

1999 HOUSE EDUCATION

HB 1224

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1224

House Education Committee

Conference Committee

Hearing Date 2-2-99

Tape Number	Side A	Side B	Meter #
Tape #2	x		41.8 to end
Tape # 2		x	0.1 to 4.9
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:

Chairman R. Kelsch , Vice-Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep. Haas ,
Rep. Johnson , Rep. Nelson , Rep. Nottestad , Rep. L. Thoreson , Rep. Grumbo , Rep. Hanson ,
Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R. Kelsch : Open the hearing on HB 1224 and ask the clerk to read the title.

Rep Delmore: District 43. sponsor of the bill. Introduced the bill, provides for executive session
for suspensions.

Rep. Hanson : District 48. cosponsor of HB 1224. Spoke in support of the bill

Max Laird: President of NDEA spoke in support of HB 1224.

Rep. L. Thoreson : What is the purpose of executive session?

Laird: Executive session by law is discussing a possible suspension in a closed session.

Rep. L. Thoreson : It determines the guilt, based on facts, without publicity.

Laird: Yes, as well as the type of punishment and the impact. Allows all parties, representation of all and it is not a conflict of the public's need to know.

Rep. Nelson : Is there a danger where a board action, strong arm tactics could get a resignation in exchange for a favorable recommendation?

Laird: There are laws on the books that disallow that possibility. But yes, it could happen.

Rep. Haas : A comment, according to the open records law, any time a school board goes into executive session, the session must be recorded.

Larry Klundt: North Dakota Education Leaders Association. spoke in support of HB 1224.

Chairman R. Kelsch : Anyone else who wishes to speak in support of HB 1224? Anyone who wishes to speak in opposition of HB 1224?

Jack McDonald: North Dakota Newspaper Association and the North Dakota Broadcasters Association. (see written attached).

End of Tape 2 side A

Begin Tape 2 side B

Rep. Nottestad : Respect the public's right to know, but the statement that it would be less fair to the teacher behind closed doors, I question that.

McDonald: What suspension is for.

Rep. Nottestad : The law permits that it goes into private session upon the request of the teacher. The teacher could also have an open hearing.

McDonald: No, not quite, it is the same as nonrenewable of teachers, it has to be both school board and teacher requesting. If you put in or instead of and it would be less objectionable.

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House Education Committee

Bill/Resolution Number Hb 1224

Hearing Date 2-2-99

Chairman R. Kelsch : Anyone else wishing to speak in opposition of HB 1224? Hearing none we

will close the hearing on HB 1224.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1224-2-12-99

House Education Committee

Conference Committee

Hearing Date 2-2-99

Tape Number	Side A	Side B	Meter #
Tape #3	x		7.6 to 14.0
Committee Clerk Signature <i>Joan Davis</i>			

Minutes:

COMMITTEE ACTION

Chairman R. Kelsch , Vice-Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep. Haas ,
Rep. Johnson , Rep. Nelson , Rep. Nottestad , Rep. L. Thoreson , Rep. Grumbo , Rep. Hanson ,
Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R. Kelsch : We will take up HB 1224. What are the wishes of the committee?

Rep. Haas : I move a DO PASS.

Rep. Solberg : Second.

Chairman R. Kelsch : Discussion. There is a DO PASS motion ask the clerk to read the roll. THE
DO PASS motion passes with 14 YES 1 NO 0 Absent Floor assignment Rep Thoreson.

Date: 2-2-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1224

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Haas Seconded By Solberg

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovdal-Vice Chair	✓				
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard		✓			
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				
Rep. Howard Grumbo	✓				
Rep. Lyle Hanson	✓				
Rep. Deb Lundgren	✓				
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki	✓				

Total (Yes) 14 No 1

Absent 0

Floor Assignment Thoreson

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

REPORT OF STANDING COMMITTEE (410)
February 2, 1999 5:40 p.m.

Module No: HR-21-1734
Carrier: L. Thoreson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1224: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS
(14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1224 was placed on the
Eleventh order on the calendar.

