is authorizing boards to purchase fuel or simply giving them an option to obtain written quotes. Similarly, he said, the last sentence provides that school districts "may register interested vendors throughout the year." He said it is not clear whether this verbiage is requiring registration, permitting it, or suggesting it.

Chairman Holmberg said in the rewrite, each school board is directed to publish information regarding the registration of motor vehicle and heating fuel vendors, and the bill draft further provides that the board must obtain written quotes from all vendors who registered with the district that year.

**It was moved by Representative Monson, seconded by Representative Eckre, and carried on a voice vote that Section 15.1-30-13 be moved out of the chapter regarding student transportation and placed in a more suitable location.**

#### **Section 15.1-30-14**

Chairman Holmberg said Section 15.1-30-14 is the proposed rewrite of present Section 15-34.2-11. He said this section provides that the driver of a vehicle used to transport students under a contract as provided in this chapter is under the supervision and direction of the school board, the school district superintendent, the school principal, and teachers while a student is being transported, by or on behalf of the student's school, and the driver is charged with exercising control and discipline during the transportation. He said no substantive changes were made to this section.

#### **Section 15.1-30-15**

Chairman Holmberg said Section 15.1-30-15 is the proposed rewrite of present Section 15-34.2-15. He said the rewrite provides that a school board may extend its schoolbus route into a bordering state for the purpose of transporting students from the bordering state into this state, provided the Superintendent of Public Instruction has entered into a reciprocal contract with the bordering state under Section 15.1-29-02.

Chairman Holmberg said proposed Section 15.1-29-02 authorizes an individual school district to contract with a district in another state for the education of its students even if the Superintendent of Public Instruction is unable to enter into a reciprocal contract. He said perhaps the committee might wish to include such a contingency in this section as well.

Senator Redlin said Section 15.1-30-15 should be amended to conform to Section 15.1-20-02.

**It was moved by Representative Thoreson, seconded by Representative Brandenburg, and carried on a voice vote that Section 15.1-30-15 be amended to conform to Section 15.1-20-02.**

#### **Section 15.1-30-16**

Chairman Holmberg said Section 15.1-30-16 is the proposed rewrite of present Section 15-34.2-16. He said this section sets forth the conditions under which a school board may provide transportation services to students attending nonpublic schools. He said the section also authorizes a school board to contract with other local, state, and federal entities for the joint provision and integration of transportation services to the public. He said present law refers to both constitutional and statutory sections granting authority for joint agreements. He said since that authority already exists, the rewrite omits the redundant references.

#### **Omitted Section**

Chairman Holmberg said Chapter 15.1-30 of the rewrite omits present Section 15-34.2-05. He said that section provides that the business manager of the school district shall include an item in the annual statement setting forth any amounts spent for transportation of students or in making any payment in lieu of transportation. He said a school district business manager is, under Section 15.1-07-21, directed to prepare and submit an annual report to the board, to perform all duties required by the board, to keep true and accurate district financial records, to prepare and submit a school district financial report to the board quarterly, to maintain custody of all district moneys, and to pay out district moneys as directed by the board, etc. He said the language of Section 15.1-07-21 makes the language in Section 15-34.2-05 duplicative and unnecessary, and it was therefore omitted from the rewrite.

### **SCHOOL CONSTRUCTION**

The committee reviewed a bill draft that creates NDCC Chapter 15.1-36, relating to school construction.

#### **Section 15.1-36-01**

Chairman Holmberg said Section 15.1-36-01 is the proposed rewrite of present Section 15-35-01.1. He said it provides that the Superintendent of Public Instruction must approve the construction, purchase, repair, improvement, modernization, or renovation of any school building or facility before commencement of the project if the project, as estimated by the school board, is in excess of \$25,000. He said in subsection 2 the rewrite maintains the language added during the 1999 legislative session stating that the Superintendent may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility unless the school district proposing the project:

- ...
- a. Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student

enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district; and

- b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education.

...

#### **Section 15.1-36-02**

Chairman Holmberg said Section 15.1-36-02 is the proposed rewrite of present Section 15-60-10(1) and (2). He said this is the section that authorizes the use of up to \$40 million from the coal development trust fund for school construction loans. He said the rewrite made no substantive changes to the section.

#### **Section 15.1-36-03**

Chairman Holmberg said Section 15.1-36-03 is the proposed rewrite of present Section 15-60-10(3). He said this section directs the Bank of North Dakota to manage and service all school construction loans issued under this chapter. He said the rewrite made no substantive changes to the section.

#### **Section 15.1-36-04**

Chairman Holmberg said Section 15.1-36-04 is the proposed rewrite of present Section 15-60-11. He said it allows a school board to issue and sell evidences of indebtedness pursuant to Chapter 21-03 to finance the construction or improvement of a project approved under this chapter. He said the rewrite made no substantive changes to the section.

