

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1248

2007 HOUSE EDUCATION

HB 1248

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1248**

House Education Committee

Check here for Conference Committee

Hearing Date: **17 January 2007**

Recorder Job Number: **1254 and 1260**

Committee Clerk Signature

Jan Prindle

Minutes:

Tom Decker, director of School Finance and Organization, DPI, introduced HB 1248.

(Testimony Attached.) The bill would remove the State Board of Public School Education from reviewing the State Superintendent's school construction approval decisions.

Mary Wahl, ND Council of Educational Leaders, testified in Opposition of the bill. The

NDCEL believes that there should remain an appropriate appeal process should the Superintendent deny the approval of a building. There should be in place a mechanism to question the denial of that project.

Chairman Kelsch: Can you tell me any instances when it would be necessary to have a construction project rejection overturned by the Board. In the cases where I am aware of when the Superintendent denied the construction property and the Board overturned the decision, those buildings probably will be abandoned shortly.

Wahl: I think we need to keep in mind that the possibility of denial is not that prevalent, despite the process the Superintendent goes through there has to be both objectivity and subjectivity with regard to the decision to approve or deny. We're less concerned about the objectivity because that is provided for through the approval process. To the degree that there might be some subjectivity with regard to the decision, we feel it is appropriate to have an appeal process.

Chairman Kelsch: What if we included in state law, steps that the State Board would be required to follow in the appeals process. Would you feel more comfortable about that?

Wahl: Yes.

Chairman Kelsch closed the hearing on HB 1248.

At a later time on the same day Chairman Kelsch opened discussion on HB 1248.

Chairman Kelsch: I signed on to this bill based on that the Department of Public Instruction has a better insight as to the number of students, the movement of students, and knowing whether or not it is economically feasible to build buildings. The Commission on Education Improvement talked about construction. In some cases this bill makes sense. Because of the time crunch, we decided to go with the bill the way it is. I would like to lay out steps that the State Board needs to take in the appeals process. I have a difficult time with the State

Board not having any parameters or guidance whatsoever when they are making the decision to overturn the Department. That's a concern to me. The Department has specific criteria laid out for them that they have to follow in their approval or denial process. Should we set up some guidelines that the State Board needs to use in that appeals process? These would not necessarily be the same as the DPI has. That's the question I have for this Committee.

Representative Haas: I think objective guidelines to coincide with what our long-term goals are with regard to school district organization and how we deliver K – 12 would be very beneficial.

Chairman Kelsch: I introduced this bill because it is an issue that needs to be brought up. It is probably not in the best form when introduced but we did not have time to develop the guidelines. Is the Committee interested in looking in developing guidelines?

Representative Mueller: I think you make an excellent suggestion regarding guidelines. If we pass this bill as it is we basically say DPI you make the call—story is done. I think most

everything we have out there in terms of decisions like this, there is an appeals process. I'm not saying DPI is not going to make the right call by their determination; there is always the possibility out there. Maybe there's some building planned in a district that is close to a metropolitan area and they have a feeling for the growth potential for that school that DPI would not necessarily always have. We have to have some place to go beyond that.

Chairman Kelsch: If I try to put something together that would not be so restrictive that they don't have some of their own subjectivity to interject in to process that reflects this Committee's views for education 15 – 20 years down the road, that would be helpful.

Representative Mueller: I think the information that DPI currently uses could and probably should be part of the criteria that the State Board uses.

Chairman Kelsch: I'll take a look at getting something put together and see if we can make some changes.

Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1248

House Education Committee

Check here for Conference Committee

Hearing Date: **25 January 2007**

Recorder Job Number: **1818**

Committee Clerk Signature



Minutes:

Representative Mueller distributed an amendment for HB 1248. The amendment provides criteria for approval of school district construction projects on appeal to the State Board of Education if the Superintendent of Public Instruction denies the building project. While it is not often this happens, the intent of HB1248 was to basically eliminate the appeals process.

