

**2019 HOUSE EDUCATION COMMITTEE**

**HB 1501**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau Room, State Capitol

HB 1501  
1/21/2019  
31147

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe by Marjorie Conley
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## Explanation or reason for introduction of bill/resolution:

Relating to suspension of a member of school board

## Minutes:

Attachment 1, 2, 3, 4, 5
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**Vice Chairman- Cynthia Schreiber-Beck :** Opened the hearing on HB 1501.

**Rep Roers-Jones:** (See Attachment 1)

**Vice Chairman- Cynthia Schreiber-Beck:** Any questions for Rep. Roers-Jones?

**Rep. Hager:** That is an interesting choice of who would have authority over this and that it would not go to the attorney general.

**Rep. Roers-Jones:** That is part of the process that is in effect right now. The petition process as it is right now. I think there is an opportunity for removal by a vote of the people. Right now not an awful lot of options.

**Vice Chairman- Cynthia Schreiber-Beck:** Continue with testimony in support of HB1501?

**Kirstin Baesler, North Dakota Superintendent of Public Instruction:** (4:49 – 7:57)  
In support of this bill and amendments.

**Vice Chairman-Cynthia Schreiber-Beck:** Any questions? Anyone else in support of HB1501?

**Scott Davis, Executive Director North Dakota Indian Affairs:** (8:40 - 13:20)  
(See Attachment 2)

**Vice Chairman- Cynthia Schreiber-Beck:** Any questions?

**Rep. Dennis Johnson:** Where is the outcry from the community to recall the board?

**Scott Davis:** It is time to develop the exits.

**Vice Chairman- Cynthia Schreiber-Beck:** Continue with testimony.

**Alexis Baxley, North Dakota School Boards Association:** (See Attachment 3)  
(16:00-18:37).

**Rep. Hager:** If the citizens of the community want to recall school board members are we displacing the rights of the voters and the members of the community to do their own recall. Are these two things in conflict with one another?

**Alexis Baxley:** You are exactly right. Both of these processes exist in current Century Code. The first where the board can do a recall election, that has a little bit higher threshold for signature percentage. The investigation one has a little bit lower, they co-exist but they don't conflict.

**Vice Chairman Cynthia Schreiber-Beck:** Additional questions? Others in favor.

**Dr. Lana DeCoteau,** Supt. Of school in question with embezzlement: (20:00-23:04).  
Has three felons on her school board. This bill will help their school.

**Vice Chairman- Cynthia Schreiber-Beck:** No questions?

**Craig Lunde:** Ability to get petition (unable to have any sign it)  
A lot of people are scared of their job. In favor of bill.

**Rep. Dennis Johnson:** If we don't ask the questions, how do we get the answer.  
This needed to be shared with the committee so we understand why we need to share this.

**Craig Lunde:** I have received a lot of phone calls and texts and messages that say please don't say my name, but thank you so much for doing this. Once they found out that their names were not going to be exposed, they got a total of 384 signatures, a little over 500 people that voted.

**Vice Chairman Cynthia Schreiber-Beck:** Any additional questions? More in support?

**Aimee Copas, North Dakota Council of Educational Leaders:** (See attachment 4)  
Support a Do Pass.

**Vice Chairman- Cynthia Schreiber-Beck:** Continue with support for HB1501.

**Nathan Davis, elected official for the Turtle Mountain Band of Chippewa Indians:**  
(See Attachment 5) Urge to pass. (29:47-32:34)

**Craig Lunde:** Further testimony on school board member who is a felon.

**Vice Chairman Cynthia Schreiber-Beck:** Further testimony in support of HB1501?

**Erica Thunder, Indian Affairs Commission, ND Governor's Office:** (35:06-39:28)  
Clarified several points.

**Vice Chairman- Cynthia Schreiber-Beck:** Any questions?

**Rep. Dennis Johnson:** With 4 school board suspended until the audit is performed how do they conduct business?

**Erica Thunder:** The governor has authority to put in committee members while working with people like those that work at the school. (40:00-40:15)

**Vice Chairman- Cynthia Schreiber-Beck:** Continue with support? Opposition?  
How about neutral? Hearing closed on HB1501.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1501  
1/23/2019  
31313

- Subcommittee  
 Conference Committee

Committee Clerk Signature Bev Monroe by Marjorie Conley

## **Explanation or reason for introduction of bill/resolution:**

Relating to audits and suspension of school board members; and to declare an emergency.

## **Minutes:**

**Chairman Owens:** HB 1501

**Rep. Dennis Johnson:** Added an emergency clause to the amendment.

**Chairman Owens:** If an audit is ordered due to financial irregularities or allegations of embezzlement, the government may suspend an elected or appointed official from his official duties that the governor determines suspension is in the best interest in the state pending the results of the audit. Was there any opposition to this bill or amendment?

**Rep. Dennis Johnson:** No. It was quite an issue with one school that we are looking at right now. The Senate has a similar bill that got defeated. In the Senate, the school board spoke against that bill. They were hoping that this one passes.

**Chairman Owens:** It is interesting that the school board would talk against that one and are for this one.

**Vice Chairman- Cynthia Schreiber-Beck:** I think that they did not pass their bill because they want this one to pass.

**Chairman Owens:** It is my understanding the **Rep. D. Johnson** that you are making a motion to amend paragraph 2 and paragraph 3 emergency clause.

**Rep. Dennis Johnson:** Yes.

**Rep. Zubke:** Second.

**Chairman Owens:** Adopt the amendment. Any additional discussion?

**Rep. Hager:** Is this a judiciary issue or an educational committee issue?

**Rep. Dennis Johnson:** I think that we have dealt with these types of issues in the past. I think we have better background in education than the judiciary committee.

Voice vote was taken unanimous Yes vote with 1 absent.

**Vice Chairman Schreiber-Beck:** I motion for a Do Pass as amended on HB 1501.

**Rep. Zubke:** Does the governor have jurisdiction over school boards on the reservation? I am assuming not. Just public schools?

**Rep. Dennis Johnson:** This is a public school.

**Chairman Owens:** If it is a public school on the reservation, it is still part of DPI under state law.

**Rep. Zubke:** Seconded motion for a Do Pass as amended on HB 1501.

**Rep. Pyle** will be the Carrier.

**Chairman Owens:** Closed meeting.

January 23, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1501

Page 1, line 2, after "board" insert "; to amend and reenact section 54-10-15 of the North Dakota Century Code, relating to audits and suspension of school board members; and to declare an emergency"

Page 1, after line 9, insert:

**"SECTION 2. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.**

1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.
2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the governor may suspend an elected or appointed official from the official's duties if the governor determines suspension is in the best interest of the state pending the results of the audit. If the governor suspends an elected or appointed official, the governor immediately shall provide notice to the political subdivision or board with which the suspended official serves. Within five days of receiving notice, the political subdivision or board shall appoint an individual to replace the suspended official to serve during the pendency of the audit. The governor shall consult with the superintendent of public instruction in determining whether suspension of a member of a school board is in the best interest of the state.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-23-19  
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1501

