

1999 SENATE EDUCATION

SB 2257

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2257

Senate Education Committee

Conference Committee

Hearing Date January 26, 1999

Tape Number	Side A	Side B	Meter #
1		x	1065-2761
2	x		358-863
Committee Clerk Signature <i>Jinda Christman</i>			

Minutes:

Hearing on SB2257 called to order, all senators present.

Testimony:

SENATOR NAADEN, IN FAVOR (Testimony attached) Bill pertaining to special education students. School district should receive special education funds even if they go broke.

SENATOR FREBORG : You said they pay the special education on the previous year ADM in special education. They lost 9 students for 1 year and then picked them up.

SENATOR FLAKOLL : Various school districts, do they get a represented percentage of the number that actually go to that school district.

SENATOR NAADEN: If we pass this bill

SENATOR FLAKOLL : Is there a provision in this that would provide for out of state students.

SENATOR NAADEN: I don't know.

Testimony In Favor:

Jerry Coleman, DPI (testimony attached)

SENATOR O'CONNELL : Under 1540 transportation does? The receiving school district haven't done anything with receipt payment. Why are we doing it.

Jerry: I don't look at it as a reimbursement for past services. A funding allocation for the current school year , just the basis of last years membership. The entitlement goes to the districts.

SENATOR WANZEK : What we're doing is if there is a school district that had 75 students that closes with \$4,500 of special education funding based on an ADM basis, when they go to 3 different schools in the next year each one of those schools will get \$2,500.

Jerry: Would be split on the number of students they took in.

SENATOR REDLIN : Is there other instances of this problem.

Jerry: We use prior year average daily membership that is how we distribute the special education funding. Separate from the foundation aid formula. Takes \$40 million of special education appropriation and distributes it to school districts based on last years average daily membership.

Testimony In Favor, Trish McCarthy, Special Education Director South Central.

(No written testimony.)

Hearing closed.

Resumed discussion on SB2257.

SENATOR REDLIN : I move the amendment, one being an emergency clause.

Page 3

Senate Education Committee

Bill/Resolution Number SB2257

Hearing Date January 26, 1999

SENATOR FREBORG : Senator Redlin has moved the amendment recommended by Jerry Coleman, should read “superintendent of public instruction rather than OMB on lines 12, 13 and 21.

SENATOR O'CONNELL : Don't we also want in that amendment the emergency clause.

SENATOR FREBORG : Line 12, 13, and 21 would read superintendent of public instruction rather the OMB. I believe Senator Redlin's motion is to include the emergency clause. We're adopting lines 12, 13, and 21 where we are replacing OMB with superintendent of public instruction and adding a new section of the bill which will provide an emergency clause.

SENATOR O'CONNELL : 2nd

SENATOR FREBORG : Clerk take the roll on motion to amend SB2257.

Vote: 7 (Yes) 0 (No)

SENATOR WANZEK : I move a DO PASS as amended on SB2257.

SENATOR COOK : 2nd

Vote: 7 (Yes) 0 (No)

Carrier: SENATOR REDLIN

Date: 1/26/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2257

Senate EDUCATION Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to amend SB 2257

Motion Made By Redlin Seconded By O'Connell

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

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: 1/26/99
 Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2257

Senate EDUCATION Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Move for a Do Pass as amended

Motion Made By Wanzek Seconded By Cook

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

Total (Yes) 7 No 0

Absent _____

Floor Assignment Redlin

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

REPORT OF STANDING COMMITTEE

SB 2257: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2257 was placed on the Sixth order on the calendar.

Page 1, line 3, after "district" insert "; and to declare an emergency"

Page 1, remove line 12

Page 1, line 13, remove "office of management and budget shall"

Page 1, line 14, remove "certified"

Page 1, line 17, remove "certified"

Page 1, line 21, replace "office of management and budget" with "superintendent of public instruction"

Page 1, after line 23, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

1999 HOUSE EDUCATION

SB 2257


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2257

House Education Committee

Conference Committee

Hearing Date 3-1-99

Tape Number	Side A	Side B	Meter #
Tape # 2	x		8.3 to 23.0
Committee Clerk Signature 			

Minutes:

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

Chairman R Kelsch : We will call the House Education Committee back to order and open the hearing on SB 2257 and ask the clerk to read the title.

