

2017 HOUSE EDUCATION

HB 1142

2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1142
1/11/2017
Job 26822

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the approval of new school construction projects.

Minutes:

Attachments 1, and 2.

Vice Chairman- Cynthia Schreiber-Beck: asks clerk to take role.

Representative Brandenburg: District 28, I come here today to talk about ending bond balances, looking at a bond project when a school goes out to get the project done and built. They use the ending fund balance to finish paying the rest. HB 1142 is about staying on track with the bond, and not empty out the ending fund balance. I am here to answer any questions.

Rep. Mary Johnson: We all know that construction projects can go not as planned, and cause a little increase. Typically, there is an overage clause in a contract, how does a school district pay for the remaining cost for a construction project.

Representative Brandenburg: Good question, and I knew the question was coming. Here is the situation of the school. Sometimes with these bonds let's say the project costs \$5 Million, and they know they cannot get the bond passed at \$5 million, so they run a bond for \$4 Million. The reason they lowered the bond is because it was not approved at the higher price, so they lowered the price of the bond saying they cut costs, and they are trying to reduce the cost of what it costs to make this building knowing well that it cost \$5 million instead of \$4 Million, but they have \$900,000 in their ending fund balance. Here is the problem with that, you want to use good sense in a building project, if you do not have any ending fund balance you have no working capital. You have to pay the teachers, and you have to pay the bills and a lot of the money does not come in until December or January. What are you going to do if you empty out your ending fund balance to pay for the teacher, fuel, or transportation whatever it may be. By emptying out the ending fund balance to finish out a school project you are bankrupting yourself.

Rep. Mary Johnson: That just begs the question sir. My question was what other mechanisms are available, because you could have a Mideast war that could drive fuel prices sky high, nobody anticipated it. Some contracts have natural disaster clauses that is

unforeseen. What mechanisms are available to school districts if such a thing were to happen.

Representative Brandenburg: That is why this is here today, because they should not have built it. If it costs \$5 million, the bond should be for \$5 Million. They are deceiving the taxpayers, and emptying out the ending fund balance. That is the reality of what is happening.

Rep. Matthew Ruby: If it comes December and they have this ending balance, what happens with to that.

Representative Brandenburg: The ending fund balance it the money that they put aside over the time of many years, every school needs to have an ending fund balance. If they don't have an ending fund balance they will not have money to pay their bills. As the money comes in from the state, and the property tax it comes at different times of the year. Depending on when the payments go out, because they need to have the payment of the students figured out at DPI, so this money will carry them forth for a period of time that they have to have. Some school depending on their budget want to maintain somewhere around the 15% to 20% ending fund balance. Some school are higher. That is just good business to have that money set aside, but the ending fund balance can be used for repairs in the school that needs to be done.

Rep. Matthew Ruby: You get all this money coming in, and the ending balance is for maintenance. Do the reserves of the ending fund balance interfere with how much money the school district gets?

Representative Brandenburg: No, you will learn going through the session. The property evaluation of the land gives money to the local area, and the money not used gets put into an ending fund balance. A bond is a separate issue; you go out to ask the voters to approve a bond for a new building. In some cases, the ending fund balance is used to finish out that project. Now granted for general upkeep, and some of that is appropriate, but to empty out the ending fund balance so you have no working capital available is not the right thing to do in my opinion. And you can disagree with that, and that is your right.

Rep. Brandy Pyle: (very soft audio)

Representative Brandenburg: I will say that you have a very special situation where you set that up, and this bill is not going after those funds. When you have a partnership it may imply that, but the implied part is if you are going to run a bond, and if you are holding up the project asking for contributions from the public sector or private sector wherever that is coming from that is great. I think that money should not be locked up in the ending fund balance. You are not taking it out to zero, that is my point.

Rep. Denton Zubke: If I understand this properly you are not telling the school district how they can spend their money if there are cost overruns or anything, you are just saying that the superintendent of public instruction cannot approve the project unless they can

demonstrate the capacity to pay for the project without using that ending fund balance. Is that correct.

Representative Brandenburg: Thank you for clarifying that, I did not clarify that I really think the issue is if you are going to ask for a bond you should run the bond for the cost of the project. Do not do it to where you need to spend your ending fund balance, in order to receive approval for the project, put the bond out there so it is the right amount.

