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2418

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2003 SENATE EDUCATION

SB 2418

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2418

Senate Education Committee

Conference Committee

Hearing Date 2-17-03

Tape Number	Side A	Side B	Meter #
1	x		19.1 - end
1		x	0 - 32.1
Committee Clerk Signature <i>Deanna Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

CHAIRMAN FREBORG opened the hearing on SB 2418 which creates an investigating committee regarding implementation of the No Child Left Behind Act of 2001; and to declare an emergency.

Testimony in support of SB 2418:

SENATOR COOK, Dist. 34, stated his support for the bill and asked for the support of the committee. He stated NCLB has created a high level of anxiety. We need to put the facts in place and allow ND to implement NCLB in a way that is best for ND. We need to replace all the anxiety this has caused with trust, replace the confusion with facts, and hopefully that is what this bill will accomplish. This brings everyone involved in the implementation of NCLB to the table. It bring all discussions and decisions to an open and public forum. This will build trust and trust builds ownership and ownership builds success. ND has long been known for its quality K-12

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Senate Education Committee
Bill/Resolution Number SB 2418
Hearing Date 2-17-03

education. He would urge passage of SB 2418 and would urge ND move forward and implement NCLB in a manner that is right for ND in a manner that raises the standard even higher. He presented to the committee a copy of a resolution that has been introduced to Congress by our ND Senators on the same issue and with the same concerns.

SENATOR FLAKOLL stated some teachers asked him if they could be on this committee and if not, how would their voices be heard. SENATOR COOK stated that everyone will be able to have input with an open forum.

SENATOR CHRISTENSON asked if this bill is going against federal regulations. SENATOR COOK does not think so, as we are implementing state regulations through this committee that is created with this bill. He further thinks NCLB has given flexibility to the states, but the funding is at issue. The state still has to decide policy that will affect education in ND.

REPRESENTATIVE R KELSCH, Dist. 34, stated the House sees implementing NCLB but to do it conservatively, not going beyond the Act or the federal regulations. The legislature will put into ND statute (the state law) as much as needed to comply with NCLB. We want the minimum guidelines for compliance. We do not want this Act to be onerous on administrators and boards. She believes we already have a quality education available for every child in ND, but we need to comply with this Act at a minimum level.

REPRESENTATIVE MONSON, Dist. 10, stated NCLB has caused much anxiety among superintendents and administrators of schools. We need to try to get flexibility available and not go beyond what we have to.

SENATOR FLAKOLL asked if this is analogous to the budget section which meets during the interim. SENATOR MONSON stated it is somewhat analogous since the budget committee

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meets to discuss budget issues during the interim, and this committee would meet to discuss policy issues that are coming through with NCLB.

REP. PHIL MUELLER, Dist. 24, also stated his support for the bill. He stated we will see changes and some alterations on NCLB which will give us a voice from ND in the direction the changes will make.

BEV NIELSON, ND School Board Assn., stated that NCLB is extensive and pervasive.

Everything from who will teach ND students to mandating that one test on one day is the sole assessment of a student. They want things to be data driven. Where is the data that proves that every child that is the same age learns in the same way at the same time to the same level of proficiency. Where is the data that proves that one single assessment given on a given day really proves everything a child knows and is able to do. They believe it behooves the Legislature to be cautious and thorough in studying the mandates and the implications of rules that are to follow.

The legislature is the policy making board of the state as far as K - 12 education is concerned.

The federal government has intervened, and because of funding that every state needs because of the economy the way it is, are driving their agenda. At the very least, NDSBA thinks the legislature should have a committee which evaluates on an ongoing basis the rules that are being applied in ND education because of NCLB. It will be a lot of work, but it needs to be done.

SENATOR COOK asked how involved NDSBA has been with NCLB. MS. NIELSON stated their group was not involved in setting of standards which was only teachers. They have only now become involved now and during the interim.

MARY WAHL, ND Council of Educational Leaders, stated their support for the bill. This committee will allow for public hearings on any impending rule or guidelines much as our

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legislature operates with their hearings. This process will allow for all concerns to be aired.

This allows ND to proceed with caution. They feels this is very necessary.

KENT HJELMSTAD, Mandan, President NDASA, presented testimony in support of the bill.

(see attached testimony).

SENATOR COOK asked if he thought we need to know what is meant by "flexibility". MR.

HJELMSTAD stated that is true and the Act seems to have more than originally thought.

GAIL WOLD, Beulah, Vice President NDAESP, presented testimony in support of the bill. (see attached testimony).

JOE WESTBY, Ex. Director of NDEA, stated their support. NCLB is here to stay. They hope the legislature will improve the flexibility of NCLB. It would put additional pressure on our highly qualified teachers. He thinks the committee should have educators on it.

MAX LAIRD, Grand Forks teacher, would encourage the committee to change "investigating committee" to "commission". He feels a fiscal note is needed to allow reimbursement which will allow professionals to be included. There are many sophisticated and complex issues involved.

Testimony in opposition to SB 2418:

DR. WAYNE SANSTEAD, Supt. of DPI, has many concerns with this bill.

Subsection 1. He feels "investigating committee" has overtones, and would prefer "commission".

Subsection 3. He considers a subpoena an insult and thinks this section has political overtones.

Subsection 4. He feels there is not a need for a committee. DPI has been able to work with the legislature and the National Board of Education.

Subsection 5. He feels this is a positive move

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Subsection 6. He feels this places the state in jeopardy of federal funds. It doesn't say "state" guidelines.

He feels there are constitutional questions involved. He presented a letter he had sent to the Attorney General asking for clarification on several issues. (see attached) He will fight to protect "separation of powers" doctrine. He concurs there is concern and anxiety on NCLB. He feels we need to keep ND's standard high it's achievement high and he feels it could be higher. He feels AYP (Annual Yearly Progress) is absolutely necessary. He feels this bill will set ND back in its quality education. He feels the bill suggests DPI hasn't provided all the information available on NCLB. He stated it is the desire of DPI to work with all in implementing NCLB. He welcomes continuing dialog, but feels it is in the hands of the Feds. He further feels DPI already has the authority to do what this bill would have a committee do.

SENATOR FLAKOLL asked if it is DPI's responsibility, why do we need any legislative bills dealing with NCLB. DR. SANSTEAD feels the legislature and the department need to be partners.

SENATOR COOK asked if the ND legislature has the right to not implement NCLB by the constitution. DR. SANSTEAD stated that federal funding is contingent on implementation.

SENATOR COOK asked if he was saying the legislature should have no say. DR. SANSTEAD replied there are some parts of NCLB that aren't applicable to DPI. SENATOR COOK stated that in subsection 6, it is implied that the reference to rule or guideline is a "state" rule or guideline. He asked what rules and regulations that are going to be implemented regarding NCLB should the legislature not be involved in. DR. SANSTEAD stated that the management and implementation rest with the FDE (Federal Dept. of Education) and by that the assurances

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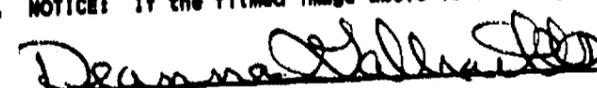
that he is the person who signs off on the assurances, declarations, and certifications that this state is eligible for federal funding that accompanies the implementation of the law. He is the person who will be responsible for indicating that to the federal gov't. and he is the person who the Feds will take after if they feel ND has been errant in that regard. There is the difference in the state and federal roles.

SENATOR COOK stated that his motive is to make NCLB a successful program in ND. He asked if Dr. Sanstead had any better idea as to implementing this program in ND than what this bill is saying which is to bring all concerned entities together to work through this for the best interest of ND's students. He would think that the department would welcome input from the different parties involved as we try to put forth this program in ND.

DR. SANSTEAD stated he welcomes input from all. When he visited with Title I officials, they indicated he is in charge and is the one responsible if this legislation is passed. He further stated his department has given accurate responses to the legislature and the citizens of North Dakota when asked. He further stated that he would fight to protect the separation of powers and the constitutional provisions of his office.

Hearing no further testimony, the hearing was closed on SB 2418.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2418

Senate Education Committee

Conference Committee

Hearing Date 2-18-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 10.6

Committee Clerk Signature *Doreen Johnson*

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all

(6) members present.

SENATOR COOK stated he is having an amendment drafted that addresses one small challenge he sees in the bill. (The amendment will merge subsection 5 and 6 and will remove the word "approved" in subsection 6. By merging the two subsections it will require that all guidelines or rules that are introduced have to come before the committee for review). But the "separation of powers" will probably require that "approved" be removed. He feels that NCLB is an important piece of legislation and there is a time frame involved. Rather than fight over this one issue, this is a workable compromise. If a guideline or rule is established that is of concern, the legislature can address the issue during the next session. Much of NCLB is to take effect in the 2005 - 2006 school year.

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SENATOR CHRISTENSON asked if the committee would be a traveling committee and meet in different cities around the state? SENATOR COOK sees that as viable. He visualizes the committee as a way for all parties to get together and voice their views.

SENATOR LEE asked if we should change "investigating committee" to "commission".

SENATOR COOK stated he feels lawmakers need to be able to make decisions and need to have a place to go to get needed information. He stated he has received many e-mails on this bill.

SENATOR COOK moved to adopt the amendment as stated. Seconded by SENATOR FLAKOLL.

Roll Call Vote: 6 YES. 0 NO. 0 Absent. Amendment Adopted.

Senator Cook will make sure all members have the opportunity to view the amendment when it is in the correct form.

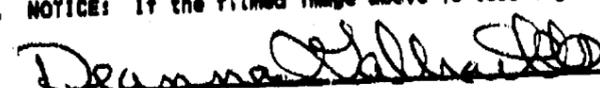
SENATOR TAYLOR asked if this will clear up the constitutional questions. SENATOR COOK stated yes. He feels the rest of the bill dealing with authority is already our right as individuals.

SENATOR COOK moved a DO PASS as Amended. Seconded by SENATOR CHRISTENSON.

Roll Call Vote: 6 YES. 0 NO. 0 Absent.

