

2009 HOUSE EDUCATION

HB 1265

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1265**

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 19, 2008**

Recorder Job Number: 7211

Committee Clerk Signature



Minutes:

Chairman Kelsch opened the hearing of HB 1265.

Representative Larry Klemin, District 47, introduced the bill. This bill will allow school districts to obtain low or zero percent loans under the QZAB (Qualified Zone Academy Bond) federal program.

Scott Wegner, of Cook Wegner & Wike PLLP, testified in favor of the bill. **(Attachment 1, includes testimony of James Stewart?)**

Representative Mueller: Can you build a new school with this?

Wegner: No, you could not. New construction is strictly prohibited by federal law. It only focuses on renovating or rehabilitating an existent facility.

Representative Mueller: The bill has a bunch of language having to do with how those mil levies—where they go and what they be used for. Did you do that or did Legislative Counsel do that.

Wegner: The specific language setting up the accounts, we did strike that in the proposed language. Section 3, legislative counsel gave me that stuff. As far as the accounting, in other bond statues you don't generally find all the detail.

Representative Kelsh: The 35%—how limiting is that? How many school districts would that eliminate if they do not meet that qualification?

Wegner: I don't have the details of home many districts, but it would certainly limit some. I think about 30 districts could take advantage of this. There are lots of schools that qualify.

This applies to a school by school basis.

Representative Kelsh: Is the 35% a federal regulation or is it something you have come up with?

Wegner: That is a federal requirement.

Chairman Kelsch: So if a school qualifies for one of these loans and the school board determines to do it, are they obligating their constituents for the debt.

Wegner: That is correct. DPI administers the program on behalf of the state. School districts apply to DPI. If they can show they meet this 35% test, they are awarded an allocation which means they can go ahead and try to line up the loan with their local bank. Under the statute 17.01 since it came in in '87, will allow the bonding based on 2/3 vote of the school board.

There is no public vote.

Bev Nielson, ND Association of School Boards, testified in favor of the bill. We hate to have opportunities go unusable. A zero percent loan for repairing buildings is something that many districts need.

Chairman Kelsch closed the hearing of HB 1265.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1265**

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 19, 2009**

Recorder Job Number: 7245

Committee Clerk Signature



Minutes:

Chairman Kelsch opened discussion of HB 1265. One of the concerns that West Fargo had was that the way this bill is currently written "the abatement of mercury and other hazardous substances" only applies to the school itself and not the school grounds. When they built an addition there were fuel tanks that had to be removed and when they did that, they found there had been a leak. The district had to pay to clean up the grounds. They asked if we approved this bill we include the school grounds as well. That's something we may want to consider.

Representative Rust: I did ask which schools were eligible. Remember it said that at least 35% of the students had to be eligible for free and reduced meals. There are 414 buildings of which 189 qualify.

Chairman Kelsch: We should add the amendment to include school grounds. That seems to make sense for the protection of our children.

Representative Rust: From the perspective of a former practicing school administrator--this bill allows you to use 15 mills allowed for asbestos removal. You just levy a couple of extra mills and you are there. It does give you some flexibility. On the other side, this allows people's taxes to be increased without the vote of the people. I submit to you that school board members are about as close as they come to the grass roots and if they are unhappy

about it they know what they can do the next election cycle. That can and does happen. It is a tool that is there and I would guess it is used when needed and not abused too much.

Chairman Kelsch: Representative Myxter would you request that amendment.

Representative Kelsh: Section 3—is that language a little funny? If it must be done, why does it have to be done at the order of the school board? It should be one or the other.

Chairman Kelsch: I wonder if they just have to have it on record. They have to approve it before it can be transferred to the general fund just so they have it on record.

Representative Rust: It might also limit you to the fund to which it can be transferred.

Chairman Kelsch: We can get a clarification on that. If we get the amendment and the clarification and then the bill should be good?

Representative Myxter: How did alternative education programs get in to this?

Chairman Kelsch: Pam, will you look that up in Century Code?

Representative Kelsh: On page 1, I don't know how many members most school boards have, but this says by two-thirds vote. On a five member board that would require 4 out of 5.

Chairman Kelsch: That's why we put it in there so all those school boards were accountable before they were allowed to do this.

Representative Johnson: The figures of 400 buildings available. If we broaden this are we going to create a list so long we create a backlog and it will never get to the schools that need the money? There are only so many dollars available.

Representative Rust: My understanding is that the QZAB program requires 35%, not all will qualify.

Chairman Kelsch: 189 qualify for new enhancement money. Currently it's not allowed in state statute so in order for those districts to access that money we have to all it in statue.

Discussion of HB 1265 closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB1265**

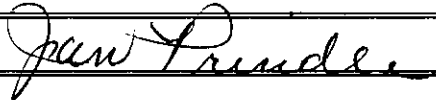
House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 20, 2009**

Recorder Job Number: 7362

Committee Clerk Signature



Minutes:

Chairman Kelsch opened discussion of HB 1265. Representative Myxter would you explain the amendment?

Representative Myxter: The people from West Fargo asked us to include school grounds. This amendment does that. **I move the amendment (90417.0201)**

Vice Chairman Meier: Second.

A voice vote was taken: The amendment was accepted.

Representative Hanson: If the Mandan School District bought property along the railroad tracks would the railroad still be responsible for that diesel under there or does that go with the property?

Chairman Kelsch: Because the railroad has taken responsibility there is a remedial process going on. It would not apply in this case. If they didn't know about it at the time and the public school wanted to build, it would not apply to the new construction but it would qualify if they discovered hazardous material under it because that would be considered their grounds. The prior owners are responsible for removal—I believe.

Representative Mueller: I think that is true. The previous owner gets to fix the problem.

Representative Kelsh: I think that's basically right. If you bought a piece of property without due diligence from a filling station, the filling station will have paid into an insurance fund and the insurance fund would pay.

Chairman Kelsch: We have the bill before us, what are the wishes of the Committee?

Representative Heller: What about the alternative school?

Representative Myxter: It includes alternative schools.

Representative Mueller: You have a 5 mil levy for removing asbestos and 3 mil for alternative schools, and so on. I think it is a combination of different levies that have been instituted by a school district that by law they could do. Some of them have done just that. It's a combination of things in the form of smaller levies that have happened over the course of time.

Discussion of bill that created 15 mil levy in 1999 and then ADA added, etc

Chairman Kelsch: I don't know that is what we are deleting here.

Representative Kelsh: In subsection 4 it talks about "up to the 10 mils of the 15 may be placed in a separate fund. . . ." That's crossed out.

Chairman Kelsch: What they are saying here is that you don't need to have the separate funds.

Representative Rust: I think before you were limited by this 15 mil fund to only spend 10 mil for alternative education and then you had to put it in a separate fund. Now what you are saying is you can still spend it for alternative education, but the 10 mil fund and the separate fund is gone.

Chairman Kelsch: I think the limit is still 15 mils.

Representative Mock: I think the intent is that any local school board can determine what is most accommodating for their needs. That's the way I read it.

Chairman Kelsch: Where is that language—it's not in here?

Representative Rust: It removes the limitation for it. Once you take it out of the language it's no longer there so therefore you can spend it any way you want to. You can spend all 15 mil for alternative education once you cross that section out. You can spend it all and don't even have to account for it. You don't have to have separate funds for it.

. . . Further unstructured discussion. . . define alternative education program, etc.

Chairman Kelsch: Pam, request the legislative history of HB1196 from 1999.

Representative Myxter: This looks to me to give the school board some flexibility.

Representative Kelsh: I move Do Pass as Amended (90417.0201)

Vice Chairman Meier: Second

Representative Karls: What does a 15 mil levy for Bismarck generate?

Chairman Kelsch: About \$150,000. They are not eligible so . .

A roll call vote was taken: Yes: 14, No: 0, Absent: 0

HB 1265 as amended was carried.

Representative Myxter will carry the bill.

This bill was called back to the Committee and further amended.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1265

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 20, 2009**

Recorder Job Number: 7363

Committee Clerk Signature

Jan Prindle

Minutes:

Chairman Kelsch called the Committee back to order. Committee so you, when it says "an approved alternative school program" there are a lot of fine educational programs . With what Representative Klemin said when he introduced the bill, it allows the school districts to levy a mil levy to ... unintelligible.. Basically what the deal was Jamestown needed to have alternative high school for 25 students which was about 5% of the junior and senior class. He said if we pass this bill it would all the Jamestown school district to establish and maintain an approved alternative school program. That's why it was done. It got a very thorough hearing. She read the sponsors.

Representative Rust: We did eliminate _____ and remodeling facilities.

Chairman Kelsch: We may hold that bill. Don't work on it yet. We may be bringing that bill back tomorrow. Perhaps someone could look at some possible amendments to make sure we make it tight but with some flexibility.

Discussion closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1265**

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 21, 2009**

Recorder Job Number: 7429

Committee Clerk Signature



Minutes:

Chairman Kelsch asked for a motion that 1265 be rereferred to the Committee of Education. This bill is not quite ready.

Vice Chairman Meier: I move that motion.

Representative Mueller: Second

A voice vote was taken: Passed.

Chairman Kelsch: The bill is now in our Committee and we know that it needs to have some amendments. Who would be interested in working on this bill?

Representatives Myxter, Heller, and Meier volunteered to further work on this bill.

Chairman Kelsch: Let's make sure we get it into the right shape. I know the amendments we had on it yesterday basically allow for construction and we don't want to open it up that wide.

That's not good public policy.