#### **Section 15.1-36-05**

Chairman Holmberg said Section 15.1-36-05 is the proposed rewrite of present Sections 15-35-16 and 15-35-17. He said it provides that a person is guilty of an infraction if the person draws plans or specifications for the construction of a public school in violation of this chapter, superintends the construction of a public school in violation of this chapter, constructs a public school in violation of this chapter, or violates any other provision of this chapter. He said it also provides, from present Section 15-35-17, that any member of a school board is guilty of an infraction if the board member concurred in a violation of this chapter.

Chairman Holmberg said since earlier in the chapter reference is included to a school building "or facility", in this penalty section, reference should also be to a "public school or facility." He said if that is acceptable to the committee, the language on page 2, line 1, "[f]or purposes of this section" should be

changed to "[f]or purposes of this chapter, 'facility' means . . . ."

**It was moved by Representative Thoreson, seconded by Representative Eckre, and carried on a voice vote that the penalty section in Chapter 15.1-36 reference a facility as well as a school building and that the definition of a facility in Section 15.1-36-01 be made applicable to the entire chapter.**

### **Omitted Sections**

Chairman Holmberg said the rewrite omits Section 15-35-15, which provides:

**15-35-15. Duty of superintendent of public instruction to enforce statutes.** The provisions of this chapter must be enforced by the superintendent of public instruction or some person designated by him for that purpose.

Chairman Holmberg said the section was enacted in 1911 and gave the Superintendent of Public Instruction the duty of ensuring that the school "toilets" were properly constructed. He said in modern times, the section has confusing application. He said this language deals with criminal penalties for the unauthorized construction of a school building or facility. Normally, he said, prosecutorial functions would be left to the state's attorney or the Attorney General. He said that being the case, this section would seem to be a candidate for omission.

Chairman Holmberg said the rewrite also omits Section 15-60-01, which provides:

**15-60-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Board" means the board of university and school lands.
3. "Construction" means purchase, lease, or construction, and the term "to construct" means to purchase, lease, or construct in such manner as may be deemed desirable.
4. "Fund" means the coal development trust fund created by section 21 of article X of the Constitution of North Dakota and section 57-62-02.
5. "Improvement" means extension, enlargement, or improvement, and the term "to improve" means to extend, to enlarge, or to improve in such manner as may be deemed desirable.
6. "Project" means any structure or facility that a school district is authorized to construct or improve under section 15-35-01.1 and which is estimated to cost in excess of fifty thousand dollars.
7. "Superintendent" means the superintendent of public instruction.

Chairman Holmberg said as the chapter was drafted, definitions were either incorporated in the respective sections or references to the Superintendent of Public Instruction or the Bank of North Dakota were clarified, so this section is not needed.

Senator Kelsh said the \$25,000 limit in Section 15-35-01.1 is far too low.

Chairman Holmberg called on Mr. Decker, who said the only change that has been made recently is the addition of the \$75,000 cap for repairs required by the State Fire Marshal. He said the paperwork required is very short for anything under \$150,000 that does not enlarge square footage. He said the fact is the state has a lot of very small facilities so the dollar figure has to reflect the reality.

In response to a question from Representative Thoreson, Mr. Decker said if the Superintendent of Public Instruction rejects a school district's request for construction approval, there is provision for an appeal to the State Board of Public School Education.

## **EDUCATION STANDARDS AND PRACTICES BOARD**

The committee reviewed a bill draft that creates NDCC Chapter 15.1-13, relating to the Education Standards and Practices Board.

Chairman Holmberg said under present law provisions regarding the Education Standards and Practices Board (ESPB) and the Administrator's Professional Practices Board (APPB) are found in portions of two chapters--Chapters 15-36 and 15-38. He said as has been done throughout the title rewrite, the material has been organized to place similar sections together.

Chairman Holmberg said under present law many sections address both the ESPB and the APPB and often assign them different duties. He said while present law tries within each section to distinguish which board is to undertake which duty in which circumstance, there also are sections such as Section 15-36-17, which provides, in part:

...

When a professional teaching license is revoked, the education standards and practices board or the administrator's professional practices board shall notify the business manager of the school district or the secretary of the board of education, as the case may be, of the district wherein the teacher is employed, and shall notify the teacher of the revocation through the business manager of the school district. . . .

Chairman Holmberg asked which board is charged with the notification? He asked if the APPB is to deal with administrators, why is it given notification authority regarding a teacher?

Chairman Holmberg said the section goes on to provide that the "appropriate board also shall notify each county superintendent of schools . . . ." He said the reality is that people who work with these boards

have come to understand which is the "appropriate board." However, he said, drafting in this manner arguably does not provide due notice of the law. He said the law needs to accurately reflect how business is conducted and that language needs to be readily understandable even by those who are not intimately familiar with the process.

Chairman Holmberg said there has been some indication that this committee will be asked to reject the proposed rewrite and leave the sections regarding the ESPB and the APPB in their current form. He said that will be a discussion item for later. He said as this section of the law is reviewed, it should be remembered that we are dealing with two boards. He said each has its own duties and circumstances under which it functions. He said each has a chairman and a vice chairman. He said each must adopt its own rules of order and procedure. He said each has independent authority to charge fees. He said only one has the authority to expend fees. He said these are some of the reasons the Education Services Committee during last interim directed that each board be given its own chapter.