House Education Committee

Subcommittee

Amendment LC# or Description: 19,1080,01002

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

Motion Made By Rep. D. Johnson    Seconded By Rep. D. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens			Rep. Guggisberg		
V. Chair. Schreiber-Beck			Rep. Hager		
Rep. Heinert					
Rep. Hoverson					
Rep. D. Johnson					
Rep. M. Johnson					
Rep. Johnston					
Rep. Longmuir					
Rep. Marschall					
Rep. Pyle					
Rep. Strinden					
Rep. Zubke					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment VOICE VOTE

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

MOTION  
CARRIED

Date: 1/23/19  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1501**

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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

Motion Made By Rep. Schreiber-Beck Seconded By Rep. A. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens	✓		Rep. Guggisberg	✓	
V. Chair. Schreiber-Beck	✓		Rep. Hager	✓	
Rep. Heinert	✓				
Rep. Hoverson	A				
Rep. D. Johnson	✓				
Rep. M. Johnson	✓				
Rep. Johnston	✓				
Rep. Longmuir	✓				
Rep. Marschall	✓				
Rep. Pyle	✓				
Rep. Strinden	✓				
Rep. Zubke	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Pyle

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

**REPORT OF STANDING COMMITTEE**

**HB 1501: Education Committee (Rep. Owens, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1501 was placed on the Sixth order on the calendar.

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Page 1, after line 9, insert:

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1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.
  
2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the governor may suspend an elected or appointed official from the official's duties if the governor determines suspension is in the best interest of the state pending the results of the audit. If the governor suspends an elected or appointed official, the governor immediately shall provide notice to the political subdivision or board with which the suspended official serves. Within five days of receiving notice, the political subdivision or board shall appoint an individual to replace the suspended official to serve during the pendency of the audit. The governor shall consult with the superintendent of public instruction in determining whether suspension of a member of a school board is in the best interest of the state.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly

**2019 SENATE EDUCATION**

**HB 1501**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

HB 1501  
3/11/2019  
33480 (45:37)

- Subcommittee  
 Conference Committee

Committee Clerk: Lynn Wolf

## Explanation or reason for introduction of bill/resolution:

A bill relating to suspension of a member of a school board; relating to audits and suspension of school board members.

## Minutes:

Att. #1-R. Marcellais; Att. #2-Davis; Att. #3-Bercier; Att. #4-J. Marcellais; Att. #5Jollie-Trottier; Att. #6-Scherbenske; Att. #7-Lunday

**Chairman Schaible:** Committee, we are going to look at HB 1501.

**Representative Roers-Jones, Dist. 46:** I am here this morning to introduce HB 1501 which would allow – if the governor has filed a petition for removal of a member of a school board, it allows the superintendent of public instruction to suspend that member pending the results of a forensic audit. Basically, if you look at the meat of this is on page two, sub two. If an is ordered due to financial irregularities or allegations of embezzlement the governor may suspend an elected or appointed official if the governor determines the suspension is in the best interest of the state pending the results of the audit. If the governor does suspend that person, the governor shall provide notice to the political subdivision or board where that person serves and within five days of receiving notice, the subdivision or board shall appoint an individual to replace that person during the audit. The governor shall consult with the superintendent of public instruction to determine whether suspension is in the best interest of the state. What we are looking to do here – there are a couple of instances where this is immediately necessary. We are hoping you would consider putting the emergency clause on it. We did have the emergency clause on the bill in the house and it was not successful. We would appreciate if the committee would put that back on and we could try again after a conference committee. This is intended to be a tool for all school boards where there is – because this is an elected position, it is difficult to do a removal process, especially in some smaller communities where there may be a lot of family ties or things like that that prevent the removal petitions from being successful. This just allows when there is evidence that there could be fraud or embezzlement happening, this allows the governor to remove someone from that position while an audit is being done so they don't have opportunity to further dig into the financial irregularities, so they don't have opportunities to cause further damage in the time that the investigation is ongoing. I would be happy to answer any questions.

(3:13) **Senator Rust:** Currently, the governor has the authority to suspend an elected individual. Is that correct?

**Representative Roers-Jones:** I believe that is accurate right now, yes.

**Senator Rust:** The first part of this allows the superintendent to suspend that member while the audit is taking place.

**Representative Roers-Jones:** That is accurate. Once the petition is filed, it allows by the governor, it allows the superintendent to suspend that person during the audit.

**Senator Rust:** And that would be different than what happens now – right?

**Representative Roers-Jones:** What I understand right now is that there – the process for school board members is that there isn't a suspension process available currently.

**Senator Rust:** As I recall I think about it, there is a recall, but not a suspension process.

**Representative Roers-Jones:** There has to be a petition and then a recall election and the problem with the recall election in some of these more – smaller districts is the fact that there is a lot of friends and family that often times would thwart a recall effort.

**Senator Rust:** The criticism will be or is that many times we pass a bill for a specific case and so you try to solve a specific case, but then you create a broad brush for the state. Would you address that at all.

**Representative Roers-Jones:** I understand the concern about creating legislation to deal with a specific issue. I think we have seen issues where this could have been utilized in the past and it was not a tool that was available to the school board. This is the type of thing – I think it is a good tool to have available to the governor to the superintendent of public instruction and to school boards in general. It is one of those things that they can use it if they feel it is warranted, but it is certainly not a tool that has to be utilized. The other thing is there is nothing in here that takes the discretion away from the school board as far as what type of suspension it has to be. Basically, they want to remove that person from having access to things that perhaps they shouldn't be based on allegations that are out there, but, it doesn't say they have to be suspended without pay, it doesn't say that they don't have the opportunity to be reinstated if audit comes out in their favor, it is just a tool in case there are instances where irregularities are occurring.

**Senator Rust:** Were these individuals re-elected?

**Representative Roers-Jones:** In some instances, I believe they were.

(7:13) **Chairman Schaible:** A school board member only has power as a board. As an individual, a board member really doesn't have a lot of power. I am trying to tie that together how as an individual board member, it seems to me – the only real power a board member has is when they are acting within a board as a group. Explain that rational with this.

**Representative Roers-Jones:** If you would not mind, there are people that are people coming after me who might have better examples of the types of situations that we are hoping to resolve with the bill. I think that what it comes down to is - it may not only be one board member – it may be something that may apply to more than one board member at a time.

**Chairman Schaible:** Yes, so getting to that train of thought that it would probably take other people in the office that would – we are just addressing the school board issue. That issue is somewhere else and would have to be addressed is already in current law.

**Representative Roers-Jones:** Perhaps yes, but it might also be more than one school board member that are working in concert with one another.

**Senator Oban:** This section of code for the second section of the bill deals with the state auditor's ability to audit political subdivisions. Is there reason if this is good policy you didn't have apply to counties, cities, other boards that have a lot of authority over budgets?

**Representative Roers-Jones:** It was not within the scope with what we were requested to do. If the committee feels that it would be beneficial to apply it to other entities – other subdivisions, certainly, we would be amenable to changing that.

