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MAY 2013

Excellence in North Dakota public education through local school board governance ■ VOL XXXVIII ISSUE 5

2013 Legislative Session Adjourns

After 80 legislative days, the 63rd Legislative Session concluded at about 4:35 a.m. on Saturday, May 4. The session set the record for longest legislative session on record.

On the morning of the 80th day, the House defeated **House Bill 1319**, the K-12 education funding bill, and eventually put components of the bill into **House Bill 1013**, the Department of Public Instruction budget bill. Conference committees worked long hours to reach a resolution that was supported on the floor of both chambers.

The April *Bulletin* summarized bills that had already been signed by the Governor. This issue provides a summary of bills signed since that date.

The final version of **House Bill 1013** includes changes to the weighted average daily membership multiplying factor and how state aid is determined. Section 44 of the bill appropriates \$50 million from the coal development trust fund and \$150 million from the strategic investment and improvements fund to provide school construction loans.

The bill also includes a provision in section 43 that allows school districts to use funds for students eligible for free or reduced lunches to receive one serving of milk or juice if a mid-morning snack break is provided.

Section 49 of the bill eliminates all

tax levies requiring board action and replaces it with language that sets a maximum levy for taxable years after 2013 at the amount the school district levied for the prior year, plus twelve percent, up to a cap of 70 mills on the taxable valuation of the district. This section also sets a maximum levy of 12 mills for miscellaneous purposes and expenses.

These funds must be deposited into a special miscellaneous fund. A board may levy no more than three mills for deposit into

a special reserve fund. No more than the number of mills necessary may be levied for payment of tuition. These tuition funds must be deposited into a special tuition fund that may not be transferred to any other fund. There are no limits on the board from levying mills for a building fund or mills necessary to pay principal and interest on the bonded debt of the district.

Please review the provisions of **House Bill 1013** carefully to determine how its 68 sections impact your school district.

House Bill 1052 makes changes to the notice required as part of a workforce safety and insurance

preferred provider program.

House Bill 1261 appropriates \$13.6 million for rapid enrollment grants, of which \$6.8 million can be used during the first year of the biennium.

House Bill 1286 requires a majority vote of the qualified electors of a school district before a school board can use a building authority for a project with total cost of \$4 million or more.

House Bill 1320 adds electronic communication to the harassment statute.

House Bill 1332 requires voters to show identification when voting that includes the individual's residential address and date of birth.

House Bill 1361 requires school boards to designate one or more polling places for each precinct at least 35 days prior to the annual election.

House Bill 1401 amends the date for canvassing of a school board election to the sixth day after the election.

House Bill 1429 and **Senate Bill 2229** allow a board to use local tax revenues for approved early childhood education programs.

House Bill 1452 amends the PERS payment contributions to an additional increase of one percent, beginning with the monthly reporting period of January 2014.

Senate Bill 2036 states that for the taxable year 2013 only, for purposes

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NDSBA Membership Dues Statements Sent

NDSBA dues statements have been sent to district business managers. School districts in North Dakota have long benefited from the support, training, information, and legislative advocacy provided by the North Dakota School

Boards Association. When public school boards join together, they make a difference in their own effectiveness and overall support for public education.

Congressman Cramer Signs on to NSBA Bill

NDSBA praises Congressman Kevin Cramer's support for the *Local School Board Governance and Flexibility Act* recently introduced in the U.S. House of Representatives. The bill (H.R. 1386) is designed to protect local school district governance from unnecessary and counter-productive federal intrusion from the U.S. Department of Education (ED).

This legislation, introduced by Rep. Aaron Schock (R-Illinois) and Rep. Patrick Meehan (R-Pennsylvania), would ensure that the ED's actions are consistent with the specific intent of federal law and are educationally, operationally, and financially supportable at the local level. It would also establish several procedural steps that the ED would need to take prior to initiating regulations, rules, grant requirements, guidance documents, and other regulators' materials. Additionally, the legislation is intended to provide the House of Representatives and Senate committees that oversee education with better information regarding the local

impact of ED activities. The legislation is designed to more broadly underscore the role of Congress as the federal policy-maker in education. This legislation is also supported by the American Association of School Administrators.