Chairman Holmberg said the committee can certainly have a detailed discussion regarding the ESPB and the APPB and determine the best manner for clearly and accurately articulating the powers and duties of each board.

### **Section 15.1-13-01**

Chairman Holmberg said Section 15.1-13-01 sets forth the membership of the ESPB. He said it is taken from Section 15-38-17. He said it requires that the Governor appoint four individuals who are public school classroom teachers, one individual who is a nonpublic school classroom teacher, one individual who is a school board member, two individuals who are school principals or school district superintendents, and one dean of a college of education or chairman of a department of education. He said the last two categories are slight departures from present law. He said Section 15-38-17 provides for the appointment of "two school administrators." He said last interim committee counsel checked with ESPB staff and was told that this was intended to mean school principals or school district superintendents. He said the rewrite spells this out.

Chairman Holmberg said Section 15-38-17 also provides for the appointment of one dean of a college of education. He said last interim the committee determined that some universities have chairmen of various departments, rather than deans, and consequently the committee directed that this reference be included.

Chairman Holmberg said, as in present law, the Superintendent of Public Instruction or his designee is included in the rewrite as a nonvoting ex officio member. He said this last reference requires comment. He said when an elected official is given a

duty, that duty may be delegated. He said that is the law of an agency, so the phrase "or the superintendent's designee" is not needed. He said if, however, it is going to cause confusion, the committee may want to leave it in for clarity's sake.

Chairman Holmberg said the phrase "ex officio" means the person is in attendance by virtue of his office. He said it does not mean that the person is a member of the board. He said consequently, a person serving in an ex officio capacity has no vote. He said in a pure world we should just be providing in lines 11 and 12 of proposed Section 15.1-13-01 that the Superintendent serves as an ex officio member. He said, however, when committee counsel checked, she was told that in other instances agency heads serving in an ex officio capacity have the authority to vote. He said to avoid confusion, the term "nonvoting" should remain. He said the term "ex officio" can be removed.

#### **Section 15.1-13-02**

Chairman Holmberg said Section 15.1-13-02 addresses compensation for members of the ESPB. He said it is also taken from Section 15-38-17. He said both present law and the rewrite provide for a \$25 per diem. He said the rewrite uses standard reimbursement language, i.e., "[e]ach member . . . is entitled to receive compensation in the amount of twenty-five dollars per day and to reimbursement for expenses as provided by law for other state officers . . . ."

Chairman Holmberg said as in present law, the rewrite provides a board member may not lose the member's regular salary and may not be required to refuse the compensation to which the member is entitled under this section for serving on the board.

#### **Section 15.1-13-03**

Chairman Holmberg said Section 15.1-13-03 addresses terms of office and vacancies. He said it is also taken from Section 15-38-17. He said as in current law, the rewrite provides for a three-year term with vacancies filled for the duration of the unexpired term in the same manner as the original appointment.

#### **Section 15.1-13-04**

Chairman Holmberg said Section 15.1-13-04 addresses officers. He said this section is also taken from Section 15-38-17. He said the same as current law, the rewrite provides for a chairman and a vice chairman. He said the rewrite directs that the executive director of the ESPB serves as the secretary.

#### **Section 15.1-13-05**

Chairman Holmberg said Section 15.1-13-05 provides for the calling of meetings and the issuance of meeting notices. He said it is taken from Section 15-38-17. He said the rewrite, as current law, provides that the chairman set the date and time of

the board meetings. He said it also requires at least ten days' notice to board members.

#### **Section 15.1-13-06**

Chairman Holmberg said Section 15.1-13-06 relates to quorums. He said as in Section 15-38-17, a majority of the board (five of nine members) constitutes a quorum and a majority of the quorum (three members) can conduct business. He said Section 15-38-17 also directs each board to adopt its own rules of order and procedure not inconsistent with Sections 15-38-16 through 15-38-19. He said the rewrite eliminates this language. He said as stated in the drafter's notes, a board does not need a statutory directive to establish its own rules of order and procedure. He said as for the statutory cites, they too are omitted. He said they serve no purpose other than to require that the board follow the law.

#### **Section 15.1-13-07**

Chairman Holmberg said Section 15.1-13-07 sets forth the duties of the ESPB. He said it is taken from Section 15-38-18. He said present law, which is entitled *Duties of the Education Standards and Practices Board*, combines in one section both the board's powers and its duties. He said the rewrite separates these into two sections. He said the duties include:

1. Supervising the licensure of teachers;
2. Setting standards for and approving teacher preparation programs;
3. Seeking advice in developing and updating codes or standards;
4. Adopting codes or standards;
5. Making recommendations for inservice education;
6. Appointing an executive director; and
7. Authorizing the executive director to employ personnel.

#### **Section 15.1-13-08**

Chairman Holmberg said Section 15.1-13-08 sets forth the powers of the ESPB. He said as was noted earlier, it is taken from Section 15-38-18. He said it provides that the board may contract with other states for the reciprocal approval of teacher preparation programs; apply for and receive federal or other funds; and perform any duties related to the improvement of instruction through teacher education, professional development, and continuing education programs.

