

FISCAL NOTE
Requested by Legislative Council
04/14/2015

Amendment to: SB 2088

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$24,902	\$0	\$24,902	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 legislation provides authority to the State Superintendent of Public Instruction to form an education foundation. Fiscal impact is related to the compensation and expenses of seven foundation members.

- 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.*

The fiscal impact is caused by compensation paid to seven foundation members, and travel related expenses (lodging, meals, transportation) to attend education foundation meetings, four quarterly meetings per year for each year of the biennium.

There is no appropriation identified.

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.*

The Department does not anticipate any revenue to support the work of the education foundation until the foundation receives money. The bill provides that the foundation may retain up to one percent of moneys received for administrative purposes.

- 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 fiscal impact is caused by compensation paid to seven foundation members, and travel related expenses (lodging, meals, transportation) to attend education foundation meetings, four quarterly meetings per year for each year of the biennium.

The Department has not identified any appropriation source.

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No appropriation is identified. The bill requires the Superintendent of Public Instruction to provide administrative support to the foundation and is responsible for costs incurred in its operation. The bill provides that the foundation may retain up to one percent of moneys received for administrative purposes.

Name: Robert V. Marthaller

Agency: Department of Public Instruction

Telephone: 701-328-2267

Date Prepared: 04/15/2015

FISCAL NOTE
Requested by Legislative Council
01/23/2015

Revised
 Amendment to: SB 2088

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
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Expenditures	\$0	\$0	\$24,902	\$0	\$24,902	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 legislation provides authority to the State Superintendent of Public Instruction to form an education foundation. Fiscal impact is related to the compensation and expenses of eleven foundation members.

- 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.*

The fiscal impact is caused by compensation paid to eleven foundation members, and travel related expenses (lodging, meals, transportation) to attend education foundation meetings, four quarterly meetings per year for each year of the biennium.

At this time there is no appropriation identified.

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The Department assumes that additional appropriation would be identified by the Legislative Assembly and appropriated to the Department agency budget. It is further assumed the appropriation would come from the state general funds or other available funding sources.

Name: Robert V. Marthaller

Agency: Department of Public Instruction

Telephone: 701-328-2267

Date Prepared: 01/29/2015

FISCAL NOTE
Requested by Legislative Council
01/23/2015

Amendment to: SB 2088

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$39,132	\$0	\$39,132	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

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Name: Robert V. Marthaller

Agency: Department of Public Instruction

Telephone: 701-328-2267

Date Prepared: 01/26/2015

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: SB 2088

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$36,316	\$0	\$36,316	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
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Name: Robert V. Marthaller

Agency: Department of Public Instruction

Telephone: 701-328-2267

Date Prepared: 12/22/2014

2015 SENATE EDUCATION

SB 2088

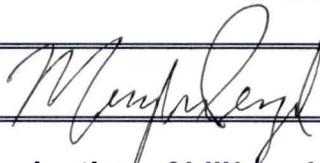
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2088
1/12/2015
Job# 21861 (20:48)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorization for the creation of a ND education foundation; and to provide for a report to legislative management.

Minutes:

Attachment #1

Chairman Flakoll called the committee to order on January 12th, 2015 at 3pm with all committee members present.

-Support

(1:30) **Kirsten Baesler**, State Superintendent of the Department of Public Instruction (see attachment #1)

(6:40) *Questions*

Chairman Flakoll: They can have multiple accounts, so you can have different corporations or individuals setting up designated accounts?

Baesler: The board would determine how they would want to structure the individual granting applications. For instance if there had been an education foundation in existence when the HESS foundation wanted to donate to the state of North Dakota, the foundation would have been able to take into consideration what their expectations were for the investment of their \$25 million and distribute that throughout the state in that manner as approved by HESS and the foundation board. There may be other philanthropists who want their donation allocated to innovation or expansion of arts, so if that is what you mean by multiple accounts, then yes.

Chairman Flakoll: they may be in perpetuity or they may be a two year gig?

