

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1444

2007 HOUSE EDUCATION

HB 1444

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1444**

House Education Committee

Check here for Conference Committee

Hearing Date: **22 January 2007**

Recorder Job Number: **1519**

Committee Clerk Signature

*Jan Prindle*

Minutes:

**Representative Mike Brandenburg, District 31**, introduced the bill. This bill would require DPI to "hold harmless" the districts that border South Dakota. Students who went to South Dakota caused a loss of foundation aid to those sending students. This bill provides that those districts would not lose their payments from the state.

**Representative Herbel:** As I understand it then, what this would do is require DPI to pay for the students that could have been in their school but wouldn't be in their school.

**Representative Brandenburg:** Yes, it would also allow them to be counted as being in their school district.

**Chairman Kelsch:** As I look at the fiscal note attached, the fiscal affect would be a \$540.0 expenditure for which there is no appropriation. So those school districts would receive those additional monies. That's what your intent is? Correct?

**Representative Brandenburg:** Yes, there is a financial impact to the state as well as there is to those schools that are impacted to accommodate those students.

**Representative Herbel:** On line 21 it says that the Supt of Public Instruction "may." Does that mean they can deny it in some cases? That opens a can of worms.

**Representative Brandenburg:** Everything we do opens a can of worms. This is an issue that impacts those schools that lost those students severely.

**Vice Chairman Meier:** How many students do you have in this situation?

**Representative Brandenburg:** There are superintendents here that could answer this. It's not just my district. It's all along the border.

**Representative Rod Froelich, District 31,** spoke in favor of the bill. All of a sudden our school districts get a bill.

**Jim Gross, superintendent at Selfridge,** testified in favor of the bill. Most districts thought there would be a hold harmless. This bill for \$18.0 all of a sudden hit me right between the eyes. We don't have a large taxable base and we did not budget for this. Had we known it was coming we could taken it off our carryover. We do get impact aid from Washington DC, but that is unreliable. Another way it affected us is that we received \$150.0 from federal impact aid just before the end of the year. Our school board thought we would not have pay additional. We then had to pay \$128.0 over the amount of the carryover. That's over 10% of our budget.

**Corbley Ogren, superintendent of Zeeland Public Schools,** testified in favor of the bill. Our problem is that we have never had a SD student in our school. Right now we have 3 kids going to Harried school. Now I get a bill \$75.4 from DPI because we have three students going to school in SD. We never look at getting money back from the state of SD because we never had a student from SD go to our school.

**Tom Decker, DPI,** testified in **opposition** to the bill. **(Testimony Attached.)** This bill as it is written would allow districts who have students going to SD to have a free lunch. It would require all the other districts to underwrite those expenses and these districts to make money.

**Gary Coleman, DPI,** gave a brief overview of the spreadsheet attached to Decker's testimony.

**Chairman Kelsch** closed the hearing of HB 1444.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1444**

## House Education Committee

Check here for Conference Committee

Hearing Date: **1 February 2007**

Recorder Job Number: **2638**

Committee Clerk Signature	<i>Jan Pender</i>
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## Minutes

**Chairman Kelsch:** We already have an agreement with South Dakota and developed an open enrollment form for cross-border students and it's working extremely well. What bill would do is basically give ND districts that are funding a net amount of students to SD all the money. They would keep the money and the kids would go to SD and they would not send any money for them. That's not the way we have set up our open enrollment. This would set us back about ten years.

**Representative Herbel:** I move a **Do Not Pass**

**Representative Mueller:** I second.

**A roll call vote was taken: Yes: 11, No: 2, Absent: 0**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/17/2007

Bill/Resolution No.: HB 1444

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$540,000	\$0	\$540,000	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill amends the statute relating to cross-border attendance agreements with South Dakota.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

School districts will be allowed to count ND students attending school in SD for state aid purposes. The requirement to assess any cost incurred by ND under the agreement back to the school districts incurring the cost is removed.

