

2017 HOUSE EDUCATION

HB 1140

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1140  
1/10/2017  
Job 26766

- Subcommittee  
 Conference Committee

Committee Clerk Signature

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

Relating to the membership of school board advisory committees.

## Minutes:

Attachments: 1A, 1B, 2, and 3

**Chairman- Mark S. Owens:** Clerk calls roll call for the day. Thank you Rep. Denton Zubke for that last minute support on that bill, everything you did was perfect as far as referring that bill, the questions to me were adeptly handled. Thank you. Opening the hearing on HB 1140.

**Representative Brandenburg:** In his district they have a good number of school districts, about 11. They bill deals with school boards and advisory committees, and dealing with bonding issues. This advisory committee is set up by the school board, and administration to go out and work with the people within the community to look at bonding issues for new construction. Whether it's for a school, gym, maintenance, whatever it may be. Maintenance usually falls into gym. This bill goes into the issue of building new buildings, and the membership of what has happened. He will refer to an issue in his district, and there are people here that will speak to it as well. The advisory committee is supposed to be generally picked as a good representation of the people of the community, and in this case it was not. This bill would reflect that the advisory committee should be selected on how the property tax is paid. If your property tax membership in this committee is 75% rural, 50% rural, 50% urban. The membership should be 50% urban, 50% rural. Full representation on where the property tax is being paid, that's what the bill does. Mr. Chairman this issue is really something, and it will lead into other bills to. We have looked into previous sessions on buying down for education. We are currently sitting on 700 Million that we pay out for property tax reduction for education for the state. Plus, or minus. In some communities have taken that relaxation in property tax, and they have done good things. Some schools have not, and the school property tax has been reduced on the property tax payer, but it opened up the door to allow the schools to go out there for schools to run bonds to build a new school, and built schools they probably should not have. The advisory committee that was set up by people that wanted it done, and after running a bond two or three times they finally get it passed, and you have 20% of the people paying 80% of the bill. In some schools it is necessary, and they are sustainable, but as you folks know the foundation formula is set up for schools that have 300 students or more. For schools that have 300 students or less, I



you don't do good management and keep the school going and educate the kids, it will be a slow death. We did some work with the waiting factors, to adjust the waiting factors for the school under 185 students, that helped them out to get some money for the smaller schools. There is also a gap in there between 185 students and 300 students where it just costs too much money to adjust those waiting factors, and they are caught in the middle of doing good management, and trying to keep it going. We also did pass that you can go out and bond so you can keep your school going, not just only for construction, but you need to pay the teachers. Here we are today trying to keep the schools going, and I have been in front of this committee and have worked very hard trying to keep the schools going out there, educate the kids, and fix the buildings, fix the roof, if we don't put air conditioner that is fine, fix the furnace. But when we started building new schools, and new buildings and started putting debt on taxpayers for a school that might not be there in 10 years from now, it is very expensive to run a high school. You need to have the accreditation standards which is required, it takes more teachers, it takes more input, it costs more money. You can run a K-6 really cheap or a K-8, and those costs are sustainable. But when you have a school district who goes out and spends 4,5,6 million dollars for a school that may not be there in 10 years, we need to start thinking different. I stand for any questions, and I will refer to about the dates that tie into dates, contracts, tax payer burden. I will let those people here speak so they can explain the situation.

**Rep. Matthew Ruby:** If you are going to make a committee of 6 people and you want 3 to represent urban, and 3 for rural. What happens if you can get one part of the three, as I read it there will be no advisory committee.

**Representative Brandenburg:** As I explain this to the legislative council, if there is a committee of 10, and 60% come from the rural area and they know that their taxes are going to be impacted you want have a problem to get people to volunteer from the city. So it is proportionately made up of people that are going to pay for it, not from the people who want to see their kids play basketball or be the cheerleaders.

**Rep. Longmuir:** does this power away from school board, what if the advisory committee says one thing, and the school board says another.

**Representative Brandenburg:** Yes it does, that's what the bill does. If the school board wants to have the authority, and they want to keep it, they should not have an advisory committee. They should just make the decision, but they want to hand pick the people that will vote the right way and do what they want then they will get the project that they want.

**Rep. Mary Johnson:** First of all advisory board is just that, an advisory board. They do not have the ultimate authority, correct? It is still the school board that makes a decision, right?

**Representative Brandenburg:** That is correct.

**Rep. Mary Johnson:** earlier you referenced operating expense revenue mechanisms, but in this you are only talking about capital improvements, isn't that correct.

**Representative Brandenburg:** The way the bill read, and you dig into it, it ties into the capital or repairs and stuff. This advisory board can do it, the advisory board meets, but they



meet behind closed doors. The Representative due to a time crunch goes on to speak about HB 1141. He just gives a small description of it. That is why these bills are here, and there are people here to attest to this.

**Rep. Mary Johnson:** yes.

**Representative Brandenburg:** I can explain this, and I really think you need to hear the people that have lied through this. What good does it do to spend 4 to 5 million dollars for a school that is going to be K-6 or K- 8 in 10 years from now. It is projected that Strasberg is looking at nearly 110 right now, and in 10 years from now they will be at 50 or 60 kids. Is that good use of taxpayer dollars? You folks know it will be harder and harder during the redistricting process comes around for us rural legislators to dig up more money for these rural schools. I have put my name on these bills because these are hot button items, there is no question about it, I talked to my local superintendent and a lot of people are looking at this and I know what they are saying, but there is other people out there that are not as much connected which are paying these property taxes, that want us to make good decisions and what we do for education, that is the hard part of it.

