



bulletin



DECEMBER 2011

Excellence in North Dakota public education through local school board governance ■ VOL XXXVI ISSUE 12

Measure 2 Retroactivity Confounds School Funding

Since the filing of Measure 2, legislative and political subdivision leaders have struggled to quantify the fiscal effects of eliminating property taxes in North Dakota. This measure was submitted to the Secretary of State with no comprehensive process or consideration of consequences.

While there is cause for concern on many levels, the retroactive effective date is most dire. The measure will be on the ballot in June 2012, but the effective date (if passed) is January 1, 2012. Many have asked why sponsors of the measure included a retroactive effective date. According to Representative Dan Ruby, a measure sponsor, the original intent was to have the measure on a ballot in 2010 with the 2012 effective date. This would have allowed the 2011 legislative session to address the issue. However, it took sponsors longer than expected to gather signatures so the petition

was not submitted to the Secretary of State until 2011 and the sponsoring committee neglected to change the effective date.

Representative Ruby requested an Attorney General's Opinion regarding the possibility of interpreting the measure with an effective date to follow passage. Attorney General Wayne Stenehjem issued his opinion on November 1. In that opinion, Stenehjem states, "Based on a plain reading of the effective date clause contained in Initiated Constitutional Measure 2, as well as other references to the year 2012 in the measure, it is my opinion that if passed by the people at the June 12, 2012, primary election, the measure is retroactively effective as of January 1, 2012."

Stenehjem opined, "Since the words of the effective date clause are not ambiguous, I may not resort to extrinsic aids to attempt to interpret it. Although in your letter, in your capacity as one

of 25 members of the sponsoring committee, you indicate your belief as to the intent of the effective date clause, I lack the authority to consider such matters since the language is not ambiguous."

A January 1, 2012, effective date causes particular problems for school districts because it falls in the middle of their fiscal year. Schools rely on property tax revenues to fund the second half of their school year obligations. It is still not clear if funds collected in 2012 for obligations of the 2011 tax levy would have to be returned.

Nearly as troubling as the effective date clause is language that states that property tax revenue used by political subdivisions before 2012 must be replaced with state funds. The words "**used before 2012,**" means that local tax revenue used by school districts to fund budgets in the **second half** of the 2011-12 school year do NOT have to be replaced by state funds.

Continued on page 2

New Meeting and Record Handbook Available for Purchase

Did you know that North Dakota law contains a requirement on when schools have authority to destroy records? Under NDCC 21-06-06, school boards, at the first meeting in January, are authorized to make a motion to destroy "documents paid more than five years prior to that time and against which the period within which an action might be commenced to determine the validity of such documents has expired." The law requires business managers to supply their boards with a detailed list of documents to be destroyed. The list must contain a description of each document.

Developing this list may pose a challenge if your district does not have a record retention schedule. To assist,

NDSBA has developed a detailed record retention schedule. The schedule contains retention recommendations for the majority of the documents in student and employee files and for other district operational records. The retention schedule is part of a new handbook that answers school officials' common questions on meetings and records based on North Dakota's sunshine laws.

The handbook can be previewed and purchased for \$125 by downloading an invoice at: <http://www.ndsba.org/handbooks/preview.asp>. Upon purchase, districts will receive a password to access the handbook online.

NDSBA will soon be offering additional handbooks on nonrenewal and discharge of teachers and superintendents.

■ MEASURE 2

Continued from page 1

Regardless of the intent of this measure's sponsoring committee, wording will cause immediate fiscal disaster for local governing entities that rely on property tax.

Clearly, if Measure 2 passes, a special session of the legislature would have to convene to sort out and hopefully remedy the fiscal consequences. Waiting until the 2013 legislative session would be too late to provide schools necessary operational funds for the 2012-13 fiscal year.

Book Rooms for 2013 NDSBA Convention

NDSBA's 2013 Annual Convention will begin October 24 with the Law Seminar and New Member Seminar. Regular convention activities will be October 25-26.

The Ramkota will begin taking room reservations for the 2013 Annual Convention on **January 1, 2012**. Secure your rooms at the Ramkota early!

bulletin

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from the director's chair

■ by Jon Martinson, NDSBA Executive Director

Is It Time to Reconsider the Four-Day School Week?

It was December 2005 when I last wrote about the four-day school week. At our 2004 annual convention, we invited a superintendent from Custer, South Dakota, to share his thoughts since they had used a four-day schedule since 1995. Gary Wilz, ever the innovative and forward-looking school superintendent from Killdeer, was interested in learning more about this idea and took his entire board to Lemon, South Dakota, for a visit since they were also on a four-day week. Back in 2005, the Department of Public Instruction had serious concerns and advised caution when approaching this concept.