Discussion closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1265

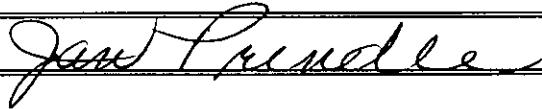
House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 27, 2009**

Recorder Job Number: 7829

Committee Clerk Signature



Minutes:

Chairman Kelsch: We will take up HB 1265.

Vice Chairman Meier: Representative Myxter, Representative Heller and I were a little concerned about language that might provide opportunities for building. We prepared an amendment. She discussed amendment 90417.0202. **I move the amendment.**

Representative Wall: Second

Representative Kelsh: I have trouble figuring out where the wording went is it line 21.

Chairman Kelsch: Page 2, line 15, after "programs." Because of the way we have the bill before us and the way it was brought back to us, the previous amendment is still on.

Representative Mueller: Why is it we think we have to do this amendment?

Vice Chairman Meier: The Committee had some concerns that with the current wording on the bill districts may consider building a new facility. We wanted to make sure that the wording prohibited using the mil levy to build new facilities. That was not the reason for the bill.

Chairman Kelsch: The intent of the bill is to add in the QZAB program. We believed when we passed the bill originally that was our intent.

Representative Rust: In addition to adding the QZAB, the language that was crossed out prohibited building a new facility. By putting this amendment in it brings that in. This bill now

put QZAB in and we eliminate a maximum amount. You could use 5 mills for remodeling or 10 mills for an alternative education program. What we have done is eliminate those caps on mills in sections 2 through 6 and now say you can use 15 mills for any one of those.

A voice vote was taken on the amendment. The amendment (90417.0202) was accepted.

Chairman Kelsch: We have the amended HB 1265 before us. It has amendments 90417.0201 and 90417.0202 on the bill.

Vice Chairman Meier: I move HB 1265 as amended and amended again.

Representative Wall: Second.

A roll call vote was taken: Yes: 14, No: 0, Absent: 0 The amended bill 1265 was passed.

Representative Kelsh: The bill also does one other thing and that is it stretches out the period you can bond from 15 to 20 years.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1265

Page 1, line 7, after "buildings" insert "or school grounds"

Page 1, line 8, after "buildings" insert "or school grounds"

Page 2, line 6, after "buildings" insert "or school grounds"

Renumber accordingly

Date:

Jan 20, 2009
Roll Call Vote #

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

House	Education	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number 90417.0201

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Winters Seconded By Deer

[illegible]

Total (Yes) _____ No _____

Absent _____

Floor Assignment

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

Date: 7-20-09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep J. Kelsh Seconded By Rep Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Myxter

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

Date:

Roll Call Vote #: 7

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

House Education

Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

☐ Do Pass

☐ Do Not Pass

☐ Amended

Motion Made By

Seconded By

[illegible]

Total (Yes) 1 No

Absent

Floor Assignment

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

HB 1265 brought back to Ed Cante

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1265

Page 2, line 15, after "programs" insert "except the funds may not be used to construct or remodel facilities used to accommodate an alternative education program"

Renumber accordingly

VR
11/30/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1265

Page 1, line 7, after "buildings" insert "or school grounds"

Page 1, line 8, after "buildings" insert "or school grounds"

Page 2, line 6, after "buildings" insert "or school grounds"

Page 2, line 15, after "programs" insert ", except the funds may not be used to construct or remodel facilities used to accommodate an alternative education program"

Renumber accordingly

Date:

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO.

House Education

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☐ Do Pass

☐ Do Not Pass

☐ Amended

Motion Made By

Seconded By

[illegible]

Total (Yes)

No

Absent

Floor Assignment

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

Date: 1-27-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90417.0202

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep. Meier Seconded By Rep. Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Myxter

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

REPORT OF STANDING COMMITTEE

HB 1265: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1265 was placed on the Sixth order on the calendar.

Page 1, line 7, after "buildings" insert "or school grounds"

Page 1, line 8, after "buildings" insert "or school grounds"

Page 2, line 6, after "buildings" insert "or school grounds"

Page 2, line 15, after "programs" insert ", except the funds may not be used to construct or remodel facilities used to accommodate an alternative education program"

Renumber accordingly

2009 SENATE EDUCATION

HB 1265

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1265

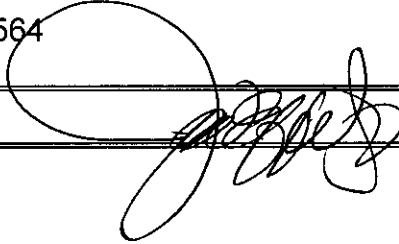
Senate Education Committee

☐ Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10560, 10564

Committee Clerk Signature



Minutes:

Chairman Freborg opened the hearing on HB 1265. All members were present.

Scott Wegner testified in favor of the bill. See written testimony. He said Representative Klemin is needed at another hearing this morning and will not be able to attend the hearing.

He also submitted the written testimony of James Stewart.

Senator Freborg asked if the school district can circumvent the voters with QZAB on very large projects such as the Wilton project.

Scott Wegner said yes and no. Under this section they are able to bond with a 2/3 vote of the school board and not of the public. This has been true since 1987 with this section, that started with asbestos removal. They cannot aggregate more than 15 mills. If they are already using 10 mills for heating and ventilation, they would only have 5 mills left.

Senator Freborg said they have 20 mills in the building fund levy, they have 10 by resolution of the board and another 10 if the people vote on it, that can go on indefinitely.

Scott Wegner said he believes any mills for the building fund levy have to be approved by the voters. Minot is a good example, the voters have turned it down and they have zero mills in the building fund. Once the voters have approved a building fund levy, then a school district can borrow against it without a vote of the public.

Senator Freborg said he thought by resolution of the board, they could apply 10 mills. He could be wrong. A \$500,000 project, he is thinking of one from many years ago, money from the general fund could affect the mill levy on the general fund and they could do that without a vote of the people.

Scott Wegner said that would be correct.

Senator Freborg said Wilton tried 2 or 3 times (he said he was not picking on them, he was not even aware of it until Scott Wegner brought it up in testimony) and the people turned down the levy. The school board found a way to do it anyway and he is not sure that is right. He knows of two more such situations for sure, one where he lives. The people turned it down consistently and the pretty soon, they were doing the project. They were taking general fund money and money from the building fund to cover the bond. It was within the law but he is not sure it is ok.

Senator Taylor asked if the mill levy is listed separately on the Department of Public Instruction report or does it fall under the general fund levy.

Scott Wegner said he is not sure.

Senator Taylor asks what a bond counsel does. This is a friendly question, what is in it for you?

Scott Wegner said the bond counsel's job is to assure the entity has the authority to enter into a borrowing under the North Dakota Century Code and to tell whoever buys the bonds that the interest they receive is exempt from income tax. The investor wants the assurance they are holding a tax exempt bond. They rely on a bond counsel opinion, someone with expertise in finance, to tell them the bond is exempt from federal income tax. In working with QZABs for years, a couple of problems are the Century Code is silent on QZAB. School districts have used their building funds, have done some type of lease/lease back or they have simply

appropriated, they have not bound themselves. As bond counsel, it is always better to have something in the code. The bank that takes it is still concerned about being repaid. Now there is no specific source unless they pledge the building fund levy. This bill would give schools a specific mill levy that they can pledge. That is binding on future boards for the next 15 years so the bank is locked in. With QZABs, a lot of banks are less than interested in making these loans, they say it is not a very good return and they are concerned about repayment. Some schools have received allocations from Department of Public Instruction and had to return them because they could not find a bank that was interested.

Senator Taylor asked what is in it for the purchaser of the bond, aside from the tax credit. Are there any earnings subsidized by someone along the line?

Scott Wegner said only financial institutions can make these loans and the only thing in it for them would be a credit. The US Treasury sets a credit rate, say 6%, and that is taken times the loan balance and that is plugged into the bank's federal tax return as a credit against other income. Banks say that is not necessarily a good deal for them. Some banks have said the credit is such a poor return that the school district agreed to pay say 1% interest in addition.

Senator Lee asked why the funds cannot be used for alternative education programs.

Scott Wegner said that came in several sessions ago. Materials and implementation of the program are permitted but not buildings. The House this session specifically added language that construction is not permitted for alternative education programs.

Senator Freborg said the bank requires a dedicated levy, can that be from the building fund or does it need to be from somewhere else?

Scott Wegner said some schools have tied the repayment of a QZAB to the building fund levy.

Senator Lee said the school districts already have the opportunity to use these QZAB funds without adding the 15 mills.

Scott Wegner said it is true there have been about 25 – 30 QZAB transactions done in North Dakota since 1998. They are hard to structure. A lease/lease back is not a good structure and there is no security for the bank. The only way they have been structured that provides security is when the building fund levy has been pledged. Some schools do not have building fund levies, and it is tied up for others.

Senator Taylor said with the Reinvestment Act with \$1.4 billion, we are looking at some funds that are also going to be used for structure in schools that are not a loan at all, that are stimulus funds. Are there going to be enough customers to use all these QZAB funds without this change?

Scott Wegner said that is a good question. Right now Department of Public Instruction is getting \$700,000 - \$1 million. The money has consistently been used since the program started. With this type of an increase, he doesn't know if it will be used. The bigger districts that might have bigger projects don't qualify because of the poverty requirement.