**Rep. Pat D. Heinert:** In the bill 1140 on line 7, if the school board appoints an advisory committee, does that make this optional?

**Representative Brandenburg:** They don't need to have an advisory committee, they can just do it themselves and then they can answer all the questions. They are subject to open record laws, school boards are. More stringent than the advisory committee, the advisory committee falls into the cracks of loopy goopy, that's the best way to say it. They are but they are not, if they can get away with it they will do it, they should have been subject to open records laws, and it was not enforced. You will hear that from the people that are here.

**Rep. Ron Guggisberg:** The billion dollars we are giving back from counties come from counties too. We don't make anything here, and I struggle with that. The question that I have, how would you define the demographics of who would be on the board. Would it be based on population density, hearing you talk about money, that is not how democracy works? We people make decisions.

**Representative Brandenburg:** You are exactly right, but this discussion has to happen, advisory committee why do we even need them, why not let the schoolboard make the decision, the advisory committee is supposed to give it good advice from the cross section of everybody who represents that school district, but they turn into an advisory committee that is handpicked by the school board so that they can stand in front and say, we want this done.

**Rep. Ron Guggisberg:** I tend to agree that advisory committees work very little, but if we set up the legislature as an advisory committee and one group of people only had to deal with taxes, they would cut all the taxes. If another group only had to deal with education they would ask for three times as much revenue for education, that is why the schoolboard needs to make these decisions, so they can understand the entire complexity of education.



**Representative Brandenburg:** I agree with you, but if it is done properly it really does work right. If it is not done properly it becomes a problem, and that is why these bills are here.

**Vice Chairman- Cynthia Schreiber-Beck:** Is this just a local issue. It brings it to the surface, and this sounds like a local issue. If your states attorney does not recognize what is already in code why would they recognize this until it becomes a local issue. Your school board is an elected body, which is such a local issue. Is there anybody else that you found that has this same issue going on in their local school district.

**Representative Brandenburg:** Yes, there are other school districts that have gone 2 or 3 votes. There is a couple of them that had the same problem or issue and the efforts are the same. They bring home the college students to vote who still have not voted, and they get enough votes to get it passed. The problem is that contactors come in and tell them that the school will cost a certain amount knowing that it will end up costing more. They are going to be broke, and it will possibly close down the high school sooner, then it did before. This is how the issue came through the advisory committee, through the open records which when they had the meetings the school board said we don't have to answer that because the advisory committee is in charge with that and they are not subject to open records laws. Now did that happen in tower city, I am not exactly sure it went down that way, but I do know that they are on their third vote looking at their fourth vote, and it failed by a few votes. If you have buildings out there with no kids in them, and you put all the debt on the property tax people, we should have this discussion. It's a hard one, there is no question about it. These superintendent are my friend too, and some of them do a very good job. Some of these school boards do a very good job, some are not. And when I met with my superintendents I told them that I will do everything I can for you to get all the money back for the rural schools, and I think my record shows that I have done that. But when you put more debt on the Property tax people for a school that may not be sustainable, I will not support that. That is why we are here, the mechanics is all in the weeds I guess.

**Vice Chairman- Cynthia Schreiber-Beck:** is this more about school closures?

**Representative Brandenburg:** This is really about not school closures, this is about people that are going out there using the advisory committee at the blessing of the schoolboard to get a bond issue passed for a school that should be more worried about taking care of their infrastructure and educating their kids, fix the roof. This is really what this is about, I am not in favor of closing schools, I am not in favor forcing consolidation, and I will stand on record for that. I am in favor of trying to keep the school going, and educating those kids, and trying to keep the building, and the teachers together, so we don't have to close it sooner.

**Rep. Bill Oliver:** From what I am gathering with all the discussion we have had; we have a loophole that we want to close. We have something that is bleeding right now, because I have the same issue in the New Town school district, they did something with an advisory committee that nobody in the public knows, what happened on that advisory committee, the one thing I want to know how do we define the school district, is it by taxes or is it by people.

**Representative Brandenburg:** In this particular bill it would be defined as the makeup of the property tax payer, 70 % is coming from ag land, in a 10-person example 7 people would



be from ag, and the other three come from the city. So you get a fair section of the people who are going to pay the bill. That is what the bill is trying to do.

**Rep. Rich S. Becker:** I never lived in a really small community like you are addressing here, but a parallel unrelated to a former mayor of a small city, but point of reference they went through a closing a school and they kept the elementary and high school went somewhere else. I can detect the emotion that you are representing with your constituency, its good to see that in a representative representing his community. My question is I really see a divide here with emotion vs the conservativeness of North Dakota where we pinch pennies. We do not spend money unwisely. In one sense it is hard to see how the community itself is going to say in 10 years we are only going to have 50 kids in our school district, are we not giving them enough credit to look at this and say we cannot afford that school, like it or not we need to do what we have to do.