Jerry Coleman: Assistant Director of School Finance and Organization for DPI (See attached testimony)

Rep Brusegaard : We could put language similar to subsection three in place of the emergency clause.

Coleman: That will work.

Rep Haas : IF they closed after the 97 school year, then the students would automatically go to another school district the following year. Wouldn't the new district just get that special ed money?

Coleman: The law does not allow for that, it does not tell you where to send the money. ADM is based on the last year count.

Rep Haas : Foundation aid follows the child.

Coleman: True, that issue is specifically addressed.

Rep Haas : If we don't enact this bill, DPI will send the money to the district where there is no school district and no kids?

Coleman: We are not going to send the money to where there is no district, what we will do is distribute it to all districts.

Rep Grumbo : What happens to left over money left in transportation?

Coleman: There is a provision in the law to allow us to forward transportation money.

Rep L Thoreson : Is this something that just occurs in the year immediately following closure of a school.

Coleman: Yes, this is a result of not being able to handle the situation of a dissolved district.

Rep Nelson : ADM payment for special ed was 128 per student.

Coleman: Yes.

Trisha McCarthy: Special Education Director for South Central Prairie Special Education Unit.

This deals with one of our school districts. We provided services to eight students and didn't receive the money for these students. With more districts closing, this will become a larger problem.

Senator Naaden: District 28 sponsor of the bill. We found out that under the present law there was no way that these students could be paid for. Therefore we see the need for this resolution.

Chairman R Kelsch : Anyone else wishing to testify on SB 2257? Seeing none we will close the hearing on SB 2257.

COMMITTEE ACTION

3-1-99

Chairman R Kelsch : What are the wishes of the committee on SB 2257?

Rep Brusegaard : I wish to move the amendments to the bill.

Rep Nottestad : Second

Chairman R Kelsch : The amendment would say - see attached amendments. Call for a voice vote on the amendments -- carried.

Vice Chair Drovdal : I move a DO PASS as amended.

Rep. Hanson : Second.

Chairman R Kelsch : Discussion on SB 2257. Hearing none the clerk will call the roll on a DO PASS as amended motion on SB 2257. motion carried 15 yes 0 No 0 absent

Floor assignment - Rep Lundgren.

Date: 3-1-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2257

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 90345.0201 title .0300

Action Taken Do Pass as amended

Motion Made By Drovdal Seconded By Hanson

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

Total (Yes) 15 No 0

Absent 0

Floor Assignment Sundgren

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

REPORT OF STANDING COMMITTEE

SB 2257, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2257 was placed on the Sixth order on the calendar.

Page 1, after line 21, insert:

- "3. The total special education payments to which a school district that ceased to exist between the completion of the 1996-97 school year and the commencement of the 1997-98 school year is entitled must be distributed as provided in subsection 1 on or before June 30, 1999."

Renumber accordingly

1999 TESTIMONY

SB 2257

TESTIMONY ON SB 2257
SENATE EDUCATION COMMITTEE
January 26, 1999
by Jerry Coleman
328-4051
Department of Public Instruction

Mr. Chairman and members of the committee:

My name is Jerry Coleman and I am the Assistant Director of School Finance and Organization for the Department of Public Instruction. I am here to speak in favor of SB 2257.

Special education aid payments are distributed under NDCC 15-40.1-07.6 based on the number of students in average daily membership (ADM) the previous year. This bill addresses a payment problem that occurs when a district dissolves. When a district closes, the law does not provide specific authority to distribute the special education funds to the district(s) that received the students (see attached Attorney General's opinion). This bill would provide that authority. Absent this authority, these ADM are simply excluded from the ADM count used to distribute the funds.

The language in this bill patterned after the language in 15-40.1-18.1 that deals with the distribution of transportation payments when a district closes.