**Chairman Schaible:** Other questions? Thank you. Other testimony in favor of the bill.

(9:40) **Senator Marcellais: See Att. #1.**

(11:51) **Scott Davis, Exec. Director, ND Indian Affairs Commission: See Att. #2.** I am here in support of HB1501. I have been working on this issue for nine months. Hundreds of phone calls – I still get them today, inquiring about a school board – in particular – a school system my alma mater in the Turtle Mountain. The calls have been inquiring about what the governor, attorney general or the superintendent can do about this – can the state do something about this – it goes on and on. Looking into this in depth, the law is very broad about what we “as a state” can do about this. One area we looked at was an audit. It took a lot of people with courage to step forward to press this. There is a fear of retaliation. You will hear about it today from some of the petitioners – of signing a petition – and now you may lose your job – somebody may come back after you. We need to focus on the kids. In light of the school violence in this country, we need to be aware of the violence of some of the members of this board. We will address that this afternoon on the felony bill. I am all for second chances, but if you are still behaving, years after you have been convicted a felon of violence and crime and embezzlement – and you are governing a school system. You are governing kids' money. I have an issue with that. I have addressed these school board members face to face – one on one with my office. I have told them they need to be accountable, but being arrested every other weekend for violence and still going back to governing and making huge fiscal decisions for the kids is wrong. That is why I have stepped into this uncomfortable position. Trying to give another voice to my constituents of what is fair and what is not fair. Two years ago, Governor Dalrymple introduced a pretty large bill on property tax relief in unison with school funding. That was a 35-page bill. Within that bill, it did not include any money for schools like where I come from that don't have a tax base, without a mill level. Tribal schools that are public schools on reservations don't have a tax base, so we did is carve a whole new funding system for this school – to the tune of about

\$30 million – of whose money – taxpayer money – more importantly, kids money. What a big win. I thought, what a big win for my school. Finally, we are going to have some money for better education results, for no more dropout rates, for tutoring services, for kids. It just hasn't turned out that way. Senator Marcellais and I fight very hard in these halls to give our people a fair shake, but there has to be accountability behind this – especially when it comes to children, kids, the school systems. I have been through the wringer enough times with child welfare, with school children, with students in general, ICWA (Indian Child Welfare Act). I have been hammered by my own chairman for meddling, for getting involved. You have to give these kids a better chance to learn – and not in an environment that is political all the time – where you have retaliation, where you are afraid to sign a petition because you are afraid you are going to lose your job. They will come after your family. This the truth. This is what happens back home. I am not making this stuff up. I hate to single out my own community at times, but it is what it is. I am asking for your support to intervene when the appropriate time has happened. I am so grateful for the auditor to step in. There is a petition done by the people in the hands of our auditor who is going to do what he has to do. There is a process he has to follow and I feel very good that that process is going to be good. I apologize for being a little emotional, but this has been weighing heavily on my heart for months.

**Chairman Schaible:** Director Davis, if a board member is removed, what happens after that? Are they banned from ever running again? If they run again and win, what happens then?

**Scott Davis:** I don't believe that is the intent of law. What I am asking for is a time out on this process. Let the chips fall where they may if they are convicted. If they are cleared, great. I think it puts a notice out that school boards – somebody is watching you. You have to be accountable for something. The attitude that we have right now is you can't touch me – the governor, the sheriff, - nobody can touch me on this stuff of wrong doing. We all have to have some – a little bit of big brother over us watching. That is just part of public service.

**Chairman Schaible:** Other questions? Thank you Scott. Other testimony in favor of the bill.

**Ella Davis, Parent of TMCHS student:** I am coming as one of the petitioners of the Belcourt School District that helped coordinate the petition. I work for the state of ND. I am not coming here as a PNA disability advocate. In my personal and professional capacity as a PNA, I see a lot of parent frustration across the state as well as my own with no checks and balances within the school system related to the school board accountability. I think there needs to be a checks and balances. I understand the concept of local control and giving the power to the voter, but in the changing landscape, I think of ND, with the oil boom, you get a lot of individuals coming from out of state. As a voter, you don't know who you are voting for – there is no way to hold that person accountable, except through the process of going to a petition process. There is no way to remove that person or if we want an audit or accountability. I am in support of this bill, because I have seen where there is a lot of misuse of funds and power. There needs to be a way to – you are trying to hold school board members accountable. From what I have heard, this has been a problem in the Fargo School District and in a school district in the Fort Berthold area. They are operating right now as if they are untouchable. I have been going in to their meetings and trying to broadcast the meetings under open public records. They have been trying to find ways to kick me out. There has been issues related to fiscal management, related to students – a school board

member gets to attend athletic events for free, but our students couldn't attend the athletic events and they get a lot of funding in that school related to Native American students. Students couldn't attend their own events. There were issues in the past related to dual credit payments, school board members manage this money and they funneled money and it is almost like a racketeering. I don't think this is just a tribal issue. This has happened in non-tribal school districts and it has potential to spread. We do have people coming from out of state, but we have people that have lived in the same small towns and school districts, so you tend to get those alliances and those relationships – for better or for worse. If for worse, I think we need to have the checks and balances in place for that. I hope you will support this bill.

(27:18) **Tucker Bercier, Student Council Secretary, Turtle Mountain Community High School(TMCHS): See Att. # 3.**

(29:06) **Jeryn Marcellais, Treasurer of TMCHS Student Council: See Att. # 4.**

(31:56) **Aiyana Jollie-Trottier, President, TMCHS Student Council: See Att. #5.**

**Chairman Schaible:** Other testimony in favor of the bill.

(33:22) **Matt Scherbenske, Deputy Director of Academic Support, Department of Public Instruction: See Att. #6.**

(34:10) **Chairman Schaible:** Could you explain how this would work. I assume the audit would have to target an individual before that one could be removed or a group of individuals. The audit would have to show that derelict of duty and then that process would move. Is that a correct understanding of how this would work?

**Matt Scherbenske:** That is my understanding as well.

(34:50) **Melvin John Laducer, Principal of TMCHS:** I have been the principal for the past 14-years. I have been and witnessed retaliation from board members who have threatened people's jobs. I remember the day I got hired. The first board member walked up to me and said – not congratulations, but, we are firing the superintendent. This continues on a regular basis and it needs to stop. We have board members that thing they run the day to day school. They are board members twenty-four seven. I have heard that so many times – we run the school – not you guys. These kids were brave enough to talk and I said I wouldn't, but on their behalf, I must fight for what is right. Our students' education. It is long overdue that we stop these rouge board members who put their interests first, their families, their nepotism, illegal hiring. They have no regard for policy or procedure. We have incompetent hires because they hire their friends, their stooges. They encourage not following school policy, employees calling them because they are reprimanded or because they are asked to do their jobs. The administrators are openly admonished in school board meetings – humiliated. I have seen more administrators attacked in school board meetings – made to feel ashamed, guilty for doing their jobs and holding people accountable in the best interest of students. I implore you – vote yes – stop this please. Thank you.