Carrier: SENATOR COOK

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30787.0201
Title.0300

Prepared by the Legislative Council staff for
Senator Cook
February 18, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2418

Page 2, line 1, remove "The committee shall hold public hearings on any pending rule or guideline prior to"

Page 2, remove line 2

Page 2, line 3, remove "6."

Page 2, line 4, remove "approved by" and after "committee" insert "holds a public hearing regarding the rule or guideline"

Page 2, line 5, replace "7." with "6."

Renumber accordingly

Page No. 1

30787.0201

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REPORT OF STANDING COMMITTEE (410)
February 19, 2003 8:07 a.m.

Module No: SR-32-3209
Carrier: Cook
Insert LC: 30787.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2418: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEARS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2418 was placed on the Sixth order on the calendar.

Page 2, line 1, remove "The committee shall hold public hearings on any pending rule or guideline prior to"

Page 2, remove line 2

Page 2, line 3, remove "6."

Page 2, line 4, remove "approved by" and after "committee" insert "holds a public hearing regarding the rule or guideline"

Page 2, line 5, replace "7." with "6."

Renumber accordingly

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2003 HOUSE EDUCATION

SB 2418

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2418

House Education Committee

Conference Committee

Hearing Date 3-18-03

Tape Number	Side A	Side B	Meter #
1	x		1780-end
1		x	00-end

Committee Clerk Signature *Rita Beckner*

Minutes:

Chairman Kelsch: we will open the hearing on SB 2418, the clerk will read the bill.

Senator Cook: I'm here to ask for your favorable support to SB 2418. I don't think I need to tell you why I'm introducing this bill, think we all know the problems that this bill is trying to address. From the start of this session we have all been involved with many conversations and discussions and much legislation regarding NO Child Left Behind (NCLB). We have listened to much testimony that clearly shows the level of anxiety that surrounds this issue. I believe we need to move forward in a manner that will allow North Dakota to implement NCLB, but do it in a manner that is best for North Dakota, we need to replace anxiety with trust, replace misinformation or confusion with facts, and I believe this bill will allow that to happen. Many have referred to this legislation as a sigh of relief bill. Change is never easy, but there are ways to do it right, SB 2418 will bring to the table all the players involved with NCLB that would be teachers, administrators, school board members, DPI, legislators and parents as they should

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desire. It brings all discussions and decisions to an open forum and allows for an exchange for ideas and concerns, trust builds ownership, and ownership builds success. ND has set the standard for quality education we tend to be the envy of many of our neighboring states. We should expect no less in the manner of which we implement NCLB I would urge a Do Pass, and urge us all to look forward to implement NCLB and do it in a manner that is right for ND.

Representative Herbel: there is no fiscal note for this piece of the bill.

Senator Cook: there is no fiscal note and the committee expenses that concur with this will be in the legislative appropriation.

Representative Mueller: we just passed 2414 out of the house, can you compare in contrast?

Senator Cook: SB 2414 basically tag or ear marked all NCLB legislation I think.

Representative Kelsch: it was more of that DPI had to report any new information that they received on NCLB.

Senator Cook: the difference is when we go home we are going to have in place considerable legislation enabling legislation alive to implement NCLB there is going to be many decisions that are going to be made to process of rules etc. the intent of 2418 is to bring that process to the table to allow for review and open discussions on any and all of those rules.

Representative Solberg: on line 17 and 18, does any person include anyone on the education committee and so on?

Senator Cook: the committee as a whole by majority vote, could issue a subpoena and the subpoena will take them to any person the committee believes can assist in being the committees objectives. I would hope that would not be necessary, but I think it is a tool there that brings forth the trust, it would take a vote of the majority of the committee to issue the subpoena and it

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can be issued to any person.

Representative Hawken: this committee would consist of 6 members of the Senate and 7 members of the House, that would be your entire education committee, right?

Senator Cook: right now we have 6 members of the Senate education Committee, and the house would deserve 1 more.

Representative Nelson: we currently have a committee a administrative rules committee, and that seems to me to have something to do with the implementation of this legislation, 2 questions, 1 do you agree with the administrative rules process would be applicable to new policy by the department and why would this be a notable exception, that committee review?

Senator Cook: yes, they are similar I think the importance here of a special committee is number 1 made up of people who serve on the education committees, this issue needs to be focused by people who are experience on education, and number 2 it would be just NCLB a very important issue to the state of North Dakota, I think as we move forward, we bring that to the table, so we can do it correctly.

Representative Nelson: that committee is set up of several members of each of the legislative committees so there is a broad spectrum of perspectives that enter into that.

Representative Kelsch: can you tell me who is on there from our education committee other than yourself?

Representative Nelson: Senator Freborg.

Representative Kelsch: we know how complicated the NCLB Act has been and how encompassing it is and how massive the legislation piece is and the administrative rules committee is covering a more broad perspective of issues, and I think this committee because it is

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so vital we want to make sure it is enacted correctly, I think the focus of the committee is the NCLB and looking at the administrative rules.

Representative Cook: do you have a sense of how often the group would have to meet?

Senator Cook: no I do not, I can't look into a crystal ball and see how complicated this is going to be the importance is as often as it needs to meet, and hopefully when the job is done, the committee is done and is dissolved.

Representative Sitte: I want to commend Senator Cook on this bill as well as our Chairman.

Representative Herbel: is there a time frame who long this committee will be established and if there are appointments to this committee on either side of the chambers, can those people if they decide not to run, can they still stay on the committee?

Senator Cook: the L.C. shall appointed the committee and this committee shall report to the next Legislative Assembly and right there would be the essence of what you are asking.

Representative Hunsakor: what would your thoughts be if the legislative body decides this is a important bill here and they would pass it along the word investigating would be replaced with Legislative review what are your thoughts on that and my second question is on lines 16, 17, 18 your thoughts on do we need that strong of language to accomplish the purpose that this bill is intending to do alluding to the subpoena?

Senator Cook: this actual concept came as we as the Senate Education Committee were deliberating on 2065 and trying to find a way to pass that bill, which is required on NCLB on standards and assessments, and move forward with some knowledge of what is was going to do, this is some rich history in legislative policy for these particular types of committees it is very seldom abused, but it has been abused and there has been some need for it. There are

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circumstances that are very unique but also very delicate and important, and I do believe that implementing NCLB fits into those situations that is why I chose to go this way and that's why I still believe this is important that we have it this way. I think you can change the word investigating to select and maybe accomplish the same thing provided you leave subsection 3 in the bill regarding the need for section 3 if you take a look at what's happen already with NCLB, and maybe we have ourselves behind in the game of implementing this, because of the rumors and confusion that is out there, we as a body have yet to pass a piece of legislation to the Governor or at least at that time, that has anything to do with NCLB. We are the ones that should be responsible for the education of North Dakota, we have got to get to a point where we have trust, and that's the point I'm trying to make, trust is what will make this successful.

Representative Williams: Section 3 is a gray area, has that been used before in any type of committee?

Senator Cook: since 1972, the issue of being able to issue subpoenas has been addressed maybe 3 times, and in varying degrees and in each case they were unique.

Representative Mueller: on the second page, lines 1-3, can you elaborate on what you had in mind with that?

Senator Cook: NCLB, we have some areas out there that cuts corners, its all got to go through the process we are going to go home with some legislation that's going to follow some rules, the rules that go before this committee and that's the opportunity for the people that are affected by these rules to stand up and say, here are my concerns, here is how they effect me, we have no authority to stop them from being implemented, but we may see something there that maybe during the next session there should be a piece of legislation that redefines this particular rule.

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Representative Hunskor: how far can the punishment go, I see some gray areas here, I'm fearful of it.

Senator Cook: I don't know why this committee would subpoena you, number 2, the purpose of the subpoenas is not to implement a penalty or punishment on somebody, they don't have that authority, the purpose of the subpoena is to get information.

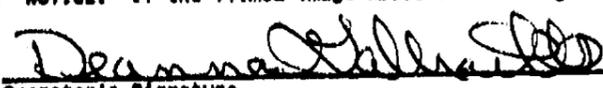
Representative Hawken: why wouldn't a interm committee be able to do everything with this?

Senator Cook: I do believe you can give the interm committee the powers in section 3 I do believe you can do that with legislation.

Bev Nielson, School Board Association: we are in support of SB 2418, most of the reasons were answered in questioning. We believe that NCLB is a large enough issue to be focus in independent of other education interim committee issues. It's critical that DPI, the Legislature, Teachers, School Boards and other interest parties are all on the same page. There is perhaps a feeling that we were mislead, and that's a critical difference.

Joe Westby, North Dakota Education Association: we supported 2418 in the Senate and we support it here, I do think you can give some consideration in softening some of the impact of this I don't know if investigating is the right word for this legislative oversight, or some other name perhaps, I do think most people if they are requested to present testimony to this committee would do so with the best intentions as possible, and I'm not sure that subpoenas are necessary to accomplish that. Our organization has been involved with NCLB prior to its enactment we were instrumentally in modifying the bill to some degree so that it became less odorous then started out when this bill was discussed at our 9 state Midwest regional meeting of president and directors of the state associations, in Sept. or Oct. prior to the final enactment of the bill we asked

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our lobbyist to go back and try and kill it, that didn't happen and there were a number of amendments that were put on the bill to make it a little more livable.

Representative Williams: this simply states what Superintendents should do, is this the committee in your mind be the committee that would handle NCLB this would replace the information in 2414 this relates to a committee. Where would you for see a subpoena being used and why?

Joe Westby: I think answering the later question first, I don't see a need for a subpoena, I think if I was requested to supply information to a committee I would be there, I don't think it should be necessary to subpoena anyone who might information relative to NCLB or any other issue that any other committee might request. Your first question, would this be the committee that would deal with what's in SB 2414, perhaps so.