Baesler: correct, perpetuity or limited time frame

Chairman Flakoll: Will you be able to find 11 members for this committee?

Baesler: That is always a consideration. I understand the time commitment, but I have found that there are many people interested in becoming involved and understand how important education is.

Chairman Flakoll: why 11?

Baesler: that was the model that the Commerce Foundation is using, and it works well for them. There is a broad perspective of ideas that are brought to the board. It diversifies our economy and educational system and can provide good counsel.

Chairman Flakoll: In page 1 line 17 and 18, it talks about a balanced representative group. Please specify.

Baesler: Those specific rules would be detailed out; however a balanced, diversified group would offer people from various departments (agriculture, arts, technical, etc.). 11 members may seem like a large account, but it would be significant for what education encompasses.

Chairman Flakoll: How about from private schools?

Baesler: Yes, we hope for collaboration for this endeavor.

Chairman Flakoll: Page 2 line 20 references \$135 per day. Why was that number picked?

Baesler: This was based on other payment models we have seen for professional reimbursement for people who generally serve on boards and what their daily rate was.

Chairman Flakoll: Sometimes we migrate towards making it legislative pay rate which would change your fiscal note though. So with the 11 member board, it would take 6 to hold a meeting and 4 of the 6 to pass something.

Baesler: Correct.

Chairman Flakoll: Referring back to HESS and what they did with \$25 million, is it this unclear situation standing for the reason we are here?

Baesler: That was the initial example. The delivery model was already in place when I took office as a state superintendent. In hindsight had this foundation not been in existence already, it would have eliminated the need for HESS to hire SHI360, an external firm located in New York. I didn't base this proposal on something that has already occurred however. Since I took office there have been a number of other industries that have been interested in donating and supporting state's efforts in helping our education, but are hesitant when told they need to work with individual organizations and pick a particular area/region. It gets complicated with a corporation who simply wants to donate.

Chairman Flakoll: Many of the developing foundations in the state, say for higher education, take a cut. The intent here is if someone donates perhaps \$10 million, that \$10 million is put to use without any kind of fee associated with it. Correct?

Baesler: correct. There would be no administrative cost or services. We're asking for the pay through appropriation for this bill and that would be the only administrative cost that would occur. A \$10 million donation would be \$10 million to education.

Chairman Flakoll: should all of the 11 members be from North Dakota?

Baesler: that is a good suggestion that should be considered, and regardless the House and Senate would be the final approvers of the board members.

Chairman Flakoll: Can this be used for higher education?

Baesler: This would be a k12 foundation.

(16:07) **Senator Schaible:** What about capital projects? Can this money be used for buildings?

Baesler: I would expect that the board that would eventually be named would help the state superintendent devise the parameters of the grant.

Senator Schaible: If the board decides to build a building, they could?

Baesler: If a grant came in and the board determined that it fit the parameters of grant purposes or if they had a donor that was specifically interested in an area, which is a scenario that could be probable.

(17:10) **Senator Oban:** To follow up on Senator Schaible, how much would that donor dictate what that money is to be used for? What would be the purpose of having a board if they (the donors) are going to have a say in what it's used for?

Baesler: Many foundations allow donors to be at least somewhat prescriptive. They wouldn't be able to dictate the board's decisions but have ultimate control over where their money is donated.

Senator Oban: This is available for all K12 schools in North Dakota to apply for these grants?

Baesler: Yes. The intent is to level the playing field in all school districts, or early childhood.

(18:45) **Vice Chairman Rust:** Could somebody designate this money to a certain school district?

Baesler: I would encourage that donor to work with that individual school district rather than involving the state.

Chairman Flakoll: but they could?

Baesler: Correct.

Chairman Flakoll: And the foundation could choose not to accept a donation?

Baesler: Correct. The board is in charge of whether they would like to accept or deny. There are a whole host of things that we as a state would ban together in which case we would deny the donation.

No further testimony; **Chairman Flakoll** closes the hearing on SB 2088.

