

2023 HOUSE EDUCATION

HB 1201

2023 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau AB Room, State Capitol

HB 1201
1/18/2023

Relating to prohibiting a state entity from employing an individual under contract with a school district

2:10 PM

Vice Chairman Schreiber-Beck opened the hearing. Members present: Chairman Heinert, Vice Chairman Schreiber-Beck, Representatives Conmy, Dyk, Hager, Hauck, Heilman, Hoverson, Jonas, Longmuir, Marschall, Murphy, Novak, and Timmons.

Discussion Topics:

- Employee shortage
- Exclusion of applicants
- Contract breach
- Competitive hiring process

Representative Pat Heinert Bill Sponsor Support

Mike Bitz Superintendent , Mandan School District Support #14175

Krista Schulz HR Manager Department of Public Instruction Opposition #14282

Wayde Sick State Director of ND Department of CTE Opposition #14244

Mike Geiermann General Counsel for ND United Opposition #14368

Alyssa Martin Director, Center for Distance Education Opposition #14202

Additional written testimony:

Aimee Copas, NDCEL #14081 #14142

Closed 2:41 PM

Kathleen Davis, Committee Clerk

By Bev Monroe

2023 HOUSE STANDING COMMITTEE MINUTES

Education Committee Coteau AB Room, State Capitol

HB 1201
1/24/2023

Relating to prohibiting a state entity from employing an individual under contract with a school district

4:31 PM

Chairman Heinert opened the hearing. Members present: Chairman Heinert, Vice Chairman Schreiber-Beck, Representatives Conmy, Dyk, Hager, Hauck, Heilman, Hoverson, Jonas, Longmuir, Marschall, Murphy, Novak, and Timmons.

Discussion Topics:

- Committee Action

Rep Novak moved a Do Not Pass, seconded by Rep Timmons.

Representatives	Vote
Representative Pat D. Heinert	Y
Representative Cynthia Schreiber-Beck	Y
Representative Liz Conmy	Y
Representative Scott Dyk	Y
Representative LaurieBeth Hager	Y
Representative Dori Hauck	Y
Representative Matt Heilman	Y
Representative Jeff A. Hoverson	Y
Representative Jim Jonas	Y
Representative Donald W. Longmuir	Y
Representative Andrew Marschall	AB
Representative Eric James Murphy	Y
Representative Anna S. Novak	Y
Representative Kelby Timmons	Y

13-1-0 Motion carried. Rep. Heilman is carrier.

Chairman Heinert closed the meeting at 4:38 PM

Kathleen Davis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1201: Education Committee (Rep. Heinert, Chairman) recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1201 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1201



1 HB 1201

2 Testimony in support

3 Chairman Heinert and members of the House Education Committee – for the record –

4 I’m here representing NDCEL and all your school leaders in North Dakota – we are

5 here to support this bill whole heartedly. We are here with the #1 purpose and that is

6 to support students. One of the ways to best support them is to have our schools

7 staffed appropriately. Each person in this committee is aware of the shortages we are

8 experiencing in staffing. Once a teacher signs a contract, it is an assurance to a certain

9 level that we will be able to serve our students for the duration of that contract,

10 however, to have our teachers encouraged to break contract, and walk away from the

11 students in the district to take a position with a state agency or political subdivision is

12 not in the best interest of kids.

13

14 In the past biennium (in fact this school year) it has happened where a state agency has

15 recruited and hired a contracted teacher during the school year which put the schools

16 in a position where they’d need to release that teacher from their contract. There are

17 individuals who are filling rolls such as teachers in special education – rolls that are the

18 most challenging to fill...and as it is just as important for those agencies to have

19 qualified people, however asking teachers to break contract to work for another state

20 agency of political subdivision does NOT directly support our students.

21

22 In a time of teacher shortages, especially in shortages in the special education

23 departments as well as all other teacher shortage areas from music to English to math

24 to science.... to have a state agency take those teachers during the school year and

NDCEL is the strongest unifying voice representing and supporting administrators and educational leaders in pursuit of quality education for all students in North Dakota.

Executive Director: Aimee Copas-----Government Lead and Special Projects: Kevin Hoherz



1 having those students now NO LONGER receiving those needed teacher services is
2 inappropriate.