Chairman Kelsch, when we heard this bill, suggested that maybe there was another way to approach this. Those people who opposed the bill, liked Chairman's Kelsch's suggestion and like keeping the Board of Education in the loop of the approval/appeal process.

Chairman Kelsch: The reason I brought this bill in was I thought there needed to be more checks and balances. It would be a little over the top to give all the control to the DPI.

Instead of having the DPI being the end, we needed to give the Board some criteria. As it stands now there are no criteria whatsoever. This gives the Board some direction and issues to consider when they override the DPI.

Representative Mueller: I visited with the president of the State Board of Education and he said they would welcome guidance when making these determinations. These are broad, but helpful. They have a very competent attorney from the AG's office that sits in on all of their meetings who would develop these in a bigger way by adding things under the subheadings.

Representative Haas: I'm just wondering if these criteria are stringent enough. There are two that I could put some type of objective analysis on, but the rest are rather subjective. It sure is a whole lot better than anything we have had before and I think the intent of this is to make sure that we allow construction projects were we know they don't have long-term viability with regard to a school district reorganization or enrollments, etc. Letter "c" is probably the most important in this whole list of criteria and can be measured. I think it's a good piece of work.

Chairman Kelsch: "C" is my favorite because that's what we need to look at is the long-term viability of the school district and of the project itself.

Representative Mueller: I move the amendment 0101.

Vice Chairman Meier: I second.

A voice vote was taken: The amendment was unanimously accepted.

Chairman Kelsch: We now have amended HB 1248 before us. What are the wishes of the committee?

Representative Haas: I move **Do Pass as Amended**

Vice Chairman Meier: **Second.**

A roll call vote was taken: **Yea: 13, No: 0, Absent: 0**

Representative Myxter will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

Page 1, line 22, remove the overstrike over "if", remove "A decision by", and remove the overstrike over "~~denies the project, the~~"

Page 1, remove the overstrike over line 23

Page 1, line 24, remove the overstrike over "~~school education.~~", and insert immediately thereafter "In considering the appeal, the state board shall review:

- a. The need for the project;
- b. The educational utility of the project;
- c. The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;
- d. The potential use of the project by a future reorganized school district;
- e. The capacity of the district to pay for the project; and
- f. Any other objective factors relative to the appeal.", remove the overstrike over "~~The decision of the state board~~", and remove "under this section"

Renumber accordingly

House Amendments to HB 1248 (70291.0102) - Education Committee 01/25/2007

Page 1, replace lines 22 through 24 with:

- "3. a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
- (1) The need for the project;
 - (2) The educational utility of the project;
 - (3) The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;
 - (4) The potential use of the project by a future reorganized school district;
 - (5) The capacity of the district to pay for the project; and
 - (6) Any other objective factors relative to the appeal.
- b. The decision of the state board is final."

House Amendments to HB 1248 (70291.0102) - Education Committee 01/25/2007

Page 2, line 1, remove the overstrike over "4."

Page 2, line 5, remove the overstrike over "5-" and remove "4."

Renumber accordingly

Date: 24 Jan
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1248

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 90296.0101

Action Taken Amend

Motion Made By Mueller Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch			Rep Hanson		
V Chairman Meier			Rep Hunskor		
Rep Haas			Rep Mueller		
Rep Herbel			Rep Myxter		
Rep Johnson			Rep Solberg		
Rep Karls					
Rep Sukat					
Rep Wall					

Vote
Vote

Total Yes 13 No 0

Absent 0

Floor Assignment _____

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

*Provide guide lines for H Bd of
Higher Ed on school
const appeals*

Date: 24 Jan 07
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1348

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 70291.0101

Action Taken No pass as amended

Motion Made By Haas Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep Hanson	✓	
V Chairman Meier	✓		Rep Hunskor	✓	
Rep Haas	✓		Rep Mueller	✓	
Rep Herbel	✓		Rep Myxter	✓	
Rep Johnson	✓		Rep Solberg	✓	
Rep Karls	✓				
Rep Sukat	✓				
Rep Wall	✓				

Total Yes 13 No 0

Absent 0

Floor Assignment Myxter

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

70291.0101

REPORT OF STANDING COMMITTEE

HB 1248: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1248 was placed on the Sixth order on the calendar.

Page 1, replace lines 22 though 24 with:

- "3. a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
- (1) The need for the project;
 - (2) The educational utility of the project;
 - (3) The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;
 - (4) The potential use of the project by a future reorganized school district;
 - (5) The capacity of the district to pay for the project; and
 - (6) Any other objective factors relative to the appeal.
- b. The decision of the state board is final."

Page 2, line 1, remove the overstrike over "~~4.~~"

Page 2, line 5, remove the overstrike over "~~5.~~" and remove "4."

Renumber accordingly

2007 SENATE EDUCATION

HB 1248

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1248

Senate Education Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3563, 3564, 3565.

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on HB 1248, a bill relating to school construction approval and appeals. Senator Taylor was absent.

Tom Decker, Director of School Finance and Organization, Department of Public Instruction, testified in favor of the bill. (Written testimony attached).

Senator Gary Lee asked with the enrollment numbers across the state, how difficult is it for a small reorganized district to build if their enrollment is declining. Is it feasible?

Mr. Decker used the example of Kidder County. There are 5 school districts discussing reorganization, two will close the end of this year, one will close next year, two will be left open with less than 400 students and 1450 square miles. If they are operated as a single administrative unit they will need to do some updates. Department of Public Instruction would approve \$2 - \$3 million in upgrades; no building would be required except a new gym.

Senator Gary Lee said even with continuing declining enrollment, there would still be an opportunity for construction?

Mr. Decker said with 1450 square miles, there is a need for long term solutions. If we create a long term solution, there is a need for upgrades.

Chairman Freborg asked if there is progress in joint efforts in building projects.

Mr. Decker said 10 – 20 years ago there was huge growth in what they call corn field sites, Northern Cass for example. That is frowned upon now due to the lack of fire protection and other services. It is not a practical solution. There is no reason there can't be more integration of facilities. It is a culture issue and we will see more of it coming along. Some of the well established JPAs are considering cooperation with the Association of Counties in the area of facilities.

Senator Gary Lee asked what the priorities are with the criteria on page 2.

Mr. Decker said it depends on the project. The first thing that is looked at is need, the ability to sustain enrollment is related to need. Apple Creek, for example, on the east edge of Bismarck has been discouraged by Department of Public Instruction from building. There is no way a building would be utilized in a future reorganization.

Senator Flakoll asked if it takes a simple majority of the state board.

Mr. Decker said yes.

Senator Flakoll asked about the membership of the state board.

Mr. Decker said 6 regional members appointed by the governor and the superintendent.

Senator Bakke asked what criteria are used by the state board.

Mr. Decker said that is the problem. There is a tendency to be swayed by emotional testimony without figures and numbers.

Doug Johnson, North Dakota School Boards Association testified in favor of the bill. He helped develop the guidelines and in testimony they learned there were no guidelines being used.

Dean Bard, North Dakota Small Organized Schools, testified in opposition to the bill. He has no deep and abiding concern about the bill. He thinks the board members are reasonable and well grounded in the work they do on the board. He is bothered we are concerned that they

can't make a decision. There is no pressing need, no evil to correct. The first opportunity for a public hearing would be before the state board and it is important for the public to have an opportunity to let their wishes be known.

Chairman Freborg closed the hearing on HB 1248.

Senator Bakke said she had one more question for Tom Decker. Is there an open hearing held by the superintendent or is the decision based only on paperwork?

Mr. Decker said they comply with the law and administrative rules. They work with the school district throughout the project. There is no formal public hearing but a good deal of communication.

Chairman Freborg asked if we are changing anything.

Mr. Decker said yes, we are defining a process for the state board to use before it makes a decision.

Chairman Freborg asked if they are using different criteria now.

Mr. Decker said there are no specific criteria now except to listen to strong support at a hearing.

Senator Flakoll moved a Do Pass on HB 1248, seconded by Senator Gary Lee.

Senator Bakke said she has a concern about the opportunity for citizens to discuss the issue in a public forum. She wants a chance for the voters to be heard.

The motion passed 3-1-1. Senator Flakoll will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1248, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends DO PASS (3 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1248 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1248

HB 1248
17 Jan 07

TESTIMONY ON HB 1248
HOUSE EDUCATION COMMITTEE
January 17, 2007
by Tom Decker, Director School Finance & Organization
(701) 328-2267
Department of Public Instruction

Mr. Chairman, members of the committee, for the record, my name is Tom Decker and I am the Director of School Finance & Organization for the Department of Public Instruction. I am here to speak in favor of House Bill 1248.

House Bill 1248 removes the language from the North Dakota Century Code which provides for review the State Superintendent's school construction approval decisions by the State Board of Public School Education.

North Dakota Century Code has provided authority for the State Superintendent to deny construction approval since about 1993. Over that period of time, the department has denied three construction approval projects. Two of those projects were in high school districts which have since become part of larger districts through reorganization. The third project was in a K-8 district. The State Board of Public School Education has had review authority since the late 1990's. The State Board had been involved in reviewing two of these decisions. In the case of the construction project in the high school district, they upheld the State Superintendent's decision. In the case of the construction project in the K-8 district, they over turned the State Superintendent's decision.

I have given you copies of the school construction statute. Section 2A of the statute provides that school construction can be approved only if a school district can demonstrate the need for the project, the education utility of the project, and the ability to sustain stable or increasing enrollment for a period of time at least equal to the anticipated useable life of the project which we consider to be 30 years, or demonstrates potential utilization of the project by a future reorganized district.

The school construction statute is backed up by 10 pages of administrative rules, which is also attached to my testimony.

The bottom line is if the State Superintendent is going to deny a school construction project, there is very extensive analysis of the school district's situation in terms of enrollment potential and financial capabilities. We have not been a turned down school construction approval request since approximately 2002. With the State Board of Public School Education dealing with these rather complex issues so infrequently, it is nearly impossible to keep the State Board up to speed on the requirements and the process. We believe that the construction law and rules outline an extensive process that requires a more than adequate review of school construction projects.

Therefore, we support provisions of House Bill 1248 and recommend that you give it a due pass.

**CHAPTER 15.1-36
SCHOOL CONSTRUCTION**

15.1-36-01. School construction projects - Approval.

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of twenty-five thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
 - a. Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project or demonstrates potential utilization of the project by a future reorganized school district; and
 - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education.
3. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. The decision of the state board is final.
4. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy-five thousand dollars.
5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

15.1-36-02. School construction projects - Loans.

1. The board of university and school lands may authorize the use of moneys in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 to provide school construction loans, as described in this chapter. The outstanding principal balance of loans under this chapter may not exceed forty million dollars. The board may adopt policies and rules governing school construction loans.
2. In order to be eligible for a loan under this section, the board of a school district shall:
 - a. Obtain the approval of the superintendent of public instruction for its construction project under section 15.1-36-01; and
 - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The board of a school district may submit its loan application to the superintendent of public instruction before or after receiving authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the

application for a loan, the application must be acted upon by the superintendent expeditiously but no later than one hundred eighty days from the date it is received by the superintendent.

4. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.
5. If the superintendent of public instruction approves the loan, the superintendent may determine the loan amount. In determining the amount of a loan, the superintendent shall take into account the cost of the construction project and the fiscal capacity of the school district.
6. If the superintendent of public instruction approves the loan, the superintendent may determine the interest rate to be paid. The interest rate on a loan under this section may not exceed a rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15.1-36-01. The interest rate may not exceed six percent.
7. A school district may not receive a loan under this section unless the superintendent of public instruction determines that the district has an existing indebtedness equal to at least fifteen percent of its taxable valuation. In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness authorized by an election under section 21-03-07 but not issued and indebtedness authorized to be paid with dedicated tax levies under subsection 7 of section 21-03-07 but not issued.
8. The superintendent of public instruction may adopt rules governing school construction loans.
9. For purposes of this section, a construction project means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority and further provided that the acquisition or activity is estimated to cost in excess of fifty thousand dollars.

15.1-36-03. School construction project loans - Management by Bank of North Dakota. If the superintendent of public instruction approves a loan application under section 15.1-36-02, the superintendent shall forward the application to the Bank of North Dakota. The Bank shall manage and service each school construction loan issued under this chapter and shall execute all necessary loan instruments. The Bank may charge a loan recipient a fee for managing and servicing the loan. The Bank shall receive payments of principal and interest from the school districts and shall remit the payments of principal and interest to the board of university and school lands. The board shall use or deposit the payments in accordance with section 57-62-02 and section 21 of article X of the Constitution of North Dakota.

15.1-36-04. Evidences of indebtedness. The board of a school district may issue and sell evidences of indebtedness under chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the lesser of thirty percent of the school district's taxable valuation or five million dollars. Evidences of indebtedness issued under this chapter constitute a general obligation of the school district.

15.1-36-05. Construction of public school building - Violations - Penalty.

1. A person is guilty of an infraction if the person:
 - a. Draws plans or specifications for the construction of a public school building or facility in violation of this chapter;

- b. Superintends the construction of a public school building or facility in violation of this chapter;
 - c. Constructs a public school building or facility in violation of this chapter; or
 - d. Violates any other provision of this chapter.
2. A member of a school board is guilty of an infraction if the member concurred in a violation of this chapter by the board.

ARTICLE 67-09

APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN TWENTY-FIVE THOUSAND DOLLARS

Chapter
67-09-01 Approval for School Construction Estimated to Cost More Than Twenty-five Thousand Dollars

CHAPTER 67-09-01
APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN TWENTY-FIVE THOUSAND DOLLARS

Section
67-09-01-01 Definitions
67-09-01-02 Construction Must Be Approved by the Superintendent of Public Instruction - Exception
67-09-01-02.1 General Requirements for Approval
67-09-01-03 Consultation With the Department Required
67-09-01-04 Preparing the Application
67-09-01-05 Facility Plan Required for Certain Construction [Repealed]
67-09-01-05.1 Approval of Remodeling Construction Costing Less Than One Hundred Fifty Thousand Dollars
67-09-01-05.2 Approval of New Construction or Remodeling Construction Costing One Hundred Fifty Thousand Dollars or More
67-09-01-06 Submission of Application
67-09-01-07 Demonstration of Need and Educational Utility [Repealed]
67-09-01-08 Application Acted on Within Sixty Days
67-09-01-09 Appeal of Disapproved Application to Board
67-09-01-10 Approval Effective for Two Years - Change in Approved Plan
67-09-01-11 Submission of Architectural Plans

67-09-01-01. Definitions. For purposes of this article:

1. "Application" means the appropriate construction approval application provided by the department, including all required supporting documentation.
2. "Board" means the North Dakota state board of public school education.
3. "Construction" means construction, purchase, repair, improvement, renovation, or modernization of any school building or facility which is estimated by the school board to cost more than twenty-five thousand dollars.
4. "Consult" means to meet with, discuss data and plans, and seek advice and counsel.
5. "Department" means the North Dakota department of public instruction.

6. "District" means a North Dakota public school district.
7. "Emergency construction" means any new construction or remodeling construction that is requested because of damage or destruction of buildings or facilities as a result of fire, tornado, flood, or other act of God.
8. "Facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the district.
9. "Facility plan" means the school district's facility plan required for new construction, or remodeling construction estimated to cost one hundred fifty thousand dollars or more, completed on forms provided or sanctioned by the department.
10. "New construction" means any construction that provides additional area to the current buildings or facilities and is estimated to cost more than twenty-five thousand dollars.
11. "Project" means the building, facility, or improvement that would result from the construction.
12. "Remodeling construction" means any construction that improves current buildings or facilities and is estimated to cost more than twenty-five thousand dollars.
13. "Stable" enrollment may only be demonstrated by using either of the following methods:
 - a. The enrollment for the district has remained the same or has increased over the three-year period prior to the year the application is made; or
 - b. The enrollment as projected by the department using the cohort-survival method will remain the same or will increase over the five-year period subsequent to the year the application is made.
14. "Superintendent" means the North Dakota superintendent of public instruction.
15. "Technical assistance" means counsel, advice, and involvement in the completion of the application and facility plan.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-02. Construction must be approved by the superintendent of public instruction - Exception. A district may not undertake construction of any school building or facility estimated to cost more than twenty-five thousand dollars unless:

1. The construction is approved by the superintendent; or
2. The construction is required as part of a plan to correct deficiencies required under North Dakota Century Code section 15.1-06-09, approved by the state fire marshal, and the estimated cost does not exceed seventy-five thousand dollars.

History: Effective April 1, 1994; amended effective May 1, 1999; November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-02.1. General requirements for approval. The superintendent may not approve any new construction or remodeling construction unless the school district demonstrates:

1. The need for the project;
2. The educational utility of the project;
3.
 - a. The ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project; or
 - b. Potential use of the project by a future reorganized school district; and
4. The capacity to pay for the project.

History: Effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-03. Consultation with the department required. The district shall consult with the department at least:

1. Sixty days prior to the submission of an application if the construction is new construction, or remodeling construction estimated to cost one hundred fifty thousand dollars or more; or
2. Thirty days prior to the submission of an application if the construction is remodeling construction estimated to cost less than one hundred fifty thousand dollars.

The department may waive the timelines in this section for emergency construction.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-04. Preparing the application. The district shall obtain the appropriate application from the department. The district shall receive and consider technical assistance provided by the department in preparing the application.

History: Effective April 1, 1994.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-05. Facility plan required for certain construction. Repealed effective November 1, 2002.

67-09-01-05.1. Approval of remodeling construction costing less than one hundred fifty thousand dollars. The superintendent may approve remodeling construction estimated to cost less than one hundred fifty thousand dollars if the district demonstrates:

1. The need for the remodeling construction by showing that the remodeling is required to address any of the following criteria:
 - a. Implementation of the life safety code;
 - b. Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];
 - c. Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];
 - d. Asbestos abatement or removal;
 - e. The school's total enrollment, or the enrollment in a particular grade range that will be affected by the remodeling, has increased;
 - f. The part of the building or facility that is to be remodeled has exceeded its useful life;
 - g. The building or facility has been damaged as a result of fire, tornado, flood, or other act of God; or
 - h. Violations of fire, health, safety, and any other required state or federal standards will be corrected by the construction;

2. The remodeling construction will enhance or facilitate delivery of educational services in the district;
3. Enrollment is likely to increase or remain stable for a period of time at least equal to the anticipated usable life of the project or the project will potentially be used by a future reorganized school district; and
4. The ability to pay for the project.