"As a former school board president, I believe that the combination of parents, educators, employers, and the local community must work together to ensure all children develop the skills and acquire the educational tools they will need to become successful. I believe a big part of this is ensuring local school boards do not have their authority eroded by regulators in Washington," said Schock. "Not all education regulations are misguided, but the ones that are need to be taken off the books. The focus has to be expanding the opportunity to learn; not tying the hand of local administrators with more red tape by federal bureaucrats. My legislation ensures this encroachment does not continue and restores the local authority school boards need."



Cramer

SESSION ENDS

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of determining the zero increase number of mills for a school district, the amount of property tax revenue from the property tax levy in the 2012 taxable year must be recalculated by reducing the 2012 mill rate of the school district by the lesser of fifty mills; or the 2012 general fund mill rate of the school district minus sixty mills. The bill appropriates \$200 million to the state treasurer for state-paid property tax relief credits.

Senate Bill 2129 requires that all new construction projects meet current federal Americans with Disabilities Act standards for accessible design. Any newly constructed building in excess of 7,500 square feet must include an automatic door at the primary entrance.

Senate Bill 2214 creates a new section of law relating to transition payments for isolated school districts.

Senate Bill 2216 amends the law relating to causes of vacancy for school board positions to reference the reasons listed in NDCC 44-02-01 that are used for other elected officials.

Senate Bill 2238 appropriates \$450,000 to the superintendent of public instruction for reimbursing school districts for CPR training to students.

Senate Bill 2267 appropriates \$3 million to the superintendent of public instruction to award safety grants to eligible school districts.

A complete list of bills tracked by NDSBA can be found on our website <http://www.ndsba.org/legislation/legislationindex.asp>.

NDSBA would like to thank board members who contacted their legislators during this legislative session.

Remember to contact the Department of Public Instruction to reserve your copy of the 2013 School Code book.

bulletin

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EDITOR Annette Bendish

PUBLISHER

North Dakota School Boards Association
PO Box 7128
Bismarck, ND 58507-7128

TELEPHONE 1-800-932-8791

LOCAL (701)255-4127

FAX (701)258-7992

WEB SITE www.ndsba.org

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NDSBA staff is looking for suggestions for clinic session topics to be offered during the 2013 Annual Convention. Please email clinic session topics or speaker ideas to jon.martinson.ndsba.org by June 15, 2013.

by Annette Bendish, NDSBA Legal Counsel



Attorney General Issues Open Meetings Opinion

In a May 3, 2013, opinion to the State Board of Higher Education, North Dakota Attorney General Wayne Stenehjem reminded boards that a meeting can occur through electronic means, such as by telephone or email. Analysis of whether a meeting took place by email is no different than the analysis used for other meetings. The opinion stated “as long as the exchange occurs among a quorum of members of a governing body of the public entity and public business is discussed, it’s a meeting subject to notice requirements.” A quorum is reached when the emails are sent to a quorum of members of a governing body. When the email conversations become steps in the decision-making process of information gathering, discussing, formulating, or narrowing of options, or action regarding public business, open meeting laws are triggered.

Using email to provide information is appropriate as long as there are safeguards to protect against communication that may trigger the open meetings law. Members of a board should be careful not to use the “reply all” function when responding to the information they receive by email. The opinion stated an email that sets an agenda item is appropriate, but when it also expresses opinion about the agenda topic to the other members of the board, open meeting laws are applicable. Expressing opinions about how to handle public business is the equivalent to having a discussion because it contributes to the consensus building process.

You may read the opinion on the North Dakota Attorney General’s website at <http://www.ag.nd.gov/Opinions/2013/OR-OM/2013-O-07.pdf>.

2013 Negotiations: Be Alert to Current Union Tactics

With negotiations underway, NDSBA has received a number of questions about proposals submitted by teacher representatives to school boards. Many proposals are similar in content, which indicates an organized, orchestrated, and deliberate approach.

In an effort to alert board negotiators to recent union tactics, below is an overview of recent proposals that erode board and administrative authority and give additional oversight to teachers.

Grievances: Teacher grievance procedures with binding arbitration.