3

4 This bill would require the agency, state entity, or political subdivision to wait until the
5 completion of the current active contract before any school district employee to begin
6 employment with that individual. They may offer the contract, but it does not begin
7 until after the end of the contract unless it is mutually agreed upon between the school
8 board, superintendent, and that state agency, state entity, or political subdivision.

9 Asking state agencies and political subs to respect contract law should be a low
10 requirement and a general level of respect toward protecting our students.

11

12 We ask that as you discuss you consider our thoughts on this bill



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1 HB1201– Relating to Prohibiting a State Entity from Employing
2 and Individual under Contract with a School District

3 Mandan Public Schools – Mike Bitz, Superintendent

4 Good afternoon Chairman Heinert and members of the House
5 Education Committee. For the record, my name is Mike Bitz. I
6 am fortunate to serve as the superintendent for Mandan Public
7 Schools. I am here today in support of HB1201. I will be brief.

8 In each of the past two school years special education teachers in
9 the Mandan Public School District have been offered jobs in
10 October by the ND Department of Public Instruction. This is
11 problematic for a number of reasons. Special education teachers
12 are difficult to find even when you open the position 5-6 months
13 before you need the teacher to start. It also is problematic from
14 an education perspective, special education teachers case manage
15 their students and spend a large part of their day with them. When
16 teacher leaves mid-year, this relationship is disrupted, and it is the
17 students who suffer.

18 When Mandan Public Schools interviews teachers, we ask the
19 question “are you currently under contract with another school

1 district?" If the answer is yes, we do not offer a contract to that
2 individual without okaying it with the superintendent of that
3 school district and we would never offer a contract to a teacher
4 under contract once the school year begins. I know the Bismarck
5 Public School District extends the same courtesy to neighboring
6 districts.

7 MPS has not approved the request for the teacher to be released
8 from her contract this year, and she is still working at Mandan
9 Middle School. We have been searching, but we have been
10 unable to find a suitable replacement. Ultimately, schools can
11 deny the release from contract, but this creates an unhealthy
12 working environment.

13 I urge you to vote YES on HB1201 and I would be happy to
14 answer any questions you may have.

15

Testimony House Bill 1201 – House Education Committee

Representative Heinert, Chairman

January 18, 2023

Chair Heinert and members of the House Education Committee, for the record, my name is Dr. Alyssa Martin. I am the director of the North Dakota Center for Distance Education (CDE) and oppose this bill.

CDE has only twelve full-time teachers. Each is required to teach 600 enrollments annually, with some exceeding this threshold. In short, our teachers serve a very large number of students on a statewide basis. We at CDE have always afforded our teachers the courtesy and flexibility to leave their employment with us for another pursuit, believing that when our teachers have the desire to seek outside work, it would **not** be in their interest or the best interest of our students to hold them to a contract. While our teacher retention rate has been very stable, if we are faced with a vacancy mid-year, we need the option to open the vacancy and hire the best-qualified candidate for the job, which may be a North Dakota teacher currently under contract. This allows us to continue to serve schools statewide and avoid capping enrollments or limiting the courses in which a student can enroll. We understand the pressure and constraints that this may place on local school districts to fill a vacancy mid-year since these are the very same issues we experience when we have a vacancy and a natural part of employee churn in other industries. Again, CDE's need to hire a full-time teacher mid-year is limited and rare, but we hope to have the ability to hire the best teacher when this need arises. We do not actively recruit from within our local schools, simply following the state process for hiring an employee and selecting the best candidate for the position based on state protocols and the pool that applies. We also do not understand the need for this law since local school boards already have the authority to adopt a policy on the rules and reasons related to releasing a teacher from a contract early. CDE opposes HB 1201 for these reasons.

**House Education
HB1201**

January 18, 2023

Chairman Heinert and members of the House Education Committee, my name is Wayde Sick, State Director for the Department of Career and Technical Education. I am here to testify in opposition to HB1201.

I believe this bill intends to prevent all state agencies from interviewing, offering employment and hiring a contracted school district employee. As a state agency, we are required to follow the State of North Dakota's competitive hiring process. This bill would require us to exclude applicants that may be our best candidates.

The Department of Career and Technical Education employs educators. The staff we employ are intended to be the leaders of their respective program areas. The program areas include Agricultural Education, Family and Consumer Science, Business Education, Marketing Education, Technology and Engineering, Information Technology, Trade and Industry, Health Careers and Career Development. The Department's staff's primary responsibility is to support the educators in the field. We need to pull from the field for the benefit of all programs across the state. Also, it is worth mentioning that we do not contract with our employees. They are free to terminate their employment and possibly go back into a school system, no matter what time of year. Often, they are more highly compensated and have a contract ranging from nine to eleven months. Our staff work twelve months a year.