**Chairman Schaible:** Any questions. Other testimony in favor of the bill. Agency testimony?

(37:17) **Josh Gallion, State Auditor:** There a couple of things I would like to make mention of. Some concerns I have with the way the bill is structured. In section 1, line 11 – It references forensic fiscal or performance audits. I would like to clarify that the state auditor’s office does not conduct forensic audits. We also have some restrictions on performance audits on local subdivisions in other provisions. In section 50-10.16 of the Century Code, this does create somewhat of a conflict with that section. The state auditor’s office does not go in and conduct audits on fiscal irregularities or embezzlement without the request of the board of that entity. It specifically states it not for the severance for their employment. We do not go in and conduct audits to have people removed. It specifically states that in 54-10.16. My concern mostly, is this references types of audits that we don’t conduct and it does put the auditor’s office in a position that it weaponizes an audit function. Our goal is to try to improve government, not attack and go after the elected leaders in these communities if there are issues, if there are problems, there are avenues already to solve some of these. As mentioned today, there is a petition audit. The citizens did initiate a petition; I believe around 195 signatures were verified. The auditor’s office is conducting an audit. It is not under the purpose and intent to remove any elected official. That is not what we do and I believe there is a misconception that that is the purpose of this. We are going to go up and make sure taxpayer resources are expended the way they are intended. That is the goal. We will be conducting a financial statement audit. We do not conduct forensic audits. If you look at a forensic audit, there is reference to that in the trial – in the court of law. We do not find people guilty, that is not the role of the Auditor’s office. That kind of a proceeding would be more in line with what the Attorney General does. Again, our goal is to make sure that things are happening the way they are intended and that people are accountable for their use of public resources. If we do find any issues, if there are any illegal actions taking place, the process for us is to refer that to the Attorney General’s office who will then proceed with investigation.

**Chairman Schaible:** You said the board can request an audit. Is there anybody else that can request an audit and receive one?

**Josh Gallion:** Under this section of law, the governor can order an audit, legislative audit and fiscal review committee can order an audit, or the audit can be done under petition by the citizens.

**Chairman Schaible:** And the petition needs how many signatures?

**Josh Gallion:** Thirty-five percent of qualified electors at the preceding election for the governor.

**Chairman Schaible:** Other questions.

**Senator Rust:** What essentially happens is there are ways in which an audit can be requested for you to go in. Then you go through the books and then as you see it, if there are issues, we refer to the Attorney General. You then do not give any recommendations for solving the problem.

**Josh Gallion:** We will identify deficiencies, if there is a clear violation of law, we make that recommendation. We do not typically call things fraud, we uncover that and then we do

referral. We allow the Attorney General's office to conduct a legal investigation and then they make that case in a court of law. Again, we want to make sure that due process occurs. The Auditor's office is not judge, jury, and executioner. I am very compassionate on some issues that these folks behind me are facing. These are some serious concerns and I do think that there is a solution that needs be found, again, my concern is turning the audit process into a weapon.

**Senator Rust:** Are you willing to give us some suggestions of the solution to be found?

**Josh Gallion:** I would be happy to answer questions. It is not the auditor's office position to make recommendations in changes in law, that is your job. (laughter)

**Senator Rust:** I wasn't asking for a recommendation; I was asking for a suggestion.

**Chairman Schaible:** Questions? Other agency testimony? Any testimony in opposition to the bill?

**Amy DeKok, In house legal counsel for ND School Boards Association:** I stand in opposition to the bill, but not necessarily the intent behind the bill. We are certainly aware of the some of the issues that are happening in some of our school boards around the state that have been addressed here this morning. Our opposition stems from a couple of concerns from the bill. Some have already been mentioned by Mr. Gallion, so I won't go through those, but we echo some of his concerns. The main concern that we have is the bill gives the superintendent of public instruction the power to suspend during an audit that is conducted in accordance with section 15.10-15. Section two of the bill gives the governor that same power. There is an inconsistency. NDSBA would support the bill if that section one was removed. In section two if it is passed, the governor already has to consult with the superintendent of public instruction if he or she is considering a suspension of a school board member pending the results of an audit. So, the superintendent of public instruction has the ability to way in and provide input. That is one concern that we would have which is why we are standing in opposition to the bill.

**Chairman Schaible:** Thank you, Amy. Questions? Any other testimony in opposition? Seeing none, we will close the hearing on HB 1501.

**Craig Lunday, Parent of three students in the Belcourt School System: See Att. #7.** Submitted via email to the committee clerk after the hearing.

# 2019 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

HB 1501  
3/19/2019  
33971

- Subcommittee  
 Conference Committee

Committee Clerk: Lynn Wolf

## Explanation or reason for introduction of bill/resolution:

A bill relating to suspension of a member of a school board; relating to audits and suspension of school board members.

## Minutes:

Att. #1-Schaible

**Chairman Schaible:** Committee members, I have an amendment for HR 1501 – 19.1080.03001. **See Att. #1.** The amendment will change the original bill to have the governor suspend the member of the school board after consulting with the superintendent of Department of Public Instruction. The only other thing this amendment does is add an emergency clause so if this would pass, this would be a tool the governor could use immediately. Any other discussion?

**Senator Rust: Move to approve the amendment 19.1080.03001.**

**Senator Marcellais: Second.**

**Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.**

**Amendment 19.1080.03001 is adopted.**

**Senator Oban:** I have a question. On page one, line 11, the way it is written, it references the results of a forensic audit in accordance with the section about the auditor's duties. The auditor does not do forensic audits. I don't know if we should clean that up – we probably should. Section 54-10-16, it was suggested may need to be clarified because on page two, it references an audit that technically the auditor –

**Chairman Schaible:** The auditor does not do.

**Senator Davison:** It does say "or" in there. So, a school board pending results of a forensic, fiscal, or performance audit. So, it could be any of the three.

**Chairman Schaible:** When I met with the governor's office on lines 8-11, it just says that if those audits were performed based on that information, that they would make their

recommendation based on that. So, it is not that they order them, but you are right. That section 54-10-15 – I should have looked at that to see what we needed to do with that.

**Senator Rust:** What is the issue?

**Chairman Schaible:** It is basically section two of the bill. Did you look up that section (referring to the Intern Hugh Grindberg).

**Hugh Grindberg:** It is about one paragraph long.

**Senator Oban:** When the auditor came to the podium, he mentioned that – are you talking right now about 54-10-16?

**Chairman Schaible:** 15, section two.

**Senator Oban:** Okay, he brought up 54-10-16, too. It is not in the bill, but it is specifically saying, the state auditor can't make audits of any political subdivision for the reason of severance from the service of such political subdivision. He suggested that based on what the intent of this is, it is basically to punish people. That is fine, but there should be clarity between those two things was his point.

**Chairman Schaible:** Ok, we can leave this as is and look at that further.

Discussion closed for the day on HB 1501

# 2019 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

HB 1501  
3/26/2019  
34222 (12:21)

- Subcommittee  
 Conference Committee

Committee Clerk: Lynn Wolf

## Explanation or reason for introduction of bill/resolution:

A bill relating to suspension of a member of a school board; relating to audits and suspension of school board members.