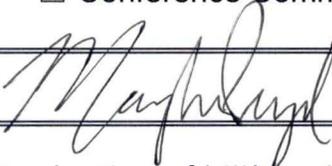
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2088
1/12/2015
Job# 21866 (04:45)

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorization for the creation of a ND education foundation; and to provide for a report to legislative management.

Minutes:

No attachments

(Continuation of hearing with Job# 21861)

Kirsten Baesler, State Superintendent of the Department of Public Instruction
Chairman Flakoll: what would happen if we go through a dry spell with little or no activity? What happens if it doesn't work out?

Baesler: if we establish the foundation in prosperous time which is where we are right now, regardless of where you are in North Dakota, there will always be corporations and industry business and individuals who have money they would like donate through trusts or investments. The Carnegie libraries are the perfect example. It's a system set up through investments that may fund projects and innovative ideas for long-term. The activity of the board will probably ebb and flow and the number of applications that they are able to approve or number of donations they are able to consider approval for will probably ebb and flow more than the actual existence of the foundation.

Chairman Flakoll: Less money, fewer meetings?

Baesler: Correct. With Prosperous times there are more people wanting to get back to the state that they are involved in.

Chairman Flakoll: do you know what the appropriation was built on in terms of number of meetings?

Baesler: No, I will get that information to you.

Senator Davison: was there any consideration of administrative cost?

Baesler: there was consideration, and as we discussed it in the department, we didn't think it would be so great to provide administrative assistance to a board. We as a state agency can absorb.

There were no further questions and **Chairman Flakoll** adjourns for the day.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2088 (1:10:23)
1/13/2015
Job # 21922

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee Work

Minutes:

Attachments: #2

Chairman Flakoll Called the committee to order on January 13th with all committee members present.

Joseph Becker with the North Dakota tax department

Chairman Flakoll: where does this fit in for tax deductions with donations for this type of foundation?

Becker: It's a state created entity and therefore would therefore represent a government entity. Under Federal Income Tax law, they are deductible provided they are used exclusively for public purposes. The only thing for the committee's concern is lines 26 and 27 on page 2 states that the "foundation shall pursue and distribute private sector moneys for use in education-related activities". What is scope or extent of "education-related activities"? The "public purpose" requirement under federal law has some standards to it. As a general rule you can give moneys to the State of North Dakota. They are responsible for education in the state and therefore it has a public purpose. I don't know if that means they can go into the private sector and give their money to an individual.

Chairman Flakoll: The answer is yes. Part of this is triggered by HESS was looking to 25 million dollars for improvement of education in North Dakota. There wasn't a good vehicle for them to put the money into, so that is the genesis of the legislation.

Becker: The donor would not be my concern. It could be a private donor, but the issue is once the money is in the foundation's hands, what are they going to do with the moneys? With the Superintendent of Public Instruction, the function of that office is for public purpose. If that money is to be used toward that end, then it should qualify as a tax deductible contribution.

Senator Schaible: would it be similar to estate giving?

Becker: yes, the same thing. The issue is whether the contribution is to a recognized, charitable organization under Section 170.

Senator Oban: Any donations given through this foundation could only be used to benefit public schools?

Becker: A public purpose is what the federal statute says. As a general rule, I would think that most government agencies are established for the purpose of providing public services, particularly in the area of education.

Senator Oban: What is the tax deduction of a donation of \$5,000 or more?

Becker: The references to the North Dakota endowment credit, if made to a qualified endowment fund in ND, there is a 40% tax credit, a very popular one, as well.

Senator Davison: So if someone were to donate \$5,000 to the Fargo Public School Foundation, they would be able to receive 40% tax credit?

Becker: For the endowment credit and that \$5,000 minimum, it has to go to an endowment fund. The foundation may be a non-profit organization but the question is whether it's an endowment fund. The NDSU foundation in Fargo for example may manage a lot of endowment funds, but it per say is not an endowment.