Representative Boucher: I do support the concept and the idea that we really need to pay careful attention and to actually try to get a handle and understand what is meant by NCLB I don't think I have to give you all a history lesson on NCLB because you have certainly worked on this in greater detail then I have up to this point, I must remind you what the North Dakota Legislature actually the DPI and the schools across the state of North Dakota are wrestling with is a national initiative, this particular initiative was created by President George Bush, supported by his Congress and was sent to the states, now we are dealing with the Presidents executive order in a sense and his feelings on education. I'm for this bill as I said previously we need to look at this total issue in detail and help our school systems, and help the citizens across the state of North Dakota what is meant by NCLB and how we are going to implement it and how we are going to deal with the probable ramifications. I really have a problem however, with SB 2418 as it is

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presented to this committee I have a problem with the fact that it says we will create and investigate in committee, I went back and looked at the language in 54-03-1.2 talking about the creation of investigative committees. An investigative committee is referred to as a select committee and as a select committee it has select and unique powers. And that causes me a great deal of concern. Is this something that has happened before in the state of North Dakota? Yes indeed it has in a couple of occasions and it has been very rare that it has. I know there have been some questions asked about subpoena power now as I understand about subpoena power, you are required by law to provide information and to appear and by the determination of that committee, you do not provide the information or do not appear in a fashion that is considered appropriate you are in contempt, and that can mean a lot of things, such a a fine, jail or what have you, so what I think what we are doing with this particular committee is probably venturing off into a area where the North Dakota State Legislature cannot go or wants to go. We want to get to the root of the issue we have a problem we don't understand NCLB and we are not comfortable with it as it has come from Washington D.C. and we need to get a better handle on it. I would hope in this committees wisdom's and deliberations that we would use 2418 as a vehicle to create some type of a study resolution or study policy, where we through a interim committee follow that route. I think it needs to be done that way. I would certainly support the concept of a special review committee, lets not get in the area of subpoenas.

Representative Nelson: in your research of a former committees that were set up in N.D. did you find that there was an abuse of power with the subpoena power?

Representative Boucher: I didn't study it in great detail I will say this that I was informed on 2 occasions, one occasion there was an investigating committee to study issues in the insurance

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department and another occasion dealing with issues in the banking industry of N.D. did they use the subpoena power? I guess I could go back and try to track history but this goes back 25 Or 30 years, it would take some time to research it.

Mary Wahl, North Dakota Council of Educational Leaders: we rise in support of 2418, we believe that this oversight committee will insure that we proceed with the greatest caution with the implementation of NCLB. Perhaps this additional processing that will be required is a method by which trust can be established regarding his bill's. Trust is critical if we are going to move forward together to implement what we hope can be through this bill, improved quality in k-12 education in our state. With regards to a couple of the issues that have been raised. I guess the term investigative committee is a little much, some one has suggested calling it the Legislative review committee, that sounds a little more user friendly and in terms of cooperation with whom you want cooperation from they may feel better to stand up in front of the Legislative Review Committee than the investigating committee. With regards to the issue of subpoena, I guess one would like to believe that it would not be necessary. Hopefully we would get to the point of where there was simply an expectancy that this Legislation was designed to ensure better implementation of NCLB and every one would join hands and this is a good idea and do it together. The reason for the language is the lack of assurance when it was written that cooperation would be forthcoming, because there was opposition to the creation of this committee as it was presented in its original form by the Department on the Senate side. If there was some assurance that everyone could get on board and we could just use this as an additional means for processing and proceeding with caution of the implementation of NCLB.

Rep. Williams Page 2, line 1 section 5., I would like to have some input about this committee of

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13 members would have hearings, if they wanted to have the hearings, the responsibility should come from Department of Public Instruction. Or is Department of Public Instruction inherited.

Wahl: As I understand the process, what this would provide for is the committee to have a rule presented to it and then before this rule or guideline can be implemented we are going to have a hearing to insure that any concerns that might be raised will be heard. That is my interpretation.

Rep. Williams . . . have to go to any school district in the state until the committee holds a public hearing.

Wahl: It probably would not be that much different between the processing that is taken place with regards to HB 1489. that will is sort of being processed in away that this bill suggests other guidelines and rules should be processed by virtue of the fact that this legislative body is meeting and hearing the bill. flip tape

Rep. Mueller The trust discussion, I am wondering what it is that this thing is all about. It seems to me the way we have 2418 structured before us is that is certainly implies distrust. And I am not so sure this is the route we want to go, taking a different path for this thing from the get go that doesn't imply distrust would be a more positive way to go. I am hearing that from what you are saying.

Wahl: It seems to me that if that old story if you get more flies with honey than with vinegar, it seems to be that this is just a huge bill that we need to try to create an atmosphere where people feel that they together are trying to work this bill through the best they can for the state of ND and for the students. And anything that interferes with that by creating some animosity or antagonism. Or they want us to do this, but I'll tell what we will do we will do this. . . . That kind

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of a lack of cooperative spirit is going to hurt the process and hurt the final result and the kids are going to be the losers. We need to do this in a more friendly way, but we do need the process.

Rep. Jon Nelson You are a pretty objective person, every bill that we dealt with NCLB in this session the Legislative intent is that we do not want to burden our schools with any higher requirements than what is necessary under this legislation. Time and time again. Your organization is supporting this bill and it is antagonistic in nature, so it leaves me to believe that there is an element of distrust that would cause you to stand up on this side of the bill, is that true? **Wahl:** That is true

Rep. Herbel we are spending an awful amount of time talking about language, the semantics

Wahl: But semantics do matter, we need to convince people that this is a good thing, good for our children and for the state, then this language would be unnecessary with regards to the subpoena and the investigating committee, not only is that unnecessary but I think it would continue to fester the problem.

Rep. Haas we have heard around this discussion that there is a huge lack of understanding on NCLB. I am wondering if there is really as much a feeling of mistrust or the manifestation of the fear of the unknown that is causing a lot of the consternation that we are seeing. And as a result of that we would just prefer to kill the messenger who is being the information to us.

Wahl: I believe it is a matter of trust, I think there are two elements out there, One is the unknown and that creates a lot of anxiety, but there is also there is an attitude of lack of trust.

Chairman Kelsch Where this came from so that you are aware of it. Part of this in regards to the State Accountability Workbook that was due to be submitted in January, I believe there was Superintendents in the schools who were concerned about what was in here. I think that they

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made the request and it was not ready for release, they thought it was a secret document, why was this not allowed to be seen on what the Department of Public Instruction was proposing. I believe the second issue is about the cut scores on how they came about. There was a lot of Superintendents that kinda got worked up and had a concern about it. Now regardless of where this committee sits in relation to whether it is an investigative committee or a select committee, whether it has subpoena power or not, I think what you need to be thinking about is not how the bill is drafted currently but the concept behind the bill. What we have talked about in this committee many times is how vast this NCLB is and how we don't know all of the answers. I was just down and testified on the highly qualified teacher and we still don't know the answers on how we are going to move forward with that. There is a lot of issues that are real fluid right now, and if there is a committee that the whole purpose is to know and understand NCLB, I think that this will be extremely important for the next legislative session.

Courtney Koebele, State Assoc. for Non-Public Schools (SANS) See Attached Testimony

OPPOSITION

Greg Gallagher, Department of Public Instruction See Attached Testimony

Rep. Sitte Are all of the rules and guidelines are determined on NCLB

Gallagher: we are working on the yet, some are still fluid yet.

Rep. Sitte your testimony would serve well in a writing class on study of tone. I would just like to share with you some of your words when you were talking about trust here. listed big words Is that a proper tone for you to use when you are talking about legislative committee that is just trying to protect the interests of the local school board in what is perceived as an enormous change in the way we have done business in Education in this state.

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Gallagher: Thank you for the question. There is study of iniquity, there is a dedicated discipline called form criticism., where you reference the form in the manner in which a message is delivered. That is the medium in which it is expressed is as equally important in the content that is being expressed. Under Engrossed 2418, A symbolic form criticism statement is being made. An investigative committee as defined under current law 54-03.2. Is a very clear statement that this is important business going on right now. It introduces designated legislative scope of intent, it designates a certain form for the content of hearing and power of subpoena and the use of attorneys and the possible identification of being held in contempt. This is not business as usual. An investigative committee is totally inappropriate use of Legislative forum. Great care should be given in finding the right forum for how the event occurs Great care should be given in moments of legislation to say exactly what we mean. If this committee were to go forward, knowing what we know and discussing what is on the table in front of us, we believe we need an investigative committee to conduct this work, you are saying all other provisions, all other options, all the historical evidence that we know of being able to have cordial and collegiate discussions upfront are thrown out. If that be the case, and that is the tone you set, it is by its nature. Caution is required here, deep wisdom is required here, don't go down that road.

Chairman Kelsch page 3 of your testimony talks about sec 5 and how it introduced a variant form of administrative rules process, what is different about this administrative rules process as opposed to the actual administrative rules process that you have to go through, because it seems to me that it is the same process. You can't enact a rule until administrative rules has approved it. What you perceive as the difference.

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Gallagher: It is the scope. When identifying elements for an administrative rules, it is clearly identified that something is going through in fact administrative rules. And a process in which it unfolds. By the fact that it is identifying effectively every element of the elementary and secondary education act, it addresses every title and every activity in every title, that must go through review before any activity can be done. It is very clear about that. That is so expansive that it is unprecedented in terms of how it reaches in to areas that have been historically conducted on a fairly routine fashion. The scope is broad and because of that you are now putting in a variant form for this reason. The Department would be shut down to do anything until the committee reviewed that element of the ESEA provision. We could not proceed, basically we stop business, that is highly unusual. Under the very first version of this before the engrossment, there was an approval mechanism that given to the committee. But now we have a review committee which says lets have a show and present what we have and then you can proceed. It is a very strange type of mechanism.

Rep. Mueller Obviously trust element, it would appear that there are some difficulties here or mistrust here, it is all new territory and I think the Department understands that. What can we do to eliminate the communication problems and build trust.