## Minutes:

Att. 1-Schaible

**Chairman Schaible: See Att. #1.** This bill for the authority to remove a school board member. The bill asked for was to have the superintendent of public instruction may suspend a school board member during the preceding or investigation. The amendment that I have before you what I suggested after visiting with the governor's office and the Tribal Affairs Commissioner Scott Davis. The governor already has the authority to remove a school board member with this information he gets. So, what I am proposing as an amendment is on page one, line nine, this would add the governor can remove a school member in consultation with the superintendent of public instruction. It is the governor that would be suspending the person while the process is going on rather than the superintendent of public instruction in consultation with the Department of Public Instruction. On page one, line eleven, this will take out the words forensic, fiscal and performance audits which is in accordance with 54-10-15. In 54-10-15 it already lists the audits that they can do. That seems to be a part that was hard to understand and made it confusing. Now, it would just say whatever process they use, the governor has that authority to do that without listing whichever audits they can. There are other chapters of 54-10-16 – which is not mentioned – but there again, they already have the authority, so we do not have to place that language in there. This basically takes that forensic, fiscal and performance language out and just says that with the audits that are there. Going down, page two basically from five through ten, there are a lot of places in here that this bill seemed to be the idea that it was for school board members, but there are a lot of references to other political subdivisions and other elected officials. That seemed to be more than what the bill is looking for, so that language removes those other references and this bill just references school board members. I think that was the intent of that and I think if we want to go somewhere else with that, that should be something different or a different bill. It seemed to me that this bill was about school board members so, that is what on page two lines five through ten does. Also added on this is an emergency clause. That is the amendment. If you have questions, I will try to answer that.

**Senator Oban:** Procedurally, we adopted an amendment that has some of this language in it already. I don't know if we need to remove that or how that works.

**Chairman Schaible:** I don't think we have to change it – it will just – the last one takes precedent and if it is duplicated, it will just – (5:24) Okay, committee, is there any suggestions? Do you need more time?

**Senator Oban:** Mr. Chairman, if we just reconsider .03001 and adopt .03002, the bill will do what you want it to do. Rust moved .03001 and Marcellais seconded it.

**Motion by Rust, second by Marcellais to reconsider the amendment 03001.**

**Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.**

**The adoption of the amendment is reconsidered.**

**Chairman Schaible:** We are looking at amendment .03002 version. Now, we need a motion to which amendment the committee would want.

(9:45) **Senator Rust: I move amendment 19.1080.03002 be adopted.**

**Senator Oban: Second.**

**Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.**

**Amendment 19.1080.03002 is adopted.**

**Senator Oban: Move to Do Pass as Amended.**

**Senator Marcellais: Second.**

**Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.**

**Senator Marcellais will carry the bill.**

19.1080.03001  
Title.

Prepared by the Legislative Council staff for  
Senator Schaible  
March 19, 2019

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1501

Page 1, line 2, remove the first "and"

Page 1, line 4, after "members" insert "; and to declare an emergency"

Page 1, line 10, replace "superintendent of public instruction" with "governor"

Page 2, after line 13, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency  
measure."

Re-number accordingly

March 22, 2019

SK  
3/26  
(2)

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1501

Page 1, line 2, remove "and"

Page 1, line 4, after "members" insert "; and to declare an emergency"

Page 1, line 9, after the third "the" insert "governor, in consultation with the"

Page 1, line 10, after "instruction" insert an underscored comma

Page 1, line 11, replace "a forensic, fiscal, or performance" with "an"

Page 2, line 5, replace "official" with "school board member"

Page 2, line 5, replace "official's" with "individual's"

Page 2, line 7, replace "official" with "school board member"

Page 2, line 8, replace "political subdivision or" with "school"

Page 2, line 9, replace "official" with "member"

Page 2, line 9, remove "political subdivision"

Page 2, line 10, replace "or" with "school"

Page 2, line 10, replace "official" with "member"

Page 2, after line 13 insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly

Date: 3-19-19  
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1501

Senate Education Committee

Subcommittee

Amendment LC# or Description: 19.1080.03001

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

Motion Made By Sen Rust Seconded By Sen Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
*Amendment is adopted.*

Date: 3-26-19  
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1501

Senate Education Committee

Subcommittee

Amendment LC# or Description: 19.1080.03001

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar
- Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen Rust Seconded By Sen Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
*Amendment is Reconsidered of 19.1080.03001*

Date: 3-26-19  
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1501

Senate Education Committee

Subcommittee

Amendment LC# or Description: 19.1080.03002

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rust Seconded By Oban

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

*Adopt Amendment  
3002*



**REPORT OF STANDING COMMITTEE**

**HB 1501, as engrossed: Education Committee (Sen. Schaible, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1501 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 4, after "members" insert "; and to declare an emergency"

Page 1, line 9, after the third "the" insert "governor, in consultation with the"

Page 1, line 10, after "instruction" insert an underscored comma

Page 1, line 11, replace "a forensic, fiscal, or performance" with "an"

Page 2, line 5, replace "official" with "school board member"

Page 2, line 5, replace "official's" with "individual's"

Page 2, line 7, replace "official" with "school board member"

Page 2, line 8, replace "political subdivision or" with "school"

Page 2, line 9, replace "official" with "member"

Page 2, line 9, remove "political subdivision"

Page 2, line 10, replace "or" with "school"

Page 2, line 10, replace "official" with "member"

Page 2, after line 13 insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly

**2019 TESTIMONY**

**HB 1501**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1501

Page 1, line 2, after "board" insert "; and to amend and reenact section 54-10-15 of the North Dakota Century Code, relating to audits and suspension of school board members"

Page 1, after line 9, insert:

"**SECTION 2. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.**

1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.
2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the governor may suspend an elected or appointed official from the official's duties if the governor determines suspension is in the best interest of the state pending the results of the audit. If the governor suspends an elected or appointed official, the governor immediately shall provide notice to the political subdivision or board with which the suspended official serves. Within five days of receiving notice, the political subdivision or board shall appoint an individual to replace the suspended official to serve during the pendency of the audit. The governor shall consult with the superintendent of public instruction in determining whether suspension of a member of a school board is in the best interest of the state.

Renumber accordingly

HB 1501  
1-21-19  
#2

**Testimony of Executive Director Scott Davis, North Dakota Indian Affairs Commission**  
Hearing in Support of HB 1501 – Relating to Suspension of School Board Members  
House Education Committee  
Chairman, Representative Mark Owens  
North Dakota State Capital, Bismarck ND  
January 21, 2019

Chairman Owens and fellow members of the Committee,

Thank you for the opportunity to testify today. My name is Scott Davis and I am Executive Director of North Dakota Indian Affairs. In this role, I serve as a liaison between the leadership, people, and governments of North Dakota's State and Tribal governments. In this capacity, my role is to address issues ranging from education, economic development, law enforcement, social services, transportation, and healthcare issues, among a long list of various other issues.