**Representative Brandenburg:** You struck another thought here, because you try to separate out the emotion and have a good thought process, and what do we need and what should we do. In the last session we passed some legislation giving DPI the authority to look forward and look back and make the decision if these schools should be building or should be looking at consolidation and approving or not approving a bond issue. Gave them the authority to do that, well they did not do it. DPI went out to Strasberg to cheer them on. I have tried that part on what should be done and what should be done by the people who are in authority to make those decisions. If you look forward 10 years you need to look at your kids, some of them kids will have some babies coming in 10 years, they are still in the school, because you start looking at your child bearing years of woman somewhere in their 20's, it happens. I realize that children are born earlier too. SO you pick out where is that determination in looking forward 10 years. It really does not make sense, because you are looking at kids sitting in the classroom, and thinking how many of them are going to have kids, it is ridiculous to think like that but its true. We looked at a five year forward and a five year back to see, how many kids are you going to have of the coming into their birth. At the most you can look forward is five years, and a five year look back instead of the 10 year. Then you have an idea of how many you have in the grades, and how many you have coming in that are your county of births. And if you can keep your kids there, that is how many you have coming into the school. That was part of the determination looking at that, and that how I know it will go from 100 kids to 50 kids. That is what is there.

**Rep. Rich S. Becker:** Mike I am in favor of what you are saying, but the reason that I am in favor is due to the senior citizens who are normally so conservative and realize the facts that they will continue to lose came to the conclusion that we want that school, and we are not going to be alive in 10 years and we will let someone else worry about it.

**Representative Brandenburg:** If the community determines that determination, this is more about that this bond should have been made for 6 million vs 4 million, but the contractor made the promise that he could build this for 4 million, when it should have been for 6 million. Would a 6-million-dollar bond passed, I don't think so. The 4-million-dollar bond was done in order to build the school, but it will not be built with sidewalks or other things.



**Rep. Brandy Pyle:** would you be open to saying that the advisory committee would reflect the wards that the school districts represent. If you have 7 members who each represent the area of that school district.

**Representative Brandenburg:** Whatever you do to make this work or make this better, I am open to that. This discussion has to happen, is my bill perfect, probably not. Can we make it better, I am open to any discussion about that?

**Rep. Corey Mock:** is the hearing on 1141 also open at this time?

**Chairman- Mark S. Owens:** I allowed Representative Brandenburg due to his schedule to go ahead and present his testimony.

**Rep. Matthew Ruby:** If you are on the school board you cannot be on this advisory committee, correct?

**Mr. Nusma:** For the record we are paying the bill. Somewhere along the line the people paying the bill need to talk. The old gym was mold infested because of neglect by our board, they could have fixed the rood, they chose not to. They had a bill for 65,000 to fix a roof with a 5 year guarantee, and they chose not to fix it. A year later they approached this topic again and did nothing. The topic has been brought up 3 times, and no action was taken. Instead of fixing it the board wanted a new building instead. When Jim Perris cam onboard the gentleman feels that he was pushing for new buildings. Jim Perris handpicked the advisory board, he was disenfranchised from the community. Indiana had some of the same issues with contractors, but they fixed it with laws. Jim Perris came down from Wisconsin, and he knows that the districts are weak and he can take advantage of them. A group of farmers hired an attorney to get the minutes from the advisory board meetings, but there were not records of the meeting, no one was invited or allowed to attend. The school board did not pick the advisory committee, Jim Perris did. He can write a book on what has been going on out there, the school that is under construction is a piece of junk, DPI could have stepped in but did not.

**Rep. Mary Johnson:** I appreciate your attendance. We are all elected officials and we are all mainly sympathetic for tax payers, because they are our constituents. Does it seem to you that your remedy is to unseat Jim Perris?

**Mr. Nusma:** That is not a remedy, but it will be a great help to the state of North Dakota if he would be stopped to be using the tactics that he uses around the state.

**Rep. Mary Johnson:** your remedy is to unseat your elected officials.

**Mr. Nusma:** Who would want to get into this mess. They had an informational meeting, but had nothing ready that would usually be presented in a professional meeting. The last meeting, they were handed a piece of paper, and they had to write their questions on the paper, him and other farmers did a student census, but were not allowed to present it. They wanted to speak at this public meeting, and they were not allowed to. DPI rubber stamped a project.

**Rep. Mary Johnson:** Rep. Ron Guggisberg alluded to a problem earlier with basing the representation of advisory boards on property values which is essentially what you are doing here. And typically agricultural and rural are assessed much less than urban property, so wont the advisory council be disproportionate. And are you satisfied with that.

**Mr. Nusma:** Well in small counties I disagree, in small towns the ag land is taxed more than the urban.

**Rep. Pat D. Heinert:** Mr. Nusma can you give us a little background on how much the bond issue was and what the final vote tally was.

**Mr. Nusma:** The bond issue was for 3.9 Million, and the vote passed by 16 votes. A school board member told Mr. Nusma that Mr. Perris needs to get this contract, but why. In the contract which we hired an attorney to look at, and the school board did not get one to look at it. That was a question I brought up at the last meeting, the only question I could ask is if the schoolboard going to get an attorney to look at the contract, Jim Perris ends conversation. The school board did not use an attorney. After they gave him a contract the \$3.9 Million in contract, they owed him another \$500,000 in commission. In the contract the school board had to pay for any damages that occurred to the construction company's equipment. The school board was unaware with the extra costs on top of the initial bond.

**Vice Chairman- Cynthia Schreiber-Beck:** Earlier you stated that representative Brandenburg did not have it right, so I am going back to talk about HB 1140.