Gallagher: By proceeding with the concurrent resolution for study everything is in the open, we would endorse that, there is nothing like sunshine to put light on a subject, and take away some of the germs in there, it is real important to us that people have a full understanding of NCLB. It is fluid where we are right now, I think we must all remain open to the study of his law because it is so new and it will unfold for a period of time here. The resolution for study committee would accomplish that and we think that is where we should go. Study committees are driven by the

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committee and the chair of the committee. You can do remarkable things with a study committees. And we would encourage this that it would open up all of the barriers elements of the law for an understanding of what is being required by the feds and what we are electing to exercise as our model in ND and where we can improve on that. Hopefully that is the case in study resolutions with study committees that divide that committee, after hearing and reviewing and discussing come back and say we believe we need to do this but public policy, reflected public policy, to move forward with a good statute toward movement on a working administrative within the department to make things so that they are right. We have to remain open to that, we should never remain closed to the vehicle in which it occurs matters.

Rep. Mueller It would seem to me given what has happen through the last two months the first bill that should have come from Department of Public Instruction should have been to do the study resolution. It would have shed some different light upon it.

Rep. Hanson On the Senate side, did you testify, and did you offer these amendments.

Gallagher: On the Senate side the testimony was delivered by Dr. Sanstead, the proposal was entirely different at that time.

Rep. Sitte there are many benefits to a citizens legislature, we only come to town once every two years. There are some severe disadvantages as well. We are not able to respond on a annual basis, If we turn this into a study resolution we wouldn't be able to propose legislation for another two years, Department of Public Instruction is going to have free reins to implement a lot of different things hat may be coming down the pipes. If we have this committee, because this committee need to have the ability to respond to the federal rules as they are written. Would you not agree that this is a unique time in the formation of such an enormous educational movement.

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Gallagher: Undoubtedly it is a unique time. And are we all having fun. However this does not require such a unique expression of governess as to change the mold. As I am listening, you introduced the prospect of a committee that would have the powers of the legislative assembly. Rule committees carry that kind of duty, this has become now a new variant form of a rules committee. We believe that is not a wise way to go. The department does not have that type of authority, the issue on the table is how do we use current vehicles for policy that will move us forward collectively. A study will move us toward our goal. What we have here raises a whole host of problems.

closed hearing

sub committee appointed Rep. Jon Nelson, Rep. Herbel, Rep. Williams

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2003 HOUSE STANDING COMMITTEE MINUTES
 BILL/RESOLUTION NO. SB 2418
 House Education Committee

Conference Committee

Hearing Date March 25, 2003

Tape Number	Side A	Side B	Meter #
1	X		00-850
Committee Clerk Signature <i>Rinda Fuchter</i>			

Opened the committee work on 2418.

Rep. Jon Nelson offered two different amendments to the bill 30787.0302/30787.0303

The sub committee has two sets of amendments that are bringing forward. I will work off of the copy 0303 for this exercise. The proposed amendment removes the offensive language, changing the investigative committee to select committee is the major change. We changed the make up of the committee to 8 House members and 5 Senate members. On the original bill on sub section 5 is omitted because of the practical nature of implementing rules dealing with this and we felt it was unnecessary and burdensome. We also took out the subpoena power. After visiting with Anita Thomas, Legislative Council and the sub committee we felt unanimously that the subpoena power will only drive a wedge between the relationship of Department of Public Instruction and this committee and every education committee in the interim. The flow of information is necessary for us to make good sound decisions, and that would be jeopardized we felt. The other thing is the cost associated with the subpoenas, if it is used. Liability is an issue with the subpoena that is another area, with the protection of the Superintendent and staff as well as the committee. It is a box that we don't want to go into. That is the differences between 0302 and

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0303. 0302 has the subpoena power in it. I would hope that we would use 0303 and I move that we accept the amendment.

Rep. Jon Nelson moved to accept the LEGISLATIVE COUNCIL 30787.0303, Rep.

Hawken seconded the motion,

Discussion:

Rep. Herbel: I was just informed by Anita Thomas that currently Legislative Council has subpoena power if they would need it, and therefore it is not necessary for that to be in this bill.

Chairman Kelsch That was a question that I had, So Legislators do not have subpoena power unless you are part of this investigating committee, but Legislative Council has the ability has the ability to subpoena.

Anita Thomas, Legislative Council: Under 54-03.2-02, that is the section that deals with the special investigating committee, it provides that the Legislative Council and any interim committee of the Council, if specifically designated by the Council as an investigative committee with subpoena powers and fulfill the role of the investigative committee. So if you choose to go with the amendment that did not specifically have the subpoena powers, and lets say during the course of the interim for some reason you felt that you needed it, it would be a committee motion asking for the Legislative Council to designate the special committee as an investigative committee and then you would have full subpoena powers.

Rep. Mueller Commend the committee first of all for their work and creating this product. I still have a question regarding the difference between select committee and investigating committee, can some one address this please.

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Rep. Williams An investigative committee basically has subpoena powers and select committee because of the nature of the definition does not have subpoena powers.

Chairman Kelsch the other question that I have, a interim committee only meets during the interim, a select could meet while the session is on as well. **Thomas:** I believe that is correct.

Rep. Sitte So with this not being an investigative committee anymore, we would not have subpoena powers

Chairman Kelsch that would be correct, they would not have the subpoena power however as Anita just told us, but if the committee felt that they were not getting the information that they need to have they could make a motion in the committee and the Legislative Council would be able subpoena for the information.

Rep. Sitte But she was referring only to investigative committee

Chairman Kelsch: upon the motion of the special committee you are designated as an investigative committee

Thomas: The statute defines an investigative committee as a standing or a select committee of either house of the Legislative Assembly, as a joint committee of both houses, as an authorized sub committee of a Legislative committee, the Legislative Council or any interim committee of the Legislative Council that is designated by the Council, and any other body created by law, the members of which may include Legislators.

Passed by voice vote.

Rep. Jon Nelson moved a DO PASS as amended, Rep. Williams second the motion

Roll vote passed 14-0-0 passed, Rep. Jon Nelson will carry the bill to the floor.

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10/23/03
Date

30787.0302
Title.

Prepared by the Legislative Council staff for
Representatives Herbel and Nelson
March 25, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2418

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for the creation of a select committee to study the No Child Left Behind Act of 2001 and the issuance of subpoenas by the committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. NO CHILD LEFT BEHIND INVESTIGATING COMMITTEE -
APPOINTMENT - POWERS.**

1. The legislative council shall appoint a select committee consisting of five members of the senate and eight members of the house of representatives for the purpose of:
 - a. Monitoring the implementation of the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.] and the promulgation of federal regulations implementing the Act;
 - b. Determining the direct and indirect impact of the Act and its regulations on the schools and school districts of this state;
 - c. Determining the financial impact of the Act and its regulations on the budget of this state and on the taxpayers of this state; and
 - d. Monitoring the development and implementation by the superintendent of public instruction of all rules related to or required by the Act.
2. The legislative council shall designate the chairman and vice chairman of the committee.
3. The committee has all powers granted to an investigating committee under chapter 54-03.2, including the power to issue a subpoena and a subpoena duces tecum to any person the committee believes can assist it in meeting the committee's responsibilities.
4. Except as provided in subsection 3, the committee shall operate under the rules applicable to other legislative council interim committees.
5. The committee shall report its findings and recommendations to the legislative council, and the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Deanna Herbel
Operator's Signature

10/23/03
Date

House Amendments to Engrossed SB 2418 - Education Committee 03/25/2003

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for the creation of a select committee to study the No Child Left Behind Act of 2001.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. NO CHILD LEFT BEHIND COMMITTEE - APPOINTMENT - POWERS.

1. The legislative council shall appoint a select committee consisting of five members of the senate and eight members of the house of representatives for the purpose of:
 - a. Monitoring the implementation of the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.] and the promulgation of federal regulations implementing the Act;
 - b. Determining the direct and indirect impact of the Act and its regulations on the schools and school districts of this state;
 - c. Determining the financial impact of the Act and its regulations on the budget of this state and on the taxpayers of this state; and
 - d. Monitoring the development and implementation by the superintendent of public instruction of all rules related to or required by the Act.
2. The legislative council shall designate the chairman and vice chairman of the committee.
3. The committee shall operate under the rules applicable to other legislative council interim committees.
4. The committee shall report its findings and recommendations to the legislative council, and the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Date: 5/25/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2418

House HOUSE EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 30787.0303

Action Taken _____

Motion Made By Nelson Seconded By Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunskor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

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Deanna Ballantyne
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10/23/03
Date

Date: 3/25/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 30787.0303

Action Taken do Pass as amended

Motion Made By Nelson Seconded By Williams

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Nelson

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

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Deanna K. Hall 10/23/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 25, 2003 3:04 p.m.

Module No: HR-53-5722
Carrier: Nelson
Insert LC: 30787.0303 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2418, as engrossed: 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). Engrossed SB 2418 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for the creation of a select committee to study the No Child Left Behind Act of 2001.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. NO CHILD LEFT BEHIND COMMITTEE - APPOINTMENT - POWERS.

1. The legislative council shall appoint a select committee consisting of five members of the senate and eight members of the house of representatives for the purpose of:
 - a. Monitoring the implementation of the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.] and the promulgation of federal regulations implementing the Act;
 - b. Determining the direct and indirect impact of the Act and its regulations on the schools and school districts of this state;
 - c. Determining the financial impact of the Act and its regulations on the budget of this state and on the taxpayers of this state; and
 - d. Monitoring the development and implementation by the superintendent of public instruction of all rules related to or required by the Act.
2. The legislative council shall designate the chairman and vice chairman of the committee.
3. The committee shall operate under the rules applicable to other legislative council interim committees.
4. The committee shall report its findings and recommendations to the legislative council, and the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

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2003 SENATE EDUCATION
CONFERENCE COMMITTEE
SB 2418

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Date

Page 2
Senate Education Committee
Bill/Resolution Number Engrossed SB 2418
Hearing Date 4-7-03

have that power if needed. They felt that if this subpoena power is in statute for the "select" committee, they are setting up a condition that could make for a very adversarial relationship with DPI and everything they would ask for would be harder to get. 4. The public hearings that are required for the implementation of rules was deleted from the bill. The reason was that the time frame for the meetings may not mesh with the practical nature of the rules or parts of NCLB which have to be implemented. It would be more burdensome than it would have to be.