Chairman Flakoll: If we were to specify any more than that, we may have a potentially large fiscal note if we were to mirror what they do in higher education with the North Dakota endowment credit.

Becker: It depends on the scope of the qualifying entity. The current credit is limited to moneys given to a qualified endowment in the state and not just any non-profit. In the history of that legislation, they were careful that they set that minimum to not go to any non-profit because it would certainly throw the fiscal doors wide open.

Senator Davison: We're talking about an endowment fund within the state that gets a 40% tax credit, so is there a federal tax credit? With HESS providing money, and let's say this foundation was created, would there be a tax credit for them as this bill reads?

Becker: It would not be federal income tax credit, but perhaps a federal income tax deduction. With the state, this would be a non-profit organization if it would be recognized as such under federal income tax law. Contributions to it could qualify as tax deductible on the federal side which would automatically flow through to the state. As far as the state tax credit, that has two components. We've been talking about just the endowment credit. This would not be an endowment fund.

(12:10) **Senator Davison:** Within SB 2088, it wasn't the intention of Superintendent Baesler to set it up as an endowment fund but rather as a foundation so corporations are able to get a tax credit at the federal level, but there are at this point in time no state tax credits available within this foundation. An additional reason would be to have a pass through place for those funds?

Chairman Flakoll: I don't believe they put thought into tax consequences and liabilities, but more set up a fund that can receive and distribute in a meaningful way with protocol set in place.

Senator Davison: From a competitive standpoint, perhaps that should be a consideration ahead of time instead of years in the future. I would like to learn more about this. If donors get a federal tax credit, that is a competitive advantage.

Vice Chairman Rust: Let's suppose that this foundation grows. All of a sudden, you will have more demands with somebody within the Department of Public Instruction, a department with already a great work load. Should something be put in here for them to administer these duties? Obviously there will be some compensation and reimbursement. Is this something we should think about?

Chairman Flakoll: It's a valid point. In the case of FHI 360, their work was paid for on the grant in an essence. I believe they got quite a bit of money to work on that.

Senator Davison: The percent should be at minimum 2% regardless of what amount of money it is. At REA we have 15 different funds, and if we didn't get administrative costs out of some of those grants, we wouldn't have enough resources. We should have a deeper discussion about the administrative side.

(19:10) **Kirsten Baesler**, State Superintendent for Department of Public Instruction

Senator Davison: What are your intentions within this bill from the foundation regarding endowment in being a more competitive foundation within the state?

Baesler: We would not be in the business of soliciting or seeking out. If the foundation board is interested in that direction, they can pursue it. One of the companies that had approached me knew that they were a national corporation. They would be able to achieve things on a federal level as far as what their tax breaks would be. From the perspective of the state and providing state relief, that is not what my vision of the foundation's initial purpose is.

Senator Davison: Would this be set up more from a standpoint only for necessity or a potential growing and progression with perhaps some administrative fees attached?

Baesler: the latter would be true. While really not knowing what education can morph into, I think we need to be open and flexible for the middle of the 21st century.

Senator Davison: So let's get this done and set up so when we get this group together, we can use this collaborative 11 people to figure out what it can or should be?

Baesler: Precisely.

Senator Oban: It says "the foundation shall pursue". That sounds like they are going out and seeking funds.

Baesler: That can be interpreted as that but the extent is flexible. How aggressively or how organized is up to them.

Senator Oban: So perhaps instead of "shall" it should say "may".

Baesler: "May" would be permissive.

Chairman Flakoll: What is your intent of your office? Is it to be made known that this is an option? Will you have someone assigned to go out and solicit donations?

Baesler: Absolutely not. It is not the intent of the Department of Public Instruction to hire someone to pursue grant funding. We want to provide a vehicle. This is basically a response to inquiries that we have had about businesses wanting to invest. The "may" would work for us. It would be permissive.

Chairman Flakoll: Are you able to share with us how many inquiries you've had?

Baesler: Yes, around 3 major corporations with initially \$10-15 million per. The most significant offer that I have been approached with is a potential donation specifically in the STEM area.