#### **Section 15.1-13-09**

Chairman Holmberg said Section 15.1-13-09 sets forth the criteria for teacher licensure. He said this section is taken from Section 15-36-01. He said present law provides that the board shall determine the criteria for teacher licensure, that the criteria shall be based upon standards that include considerations of character, adequate educational preparation, and

general fitness to teach in the public schools of this state, and that the board shall adopt rules concerning the issuance of professional teaching licenses. He said the 1997-98 interim Education Services Committee was concerned with the phrase "the board shall adopt rules concerning the issuance of professional teaching licenses." He said the committee wanted more specificity regarding what the rules were to cover. Consequently, he said, the rewrite directs that the ESPB establish by rule the criteria for teacher licensure and the process for issuing teaching licenses.

Chairman Holmberg said present law at times refers to a professional teaching license. He said the adjective "professional" has been eliminated in the rewrite, in part because the use of a distinguishing adjective makes one wonder about the need for the distinction. He asked if there is a "nonprofessional" teaching license? Is there an "amateur" status? He said the Century Code has references to professional services, organizations, relationships, practice, boards, degrees, training, competency, and conduct. He said there are generic references to professional licenses. He said there are references to professional versus amateur teams and to professional versus occupational licenses. He said doctors do not refer to a professional medical license and attorneys do not refer to a professional law license. In fact, he said, the only reference found was to a professional weather modification license. He said given the desire to promote professionalism, the reference was removed.

Chairman Holmberg said the rewrite, as in present law, provides that the ESPB may not require any teacher who graduated from college in an accredited teacher education program on or before September 1, 1980, to earn college credits in native American or other multicultural courses in order to be licensed or relicensed. He said it also continues to provide that life certificates are intact.

#### **Section 15.1-13-10**

Chairman Holmberg said Section 15.1-13-10 sets forth the criteria for application and licensure fees. He said this section is taken from Section 15-36-08. He said while current law provides that the ESPB must determine a fee for each professional teaching license issued by this state, the rewrite provides that the board may charge for filing an application as well as for the issuance. He said present Section 15-38-18.2 states the board "may charge an application fee established by the board by rule."

#### **Section 15.1-13-11**

Chairman Holmberg said Section 15.1-13-11 sets forth the period for which a teaching license is effective. He said this section is taken from Section 15-36-08, which has fees for licenses as its major topic.

#### **Section 15.1-13-12**

Chairman Holmberg said Section 15.1-13-12 authorizes the issuance of provisional teaching certificates. He said this section is taken from Section 15-38-18.2, which is better known as the section regarding background checks. It is a 1999 law, and the rewrite gave it its own section.

Chairman Holmberg said in the 1999 legislative session the ESPB had attempted to statutorily change references from teaching certificates to teaching licenses. He asked the Legislative Council staff to change any remaining references in the rewrite to reflect this language.

#### **Section 15.1-13-13**

Chairman Holmberg said Section 15.1-13-13 authorizes criminal background checks. He said the section parallels present Section 15-38-18.2. He said as stated earlier, the material regarding provisional teaching licenses was moved to its own section.

#### **Section 15.1-13-14**

Chairman Holmberg said Section 15.1-13-14 parallels Section 15-36-01.1 and pertains to student transcripts. He said Section 15.1-13-14 provides that a student who has met all the criteria necessary to receive a teaching license but who has not graduated from a college or university may request a copy of the student's completed transcript from the college or university the student attended. He said within 10 days of the request by the student, the college or university shall mail a copy of the transcript to the ESPB showing the student has met all the criteria necessary to receive a professional teaching license except graduation. He said the transcript must indicate areas in which the student has a major or minor.

Chairman Holmberg said when the Education Services Committee looked at this section last interim, it concluded that the section should not even exist. However, he said, the committee did not take the step of eliminating the language on the theory that someone sometime must have thought it was important. He said the section was enacted in 1989, so perhaps someone still remembers why it is here.

Representative Hanson said a university student who graduated at Christmas could not get a copy of his transcript until the spring. He said this section ensures that universities will provide transcripts when needed.

#### **Section 15.1-13-15**

Chairman Holmberg said Section 15.1-13-15 is the provision that requires an individual to have a teaching license or to be approved to teach by the ESPB. He said the section combines present Sections 15-36-11 and 15-36-11.1. He said the language regarding the approval of individuals who have in the past held valid North Dakota teaching

licenses or those who hold valid licenses from other states was added during the 1999 legislative session.

### **Section 15.1-13-16**

Chairman Holmberg said Section 15.1-13-16 relates to the presentation of one's teaching license to the school district business manager. He said it is taken from present Section 15-36-12, which provides that:

No teacher is entitled to receive any compensation for the time the teacher teaches in a public school without a professional teaching license. Prior to receiving a salary for the first month taught in a school district, a teacher must exhibit a professional teaching license to the business manager of the school district. . . .