History: Effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-05.2. Approval of new construction or remodeling construction costing one hundred fifty thousand dollars or more. The superintendent may approve new construction or remodeling construction estimated to cost one hundred fifty thousand dollars or more, if the district meets the following requirements:

1. The district must submit a completed facility plan with the application for construction approval.
2. At the time of consultation with the department, the district shall complete and review its facility plan with the department. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan. If the district submitted an acceptable facility plan within the preceding two years, the district may submit a copy of that plan but the superintendent may require the district to update or revise the plan.
3. The facility plan must include:
 - a. A description and preliminary diagrams of the proposed construction;
 - b. A description of programs to reduce energy costs and waste disposal costs;
 - c. Trend data on school or facility maintenance;
 - d. The estimated difference in operation costs as a result of construction completion; and
 - e. Any other information deemed advisable by the superintendent.
4. The facility plan must address the following factors, which relate to the need for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

- a. A description of district schools and facilities;
 - b. Alternatives considered by the district and reasons for rejecting alternatives;
 - c. Evidence that demonstrates that, despite attempted cooperation or collaboration with area schools, health and human service agencies and other education agencies and political subdivisions, no form of cooperation with another entity will result in buildings or facilities that meet the needs of the students;
 - d. The need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities;
 - e. Description of district programs and services and an assessment of improvements that will occur as a result of construction completion;
 - f. Violations of fire, health, safety, and any other required state or federal standards, which will be corrected by the construction;
 - g. The new construction or remodeling is required to address any of the following criteria:
 - (1) Implementation of the life safety code;
 - (2) Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];
 - (3) Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];
 - (4) Asbestos abatement or removal;
 - (5) The school's total enrollment or the enrollment in a particular grade range that will be affected by the construction has increased;
 - (6) The building or facility, or part of the building or facility, has exceeded its useful life; or
 - (7) The building or facility has been damaged or destroyed as a result of fire, tornado, flood, or other act of God; and
 - h. Any other information deemed advisable by the superintendent.
5. The facility plan must address the following factors, which relate to the educational utility of the project construction, but may also relate

to the other general requirements for approval as indicated in section 67-09-01-02.1:

- a. The building or facility will enhance or facilitate delivery of educational services in the district;
 - b. The building or facility meets or exceeds the size standards recommended by the department;
 - c. The proposed building or facility is comparable in size, cost, and quality to buildings or facilities recently constructed in other districts that have similar enrollment; and
 - d. Any other information deemed advisable by the superintendent.
6. The facility plan must address the following factors, which relate to the district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
- a. Past, present, and projected enrollment data;
 - b. The economic and population bases of the communities to be served are likely to grow or to remain stable;
 - c. Enrollment is likely to increase or remain stable for a period of time at least equal to the anticipated usable life of the project;
 - d. The building or facility will be in use for the life of the building or facility; and
 - e. Any other information deemed advisable by the superintendent.
7. The facility plan must address the following factors, which relate to the potential utilization of the project by a future reorganized school district, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
- a. The location of school sites in each surrounding school district, including surrounding districts' attendance numbers in elementary and high school, capacity of buildings, and distances from the applicant's district;
 - b. Geographic information regarding the area proposed to be served;
 - c. Appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made;

- d. Information regarding the potential utilization of the project by a future reorganized school district; and
 - e. Any other information deemed advisable by the superintendent.
8. The facility plan must address the following factors, which relate to the district's capacity to pay for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
- a. The availability and manner of financing the construction has been thoroughly evaluated;
 - b. Trend data on general fund revenues, expenditures, and fund balances;
 - c. Trend data on tax levies;
 - d. Trend data on taxable valuation per student;
 - e. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;
 - f. Current sources of district revenue;
 - 9. The operating budget of the district can satisfactorily meet the projected operating cost of the proposed building or facility; and
 - h. Any other information deemed advisable by the superintendent.

History: Effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-06. Submission of application. The district shall submit the application to the department, along with its approved facility plan, if necessary. If the superintendent determines the application or facility plan is not complete, the superintendent shall return the application and facility plan to the district for completion.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-07. Demonstration of need and educational utility. Repealed effective November 1, 2002.