Chairman Flakoll: Should we have language in there that relates to an administrative fee, such as a "not to exceed" language like 1 or 2%? 2% on \$10 million is \$200,000. If there are bigger dollar amounts here you can manage things without to come back for more appropriations. Then we can backfill the \$36,000 plus change so the first "x" number of dollars would first backfill the appropriation and then you could move forward from there.

Baesler: We have been cautioned about not asking for administrative costs. It would be helpful to be proactive in what may be ahead of us. The reason it was not included initially is because we want to make sure we are completely transparent and interpreted as

something as simple and pure as delivering dollars to education. 1% is what we use for our federal dollars. It seems to allow us to function well. People in my office are concerned about what type of extra work this may grow into.

(28:30) **Senator Davison:** You had said "we were cautioned". Whose we?

Baesler: Simply general public persons involved with policy making.

Chairman Flakoll: If we were to pass this bill it would go down to appropriations. We know that you don't hold meetings if you don't have money, so there could be some kind of a loop that would at least backfill some of that.

Baesler: We didn't want the bill to be killed because of a fiscal note.

Senator Davison: It's good practice to come before the legislative process and ask for seed money for sustenance

Baesler: That is the approach I prefer as well.

Senator Oban: Is there anything standing in the way for a private foundation being set up to do this? If there are already concerns with following laws making sure money is being granted the right way with the way it's given and being overseen by a public entity through your office, why isn't there a private foundation set up where it's not through Department of Public Instruction? Why don't we just encourage the private sector to form a foundation that would take this money and handle it?

Baesler: There is a certain level of security and comfort that comes that is provided to a donor by providing gifts attached to a public entity. There may be fewer donors that feel comfortable in donating to a private organization. Public entities are bound by all sorts of requirements that allow that equity and transparency.

(32:40) **Chairman Flakoll:** How might this have been helpful with the HESS grant?

Baesler: From my perspective, it would have eliminated a middle man of sorts. The HESS corporation delivered it to the 8 REAs who each had their own governing bodies, but they contracted with an outside consulting firm called FHI360 which is based outside of New York and they have a lot of experience both in the United States and abroad. The REA's at that time were the only thing that was able to deliver dollars to every school district across the state.

Chairman Flakoll: The grant that went out to be distributed in North Dakota was \$25 million. There was a rumor that FHI 360 was paid quite a large amount for administrative services.

Baesler: That is my understanding as well.

Senator Davison: With the amount of people involved, I would be shocked if it had low administrative fees. The work that FHI 360 does is actually incredible. If you don't have FHI 360 and you come to the Department of Public Instruction with \$25 million and the same advantages from a tax standpoint, who would Superintendent Baesler have on staff without an administration fee to successfully handle the heavy workload?

Chairman Flakoll: How would you characterize donor intent, more so education enhancement or tax advantages?

Baesler: Education advancement. They are truly interested in making a difference. Within the Department of Public Instruction, we have 16 flow through grants that are granted out to several different entities. We don't have oversight, but they are simply projects that enhance education. All of those are not under our authority, but are groups and entities that come to the state for state dollars and support. There were previously no accountability for

those dollars that were granted through, but finally last session the 63rd legislative assembly required a report mechanism that required them to provide their revenue and the number of students reached and impacted. All we are is the flow through, the fiscal agent that the legislature appropriates the dollars to and we disburse. Those are the flow through grants that we don't take administrative costs from.

Senator Davison: If it goes throughout multiple years, someone needs to keep reporting the impact.

(41:20) Vice Chairman Rust: On page 2 line 26, we considered changing the language from "shall" to "may". "Shall" seems like an obligation, while "may" is less directive. Another possible amendment would be to allow up to 1% for administrative cost. We need to protect both the Department of Public Instruction and the State of North Dakota and its tax payers from having to pay for something.