Doug Johnson, North Dakota Council of Educational Leaders, testified in favor of the bill. The amendment in the House that added "on school grounds" is important. There can be asbestos and other items that are on the grounds. His son is a land surveyor who has just moved back to Bismarck from Montana. His job in Montana was surveying Libby, Montana for the asbestos that was put into gardens from the mine. A significant amount of work was done to assist with the abatement that had to be done. They used the asbestos to absorb the moisture so the gardens would produce better. The other amendment is in section 2 part d, they would like a clarification. It says construct or remodel facilities used. His question is if you had an alternative high school and it had asbestos in it, would you be able to remodel it or not. He believes the alternative high school in Grand Forks is in an older building, would they be prevented from remodeling the ventilation system with this amendment?

Scott Wegner said he wanted to add to his testimony that when Congress introduced QZAB in 1997 they wanted to see partnership with private business so 10% of the dollar amount of the loan must be a match from a private source. The private source could be a booster club, contractors donating time or materials, utilities, or, in the case of the Wilton project, community volunteers.

Senator Freborg asked if the school can just pay the 10%.

Scott Wegner said that is correct, it cannot be any government entity, the park board, for example, could not help. It has to be private sector.

Senator Freborg asked if it could be in kind donations.

Scott Wegner said yes, it could be a wide variety of things, cash or volunteer labor for example.

Chairman Freborg closed the hearing on HB 1265.

Later in the day, Chairman Freborg opened the discussion on HB 1265.

Senator Taylor asked the vote in the House and the clerk said it was 76 – 16.

Senator Taylor said he is concerned about the alternative school districts and that we are not precluding work that they want to do. They should be able to abate asbestos, too.

Senator Lee asked Senator Freborg to explain his concern about a school district's ability to ramp up the 15 mills to something beyond that.

Senator Freborg said if he understands the bill, a school district by resolution of the board would be able to use an additional 15 mills. They can already use the building fund which is 10 mills by resolution of the board. If, over the years, they have approved another 10 mills and haven't taken the initiative to remove it, that goes on forever. We would be giving them the

option of using up to 35 mills for a QZAB loan. His concern is they can circumvent the voters.

In the Wilton situation, they voted 3 times not to do the project and the board did it anyway. In his own community, they voted twice and the board did it anyway.

Senator Flakoll said at one time this was for asbestos abatement and had highest priority. We keep adding to what it can be used for. It is evolving into 15 mills of general fund dollars.

Some of the language takes away the mechanism for tracking where the dollars go. We are working hard this session to decrease the local mills by an average of 75 mills. If we pass this, will it just bounce up 15 of those 75 mills in many places?

Senator Freborg said they can increase the mills now for the 3 or 4 things, ADA, asbestos abatement, anything the fire marshal deems necessary. We are just adding one thing to that but it is something that will be used a whole lot more often than the other options.

Asbestos abatement is about over.

Senator Flakoll said that is his argument. He views asbestos abatement as life issue. He views ADA as a mandatory access issue. Those things are without peer and do not compare to replacing a gym floor.

Senator Freborg said if you have a building project and it has an elevator, he thinks the cost of the elevator can be singled out and use ADA dollars to pay for it.

Senator Flakoll said a school cannot exist without accessibility, it is a primary requirement.

Asbestos abatement is a high priority and he agrees it is mostly fixed now. It is like the tax that doesn't go away.

Senator Lee said in looking at the February finance book, there are 21 schools that have some mills levied under their asbestos mill levy, 9.9 is the most. Most schools have those 15 mills available unless they are called something else in the report.

Senator Flakoll said if we were to adopt the bill with no amendments that category would go away, it would not be quantified any more or recorded which raises a flag.

Senator Lee said they could aggregate those mills under these 4 or 5 different categories and use those 15 mills for any of the categories. If there are only 20 schools using them, there are many schools that could use them in the future.

Senator Flakoll asked if we are taking away the recording procedure in the bill, that is one of his issues.

Senator Freborg said it is plenty loose. 0% or 1% is great but if it's a worthy project, the people will approve it. If they don't approve it, he doesn't think they should do it.

Senator Lee said he doesn't see where the category would go away.

Senator Flakoll said page 2 line 29. He would like to get Jerry Coleman down here to ask him about it. He will vote no until he can figure it out better.

Senator Taylor said even if we did want to add QZABs, he doesn't see the need to strike the other language that accounts for the other various mills. He said he may have misspoken earlier on the alternative education. It's not so much on the asbestos, that is a separate fund. Banks that take the bonds on want to see a more dedicated revenue source from schools. Scott Wegner thought these projects would not be 15 mills, they would be more like 2 or 3 mills. Are the banks not seeing the dedication within the school's building fund levy? Why is that not a dedicated enough source?

Senator Freborg said he doesn't know what happens if they pay them off out of the general fund. You can't dedicate general fund mills to pay off a QZAB. He is surprised they can even use general fund money. They can still use the QZAB and they can still get a no interest loan even if they had to have the people approve it. \$500,000 is a pretty good sized project. In the end, if they get a few mills here and a few mills there and they can do it through resolution of

the board and pretty soon property taxes are too high and we are looking at trouble.

Senator Flakoll said it is very appropriate on page 1 lines 7 – 9 to include school grounds.

That single issue makes the bill worth saving.

Senator Bakke said page 2 line 8 adding school grounds make sense.

Senator Bakke asked if the language being eliminated in the bill on pages 2 and 3 is necessary. They said the reason it was eliminated was it was not necessary.

Senator Flakoll said he worries we may lose track of the categories of asbestos abatement etc. There is some accountability associated with the categories. The Wegner testimony indicates a lot of things could be paid for with QZAB loans, almost everything except transportation and salaries could be covered.

Senator Flakoll said we know there are millions and millions of dollars in deferred maintenance out there. Equipment is a bottomless pit. They could bounce those 15 mills up with QZAB.

Statewide 42% of students qualify for free and reduced so a lion's share of the school districts would qualify. The Fargo district as a whole may not qualify but a number of their buildings would qualify.

Senator Bakke said school districts could still not go over the 15 mills.

Senator Freborg said in the asbestos abatement fund, they are limited to 15 mills. By resolution of the board, they can use 10 mills in the building fund which normally goes to remodeling. 2 mills is a small project.

Senator Flakoll said statewide, it is \$4 million per mill so 15 mills would equal \$60 million. He based his numbers on SB 2199 that had \$300 million for property tax reduction for 75 mills so dividing it gets the dollars per mill statewide.

Senator Taylor said there will be \$2 million available in QZAB loans . There will be only a few projects in play. We don't need to worry about the whole state.

Senator Bakke said a school district can still apply for QZAB without this bill.

Senator Freborg said yes, they are doing it now, they want another source of dollars. The source is by resolution of the board. He has no problem with QZAB loans. We are getting pretty lenient when the board can do it without the blessing of the people.

Senator Freborg asked Warren Larson what he thought.

Warren Larson said the 15 mills are already there. QZAB is pretty open ended, they don't give the whole pot to one school district. The projects used to be for a small amount.

Senator Freborg reviewed the Wilton project, it was a substantial project, \$500,000 that the voters turned down 3 times and ended up getting anyway. All the board members are not still there but that is immaterial, the money is gone.

Senator Flakoll said it is almost like a food stamp program for cheese and milk. A few years later you add meat. Then a few years later you add juice and/or soda pop. Have we gone beyond the original intention?

Senator Freborg asked if there is any interest in amending the bill to restructure the amount of QZAB loans that could be used without a vote of the people. They could still use a QZAB loan if the people voted yes.

Senator Flakoll asked if they can turn it quickly enough, go through the application process and get a vote of the people.

Senator Freborg said they could turn down the QZAB loan.

Senator Flakoll said with stimulus dollars, if it required a vote of the people, they couldn't pull it off.

There was discussion about bond issues, mills and votes of the people. (36.05)

Senator Lee said he is not sure how to decide the appropriate number of mills or dollars to put in the bill. As he looks over Mr. Wegner's testimony, the open ended things that a QZAB loan can be used for, it really changes the intent of the whole section. It would just be another

puddle of money for discretionary use. He would support amending the bill to include school grounds and let the rest of it go.

Senator Freborg said the next thing that will come along is to increase the number of mills in that fund.. It started at 5 mills for asbestos abatement and it crept up to 15 mills.

Senator Lee asked why we would need to add school grounds to line 8.

Senator Flakoll said in testimony we heard asbestos can be in the garden. The intent with the asbestos law is to rid us of all asbestos, even if it is on the school grounds.

Warren Larson said in the House committee this related to UDT's underground fuel tanks. It is a hazardous material.

Senator Lee said he would like to just include the language on school grounds, in sections 1 and 2.

Senator Lee moved the Lee Amendment to go back to the original language and include "on school grounds" on page 1 j lines 7 – 9 and on page 2 1.a, line 8, seconded by Senator Flakoll

The amendment passed 4 – 0 – 1 with Senator Taylor absent.

Chairman Freborg closed the discussion on HB 1265.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1265

Senate Education Committee

☐ Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11077

Committee Clerk Signature

Minutes:

Chairman Freborg opened the discussion on HB 1265.

Senator Flakoll clarified that the amendment takes us back to the original language except to add "on school grounds".

Senator Flakoll moved a Do Pass As Amended on HB 1265, seconded by Senator Lee.

The motion passed 5 – 0. Senator Bakke will carry the bill.