1999 SENATE EDUCATION

HB 1224


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1224

Senate Education Committee

Conference Committee

Hearing Date March 3, 1999

Tape Number	Side A	Side B	Meter #
1		x	0-3412
2	x		1070-2212
Committee Clerk Signature 			

Minutes:

SENATOR FREBORG opened the hearing on HB1224. All senators present.

REPRESENTATIVE LOIS DELMORE, DISTRICT 43, INTRODUCED HB1224. The bill is not terribly complicated and I believe fair to both sides. It simply provides for an executive session that is closed to the public. Allegations are presented in these hearings. This protects the right of privacy for the teachers as well as his or her family. You will note the sponsors to this bill are school board members in the legislature. I urge favorable consideration of HB1224.

Testimony in Favor of 1224: Bev Nielson, ND School Board Association. We are in favor of HB1224.

Testimony in Favor: Ron Torgeson, ND Council of Education Leaders. We are appearing here in support of HB1224 and would like your favorable consideration.

Testimony in Favor: Representative Lyle Hanson, District 48. Before you is HB1224, which I am a cosponsor. It was put in because basically it was a teacher in Jamestown that was suspended. They had a board meeting and asked the media not to report it. It ended up in the paper and as a result this person moved out of his house, left his wife, and started drinking pretty heavily. He suffered a massive heart attack. The suspension which was put in the paper probably caused this man's death. It could have been a closed meeting then later released, he probably could have had some help. So that's the reason my name is on the bill.

SENATOR FLAKOLL : Just a question in terms of what typically happens in a case like this. In a closed door hearing would there be some records kept for the school boards sake, but also for the individuals sake. Things that may or may not have been said in that situation, whether they had legal advice or counsel or not, but just so there would be some record of that.

Rep. Hanson: I am sure there would be records of it and they would be released at a later time. If someone is relieved of their duties it would be released at a later time. But this would be just the suspension part of it.

Testimony in Favor: Joe Westby, NDEA. NDEA has represented teachers in these kinds of hearings and other over the years. We would support this bill. I think you are familiar with the situation that prompted Rep. Hanson to introduce this bill. Indeed it was a tragic situation that maybe could have been prevented, I don't know. But there are other situations where there are allegations that are made that may not be proven and I think the individual in question needs to have the opportunity to hear those allegations in a closed session rather than it becoming public

in the event that those allegations do not become proven and in fact end up being proven as rumors. So we would support this bill.

Testimony in Opposition: Jack McDonald, ND Newspaper Association and ND Broadcasters Association. Written testimony attached.

SENATOR FREBORG : The teacher or individual in question that may be dismissed or may not be certainly has the right to publish their side of the story in that very same paper.

Jack: You are correct. If the person wishes to they can try to make it public but it is after the fact.

SENATOR FLAKOLL : Understandable we're dealing on a number of occasions with juveniles, my wife is a prosecuting attorney and done thousands of juvenile cases. What's the difference though between those closed hearings where that information is not made public and people are not even allowed into the courtroom and a situation like this when in fact it could be the same intent and deal with the same issues. I'm a little concerned for example one of the people I ran against was accused of a crime as a teacher, but we never did hear anything past that point.

Jack: That is one of the reasons why I don't think they should have it because they are accused but never find out anything. If a school board deals with juvenile or student records it would be closed. If the reason for the meeting was not related to a juvenile the meeting would not be closed. The reason for the closed juvenile hearings are because there is a provision in law that says that the juvenile in certain circumstances should be closed. I think the reason they close the hearings on juveniles is to allow for rehabilitation. One way to make this bill better would be to give the teacher the opportunity to have it open or not. This bill would mandate that it would be

closed. Why not have the closure at the discretion of the teacher. Maybe this bill could be rewritten to say they are closed unless the teacher requests an open hearing.

SENATOR KELSH : Is there a courtroom in the state of ND that would allow television cameras. My point is this is a kind of a court. The school board is the judge and jury in this case and the other person is the defendant. Is it normal in a case where someone is being accused and things are thrown out by some people in a desperate attempt to get the guy and they are defending that. Is that normally opened for the public to see or hear. Nobody has laws to keep you out of courts.

Jack: No we don't.