The Lehr school district dissolved at the end of the 1996-97 school year. The land from the Lehr district went to the Ashley, Wishek, Gackle-Streeter and Kulm school districts. If Lehr had not dissolved, the district would have been entitled to per student special education aid payment for 49.39 ADM at \$128 in 1997-98 - \$6,321,92. Under this amendment, a prorated payment would be forwarded to the districts that received these students. NOTE: This bill does not

include an emergency clause. Such a clause would be necessary to make an adjustment for this case.

On a technical matter, OMB has asked that I point out that the references to the office of management and budget is dated language and should be changed to the superintendent of public instruction (lines 12, 13 and 21). This is consistent with the clean-up efforts going on in HB 1034 Title 15 update.

March 24, 1998

Honorable Lawrence L. "Pete" Naaden
State Senator
PO Box 53
Braddock, ND 58524-0053

Dear Senator Naaden:

Thank you for your memorandum asking whether the Superintendent of Public Instruction can pay special education aid under N.D.C.C. § 15-40.1-07.6 to local school districts educating children from a dissolved school district for the school year immediately following the dissolution.

N.D.C.C. § 15-40.1-07.6 provides, in part:

1. [E]ach biennium the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under subsection 3 of section 15-40.1-06, to eligible school districts in the same manner and at the same time that the superintendent distributes foundation aid payments. . . .

N.D.C.C. § 15-40.1-07.6(1).

That section requires payments to be made to eligible school districts on the basis of "average daily membership."

N.D.C.C. § 15-40.1-09 defines average daily membership as "the total days all students in a given school are in attendance, including two days set aside for the North Dakota education association instructional conference, three days listed in subsections 2 through 10 of section 15-38-04.1 which have been selected by the school board in consultation with the teachers, and up to two full days during which parent-teacher conferences are held, divided by one hundred eighty days." Under N.D.C.C. § 15-40.1-09, average daily membership is used in conjunction with fall enrollment to determine foundation aid payments. That section also provides:

. . . Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year

in another district under the provisions of open enrollment or the current year's fall enrollment, whichever provides the greatest payment, for all current grade levels.

In Horst v. Guy, 219 N.W.2d 153, 157 (N.D. 1974), it was stated:

In construing statutes the courts must take judicial notice of the history of the terms employed and, where statutes have been in existence for a long period of time, it must be presumed that the Legislature has at all times been aware of the meaning originally attaching to those terms. . . .

219 N.W.2d at 157. Also, "[t]he legislature is presumed to know the construction of its statutes by the executive departments of the State and the failure to amend the statute indicates legislative acquiescence in that construction." Effertz v. North Dakota Workers Compensation Bureau, 525 N.W.2d 691, 693 (N.D. 1994).

Therefore, when the Legislature used "average daily membership" in N.D.C.C. § 15-40.1-07.6, it did so with knowledge that the term had specific meaning in the business of state aid to local school districts. Under N.D.C.C. § 15-40.1-09, the distribution of foundation aid is based on the current year's fall enrollment or the previous year's average daily membership, whichever produces the higher payment. However, N.D.C.C. § 15-40.1-07.6 provides for distribution of special education aid only on the basis of average daily membership. For purposes of distributing state aid under N.D.C.C. ch. 15-40.1, average daily membership is known only for school years prior to the current school year because that calculation is made after the close of each school year. N.D.C.C. § 15-40.1-09 requires school districts to file annual enrollment reports with county superintendents by July 15 after the close of the school year. Therefore, the average daily membership referred to in N.D.C.C. § 15-40.1-07.6 must necessarily mean the previous year's average daily membership.