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

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

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

The bill does not provide an appropriation.

State aid for ND students attending SD is estimated at \$400,000.

The amount due SD from ND is estimated at \$140,000.

The biennium total is \$540,000.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Jerry Coleman	<b>Agency:</b>	Public Instruction
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Phone Number: 328-4051

Date Prepared: 01/18/2007

Date: 1 Feb 02  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1444

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Herbel Seconded By Mueller

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 11 No 2

Absent 0

Floor Assignment Herbel

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

**REPORT OF STANDING COMMITTEE**

**HB 1444: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS**  
(11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1444 was placed on the  
Eleventh order on the calendar.

2007 TESTIMONY

HB 1444

**TESTIMONY ON HB 1444**  
**EDUCATION COMMITTEE**  
**January 22, 2007**  
**by Thomas Decker, Director, School Finance**  
**(701) 328-2267**  
**Department of Public Instruction**

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Chairperson Kelsch, members of the committee, for the record, I am Tom Decker, Director, School Finance & Organization, Department of Public Instruction.

House Bill 1444 deals with the North Dakota, South Dakota cross border attendance provisions passed by the last legislative session. If you recall, South Dakota and North Dakota passed similar legislation which allows more open enrollment between the states.

The provisions of the bill applies to students in districts which are contiguous to the North Dakota, South Dakota border. Parents and students are allowed to choose in which state they want to attend school. The law provides that the students can attend the neighboring state and are treated as resident students for foundation aid purposes.

We have developed an agreement with South Dakota and developed an open enrollment form for cross border students. During its first year of operation, 66 students from North Dakota attended in South Dakota and 53 students from South Dakota attended in North Dakota. Part of the agreement we reached with South Dakota establishes a per student cost of education figure. This year, that figure was \$5319. At the end of each school year under provisions of this legislation, the North Dakota Department of Public Instruction works with the South Dakota Department of Public Instruction to complete a reconciliation of costs. North

Dakota had more students going to South Dakota than South Dakota had coming to North Dakota, therefore, we owed South Dakota \$69,945.

In North Dakota, what we do is determine on a district by district basis whether a district had more students coming into their school from South Dakota than they had going out. If more North Dakota students from a district went to South Dakota than came into the district, we withhold the difference in the per student cost we owe South Dakota for that amount of students from the district's foundation aid (\$1994.44). In this case, the amount of money withheld per student is quite reasonable compared to what most districts along the border used to pay in aid or tuition if they negotiated their own agreement with South Dakota. This money withheld from local districts is simply the local share of the cost of education.

House Bill 1444 proposes to prohibit the state education agency from withholding that money. This would, in effect, give North Dakota districts who are sending a net amount of students to South Dakota a free lunch. The local share of the cost of education for each student that goes to South Dakota would be in effect paid by all the other school districts in North Dakota.

Also provisions of the cross border legislation say that students coming in from South Dakota are treated as residents and receive North Dakota foundation aid. Similarly, North Dakota students who go to South Dakota are counted as resident students in South Dakota and are eligible to receive foundation aid for the state of South Dakota.

House Bill 1444 also proposes to change that provision so that North Dakota state students could be counted by the North Dakota district and be eligible for foundation aid even though they are attending school in South Dakota and South Dakota is receiving state aid for them there. This will also result in the rest of the

North Dakota districts in effect, paying the local share of the cost of education for North Dakota students attending in South Dakota.

Chairperson Kelsch, members of the committee, the cross border attendance bill is working quite well exactly as it is. These amendments are inappropriate in a period when we are trying hard to achieve funding equity for all students. Every district should be responsible for the local share of the cost of educating their resident students. We certainly should not waive that cost for a few districts and spread it to all districts. I recommend that you give this bill a do not pass.