67-09-01-08. Application acted on within sixty days. Within sixty days of receipt of the completed application, the superintendent shall issue a written decision either approving or disapproving the application and shall provide a written rationale for the decision. However, if the application seeks approval of emergency construction, the superintendent shall approve or disapprove the application within seven days of receipt, or as soon thereafter as is reasonably possible.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-09. Appeal of disapproved application to board.

1. If the superintendent disapproves the district's application, the district may appeal the superintendent's decision to the board by serving a written notice of appeal on the superintendent, with a statement of the reasons the application should be approved, within thirty days of the mailing of the notification of disapproval.
2. If the district includes new information in its written notice of appeal that was not considered by the superintendent when making the superintendent's decision, the matter shall be sent back to the superintendent for reconsideration. If the matter is sent back to the superintendent, the superintendent may request additional information from the district, and the timeline for initial consideration of an application shall apply.
3. Within sixty days of receipt of a written appeal request that does not include new information, the board shall review the application, the superintendent's written rationale for disapproval, and the district's statement of reasons the application should be approved, and determine whether the application should be approved. The board may ask questions of the school board and the school board's representatives, and the superintendent and the superintendent's representatives. The board's decision on the district's application is final.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-10. Approval effective for two years - Change in approved plan. Construction approval received under this chapter is effective for two years from the date of approval. If the district has not commenced construction within the two-year period, the district must apply again for construction approval. If a district modifies an approved plan and the modification results in a cost of more

than twenty-five thousand dollars in excess of the cost of the approved plan, the district shall obtain the approval of the superintendent as provided by this chapter.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-11. Submission of architectural plans. Prior to commencement of approved construction, the district shall submit architectural plans required by law to the department.

History: Effective April 1, 1994.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

**TESTIMONY ON HB 1248
SENATE EDUCATION COMMITTEE**

February 21, 2007

by Tom Decker, Director School Finance & Organization

(701) 328-2267

Department of Public Instruction

Chairman Freborg, members of the committee, for the record, my name is Tom Decker and I am the Director of School Finance & Organization for the Department of Public Instruction. I am here to speak in favor of House Bill 1248.

Engrossed House Bill 1248 changes the language in the North Dakota Century Code which provides for review the State Superintendent's school construction approval decisions by the State Board of Public School Education.

North Dakota Century Code has provided authority for the State Superintendent to deny construction approval since about 1993. Over that period of time, the department has denied three construction approval projects. Two of those projects were in high school districts which have since become part of larger districts through reorganization. The third project was in a K-8 district. The State Board of Public School Education has had review authority since the late 1990's. The State Board had been involved in reviewing two of these decisions. In the case of the construction project in the high school district, they upheld the State Superintendent's decision. In the case of the construction project in the K-8 district, they over turned the State Superintendent's decision.

I have given you copies of the school construction statute. Section 2A of the statute provides that school construction can be approved only if a school district can demonstrate the need for the project, the education utility of the project, and the ability to sustain stable or increasing enrollment for a period of time at least equal to the anticipated useable life of the project which we consider to be 30 years, or demonstrates potential utilization of the project by a future reorganized district.

The school construction statute is backed up by 10 pages of administrative rules, which is also attached to my testimony. If the State Superintendent is going to deny a school construction project, there is very extensive analysis of the school district's situation in terms of enrollment potential and financial capabilities. We have not had to turn down a school construction approval request since approximately 2002. As a result, the State Board of Public School Education deals with these rather complex issues infrequently. It is nearly impossible to keep the State Board up to speed on the requirements and the process. The amendments adopted by the House require that the review of the State Superintendents decision to deny a school construction request be reviewed using the same criteria that the law requires the State Superintendent to use. Up to now, there were no specific criteria in law to guide a review by the State Board. We think these criteria provide a sound and reasonable basis for review.

Therefore, we support provisions of Engrossed House Bill 1248 as amended by the House and recommend that you give it a due pass.