Chairman Holmberg said the problem with this section is it says an individual cannot be paid for the time that individual teaches without a teaching license. He said the previous section provides that an individual cannot teach unless that individual holds a teaching license or is approved to teach by the ESPB. He said to overcome this inconsistency, the rewrite provides that, before being employed to teach, the individual must show to the school district business manager a teaching license or some other evidence that the individual has been approved to teach by the ESPB.

### **Section 15.1-13-17**

Chairman Holmberg said Section 15.1-13-17 relates to the expiration of a teaching license. He said the subject matter comes from Section 15-36-12, and because this section was not germane to other matters in that section, the rewrite gives it its own section. He said as in current law, the section provides that an individual whose teaching license expires within the final six weeks of a school year may continue teaching under the expired license until the completion of the school year.

### **Section 15.1-13-18**

Chairman Holmberg said Section 15.1-13-18 relates to the authority of the ESPB to grant an interim reciprocal teaching license. He said the section is taken from present Section 15-36-11.2, which was enacted by the 1999 Legislative Assembly. He said the section provides that the ESPB shall grant an interim reciprocal teaching license to an individual who holds a valid regular teaching license or certificate from another state provided certain standards and requirements are met. He said one of these requirements is that the individual must submit evidence of progress on the individual's educational plan to the ESPB at the end of the two-year period. He said this appears to be a less than specific requirement. He asked if it must be submitted on a date certain or is latitude given to the individual? He

said perhaps it would be better to require submission "on or before the expiration of the interim certificate." He said this section contains internal references to Title 15 which will have to be reconciled.

### **Section 15.1-13-19**

Chairman Holmberg said Section 15.1-13-19 is the rewrite of Section 15-36-11.3. He said it is a 1999 law and directs the ESPB to pursue the reciprocal acceptance of teaching certificates issued by other states. He said the second line of the present section calls for the ESPB to report to the Legislative Council or to a committee designated by the council before October 1, 2000. He said that line has been eliminated in the rewrite. He said this committee has been designated to receive the report and will receive it before the end of the interim.

### **Section 15.1-13-20**

Chairman Holmberg said Section 15.1-13-20 is the rewrite of Section 15-36-18.1. He said the section simply provides that the ESPB may certify instructors of North Dakota Indian languages.

### **Section 15.1-13-21**

Chairman Holmberg said Section 15.1-13-21 is the rewrite of Section 15-36-18. He said this is a 1997 law, and it states that guidance and counseling services may be offered by a person holding a graduate degree in counseling provided the person has a teaching license or will obtain one within seven years. He said no substantive changes were made to the section.

### **Section 15.1-13-22**

Chairman Holmberg said Section 15.1-13-22 is the rewrite of that portion of present Section 15-38-19 which deals with the ESPB accepting complaints against teachers. He said the rewrite simply takes one large paragraph and, using subsections, breaks the complaint and hearing procedure into chronological steps.

### **Section 15.1-13-23**

Chairman Holmberg said Section 15.1-13-23 is the rewrite of present Section 15-36-15. It deals with the grounds for revocation or suspension of a teacher's license. He said present law refers to suspension, revocation, and annulment of a teaching license. He said the rewrite eliminates the reference to annulment because revocation has the same practical effect.

### **Section 15.1-13-24**

Chairman Holmberg said Section 15.1-13-24 is the rewrite of present Section 15-36-16. He said as in present law, this section covers the steps to be taken by the ESPB once a complaint is received and the board establishes sufficient evidence exists to sustain the allegations. He said for the same reasons

previously mentioned, the reference to annulment of a teaching license has been omitted.

### **Section 15.1-13-25**

Chairman Holmberg said Section 15.1-13-25 is the rewrite of present Section 15-36-15.1. He said this is the section that calls for denial of a teaching license and immediate revocation of an existing license if the individual has been found guilty of a crime against a child or a sexual offense. He said other than creating a new section for circumstances involving an administrator, the rewrite makes no substantive change.

### **Section 15.1-13-26**

Chairman Holmberg said Section 15.1-13-26 is the rewrite of present Section 15-36-17. He said it provides that when a professional teaching license is revoked, the ESPB shall notify the business manager of the school district or the secretary of the board of education, as the case may be, of the district wherein the teacher is employed and shall notify the teacher of the revocation through the business manager of the school district. He said the ESPB shall also "notify each county superintendent of schools in the state and shall enter an action in the case upon the records of the superintendent's office." He said it is not clear whether the board is to enter an action in the case upon the records of the county superintendent or of the Superintendent of Public Instruction. He said as set forth in the drafter's notes, an assumption was made that by notifying the county superintendent, a record would be made and that, therefore, the section should provide for notification of the Superintendent of Public Instruction.

Chairman Holmberg said present law also provides that upon "being notified that the individual's professional teaching license has been revoked, the teacher . . . shall return the license to the . . . board, and if the teacher . . . neglects so to do, that board may issue notice of the revocation by publication in the official newspaper of the county in which the teacher . . . last was employed." He said no time-frame is given for the return of a license so the rewrite directs the board to set the period within which the license must be returned.