SENATOR KELSH : Most of time these crimes, or whatever you want to call them aren't serious crimes. I think in some places you have over zealous newspapers, television people, etc. and can destroy someone with not serious enough reason.

Jack: Don't feel that is happening in ND.

SENATOR COOK : You mentioned the 9 AM news conference, court appearance. Prior to that indictment there was a period where the law enforcement sat down in a room and questioned this guy. They came with allegations and tried to make the point whether there was guilt there. Were cameras and newspapers involved and allowed in that aspect.

Jack: They were not involved until he was arrested and taken to court.

SENATOR COOK : Is this possibly the same process, you have allegations and if all of a sudden in this closed meeting the allegations were found to be true at that time it would be proper for the press to be involved.

Jack: It is not quite the same because in this case you have the public body like you have the court, in the other case you have the independent police talk at him just like you might have the superintendent acting.

SENATOR COOK : You mentioned that it would be better if the teacher could opt out of it. If the teacher wanted to have an open hearing why would a school not want to.

Jack: I'm not going to speak for the school board but I relate that often times in the nonrenewable hearings, in my experience often times teachers would like the chance to have other people present and to speak at nonrenewable hearings.

SENATOR KELSH : In those instances where there is any sexual predator that has to be reported. That person is deemed a sexual offender and that is a whole different story. When we talk about open meeting laws, anything that happens here yes, anything that is for the good of the taxpayers. But when you get into a situation where you get into an individual who can be destroyed, you really think in all honestly that the open meeting laws should apply. Where that person can unjustifiably be destroyed. I disagree.

Jack: I only disagree with you on the matter that it would destroy an individual. We're talking about something that happened. It is either an allegation or it is true.

SENATOR FREBORG : The legislation only says the hearing is closed, it doesn't say that either or both parties can't disclose everything the next day and it certainly doesn't prevent that media person from being out there interviewing each one the same day they have the meeting as they come out of the school house. If I were a teacher and believed I was wronged or at least wanted to tell my story that is an opportune time. Right after the hearing.

Jack: I agree with you yes that there is nothing to prevent that and that is quite likely to happen.

We are concerned about the fact where the instances where they want to deny anything happened. Everyone concerned wants to keep it quiet.

SENATOR FLAKOLL : It only takes one person to make allegations, say you have student that is disgruntled because they are getting a poor grade or don't think the teacher likes them. They can say the teacher did this or that to me to the school. What protection or recourse do the Richard Jewels of the world have against allegations. He was totally ruined.

Jack: It is the same allegation if you are wrongly accused of a crime. What recourse do you have when you are found not guilty. Guess the best recourse you have is if you are publicly exonerated.

SENATOR FLAKOLL : The allegations are front page and the not found guilty is on page 13. We don't write about houses that don't burn down.

SENATOR WANZEK : How would this compare to say other employees of the school who are not teachers. Are we extending them the same if we pass this, is that comparable to the they would be treated.

Jack: No. The law does say that the school board by unanimous vote can suspend a teacher from regular duty. Imagine non-teacher would not have this protection.

SENATOR KELSH : Someone is accused of having Aids and in rural ND I can guarantee that would excite a lot of people. Then the allegation was not true. Wouldn't it be best that it be held in confidence until it was proven one way or another.

Jack: I think the best way to stop rumors is to have open meetings. Worst thing is to dismiss somebody and the questions are going to be why.

SENATOR KELSH : Can you at that time go into the teachers files and find out what was put in that file and why they were dismissed. If the paper is interested at that time can not they do that.

Jack: The records of a confidential meeting are closed records also. So to the intent that what would be placed in their file would be anything that would be recorded at that meeting. I would have to say probably not.

SENATOR FREBORG : We have beat the subject to the ground.

SENATOR WANZEK : Could it conceivable happen if we had a closed executive meeting in this instance where say the school was victimized as far as money was stolen and then because it was closed and confidential we would never know. He or she would move on to another school and potentially do the same things. Is there a way between the end of the meeting, the suspension, is there a way to get that information.

Jack: I don't mean any disrespect to the school but that happens a lot.

SENATOR KELSH : If that is the case then the six year old law is not working.

Jack: It is working to the extent that these situations arise. What we are dealing with here is the unusual situation.