Rep. Pat D. Heinert: Just to clarify a point. What would be construction money and what would be operational money form the year end account. A scenario, we need to build a high school, but the equipment for the science lab is not in the bond, can the school utilize this year end money to purchase that science equipment for the new school.

Representative Brandenburg: Where I am going with this is that, it is the construction portion of this. You can tie into this being the classroom part, and that is not where I am trying to go. Where I want to go is getting the structure up, and getting the building up, and getting it going. That is what the ending fund is there for to buy books, and buy equipment.

Rep. Rich S. Becker: I understand that you want the bond to be what they anticipate the full amount will be, and that will include furnishing the science lab, now I am hearing well if they run short there is not enough bond money, overruns whatever, they can use the ending fund balance to buy the equipment for the science lab.

Representative Brandenburg: there has to be some common sense in that discussion, because that is not really the expensive cost to it. The thing is if you have to run a bond two or three times and it does not pass, then you lower it to pass it, but you know you cannot build a building. That is really where it is going. You know very well that by lowering the bond, you will need to deplete your ending fund balance to finish off the project.

Rep. Andrew Marschall: We are looking at the beginning of a project, and not something that is going to happened down the road, I am talking about the beginning of a project, correct. We are talking about the beginning of a project, you cannot consider the working capital of a school within a project, that is completely off limits during the beginning phases of the operation. Now during the beginning when it comes to funding, if you bond something. In other districts if you go out and ask for donations from the public, that can be part of the project. Let's say that a \$5 million is funded for \$4 million, and you are looking for another million from local people, that is all part of the bonding, and financing to get the project off the ground. Am I correct.

Representative Brandenburg: That is correct, that is exactly what I want to do.

Chairman- Mark S. Owens: any other questions or comments, hearing none thank you. Any additional testimony for HB 1142.

Francis Krumm: Mike was talking about bond issues; this is what we went through in our school system. They tried to run two bond issues through, and they failed. One at \$3.8

million and one at \$2,8 million. What happened was we ran a third bond issue through that passed. I want to talk about this bond issue.

Chairman- Mark S. Owens: Mr. Krumm, we are aware of this bond issue, we need you to address this issue in the bill, that is what we are focused on. I appreciate your point, and we understand the timeline, and it is also my understanding that it need 60% percent to pass, so that is a pretty high hurdle on top of that. I appreciate you bringing that up to us yesterday, but due to time I would like you to stick to the bill about obtaining funds from the ending school balance for something other than operational costs.

Francis Krumm: Bond issue in our case was a \$3.8 million issue, it probably is not going to be big enough so we have an ending balance of about \$800,000. Now if we end up in our school district where the bond does not cover the entire project, we will need to go into our ending fund balance of \$800,000. When you go into that ending fund balance your school runs out of money for the following year, how do you operate it. If you do not run a proper bond and explain it to the public, and what the cost and the operation of the school is, and what it is going to cost to build it down the road a year or two it comes back to haunt the school district. Now that is the problem that we are going to run into.

Chairman- Mark S. Owens: What you are talking about is you feel that the school board and the local that were elected to do this, did not properly explain the bond issue or how it works, or they did not properly plan for the extended time frame necessary which caused the costs to go up. Have you brought this to them.

Francis Krumm: Yes Mr. Chairman I have. In all fairness to the school board I don't know their budget, because there is not a lot of communication. What Mike is trying to do here is protect public taxpayers, that if the bond issue does not build the building, and if you end up depleting your ending fund balance, you have to go back to the taxpayers again and say we need to increase your taxes to keep funding this school. It is important for bond issues to be studied, and considered very strongly. Any questions for me?

Chairman- Mark S. Owens: Any further support for HB 1142, any opposition for HB114

Aimee Copes: I am here today to voice our opposition to HB 1142. The ending fund balance that a schoolboard is allowed to carry over as of July 1st of 2017, is no more than 35% plus \$20,000 of their total expenditure from one year to the next. If they do carry over more than that particular amount, by law that amount is automatically deducted from their state aid payment. SO it maintains that particular level, most of our districts have an ending fund balance substantially lower than that, regardless the amount carried over and for what purpose is a decision voted on by a locally elected school board. And how they run their budgets is a decision of locally elected school boards. Our locally elected boards are elected to serve and represent the will of their local community with education assistance as their focus, and they are locally voted on to set policy, and to check that fiscal policy is operation is appropriate among other things. As a state that respects local control, and the locally elected officials that we have we really need to entrust them to make a good decision with regard on how they want to use their ending fund balance. It is something that is very carefully watched by the legislature as well as the locally elected school boards, they garner very closely, and they won't make unwise decisions. So we need to trust our locally elected

officials to do right by the district, and we are asking for a do not pass for HB 1142. (see attachment 1 for testimony).