### **Section 15.1-13-27**

Chairman Holmberg said Section 15.1-13-27 is the rewrite of the last paragraph of present Section 15-36-15. He said the section provides that the revocation of a teaching license results in immediate termination of employment. He said present law states the district is to compensate the individual for services rendered until such time as the notice of revocation is received. He said since it is not clear whether this was intended to mean the time the notice of revocation is received by the individual or the district, the rewrite provides the school district shall compensate the individual for services rendered until

such time as the notice of revocation is received by the district. He said the previous section in the rewrite now addresses the time question by providing that the ESPB shall notify the individual through the business manager of the employing school district. He said the last line of the drafter's note should cite Section 15.1-13-26 not Section 15.1-13-21.

### **Section 15.1-13-28**

Chairman Holmberg said Section 15.1-13-28 is the rewrite of one sentence of present Section 115-38-18. He said this simply provides that Burleigh County is the venue for all actions to which the ESPB is a party.

### **Section 15.1-13-29**

Chairman Holmberg said Section 15.1-13-29 is the rewrite of present Section 15-36-14.1. He said it provides that the state's attorney shall notify the ESPB in writing when an individual holding a teaching license is convicted of a felony or a Class A misdemeanor.

### **Omitted Section**

Chairman Holmberg said present Chapter 15-38 contains one section that was omitted from the rewrite. He said present Section 15-38-16 states:

The legislative assembly hereby declares the profession of teaching in the public schools of this state to be a profession affected by high public interest, and that it is in the best interest of the state that such profession be recognized and that it accept its professional responsibilities in the development and promotion of high standards of ethics, conduct, and professional performance and practices. For the purposes of sections 15-38-16 through 15-38-19, the "profession of teaching" or "teaching profession" means persons engaged in teaching in the public schools and persons providing related administrative, supervisory, or other services in the public schools requiring licensure from the education standards and practices board.

Chairman Holmberg said the reality is that a definition of the "teaching profession" is not needed. He said as for the rest of the section, the same Legislative Council drafting standards were applied as were used in the first part of the rewrite, and those standards include the elimination of testimony and would-be or should-be resolution material.

## **ADMINISTRATOR'S PROFESSIONAL PRACTICES BOARD**

The committee reviewed a bill draft that creates NDCC Chapter 15.1-14, relating to the Administrator's Professional Practices Board (APPB).

**Section 15.1-14-01**

Chairman Holmberg said Section 15.1-14-01 is a new suggested section. He said there is no definition of an "administrator" with respect to which individuals are subject to the jurisdiction of the APPB. He said there should be a statutory definition of an administrator; otherwise, the committee is working on the assumption "the committee" knows what it is supposed to mean or how it is supposed to work. He said a newcomer might not have that knowledge. He said John Q. Public, who is supposed to have due notice of the law from these statutes, might not have that knowledge.

**Section 15.1-14-02**

Chairman Holmberg said Section 15.1-14-02 is taken from Section 15-38-17. He said the section sets forth the membership of the APPB. As in current law, the APPB is made up of five specific members from the ESPB. He said on a technical note, the rewrite has maintained the name "Administrator's Professional Practices Board," using the single possessive "Administrator's." The committee may wish to consider whether the plural possessive--"Administrators"--might be more appropriate or at least grammatically correct.

Chairman Holmberg asked the Legislative Council staff to amend the rewrite to make the necessary grammatical change.

**Section 15.1-14-03**

Chairman Holmberg said Section 15.1-14-03 addresses compensation for members of the APPB. He said the section is also taken from Section 15-38-17. He said both present law and the rewrite provide for a \$25 per diem. He said the rewrite uses standard reimbursement language, i.e., "[e]ach member . . . is entitled to receive compensation in the amount of twenty-five dollars per day and to reimbursement for expenses as provided by law for other state officers . . . ." He said as in present law, the rewrite also provides a board member may not lose the member's regular salary and may not be required to refuse the compensation to which the member is entitled under this section for serving on the board.

Chairman Holmberg said, as stated in the drafter's note, if an individual serves on both the ESPB and the APPB the same day, that person does not receive compensation twice. He said the last sentence of Section 15.1-14-03(1) takes care of that matter. He said this subsection does not apply to any time for which the member receives compensation and reimbursement for expenses as a result of the individual's service on the ESPB.

**Section 15.1-14-04**

Chairman Holmberg said Section 15.1-14-04 addresses terms of office and vacancies. He said the section is also taken from Section 15-38-17. He said

as in current law, the rewrite provides for a three-year term with vacancies filled for the duration of the unexpired term in the same manner as the original appointment.

**Section 15.1-14-05**

Chairman Holmberg said Section 15.1-14-05 addresses officers. He said it is also taken from Section 15-38-17. He said as in current law, the rewrite provides that the APPB annually select a chairman and a vice chairman. He said the section directs the executive director of the ESPB to serve as the secretary.

**Section 15.1-14-06**

Chairman Holmberg said Section 15.1-14-06 is the rewrite of a portion of present Section 15-38-17. He said the section provides for the calling of meetings and the issuance of meeting notices. He said the rewrite as in current law provides that the chairman sets the date and time of the board meetings. He said the section also requires at least ten days' notice to board members.