My interest in this idea was rekindled after reading research provided by NSBA's Center for Public Education. The article, *Time in School: How does the U.S. Compare?*, presents data regarding the amount of time U.S. students spend in school compared with students in other countries. One conclusion is that merely adding instructional time does not automatically improve student achievement. Rather, the additional time must be used wisely and with a specific purpose. "Simply providing students the same content with the same instruction over a longer period of time is not likely to improve student achievement." No surprise there.

But here is the interesting part. Research suggests that low-cost options like four-day weeks can prove beneficial to student achievement. Apparently some districts are seeing unintended benefits of the four-day week such as higher test scores, decreased disciplinary problems, greater collaboration among teachers, and higher morale.

Given frequent stories in the media about rapid growth in western North Dakota that has created—among other

things—traffic headaches including congestion and accidents, I wondered if Gary and his colleagues in oil country have given the four-day week more thought. "Funny you called," Gary said, "I was just visiting about this over lunch today." Last summer, he interviewed individuals for a counseling position in Killdeer. One candidate from South Dakota who is the school district testing coordinator and student data collector, whose school is on a four-day schedule, said she would never have believed it but student test scores on both the state assessment and in the classroom actually went up—anecdotal evidence that supports current research.

Gary thinks there is still plenty of resistance to a change of this magnitude, but the idea is more palatable today than it was years ago. Certainly school boards and superintendents in western North Dakota know what is best for their students and will make the right decisions about the four-day week.



mark your calendar

2012 NDSBA Negotiations Seminar

February 9-11, 2012

Doublewood Inn, Bismarck

2012 NSBA Annual Conference

April 21-23, 2012

Boston, Massachusetts

2012 NDSBA Annual Convention

PRE-CONVENTION

NDSBA New Member Seminar

NDCSA School Law Seminar

Thursday, October 25, 2012

Ramkota Hotel, Bismarck

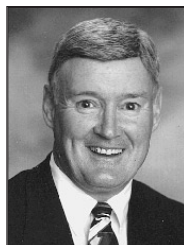
ANNUAL CONVENTION

October 26-27, 2012

Ramkota Hotel, Bismarck

comments of counsel

■By Gary R. Thune, NDSBA Legal Counsel



2012 NEGOTIATIONS SEMINAR

If your district has a contract that expires on June 30, 2012, the unique process of North Dakota's negotiation law merits your attendance at NDSBA's Negotiations Seminar on February 9-11 at Bismarck's Doublewood Inn. For the first time, the Negotiations Seminar will begin with a keynote address. Ron Wilson, executive director of the North American Association of Educational Negotiators (NAEN), will provide valuable insight concerning union preparation and examination of the union's "playbook." Other presenters include NDSBA staff and legal counsel, a board member, administrator, and chairman of the Fact Finding Commission. An "early bird" session will be offered on Thursday afternoon, February 9.

EARLY BIRD SESSION

A. NONRENEWAL TRAINING

Commencing at 1:00 p.m. on Thursday, I will provide a review of the nonrenewal process, starting with the importance of complying with statutory deadlines and significance of timely evaluations. Reduction-in-force and performance-based (cause) nonrenewals will be discussed, along with appropriate forms. Exceptions to the "general rules" for nonrenewals will also be covered in this two-hour early bird session.

B. TRAINING FOR NDSBA FIELD REPRESENTATIVES

Following the nonrenewal session for administrators and board members, I will provide an overview and Q & A session for the nonrenewal field representatives who annually volunteer to assist school boards across the state with procedural aspects of nonrenewal hearings.

NEGOTIATIONS 2012

A. KEYNOTE ADDRESS

Ron Wilson, NAEN executive director, will lead off the Negotiations Seminar at 9:00 a.m. on Friday, February 10, with an insightful presentation entitled "Do You Know the Teachers' Union Lesson Plan for Negotiations?" He will also

discuss the union's negotiation priorities. A Question-and-Answer session will provide a follow-up opportunity for attendees.

B. JEOPARDY AND THE BASICS

After a short break, NDSBA Director of Policy Services Alyssa Martin will conduct a game of "Negotiations 101 Jeopardy," introducing unique words and phrases that are a part of the negotiations process.

C. THE LAW

I will briefly summarize the law, both statutory and via court decisions, that has evolved since 1969. One focus will be on the erosion of board powers, both intentional and gratuitous, during negotiations. A review of the recognition process will illustrate how that erosion can begin early and continue throughout the negotiations process.

D. PREPARATION AND STRATEGY

From ground rules and board proposals to the ongoing use of executive sessions to formulate and provide strategy to the board's negotiation team, this session will provide practical suggestions followed by a timely adjournment for lunch, which is included in your registration fee.