"It is well-settled that public officials have only such authority as is expressly given them by the constitution and statutes together with those powers and duties which are necessarily implied from the express grant of authority." American Federation of State, County, and Municipal Employees v. Olson, 338 N.W.2d 97, 100 (N.D. 1983). N.D.C.C. ch. 15-40.1 provides specific authority for distribution of various forms of state aid to local school districts under a complicated formula using numbers appearing on certain forms filed with the Superintendent of Public Instruction. Nothing in that chapter gives the Superintendent of Public Instruction discretion to vary the terms of the statute to decide to pay an entity other than as provided in that chapter. It is therefore my opinion that the Superintendent of Public Instruction is not authorized to pay special education aid under N.D.C.C. § 15-40.1-07.6 to school districts receiving students from a dissolved school district for the school year immediately following the date of dissolution. The special education aid is payable only on the previous year's average daily membership, not current fall enrollment. The

Honorable Lawrence L. "Pete" Naaden
March 24, 1998
Page 3

receiving school districts' average daily membership for the previous school year does not include students from the dissolved district. It is not within the implied authority of the Superintendent of Public Instruction to re-direct special education payments to school districts that receive students from a dissolved school district in the school year immediately following the dissolution. No criteria exists for redistributing special education aid to such school districts.¹

State aid to school districts for transportation is also calculated on numbers filed by school districts after the close of the school year. When it became apparent that transportation costs would go uncompensated under N.D.C.C. §§ 15-40.1-17 and 15-40.1-18 because of the closing of school districts, the Legislature responded in 1995 with the enactment of N.D.C.C. § 15-40.1-18.1. That section allows pro rata distribution of transportation payments by the Superintendent of Public Instruction to districts receiving students from a closed school district. The Legislature may wish to consider similar ameliorating legislation for special education payments under N.D.C.C. § 15-40.1-07.6.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg

cc: Dr. Wayne G. Sanstead, Superintendent of Public Instruction

¹ If a school district dissolution's effective date is delayed by the county committee for the reorganization of school districts under N.D.C.C. § 15-27.4-01 to a date after July 1, the payment procedure under N.D.C.C. § 15-40.1-05 would require the Superintendent of Public Instruction to pay the initial payments due under that section until the effective date of dissolution. This is so because the first four payments in the system under N.D.C.C. § 15-40.1-05 are automatic payments based only on the amounts the school district was paid the previous year. I understand it has become the policy of the Department of Public Instruction to recommend an August 15 effective date for dissolutions. That policy would result in two payments for special education aid being made to a dissolving school district. However, because no special education unit would be providing services to the dissolving district for the current school year, that money would be distributed under N.D.C.C. §§ 15-27.4-02.1 or 15-27.4-03.

TESTIMONY ON SB 2257
HOUSE EDUCATION COMMITTEE
March 1, 1999
by Jerry Coleman
328-4051
Department of Public Instruction

Madam Chairman and members of the committee:

My name is Jerry Coleman and I am the Assistant Director of School Finance and Organization for the Department of Public Instruction. I am here to speak in favor of SB 2257.

Special education aid payments are distributed under NDCC 15-40.1-07.6 based on the number of students in average daily membership (ADM) the previous year. This bill addresses a payment problem that occurs when a district dissolves. When a district closes, the law does not provide specific authority to distribute the special education funds to the district(s) that received the students (see attached Attorney General's opinion). This bill would provide that authority. Absent this authority, these ADM are simply excluded from the ADM count used to distribute the funds.

The language in this bill patterned after the language in 15-40.1-18.1 that deals with the distribution of transportation payments when a district closes.

The Lehr school district dissolved at the end of the 1996-97 school year. The land from the Lehr district went to the Ashley, Wishek, Gackle-Streeter and Kulm school districts. If Lehr had not dissolved, the district would have been entitled to per student special education aid payment for 49.39 ADM at \$128 in 1997-98 - \$6,321,92. Under this amendment, a prorated payment would be forwarded to the districts that received these students. NOTE: Our legal council

pointed out to me this morning that in order to make a corrective payment for the Lehr dissolution, specific language is required to include them. I have attached a copy of NDCC 15-40.1-18.1 as an example.

s necessary for
apply for the

1971, ch. 187, § 1;
1977, ch. 170,
§ 10; 1981, ch.
203, § 1; 1983,
1987, ch. 38, § 10;
§ 1; 1993, ch. 3,
179, § 4.