Date: 3/10/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~1265~~ 1265

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Lee Amendment

Motion Made By Sen. Lee Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor	0	
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll	✓				

Total (Yes) 4 No 1

Absent _____

Floor Assignment _____

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

*back to original language.
include school grounds*

pg 1 j 7-9

pg 2 1. a. line 8

Date: 3/17/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Flakoll Seconded By Sen. Lee

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor	✓	
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll	✓				

Total (Yes) 5 No 0

Absent _____

Floor Assignment Sen. Bakke

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

REPORT OF STANDING COMMITTEE

HB 1265, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1265 was placed on the Sixth order on the calendar.

Page 1, line 1, after the second "and" insert "subdivision a of subsection 1 of"

Page 1, line 2, replace the second "to" with a period

Page 1, remove line 3

Page 1, line 15, remove the overstrike over "and"

Page 1, line 16, remove ", and for"

Page 1, remove line 17

Page 1, line 18, remove "Bond program"

Page 1, line 19, replace "Section" with "Subdivision a of subsection 1 of section"

Page 1, remove lines 21 through 23

Page 2, remove lines 1 through 6

Page 2, remove lines 12 through 31

Page 3, remove lines 1 through 31

Renumber accordingly

2009 HOUSE EDUCATION

CONFERENCE COMMITTEE

HB 1265

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1265

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 15, 2009

Recorder Job Number: 11869

Committee Clerk Signature

Carmen Hart

Minutes:

Chair Lisa Meier: I would like the Senate explain what they did to HB 1265.

Senator JoNell Bakke: We had conflicting reports. Looking at Version 300, page 2, starting at Line 26 all the way down to the end of page 3, was all language that was not necessary.

We were told that by one group, but we were also told by another group that if we remove this language that we would lose accountability if we eliminated it in respect to the bonding.

Chair Lisa Meier: Can you explain to us what you recall what group it was that had asked you to remove it?

Senator JoNell Bakke: I don't recall.

Chair Lisa Meier: Do any of the other senators recall what group it was that had requested to remove it? No other senator could recall. We removed the authority for a district to appropriate mills for removal of asbestos and right now there is no funding source. Does that concern the Senate?

Senator JoNell Bakke: Of course, it concerns the Senate.

Senator Layton Freborg: My biggest concern was that we were beginning to get a lot of loans, and I am sure that you had the same information that we did, that one of the schools took the bond issue to the people three times and it was refused. They received a \$500,000 QZAP loan to do the job in spite of the vote of the people.

Chair Lisa Meier: These loans are no interest loans from the federal government. Were you aware of that?

Senator Layton Freborg: I understand that. There certainly is a possibility of the people approving that very same loan. They could take that issue to the people to make that loan. Many schools, now that they are getting into the QZAP loans, information is becoming very widespread. Lots and lots of schools are making loans of this magnitude or bigger and not going to the people.

Rep. Lee Myxter: As I understand it, there is only \$718,000 per year that North Dakota gets for all the loans. One was \$500,000? That seems like an awful lot of money out of the pool of \$700,000. I don't know how many loans that would possibly support.

Senator JoNell Bakke: If you look on page 3, Line 22, where it says the school board may authorize levies for any purpose. I think that was what concerned us is that you were giving blanket authority to these school boards.

Rep. Lee Myxter: As I understand it, they can only raise it up to 15 mills and it has to be used for one of these purposes listed in Section 1, asbestos, mercury, disabled acts, and alternative education programs. It can't be for anything except those that are listed.

Senator Tim Flakoll: We are also mindful that 15 mills could translate to \$120 million per biennium. Are our different districts, such as the one Senator Freborg cited, using some of this as a gateway to get some other things that were unintended consequences? Since 1998 we heard that about 28 of these QZAPs had been utilized in North Dakota. That number will likely go up with some of the federal stimulus dollars. Our concern is what they may be used for beyond the scope of the intent.

Senator Layton Freborg: I am going to give you a little history of these 15 mills. It all started back when asbestos became a problem. They allowed 5 mills for asbestos abatement. Of

course, most of that has been taken care of. There is still asbestos in many of the older schools and they will use that fund occasionally. Then Americans with Disabilities Act came along so there was another 5 mills added to comply with ADA. Down the road they decided to go to 15 mills to take care of any recommendations from the State Fire Marshall which required remodeling. Now if a school applies in tie of 15 mills and has the QZAP loan, what are they going to do if they have an asbestos problem or they do some remodeling and the ADA requires them to put in an elevator or something like that? They don't have any mills left. The intent of these 15 mills is very clear. They might just as well put those 15 mills and increase the general fund levy because it is the same thing.

Senator Tim Flakoll: I would like to reinforce one point along with what Senator Freborg mentioned. There was one school district that used their QZAP funds to buy computers.

When you think about this bill and what it is for, computers don't come to the top of your mind. If we keep chipping away and adding one more thing, pretty soon you have more things that are eligible for than are not eligible for.

Chair Lisa Meier: Do you recall what school district it was that used QZAP funds for computers?

Senator Tim Flakoll: Yes, Fairmont.

Rep. Lee Myxter: How did they get that loan under QZAP? What area did they use in Section 1?

Senator JoNell Bakke: It says a school district may use the QZAP for any of the following: repairing the school facilities, providing equipment, developing course material, training teachers and other school personnel. They can fit under that.

Rep. Dennis Johnson: Part of the concern here is where the money is being used and it isn't really part of the bill. I thought this is a pretty good tool as far as using monies with no or low interest to help these schools.

Chair Lisa Meier: Senators, did you receive testimony against this bill?

Senator Layton Freborg: I don't believe so.

Chair Lisa Meier: I need a little refreshing to my memory. When we had the discussion about the school grounds, what was the main purpose for adding school grounds to this bill?

Senator JoNell Bakke: We were told that sometimes there are underground tanks that are insulated and under the pavement on school playgrounds. When they go to do an addition to the building or when they go to repave, they come upon these tanks and those hazardous materials around them. That is why we kept school grounds in the bill.

Rep. Lee Myxter: It came from West Fargo. They were making an addition, and they ran into an underground gas tank.

Chair Lisa Meier: It didn't pertain to a shed or anything located on the school grounds?

Senator Tim Flakoll: It could. It could pertain to situations where they may have a building that was tore down at some point and in the sake of just saving money, they dug a hole pretty close up on the grounds and buried parts of the building. Now some of that could be working its way up whether it is on a playing field or a recess area.

Chair Lisa Meier adjourned for the day and the committee will come back at a later time.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1265

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 20, 2009

Recorder Job Number: 11976

Committee Clerk Signature

Carmen Hart

Minutes:

Chair Lisa Meier distributed an amendment (**Attachment 1**). This applies to the 300 version of HB 1265. What the amendment does is it moves the mill levies down from 15 to 5 of what a school district can actually utilize.

Senator Layton Freborg: Under certain conditions I think this amendment could be acceptable. Have you ever considered limiting the amount of dollars that they could bond for under the QZAP proposal? Have you ever considered making them go to the people for let us say anything over \$100,000? I have a real bad time circumventing the vote of the people. In several cases on record they have used the QZAP after the people have voted down the bond issue. We keep talking about no interest loans and not all no interest loans. Sometimes the lending agency will not give them money unless they subsidize whatever their write off is as a tax credit, 1 to 1 ½ %. The patrons of the district are still paying the bill for the initial cost whether there is interest on them or not.

Chair Lisa Meier: We could certainly look perhaps amending that into this bill as well.

Senator Tim Flakoll: An example would be the Fargo school district. Let us say they are at \$350,000 per mill, they could do a \$3.2 million project for the biennium.

Rep. Lee Myxter: On this information sheet we received last Friday, for 2007 allocations and beyond, DPI is limiting school districts to no more than \$350,000. They would be able to borrow \$3 million or even \$500,000.

Scott Wegner, Cook Wegner & Wike Law Firm, Bismarck, appeared. When the program started, DPI limited the amount that would be awarded to any one school district to \$500,000. Because that didn't go very far and the state doesn't receive a lot of QZAP dollars, my understanding is that in 2007 then DPI restricted that to \$350,000 per any one school district. That would be the largest loan that could be done currently as a QZAP.

Chair Lisa Meier: Currently what is going to be allocated to North Dakota would be like \$2.9 million. Will that amount go up then from DPI? Will it stay the same at \$350,000?

Bob Marthaller, DPI, appeared. It has been my understanding that the department has had the flexibility to vary that amount depending upon the allocation. I think the allocation is going to be \$2.5 to \$2.9 million. We have already had a bit of discussion about extending it to \$500,000. I am not aware that there is any statutory or any other limitation that has been placed on the department.

Senator Tim Flakoll: The amendment states they may use up to 5 mills. Can they get the QZAP—Take \$400,000 say that is equal to one mill. We will use Fargo as an example at one mill. They could use the remaining four mills to enhance the project?

Bob Marthaller: Yes, that would be correct. However, they would still require a vote on anything beyond the QZAP, not Fargo perhaps.

Senator Tim Flakoll: They could if one mill equals \$350,000 and have up to five. You could have over a \$3 million project for the biennium.

Bob Marthaller: Yes, that would be correct.

Chair Lisa Meier: Scott, what Senator Freborg had proposed limiting the amount to \$100,000 and then having a further amount go up for a vote for the district, can you speak to that?

Scott Wegner: Currently QZAP isn't recognized in state law so districts that do a QZAP either appropriate it annually out of their budget as a current expense each budget year. Some use their building fund levy. The statute the committee is looking at, 5715-17.1, allows limited borrowing without a public vote for those specific purposes listed, remodeling, fire marshal violations, Americans with disabilities. I think the idea here because QZAP projects are small would be to let them fall in this category without public vote since the dollar sizes are very limited and the mills for repayment would be limited. The committee could certainly look, of course, at a public vote. I don't think it would be practical.