Rep. Pat D. Heinert: How would DPI go into a local school district and determine whether they are using the any of their left over money for a building project.

Aimee Copes: They actually would not do that. DPI's role is to do an approval of the project once the bond has been approved, and once the locals said, they go ahead and they build. Then DPI takes a look at the project, they give the approval from there. They do not get involved with the fiscal nature of the locally elected school board and how they operate that.

Chairman- Mark S. Owens: any further questions, seeing none, thank you.

Anita Thomas: If an act of this language would apply not just to situations in Representatives Brandenburg's district, but to all 179 school districts. It fails to take into account the myriad of circumstances that exist among the districts, and it certainly fails to take into account the financial needs, and the resources of those districts. One very simple example is if you are going to build a \$200,000 house, and you have \$100,000 in your checking account, you may not have to take a loan out for \$200,000. But most importantly what this bill does is it fails to recognize that school board members are dually elected by the patrons of the district, they are entrusted with the public dollars, they are charged with using those dollars in the most efficient and effective manner possible. And that does not mean that everybody in the district is going to agree with the decisions that the school board makes, but those decisions still need to be left in the hands of the local boards, they are the best ones to understand the local circumstances. Let me remind you that the state of North Dakota rightfully bristles when the federal government tries to impose a, we know better than you do, a one size fits all kind of legislation, and that is exactly what this bill is doing. We would respectfully request that you give this bill a do not pass. (see attachment 2 for testimony).

Chairman- Mark S. Owens: Any other opposition testimony, any neutral testimony to HB 1142.

Brandt Dick: Superintendent of Underwood school district, and he also serves on the board of the North Dakota Small Organized Schools. At underwood school we just finished a building project, and we did utilize some of our ending fund balance to fund this project, and it was very well received and what I have a problem with this bill is it does not allow for any of that. There needs to be some situations where the local school district as others testified that they need to have the flexibility to utilize those funds as needed. Our project was about \$2.1 million project, and we bonded \$1.5 million and the rest of it we are using our ending fund balance. It has worked out very well, and it has been very well received in our community.

Rep. Denton Zubke: When you started this project, you actually planned on using that ending fund balance for the construction of the school.

Brandt Dick: Yes, we planned on using that. We were at that level of 35%, and our borough felt comfortable that we can spend down some of that ending fund balance, and still have a healthy ending fund balance that we needed going forward. We did have to apply for DPI,

and they do ask how you are going to fund this project. So we did show that as well, and the project came in exactly what we felt with our budget.

Chairman- Mark S. Owens: any other questions.

Jeff Fastnuht: I am the superintended for Ellendale school, I am also the superintendent from district 28. I represent the North Dakota association of school administrators as their president, and I would like to show my opposition to this bill. We have also in recent history built a new addition to our school, and with the little bit of extra funds from our interim balance we are planning to do that. Good laid plans change, and to leave those decisions to local school boards. You can in all due diligence plan with your school board for a x million dollar building, even if you gather the proof things can happen. You need to provide that flexibility to local school boards, and as several others have stated this is really an item for local school boards, and local control.

Chairman- Mark S. Owens: any questions?

Rep. Rich S. Becker: can you comment in a general sense. Trust factor that is missing, that is what the bill is trying to protect. Not every school has an open relationship with the community. If we did not have a bill like this, what is your suggestion to improve communication in districts that are contentious.

Jeff Fastnuht: yes there can. Not every school, not every business, not every school district and their board have perfect relationships with their constituents. I don't think you can govern this with law, this is relationships, relationships are built on trust, and respect and working together. As a constituent your responsibility is to elect good people, and cast your vote and hold them accountable. That is done by attending the meetings, if you are going to run a bond and build a building there is numerable opportunities to give input, and those are done in public meetings. That is the opportunity for the constituents to get involved, the vast majority with rare exceptions school board members are trying to do their very best. There are not rogue school members out there, but if you feel that they are not upholding the morals and the purpose of local constituents, then again you go to meetings and you elect them off. You campaign against them to get your voices heard on that school board, that does not make relationships better quick, but both parties have responsibilities to do that in the open and have that dialog. It was mentioned earlier, but there are still people who don't like the decisions made. That is a relationship issue, I don't know what happened in Strasberg, again I am not in the district I am not familiar with that. But in Ellendale we took a lot of time to talk to constituents, and hear their thoughts and build a bond with them and to respect their decisions. In the beginning we knew we were going to use our ending fund balance, and we used them to the best of our ability.