**Vice Chairman- Cynthia Schreiber-Beck:** When I am looking at the bill that is in front of us, I this relative to your situation.

**Mr. Nusma:** In a sense it is, do we need advisory boards. That is part of it, and the language can be changed to govern advisory boards.

**Vice Chairman- Cynthia Schreiber-Beck:** The issue here is with the contractor, because you said that the contractor would not speak with the school board when they tried to address him at a later date.

**Mr. Nusma:** No, I said the president of the board came up here to talk to him, because he was appointed to the board. He was totally against what was going on, no minutes were being kept, and he wanted to slow this thing down. When the president of the board wanted to talk to Jim Perris, Jim Perris told him to get out. Because he wanted a lesser project, but Jim Perris wanted to maximize the project that he is doing.

**Vice Chairman- Cynthia Schreiber-Beck:** is your issue with the contractor or more so than with the school board. Then the separate issue is that you were unable to attain information from your advisory board or school board.

**Mr. Nusma:** The guy who became the contractor was initially was the one involved on how to get to yes, to get this bond issue passed. Once he appointed his own people he would not listen to the president of the board, who did not want certain individuals on that board.



**Rep. Corey Mock:** You had mentioned that the superintendent's office approves school construction projects, but they have no jurisdiction over recommendations for improvements or repairs or telling school boards on what they can or what they should do. Can you elaborate a little on what the superintendent's office had in this matter?

**Mr. Nusma:** According to a bill that was passed 2 years ago, final approval can be made by the DPI. There was neglect on the building, and the building could have been kept up if maintenance was done. DPI came to look at the building and made an assessment that a new building was needed without looking at the census. That district will be out of money soon.

**Rep. Corey Mock:** all of this was done by the recommendation of the school board?

**Mr. Nusma:** no, they refused to listen. We were going to give them numbers that night that, but they would not take that information. They wanted to be oblivious, Jim Perris according to one member said I want no members coming tonight.

**Rep. Corey Mock:** The school board made that recommendation with the information they had, whether they chose to seek information or not, but they made the recommendation that the school was unfit to serve as an environment for education, and their recommendation was a new construction, they asked the DPI by law as they are required to do for approval on the project, DPI recognizing the situation granted the approval. All of this was done with the approval of the school board, and the school board is the one that made the decision. Is that correct?

**Mr. Nusma:** The school board made that decision on vice initially from the advisory board prior to the last vote that the school board had, 2 of the advisory board members came in and they were very skeptical of the contractor Jim Perris, and they said do not vote this project through. The school board ignored them at that point, and voted it through, anyways.

**Rep. Corey Mock:** final comment, I just want to make sure that we are clear that the superintendent's office did not come in to say you need to build a new school, the school board came to the superintendent's office and said we need to build a new school, and it was approved by required by law.

**Mr. Nusma:** it was approved, but the last bill 2 years ago gave them the authority to stop such projects, because they should have looked at the numbers and said we are doubling up money here. We are going to spend by the time this is done, maybe \$6 Million dollars. Student enrolment is dropping, and they will be forced to join in with another school district.

**Chairman- Mark S. Owens:** Mr. Nusma that is another issue, at the moment we are focused on the advisory committee. I appreciate some of the issues you have down there, and I am sure we will get into some of those as we go on.

**Mr. Nusma:** He pointed to Francis Krumm's article.

**Chairman- Mark S. Owens:** thank you for your testimony Mr. Nusma.

**Francis Krumm:** Is beginning to talk about bond issues; look at attachments 1a and 1b to look at his article. Mr. Krumm hired a contract attorney to read the 80-page contract that covers the bond, and the school board did as well but it was not a contractual attorney. They offered to give the school board a free attorney brief, and the school board continued to sign the 80-page contract without knowing what the contract entailed.

**Chairman- Mark S. Owens:** Mr. Krumm you are saying that the school board did not have the contract looked over by a legal expert.

**Francis Krumm:** I have no way to prove that. When the bond issue passed, the superintendent became the owner of the Strasburg school, so when the paper I published shows some evidence of what happened, no one will talk with him on the bond issue.

**Chairman- Mark S. Owens:** we need to be on track with HB 1140. This bill deals with the division of representation on that advisory board. Is it your contention that some of the problems that you have mentioned will be addressed in the future for other groups, if that is proportioned as the bill suggests according to the division property tax settlement in the district?

**Francis Krumm:** in all honesty, I don't know. And here is why, you need to eliminate advisory boards, we elect a school board who takes an oath, and these school boards can be held accountable if they perform illegal procedures, I don't think there should be advisory boards or building committees.

**Chairman- Mark S. Owens:** I appreciate that point, the fact that they used an advisory board here, regardless if they allowed someone else to choose the membership or if they did, they had to approve the membership, and then they had to make the vote to approve whatever that advisory board was recommending. So you are right, the school board is still the ultimate bearer of responsibility here. I can hear and understand the frustration with the process you have lived through so far, I don't yet know what we can do about it, and again we are singularly focused on these two bills, and this is our only authority at this point is what is in this bill. Your testimony has provided information related to the bill, and you have giving us details about your personal experience, but do you have anything else specific about the membership of the advisory boards. What are you looking for?

**Mr Krumm:** Right now in our district the tax paying debt is paid mostly by land owners. A third I believe is what he was calling for, correct?