Rep. Dennis Johnson: You say they are very small. What is the average size of the QZAP loan?

Scott Wegner: When the program started, there were some \$500,000 QZAPs. Those are the largest that have been done. Our firm has done QZAPs for \$50,000, \$80,000, and several around the \$100,000 range. These are typically spread out over 15 years. Hebron, for example, did \$80,000 over 15 years. For Hebron that would come to one or two mills in a year for repayment.

Chair Lisa Meier: Most of the QZAP loans then are under \$100,000? It is rare to have one that is over \$100,000?

Scott Wegner: There have been several. I know we have done ones for \$150,000, \$250,000, and \$300,000. They have ranged from \$50,000 to \$500,000.

Senator Layton Freborg: You stated under this particular section which is the old original asbestos abatement section in the code that they could do this as a resolution of the board.

They can only do it if we pass the bill as introduced to allow QZAP loans to be a part of the fund, the repayment of them. Presently they can't do that.

Scott Wegner: You are correct. Currently under this statute they cannot do a QZAP under that section. None have been done under this section. They all have been done under the building fund levy or simply as an annual expense out of a general fund.

Senator Layton Freborg: Getting back to Senator Flakoll's statement that a part of a project would be enhancement dollars. For instance, they get \$200,000 from the Department for a QZAP loan. What happens then if the project is \$400,000? Do they pay that off in a resolution of a 2/3 majority of the board? Do they use the same fund to pay off the \$200,000? It was only an enhancement.

Scott Wegner: For example if a school had a \$500,000 project and DPI awarded them a \$250,000 QZAP allocation and assuming this passed, then they could use five mills and they needed three of those mills to service the \$250,000, under this statute they wouldn't have any other mill authority for that remainder. The remaining amount of the project would have to come from general fund or their building fund levy. Under this statute this specifically allows borrowing up to five mills. In Hebron that was \$80,000. It came to two mills to service the \$80,000. Our interpretation under this statute, two mills is all they get because that is all that is needed to service Hebron's QZAP. They wouldn't have the other three available for any use. They could only use what was needed for their QZAP and in Hebron's case, it would be two mills.

Senator Layton Freborg: They would have to take the money for instance from the building fund or the general fund or something to cover the additional dollars in the project? With resolution of the board they could do the project without going to the people. We are not talking only about QZAP money. We are talking about another \$200,000 or \$300,000.

Through this legislation are we allowing them then by resolution of the board to do the additional dollars in the building project just simply by a 2/3 vote of the board?

Scott Wegner: I don't believe so. Again if they say they had a \$250,000 QZAP but they wanted to do a million dollar project in total, you only authorized mills up to the \$250,000 if it fits within the five. To finance the remaining of a million dollar project that would have to fit within their regular levies. That has to come out of the budget so if a school district could decide they had room in their budget—they can do that today anyway if they construal that the budget will support it.

Chair Lisa Meier: If we attached another amendment to this bill and limiting the amount of anything over \$100,000 up for a vote of the people, what do the committee members think about that?

Senator Layton Freborg: That is a wonderful suggestion.

Rep. Lee Myxter: What can you do with \$100,000 in today's market? Can you fix a boiler? Can you repair a gym floor in the flood?

Chair Lisa Meier: We might want to consider a sunset clause on that amendment too. We can entertain the thought of Senator Freborg's amendment to tack that on if we want to put over \$100,000 up for a vote of the people or if we want to put a sunset clause on the amendment that I passed out. Think about until we meet next.

Senator Tim Flakoll: I would be supportive of a sunset that could be put on here. In regard to Rep. Myxter's question, talking to Warren Larsen formerly of the Williston School District, they were redoing their science labs in the \$10,000 to \$20,000 range per lab. That would be one example.

Chair Lisa Meier: We will have two amendments drawn up and when the meeting is rescheduled, we will take a vote on those amendments. The meeting was adjourned.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1265

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12119

Committee Clerk Signature

Carmen Hunt

Minutes:

Chair Lisa Meier: The chair will note that is everyone present and will open this up for HB 1265 conference committee for discussion. Last time we talked about a couple of amendments, and I will open it up to legislators presenting amendments to 1265.

Rep. Dennis Johnson: He presented amendment 90417.0304 (**Attachment 1**). The level of funds that would be available would be \$250,000. We have talked about \$100,000. Talking with some of the schools in my area that have participated, they participate at \$500,000 range. They said it really is a good program. They work with the 0 interest. He said he had a project this year for \$320,000. That \$100,000 level would probably be a little on the low side.

Chair Lisa Meier: What else does the amendment do?

Rep. Dennis Johnson: It also agrees in there the bonds may not be issued unless approved by a vote of 60% or more of the qualified electors of the school district voting on this question.

Chair Lisa Meier: It has a sunset clause on it too as well.

Rep. Dennis Johnson: The first part of the amendment is what I requested. It is the sunset clause that we had talked about also.

Chair Lisa Meier: You had a discussion with your superintendent, and they have put in for these QZAP loans?

Rep. Dennis Johnson: They have participated in this program at the level of \$500,000 at 0% interest. They had a bank that would go along with the 0% interest. They said it really helped them out on that project. They would probably participate again, but it depended on what the guidelines or levels would be. The project in mind this time was \$320,000 so they didn't know if they would apply for it or not.

Chair Lisa Meier: This project was roof replacement?

Rep. Dennis Johnson: It was repair work. If you see something other in this amendment that was unintended, please bring it to my attention.

Senator Tim Flakoll: When is the sunset on this?

Rep. Dennis Johnson: This is the part of the amendment that you were requesting, Madame Chair, and I don't have the bill in front of me so where this language fits in as far as expiration date.

Chair Lisa Meier: I am going to look at the version that the House has sent out. If you read page 3, Line 28, version 300, where it states effective date replace transfer with expiration date and then it says for two taxable years. When I took this up to Legislative Council I did request a sunset date be placed on this amendment and on this bill. The individual that prepared this had stated that he would make sure that a sunset clause was on this. That is what I believe he feels is suitable for a sunset clause on this bill.

Rep. Dennis Johnson: The way I would understand this would be it would sunset December 31, 2010.

Chair Lisa Meier: I believe that is how I read it too. Is that agreeable with everyone on the committee for the expiration date?

Senator Tim Flakoll: After any monies in Line 29, that has essentially been moved up to Subsection 7 above, the underscored language, and on page 2 of your 0304 amendments?

That would in essence be the same, just moved around?

Rep. Dennis Johnson: I would understand it to be that. If we were to come back next session, this is the sunset. This old language here did sunset to 31st of 08 so I guess there is not a window of opportunity for any applications.

Chair Lisa Meier: This would have to be revisited again. We wanted to put a sunset clause on this legislation in order to see how it would perform in the next two years. I think, committee members, to monitor it and take a look at it and see what it would do in the next two years with some of the cautiousness that was stated in the committee.

Rep. Lee Myxter: If this passed the way it is right now, when would this go into effect, this summer?

Chair Lisa Meier: Usually the legislation begins in July, I believe.

Rep. Dennis Johnson: There is no emergency clause on this.

Rep. Lee Myxter: My point is you are missing a half of a year there. From December to July you would not be able to apply. I think it would make more sense to have it two years from the time law goes into effect.

Chair Lisa Meier: I believe we would still be operating under the old law. Perhaps if Mr. Wegner wants to come up and address that, I believe that is correct. We would be under current law until July and then this law would come into effect. I see him shaking his head.

Senator Tim Flakoll: The measure would become effective July 1, 2009 and it would only be after that point wherein they could go to a vote of the people to have that changed, right? Am I right in thinking that they can't go to a vote of the people until after which this is in effect on July 1?

Chair Lisa Meier: I believe that is correct. Mr. Wegner is shaking his head in the background.

Rep. Dennis Johnson: With this two years in here, are we okay with a sunset of December 31, 2010 or is there going to be a window there that we can't participate in these types of loans?

Scott Wegner: I haven't looked at this particular language you are looking at, but I think the way it would work is assuming this passes, until it is effective we would operate under the status of the law today, and that is schools can do QZAPs if they find another method in law, just like they are doing right now. Once July 1 comes, this amendment would take effect which would require then the voting if you are at the \$250,000 level. Once this sunsets, we just revert back to the way it is now. Schools could continue to do QZAPs. They just wouldn't fall under this section. Again, they would have to find another method under law.

Senator Layton Freborg: How did you happen to arrive at the \$250,000 considering that we had testimony more than once that said most QZAPs are for \$50,000?

Rep. Dennis Johnson: That is a number I just picked after visiting the school where they used the \$500,000 and it worked well. I realize in testimony it talked about the \$80,000 to \$90,000 applications. When I talked about \$100,000 limit on the application, the schools I talked to said they probably would be interested in participating because of that low number.

Senator Layton Freborg: Where do they get their money then if most of them run under \$100,000?

Rep. Dennis Johnson: I am not in a position to answer that.

Chair Lisa Meier: Rep. Johnson had visited with me about his discussion with his superintendent and his superintendent was concerned that if you did have a major repair such as a roof repair, so much of the time that is going to run you right around \$200,000 to \$300,000. We thought that with maybe some of the size of the scopes of the project, it might

be a little bit more workable if the amount was up for a building project, just a little bit higher than the \$100,000 mark.

Senator Tim Flakoll: Has there been any thought about making it relative to the size of one's budget? \$250,000 in some districts could easily be more than 25% of their budget.

Rep. Dennis Johnson: ___are addressing a lot of scenarios across the state. When you look at what we have been doing in the past with \$500,000, it is still a general number to kind of address all the schools and all the sizes.

Senator Layton Freborg: These five mills will be set aside now and can only be used for QZAPs, right?

Rep. Dennis Johnson: That is the way I understand the way it is written here.

Chair Lisa Meier: That is the way I understand it too. When you read the amendment all revenue accruing from up to 5 mills of the 15 mill levy under this section must be placed in a separate fund known as the qualified enhancement fund and must be accounted for within the capital project fund group and disbursements must be made from such funds with this fund group for the purpose of qualified enhancement as set forth in Subsection 1. That is the way I read it as well.

Senator Tim Flakoll: It will be all flushed to the general fund at the end of the project and/or the expiration date.

Chair Lisa Meier: That is the way I read it. Correct.

Senator Layton Freborg: Maybe we have someone here that can tell us how they read it.

Scott Wegner: This would allow bonds to be issued under this specific section to pay back principal on a QZAP and up to five mills could be added for that specific purpose. This would be an excess mill levy of up to five mills maximum but only for the purpose again of retain the QZAP. Once the QZAP is retired the levy ends. Say, the QZAP is a ten-year period, the five

mills would go on for ten years until the QZAP is retired at which time the levy would end. If there is some diminutiveness left over amounts in this QZAP fund that was referred to that would be transferred to the general fund.

Chair Lisa Meier: Does that make it a little more agreeable?

Senator Layton Freborg: I am not sure yet.

Rep. Dennis Johnson: I would move my amendments with this piece of legislation, .0304.

Rep. Lee Myxter: I will second it.

Senator Tim Flakoll: May we further amend? I would move that on page 1 where we had the portion that says \$250,000 be changed to \$150,000 in value.

Chair Lisa Meier: Your reasoning for doing that, Senator Flakoll?

Senator Tim Flakoll: I think it will get us more whoops.

Rep. Dennis Johnson: Where did you arrive at this number?

Senator Tim Flakoll: I took and went three times the amount that traditionally they go after thoroughly studying it here.

Senator Layton Freborg: I was asked if I seconded the motion. Technically, this is just a piece of paper. We haven't adopted it. We don't have to. If you want to vote to amend it, we can simply discuss and we do or don't. This is just a recommendation right now.

Chair Lisa Meier: We have had discussion brought forward to bring the dollar amount down to \$150,000 by Senator Flakoll. A voice vote was taken. The motion fails. We have a motion on the table, Rep. Johnson's amendment to HB 1265, and we have a second. A roll call vote was taken. **Motion fails. 4 Yeas, 2 Nays.**

The meeting was adjourned.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1265

House Education Committee

☒ Check here for Conference Committee

Hearing Date: April 23, 2009

Recorder Job Number: 12140

Committee Clerk Signature

Carmen Hart

Minutes:

Chair Lisa Meier noted that all members were present. She opened HB 1265 out to conference committee to discussion.

Rep. Dennis Johnson: The amendments we had yesterday got defeated. What do we have before us right now? What do you want to do?

Senator Tim Flakoll: I move the .0304 amendments with the substitution of instead of \$250,000, \$125,000.

Senator Layton Freborg: I second the motion.

Chair Lisa Meier: What we have before us is the amendment that we had yesterday which put the amount of QZAP loans before it had to go to a vote of the people from \$250,000 to now \$125,000.

Senator JoNelle Bakke: Senator Flakoll, yesterday, you were saying \$150,000. How come we are down to \$125,000 today?

Senator Tim Flakoll: That was yesterday.

Chair Lisa Meier: Does your budget go down as the month goes on?

Senator Tim Flakoll: Personally or otherwise?

Chair Lisa Meier: Otherwise.

Senator Tim Flakoll: May I further amend that or not?

Chair Lisa Meier: We have a motion on the table so no, you may not further amend until we vote on the motion.

A voice vote was taken. There was a tie, so it failed.

Chair Lisa Meier: Right now we have the version that the Senate passed over.

Rep. Dennis Johnson: I move that we accede to the Senate amendments to the original bill.

Rep. Lee Myxter: I second the motion.

A roll call vote was taken. **6 Yeas, 0 Nays.**

The meeting was adjourned.

Attendance

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1265 (, as (re)engrossed):

Date: 4-15-09

Your Conference Committee House Education

For the Senate:

YES / NO

For the House:

YES / NO

<input checked="" type="checkbox"/>	Sen. Flakoll	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Meier	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Sen. Treborg	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Johnson	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Sen. Bakke	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Myrten	<input type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1265

That the Senate recede from its amendments as printed on pages 809 and 810 of the Senate Journal and page 1046 of the House Journal and that Engrossed House Bill No. 1265 be amended as follows:

Page 1, line 2, remove the second "to"

Page 1, line 3, remove "provide for a transfer"

Page 2, line 4, remove the overstrike over "~~for a period not longer than fifteen years~~"

Page 2, line 5, remove the overstrike over "~~general obligation~~"

Page 2, replace lines 26 through 31 with:

- "2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3, 4, and 5, and 6, must be placed in a separate fund known as the mercury and hazardous substance abatement or removal fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of mercury and hazardous substance abatement or removal.
3. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 2, 3, and 4, and 6, must be placed in a separate fund known as the heating, ventilation, and air-conditioning upgrade fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of improving indoor air quality.
6. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the qualified enhancement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of a qualified enhancement, as set forth in subsection 1.

7. Any moneys remaining in the mercury and hazardous substance abatement or removal fund after completion of the principal and interest payments for any bonds issued for any school mercury and hazardous substance abatement or removal project, any funds remaining in the required remodeling fund after completion of the remodeling projects, any funds remaining in the alternative education program fund at the termination of the program, and any funds remaining in the heating, ventilation, and air-conditioning upgrade fund after completion of the principal and interest payments for any bonds issued for any indoor air quality project, and any funds remaining in the qualified enhancement fund after completion of the qualified enhancement must be transferred to the general fund of the school district upon the order of the school board."

Page 3, remove lines 1 through 27

Page 3, line 28, remove "- **TRANSFER**"

Page 3, line 29, remove "Any moneys in a separate fund created under section"

Page 3, remove lines 30 and 31

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1265

That the Senate recede from its amendments as printed on pages 809 and 810 of the Senate Journal and page 1046 of the House Journal and that Engrossed House Bill No. 1265 be amended as follows:

Page 1, line 2, remove the second "to"

Page 1, line 3, remove "provide for a transfer", remove "and", and after "date" insert "; and to provide an expiration date"

Page 2, line 4, remove the overstrike over "~~for a period not longer than fifteen years~~"

Page 2, line 5, remove the overstrike over "~~general obligation~~"

Page 2, line 25, after "program" insert ". If bonds to be issued by a school district for a qualified enhancement under this subdivision exceed two hundred fifty thousand dollars in value, the bonds may not be issued unless approved by a vote of sixty percent or more of the qualified electors of the school district voting on the question"

Page 2, replace lines 26 through 31 with:

- "2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3, 4, ~~and 5, and 6~~, must be placed in a separate fund known as the mercury and hazardous substance abatement or removal fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of mercury and hazardous substance abatement or removal.
3. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 2, 3, ~~and 4, and 6~~, must be placed in a separate fund known as the heating, ventilation, and air-conditioning upgrade fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of improving indoor air quality.
6. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the qualified

enhancement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of a qualified enhancement, as set forth in subsection 1.

7. Any moneys remaining in the mercury and hazardous substance abatement or removal fund after completion of the principal and interest payments for any bonds issued for any school mercury and hazardous substance abatement or removal project, any funds remaining in the required remodeling fund after completion of the remodeling projects, any funds remaining in the alternative education program fund at the termination of the program, and any funds remaining in the heating, ventilation, and air-conditioning upgrade fund after completion of the principal and interest payments for any bonds issued for any indoor air quality project, and any funds remaining in the qualified enhancement fund after completion of the qualified enhancement must be transferred to the general fund of the school district upon the order of the school board."

Page 3, remove lines 1 through 27

Page 3, line 28, replace "TRANSFER" with "**EXPIRATION DATE**" and after "for" insert "the first two"

Page 3, line 29, after "2008" insert ", and is thereafter ineffective" and remove "Any moneys in a separate fund created under section"

Page 3, remove lines 30 and 31

Renumber accordingly

1

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

 Bill Number 1265 (, as (re)engrossed):

 Date: 4-22-09

 Your Conference Committee House Education

For the Senate:

For the House:

	YES	NO		YES	NO
Senator T. Haloll			Chm. L. Meier		
Senator L. Treborg			Rep. D. Johnson		
Senator J. Bakke			Rep. L. Myrten		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____, and place _____ on the Seventh order.

 _____, adopt (further) amendments as follows, and place _____ on the
Seventh order:

 _____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>voice vote to accept</u>	

 MOTION MADE BY: Senator Haloll

 SECONDED BY: Senator Treborg

VOTE COUNT YES NO ABSENT

Revised 4/1/05

Charge to
 amendment
 90417.0304
 motion fails
 dollar
 amount
 down
 to \$15000

#2 ✓

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 1265 (, as (re)engrossed):

Date: 4-22-09

Your Conference Committee House Education

For the Senate:

For the House:

	YES / NO			YES / NO	
Senator T. Bakke		✓	Chm. L. Meier	✓	
Senator L. Treborg	✓	✓	Rep. S. Johnson	✓	
Senator J. Bakke	✓		Rep. L. Myrten	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>to accept 90417.0304</u>	

MOTION MADE BY: Rep Johnson

SECONDED BY: Rep Myrten

OTE COUNT 4 YES 2 NO _____ ABSENT

Revised 4/1/05

motion fails

#1

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1265 (, as (re)engrossed):

Date: 4-23-09

Your Conference Committee House Education

For the Senate:

For the House:

	YES	NO		YES	NO
Senator T. Flakoll			Chm. L. Meier		
Senator L. Treborg			Rep. D. Johnson		
Senator J. Bakke			Rep. L. Mylter		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>to accept change to amendment</u>	

MOTION MADE BY: Senator Flakoll

SECONDED BY: Senator Treborg

VOTE COUNT YES NO ABSENT

Revised 4/1/05

failed 90417.
the voice 0305
vote from
\$250,000
to
\$125,000

2

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1265 (, as (re)engrossed)

Date: 4-23-09

Your Conference Committee House Education

For the Senate:

For the House:

YES / NO		YES / NO	
Senator T. Flakoll	✓	Chm. L. Meier	✓
Senator L. Treborg	✓	Rep. D. Johnson	✓
Senator J. Bakke	✓	Rep. L. Myrsten	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/H) page(s) 1046 -

✓, and place 1265 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1265 was placed on the Seventh order of business on the calendar.

DATE: 4-23-09

CARRIER: Rep Meier

LC NO. <u>90417.0301</u> of amendment <u>0400</u>
LC NO. _____ of engrossment _____
Emergency clause added or deleted _____
Statement of purpose of amendment _____

MOTION MADE BY: Rep D Johnson

SECONDED BY: Rep Myrsten

OTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1265, as engrossed: Your conference committee (Sens. Flakoll, Freborg, Bakke and Reps. L. Meier, D. Johnson, Myxter) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 1046 and place HB 1265 on the Seventh order.

Engrossed HB 1265 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1265

HB 1265
House Education Committee
January 19, 2009

1

Madam Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Cook Wegner & Wike PLLP in Bismarck. We serve as bond counsel to various entities including school districts. I am appearing this morning in favor of House Bill 1265.

The purpose of HB 1265 is to permit public school districts to use an existing 15 mill tax levy to repay a Qualified Zone Academy Bond.

In 1987, the Legislature adopted by NDCC Section 57-15-17.1. Initially, this section authorized school districts to issue bonds without an election payable from a tax levy of up to 15 mills for the purpose of asbestos removal. Section 57-15-17.1 has subsequently been amended a number of times to permit bonding for other projects, specifically:

- (A) Abatement or removal of mercury and other hazardous substances
- (B) Remodeling required to meet Americans with Disabilities Act specifications
- (C) Remodeling required to meet state fire marshal specifications
- (D) Providing alternative education programs
- (E) Repair or replacement of heating, ventilation or air-conditioning systems

The number of mills has not changed, the limit is still 15 mills.

Section 2 of HB 1265 adds a new category to this list. A new subsection provides that a purpose for which bonds may be issued under NDCC Section 57-15-17.1 is to provide a qualified enchancement under the federal Qualified Zone Academy Bond program.

For the past ten years, Congress has authorized the Qualified Zone Academy Bond, or QZAB, program to encourage school modernization and the development of innovative school programs through public/private partnerships. A QZAB is an interest free loan from a bank to a public school district. A school district may use a QZAB for any one of the following:

- (A) Rehabilitating or repairing school facilities (*new construction is not permitted*)
- (B) Providing equipment
- (C) Developing course materials
- (D) Training teachers and other school personnel

Under the QZAB program, the North Dakota Department of Public Instruction is annually allocated an amount of qualified zone academy bonds which DPI then allocates to individual school districts. In order to qualify for a QZAB, at least 35% of the students must be eligible for free or reduced-cost lunches under the school lunch program. Local banks typically purchase the QZABs. Instead of interest, the bank receives a federal tax credit each year the bond is outstanding.

Nationally, \$400 million is available annually for the QZAB program. This amount is then allocated to each state. North Dakota received \$718,000 for 2006 and 2007. The amounts for

2008 and 2009 will be similar. A state's allocation is based on the population below the poverty level. QZAB projects in North Dakota have ranged from \$50,000 to \$500,000. This means a relatively small tax levy to repay the QZAB. For example, depending on a district's taxable valuation, it might take only 2 mills to repay a \$100,000 QZAB at 0% over 15 years.

Approximately 25 to 30 school districts have used QZAB financing. Please see the two attached newspaper articles regarding QZAB projects for the Wilton School District and the Fairmount School District. Most school districts use lease financing to secure a QZAB, which requires the school board to appropriate the payment out of current revenues on an annual basis. HB 1265 will allow a school district to establish a dedicated revenue source apart from the general fund. A dedicated tax levy also provides security to the bank that purchases the QZAB.

HB 1265 contains a few other miscellaneous changes to NDCC Section 57-15-17.1. First, the term "general obligation" is deleted. General obligation bonds are issued under the provisions of NDCC Chapter 21-03. The bonds issued under NDCC Section 57-15-17.1 are not referenced in Chapter 21-03 and do not follow the procedures set forth in Chapter 21-03. Further, the repayment of bonds issued under NDCC Section 57-15-17.1 is strictly limited to 15 mills. Such bonds are not full faith and credit, or general obligations of the school district. Reference to "general obligation" should simply be deleted.

Currently, the statute authorizes bonds to have a maturity of fifteen years. HB 1265 authorizes bonds issued under Section 57-15-17.1 to have a maturity of twenty years. Tax-back bonds typically have a twenty year maturity, so this change provides consistency. Also, the maturity of a QZAB is set by the US Treasury, and for some QZAB transactions the maturity was sixteen years, so a longer maturity is necessary.

While Section 57-15-17.1 authorizes 15 mills, the mill levy for required remodeling is limited to 5 mills and the mill levy for alternative education programs is limited to 10 mills. HB 1265 provides that the 15 mills may be applied to any of the specified uses. This allows the school board to determine how much of the total allowed tax levy will be dedicated to any one purpose.

HB 1265 deletes language relating to how the tax levy is accounted for. The accounting information is unnecessary detail. School districts are already subject to accounting standards and are audited by the state auditor.

Finally, Section 1 of HB 1265 adds a qualified enhancement under the federal Qualified Zone Academy Bond program to NDCC Section 57-15-14.2. Section 57-15-14.2 authorizes a tax levy for the purposes discussed above, and Section 57-15-17.1 permits bonding against the tax levy.

We ask you to give House Bill 1265 a Do Pass recommendation.

Scott Wegner
Cook Wegner & Wike PLLP
3801 Lockport Street, Suite 1
Bismarck, ND 58503
(701) 255-1008
scottwegner@cwwbondlaw.com

4-18-02

*Same handouts
given to Seniors.*

Wilton folks think out of the box, get better gym

Necessity drove the Wilton School District to be innovative in fixing up its old high school gymnasium.

By working together, taking advantage of government programs

Tribune editorial

and applying sweat equity, the community will have a refurbished gym with new seats, floor

and four locker rooms in August.

Wilton also will have the gym because people didn't give up.

Voters, watching enrollments erode from 296 students to 227 in four years, turned down bond issues to do the work three times. But instead of quitting, Superintendent Les Kramer found different funding sources. The school board also brought the city and park board into the project and increased the potential use of a remodeled gym.

The result was an interest-free federal loan of \$500,000, to be repaid over 14 years. To make a 10 percent match for the loan, 160 volunteers tore out the gym floor and dismantled bleachers. It was work worth \$57,000.

The Wilton community took advantage of all of the assets that they could put their hands on. They found common ground and pursued a common goal. Kramer now calls it the "miracle in Wilton."

People working together can do remarkable things, even miracles. That's a lesson often forgotten and one that the people of Wilton have given us.

— Ken Rogers for the Tribune

Wahpeton Daily
News
Wahpeton, ND
Circ. 3400
From Page:
3
9/14/2008
397123



KATHLEEN LEINEN • DAILY NEWS

Fairmount High School used the 1-to-1 laptop initiative to make sure their entire senior high has a laptop to use this year. Shown here are: Katelyn Campbell, Jade Krause, Keasha Kurtz, Jamie Burlison and Justin Meyer.

107-137-509-88

Fairmount high school students utilize the newest technology

BY KATHLEEN LEINEN • DAILY NEWS

When Fairmount students arrived at school on the opening day of classes, they found each sophomore through senior student had a laptop to use.

Thrilled to keep up with technology, the students and staff are settling into using their new computers.

Mark Reinig, technology coordinator at Fairmount, said each teacher in senior high is utilizing new software and working with the laptops. In his world history class, sophomores were eager to show off their portable computers.

Annalicia Reinig said she uses her laptop for homework.

Justin Meyer said the computers are a great asset to the school and lets them use advanced technology.

"I love to show this off to my friends," said Katelyn Campbell. "They get jealous."

All of their books were downloaded before school opened. If a student is sick for the day, their teacher can send them their missed course work through an email. The school is set up for wireless internet, but in order to use their laptops at home and receive email transmissions, each house needs some type of internet

access. Mark Reinig said it didn't matter if that access was dial-up, DSL or wireless. The laptops are \$1,600 each.

Reinig said the school bought 41 of them for all the secondary teachers and 10th-12th graders. Superintendent Ron Stahlecker said the school is using a bond to pay for the laptops, and he considers the expense a good investment.

