

2011 HOUSE EDUCATION

HB 1428

2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1428
02/08/11
14207

Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1428.

Scott Wegner – Arntson Steward Wegner PC: Support. Testimony attachment 1.

Rep. David Rust: You said this bill does two things. I understand that it is being added to subsection 1, but after that to allow school districts, I am not clear on that.

Scott Wegner – Arntson Steward Wegner PC: The first change to add school districts took place in subsection 1. The idea is currently the way the statute reads, the public finance authority or a paying agent are the entities that can provide notice to DPI that either a default exists or a default is anticipated and that triggers the withholding of the state aid. By adding school districts here this allows a district if they anticipate a default. For example if there was an error in the tax certification, they will know that they will be short and this allows a school district to contact DPI and indicate that they expect to be short and want to trigger the state aid intercept.

Rep. Phillip Mueller: If I'm reading this correct we don't have a bond intercept mechanism in place that you are happy with at this time. Has that lack of a bond intercept mechanism affected bond rates since 1999 for bond rates in our state?

Scott Wegner – Arntson Steward Wegner PC: It is correct even though this has been on the books since 1999 it has not been used for publicly offered bonds because we do not have the mechanism in place to withhold the state aid. Whether it has affected ratings, the idea is this will only increase ratings.

Rep. Phillip Mueller: I suppose because we don't have it, you couldn't tell us nor could you guarantee for us that there would be a greater rating with this mechanism in place?

Scott Wegner – Arntson Steward Wegner PC: I am confident saying that this would result in a higher rating. There are approximately 20 states that have these. In these states what happens is the rating agencies look at the program, they look to see how it works and that this intercept can happen and then they assign ratings to these programs.

Vice Chair Lisa Meier: What is the typical rating for a district bond in North Dakota?

Wegner – Arntson Steward Wegner PC: It depends on the district. The larger districts do get the larger ratings. Smaller school districts at the most have an A rating. In today's market and with some of the financial difficulties it is more important to have a bond rating when you sell bonds. Even districts in the past that might have sold with unrated bonds, in the future they'll probably need to get a rating.

Rep. Karen Rohr: How frequently do you think this procedure will be put into place or used in North Dakota?

Scott Wegner – Arntson Steward Wegner PC: This program is voluntary so every time a school needs to sell bonds the school board has to elect to use this intercept program. This is not mandatory. If for whatever reason a district is not comfortable with this they don't have to use it but we expect that they would want to use this. To our knowledge state aid has never been intercepted because of a default.

Rep. David Rust: Is the addition of the school district being added into the bill something that will be used for or against the district?

Scott Wegner – Arntson Steward Wegner PC: The reference of school districts is to benefit school districts. I think the most likely example is if there is an error made when a budget is certified, and if there was somehow a mistake, because of that mistake they know they might be short on the tax collections, this allows a district on its own initiative to be able to contact DPI and say because of the mistake they will be short for their payment. It gives districts the option of giving DPI the notice.

Rep. David Rust: I'm going to equate this personally. Personally I can't meet my obligations so the option from the people I owe money to is to garnish my wages. This sounds like I recognized I can't pay my debts so I'm going to notify the clerk in advance to garnish my wages. It really seems to me more against the school district than for it.

Scott Wegner – Arntson Steward Wegner PC: In the bond market it is a big deal to miss a payment. Even if that is cured, it does hurt a credit rating of a school district for issuing bonds later on. In the case of any governmental entity that issues that, they are concerned of missed payments. I think here it is very much in the district's interest to be able to initiate the process to cover a bond payment that is coming up. That is in the district's interest not to miss that payment. This allows them to initiate that so they don't miss a payment.

Rep. Phillip Mueller: The bill specifically calls for developing a detailed procedure for school districts to notify the superintendent. Can you talk about that?

Scott Wegner – Arntson Steward Wegner PC: We are not sure what that would look like other than there would need to be some written guidelines prepared by DPI that have timing mechanisms.

Rep. Phillip Mueller: Currently we have school bonds and so on. Do we have similar mechanisms to intercept their financial resources? Do we have that in the state now?

Scott Wegner – Arntson Steward Wegner PC: To my knowledge we do not have anything like this right now. Part of it is because maybe the nature of state foundations aid. We do not have a similar enhancement program in place.

Chairman RaeAnn Kelsch: Further questions? Rep. David Monson you can come forward.

Rep. David Monson: Sponsor. I don't have much to add. This bill would work for the school district as long they were making payments and everything was going fine. Once you start getting close to that default, it would work against you if you were a school district that was in financial trouble. That is the trade off. You can get a better bond rating and save interest money but if you start going south it could be tool you wish you didn't have.