**Section 15.1-14-07**

Chairman Holmberg said Section 15.1-14-07 is the rewrite of a portion of present Section 15-38-17. He said the section relates to quorums. He said as in Section 15-38-17, a majority of the board (three of five members) constitutes a quorum and a majority of the quorum (two members) can conduct business.

Chairman Holmberg said Section 15-38-17 also directs each board to adopt its own rules of order and procedure not inconsistent with Sections 15-38-16 through 15-38-19. He said the rewrite eliminates this language. He said as stated in the drafter's notes, a board does not need a statutory directive to establish its own rules of order and procedure. He said as for the statutory cites, they too are omitted. He said they serve no purpose other than to require that the board follow the law.

**Section 15.1-14-08**

Chairman Holmberg said Section 15.1-14-08 is the rewrite of that portion of present Section 15-38-19 which deals with the APPB accepting complaints against administrators. He said the rewrite simply takes one large paragraph and, using subsections, breaks the complaint and the hearing procedure into chronological steps.

**Section 15.1-14-09**

Chairman Holmberg said Section 15.1-14-09 is the rewrite of that portion of present Section 15-36-15 which deals with the grounds for revocation or suspension of an administrator's teaching license. He said present law refers to suspension, revocation, and annulment of a teaching license. He said the rewrite

eliminates the reference to annulment because revocation has the same practical effect.

#### **Section 15.1-14-10**

Chairman Holmberg said Section 15.1-14-10 is the rewrite of that portion of present Section 15-36-16 which covers the steps to be taken by the APPB once a complaint is received and the board establishes that sufficient evidence exists to sustain the allegations. He said for the same reasons previously mentioned, the reference to annulment of a teaching license was omitted.

#### **Section 15.1-14-11**

Chairman Holmberg said Section 15.1-14-11 is the rewrite of that portion of present Section 15-36-15.1 which calls for the immediate revocation of an administrator's teaching license if the administrator has been found guilty of a crime against a child or a sexual offense. He said other than creating a separate section for circumstances involving an administrator, the rewrite makes no substantive change.

#### **Section 15.1-14-12**

Chairman Holmberg said Section 15.1-14-12 is the rewrite of that portion of present Section 15-36-17 which requires the APPB to notify the administrator through the business manager of the school district in which the administrator is employed if the administrator's teaching license is revoked. He said the APPB is also directed to "notify each county superintendent of schools in the state" and to "enter an action in the case upon the records of the superintendent's office." He said it is not clear whether the board is to enter an action in the case upon the records of the county superintendent or upon the records of the Superintendent of Public Instruction. He said as set forth in the drafter's notes, an assumption was made that by notifying the county superintendent, a record would be made, and therefore, the section should provide for notification of the Superintendent of Public Instruction.

Chairman Holmberg said present law also provides that upon "being notified that the individual's professional teaching license has been revoked, the . . . administrator shall return the license to the . . . board, and if the . . . administrator neglects so to do, that board may issue notice of the revocation by publication in the official newspaper of the county in which the . . . administrator last was employed." He said no timeframe is given for the return of a license so the rewrite directs the board to set the period within which the license must be returned.

#### **Section 15.1-14-13**

Chairman Holmberg said Section 15.1-14-13 is the rewrite of the last paragraph of present Section 15-36-15, as applied to administrators. He said it provides that the revocation of a teaching license results in the immediate termination of employment.

He said present law states the district is to compensate the individual for services rendered until such time as the notice of revocation is received. He said since it is not clear whether this was intended to mean the time the notice of revocation is received by the individual or the district, the rewrite provides that the school district shall compensate the individual for services rendered until such time as the notice of revocation is received by the district. He said the previous section in the rewrite now addresses the time question by providing that the APPB shall notify the individual through the business manager of the employing school district. He said the last line of the drafter's note should cite Section 15.1-14-13 not Section 15.1-14-10.

#### **Section 15.1-14-14**

Chairman Holmberg said Section 15.1-14-14 is the rewrite of present Section 15-36-14.1, as it applies to the APPB. He said the section provides that the state's attorney shall notify the APPB in writing when a school district superintendent, an assistant superintendent, a school principal, or an assistant principal is convicted of a felony or a Class A misdemeanor. He said since the definition of an administrator is included at the beginning of this proposed chapter, this section could be amended to replace line 3 with the word "administrator." He said the section would then read the state's attorney shall provide written notification to the APPB when an administrator is convicted of a felony or a Class A misdemeanor.

Chairman Holmberg said the drafter's note at the end of the proposed rewrite provides that the ESPB is given authority to generate income under several sections of the Century Code. He said the only reference to generation of income by the APPB is in the section dealing with crimes against a child. He said the board may impose a fee to cover the cost of its administrative actions that result in disciplinary action. He said the Century Code makes no provision for the ESPB to fund the workings of or otherwise cover any expenses incurred by the APPB. The committee may wish to examine and clarify this matter.