I come here before you all today to implore that HB 1501, as it relates to the protection of our most vulnerable population--our youth--and how those who effectively govern over them, their School Boards, should be held accountable during audits, with the ability of checks and balances of North Dakota law to allow for suspension of School Board members during audits requested by qualified electors of their individual Public School District. When we see a level of concern raised, in an example, by qualified electors to petition their State government to perform an audit of their School Board (under NDCC § 54-10-15), due to financial irregularities or allegations of embezzlement, qualified electors, students, and those directly affected by such activity should be afforded, under North Dakota Century Code, the ability to be reassured the governor, who finds, through the best interests of the state, requires suspension of an official or official from the performance of duty during the pendency of the audit.

HB 1501 addresses particular loopholes in North Dakota Century Code ("NDCC"), specifically the section of, **NDCC § 54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.** This part of code reads:

"The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14."

This language makes it abundantly clear that the Governor of North Dakota is the only executive branch state official with removal authority and the authority to suspend ties directly to a removal. I recommend amending the bill to allow suspension of the school board member by the Governor, in consultation (or after consultation) with the superintendent.

In addressing this issue, the following language is what I am proposing be added in order to tighten this law: "If an audit is ordered under this subsection due to financial irregularities or allegations of embezzlement and the governor finds the best interests of the state require suspension of an official or official from the performance of duty during the pendency of the audit, the governor may suspend the official or officials from duty. The governor immediately shall notify the political subdivision and board or persons authorized to fill vacancies in that office, and the board or persons, within five days after receipt of such notice, shall appoint one or more competent persons to fill the office and perform the duties of the officer or officers during the suspension.

If the governing body of a school district is being audited under this section for financial irregularities or allegations of embezzlement, the governor shall confer with the state superintendent of schools to determine whether the best interests of the state require suspension of a school board member or members."

Without the proposed language above, in the event of an audit of a North Dakota Public School Board, the audit would take several months to complete. Unfortunately, there is no process in law for suspension of the board during an audit. Unless a removal petition has been filed, suspending the board is not an available option. School board members have protections while in office more so than many other elected officials. For many years, it was not possible to remove a school board member except through a grand jury proceeding. In 1987, the legislative assembly gave the Governor authority to remove school board members, by petition.

When an instance occurs where in a North Dakota Public School Board is under an auditing process, our current law makes it nearly impossible to suspend a Board member during this process—even if wrongdoings and behavior unbecoming of their elected position continues. That is why I am in support of this bill, HB 1501, and its ability to address a gap that needs immediate attention.

This concludes my testimony. Thank you, Chairman and members of the Committee. I will stand for any further questions.

19.1080.01000

Sixty-sixth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1501**

HB 1501  
1-21-19  
#2

Introduced by

Representatives Roers Jones, Heinert, M. Johnson, Pyle

Senator Rust

1 A BILL for an Act to create and enact a new section to chapter 15.1-09 of the North Dakota  
2 Century Code, relating to suspension of a member of a school board.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 15.1-09 of the North Dakota Century Code is created  
5 and enacted as follows:

6 **School board membership - Suspension.**

7 Upon the filing of a petition under chapter 44-11 for removal by the governor, the  
8 superintendent of public instruction may suspend a member of a school board pending the  
9 results of a forensic, fiscal, or performance audit in accordance with section 54-10-15.

HB 1501  
1-21-19  
#3



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

P.O. Box 7128  
Bismarck ND 58507-7128  
1-800-932-8791 • (701)255-4127  
[www.ndsba.org](http://www.ndsba.org)

**HB 1501**  
**Testimony of Alexis Baxley**  
**House Education**  
**January 21, 2019**

Chairman Owens and members of the House Education, my name is Alexis Baxley. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in support of HB 1501.

Section 44-11 of North Dakota Century Code lays out the process for removal of an elected official by the Governor. A petition with a number of names equal to twenty percent of the total number of the most recent school census is required for a school number. If the census is greater than 4,000, only 15 percent is required. In either case, the absolute minimum number of signatures is 25, unless the district has less than 25 qualified electors. In that situation, the petition would require 25 percent of the qualified electors. We believe this is a fair, accessible process with appropriate checks and balances

Once a petition is filed with the state's attorney general, an investigation must be conducted and a recommendation made to the Governor within 30 days as to whether a removal proceeding should take place. Currently, the Governor may suspend a board member during the removal proceedings. HB 1501 would allow the superintendent of public instruction to suspend a board member sooner – upon the filing of the petition. We believe this change would allow for the immediate protection of the district and taxpayer funds.

For this reason, NDSBA stands in support of HB 1501 and encourages this committee to give it a do pass recommendation. I would be happy to answer any questions the committee may have.



HB 1501  
1-21-19  
# 4

HB 1501 – Suspension of School Board Member  
NDCEL - Support

Good afternoon Senate Education Committee, I stand before you to testify in opposition to HB 1501 for the North Dakota Council of Educational Leaders which is the organization that serves our school Superintendents, Principals, CTE Directors, Technology Directors, AD's, County Superintendents, Business Officials and truly every school leader with the exception of teachers and school board members.

Our schools charged with and are expected to maintain role model role within our communities. We are charged with finding the best teachers and staff possible. We are charged with providing for our students a rigorous yet safe environment. One of the key components of this being a successful initiative is when the level of professionalism is at every level of involvement within a school.

It seems completely reasonable to those in our profession to expect the same level of professionalism and ability to be a role model in act and deed from our school board members. There are times within a community when an individual on a board acts in a way that reflects very negatively on a school and currently there is very little recourse for a community when unfortunate events occur. Recall elections are very difficult to pull to fruition and generally the other area of resources is filing a petition with the governor. If the act of the board member is egregious, they are still able to serve even when there is an investigation. This addition to code would enable the superintendent of public instruction to suspend that board member pending the results of the forensic, fiscal or performance audit.

We support this additional ability of the state superintendent. Our schools and our students absolutely should be represented by the best possible school board members, and when unfortunate events occur, there should be a modality of recourse that can be more swift and provide needed protection for school districts.

We respectfully would support a Do Pass recommendation on HB 1501.

HB 1501  
1-21-19  
#5  
page 1

House Education Committee  
State Capitol  
600 East Boulevard  
Bismarck ND, 58505-0360

RE: House Bill 1501  
66<sup>th</sup> Assembly (2019)

Dear Chairman and Committee Members,

The Turtle Mountain Band of Chippewa Indians supports House Bill 1501 and have drafted this letter for future reference of support. Recent events in our community have led to a request of a forensic audit of our local school board. The petition was turned into the Governors office along with a letter of support from all Turtle Mountain Band of Chippewa council members. The initial thought was that the petition was going to suspend the board, halting any potential illegal activity. But after sitting down and going over the steps it was realized that it could be months before the audit starts. Giving the rogue board members the time to potentially do more harm to the school system. With the ability so suspend a board or board member pending the result of an audit, could potentially stop unethical behavior before it becomes a major problem.

Sincerely,

Nathan A. Davis

Council Representative

Turtle Mountain Band of Chippewa Indians

TURTLE MOUNTAIN BAND OF  
**CHIPPEWA**

4180 HIGHWAY 281  
BELCOURT, ND 58316  
TMBCI.ORG

HB 1501  
1-21-19 #5  
Page 2  
FROM THE OFFICE OF THE CHAIRMAN

**JAMIE AZURE**  
TRIBAL CHAIRMAN  
JAMIE.AZURE@TMBCI.ORG

701.477.2673

January 9, 2019

The Honorable Douglas Burgum  
North Dakota Governor's Office  
Honorable Attorney General Wayne Stenjehem  
600 East Boulevard Ave.  
Bismarck, ND 58505-0001

RE: Belcourt School District #7, petition for Audit of finances.