Baesler: I am reflecting on the permissive versus directive language. I am a member of the board of the Center for National Dropout Prevention, and as a board member's responsibility is that I network with the people I knew in order to make them aware of this organization and to further their foundation work and cause for providing dollars. I took that out as a responsibility as a board member. I don't get paid for my extra work, but this position is getting a daily rate of \$135, not a paid position but being compensated nonetheless. There is to me some sense of responsibility to be an active board to help further the work and mission for the foundation. If it is permissive, it is not meeting the full obligation of what we would expect our board members to be accomplishing.

Senator Davison: If we're setting up a foundation, why would we set them up if we're not pursuing funds? We shall pursue funds. That is why we're setting them up. Why would we not be more intentional with the wording? Never before in the history of education has business and industry been more at the table to provide human capital and financial resources to schools than it is right now. "Shall" is better.

(46:10) Vice Chairman Rust: I don't have a problem with "shall". The one I wonder about is administrative services and expenses. I would insert a statement covering the concept that if you are already getting paid, you wouldn't get a double salary.

Chairman Flakoll: The superintendent would not be eligible but more so part of her duties.

Senator Oban: I'm getting mixed messages. Superintendent Baesler said the foundation isn't expected to go out to get money and now we are saying they are.

Chairman Flakoll: We're not expecting the superintendent or people from the Department of Public Instruction to do so, but the foundation which in essence is separate, could and should.

Senator Oban: I would propose an amendment to page 3 line 3 changing the word "shall" to "may". I don't feel it is in the purview of a foundation to come in and provide advice on all matters of what the Superintendent is doing in education.

Chairman Flakoll hands out proposed amendments (*see attachment #2*)

Chairman Flakoll: These seem to reflect some of the discussions that we had including that the foundation members should be residents of the state and that they can have up to the rate paid by two members of the legislative body. If those seem appropriate, we can include Senator Oban's amendment on page 3 line 3 or take those issues separately.

Senator Davison makes a motion to pass the two amendments
Vice Chairman Rust seconds the motion.
A vote was taken: Yes: 6, No: 0, Absent: 0
Senator Oban will work on amendments.

Vice Chairman Rust: On page 3, line 3, with regard to "shall" and "may", is it a case of the foundation having to provide and the Department of Public Instruction has to listen or rather the Department of Public Instruction would like some information and they have to give it? Which direction is this "shall" working? I see it as Department of Public Instruction can ask and the foundation shall give as opposed to obligation.

Chairman Flakoll: I read it as the foundation shall as in they are required to provide and the Department of Public Instruction must listen.

Senator Davison: I interpret it as you're starting something from scratch. This has never been established before. I would believe that the Superintendent's intention is having this foundation to provide advice and guidance because this is a new organization and they need to listen and be collaborative in that process.

Chairman Flakoll: It seems like they were going outside of their scope of duties.

Senator Oban: Perhaps if it said "in all matters pertaining to the foundation's work" I would be more comfortable, but it's basically saying most everything the Superintendent is responsible for. A foundation shouldn't come in and have a say on education standards

Vice Chairman Rust: It doesn't say that the foundation shall provide and the Superintendent shall do this. I think it is the other way around. If the Superintendent of Public Instruction wants information, the foundation shall give it to them. I see it as a responsibility of the foundation to provide information.

Chairman Flakoll: Could they provide advice on the bill we just voted to kill?

Vice Chairman Rust: They could do that probably no. As far as giving them advice, anyone can give advice and she can do whatever she pleases with that. I see it as an obligation for the foundation not the superintendent.

Senator Schaible: I see it as the foundation shall "report to" the superintendent rather than suggest and advise. They are reporting their work and findings, so it seems like it is their responsibility to report to Superintendent Baesler.

Vice Chairman Rust: Section b covers that.

Senator Schaible: In that case I'm not sure why 2 would be in there at all then.

Vice Chairman Rust: We should ask Anita why it was put in there at all.

Senator Davison: I do like the foundation "shall report" and I don't believe it is a duplication. They are two separate items obligating the continuation of the reports.