The purpose is to allow a third party to make decisions for your school board, thus usurping board authority. Keep binding arbitration out of grievance procedures. These procedures belong in policy -- not in the negotiated agreement.

Grading: This proposal would allow teachers exclusive authority to assign grades.

This initiative would prohibit administrative oversight in the event a grade is assigned in error or in an arbitrary, capricious, or discriminatory manner. Keep grading grievances that allow administrative investigation and oversight in policy.

Review of files: Public requests to view teacher files in the negotiated agreement.

The idea is to require advance notice when a request is made to review the teacher’s file; the teacher is to be present during the review; and the public is required to sign in when viewing the file. Nothing in law requires that teachers receive notice prior to

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North Dakota High Court Hears Appeal

by Nick Smith
Bismarck Tribune

(reprinted with permission)

The North Dakota Supreme Court heard oral arguments Thursday in an appeal brought by advocates of abolishing property taxes who’d been ordered to pay sanctions for their failed lawsuit.

Bismarck attorney Lynn Boughey, representing members of the Empower the Taxpayer group, argued before the court Thursday.

He said a district court judge was incorrect in ruling that the group’s original lawsuit had been frivolous. He argued further that the court had gone too far in ordering the group to publish a public retraction and pay attorney fees.

The Empower the Taxpayer group supported the failed Measure 2, which would have abolished property taxes in North Dakota.

In February 2012, a lawsuit was filed against several local and state officials by the group, alleging that they had violated the state’s Corrupt Practices Act. The officials were alleged to have been violating the law by spreading false information on the potential impacts of Measure 2.

The Supreme Court ruled in June 2012 that only prosecutors, not private citizens, could pursue violations of the act.

The district court ruling for sanctions came in August 2012. Subsequent appeals by Empower the Taxpayer regarding the sanctions were denied.

Bismarck attorney Randall Bakke argued on behalf of several of the officials accused of the violations. He urged the justices to agree with the district court ruling that the lawsuit was frivolous and the sanctions were justified.

The Supreme Court will issue its ruling on the appeal at an undetermined date.

■ NEGOTIATIONS

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a member of the public viewing a file. Furthermore, allowing the teacher to be present during the review and requiring the public to sign in may actually violate open records law. Remember that the public has a right to review teacher and administrator files under North Dakota's open records law.

Duration clause: Several proposals from teachers this year say, "In the event a successor Agreement is not agreed upon on or before the anniversary date of this Agreement, all provisions of this agreement shall remain in full force and effect until **mutual agreement** is reached. All salaries, benefits, and working conditions agreed upon in the successor Agreement will be retroactive to the anniversary date of this Agreement. This language will prevent a board from issuing a unilateral contract because it requires mutual agreement before contracts are issued.

Examples above are likely only a sampling of language that may be proposed by your teacher representatives during negotiations. If you have questions about proposals submitted by teacher negotiators, contact NDSBA for assistance.

Thune Honored

Gary R. Thune, a partner at Pearce and Durick in Bismarck and former legal counsel for the North Dakota School Boards Association, was presented with the 2013 Lifetime Achievement Award from the National School Boards Association's Council of School Attorneys (COSA).



The award for exemplary leadership in legal advocacy and distinguished service to COSA was presented at the annual School Law Seminar in San Diego, California, in April.

He co-founded the North Dakota Council of School Attorneys, served for 11 years on COSA's board of directors, and was chairman of the council.

Dropout Prevention Summit

The 5th Annual ND Dropout Prevention Summit will be held June 5, 2013, at Bismarck High School. Register at www.ndcel.org.



Lidgerwood School District

Secondary Principal
Contact: Jon Martinson
(701)255-4127

jon.martinson@ndsba.org
Application: www.ndsba.org
Deadline: Open until filled

South Prairie School District

Superintendent (K-8 District)
Contact: Jon Martinson
(701) 255-4127

jon.martinson@ndsba.org
Application: www.ndsba.org
Deadline: Open until filled

Solen School District

Secondary Principal
Contact: Magdalene Fasthorse, BsMgr.
(701) 445-3331
Deadline: Open until filled

Solen School District

Superintendent
Contact: Magdalene Fasthorse, BsMgr.
(701) 445-3331
Deadline: Open until filled