SENATOR FREBORG : I agree with Mr. McDonald that too often boards for various reasons, one my be that they want to get rid of the person so they give a good recommendation or at least they don't give a bad one. I have considered for several sessions introducing legislation to charge a board with a class B misdemeanor that does not actively reflect the past history of that teacher in that system. I can site you cases where people should have not even remained in the profession and they were given an excellent recommendation. Simply to get them out of the system.

Jack: You did pass legislation last season that would help in that regard when you passed a bill that would allow persons to give letters of recommendation and somewhat freedom from liable suits and such. Most of the time school boards to avoid litigation and costly battle over nonrenewable simply say if you leave we'll give you a good recommendation.

SENATOR FREBORG : This happens consistently.

Close hearing on HB1224. Opened discussion.

SENATOR KELSH: This is basically where they take the guy and question him and if that is the case then that person deserves not to have their name splashed in the paper until he is proven guilty. That is my feeling. This is just a temporary suspension, when they have been proved guilty then the suspension would be permanent. If it is a serious case and has to be turned over to authorities, like a sex offense, maybe then the newspapers should be allowed but this is pretty much basic.

SENATOR COOK : I thought there was some merit in this bill because I signed on to it. The young lad that was brought up for murder. He was interrogated in private. His hearings will be in public. In the case of a teacher that is accused they are interrogated in public and a nonrenewable is in private. We need this bill.

SENATOR WANZEK : I can understand the initial stages but wish I could be assured at some point in time if they are actually suspended that we are made aware of it and we know the truth.

SENATOR COOK : I move a DO PASS on HB1224.

SENATOR KELSH : 2nd Vote: 7 Yes 0 No CARRIER: SENATOR KELSH

Date: 3/3/99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1224

Senate EDUCATION Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Move a Do Pass

Motion Made By Cook Seconded By Kelsh

Senators	Yes	No	Senators	Yes	No
Senator Freborg, Chairman	✓				
Senator Cook, Vice Chairman	✓				
Senator Flakoll	✓				
Senator Wanzek	✓				
Senator Kelsh	✓				
Senator O'Connell	✓				
Senator Redlin	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE (410)
March 4, 1999 8:22 a.m.

Module No: SR-39-3988
Carrier: Kelsh
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1224: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1224 was placed on the
Fourteenth order on the calendar.

1999 TESTIMONY

HB 1224

FEBRUARY 2, 1999

HOUSE EDUCATION COMMITTEE
HB 1224

CHAIRMAN KELSCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of The North Dakota Newspaper Association and The North Dakota Broadcasters Association. We **OPPOSE HB 1224**. We think the public, the school district and, even the teacher, are better served if these matters are handled in a public meeting where questions can be answered, rumors put to rest, and each side is assured of an opportunity to have their side heard.

North Dakotans have a long tradition of open government. We were one of the first states to pass a comprehensive open meetings and open records law in 1947. And, we were the first state to put those same protections into the constitution in the 1960s, by overwhelming votes of nearly four-to-one.

Unlike practically every other public body, school boards already have the right to hold executive sessions for many reasons. They can close their doors to meet with their attorney to discuss litigation, either current or pending. They can hold executive sessions to consider the nonrenewal of teachers. They can hold another executive session to consider the nonrenewal of superintendents.

They can go into executive session to discuss student disciplinary or academic matters, and they can go into executive session to give bargaining instructions to their negotiator in teacher contract negotiations, and in other similar negotiations.

Now comes this bill that allows a closed or secretive executive session to suspend a teacher in "mid-season." The question is getting to be not, are the meetings closed, but when are they open?

The North Dakota school system has survived the last 52 years with the current procedures for suspending or firing teachers during the school year without closing its doors to its taxpaying constituents. We think it will survive into the next millenium as well without closed evaluation.

Closed sessions in such cases will only lead to rumors and speculation about the dismissals. Don't the taxpayers deserve to know what is happening in their schools? Let's not hide this behind closed doors and simply pass the teacher unto another district.

We respectfully request a **DO NOT PASS**. If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

March 3, 1999

SENATE EDUCATION COMMITTEE
HB 1224

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