2005-2006 ADM

CoDist	DistrictName	In	Out	Net	\$ 1,994.44 Net Out	Net Out
1013	Hettinger 13	32.85	30.00	2.85	-	-
6001	Bowman 1	6.00	0.93	5.07	-	-
6017	Rhame 17	-	-	-	-	-
6033	Scranton 33	14.00	-	14.00	-	-
11040	Ellendale 40	-	3.00	(3.00)	(3.00)	(5,983)
11041	Oakes 41	-	-	-	-	-
15010	Bakker 10	-	10.00	(10.00)	(10.00)	(19,944)
15015	Strasburg 15	-	-	-	-	-
26004	Zeeland 4	-	-	-	-	-
26009	Ashley 9	-	-	-	-	-
39008	Hankinson 8	-	4.00	(4.00)	(4.00)	(7,978)
39018	Fairmount 18	-	-	-	-	-
39028	Lidgerwood 28	-	-	-	-	-
41006	Sargent Central 6	-	-	-	-	-
43004	Ft Yates 4	-	-	-	-	-
43008	Selfridge 8	-	18.07	(18.07)	(18.07)	(36,040)
Total		52.85	66.00	(13.15)	(35.07)	(69,945)

SD District Tuition Cost 2006-07	ADM	Per ADM
General Aid Need	18,283,992.00	3,927
SpEd	2,604,609.00	663
<b>Total Cost</b>	<b>20,888,601.00</b>	<b>3,927</b>
Net ADM Out		13.15
Due South Dakota		<u>69,945</u>

**AGREEMENT FOR CROSS-BORDER ATTENDANCE  
BETWEEN THE STATE OF NORTH DAKOTA AND  
THE STATE OF SOUTH DAKOTA**

This agreement is entered into between the State of North Dakota, acting through its Superintendent of Public Instruction ("North Dakota") and the State of South Dakota acting through its Secretary of the Department of Education ("South Dakota") (collectively "the states") to provide cross-border attendance of kindergarten through 12<sup>th</sup> grade students.

**1) Purpose**

A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota.

**2) Authority**

The authority to enter into this agreement is provided by H.B. 1194, 2005 N.D. Leg, and H.B. 1149, 2005 S.D. Leg.

**3) Application Procedure**

- a) The parent or guardian of a student who is a resident of and is eligible to attend a school in a North Dakota school district that is contiguous to the South Dakota border, or a parent or guardian of a student who is a resident of and is eligible to attend a school in a South Dakota school district that is contiguous to the North Dakota border may file an application in order for the student to attend school in the receiving district.
- b) The student must be under 21 years of age as of July 1<sup>st</sup> for enrollment the following school year. The student's parent or guardian shall submit an application to the resident district. The application shall be on a form provided by the states.
- c) Once enrolled in a receiving district, the student may remain enrolled in the receiving district and is not required to submit annual or periodic applications.

**4) The Manner and Notification of Acceptance**

- a) The school board of the student's district of residence shall transmit the application to the receiving district within 7 days of receipt of the application.

- b) Within 10 days of approval or denial of the application, the receiving district shall notify the resident district and the parent or guardian of the student.
- c) Notice of intent to enroll in the receiving district obligates the student to attend the receiving district during the following school year unless the school boards of the resident and the receiving districts agree in writing to allow the student to transfer back to the resident district or the student's parent or guardian relocates to another district.
- d) All notices required to be given by one school district to the other under this Agreement, unless specifically provided otherwise, must be in writing and sent to the school board president at the school district administrative offices.
- e) A receiving district shall accept credits toward graduation awarded by the resident district provided the credits meet state and local requirements for graduation from the receiving district. Each of the school districts must award a diploma to a receiving student attending the receiving school so long as the student meets all state and local requirements for receipt of a diploma.

#### **5) Causes for Denial of an Application**

The board of the receiving district may deny an application only if the application will result in overcrowding of the class, grade level, or school building attended by the student involved. The ability of the receiving district to deny an application of a student in need of special education or special education and related services shall be governed by paragraph 7).

The board of a resident district may not deny an application.