SENATOR COOK stated that when this legislation was drafted, the intention was for the members of the "select" committee to be from the Education Standing Committees who would be familiar with NCLB. It was hoped there would never be a need for a subpoena.

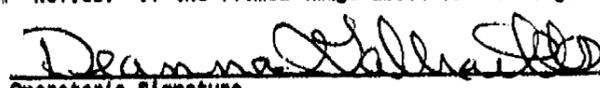
SENATOR COOK asked when can the rules be implemented. REP. NELSON stated that in subsection d., the "select" committee would monitor the implementation of the parts of NCLB by DPI before the final hearing by the "select" committee. There was a concern that some parts of the Act may not be met by the timelines set forth.

REP. C. WILLIAMS explained why the subpoena power was removed. They had been told by Legislative Council that by a committee motion, the committee could ask the Legislative Council to designate the special committee as an investigative committee and they would then have full subpoena powers.

SENATOR COOK discussed how many times this conference committee would meet. It is the hope of leadership that all NCLB legislation be consistent. They certainly don't want mistrust between agencies and committees.

The Committee was adjourned until the call of the Chairman.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed SB 2418

Senate Education Committee

Conference Committee

Hearing Date 4-14-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 21.8
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CONFERENCE COMMITTEE CHAIRMAN COOK called the committee to order with all members present.

SENATOR COOK stated that HB1489, SB2065 and this bill (SB2418) all deal with some of the same issues.

SENATOR COOK stated there are three differences the first being the makeup of the committee.

REP. J. NELSON explained about the makeup of the committee and why the House had changed it from the Senate's version. They felt it was a more balanced committee and would relate better to the makeup of the legislature.

SENATOR COOK talked about HB1043. This is the bill for the Information Technology Advisory Committee. He stated it will be made up of 6 House members and 5 Senate members.

REP. HERBEL stated he agrees with the philosophy of NCLB and feels the numbers are not real important. REP. WILLIAMS stated the number on the committee is not real important, and the House was just trying to balance the committee.

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Senate Education Committee
Bill/Resolution Number Eng. SB2418
Hearing Date 4-14-03

SENATOR COOK asked at what point should the rules that are implemented go into effect. The intent was for the committee to review the rules first. As the bill is now the rules go into effect and then the committee reviews them.

REP. J. NELSON brought a letter from the AG's office with their opinion. It had been requested by the Superintendent. (see attached). He stated the footnotes explain there could be some constitution effect if the committee chose not to meet. Although unlikely, that is one issue the AG saw as a problem. Rep. Nelson stated we need to have a trust between the legislature and DPI. He feels the House language will work and will meet the requirement of what the Senate wants. He feels there are sufficient checks and balances.

SENATOR COOK asked if we do have trust now. Is there a trust among those affected by NCLB. REP. NELSON feels steps have been taken to develop trust between DPI, schools, administrators, school boards, etc. SEN. COOK said it is unfortunate we are still on this issue of building trust. He feels one decision has to be made and that is the cut score. And that can only be done by the group of teachers who met and developed the cut score.

REPRESENTATIVE HERBEL feels the lack of understanding is what the problem was and that is where the mistrust developed. He feels since the legislature has been working on NCLB, the people involved are not so afraid or mistrusting. He has a problem with large public forums that become so unorganized and seem to never get anything solved. They seem to not focus on the issue at hand.

SENATOR CHRISTENSON feels this committee will be able to focus the power of understanding. They will be able to forward communication thus building trust and understanding. If the committee is able to go around the state and hold focused meetings with

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Senate Education Committee
Bill/Resolution Number Eng. SB2418
Hearing Date 4-14-03

those who have a definitive interest in this, the understanding and trust will come. She feels the burden should be put on all involved. She feels this would be an opportunity to make something that could be terrifying and very disruptive altogether different.

SENATOR COOK stated the committee has no authority, but it can give ownership and understanding to all involved.

REP. NELSON feels there is a difference of opinion on the subpoena power. He feels the end will be better served if there is a willing nature for all to participate.

SENATOR COOK asked if it wouldn't be better for those who have questions to address them before the rule is implemented rather than afterward. REP. HERBEL agrees with Sen.

Christenson, but a plan needs to be laid out. SENATOR COOK stated all parties need to be committed to making this work.

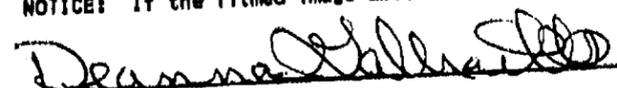
REPRESENTATIVE WILLIAMS asked if Subsection 6 is more important than the subpoena powers. SENATOR COOK said yes. He hopes there will never be a reason to issue a subpoena.

In the Senate version, the legislative assembly is giving to this committee the right to issue a subpoena for information if half of them want to do so. The House version states if half of the committee feel there is a need to get information they have not received, they have to get permission to subpoena from the legislative council.

REP. HERBEL stated all information should be up front and the ability to get the information is important. He sees no need to give the committee subpoena power when the legislative council already has it.

SENATOR COOK would ask the committee to study an amendment to the bill that will satisfy all. He feels all three bills have to move forward together. (HB 1489, SB 2065, and SB 2418)

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Senate Education Committee
Bill/Resolution Number Eng. SB2418
Hearing Date 4-14-03

REPRESENTATIVE NELSON stated that if we go back to the original makeup of the committee, leaving in subsection 5 and removing subsection 3 of the Senate version, it would be close to a point of agreement for this committee. SENATOR COOK stated it would definitely be a step in the right direction.

The committee was adjourned.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed SB 2418

Senate Education Committee

Conference Committee

Hearing Date 4-16-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 5.2

Committee Clerk Signature *Andrea Johnson*

Minutes: CONFERENCE COMMITTEE CHAIRMAN COOK called the committee to order with all members present.

SENATOR COOK presented an amendment for the committee's consideration (see attached 30787.0307).

REPRESENTATIVE J. NELSON explained the amendment. He stated that the major change is in page 2, subsection 4. The other changes are in the number of people on the committee. This number coincides with the number of people on the Information Technology committee.

SENATOR COOK said the major difference in subsection 4 is when the rule will take place, either before or after the committee has met and reviewed it.

REP. NELSON stated the intent is for the meeting to be held before the rule is in effect.

SEN. COOK stated the process now is if it is deemed an emergency, the process will still happen. That is in administrative rule now.

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Date

Page 2
Senate Education Committee
Bill/Resolution Number Eng. SB 2185 2418
Hearing Date 4-16-03

REPRESENTATIVE WILLIAMS moved the House recede from its amendments and that the Engrossed SB 2418 be amended with 30797.0307. Seconded by **REPRESENTATIVE HERBEL**.

Roll Call Vote: 6 YES. 0 NO. 0 Absent. Motion Carried.

The conference committee was adjourned.

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10/23/03
Date

30787.0307
Title.0500

Prepared by the Legislative Council staff for
Senator Cook and Representative Nelson
April 16, 2003

JCS
4-16-03

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2418

That the House recede from its amendments as printed on pages 1011 and 1012 of the Senate Journal and pages 1084 and 1085 of the House Journal and that Engrossed Senate Bill No. 2418 be amended as follows:

Page 1, line 1, replace "an investigating" with "a select"

Page 1, line 4, replace "INVESTIGATING" with "ACT OF 2001 - SELECT"

Page 1, line 5, replace "POWERS" with "DUTIES"

Page 1, line 6, replace "an investigating" with "a select" and replace "six" with "five"

Page 1, line 7, replace "seven" with "six"

Page 1, remove lines 16 through 19

Page 1, line 20, replace "4." with "3."

Page 2, replace lines 1 through 3 with:

- "4. When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 1 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving presentations by members of the public regarding the nature and scope of the proposed rules."

Page 2, line 4, replace "6." with "5."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE (420)
April 16, 2003 4:08 p.m.

Module No: SR-69-7811

Insert LC: 307/87.0307

REPORT OF CONFERENCE COMMITTEE

SB 2418, as engrossed: Your conference committee (Sens. Cook, G. Lee, Christenson and Reps. Nelson, Herbel, Williams) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1011-1012, adopt amendments as follows, and place SB 2418 on the Seventh order:

That the House recede from its amendments as printed on pages 1011 and 1012 of the Senate Journal and pages 1084 and 1085 of the House Journal and that Engrossed Senate Bill No. 2418 be amended as follows:

Page 1, line 1, replace "an investigating" with "a select"

Page 1, line 4, replace "INVESTIGATING" with "ACT OF 2001 - SELECT"

Page 1, line 5, replace "POWERS" with "DUTIES"

Page 1, line 6, replace "an investigating" with "a select" and replace "six" with "five"

Page 1, line 7, replace "seven" with "six"

Page 1, remove lines 16 through 19

Page 1, line 20, replace "4." with "3."

Page 2, replace lines 1 through 3 with:

- "4. When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 1 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving presentations by members of the public regarding the nature and scope of the proposed rules."

Page 2, line 4, replace "6." with "5."

Renumber accordingly

Engrossed SB 2418 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

SB 2418

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Full Text for the 108th Congress

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S.RES.22

Expressing the sense of the Senate regarding the implementation of the No Child Left Behind Act of 2001. (Introduced in Senate)

SRES 22 IS

108th CONGRESS

1st Session

S. RES. 22

Expressing the sense of the Senate regarding the implementation of the No Child Left Behind Act of 2001.

IN THE SENATE OF THE UNITED STATES

January 16, 2003

Mr. DORGAN (for himself and Mr. CONRAD) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions

RESOLUTION

Expressing the sense of the Senate regarding the implementation of the No Child Left Behind Act of 2001.