**Chairman- Mark S. Owens:** Actually no, there is no percentage. He said you make it a portion share between ag, rural, and urban based on the population demographics of the district.

**Mr Krumm:** Using that percentage I don't know how you would provide 80 percent of rural, do some people think it's fair, I don't know either if it is.



**Chairman- Mark S. Owens:** My concern is what was said by representative Rep. Matthew Ruby, because I had a similar concern. Getting people to volunteer to do things is very difficult, and assigning an advisory board in this proportion, enforcing it to be may be impossible to do so. In some cases, if you may not like advisory boards they may come in handy, because there are some people who have specific experience in an area that the school board members don't have, and in other cases it may be a situation where they are passing the bucket, and they want someone else to say that they recommend this and then we can just say that we approve what we were advised. I understand that, that happens everywhere. My concern in the proportion is it may be hard to find members, but we are not here really not hearing that either. I still have an open mind, is this what you are supporting, or do you have a recommendation for changing it in how we proportion.

**Mr. Krumm:** I would like to think about it.

**Rep. Mary Johnson:** In September 2015 you said the bond issue was passed, was that by the school board or was there a vote with the general public.

**Mr. Krumm:** The September 30<sup>th</sup> of 2015 it was passed by the school district, by voters. And the school board had accepted it.

**Chairman- Mark S. Owens:** any further questions or comments. Anyone else in support of HB 1140?

**Kirsten Baesler:** I am the state superintendent for the North Dakota school of public instruction. Since we have a lot of new members to this committee I wanted to give some background and clarification on a portion of the century code that was referenced, is our responsibility as the state. The state legislature has given the North Dakota department of public instruction the responsibility of approving all construction projects within the state for our schools. With that there is an application that every school district must submit to the department of public instruction before they are approved to proceed with any construction project, whatsoever. That form that they fill out asks for a multiple of information as prescribed very specifically by the legislature in North Dakota century code, it does include a report on the enrollment trends for previous years and projected forecast for enrollment in the future, in addition to that the century code does prescribe that the North Dakota department of public instruction must take into consideration not only the enrolment trends, and future projections, but also consider any evidence that the school district has provided the quality and environmental impact report. It is a though rough application process. I did not travel down to the school district that was mentioned, but Mr. Bob Marthaler and Don Williams did travel down and took a look of the conditions. They approved based on environmental hazards that were cited, and evidence was provided with the application. In no way does the century code provide us the authority to prescribe how a school district or a community should remedy what they have provided evidence for. We do not have the authority to say, you should have done this or you should consolidate, all we are given authority to deem if the school district has provided the evidence that is required by you in law to state their case for approval. And at that point it is up to the local school board members to determine how they would like to proceed, whether to do nothing or consolidate with another school to fix one problem at a time or to do a new construction project. That's the process, and if you have any questions I can clarify on the process.



**Rep. Matthew Ruby:** Do you review contracts?

**Kirsten Baesler:** we do not review contracts, all the law allows us to do is review the application by the school district, and then the school district in their community.

**Chairman- Mark S. Owens:** when did you say your employees went down to visit, do you recall?

**Kirsten Baesler:** It was the Spring of 2015. None of the meetings can occur or working occur with the contractors until a school district has gone through the first initial phase of approval from the state.

**Rep. Rich S. Becker:** did I hear you correctly say that when your people went down, they were furnished information on student growth or lack of growth and other materials. They came back with a packet.

**Kirsten Baesler:** Yes that application was complete, there was evidence that was provided which included student enrolment as well as quality of the building and necessary remedies that the school district thought was important.

**Chairman- Mark S. Owens:** remind the committee that we are discussing HB 1140 Thank you for that update. Anymore support for HB 1140. Any opposition to 1140.

**Anita Thomas:** see Attachment 2 for her testimony. She respectfully requests a do not pass on this bill.

**Chairman- Mark S. Owens:** any questions from the committee.

**Rep. Dennis Johnson:** As a state organization do you pass on advise or consultation to the school boards if they have questions on school construction or improvements.

**Anita Thomas:** We continuously talk to our members about various things that are going on in the district. When we get to projects like school construction like school contracts, we were talking about an 80-page contract, that is something school boards would be encouraged to seek legal counsel on to make sure what their committee should do. Just as anyone in private life would want to know what they are committing to in an 80-page contract.

**Rep. Bill Oliver:** When did you find out they had an issue with the advisory board, not being open to the public or records not being kept with that. And are you involved with that type of thing being the head of North Dakota school board association.

**Anita Thomas:** I am general counsel for the school board association, the executive director is in the room as well. Those are independent school board decisions, that would not be something that the association would normally get involved in other than just general information about how they should approach these kinds of issues.

**Rep. Bill Oliver:** Were you advised that there was an issue with public records.



**Anita Thomas:** No there was nothing. I have only been with the association for a little over a year, that was nothing that has ever come across my desk.

**Chairman- Mark S. Owens:** any other opposition to 1140.

**Aimee Copas:** See attachment 3 for her testimony.

**Rep. Matthew Ruby:** You referred that the advisory committee is made up of strickly on experience. I have a little issue being made up of tax payer dollars, with the setup of population. (forgot to turn on his microphone, his question is hard to hear.