Dear Governor Burgum:

The Turtle Mountain Band of Chippewa hold our Pillar of Education at the Highest Standard.

Petitioners in the Belcourt School District collected signatures to request a finance audit of the District's finances and expenditures. The Audit request comes in response to unnecessary expenditures and alleged misuse of funds. The People of the District make the request in order to further the interests of the Children and the Community as a whole.

In the June 5, 2018 election, 555 voters cast ballots. Per N.D.C.C. Statute the petitioners' requirements are 35% of the ballots cast in the last election meet the minimum threshold for the petition for Financial Audit. In this petition request that minimum number is 195. The Petitioners exceeded that minimum requirement.

Please accept this letter as my support of the process and my interest in seeing a financial audit executed on Belcourt School District #7.

Very Truly Yours,



Jamie S. Azure  
Chairman  
Turtle Mountain Band of Chippewa Indians

HB 1501  
1-21-19  
#5  
Page 3



# TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

4180 Hwy 281  
P.O. BOX 900  
BELCOURT, ND 58316

(701) 477-2600  
Fax: (701) 477-0916  
Website: [www.tmbci.org](http://www.tmbci.org)

In Support of Chairman Jamie S. Azure's letter regarding the Petition for Audit

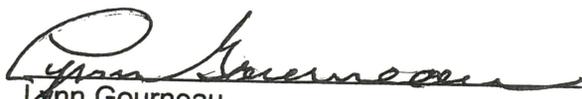
January 9, 2019

  
James Baker  
District 1

  
Nathan Davis  
District 1

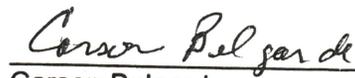
  
Stuart LaFountain  
District 2

  
Ron Trottier  
District 2

  
Lynn Gourneau  
District 3

  
Loann Jerome  
District 3

  
Chad Counts  
District 4

  
Carson Belgarde  
District 4

# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



HB 1501  
3-11-19  
Att #1  
plofj

## Senator Richard Marcellais

District 9  
301 Laite Loop NE  
Belcourt, ND 58316-3877

R: 701-477-8985  
B: 701-477-8985  
C: 701-278-0632  
F: 701-477-8985  
rmarcellais@nd.gov

## COMMITTEES:

Education  
Government and Veterans Affairs

**March 11, 2019**

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

***I am here today to testify in support of House Bill 1501 relating to suspension of a Member of the school board.***

***In accordance with the National School Board Association (NSBA) school board members are elected to help all students achieve state standards and reach their full academic Potential, federal, state and local policy makers.***

***Local school board members are elected - or occasionally appointed - to be leaders and champions for public education in their communities. The most important responsibility of school board members is to work with their communities to improve student achievement in their local schools. School board members derive their power and authority from the state. In compliance with state and federal laws, school boards establish policies and regulations by which their local schools are governed.***

***The school board is responsible for:***

- ***Employ the superintendent***
- ***Develop and adopt policies, curriculum, and the budget***
- ***Oversee facility issues; and***
- ***Adopt collective bargaining agreements.***

***On behalf of the Students, we ask for a do pass on House Bill 1501 and I will try and answer any questions the Senate Education Committee may have.***

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**Testimony of Executive Director Scott Davis, North Dakota Indian Affairs Commission**  
Hearing in Support of HB 1501 – Relating to Suspension of School Board Members  
Senate Education Committee  
Chairman, Don Schaible  
North Dakota State Capital, Bismarck ND  
March 11<sup>th</sup>, 2019

Chairman Schaible and fellow members of the Committee,

Thank you for the opportunity to testify today. My name is Scott Davis and I am Executive Director of North Dakota Indian Affairs. In this role, I serve as a liaison between the leadership, people, and governments of North Dakota's State and Tribal governments. In this capacity, my role is to address issues ranging from education, economic development, law enforcement, social services, transportation, and healthcare issues, among a long list of various other issues.

I come here before you all today to implore that HB 1501, as it relates to the protection of our most vulnerable population--our youth--and how those who effectively govern over them, their School Boards, should be held accountable during audits, with the ability of checks and balances of North Dakota law to allow for suspension of School Board members during audits requested by qualified electors of their individual Public School District. When we see a level of concern raised, in an example, by qualified electors to petition their State government to perform an audit of their School Board (under NDCC § 54-10-15), due to financial irregularities or allegations of embezzlement, qualified electors, students, and those directly affected by such activity should be afforded, under North Dakota Century Code, the ability to be reassured the governor, who finds, through the best interests of the state, requires suspension of an official or official from the performance of duty during the pendency of the audit.

HB 1501 addresses particular loopholes in North Dakota Century Code ("NDCC"), specifically the section of, **NDCC § 54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.** This part of code reads:

"The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in

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accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.”

This language makes it abundantly clear that the Governor of North Dakota is the only executive branch state official with removal authority and the authority to suspend ties directly to a removal. I recommend amending the bill to allow suspension of the school board member by the Governor, in consultation (or after consultation) with the superintendent.

In addressing this issue, the following language is what I am proposing be added in order to tighten this law: “If an audit is ordered under this subsection due to financial irregularities or allegations of embezzlement and the governor finds the best interests of the state require suspension of an official or official from the performance of duty during the pendency of the audit, the governor may suspend the official or officials from duty. The governor immediately shall notify the political subdivision and board or persons authorized to fill vacancies in that office, and the board or persons, within five days after receipt of such notice, shall appoint one or more competent persons to fill the office and perform the duties of the officer or officers during the suspension.

If the governing body of a school district is being audited under this section for financial irregularities or allegations of embezzlement, the governor shall confer with the state superintendent of schools to determine whether the best interests of the state require suspension of a school board member or members.”

Without the proposed language above, in the event of an audit of a North Dakota Public School Board, the audit would take several months to complete. Unfortunately, there is no process in law for suspension of the board during an audit. Unless a removal petition has been filed, suspending the board is not an available option. School board members have protections while in office more so than many other elected officials. For many years, it was not possible to remove a school board member except through a grand jury proceeding. In 1987, the legislative assembly gave the Governor authority to remove school board members, by petition.

When an instance occurs where in a North Dakota Public School Board is under an auditing process, our current law makes it nearly impossible to suspend a Board member during this process—even if wrongdoings and behavior unbecoming of their elected position continues. That is why I am in support of this bill, HB 1501, and its ability to address a gap that needs immediate attention.

This concludes my testimony. Thank you, Chairman and members of the Committee. I will stand for any further questions.

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# Bill 1501

North Dakota State Legislature, Bismarck, North Dakota

## Testimony of Tucker Bercier

Secretary, Turtle Mountain Community High School Student Council

Monday, March 11, 2019

Good morning Chairman Schaible, Vice Chair Fors, and members of the North Dakota Senate Education Committee, I come before you today in support of Bill 1501. For the record, my name is Tucker Bercier. I am an enrolled student at the Turtle Mountain Community High School up in Belcourt and I am the Student Council Secretary.