Whereas all students, no matter where they live, should receive the highest quality education possible, and Congress and the President enacted the No Child Left Behind Act of 2001 (Public Law 107-110) to ensure high academic standards and the tools and resources to meet those standards;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements and challenges for States, school districts, and individual educators;

01/23/03 10:26

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Whereas many States and school districts are struggling to understand the requirements of the No Child Left Behind Act of 2001, even as additional regulations and guidance continue to be forthcoming from the Department of Education;

Whereas the small size, remoteness, and lack of resources of many rural schools pose potential additional problems in implementing the No Child Left Behind Act of 2001;

Whereas many rural schools and school districts have very small numbers of students, such that the performance of a few students on the assessments required by the No Child Left Behind Act of 2001 can determine the progress or lack of progress of that school or school district;

Whereas the small number of students in many rural schools can make the disaggregation of testing results difficult and even statistically unreliable;

Whereas some of the options created for students attending failing schools, including the choice to attend another public school and the availability of supplemental tutoring services, simply may not be available in rural areas or may be prohibitively expensive due to the cost of transportation over long distances;

Whereas many rural schools already have shortages of teachers in key subject areas, rural teachers frequently teach in multiple subject areas, and rural teachers tend to be older, and lower paid than their urban counterparts;

Whereas many experienced teachers and paraprofessionals in rural schools may not meet the definition of 'highly qualified' in the No Child Left Behind Act of 2001 and rural school districts will have difficulty competing with large school districts in recruiting and retaining quality teachers;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements on schools and school districts, but the President's budget request for fiscal year 2003 does not provide the level of funding needed and authorized to meet those requirements and in fact cuts funding by \$90,000,000 for programs contained in the No Child Left Behind Act of 2001; and

Whereas a majority of the States are being forced to cut budgets and local governments are also struggling with revenue shortfalls that make it difficult to provide the increased resources necessary to implement the No Child Left Behind Act of 2001 in the absence of adequate Federal funding: Now, therefore, be it

Resolved, That--

(1) the Secretary of Education should provide the maximum flexibility possible in assisting predominantly rural States and school districts in meeting the unique challenges presented to them by the No Child Left Behind Act of 2001 (Public Law 107-110);

(2) the President should, in his fiscal year 2004 budget request, request the full levels of funding authorized under the No Child Left Behind Act of 2001 for all programs, including the Rural Education Achievement Program (20 U.S.C. 7341 et seq.); and

(3) it is the sense of the Senate that, if the President does not request and Congress does not provide full funding for the No Child Left Behind Act of 2001 in fiscal year 2004, Congress should suspend the enforcement of the implementation of the requirements of the No Child Left Behind Act of 2001 until full funding is provided.

1 of 1

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Testimony on SB 2418
By Dr. Kent Hjelmstad, Supt. of Mandan Schools
President of the NDASA

Mister Chair and members of the Committee, my name is Kent Hjelmstad, Supt. of Mandan Schools and President of the North Dakota Association of School Administrators. I am here to testify in favor of SB 2418.

This bill would establish a legislative oversight to assist with the implementation of No Child Left Behind -- a commendable idea. With this bill, the committee could hold public hearings to gather input, seek federal explanation, and assure that we in North Dakota do not in any way jeopardize federal funding while maintaining local control and the great schools of North Dakota.

NCLB is so new that much of the administration of the bill is open to the pending guides of the federal government. Those items left to individual states are not yet clearly understood. The assistance of the committee from SB 2418 is a breath of fresh air as we seek to comply with a massive federal law without superseding it or creating additional obstacles to North Dakota. Thank you for your willingness to assist the children of North Dakota.

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Mister Chairman and members of the committee, my name is Gail Wold. I am the principal of Beulah Middle School and also currently serve as vice-president of the North Dakota Association of Elementary School Principals (NDAESP).

It is important that North Dakota not put into place, either in statute or the state plan, anything that will not have flexibility or which exceeds the provisions of NCLB. This is especially important relative to provisions related to highly qualified instructors and adequate yearly progress. I favor of SB2418 because throughout the current legislative session North Dakota legislators have seemed to understand that while decision-makers at the Department of Public Instruction (D.P.I.) appear to have not.

CONCERNS RELATED TO HIGHLY QUALIFIED TEACHERS

During the course of this legislative session, D.P.I. introduced a bill (SB1181) that would have required ALL teachers in North Dakota to pass a state test or demonstrate knowledge and skills through a portfolio. This bill went far beyond the federal requirements in NCLB and was opposed by all of the education associations in the state, including the Educational Standards and Practices Board (ESPB). Two weeks later, when ESPB introduced an alternative bill (HB1489) to set the standards for highly qualified teachers that satisfied but did not exceed NCLB, D.P.I. again testified for a change that would have required teachers to have majors or major equivalents in ALL courses taught in middle and high school, not just core subjects as proposed in HB1489 and required in NCLB.

The greatest resource we can provide for a classroom teacher is TIME. I do not understand why D.P.I. would seek to burden a teacher who meets the federal provisions of NCLB with unnecessary tests or portfolio assessments. In a school the size of mine, and in most North Dakota schools, instructors are required to teach multiple subjects. Successful passage of D.P.I.'s bill (SB1181) would have required multiple teacher on my staff - "highly qualified" under NCLB - to take three separate tests or successfully complete a portfolio assessment.

CONCERNS RELATED TO ADEQUATE YEARLY PROGRESS:

1. Cut Scores Were Set Too High

Educators from around the state have been pleading with D.P.I. to revisit our state's cut-scores. They were set too high and must be lowered. I have joined many others in the field in asking D.P.I. to put this process in motion immediately, even if it requires bringing the original teacher group back together to review their work. I have had detailed conversations with teachers and administrators who were part of the cut-score process. They have shared that they did not understand the gravity of their work nor do they feel their input was truly volitional; D.P.I. personnel and CTB/McGraw Hill testing company officials heavily coerced the final outcome. To present these cut scores as being determined by North Dakota educators is misleading. Unless the preliminary North Dakota process is reconsidered and adjusted, it surely will result in embarrassment for a large number of excellent schools and fine North Dakota students. This must not be allowed to happen.

2. Three vs. Four Levels of Assessment

NCLB specifies only three levels of assessment (Advanced, Proficient, and Basic) rather than the four levels that D.P.I. is using. Therefore, I have joined educators from across the state in urging D.P.I. to merge the two middle levels of assessment ("Proficient" and "Partially Proficient") into one level ("Proficient") so that North Dakota will comply with the provisions of NCLB and retain its rightful place as a leader in student achievement in the United States. The current measure of achievement misleads the North Dakota public and this must not continue.

3. Absence of State Standards To Which State Assessments Are To Be Aligned

The provisions for adequate yearly progress in NCLB are based upon the assumption that state assessments will be aligned with state academic standards. Students in grades 3-8 and one secondary grade are to be assessed annually in reading and math beginning Fall 2006. The biggest problem with that provision in our state is that North Dakota has no content or

FAVOR

Page 1 of 2

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Gail Wold
Operator's Signature

10/23/03
Date

achievement standards for most of the grades scheduled to be assessed under NCLB. Currently there are no state standards specific to reading; there are English Language Arts (ELA) standards for grades 4, 8, and 12. There are state math standards for only grades 4, 8, and 12. That means that, as of today, teachers of students in grades 3,5,6,7, and 10 or 11 can only guess at the content and assessment standards their students will be held accountable for in three years.

According to information provided by Laurie Matske, Director of Title I for D.P.I, at the elementary principals' midwinter conference earlier this month, the Department is planning to revisit state ELA and math content and achievement standards to possibly revise the standards to meet the needs of the field. It is high time.

Educators in rural North Dakota wear many hats. In addition to my principalship, I have also coordinated curriculum development in a six-school consortium spanning Oliver and Mercer counties for six years: Beulah, Hazen, Center, Stanton, Dodge, and Golden Valley. Curricula has been written for the core content areas; Math, English Language Arts, Science, Social Studies, as well as Art, Foreign Language, Music, Physical Education, Agriculture and Technology. Subject area committees, comprised of K-12 teachers representing each of our six schools, meet several times throughout the school year at district expense. Since state content standards are written only for grades 4, 8 and 12, it has been the responsibility of the local subject area committees to detail specific skills and knowledge within the framework provided by the state. Throughout that time I have repeatedly asked D.P.I. personnel to facilitate development of specific content and assessment standards K-12. D.P.I. has declined, citing "local control" and "lack of funds". Subsequently, in just three years, students in grades 3, 4, 5, 7, and most likely 11 will be assessed on standards that have not yet even been written at the state level. Hopefully our locally developed curricula will line up with the state assessment. That statement makes my point: I shouldn't have to hope; I should *know*.

The problems I have detailed in my testimony are not specific to Beulah; they are common to many schools throughout the state. Ideally, educators in the field would be working hand in hand with the state department of education to prudently and expediently implement the necessary provisions of NCLB. A legislative oversight committee should be unnecessary. Unfortunately, that is not currently the case in North Dakota, so I favor a DO PASS recommendation on SB2418.

Gail M. Wold
Beulah Middle School
1700 N. Central Ave.
Beulah, ND 58523

Telephone: 701-873-4325
Email: Gail.Wold@sendit.nodak.edu

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10/23/03
Date

March 18, 2003

HOUSE EDUCATION COMMITTEE
SB 2418

REPRESENTATIVE KELSCH AND COMMITTEE MEMBERS:

My name is Courtney Koebele. I am appearing today on behalf of the State Association for Non-Public Schools (SANS). SANS represents 62 nonpublic grade schools and high schools throughout North Dakota, with approximately 7,200 students.

We support this bill and urge that you give it a DO PASS recommendation.

Non-public schools are generally not covered by the No Child Left Behind Act (NCLB). However, rules, regulations and legislation proposed or enacted in response to this Act can have a serious impact on our schools in the areas of school accreditation, course requirements and teacher licensing to name but a few.