Chairman RaeAnn Kelsch: Further support?

Wilfred Volesky – Superintendent, Mandan School District: Support. Testimony attachment 2.

Rep. Karen Karls: You make it sound like this missed payment is a onetime event. Is it because of a mistake made in the budgeting process or is this because you have smaller district in a financial tail spin?

Wilfred Volesky – Superintendent, Mandan School District: Certainly mistakes can be made and at times we don't ask for the amount of tax revenue we need to pay back the principle interest on annual basis. If it does happen here is an opportunity for them to get the dollars to make the payment. I would assume that if a school district is in the situation where they're going to continually miss bond payments, I would think that DPI would want to know about that type of situation. If that is happening there other issues that will come to the surface very quickly. When you say what benefit would it have, I think the true benefit is if this concept is accepted, the fact that the state is willing to say we will withhold state aid to enable schools to get a better bond rating, and if you get a better bond rating you get lower interest rates over a life of 10, 15, or 20 year bond. There will be a substantial saving in interest. Are there some shortfalls, there probably are.

Rep. Mark Sanford: I was a superintendent in Stanley and Grand Forks. This was not in place at this time. I believe both districts would have benefited from his had it been in place. The advantage is that because it's in place we are going to get better rates.

Chairman RaeAnn Kelsch: Further support?

Warren Larson – NDCEL: We support this bill as written. I will make a slight clarification over the funding if we have had hard times. In past I can tell you the way funding was we had tough times. Today the way funding is from the state, local, and county it is a pretty even flow so we don't run into that danger very often.

Chairman RaeAnn Kelsch: Mr. Larson was that time back in the late 80s when school districts were not funded to the expectations of the second year of the biennium?

Warren Larson – NDCEL: Yes.

Rep. Phillip Mueller: The bill would take financial aid and put it back toward the bond repayment effort. I don't believe that has happened very often, but should that eventuality occur, what happens when you don't get your foundation aid payments anymore? Students and faculty suffer greatly at that time. Could you address that?

Warren Larson – NDCEL: I believe hypothetically if something like that happened, the school district would have bigger problems than just that if it got that far. Perhaps over natural attritional or maybe a 20-30 year period in time it could happen. I can't see too many instances today with all the safeguards we have that it would happen.

Chairman RaeAnn Kelsch: Further questions? Support? Opposition? Neutral?

Rep. Mark Sanford: I motion to do pass.

Rep. Karen Rohr: Second.

Chairman RaeAnn Kelsch: Discussion? We will take the roll on a do pass motion on HB 1428. Motion carries. We will close on HB 1428.

**13 YEAS 2 NAYS 0 ABSENT
CARRIER: Rep. Mark Sanford**

DO PASS

Date: 02-08-11
Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1428

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By REP. SANFORD Seconded By REP. ROHR

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Kelsch | X | | Rep. Hanson | | X |
| Vice Chairman Meier | X | | Rep. Hunsakor | X | |
| Rep. Heilman | X | | Rep. Mock | X | |
| Rep. Heller | X | | Rep. Mueller | | X |
| Rep. Johnson | X | | | | |
| Rep. Karls | X | | | | |
| Rep. Rohr | X | | | | |
| Rep. Rust | X | | | | |
| Rep. Sanford | X | | | | |
| Rep. Schatz | X | | | | |
| Rep. Wall | X | | | | |
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Total (Yes) 13 No 2

Absent 0

Floor Assignment REP. SANFORD

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

REPORT OF STANDING COMMITTEE

HB 1428: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO PASS**
(13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1428 was placed on the
Eleventh order on the calendar.

2011 SENATE EDUCATION

HB 1428

2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1428
March 21, 2011
15709

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authority to withhold school district state aid.

Minutes:

See "attached testimony."

Chairman Freborg opened the hearing on HB 1428; no fiscal note attached.

Scott Wegner, Arntson Stewart Wegner law firm (bond counsel firm representing school districts across the state) introduced the bill. (#1 Testimony) This is old legislation so this bill is just assisting schools to be able to use the program to lower interest rates on school district financing bonds. Can save the districts tens of thousands of dollars in interest. They do not have to use this program; the school board would have to decide that they want to add this credit layer to their bonds. Entirely optional. Credit enhancement program has been in place since 1999, but has not been used on publicly marketed bonds because there are no procedures in place. The rating agencies need to see how this will actually work mechanically, and this bill would spell that out.

Senator Flakoll: How does this work with school districts that work with a building authority (outside the control of the school district in some respects) and don't issue the bonds themselves? Will the outside entity be able to use the plan; does this give them that authority to intervene? **Scott Wegner:** No, it only applies to the school districts as the building authority or nonprofit corporation are not entitled to receive state aid.