1501 is a simple, but common sense bill. This bill is aimed at protecting taxpayer funds from further potential disturbance during a requested financial audit. The new law would allow the Superintendent of Public Instruction to suspend the rogue school member(s) during the course of the financial audit.

This bill would not change the current process of an audit, but rather looks at the best interests of the state and taxpayers. Simply put, this bill prevents the potential continuation of mishandled funds. Thank you.

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p10A2

# Bill 1501

North Dakota State Legislature, Bismarck, North Dakota

**Testimony of Jeryn Marcellais**  
**Treasurer, Turtle Mountain Community High School Student Council**  
**Monday, March 11, 2019**

Boozhoo (hello) Chairman Schaible, Vice Chair Fors, and members of the North Dakota Senate Education Committee. For the record, my name is Jeryn Marcellais. I'm a junior at Turtle Mountain High School and serve as the treasurer for the Turtle Mountain High School Student Council. Today, I stand before you urging all of you to vote do pass on Bill 1501.

As you all know, this will give the Superintendent of Public Instruction, with permission from the governor, to suspend a school board member for unruly actions during a forensic, fiscal, or performance audit.

Members of the Committee, I'm going to give you the following scenario. A student is acting disrespectful during class. This student continues to act in an unruly manner after being given many warnings to stop. This student is removed from the classroom by their teacher, sent to their principal, and disciplined in an orderly fashion. If our students are being held to this standard, shouldn't our officials be too?

Giving this bill a do pass will benefit my school and other schools with unruly and unprofessional school board members. On March 5th, 2019, I attended a school board meeting. I stayed in this meeting for an hour and left the meeting early. As I sat in this meeting, I was disgusted by the way some of the school board members talked to each other and to others attending the meeting. Some argued back and forth with one another and acted in an unprofessional manner. I was embarrassed because I realized that when people outside of my community hear or think of Turtle Mountain High School, the first thing that usually comes to mind is these members and their unprofessional actions. They don't think of our rich cultural history, the bravery and determination of our ancestors, or the accomplishments former students have made. They don't think about our intelligent, hardworking students, our amazing pep band, or the success our athletes have had. They don't think of the bright futures our children will have or the kindness, respectfulness, and gratitude our students show.

I am asking you today to vote do pass on this bill, not only for me and my community, but communities all across North Dakota. I hope that no other school will have to be put through what my school is currently going through. I ask that when you vote on this bill to

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think about the children in my school and the children all across North Dakota. Please vote do  
pass on House Bill 1501. Thank you.

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# Bill 1501

North Dakota State Legislature, Bismarck, North Dakota

## Testimony of Aiyana Jollie-Trottier

President, Turtle Mountain Community High School Student Council

Monday, March 11, 2019

Good afternoon Chairman Schaible, Vice chair Fors, and members of the North Dakota Senate Education Committee. I am here today in support of Bill 1501. My name is Aiyana Jollie-Trottier, I attend Turtle Mountain Community High School where I serve as student council president. Passing this bill is not only in the best interest of the state, but will also have a big impact on students as well. If a school board member is stealing money from a school, they are also stealing from a child's education. The money a school has is there for the students; it pays for our teachers, books, equipment, etc. If a member is irresponsibly spending money for other purposes, such as taking unnecessary trips out of town, then the school will not perform its best academically. I personally think this bill is just common sense; if a school board member acts unprofessionally, or is under suspicion of embezzlement, they should be immediately suspended before they can do further damage. Just as I would be suspended from student council if I were not performing effectively. This is an important life lesson; actions have consequences, and how will they learn this lesson if the consequences never come. Thank you for your time and attention. Please vote this bill "do pass."

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**TESTIMONY ON HB 1501  
SENATE EDUCATION COMMITTEE**

**March 11, 2019**

**By: Matt Scherbenske, Deputy Director of Academic Support**

**701-328-2629**

**North Dakota Department of Public Instruction**

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Mr. Chairman and Members of the Committee:

My name is Matt Scherbenske and I am the Deputy Director in the Office of Academic Support within the Department of Public Instruction. I am here at the request of Superintendent Baesler to speak in favor of House Bill 1501 allowing a procedure for the superintendent of public instruction to suspend a member of a school board as a result of financial irregularities or allegations of embezzlement.

On behalf of Superintendent Baesler and the Department of Public Instruction, I offer a statement of support for House Bill 1501, and furthermore, the Department of Public Instruction is prepared and willing to assume the authority provided within the bill should the Legislative Assembly so pass HB 1501.

Chairman Schaible and Members of the Committee, this concludes my prepared testimony. I would be glad to stand for any questions if the Committee may have any.

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Sixty-sixth  
Legislative Assembly  
of North Dakota

House bill No. 1501

Hello my name is Craig Lunday. I'm from Belcourt ND and I **support** Bill 1501. 1<sup>st</sup> of all, I'd like to thank representatives, Roers Jones, Heinert, M. Johnson, Pyle and Senator Rust for introducing this bill.

Due to the fact it seems that all school boards are untouchable by anyone at this time, I'm concerned and seek your support to change it.

I'm asking the support of the complete House/Senate 66<sup>th</sup> legislative branch to pass this bill.

This bill will give the authority to the Governor and Superintendent of schools to suspend a school board member. At this time, to my knowledge, there is no law in place that gives the Governor or the Superintendent that authority. As a parent of 3 children in the Belcourt School system I'm concerned and asking your support on this bill to give the Governor and Superintendent the power to suspend a school board member/s if an audit is ordered due to financial irregularities and misappropriations of funds.

Thank you to all members.

19.1080.03001  
Title.

Prepared by the Legislative Council staff for  
Senator Schaible

March 19, 2019

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PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1501

Page 1, line 2, remove the first "and"

Page 1, line 4, after "members" insert "; and to declare an emergency"

Page 1, line 10, replace "superintendent of public instruction" with "governor"

Page 2, after line 13, insert:

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency  
measure."

Renumber accordingly

19.1080.03002  
Title.

Prepared by the Legislative Council staff for  
Senator Schaible

March 22, 2019

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3-26-19  
AH #1  
p1 of 1

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1501

Page 1, line 2, remove "and"

Page 1, line 4, after "members" insert "; and to declare an emergency"

Page 1, line 9, after the third "the" insert "governor, in consultation with the"

Page 1, line 10, after "instruction" insert an underscored comma

Page 1, line 11, replace "a forensic, fiscal, or performance" with "an"

Page 2, line 5, replace "official" with "school board member"

Page 2, line 5, replace "official's" with "individual's"

Page 2, line 7, replace "official" with "school board member"

Page 2, line 8, replace "political subdivision or" with "school"

Page 2, line 9, replace "official" with "member"

Page 2, line 9, remove "political subdivision"

Page 2, line 10, replace "or" with "school"

Page 2, line 10, replace "official" with "member"

Page 2, after line 13 insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly