

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2080

2001 SENATE EDUCATION

SB 2080

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2080

Senate Education Committee

Conference Committee

Hearing Date 01/15/01

Tape Number	Side A	Side B	Meter #
I	x		0 - 25.4
		x	0 - 3.0
1 (01-17-01)	x		49.0 - end
		x	0 - 7.6
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes:CHAIRMAN FREBORG called the committee to order.

Roll call was taken with all members present.

CHAIRMAN FREBORG called the hearing on SB 2080 which relates to an exemption from the Administrative Agencies Practice Act for the state board for vocational and technical education; and relates to rulemaking authority of the state board for vocational and technical education.

Testimony in support of SB 2080:

RITA WILHELMI, a member of the State Board for Vocational and Technical Education (SBVTE), testified in support of SB 2080. (see attached testimony)

SENATOR KELSH asked if SBVTE had ever used the rulemaking authority given in chapter 28-32. She stated that policies have been established by SBVTE and the rules in 28-32 have agreed with the policies. This could be interpreted as establishing policies out of line.

SENATOR COOK asked if it was the 1997 Session that changes were made which required the SBVTE to establish rules under chapter 28-32. LeaAnn Schneider, AG - atty. for SBVTE,

stated the state board has never adopted rules through 28-32. The 1997 session set requirements for DPI to adopt rules of which SBVTE is not a part. SEN. COOK asked for the difference between a rule and a policy and what effect it has. She stated it is important to know if a rule is passed pursuant to 28-32. This is from the Administrative Agency Practices Act, which is the formal rulemaking process. This requires drafting the rules, sending out the notices, having a hearing, getting feedback in written form, commenting on the feedback in documented form, getting approval from the AG office as to the draft rules, file with the Legislative Council, and the following month the rules would become effective. In the case of SBVTE they go through the process of having feedback at their meetings. SEN. CHRISTENSON asked her to discuss the ramifications of a group that has exempted themselves from this policy. The significance is that you don't have to go through the formal process of rule making. Policies are not filed with the Legislative Council, and are kept in house with the agencies.

SENATOR COOK asked LEAANN SCHNEIDER to discuss any rules involved in notification of third party. The Board is not governed under the rules in 28-32, but they do give notice regularly to the Voc/Ed director and anyone interested. SENATOR COOK asked if there was a danger of someone who would be affected by the policies not being given notice. He feels it is important for the legislature to know what the process is for notification of third parties. The Board has authority under NDCC to adopt rules but has chosen not to but would rather make policies. She knows of no third party who is dissatisfied. The main purpose of the rules is to remove the process of 28-32 ruling which is not used by the Board.

WAYNE KUTZER, State Director of SBVTE, stated the information about Board meetings is sent to all state agency heads, posted on their web site, and sent to all vocational directors. The biggest issue they have is in funding and budgetary concerns. The Board needs to have

flexibility. SENATOR KELSH asked what the main reason is for the exemption. He stated the main issue is funding and the ability to deal with the funding rates on an annual basis.

SENATOR KELSH asked if the Board would be required to do anything different if this bill does not pass. LEA ANN SCHNEIDER replied the Board has been advised to follow the 28-32 rules when there are third parties involved. SEN. COOK asked if there is any way a school district can challenge a rule or policy of the Board. She stated in some instances the Board is required to make rules and those are under section 28-32. She also knows of no time where they have been challenged and feels this shows their willingness to work with third parties.

No Opposition.

Hearing Closed.

SENATOR COOK moved a DO NOT PASS on SB 2080. SENATOR FLAKELL seconded.

Roll Call Vote: 2 YES. 5 NO. 0 Absent. Motion Failed.

01-15-01 Tape 1, Side B, 0 - 3.0

LEA ANN SCHNEIDER discussed what is in law (NDCC) as to what the duties of the Board are. She feels the law suggests the Board should have rules (sec. 28-32) governing area Vo/Tech centers. The law states the Board has power and duty over post secondary institutions and therefore should have 28-32 rules over them. She does have concerns on the enforcement of these.

Bill to be held for further discussion.

01-17-01 Tape 1, Side A, 49.0 - end; Side B, 0 - 7.6.

SENATOR KELSH presented proposed amendments to SB 2080. (see attached proposed amendments). He also presented a list of post-secondary institutions. (see attached). The

1-17-01

amendments do not remove the rulemaking authority requirements from post secondary educational institutions. Present law gives the vocational board authority to hold 28-32 hearings on these institutions listed. He feels it is important to put post-secondary schools back under the authority of 28-32.

SENATOR KELSH moved the amendments. Seconded by SENATOR CHRISTENSON.

Discussion followed on the amendments.

ROLL CALL VOTE: 7 Yes. 0 No. 0 Absent. Motion Carried.

SENATOR WANZEK moved a DO PASS AS AMENDED. Seconded by SENATOR KELSH.

SENATOR COOK stated he wants to be sure third parties have due process for being heard and is not sure this bill gives that assurance. SENATOR KELSH stated the board meets every month and those parties who are interested can attend and voice their concerns. More discussion.

Roll Call Vote: 5 Yes. 2 No. 0 Absent. Motion Carried.

Carrier: SENATOR KELSH

FISCAL NOTE
 Requested by Legislative Council
 12/11/2000

Bill/Resolution No.: SS 2080

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivisions.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There is no Fiscal impact on this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Wayne Kutzer	Agency:	State Board for Vocational Technical Education
Phone Number:	328 2259	Date Prepared:	01/09/2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2080

Page 2, line 6, remove the overstrike over "~~rules~~"

Page 2, line 7, remove the overstrike over "and"

Page 3, line 29, remove the overstrike over "rules" remove the overstrike over "~~promulgated~~", and remove "policies adopted"

Page 3, line 30, remove the overstrike over "~~Promulgate~~", remove "Adopt", remove the overstrike over "rules", remove "policies", and overstrike "and procedures"

Page 4, line 12, remove the overstrike over "rules", remove "policies", and overstrike "adopted" and insert immediately thereafter "promulgated"

Page 4, line 17, remove the overstrike over "rules"

Page 4, line 18, remove "policies"

Page 4, line 22, remove the overstrike over "rules" and remove "policies"

Page 5, line 3, after "to" insert "postsecondary educational institutions under chapter 15-20.4 and"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2080: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2080 was placed on the Sixth order on the calendar.

Page 2, line 6, remove the overstrike over "~~rules~~"

Page 2, line 7, remove the overstrike over "~~and~~"

Page 3, line 29, remove the overstrike over "~~rules~~" and remove "policies"

Page 3, line 30, remove the overstrike over "~~rules~~", remove "policies", and overstrike "and procedures"

Page 4, line 12, remove the overstrike over "~~rules~~" and remove "policies"

Page 4, line 17, remove the overstrike over "~~rules~~"

Page 4, line 18, remove "policies"

Page 4, line 22, remove the overstrike over "~~rules~~" and remove "policies"

Page 5, line 3, after "to" insert "postsecondary educational institutions under chapter 15-20.4 and"

Renumber accordingly

2001 HOUSE EDUCATION

SB 2080

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2080

House Education Committee

Conference Committee

Hearing Date 03/13/01

Tape Number	Side A	Side B	Meter #
#1	X		120 to 1817
#1		X	3655 to 4170
Committee Clerk Signature <i>[Handwritten Signature]</i>			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsdor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on SB2080.

Wayne Kutzer: (State Board for Vocational and Technical Education) *Please refer to written testimony*

Rep. Nelson: How do you allow the private citizens of the state be able to participate in this?

Kutzer: The interested third parties are vocational programs. All those directors are served by school boards, and through that process of the director being notified, in turn, the school board and public are notified anytime that there needs to be something addressed in terms of policy set. In terms of funding.

Rep. Hawken: It's more like a school board in that it sets policy, would that be an accurate statement?

Kutzer: Yes.

Rep. Hawken: So, the rulemaking authority actually, we don't want to set unrealistic rules that would affect the liability.

Kutzer: Yes. The chief reason we started the process was in terms of funding rates, so we could have the ability to set those rates.

Rep. Brusegaard: You've already set rates in the past, why do you need to be exempt now?

Kutzer: Maybe our attorney can answer that more clearly, but since the legislation has been unclear, our attorney has advised us that we needed to establish rules.

Rep. Nottestad: Would this have anything to do with the fact that DPI has been asked to go provide ones that are rulemaking processes as well?

Kutzer: No, not at all.

Leann Schneider: (Legal Council for the State Board for Vocational and Technical Education)

The law isn't very clear as to when the State Board should make a rule. There are six areas. The first area is for persons engaged in the training in vocational education teachers. State law requires that the state board have rules on that subject, but the board has never delved into that area, it's the university system that really deals with that and has never had rules in that area, and I think removing rulemaking there would just make sense, because it's not something the board does. The second area is area vocational and technology centers. The law appears to require rulemaking for the establishment and dissolution of area vocational and technology centers.

Apparently, in the 70s when these area voc and tech centers were first created and there has been

no created and maybe one dissolution since then. The board has never had rules regarding creation or dissolution or anything relating to that. The third area is in the area of policy and rules for post secondary education. Approval of post secondary education institutions to operate in this state. The original bill in the Senate had exempted the state board from all rulemaking, the Senate was concerned about that rulemaking for post secondary institutions that it be done through rulemaking, so the bill you have before you requires rulemaking in that area. The other three areas which the law doesn't address at all really is for distribution of funding, cooperative arrangement between schools for vocational education services and teacher certification requirements. There's nothing in the law that requires rulemaking in that area at all, but I have consistently advised state boards that when they are implementing laws that affect third parties, that they should be doing it through the rulemaking process, otherwise we are trying to enforce those rules and it's a question whether they're effective, whether they have effective law, so I advise the board that even their funding process should be done through rulemaking. The question about DPI. State Board for Vocational and Technical Education is a separate agency than DPI, so all that requirements for DPI rulemaking doesn't apply to SBVTE.

Rep. Nottestad: This bill asks that the certification for voc tech not be involved in rulemaking. Can you give me a good reason why one should be and one shouldn't be?

Schneider: That's true, and I'm not the best person to go into that, because I'm not familiar with the details.

Rep. Nelson: How many boards that you're aware of that are exempt from the rules process?

Schneider: They're specifically listed in 20-32-01.

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House Education Committee
Bill/Resolution Number SB2080
Hearing Date 03/13/01

Rep. Haas: If we leave out post secondary educational institutions, would this bill cause the state board do anything different than it has been doing?

Schneider: Yes, what it would do that it has not been doing is go through the 28-32 ruling process the policy they currently have for when they approve post secondary educational institutions will need to go through the 28-32 process.

Rep. Haas: But in other areas of board policy and administrative...whatever the state board does, things essentially would be done that is being done now.

Schneider: Yes.

Chairman Kelsch: We will now close the hearing on SB2080.

Chairman Kelsch: We will take up SB2080. What are the wishes of the committee?

Rep. Hawken: I move a DO PASS.

Rep. Meier: Second.

Chairman Kelsch: Committee discussion.

The motion of DO PASS passes with 12 YAY 2 NAY 1 ABSENT

Floor Assignment: Rep. Nelson

Date: 3/13/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2080

House House Education Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Hawken Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	✓		Rep. Howard Gurnho	✓	
V. Chairman-Thomas T. Brusegaard	✓		Rep. Lyle Hanson	✓	
Rep. Larry Bellew		✓	Rep. Bob Hunsdor	✓	
Rep. C.B. Haas	✓		Rep. Phillip Mueller	✓	
Rep. Kathy Hawken	✓		Rep. Dorvan Solberg	✓	
Rep. Dennis E. Johnson	✓				
Rep. Lisa Meier	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad		✓			
Rep. Laurel Thoreson					

Total (Yes) 12 No 2

Absent 1

Floor Assignment Rep. Nelson

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

REPORT OF STANDING COMMITTEE (410)
March 13, 2001 12:28 p.m.

Module No: HR-43-5443
Carrier: Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

**SB 2080, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends
NO PASS (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2080
was placed on the Fourteenth order on the calendar.**

2001 TESTIMONY

SB 2080

TESTIMONY ON SB2080
Monday, January 15, 2001
Prepared by Rita Wilhelmi

Chairman Freborg and members of the committee, my name is Rita Wilhelmi. I am a member of the State Board for Vocational and Technical Education (SBVTE).

The State Board for Vocational and Technical Education asks to be exempted from chapter 28-32 rulemaking requirements.

Our Board has a procedure in place that provides an opportunity for a third party to make and submit comments, before the SBVTE, on any matters including funding, cooperative arrangements, teacher certification, and private postsecondary institutions. We have never found it necessary to adopt rules under chapter 28-32.

The SBVTE is a nine member board, six members are appointed by the governor and three are state officers. The six members are appointed from each of the six judicial districts in the state, two of them must be members of the North Dakota School Boards Association. The three state officers are the superintendent of public instruction, the commissioner of higher education or designee, and the executive director of job service or designee.

The SBVTE already follows the procedures and process that ensures that an affected third party will have an opportunity to provide comment on any matter. We have regularly scheduled monthly meetings that are scheduled a year in advance, notices and agendas of every meeting are sent out to all vocational directors, interested parties, and the media.

As an example, our board establishes funding rates to reimburse schools and each biennium and sometimes annually, we need to adjust those rates in order to stay within our legislative appropriation. When we put together draft rules that the SBVTE the ability to adjust funding rates, we were told by our attorney that, in her opinion, the rules would need to be more specific.

Another area is cooperative agreements. Cooperative agreement policies set the funding rates for schools and are approved by the board on an annual basis, at the monthly board meetings again with notices, agendas, and allowances for public comment at those meetings.

Two other areas are in teacher certification and private postsecondary institutions. In either area, policies are set by the board at our monthly meetings. We have never had any concerns brought forward as to either the policies or the procedure in place to set those policies.

On behalf of the State Board for Vocational Technical Education I ask that you do exempt our board from rulemaking authority.

**POSTSECONDARY EDUCATIONAL INSTITUTIONS
AUTHORIZED TO OPERATE**
in the State of North Dakota by the
North Dakota State Board for Vocational and Technical Education
School Year 2000-2001

PRIVATE/POSTSECONDARY INSTITUTIONS

AAKER'S BUSINESS COLLEGE
4012 19th Ave. S.W.
Fargo, ND 58103

COMPUTERLAND OF BISMARCK
1726 East Main Avenue
Bismarck, ND 58501

GLOBAL TECHNOLOGY INC.
928 17th St. N.E.
P.O. Box 594
MANDAN, ND 58554-0594

CENTRAL MICHIGAN UNIVERSITY
College of Extended Learning
131 Rowe Hall
Mount Pleasant, MI 48859-0001

EMBRY-RIDDLE AERONAUTICAL
UNIVERSITY
College of Career Education
600 South Clyde Morris Boulevard
Daytona Beach, FL 32114-3900

GALLAUDET UNIVERSITY
Extension Programs
College for Continuing Education
Kendall Green
800 Florida Avenue NE
Washington, DC 20002-3695

PARK UNIVERSITY
School for Extended Learning
8700 NW River Park Drive
P.O. Box 68
Parkville, MO 64152-3795

SAIN~~T~~ JOSEPH'S COLLEGE
Distance Education Program
278 White's Bridge Road
Standish, ME 04084-5263

WESTERN SEMINARY
Department of External Studies
5511 SE Hawthorne Boulevard
Portland, OR 97215-3399

INSTITUTE OF MYOTHERAPEUTIC STUDIES
1303 East Central Avenue
Bismarck, ND 58501

THE PROFESSIONAL INSTITUTE OF
MASSAGE THERAPY
4235 13TH Avenue, SW
PO Box 227
Fargo, ND 58103

SISTER ROSALIND GEFRE SCHOOL OF
PROFESSIONAL MASSAGE
1519 1ST AVE SE #A
Fargo, ND 58103-1501

TESTIMONY ON SB2080
Prepared for the House Education Committee
Tuesday, March 13, 2001
Prepared by Dr. Charles Brickner

Madam Chair and members of the committee, my name is Charles Brickner. I am chairman of the State Board for Vocational and Technical Education.

SB2080 as amended by the Senate asks that the State Board for Vocational and Technical Education (State Board) be exempted from chapter 28-32 rulemaking requirements" except with respect to postsecondary educational institutions". That amendment is on page 5, section 11 lines 3 through 5.

The State Board is a nine-member board, six members are appointed by the governor and three are state officers. The six members are appointed from each of the six judicial districts in the state, two of them must be members of the North Dakota School Boards Association. The three state officers are the superintendent of public instruction, the commissioner of higher education or designee, and the executive director of job service or designee.

The State Board has always been receptive to public comment and follows a procedure and process that ensures that an affected third party will have an opportunity to provide comment on any matter including funding, cooperative arrangements, teacher certification, and private postsecondary institutions. We have regularly scheduled monthly meetings the third Monday of every month. They are scheduled a year in advance and notices and agendas of every meeting are sent out to all vocational directors, any interested parties, all state agency heads, and the media. Because we follow this process we feel that we are allowing all comments to be made and that we are more

responsive and fiscally responsible to all parties than if we went through the rule making process. The century code that governs our board is not very clear regarding when rulemaking is required. Also, in those areas where rulemaking appears to be required, it also seems not to be necessary, except in the area of private postsecondary institutions. Our attorney is here and will provide further comment on the state laws regarding rulemaking by the State Board. The State Board has never adopted rules under chapter 28-32.

Our board establishes funding rates to reimburse schools, and each biennium and sometimes annually we need to adjust those rates in order to stay within our legislative appropriation. Drafting rules that included funding rates would dramatically affect how our board could manage the agency. When we tried to put together draft rules "that gave the State Board the ability to adjust funding rates", our attorney told us that, in her opinion, the rules would need to be specific as to the rates. This would severely limit our responsiveness to financial affairs of the agency. We do discuss funding rates at our board meetings and we do have a room full of interested parties who provide comment on those rates.

Another area is cooperative arrangements. Cooperative arrangement policies again set the funding rates for schools and are approved by the board on an annual basis at the monthly board meetings, again with notices, agendas, and allowances for public comment at those meetings.

Another area is teacher certification. In this area, the board at our monthly meetings accepts public comment and sets policies. Again notices of our meeting are sent out to all vocational directors, any interested parties, all state agency heads, and the

media. We have never had any concerns raised as to either the policies regarding teacher certification or the procedure in place to set those policies.

Two other areas are the qualifications of vocational teacher educators and area vocational and technology centers. The State Board has never established policies in either of these areas. The qualifications for vocational teacher educators are determined by the teacher education programs at those universities. The six area vocational and technology centers were established in the early 1970s. Again, we have never needed any rules regarding the operation of the area centers.

On behalf of the State Board for Vocational Technical Education I ask that you do pass Engrossed SB2080.

I would be glad to answer any questions.