The school board agreed when Reinig first proposed buying laptops for the senior high. As far as he knows, Fairmount is one of the few schools across the state to buy laptops for each of their students.

As Reinig worked with his sophomores, it was immediately apparent how the laptops help him in his daily lessons. He opened a chapter on prehistoric man. Each of the students booted up their laptop and he began asking them

County:
Richland

397123-09-14_3001

TESTIMONY IN SUPPORT OF HOUSE BILL 1265

Presented to the House Education Committee
January 19, 2009

My name is James Stewart. I am an attorney with the law firm of Arntson & Stewart, P.C. in Fargo. We represent a number of school districts in North Dakota as bond counsel.

House Bill 1265 amends Sections 57-15-14.2 and 57-15-17.1 of the North Dakota Century Code to provide greater flexibility to school districts to finance essential projects.

Subdivision j of Subsection 1 of Section 57-15-14.2 currently permits school districts to use a special mill levy for the following purposes: asbestos abatement, remodeling required by ADA or the state fire marshal and alternative education programs. The proposed amendment would expand the permitted uses to include projects financed with Qualified Zone Academy Bonds ("QZABs").

QZABs are a special type of bond authorized under Section 1397E of the Internal Revenue Code which provides a federal tax credit to the holder in lieu of interest. QZABs can only be issued by school districts which (i) are located in an empowerment zone or enterprise community, or (ii) expect at least 35% of their students to qualify for free or reduced-cost lunches. There is a limit on the amount of QZABs that may be issued within each state during a calendar year and the QZABs may only be purchased by banks, insurance companies or other financial institutions.

Projects which may be financed by QZABs are limited to:

1. Rehabilitating or repairing public school facilities;
2. Providing equipment;
3. Developing course materials; and
4. Training teachers and other school personnel.

The proposed amendments to Section 57-15-17.1 would allow the fifteen mill levy to be dedicated to the repayment of QZABs in addition to the other purposes currently permitted. The Bill does not authorize any new taxes but extends the allowable term of financing from 15 years to 20 years.

House Bill 1265 will particularly benefit those school districts which are eligible to issue QZABs and will provide greater financing flexibility to all school districts financing essential projects authorized by Section 57-15-17.1. We urge your support for House Bill 1265.

James H. Stewart
Arntson & Stewart, P.C.
51 Broadway, Suite 603
Fargo, ND 58102
(701) 280-0195
jstewart@aspclaw.com

HB 1265
Senate Education Committee
March 10, 2009

Mr. Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Cook Wegner & Wike PLLP in Bismarck. We serve as bond counsel to various entities including school districts.

The purpose of HB 1265 is to permit public school districts to use an existing 15 mill tax levy to repay a Qualified Zone Academy Bond.

In 1987, the Legislature adopted NDCC Section 57-15-17.1. Initially, this section authorized school districts to issue bonds without an election payable from a tax levy of up to 15 mills for the purpose of asbestos removal. Section 57-15-17.1 has subsequently been amended a number of times to permit bonding for other projects, specifically:

- (A) Abatement or removal of mercury and other hazardous substances
- (B) Remodeling required to meet Americans with Disabilities Act specifications
- (C) Remodeling required to meet state fire marshal specifications
- (D) Providing alternative education programs
- (E) Repair or replacement of heating, ventilation or air-conditioning systems

The number of mills has not changed, the limit is still 15 mills.

Section 2 of HB 1265 adds a new category to this list. A new subsection provides that a purpose for which bonds may be issued under NDCC Section 57-15-17.1 is providing a qualified enhancement under the federal Qualified Zone Academy Bond program.

For the past ten years, Congress has authorized the Qualified Zone Academy Bond, or QZAB, program to encourage school modernization and the development of innovative school programs through public/private partnerships. A QZAB is an interest free loan from a bank to a public school district. A school district may use a QZAB for any one of the following:

- (A) Rehabilitating or repairing school facilities (*new construction is not permitted*)
- (B) Providing equipment
- (C) Developing course materials
- (D) Training teachers and other school personnel

Under the QZAB program, the North Dakota Department of Public Instruction is annually allocated an amount of qualified zone academy bonds which DPI then allocates to individual school districts. In order to qualify for a QZAB, at least 35% of the students must be eligible for free or reduced-cost lunches under the school lunch program. Local banks typically purchase the QZABs. Instead of interest, the bank receives a federal tax credit each year the bond is outstanding.

Nationally, \$400 million is available annually for the QZAB program. The American Recovery and Reinvestment Act of 2009 provides an additional \$1.4 billion of QZABs for 2009 and 2010. This amount is then allocated to each state. North Dakota received \$718,000 for 2006 and 2007. North Dakota should receive over \$2 million for 2009 and 2010. A state's

allocation is based on the population below the poverty level. QZAB projects in North Dakota have ranged from \$50,000 to \$500,000. This means a relatively small tax levy to repay the QZAB. For example, depending on a district's taxable valuation, it might take only 2 mills to repay a \$100,000 QZAB at 0% over 15 years.

Approximately 25 to 30 school districts have used QZAB financing. Please see the two attached newspaper articles regarding QZAB projects for the Wilton School District and the Fairmount School District. Most school districts use lease financing to secure a QZAB, which requires the school board to appropriate the payment out of current revenues on an annual basis. HB 1265 will allow a school district to establish a dedicated revenue source apart from the general fund. A dedicated tax levy also provides security to the bank that purchases the QZAB.

HB 1265 contains a few other miscellaneous changes to NDCC Section 57-15-17.1. First, the term "general obligation" is deleted. General obligation bonds are issued under the provisions of NDCC Chapter 21-03. The bonds issued under NDCC Section 57-15-17.1 are not referenced in Chapter 21-03 and do not follow the procedures set forth in Chapter 21-03. Further, the repayment of bonds issued under NDCC Section 57-15-17.1 is strictly limited to 15 mills. Such bonds are not full faith and credit, or general obligations of the school district. Reference to "general obligation" should simply be deleted.

Currently, the statute authorizes bonds to have a maturity of fifteen years. HB 1265 authorizes bonds issued under Section 57-15-17.1 to have a maturity of twenty years. Tax-back bonds typically have a twenty year maturity, so this change provides consistency. Also, the maturity of a QZAB is set by the US Treasury, and for some QZAB transactions the maturity was sixteen years, so a longer maturity is necessary.

While Section 57-15-17.1 authorizes 15 mills for hazardous substance abatement, the mill levy for alternative education programs is limited to 10 mills and the levy is for required remodeling is limited to 5 mills. HB 1265 provides that the 15 mills may be applied to any of the specified uses. This allows the school board to determine how much of the total allowed tax levy will be dedicated to any one purpose.

HB 1265 deletes language relating to how the tax levy is accounted for. The accounting information is unnecessary detail. School districts are already subject to accounting standards and are audited by the state auditor.

Finally, Section 1 of HB 1265 adds a qualified enhancement under the federal Qualified Zone Academy Bond program to NDCC Section 57-15-14.2. Section 57-15-14.2 authorizes a tax levy for the purposes discussed above, and Section 57-15-17.1 permits bonding against the tax levy.

We ask you to give House Bill 1265 a Do Pass recommendation.

Scott Wegner
Cook Wegner & Wike PLLP
3801 Lockport Street, Suite 1
Bismarck, ND 58503
(701) 255-1008
scottwegner@cwwbondlaw.com

TESTIMONY IN SUPPORT OF HOUSE BILL 1265

Presented to the Senate Education Committee
March 10, 2009

My name is James Stewart. I am an attorney with the law firm of Arntson & Stewart, P.C. in Fargo. We represent a number of school districts in North Dakota as bond counsel.

House Bill 1265 amends Sections 57-15-14.2 and 57-15-17.1 of the North Dakota Century Code to provide greater flexibility to school districts to finance essential projects.

Subdivision j of Subsection 1 of Section 57-15-14.2 currently permits school districts to use a special mill levy for the following purposes: asbestos abatement, remodeling required by ADA or the state fire marshal and alternative education programs. The proposed amendment would expand the permitted uses to include projects financed with Qualified Zone Academy Bonds ("QZABs").

QZABs are a special type of bond authorized under Section 1397E of the Internal Revenue Code which provides a federal tax credit to the holder in lieu of interest. QZABs can only be issued by school districts which (i) are located in an empowerment zone or enterprise community, or (ii) expect at least 35% of their students to qualify for free or reduced-cost lunches. There is a limit on the amount of QZABs that may be issued within each state during a calendar year and the QZABs may only be purchased by banks, insurance companies or other financial institutions.

Projects which may be financed by QZABs are limited to:

1. Rehabilitating or repairing public school facilities;
2. Providing equipment;
3. Developing course materials; and
4. Training teachers and other school personnel.

The proposed amendments to Section 57-15-17.1 would allow the fifteen mill levy to be dedicated to the repayment of QZABs in addition to the other purposes currently permitted. The Bill does not authorize any new taxes but extends the allowable term of financing from 15 years to 20 years.

House Bill 1265 will particularly benefit those school districts which are eligible to issue QZABs and will provide greater financing flexibility to all school districts financing essential projects authorized by Section 57-15-17.1. The American Recovery and Reinvestment Act of 2009 includes an additional \$1.4 billion of QZABs in each of 2009 and 2010. House Bill 1265 will enable qualifying school districts to take advantage of this valuable program. We therefore urge your support for House Bill 1265.

James H. Stewart
Arntson & Stewart, P.C.
51 Broadway, Suite 603
Fargo, ND 58102
(701) 280-0195
jstewart@aspclaw.com