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effective August 1,

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section, the superintendent of public in-
struction shall, upon request, make the
payments under this section that are due
to school districts participating in area
vocational and technology centers or
multidistrict special education programs,
for the transportation of pupils in those
centers and programs, directly to the re-
spective area vocational and technology
centers or multidistrict special education
programs.

Source: S.L. 1975, ch. 131, § 8; 1975, ch. 158, § 2;
1979, ch. 220, § 11; 1979, ch. 262, § 6; 1981, ch. 198,
§ 12; 1981, ch. 203, § 2; 1989, ch. 233, § 1; 1991, ch.
193, § 1; 1993, ch. 62, § 9; 1993, ch. 180, § 5.

Note.

Section 15-40.1-16.1 was amended twice by the
1993 Legislative Assembly. Pursuant to section 1-02-
09.1, the section is printed above to harmonize and
give effect to the changes made in section 9 of chapter
62, S.L. 1993, and section 5 of chapter 180, S.L. 1993.

**15-40.1-16.2. Family system
transportation reimbursement — In-
tent.** Repealed by S.L. 1993, ch. 180, § 7.

**15-40.1-16.3. Superintendent to
make rules and regulations — Reim-
bursement to districts for family sys-
tem method of transportation pay-
ments.** Repealed by S.L. 1993, ch. 180,
§ 7.

**15-40.1-18. State transportation
payments to school districts.** The super-
intendent of public instruction shall deter-
mine the total amount of payments to be
made to the school districts for transporta-
tion aid. The office of management and
budget shall pay the sum certified by the
superintendent of public instruction to
each school district. Payments must be
made in the same manner and at the same
time as other payments from the state to
school districts are made, as provided in
section 15-40.1-05. No school district may
receive more than ninety percent of the
actual costs it incurs in the provision of
transportation services. For purposes of
this section, actual costs include the trans-
portation operating expenditures reported
to the superintendent of public instruction
for the most recent year plus the eight-year
average cost of transportation equipment
determined by the superintendent of public
instruction. Any district that has con-
tracted for transportation services, how-
ever, may determine its actual costs for the
first year it provides its own transportation
services by using the statewide average
cost of transportation during that first
year.

Source: S.L. 1971, ch. 158, § 7; 1979, ch. 220, § 12;
1981, ch. 198, § 13; 1993, ch. 3, § 24; 1995, ch. 179,
§ 5; 1997, ch. 180, § 1.

Effective Date.

The 1997 amendment of this section by section 1 of
chapter 180, S.L. 1997 became effective August 1,
1997.

The 1995 amendment of this section by section 5 of
chapter 179, S.L. 1995 became effective August 1,
1995.

**15-40.1-18.1. School district clo-
sure — Distribution of transportation
payments.**

1. If a school district ceases to exist,
the superintendent of public in-
struction shall calculate the
amount of transportation payments
to which the former school district
would have been entitled for provid-
ing transportation services during
its final year of operation and shall
certify the amount of transporta-
tion payments to the office of man-
agement and budget. The office of
management and budget shall pay
a percentage of the total amount
certified to each North Dakota
school district that enrolls students
who attended the former school dis-
trict during the prior school year.
Each of the school districts eligible
for a payment under this section is
entitled to receive that percentage
of the total amount certified which
is the same as the percentage that
the number of the district's stu-
dents who attended the former
school district during the prior
school year bears to the total num-
ber of students who attended the
former school district during the
prior school year.
2. Except as provided in subsection 3,
the office of management and bud-
get shall pay the amount certified to
the school district in the manner
and at the time provided for other
state payments in section 15-40.1-
05.
3. The total transportation payments
to which a school district that
ceased to exist between the comple-
tion of the 1993-94 school year and
the commencement of the 1994-95
school year is entitled must be dis-
tributed as provided in subsection 1
on or before June 30, 1995.

Source: S.L. 1995, ch. 195, § 1.

Effective Date.

This section became effective March 15, 1995, pur-
suant to an emergency in section 2 of chapter 195, S.L.
1995.