This bill assures us that we will have the opportunity for public input and time to weigh the effects of any NCLB proposals before they are put in place.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

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10/23/03
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**Testimony on Engrossed SB 2418
HOUSE EDUCATION COMMITTEE
By Greg Gallagher
Department of Public Instruction
March 18, 2003**

Madam Chairperson and Members of the House Education Committee:

I am Greg Gallagher, Director of Education Improvement within the Department of Public Instruction. I am here on behalf of the Department to oppose the current structure and language within Engrossed SB 2418 and to propose amendments that will redraft this bill as a continuing study resolution dedicated to the proper implementation of the *No Child Left Behind Act* within North Dakota. The Department seeks to remove the undertone of the current Engrossed version and to reaffirm the historically constructive working relationship that has existed among the Department, the various education organizations, and the Legislative Assembly. What should emerge is a resolution that provides for the study of the Act's impact on the State's education system, a measured oversight regarding the implementation of the Act, and a process that reflects a mutual respect for the constitutional responsibilities of both the legislative and executive branches. This proposed legislation should demonstrate a balance of powers, a respect for language, and a tone that reflects well on the State's well-deserved reputation for political collegiality and civility.

Every legislative proposal carries a concern for both form and content. Whether a bill appropriates funding, enacts programs, or studies policy issues, a proper legislative form serves to structure content. Most legislation uses a form that is innocuous and understood at face value. Sometimes, however, proposals, such as Engrossed SB 2418, carry within their structure an implied finding that rises to the level of symbol. Engrossed SB 2418 establishes an investigative committee with subpoena power to delve into the implementation of provisions within the *Elementary and Secondary Education Act*. Such a proposal introduces an unprecedented investigative vehicle with unprecedented probative powers that clearly depart from a normative study approach. The use of an investigative form rather than a study form is being proposed for an apparent reason. What is occurring here: a qualitative study of a complex Act or a probative investigation of questionable practices? Clarity of intent and precision in language is a treasured commodity within any legislative proposal. Great care must be exercised to state what is going on within the language of Engrossed SB 2418.

Engrossed SB 2418

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March 18, 2003

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An investigative committee with subpoena power is simply not a vehicle used in the normative conduct of intergovernmental activity. Its use here is out of character with the constructive spirit that exists among the various federal and state entities. It carries an onerous message that all other measures have proven unsuccessful and are to be abandoned in favor of more intrusive measures. An investigative committee is convened, with its inherent legal proceedings, as if there exists a need to probe for evidence of subterfuge or nefarious activity. The powers of subpoena are provided as if to ferret out non-cooperating parties. It is as if a cover-up or conspiracy is in need of disclosure. What exactly is being implied here by the use of these unprecedented measures?

Every legislative proposal carries a message. Every word in every proposal exists for a purpose. Let us be careful here.

The Department, from the elected State Superintendent to every classified staff member, presumes that it is neither the desire nor intent of the sponsors of this bill to place upon the education system a pall of suspicion or distrust. Every Department member understands, especially those who periodically approach this podium, that the *No Child Left Behind Act* has propelled us collectively into a period of transition and cast the Department, especially the Department, in the center of efforts to bring clarity to issues that are oftentimes fluid and uncertain. In this regard, I wish to append to this testimony the testimony delivered by the Department on SB 2414 on the need to fully disclose measures required under the NCLBA. There has been no shortage of challenges, and an occasional fumble, regarding the interpretation of the Act from entities as varied as the Department of Public Instruction, the Education Commission of the States, various consultation organizations, and even the U.S. Department of Education. Within a setting of such uncertainty, it is understandable to us that language can find its way into legislative proposals that express frustration and an impulsive need for recompense and resolution. And in the rush to submit legislative proposals, sponsors place trust in the originator and the Legislative Council to draft appropriate language that will communicate appropriate intent.

To study the implementation of the Act, Engrossed SB 2418 should employ a conventional vehicle with a clearly understood deliberative process to accomplish this aim. The use of a continuing study resolution provides the proper vehicle and, equally important, sets a proper tone for the manner of deliberation. The proper symbolic statement will be made. The Legislative Assembly, the Department, all educational stakeholders, and the public will understand that the State is conducting its business

Engrossed SB 2418

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March 18, 2003

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with an air of responsibility, collegiality, and civility. This statement is arguably as important for the constructive, long-term administration of state government. Words are by their nature symbolic, and public symbols matter greatly.

The Department has always worked cooperatively with the Legislative Council. The Department repeatedly has volunteered information to the Legislative Council in order to advance multi-faceted policy issues. We have always cooperated and provided our best efforts to elucidate policy issues, as best we understood them.

When in the future the study committee meets to explore the many issues related to the Act, Department staff will characteristically arrive early and sit in the front row. We will be respectful of your constitutional duty and conduct ourselves in a forthright, cooperative, and civil manner. You have our pledge to continue to do no less.

The Department respectfully submits the attached amendments for consideration by the Committee. These amendments strike out all references to the investigative committee and insert a concurrent resolution to establish a study committee dedicated to a review of the implementation of the Act within North Dakota.

In addition to removing any references to an investigative committee, the Department's proposed amendments would eliminate section 5 of Engrossed SB 2418. This would remove any requirement for a rule or guideline related to the Act to undergo a public hearing prior to its application. The Department believes that any such restriction is a dangerous intrusion by the Legislative Council into the executive responsibilities held by the State Superintendent. Section 5 introduces a variant form of an administrative rules process where the Department is held administratively impotent until a hearing is held on every aspect of many long-standing programmatic practices. Section 5 would place in jeopardy administrative activities that must proceed according to a scripted time frame in order to meet target dates set in federal law and regulation. Section 5 constitutes legislative micro-management over executive responsibilities.

With an effective emergency clause, section 5, as currently drafted, would effectively shut down the administration of all federal program activity authorized under the *Elementary and Secondary Education Act*. This would include a wide variety of activities required under federal regulation and state statute. Some of these activities include

- the determination of all federal Title program allocations to districts;
- the issuance of applications for federal Title program funding to districts;

- the individual review of every district application for program approval in anticipation of receiving federal Title funding;
- the issuance of instructions, both documented and verbal, regarding the implementation of the Act to districts or the public;
- the development and revision of state content and achievement standards;
- the release of Request for Proposals related to the development and implementation of the state assessment program;
- the issuance of contracts for the administration of Title program activities;
- the determination of adequate yearly progress for each school and district;
- the informing of schools, districts, and the public on the respective report cards, profiles and adequate yearly progress standings;
- the development and implementation of mentoring programs for teachers, teacher quality portfolios, and related support activities;
- and more.

There are literally hundreds of individual activities that constitute the makeup of the items listed above and those not mentioned here. These activities would be held in abeyance until the investigative committee conducted a public hearing. Engrossed SB 2418 does not introduce an approval mechanism, only a public hearing mechanism. It makes little sense to hold up the administration of important federal- and state-driven activities for an indeterminate, pro forma public hearing. The state has conducted federal programming successfully for decades without such a perfunctory barrier to hurdle. Section 5 places in jeopardy the state's ability to conduct its business in a forthright manner. Section 5 must be removed. The Department's amendments allow for the State to proceed with its important business on a time table that is respectful to its constituents and responsive to the complicated nature of the work.

Madam Chairperson and Members of the Committee, what should emerge from your deliberations is a resolution that provides for the study of the Act's impact on the State's education system, a measured oversight regarding the implementation of the Act, and a process that reflects a mutual respect for the constitutional responsibilities of both the legislative and executive branches. This proposed legislation should demonstrate a balance of powers, a respect for language, and a tone that reflects well on the State's well-deserved reputation for political collegiality and civility.

This completes my testimony. I am available for any questions.

**Proposed Amendments
Engrossed SB 2418**

Page 1, line 1 delete page 1, line 1 through to page 2, line 7
Page 1, line 1 insert the following and number accordingly

**HOUSE CONCURRENT RESOLUTION
NO CHILD LEFT BEHIND ACT STUDY**

A concurrent resolution directing the Legislative Council to study the effects of implementing the No Child Left Behind Act on North Dakota and the public school districts across the State.

WHEREAS, the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.] reauthorized the Elementary and Secondary Education Act of 1965; and

WHEREAS, the Act authorizes the granting of federal resources to the States to advance excellence in education to all the Nation's students, especially disadvantaged students; and

WHEREAS, the Act advances the development and adoption by the States of high quality educational standards for programs and personnel as a condition for the receipt of federal funding; and

WHEREAS, the States are granted certain limited flexibility to develop and implement the various provisions of the Act to accommodate the various educational models enacted among the States; and

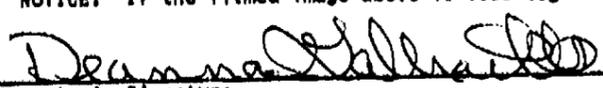
WHEREAS, the promulgation of federal regulations, non-regulatory guidelines, on-site peer reviews, assorted professional consultations, and letters of instruction from the U. S. secretary of education have served to clarify the Act and accommodate the various models of implementation employed among the States; and

Engrossed SB 2418

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March 18, 2003

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WHEREAS, the scope of the Act's coverage, the anticipated impact to States, and the limits of flexibility are yet to be understood fully;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the adoption of the No Child Left Behind Act of 2001, its rationale, the promulgation of any federal regulations implementing the Act, the direct and indirect impact of the Act and its regulations on the school districts of this State, and the financial impact of the Act and its regulations on the budget of this State and on the taxpayers of this State.

BE IT FURTHER RESOLVED, that the Legislative Council report its findings, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Engrossed SB 2418

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March 18, 2003

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Deanna Galt
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10/23/03
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Department of Public Instruction

600 E Boulevard Ave., Dept. 201, Bismarck, ND 58505-0440
(701) 328-2260 Fax - (701) 328-2461
<http://www.dpi.state.nd.us>

Dr. Wayne G. Sanstead
State Superintendent

February 17, 2003

Honorable Wayne Stenehjem
Attorney General
1st Floor, State Capital
600 E. Boulevard
Bismarck, ND 58505

Dear Attorney General Stenehjem:

I seek your opinion regarding Engrossed Senate Bill No. 2065 and Senate Bill No. 2418 currently under consideration by the Fifty-eighth Legislative Assembly.

Specifically I ask whether these bills, if enacted, will

1. violate the separation of powers doctrine;
2. create an unconstitutional delegation of legislative power;
3. impermissibly intrude into the core functions of a state constitutional officer;
4. vest legislative agents or members of the legislature with executive power;
5. impermissibly delegate governmental authority to a private entity; or
6. violate any other constitutional provisions.