#### **6) Calculation of North Dakota State Aid**

- a) The North Dakota superintendent of public instruction (Superintendent) may count any South Dakota student participating in cross-border attendance under this agreement for the purposes of determining the amount of North Dakota state aid to which a North Dakota school district is entitled.
- b) The superintendent may not count a North Dakota student participating in cross-border attendance in accordance with this contract for purposes of determining the amount of state aid to which a North Dakota school district is entitled.

- c) If there are more students from North Dakota than South Dakota participating in cross-border attendance under this agreement, the superintendent will forward to the secretary of the South Dakota department of education (Secretary), on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.
- d) If there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.

## **7) Special Education**

A student who requires special education or special education and related services may participate in cross-border attendance under this section. For each student in need of special education or special education and related services, the resident school district will be invited to take part in an Individual Education Plan (IEP) meeting. If it is determined that an out-of-district (that is, out-of-receiving-district) placement is needed for the student, the resident school district will be solely responsible for the education, related services and all expenses for that student.

Notwithstanding any other provision of this agreement, a request to transfer a student in need of special education or special education and related services may be granted only if the receiving district:

- a) Upon receipt of an open enrollment application, obtains copies of all relevant student education records on the student applying to transfer from the resident district;
- b) Completes a review of those relevant student education records; and
- c) Directly communicates with the student's parent or guardian and representatives of the resident district regarding the student's special education or special education and related services needs.

If the receiving district confirms, based upon the records review and communications with the student's parent or guardian and representatives of the receiving district, that it can provide an appropriate instructional program and facilities, including transportation, if necessary, to meet the needs of the student, it may proceed to approve the application for a cross-border transfer. If the receiving district determines that it is not able to make that confirmation, the receiving district shall initiate an individual education program team meeting consisting of representatives from both the resident and receiving districts to

determine whether the receiving district can provide an appropriate instructional program, facilities, and transportation, if necessary.

A request to transfer a student in need of special education or special education and related services may be denied only if the application will result in overcrowding of the class, grade level or school building in which the student is to enroll or if an individual education program team consisting of representatives from the resident and receiving districts determines that the receiving district cannot provide an appropriate instructional program and facilities, including transportation, to meet the student's needs. If the request to transfer is granted, the receiving district is responsible for the provision of a free appropriate public education for the student in need of special education or special education and related services, except as otherwise set out in this paragraph (7). The IEP team consisting of representatives from the resident and receiving districts shall also determine whether the student in need of special education requires transportation as a related service. If so, the resident district shall provide or ensure the provision of transportation within the boundaries of the resident district, and the receiving district shall provide or ensure provision of transportation within the boundaries of the receiving district.

If a parent or guardian of a student in need of special education or special education and related services requests to transfer the student back to the resident district, the provisions of paragraph 4)c) of this agreement shall apply.

#### **8) Transportation**

- a) Each school district may provide transportation to students participating in cross-border attendance under this section.
- b) The school districts may jointly enter into a subsequent transportation agreement; however, the transportation agreement must be in writing and approved by the respective districts.

#### **9) Miscellaneous Provisions**

- a) Application of other Laws. North Dakota Century Code Sections 15.1-29-01 through 15.1-29-13, regarding receiving tuition and reciprocity do not apply to students participating in cross-border attendance under this Agreement.
- b) Merger. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement.
- c) Severability. If any term or provision of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and, if possible, the

rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term or provision.