**Aimee Copas:** There is a variety of ways you can look up setting up an advisory committee, and one of the things that is critically important is that we allow our locally elected officials be able to handle the things that they want, and they need advisory boards on the basis of their specific needs. If we are talking about the bond memorandum in Strasburg, and many of us in our roles monitored that situation. You may have a scenario where you are cognizant of the taxpayers and you may have somebody on that advisory board. It should truly be a representation of your district on the basis of experience. It could be on the basis of the population, but those are decisions we should entrust our local school board members, that we go to the voting booth and vote for to represent us, they should be able to make that decision, we should not have to legislate that through state statute.

**Rep. Pat D. Heinert:** Is there anything in the century code that says the school board cannot ask for an advisory council?

**Aimee Copas:** not that I am aware of. I may be stepping out of bounds , but I feel inclined to say that Jim Perris took a verbal beating a while ago and I think it is worth noting that he provided tremendous service to many of our districts in North Dakota. Before we pass judgement on that individual as well, he should be allowed to speak for himself. I don't think he would have known that this was coming.

**Rep. Brandy Pyle:** when you make up this advisory committee is it taxpayers in the school district or do you bring in outside people or recommendations.

**Aimee Copas:** Yes, it is typically as a part of that district. Interestingly I was just visiting with another superintendent from around that state, and a piece of the recommendations with regard of advisory committees are certain types of people who are on there. And one of the advisory committee members should be a licensed contractor, and we have run into issues with that at some of our schools because there are limited amounts of licensed contractors inside of each district, and it is a conflict of interest to bring in one of the few within that local district to be on an advisory committee when it comes to building. There may be something outside not quite as big as maybe as the large building project in Strasburg walked into when they built a new school, but it may be something like an addition to the school and some of your local contractors maybe bidding for those. That becomes tricky, and we try to keep them within district whenever possible. For that particular instance we may have to look for an outside advisory person to come in, so we do not cross over on that conflict of interest piece. Does that make sense?

**Rep. Rich S. Becker:** I agree with what you said earlier about Mr. Perris taking a good beating this morning. Does that imply that it was unfair to say you have seen similar tactics he was accused of in other districts?

**Aimee Copas:** That would be accurate, Jim has worked extensively with a number of our districts within the state, and we have seen good things and positive comments coming from those communities. I do realize that Strasberg had a contentious time, this last year, but I do not believe that it is representative of his work.

**Rep. Rich S. Becker:** could you comment at all in helping me understand better what was different in Strasberg.

**Aimee Copas:** Although we watched it from afar a bit of what happened in Strasberg came out in the local media. This truly was one of the instances that can happen in some of our smaller class B schools that splits a town, it became very difficult for them. I had a number of conversations with their local superintendent and it broke their hearts in the community, because we had those that really wanted the school to come to pass. And we had a large number of land owners that were really feeling that they were taking the blunt of the tax burden. In the smaller communities it can be really trying, anytime you walk into this scenario. These folks have lived there for a long time, I came from that neck of the woods, I was an administrator from right across the border from Pollack South Dakota, so when you have family members that are contentious about this, it can become very difficult, and I believe that some of those feelings, it became more emotional. Its always important to remember that our school districts are one of the only entities that are bound to a 60 percent bond referendum passage rate to get a bond passed. Whereas in other instances it is a 50 percent referendum passage rate. The 60 percent is tough to get, but if you get it, it was well earned. I do respect the 40 percent who voices were not reflected on the winning vote, but the beauty of democracy is the majority rules. It makes it challenging.

**Chairman- Mark S. Owens:** is there any other questions on 1140. Any opposition on 1140, any neutral testimony.



# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB1140  
1/10/2017  
Job 26763

- Subcommittee  
 Conference Committee

Committee Clerk Signature

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

Relating to the membership of school board advisory committees.

## Minutes:

No attachments.

Chairman- Mark S. Owens: continuing talk on 1140

Rep. Mary Johnson: motioned a do not pass on HB 1140

Rep. Pat D. Heinert: seconded the motion.

Chairman- Mark S. Owens: invites the clerk to take roll on the do not pass vote. The result is 14-0-0. With Rep. Bill Oliver as the carrier. Ladies and gentleman we have nothing to work on.

Rep. Corey Mock: Do we have a status on any more bills coming in.

Chairman- Mark S. Owens: we know there is some more. We still have the formula bill, something tells me it has to be done on Friday.

Date: 1/10/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1140

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. M. Johnson Seconded By Rep Heinert

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens	✓		Rep. Andrew Marschall	✓	
Vice Chairman- Cynthia Schreiber-Beck	✓		Rep. Bill Oliver	✓	
Rep. Rich S. Becker	✓		Rep. Brandy Pyle	✓	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby	✓	
Rep. Dennis Johnson	✓		Rep. Denton Zubke	✓	
Rep. Mary Johnson	✓		Rep. Ron Guggisberg	✓	
Rep. Donald W. Longmuir	✓		Rep. Corey Mock	✓	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Oliver

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



**REPORT OF STANDING COMMITTEE**

**HB 1140: Education Committee (Rep. Owens, Chairman)** recommends **DO NOT PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1140 was placed on the  
Eleventh order on the calendar.

**2017 TESTIMONY**

**HB 1140**



# Taxpayer questions actions of Strasburg School Board, administrator

Dear Editor:

(Editor's Note: This letter is a paid ad placed by the author.)