Chairman Holmberg called on Ms. Janet Placek, Executive Director, Education Standards and Practices Board, who presented testimony regarding the chapters related to the ESPB and the APPB. Her testimony is attached as Appendix C. She said the ESPB would prefer the ESPB and the APPB not be split into separate chapters. She said the way the Century Code is presently written, the APPB functions like a subset of the ESPB. She said the only time the APPB is involved as an independent board is when a license of an administrator is at issue. She said the rest of the functions are all performed by the ESPB. She said to assure the administrators there would not be a majority of teachers reviewing their disciplinary matters, the APPB was formed. Ms. Placek said the APPB is a subset of the ESPB.

In response to a question from Representative Thoreson, Ms. Placek said the split would be adding another board for approximately 500 administrators. She said she is concerned about the financial circumstances of the ESPB and the APPB.

Chairman Holmberg called on Mr. Joe Westby, Executive Director, North Dakota Education Association, who said when this bill was originally enacted he was involved in its drafting and testified for it. He said the current law represents an amalgamation of the thinking of the North Dakota Education Association and the school administrators at the time. He said if the current situation is not working and meeting the needs of the teachers and administrators, then we should change it. However, he said, if the statute is functioning, then we should maintain the statute the way it is.

With the permission of Chairman Holmberg, Ms. Norby said regardless of which way the committee decides to go, the addition of the section defining an administrator is a good one. She said special education and vocational education directors should be included. She said the definition should be the same as used for the termination of administrators.

With the permission of Chairman Holmberg, Ms. Deb Jensen, Assistant Director, Education Standards and Practices Board, said when the ESPB was formed, it was intended to be a professional board where all of the profession could sit down together. She said a split of the two boards would not be good.

Senator Redlin said the administrators did not want to be judged by a board of teachers. He said they wanted to be judged by administrators.

Chairman Holmberg said the sections containing references to the two boards and their independent duties are the result of an initial compromise by the interested groups. He said the committee has tried to take a look at what the Legislative Assembly enacted and how the field is actually working.

Senator Redlin said when an administrator does something wrong, his teaching license is revoked. He asked why two boards are needed?

Representative Monson said one cannot be a superintendent unless one holds a teaching certificate.

In response to a question from Representative Brandenburg, Ms. Placek said the chairman of the ESPB is presently also the chairman of the APPB. She said the ESPB board chairman runs the meetings for the ESPB and the APPB. She said the discipline cases are divided between teachers and administrators. She said when it comes to a disciplinary action against an administrator, the extra members of the ESPB board leave the table.

In response to a question from Senator Kelsh, Ms. Placek said an administrator was caught stealing from one of his school district funds. She said his case is presently before the APPB. She said there

was a case of sexual abuse in Strasburg and that was handled by the APPB. She said in both those cases the administrator's teaching license was in jeopardy.

Ms. Placek said an administrator's credential is handled by the Superintendent of Public Instruction. She said the ESPB has nothing to do with the giving or taking away of an administrator's credential. She said sexual offenses, murder, or contributing to the delinquency of a minor are the reasons people have lost teaching licenses.

With the permission of Chairman Holmberg, Representative Brandenburg said the two separate boards work together on a teacher's license but only the APPB deals with the teaching license of an administrator. He said he wonders why there is a need for two boards.

With the permission of Chairman Holmberg, Ms. Placek said the administrators wanted to be sure if they had a case, it would not be heard by a majority of teachers.

In response to a question from Representative Nottestad, Ms. Placek said the APPB looks at an individual's performance of that person's duties.

In response to a question from Representative Thoreson, Ms. Placek said a teaching license can be suspended or revoked.

In response to a question from Representative Brandenburg, Ms. Placek said last year the board heard 78 cases against teachers, and of those only five licenses were revoked.

Chairman Holmberg said the committee needs to decide how to proceed. He said the two separate bill drafts can be used with some updating and tweaking or the current layout can be used with the updating and flow offered by the new rewrite. He said the overriding issue is what is actual practice and how should it be reflected statutorily.

Chairman Holmberg said a third option is to have the chapter address the powers and duties of the ESPB and include a separate section that would reconfigure the membership of the board when the issue before the board is the teaching license of an administrator.

Senator Redlin said the APPB is nothing but a subcommittee of the original committee. He said no new people are appointed. He said he believes that all matters regarding teacher licenses should come before the ESPB, and if an administrator is involved, the subcommittee should handle that one case.

Senator Kelsh said he agrees with Senator Redlin. He said one is dealing with a teaching license not with an administrator's credential. He said the only difference is that the decisions on an administrator's teaching license are made by this subcommittee.

Representative Thoreson said he would support that type of approach.

Chairman Holmberg said committee counsel should work with the respective groups and present to the committee a bill draft that focuses on the ESPB

but allows for a subcommittee to hear and act on the teaching license of an administrator.

Representative Nottestad said there might be others who the committee might want to include in the definition of administrator. He asked where athletic directors fit in.

Chairman Holmberg said committee counsel should prepare an amendment for committee review which defines administrators in a fashion similar to that used in the dismissal law.

Chairman Holmberg adjourned the meeting at 2:30 p.m.

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L. Anita Thomas  
Committee Counsel

ATTACH:3