Chairman- Mark S. Owens: Any further questions. Any opposition to HB 1142, any neutral testimony.

2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1142
1/11/2017
Job 26823

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the approval of new school construction projects.

Minutes:

No attachments.

Rep. Longmuir: (18:00) does a motion for a do not pass vote on HB 1142, and seconded by Rep. Matthew Ruby.

Chairman- Mark S. Owens: calls a clerk to do a roll call vote for HB 1142. The result is 13-0-1 with Rep. Corey Mock being absent. The person carrying the bill is Rep. Longmuir.

Date: 1/11/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1142

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. Langmuir Seconded By Rep. Ruby

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	AB	

Total (Yes) 13 No 0

Absent Rep. Mock

Floor Assignment Rep. Langmuir

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

REPORT OF STANDING COMMITTEE

HB 1142: Education Committee (Rep. Owens, Chairman) recommends **DO NOT PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1142 was placed on the
Eleventh order on the calendar.

2017 TESTIMONY

HB 1142

**HB 1142 – Prohibited use of School Ending Fund Balance
Testimony in Opposition
North Dakota Council of Educational Leaders – Dr. Aimee Copas**

Good day Chair Owens, Vice Chair Schreiber-Beck and members of the House Education Committee. HB1142 restricts the use of the school ending fund balance. The ending fund balance that a school board is allowed to carry over as of July 1, 2017 is no more than 35% plus \$20k of their total expenditures from one year to the next. If they do carry over more, that amount is deducted from their state aid. Most of our districts have an ending fund balance substantially lower than that. Regardless, the amount carried over and for what purpose is a decision voted on by a locally elected school board.

Our local school boards are elected to serve and represent the will of their local community with education as the center of their focus. They are locally voted to set policy and to ensure that the fiscal operations of the school are appropriate (among other things). As a state that respects local control and the locally elected officials, we must entrust in them the ability to make sound decisions on how their ending fund balances are to be spent.

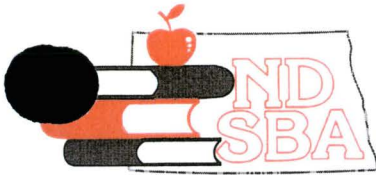
To restrict their ability to spend in one area or another by blanket state law does may not serve each district well and is inappropriate. We must trust our locally elected officials to make this decision.

Thank you – I am happy to answer any questions you may have.

Attachment 2

1142

1/11/17



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

Excellence in North Dakota public education through local school board governance

HB 1142 – TESTIMONY

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

General Counsel

North Dakota School Boards Association

January 12, 2017

Under current law, the Superintendent of Public Instruction is to approve the construction, purchase, repair, improvement, modernization, and renovation of any public school building or facility, before a project is commenced, if the project is estimated to cost more than \$150,000.

There are statutory parameters on the approval and those are set forth on lines 6 through 18 of the bill. A district must demonstrate a need for the project. A district must demonstrate that it has or is expected to have a stable or increasing population or if its population is decline, that there is no feasible alternative to the proposed project.

Another one of the parameters is that the district must demonstrate the capacity to pay for the project.

This bill would add that a district's capacity to pay for the project may not include using any dollars in the district's ending fund balance. The bill suggests that those dollars should be used to pay for the costs of operating the district.

If enacted, this language would apply not just to situations in the sponsor's legislative district, but to all 179 school districts. This type of language fails to take into account the myriad of circumstances that exist among those school districts. It certainly fails to take into account the financial needs and resources of those districts.

Most importantly, it fails to recognize that school board members are duly elected by the patrons of each district and they are entrusted with public dollars and charged with using those dollars in the most efficient and effective manner possible. That does not mean everyone will agree with every decision that is made. But, decisions need to be left in the hands of those who are most familiar with their local circumstances.

The State of North Dakota rightfully bristles when the federal government tries to impose a "we-know better" or a "one-size-fits-all-solution." That's what this bill is attempting to do.

We would therefore request that you give HB 1142 a **DO NOT PASS**.