I am asking that you expedite your opinion on this matter so that the legislature will have time to consider your advice before it finalizes its action on these legislative measures.

Sincerely,

Dr. Wayne G. Sanstead
State Superintendent

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(701) 662-9000

School for the Blind
Grand Forks, ND
(701) 785-2700

State Library
Bismarck, ND
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Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226

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582418

LETTER OPINION
2003-L-21

March 26, 2003

Honorable Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking if 2003 Senate Bills 2065 and 2418 are constitutionally infirm because they affect your administration of education matters related to federal law compliance and testing by requiring oversight and approval by a legislative investigating committee.

It is presumed when construing a statute that the Legislature intended to comply with the constitutions of North Dakota and of the United States and any doubt must be resolved in favor of a statute's validity. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 197 (N.D. 1994); Snortland v. Crawford, 306 N.W.2d 614, 626 (N.D. 1981); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 359 (N.D. 1945); N.D.C.C. § 1-02-38(1). This presumption is conclusive unless the statute clearly contravenes the state or federal constitutions. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987); State ex rel. Lesmeister v. Olson, 354 N.W.2d 690, 694 (N.D. 1984). Also, a statute will only be found unconstitutional upon concurrence of four of the five justices of the North Dakota Supreme Court. N.D. Const. art. VI, § 4. "One who attacks a statute on constitutional grounds, defended as that statute is by a strong presumption of constitutionality, should bring up his heavy artillery or forego the attack entirely." S. Valley Grain Dealers Ass'n v. Bd. of County Comm'rs of Richland County, 257 N.W.2d 425, 434 (N.D. 1977). Because it is the Attorney General's role to defend statutory enactments from constitutional attacks, this office has been reluctant to issue an opinion questioning the constitutionality of a statutory enactment. Accordingly, absent controlling case law to the contrary, this office will not declare that a bill, if enacted, would be unconstitutional. In this case, the bills have been amended since you requested my opinion to remove the language that you questioned.

Senate Bill 2418, as introduced, created a legislative investigating committee to review the No Child Left Behind Act of 2001 (NCLBA), 20 U.S.C. § 6301 et seq., and its implementation, and would have allowed the committee to approve or disapprove rules

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LETTER OPINION 2003-L-21

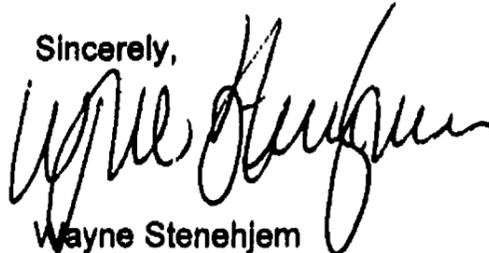
March 28, 2003

Page 2

implementing NCLBA. This provision was removed. Subsection 5 of the bill now states that no rule or guideline to implement the NCLBA applies to any North Dakota school district until the investigating committee holds a public hearing on it. Engrossed S.B. 2418, 2003 N.D. Leg. As originally introduced, Senate Bill 2065 did not contain any restrictions on rulemaking. Senate Bill 2065 originally addressed statewide testing, but it was amended to require a public hearing before the investigating committee created by Senate Bill 2418 before a test required by that section could be administered. Amendments in the House have removed this provision. 2nd Engrossed S.B. 2065, 2003 N.D. Leg.

Senate Bills 2065 and 2418, as amended, no longer provide for a legislative committee to approve or void your rules or actions on the subjects at issue. Senate Bill 2418 still allows for a hearing before a rule or guideline becomes effective, while Senate Bill 2065 does not. It is my opinion that the bills, in their present form, do not constitute an impermissible legislative intrusion into executive functions and are, therefore, facially constitutional.¹

Sincerely,



Wayne Stenehjem
Attorney General

pg

¹ A statute may be constitutional on its face, but yet be unconstitutional when applied to specific circumstances. See Traynor v. Leclerc, 561 N.W.2d 644, 646 (N.D. 1997); Glaspie v. Little, 564 N.W.2d 651, 654 (N.D. 1997); Quist v. Best Western Intern., Inc., 354 N.W.2d 656, 665 (N.D. 1984). Even though Senate Bill 2418 is not facially unconstitutional, it appears its application could cause unconstitutional results. Traynor, 561 N.W.2d at 646. Because Senate Bill 2418 does not provide a specific time within which the investigative committee created must meet and act upon your activities by holding its public hearing and because your activities are not effective until the committee holds the public hearing, application of the bills could produce an unconstitutional effect if committee inaction allowed the rules or tests to be "vetoed" by allowing them to languish. State ex rel. Meadows v. Hechler, 462 S.E.2d 586, 589 (W. Va. 1995).

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10/23/03
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ing. But read his tired eyes
ar-and-peace book of what
feel when his soldier son
ble danger.
ars, for the moment. They
lry cycle for the moment,
, on this Wednesday morn-

ars, just leftover glaze, the
weariness turning to rusti-
st stared straight ahead like
he convoy that was taking
i son, Stephan, down the

ad to who-knows-what.
was one person in about a
ch of vehicles and people

afar — from the shoulders of East Divide
Avenue — to the National Guard soldiers
of the departing 957th Multi-Role Bridge
Company. The soldiers are traveling in 84
vehicles the 1,000 miles to Fort Leonard-
wood, Mo. And later there might be thou-
sands of miles more, overseas, final desti-
nation unknown. But a truck displayed
someone's assumption.
"Saddam or bust," was written in white
on a green 66-foot-long bridge transport
truck and trailer in tow. And, on another:
"All the way to Baghdad."
It was a July 4th parade without the gig-
gles.
People waved, but let their flags and
signs do most of their talking.

loon for every soldier who passed by.
Soldiers waved back, but let the trucks
do the talking. Engines roared.
"He told his grandmother (the other
day) that if we like living in a free country,
somebody's got to do it," said Kevin Vetter,
relating his son's conversation.
"We told him we're proud of him," said
Jeanne Vetter, about the last thing she said
to him before he left her Tuesday, now
completely out of her control, to report to
a new world.
Communications with the outside
world are controlled, now.
"They (the soldiers) belong to the
Army, now," said Rob Keller, a National
SEE GUARD, 6A

**grandmother
(the other day)
that if we like
living in a free
country,
somebody's
got to do it."**

*Kevin Vetter,
father of National
Guardsmen*

"We're going to put you out of busi-
ness, and I mean that."
Dodson said he was "very
uncomfortable" to be on the same
side as abortion rights advocates,
and questioned whether the bill was
designed to "force us to look like
we're on the same side."
The bishop of the Bismarck
Catholic Diocese, Paul Zipfel, testi-
fied against the bill, saying although
the Catholic church opposes abor-
tion and would like to see the Roe vs.
Wade Supreme Court decision over-
turned, the bishops oppose laws
that criminalize women who abort
SEE ABORTION, 10A

Senators want panel to oversee 'No Child Left Behind'

By DEENA WINTER
Bismarck Tribune

ON
ban
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7A
people
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7A
far, 8A

A delayed bill was introduced Wednes-
day that would set up a 13-member "investigating committee" comprised of lawmakers who would oversee the state Department of Public Instruction's implementation of the federal "No Child Left Behind Act."
Sen. Dwight Cook, R-Mandan, is the primary sponsor of the delayed bill, which would require the Legislative Council to

appoint a committee comprising six sena-
tors and seven representatives to "investigate" the adoption of the federal law. The committee would have the power to issue subpoenas and would hold public hearings on any rules or guidelines the state considers before they're implemented.
The Department of Public Instruction would not be allowed to implement any rules or guidelines unless it has had a public hearing and been approved by the committee. The bill has an emergency clause, meaning it would be effective immediately

if it passed in the Legislature and were signed by the governor.
Wayne Sanstead, the state superintendent of public instruction, bridled at some provisions of Cook's measure, which he has introduced as a delayed bill. The normal Senate deadlines for introducing legislation have passed.
Sanstead believes it would be unconstitutional to give a legislative panel veto power over the implementation of the federal law.
"Parts of this I would consider an

unfriendly act, and moreover, it could get very, very serious," Sanstead said. "I don't like the idea that he would paint the department as a place that needs to be investigated, or needs to be subpoenaed."
Cook said the federal law is going to have a huge effect on North Dakota schools, and although the Legislature has been passing simple enabling pieces of legislation to allow implementation of the act, it is going to make sweeping changes in the state, and he wants legislative oversight of the process.
SEE EDUCATION, 10A

Deaths, 9A
Life, 1C
Money, 6D
Movies, 6B
Nubs, 9A
Opinion, 4A
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COMING UP

FRIDAY
Time running out
to buy gifts for
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Life



SUNDAY
Has the
GNDA lost
its clout?
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Education: Everyone stressed, Sanstead says

FROM 1A

He said the federal law is causing a great deal of anxiety statewide, and some misinformation. He said the committee would ensure that the state not do more than it has to in order to be compliant.

"I think something as important as this ... has to be done in an open forum," Cook said.

He said if everybody is given a say during the process, it will ease a lot of anxiety, reduce the likelihood of mistakes, build trust and help all parties "take ownership."

The chairman of the Senate Education Committee, Layton Freborg, R-Underwood, is also a sponsor of the bill, which is called a delayed bill because it was introduced after the bill introduction deadline passed.

His counterpart in the House, RaeAnn Kelsch, R-Mandan, is also a sponsor. Kelsch said teachers, administrators and school board members statewide are concerned about the implications of the law, and she thinks the state needs to proceed with caution.

Sanstead said the Depart-

ment of Public Instruction would be "willing to work with the legislative branch at any time" with questions about state education rules stemming from the federal law. He understood legislators' frustrations with the law, he said.

"Clearly, everybody is stressed about the impact of No Child Left Behind," Sanstead said. "There are some heavy implications."

(The Associated Press contributed to this report. Reach Deena Winter at 223-8482 or deenawinter@ndonline.com.)

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Deena Winter

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