At the October 5, 2016, public tax hearing that I attended for the Strasburg School District, I reminded the school board that they had said if the bond passed, they would remove the 12-mill building fund tax levied against the Strasburg School District. I asked why they were still levying this tax. President Bernice Keller replied, "Yes, we said that we would remove the tax if the bond issue passed, but we did not tell you which year we would remove it."

Is the school board double-taxing the Strasburg School District? Did the Strasburg school board intentionally deceive the public to get the bond issue passed?

Other questions that I asked the school board were, "Is it true that the Strasburg School District has to pay the insurance deductible of \$10,000 for damages to Jim Perras/CCC (Consolidated Construction, Co.) equipment and inventory received during the August 9 storm to the Strasburg School and construction site?" Supt. Mittleider replied that the school is responsible for this deductible, but she is negotiating with them.

I asked if the school

board knew this clause was in the contract before they signed it. Supt. Mittleider said that they were aware this clause was in the contract. When I asked why they would sign the contract knowing that, Supt. Mittleider said, "We didn't know there was going to be a storm."

I also asked the school board, "What else is in the contract that we are not aware of?" Of the five school board members, none of them would answer this question. If you knew you were responsible for the \$10,000 deductible, then why are you trying to negotiate it? Is the \$10,000 deductible a one-time cost or is it \$10,000 per occurrence? Did Supt. Mittleider and the Strasburg School Board enter into a high-risk contract? It looks like you signed the contract in order to find out what was in it.

Here are some things that taxpayers may not be aware of in the Strasburg School District. In a phone conversation that I had with Supt. Mittleider on May 19, she informed me that she had not read the contract between the school and Jim Perras/CCC. I then requested a copy of the contract from Supt. Mittleider. If Supt. Mittleider did not read the contract, how could she have reviewed it with the school board before the May 18 meeting with Jim Perras/CCC regarding the construction project bids? I did not receive a copy of the contract, but on May 20,

**ARTICLE 12 SCOPE OF THE AGREEMENT**

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- 1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- 2 AIA Document A201-2007, General Conditions of the Contract for Construction, amended copy attached and hereby made a part of this Agreement.
- 3  
(Paragraphs deleted)

Exhibit A: Construction Management at Risk Fee Proposal, dated November 23, 2015

- 4 Exhibit B: Certificate(s) of Insurance
- 5 Future GMP Amendment(s)

Other documents:  
(List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the day and year first written above.

*Tracy Mittleider*  
OWNER (Signature)

*Jim Perras*  
CONSTRUCTION MANAGER (Signature)

Tracy Mittleider, Superintendent of Schools  
(Printed name and title)

Jim Perras, Partner & Project Director  
(Printed name and title)

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1144  
1/10/17  
Attachment  
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I did receive an email from Supt. Mittleider stating, "I have been waiting to hear from our lawyers to make sure I'm following protocol. I'm advised to keep a copy in the office for patrons to look through. The copy will stay in the office."  
If the school lawyers reviewed the contract, why was Supt. Mittleider waiting to hear from them regarding proper protocol? If Supt.

Mittleider was told by the school lawyers to keep a copy of the contract in the school office, where was the contract and who had possession of it prior to May 20?  
Since I did not receive a copy of the contract, I contacted the N.D. Watchdog Network on May 20, who requested a contract from Supt. Mittleider. She provided a copy to them within two hours of the request. The

contract was forwarded to me. After reading the contract, I noticed that there were no signatures or dates on the contract. On May 23, I asked the ND Watchdog Network to request a signed and dated contract. Supt. Mittleider replied to them, "I will be in meetings most of the week. I will send one no later than Friday (May 27)."

After attending the school board meeting on May 25, I had a phone conversation with the school board president, Bernice Keller. She told me that she had read the contract but didn't understand it. How could she or anybody else understand it, when it appears to be three separate contracts, the "Agreement," the "Contract for Construction," and the "Guaranteed Maximum Price Amendment," in excess of 75 pages, of hard-to-read, legal language that only an attorney trained in contractual law could understand?

I received a copy of the signed contract on May 27. It appears that Supt. Mittleider, who was listed as the owner, and Jim Perras, who was listed as the project manager, had both signed the contract on or before December 16, 2015.

Why did Supt. Mittleider sign the contract on or before December 16, 2015 if she told me on May 19, 2016, that she had not read the contract? Why did Supt. Mittleider, who promised to be open and transparent, try to deceive the ND Watchdog Network and myself with an unsigned, undated contract when she was well aware that she had signed the contract on or before December 16, 2015?

It appears that Supt. Mittleider possibly withheld this contract from the school board and the Strasburg School District taxpayers for five months, until the May 18, 2016, meeting between Jim Perras and the school board. According to an article about this meeting in the May 26 edition of the Emmons County Record, board member Robert Heidrich "was concerned that management fees would be about \$525,000 compared with the five percent management fee of about \$195,000 that had been discussed earlier in the project. He questioned whether Perras had misled the board."

In the same article, Jim Perras reminded the school board that, "Various fees were spelled out in the contract negotiated between the school district and Consolidated Construction and signed by both. He wondered if the board's attorney had thoroughly reviewed the contract with them."

Who negotiated the above-mentioned, signed contract, on behalf of the school district?

There does not appear to be any mention, in any school board minutes published in the Emmons County Record, between the bond passing in October of 2015 and May 2016, of negotiations between the school board, its lawyer(s), and Jim Perras/CCC. It does not appear that the school board was aware of the existence of this contract.