It is worth mentioning that when the Department makes a job offer, we are flexible with the candidate with their start date. It is up to that individual to work with their

local administration to determine an appropriate employment start date. Sometimes a candidate is released from their contract, other times, we have waited for the contract to end prior to a start date with the Department. If we can't wait for the candidate, we move on to other options. My point is, we respect the local contract. Currently, administration and the local school board have policies that allows the board to reject the resignation and require for the individual to obligate the entire contract prior to leaving employment. Often there are fiscal penalties for terminating a contract. The school district can report a breach of contract to the North Dakota Education Standards and Practices Board, which may have additional penalties.

I also feel I need to mention that this limits an individual from expanding his or her career. A local educator may have a desire to work for one of the state agencies, being able to pass on their knowledge and expand his or her sphere of influence. This bill would potentially hold back an individual and their career goals.

The Department respects the shortage of workers across all sectors, including education. But we feel this bill is not necessary as there are already local policies in place for school boards and districts to utilize.

This concludes my testimony, and I am happy to stand for any questions.

TESTIMONY ON HB 1201
HOUSE EDUCATION COMMITTEE
January 18, 2023
By: Krista Schulz, Human Resources Manager
701-328-3298
North Dakota Department of Public Instruction

Mr. Chairman and Members of the Committee:

My name is Krista Schulz, and I am the Human Resources Manager with the Department of Public Instruction (DPI). I am here to speak in opposition of House Bill 1201 regarding the restriction of a state agency, department, institution, or political subdivision from employing an individual that is under contract with a school district.

For clarification, most state entities do not enter into employment contracts with employees. This bill, as written, would likely not affect DPI's hiring process due to the statement about entering into a contract of employment; however, we still stand in opposition of the bill for the few entities that do enter into employment contracts with employees.

Because we believe the bill was intended to affect all state entities, including our agency, from interviewing, offering employment and hiring a contracted school district employee, I will be speaking to it as such. As I stated, the Department of Public Instruction does not enter into employment contracts with employees. Instead, DPI makes employment offers that follow the State of North

Dakota's requirement for a competitive hiring process. Our employment offers are not a contract, and the term of employment may be terminated at the will of the employee. Following the State of North Dakota's competitive hiring process ensures equal employment opportunities, allows for veteran's preference to be applied, and requires the agency to hire the best candidate for the position. If this bill is asking us to exclude applicants and restrict us from making an employment offer to the best candidate for the position, this may directly conflict with the competitive hiring process required by the State of North Dakota. Human Resources Management Services' requirement for external hiring requires agencies to ensure the public has the opportunity to know of and apply for the position. Additionally, it requires the agency to select on the basis of the applicant's job-related qualifications for the position (NDAC 4-07-05-05). I also have concerns about whether this constrains a state entity from ensuring an equal employment opportunity when hiring for vacant positions.

As we understand, school boards currently have policies that detail and outline their procedures for denying or granting a person's request to be released from a contract. School districts also have a schedule of liquidated damages and penalties for a breach of contract. An example of a local school board enforcing its policy has recently occurred. In September 2022, DPI posted, interviewed and offered a vacant position to an individual who ranked the highest in our interview

process. We offered the position to this individual, who was a contracted teacher. The individual submitted a request to her school board to be released from her contract. To date, the school board has not released the teacher; therefore, the teacher is not an employee of the Department of Public Instruction. The school board followed its policy and denied the release from the contract. DPI understands the school board's policy and must decide whether or not to rescind the offer or wait to hire the individual after the contract term dates. I invite you to review an example of a school board's release of contract policy found at the end of my testimony. We feel that school boards already have policies in place to deal with these situations and that this law is unnecessary and will further complicate hiring efforts and cause some concerns with current state hiring requirements.

Just like Local Education Agencies (LEAs) have requirements to hire fully licensed and credentialed staff, so does the State Education Agency, specifically in our Specially Designed Services Office, formally known as our Special Education Office. We understand that the Local Education Agencies and the State Education Agency may receive applications and offer employment to the same individuals. If this bill, as written, is intended to restrict DPI from offering employment to the best candidate, it will put us at a disadvantage in meeting state and federal requirements.