(1:00:00) **Vice Chairman Rust:** In the last statement on page 3 line 13, that obligates the Superintendent of the Department of Public Instruction to do something just like page 3 line 3 obligates the foundation only. "May" is too permissive.

Senator Oban: If it is obligating the foundation to provide it, whether or not the superintendent takes it is not the issue. It is what they shall provide advice and guidance on that I have an issue with then.

Senator Davison: Who has the final decisions on where money goes?

Chairman Flakoll: The foundation board has the final say. They do not need to have consent of the Superintendent, the Legislature or anyone else.

Vice Chairman Rust: The Superintendent that may create this foundation and appoints the members. After that I don't believe she is involved except for on page 3 with providing administrative services. I don't see her being on the board unless she wants to or anyone from the Department of Public Instruction for that matter.

Chairman Flakoll: Should they have a report to the interim committee of the legislative management for the first biennium? For the first session we should be more intentional on that. That may be something worth reviewing.

Senator Davison: Wouldn't they be required in the next biennium to report back since they have \$36,000 of general fund? I agree with you that I would like to see something more intentional about the first biennium to hear how it went if this bill passes.

Chairman Flakoll: I'm guessing that would be no sooner than September 2016 because they wouldn't have anything right away. I'm not opposed to the language that is in here, but we may want to be more intentional for the first time.

Chairman Flakoll closes committee work on SB 2088.

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2088
1/14/2015
Job # 21986 (34:50)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work with **Anita Thomas**, Legislative Council

Minutes:

No attachments

Chairman Flakoll called the committee to order at 2:30

Senator Oban: Are you aware of any other foundations besides the Department of Commerce, where the precedent is set at 11 members?

Thomas: In order to prepare at this time in the year, we did not engage in comparative research with what other states are doing. As a basic managerial number you want the right number that will bring a sufficient amount of ideas to the table while combating the other side of having too many ideas that a decision is not possible. A 9-11 member range is adequate. It of course depends on the content that the committee will be dealing with.

Senator Oban: On page 3, I have serious reservations of including that this "foundation (shall) provide advice and guidance on all matters" relating to essentially what the office does. I did have a discussion with Superintendent Baesler. Again this is just language previously in other things. Is that your interpretation as to why that would be included?

Thomas: Correct. The foundation is not specifically targeted with respect for moneys other than for general educational purposes. We were trying to put some opportunities in there to take a look at 11 people who are fairly broad minded in their thinking. If the superintendent of public instruction did want to sample their thoughts, they would be in a position to provide them, or even if she didn't ask they would be in a position to voice their thoughts. It is advice and guidance, and you can do with that with what you wish

Chairman Flakoll: There were questions as to if the foundation shall provide or if the superintendent shall receive.

Thomas: It's an opportunity for 11 people who will arguably bring intellectual and diverse power to any kind of discussion regarding K12 and if they were of the mind to suggest things to the superintendent, they certainly could.

Chairman Flakoll: does this damage the rest of the bill in any way if we remove subsection 2 on that page?

Thomas: No, absolutely not.

Chairman Flakoll: but would we need to retain lines 7-9 then?

Thomas: If the foundation is not going to be harnessing up to provide advice and guidance, it probably doesn't have that much of a need to engage in working groups and task forces.

(5) **Chairman Flakoll:** Are these subject to open records?

Thomas: That is an area of the law that is not clear.

Chairman Flakoll: In terms of the state agency, how would you categorize them? What would they be comparable to?

Thomas: It's not an agency; it's more of a private group brought together to expend private dollars working in consort with the department of public instruction and the superintendent.

Chairman Flakoll: do they have to post meeting notices?

Thomas: If it's not a governmental group, no.

Senator Oban: How can it be considered a private group if tax payers fund it?

Thomas: that may be the kicker then.

Chairman Flakoll: What is the relationship between the superintendent of public instruction and the foundation? Are they on the committee?