Was a building committee set up to bypass the elected school board and make the superintendent of the school the owner of the contract, therefore, keeping the school board and taxpayers in the dark as to the terms and conditions of the contract?

Is it possible that Supt. Mittleider and the Strasburg School Board were negligent in their duty to protect the school district and taxpayers?

The Strasburg School Board needs to hold a public meeting to answer these and any other questions, and also explain what they are doing with taxpayer money. The taxpayers, that you took an oath to serve, are entitled to have their questions answered.

Francis Krumm  
Hague, N.D.  
(Paid for  
by Francis Krumm)

## Certification of Document's Authenticity AIA® Document D401™ - 2003

I, Sarah Rühr, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:33:52 on 12/16/2015 under Order No. 5937481948\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

*Jim Perras*  
(Signed)

CORPORATE SECRETARY  
(Title)

December 16, 2015  
(Dated)

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# EMMONS COUNTY RECORD

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 1/10/17  
 Attachment  
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2016-11-24 / Letters

## Letter to the Editor

Dear Editor:

Based on the recent letter from a Hague resident, the Strasburg 3.9 million dollar school project seems to be getting more complicated and much more expensive.

The project, from the beginning about three years ago, gives off a "smell" that suggests too many hands are in the finances, causing misguided, unfortunate (maybe illegal) decisions made much too quickly with little regard to legalities involved.

I wonder if legal requirements for this bonding project were / are being overlooked in favor of a "hurry - up - and - finish" attitude, so the project companies can remove themselves from irresponsible actions on their part.

With the money being taxed onto the landowners (maybe 80 percent of that bond amount), it would seem reasonable to unite the landowners in that district and employ a legal team to examine the wherewithal of the contractors' (and school board's) decisions. For a small dollar amount from each and every landowner, a much better picture of what is going on would be gained. That amount, compared to the tax bill over twenty years, might prove very interesting to all.

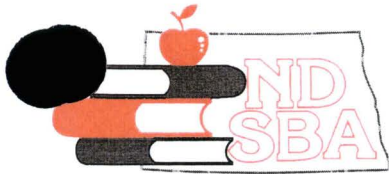
It could be possible to stop this project, temporarily, if too many illegal decisions have been made.

It is unfortunate that, three years ago, there was no united effort made to prevent this fiasco.

**Mike Dosch**  
 Eagan, MN  
 mikedosch@gmail.com

[Return to top](#)





*Excellence in North Dakota public education through local school board governance*

**NORTH DAKOTA  
SCHOOL BOARDS  
ASSOCIATION**  
**I N C O R P O R A T E D**

Attachment 2

1140

1/10/17

**HB 1140 – TESTIMONY**

**L. Anita Thomas, J.D., LL.M.**

**General Counsel**

**North Dakota School Boards Association**

**January 11, 2017**

HB 1140 states that if a school board appoints an advisory committee to advise the board regarding any public improvement project supported by property taxes, the committee membership must reflect the property - owner interests of the district, proportionate to the share of agricultural, rural, and urban property taxes expected to fund the project.

In creating legislation, it is important that words be precise. If they are not precise, those who are subject to the law don't have clear notice of their rights or duties and those who must administer the law don't have clear notice of the intended obligations.

What is this bill directing school boards to do? Is it suggesting that committee members must receive input on or discuss the various property owner interests? Is it suggesting that a certain percentage of the advisory committee be made up of those who own agricultural land within the district? Is that percentage to be determined based on acreage or value? If a district is 80 percent agricultural how can agricultural versus other interests be proportionately reflected on a 3 member advisory committee?

If a school board is in the position of seeking the input of an advisory committee, it needs the flexibility to select advisory committee members based on their knowledge, training, expertise, and experience, not just on the type of land that they might own and certainly not on a requirement for land ownership in the district.

School board meetings are open to the public. Advisory committee meetings are open to the public. Records received or generated by those entities are open to the public. School board members are accessible to the public by phone, email, etc.

There is no shortage of opportunity for property owners of any ilk to offer their opinions.

We therefore respectfully request that the committee give this bill a **DO NOT PASS**.

Attachment 3

1140

1/10/17

**HB 1140 – School Board Advisory Committees**

**Testimony in Opposition**

**North Dakota Council of Educational Leaders – Dr. Aimee Copas**

Good morning Education Chair Owens, Vice Chair Shreiber-Beck and members of the House Education Committee. Thank you for the opportunity to speak to you today on HB1140. For the record, my name is Dr. Aimee Copas. I serve as the Executive Director for the ND Council of Educational Leaders.

This bill which requires that an advisory committee to have specific balance which matches the property-owner interests is a piece of law, which although may have good intentions, may not support a local district with the best people.

In functional reality within a school district, school boards do encounter their times in which the development of an advisory committee to help guide the board through a particular process – whether that process be something relating to a building project, or a policy item. Regardless, when a board reaches the point of needing that assistance, the most important attribute of the individuals on the board should and must be talent and knowledge base regarding the topic, rather than what their tax filing status might be.

Our school boards are elected officials that represent the taxpayers, and we must entrust in them the ability to form the type of advisory group they so choose to most positively impact the school district. This is the local empowerment that North Dakota is well known for and is certainly an attribute that we wish to continue.

I ask you today for a DO NOT PASS vote on HB 1140. Thank you.