The Department of Public Instruction recognizes the hiring issues all industries are facing. We also understand the teacher shortages our nation is experiencing. DPI has committed over \$4.2 million for the Para to Teacher Pathway and Grow Your Own program which assists districts in getting their own staff licensed as teachers to help with teacher shortages. If we are restricted from offering employment to and hiring the best candidates, we will not be able to initiate and implement these types of programs that have had a positive effect on all North Dakota districts. Historically, DPI has also lost staff to school districts during very busy times. Districts typically can pay higher hourly salaries and offer nine-month contracts.

In conclusion, the Department of Public Instruction understands the current hiring challenges that all industries are facing. We feel this bill is unnecessary due to the current policies and procedures that school boards already have in place, and it may directly conflict with the State's human resource requirements.

Chairman Heinert and Members of the Committee, that concludes my prepared testimony and I will stand for any questions that you may have.

ATTACHMENT

MANDAN PUBLIC SCHOOL DISTRICT #1

Descriptor Term:	Descriptor Code:	Adopted:
RELEASE OF CONTRACT & PENALTIES	GBAA	02/17/1997
	Revised:	Effective:
	02/03/2020	03/01/2020

The board has a right to deny a release of contract or to waive any penalties at its discretion.

The Mandan Public School District has established the following penalties for breach of contract and cost of replacement.

<u>Time of Release Request</u>	<u>Cost of Replacement</u>
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March 1 through June 14	\$ 500
June 15 through June 30	\$1,000
July 1 through July 31	\$1,500
August 1 through the term of contract	\$2,000

In the event of extenuating circumstances, a waiver may be submitted by the individual explaining relevant circumstances for consideration to the Appeal's Committee. The Appeal's Committee will be made up of the Superintendent of Schools, the Chairperson of the Policy & Personnel Committee, and a teacher representative recommended by the Mandan Education Association and by the Board.

The recommendation of the appeals committee will be forwarded to the Mandan School Board for final approval.

LEGAL REF: NDCC 15.1-15-04



Great Public Schools

Great Public Service

**Testimony before the House Education Committee
In opposition to House Bill 1201
Michael Geiermann, North Dakota United
January 18, 2023**

Chairman Heinert and the members of the House Education Committee, I am Michael Geiermann and I serve as General Counsel for North Dakota United. I am here to testify in opposition to House Bill 1201. The provisions of this bill deal with an isolated situation which can be adequately remedied by existing North Dakota law. There is no need for this bill and it will not assist a school district that is dealing with the teacher shortage.

Under North Dakota contract law, individuals, companies, corporations and the State have the freedom to contract with whomever they choose. The law concerning contract in North Dakota is found at NDCC Title 9 and contains all of the law concerning contracts. In addition, the North Dakota Supreme Court has issued numerous opinions on the parameters of contract law. Pursuant to this body of law, individuals who enter contracts have the right to breach their contractual duties if they choose to do so. A breach is defined as the nonperformance of their contractual duties. Under existing law, there are legal consequences for a breaching party. The remedy for breach of contract since statehood has been an action for damages for the non-breaching party to put that person or entity in the same position it would have been in had the contract not been breached. These rules apply in the public sector, the private sector and to all parties to contracts in ND. This bill is not in keeping with the law of contracts in North Dakota as it provides an additional remedy to school district not available to any other employer.

There have been instances in which school district employees breach their employment contracts and leave their employment. This is a very rare occurrence and usually is very justified. When that happens the remedy for school districts, if they have been damaged by the breach/departure of the employee, is to seek damages. An additional remedy is the enforcement of a liquidated damages provision in the negotiated agreement. These provisions are common in school districts and are most often times negotiated with the

teacher's association. This bill now purports to give school districts an additional remedy available to no other employer in the state. It legalizes a school board to interfere with the employees right to contract in ND. It holds the employee hostage in an employment situation where the employee prefers not to stay.

North Dakota has had a well-established public policy on allowing employees to practice their professions without interference. North Dakota is one of the few states which still prohibits covenants not to compete. See NDCC 9-08-06. This bill legalizes covenants not to compete and is contrary to the public policy of the State. Moreover, it puts public employers at a disadvantage to their private sector counterparts. This bill only prevents the public sector from hiring a school district contracted employee. A private sector can hire the same person.

I urge this committee to give this bill a do not pass recommendation.