E. THREE-PART SESSION

1. THE 70% RULE

Following lunch, West Fargo's Business Manager Mark Lemer will walk us through the definition of "compensation" and the challenging computations necessary to determine whether the board's proposals are in compliance with the "70% Rule."

2. NEW FRINGE BENEFITS RULES

Mark will also discuss the need for caution when dealing with new benefits as a part of the 70% compensation calculation.

3. TFFR IN 2012 AND 2014

The legislatively mandated increases in TFFR in both 2012 and 2014 (bringing the total to 24.5 percent in 2014) will be

discussed, including a cost assessment of buy-outs. Mark and I will interact with each other during each of these three topics.

F. AT-THE-TABLE TIPS

Over the past 30 years of negotiating teachers' contracts, I have accumulated numerous principles and techniques which have proven to be useful. I have also observed recent NDEA strategies that merit review so you will recognize them when you see or hear them. Practical tips in the form of "Do's and Don'ts," as well as "Alternatives to Saying No," will be reviewed.

G. NDEA NEGOTIATION STRATEGY IN RURAL SCHOOLS

Following a short break, Lisbon Superintendent Steve Johnson will share his observations regarding NDEA "tactics" that he has observed in Lisbon's negotiations, as well as other rural school districts.

H. CONTRACT LANGUAGE – FIND THE PROBLEM

The final first day session will employ an interactive ("clickers") format to assist participants in identifying contract language that should be revised or removed from your negotiated agreement. NDSBA Executive Director Jon Martinson will serve as facilitator for this session. Alyssa Martin, NDSBA Director of Policy Services, and I will provide responses to audience input regarding existing contract language.

Continued on page 4

2012
HUMAN RESOURCE CONFERENCE
FOR LOCAL GOVERNMENT
★
APRIL 25-26, 2012
at the Best Western Ramkota Hotel in Bismarck
★
Registration will be opening in January 2012

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★
HR
ALL STAR
HUMAN RESOURCE CONFERENCE
FOR LOCAL GOVERNMENT
GET IN THE GAME

Supported by the Otto Bremer Foundation

comments of counsel

Continued from page 3

IMPASSE PROCESS

After a buffet breakfast, Saturday morning will begin with Dean Rummel, chairman of the North Dakota Education Fact Finding Commission, sharing his unique perspective on the fact finding process. Since Milnor was one of the school districts that went to impasse last spring, Board President James Martinson and Superintendent Diann Aberle have agreed to share their "lessons learned" during that process. After a short break, I will summarize "after the hearing" procedural steps necessary to bring the process to a close, including requirements to issue contract offers.

A Question-and-Answer session, covering all phases of the two-day presentations, will bring the seminar to a close.

SEE YOU IN BISMARCK!

Mark your calendar for **February 9-11, 2012**, and preregister so you receive all the materials to be presented at this year's Negotiations Seminar. Registration brochures will be mailed to your school district and registration information is also available on the NDSBA webpage at www.ndsba.org.

Contact the Doublewood Inn at (701)258-7000 for sleeping room reservations.



Season's
Greetings

Alyssa, Bev, Gary,
Jon, Julie, and Linnae

Legal Services Notice

Gary Thune is retiring as NDSBA legal counsel as of June 30, 2012, and NDSBA is currently in the initial stages of hiring an in-house legal counsel to commence duties prior to Gary's retirement date.

As part of your NDSBA dues, our in-house counsel will be able to provide timely response to your legal questions by phone and email on a daily basis with one phone call to our office. Counsel will also help advise and assist NDSBA Policy Services, offer legislative assistance, review NDSBA handbooks, assist with NDUC Group Account, offer assistance to Regional Education Associations, and coordinate the annual Negotiations Seminar and School Law Seminar. Other additional services will be offered as the Legal Services Program is expanded to meet growing school district legal needs.

 superintendent.
vacancies

Fargo Public School

Contact: Ray and Associates, Inc.
319-393-3115
glr@rayassoc.com
Apply online: www.rayassoc.com
Deadline: February 28, 2012
(Do not contact district directly)

Devils Lake Public School

Contact: Deb Budish, Admin. Asst.
1601 College Dr. N.
Devils Lake, ND 58301-1550
701-662-7640
deb.budish@sendit.nodak.edu
Apply online: www.dlschools.org
Deadline: January 25, 2012, at 4:00 p.m.

Grenora Public School

(Superintendent/HS Principal)
Contact: Jennifer McNamara, BsMgr.
PO Box 38
Grenora, ND 58845-0038
701-694-2711
Deadline: Open