No further testimony in support; no opposition. Hearing closed.

Senator Flakoll: Moved a Do Pass to HB 1428; second by **Senator Heckaman**. Motion carried 7-0-0. **Senator Luick** will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1428: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1428 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1428

TESTIMONY ATTACHMENT 1

HB 1428
House Education Committee
February 8, 2011

Madam Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Arntson Stewart Wegner PC. We serve as bond counsel to several school districts. We favor approval of House Bill 1428.

North Dakota Century Code Section 6-09.4-23 authorizes the Superintendent of Public Instruction to withhold or intercept state aid to a school district upon notice that a district has failed, or is expected to fail, to pay debt service on any bonds. The Department of Public Instruction (DPI) is required to apply the withheld funds toward the district's bond payments.

Section 6-09.4-23 is a credit enhancement program designed to lower the interest rates on school district financing. Because of the state aid intercept or withholding program, the rating agencies will assign a higher bond rating to a school district. A higher rating means lower interest rates on the district's bonds. For example, a smaller school district utilizing this program might receive a bond rating of "AA" compared to an "A" rating without this program. The higher rating would result in at least a 50 basis point (1/2 of 1%) lower interest rate on the bonds.

Because school district bonds are paid from property taxes, the lower interest rate on school district bonds results in lower property taxes.

Approximately twenty states have a state aid intercept program. Minnesota's program has been in place since 1993 and to our knowledge there have been no instances of a school district missing a bond payment and having its state aid withheld.

Section 6-09.4-23 does not automatically apply to school district bond issues. The district's school board must authorize use of this section as part of a bond financing.

House Bill 1428 does two things:

1. "school district" is added in subsection 1 to allow school districts to initiate the withholding process with DPI as well as the notification process to DPI regarding payment of principal and interest due on the bonds.
2. New subsection 5 directs DPI to develop procedures to implement the withholding of state aid. While Section 6-09.4-23 was added in 1999, procedures were never implemented, and it never applied to publicly offered securities.

We ask you to give House Bill 1428 a Do Pass recommendation.

Scott Wegner
Arntson Stewart Wegner PC
(701) 255-1008
swegner@aswbondlaw.com

TESTIMONY ATTACHMENT 2

**Testimony on House Bill 1428
House Education Committee
February 8, 2011**

Chairperson Kelsch and members of the House Education Committee my name is Wilfred Volesky and I am the Superintendent of the Mandan School District.

I am here today to speak in favor of HB 1428. This bill would enable the Department of Public Instruction to withhold school district state aid if a school district is not able to make full payment on principal and interest on any General Obligation or Limited Tax Building Bonds for building/renovation of school facilities. It really is a state credit enhancement program that would benefit the state, school districts and the taxpayers in the school district. Programs similar to this program are currently in existence in about 20 states. Minnesota has had this program in place since 1993.

The analogy that I can use to describe this program is the relationship between a father and a son. A son may want to borrow money to purchase a car or home. Since he is young and just starting his career he may not be able to get a loan because he is viewed by financial institutions as a risk in being able to make payments on his loan. He may not get the loan or he may get the loan and end up paying a higher rate of interest. As a father if am willing to co-sign his loan and make his payments if he defaults, he is not seen as quite the financial risk and he may be able to get a loan and a better rate of interest.

If HB 1428 were passed it would provide clarification and establish a process whereby the state would enhance the bond rating of most school districts in ND when they issue G.O. bonds. What the state is doing is co-signing and saying that they would pay if the school district defaults. This would be particularly helpful to all but a few of the largest school districts since

these districts would be able to get higher bond ratings and thereby obtain lower borrowing costs. The largest school districts already have AA3 bond ratings, but may still receive a slight benefit in receiving more bids and/or lower interest rate with a state credit enhancement rating. An added benefit could be a lower bond rating fee.

If this bill passed we believe that a school district could receive up to a ½ % lower interest rate. Let's assume that a bond for \$1,000,000 payable over 10 years is sold and the interest rate due to the passage of this bill goes from 4% to 3.5%. The total interest costs over 10 years at 4% would have been \$232,909 and at 3.5% the interest costs would be \$202,413 thus saving the district \$30,496.

If this bill is passed it is a win-win situation for everyone. Almost all school districts will benefit, there is no cost to the state and those that purchase the bonds don't need to worry about receiving the principal and interest payments annually since the state has made a commitment to make payment if a school district does default. DPI would withhold state aid due that district to recoup any payment made by the state on their behalf.

I would encourage you to give HB 1428 a Do Pass recommendation.

HB 1428
Senate Education Committee
March 21, 2011

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