- d) Spoliation. Each party shall promptly notify the other party of all potential claims that arise from or result from this Agreement. Each party shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence, including the scene of an accident.
- e) Indemnity. North Dakota and South Dakota each agrees to assume its own liability for any claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.
- f) Alternative Dispute Resolution – Jury Trial. Neither South Dakota nor North Dakota agrees to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies. Neither South Dakota nor North Dakota waives any right to a jury trial that either State may have under applicable law.
- g) Confidentiality. The parties agree not to use or disclose any information either of them receives from the other under this agreement that the opposing party has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the opposing party. The duty of each party to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it.
- h) Compliance with Public Records Act. South Dakota understands that, except for those disclosures prohibited in this Agreement, North Dakota must disclose to the public upon request any records it receives from South Dakota under this agreement. South Dakota further understands that any records that are obtained or generated by South Dakota under this agreement, may be open to the public upon request under the North Dakota open records law. See N.D.C.C ch. 44-04. South Dakota agrees to contact North Dakota immediately upon receiving a request for information under the open records law and to comply with North Dakota's instructions on how to respond to the request, except that North Dakota will comply, in good faith, with North Dakota law after consultation with South Dakota.

- i) Compliance with Public Records Act. North Dakota understands that, except for those disclosures prohibited in this Agreement, South Dakota must disclose to the public upon request any records it receives from North Dakota under this agreement. North Dakota further understands that any records that are obtained or generated by North Dakota under this agreement, may be open to the public upon request under the South Dakota open records law. See SDCL ch. 1-27. North Dakota agrees to contact South Dakota immediately upon receiving a request for information under the open records law and to comply with South Dakota's instructions on how to respond to the request, except that South Dakota will comply, in good faith, with South Dakota law after consultation with North Dakota.
- j) Contract Term. The term of this agreement is one (1) year, beginning July 1, 2005 and ending July 1, 2006. The agreement shall be automatically renewed for successive term of one (1) year each without action by either party unless one of the parties gives written notice of its intention to terminate the parties' agreement at least sixty (60) days in advance of the renewal date hereof. Such notice of termination must be mailed to either the South Dakota Secretary of Education or the North Dakota Superintendent of Public Instruction, as the case may be, by certified mail, return receipt requested, and postmarked at least 60 days prior to the next renewal of this contract. In absence of such notice, the agreement shall be automatically renewed in accordance with this paragraph.
- k) State Audit. All records, regardless of physical form, and the accounting practices and procedures of either party relevant to this Agreement are subject to examination by the appropriate state auditing agency of either state. Both parties will maintain all such records for at least three years following completion of this Agreement.
- l) Effective Date. This Agreement is not effective until fully executed by both parties.

[Signature page to follow]

STATE OF SOUTH DAKOTA

  
Signature

Rick Melmer  
Typed Name

Cabinet Secretary of Department of Education  
Title

7/6/05

Date

STATE OF NORTH DAKOTA

  
Signature

Wayne G. Sanstead  
Typed Name

State Superintendent  
Title

June 22, 2005

Date

**South Dakota / North Dakota  
OPEN ENROLLMENT APPLICATION**  
Parent / Guardian: complete Sections I, II, III & sign

**I. Parent/Guardian Information**

Parent or Guardian Name (Last, First, M.I.)	Home Telephone (    ) -		
	Work Telephone (    ) -		
	Cell Number (    ) -		
Parent or Guardian Address:	City	State	Zip
School district in which family resides:			

**II. Student Information**

Student Name (Last, First, M.I.) - List only <u>one</u> student per application	Does this student have an IEP? (    ) Yes (    ) No	
	<i>If "yes," the receiving district must have an appropriate program/services to meet the special needs of this student..</i>	
School Currently Attending:	Current Grade Level	Grade Level Next Yr.
District:	State:	

List reason(s) for requesting open enrollment (OPTIONAL)

\_\_\_\_\_

Requested date for student to transfer \_\_\_\_\_ (month/day/year).

**III. Receiving School District Information**

North Dakota or South Dakota district to which student wants to transfer:	Preferred school building, if space is available:
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The above information is true and correct to the best of my belief and knowledge.

Signature of Parent/Guardian

Date

**IV. Date and Time Application Received by Resident School District**

Date Application Received	Received by: (Please sign)
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**V. Approval or Denial of Application by the Receiving School District**

This application is <b>approved</b> _____ <b>denied</b> _____ (select one).	Date:
Effective date of this application is _____	(month/day/year)