Thomas: I would not envision the superintendent to be part of the foundation, especially as it was originally drafted because this entity was going to provide advice and guidance to the superintendent.

Chairman Flakoll: If Baesler would go to the meetings, she would not be paid because it would be deemed part of her regular duties?

Thomas: Correct. That would be within the individual scope of employment for the state.

(8) **Senator Davison:** So the superintendent identifies 11 people through this process. In the first meeting, they need to determine the duties. They form and determine basic bylaws in which they will operate. In later a meeting dealing with some donation, they determine they will spend x amount of dollars with 2 proposals. Would this group vote to determine how the money is appropriated to that organization and then would that foundation report to the superintendent of public instruction of what they did with that money? Also, who is accountable for the work and the results for what the donator asks with what happens with that money?

Thomas: The accountability is between the private sector that is providing the dollars and this foundation. If you had a corporation that wasn't comfortable with its accountability, they will find some other entity. It is a private agreement. The accountability within the statute is that "the foundation with the superintendent has to provide a report to the legislative management". Part of that is so management has some idea of how much money is coming in and what it is being used for.

Senator Davison: How the board would be formed is what I described?

Thomas: essentially, yes. This bill is a skeleton and the foundation would fill in their own rules. The bill doesn't indicate that formality.

Senator Davison: Would the foundation be able to pick a different fiscal agent to handle the dollars? The foundation really has the freedom to determine the operation of that organization and how they want the superintendent to be involved in that process as well.

Thomas: Correct. The main conversation would be between the granting entity and the foundation recommending how to distribute that money.

Chairman Flakoll: The bill seems silent on how the money is stored. It doesn't say a certain, reputable bank. What is the intent?

Thomas: The intent is not discussed with me. The bill does however say that all moneys here are private sector moneys. It would be the granting agency determining in conjunction with the foundation when the foundation will receive, how many dollars, and where those dollars were going to sit until such point as they were turned over for use.

Chairman Flakoll: If you were to invest in oil stocks 10 months ago, you may not have so much a corpus lift.

Thomas: Correct, but if I was a corporation providing dollars to education in North Dakota, I wouldn't discuss investments with the foundation.

Chairman Flakoll: Once the corporation makes the donation they lose the control of how those dollars are managed unless they are prescribed as far as going to REAs or some of those other things.

Thomas: Correct, just as any charitable contribution provided as an individual.

(14:15) **Chairman Flakoll:** On page 2 lines 26-27, we have a difficult time understanding whether the foundation "shall" or "may" pursue. Can you explain the differences with those?

Thomas: "shall" is chosen because that is the intent for a foundation. If it was optional, we wouldn't need this bill. Those who wanted the bill envisioned the foundation going out and fairly aggressively pursuing dollars for educational related purposes

Chairman Flakoll: The aggression is called to question. Would they hire a fundraiser?

Thomas: The foundation's ability to do that would be based on the foundation's ability to obtain dollars for that purpose. Perhaps one of the donations might be so that the foundation can go out and aggressively pursue more dollars. It's just not addressed in the bill.

(16:20) **Senator Schaible:** From what the bill states, DPI will absorb the costs of running this foundation. We had discussions of a maintenance fee of 1% for operations. How would that change the structure? For instance HESS with \$25 million needed a lot of management and therefore created a big cost. Would it not be necessary for a maintenance fee to manage those things?

Thomas: That would be a policy decision. If you want one, it can be drafted that way. It would be more of a matter of someone calling and taking minutes versus a secretarial service. If it gets to be that point then, the foundation can always look at contracting for such services.

Senator Davison: From a contracted services standpoint, would the foundation be able to put together a joint powers agreement or a contract with DPI to be that fiscal agent and support services depending on their success or nonsuccess on what they're doing and what needs they may have in order to run at a certain level depending on what the funder asked them to do as a foundation?

Thomas: I have not been involved in that envisioning. I don't know how big the foundation will get or how big DPI sees it getting. That's not part of the initial bill draft.

Senator Davison: Superintendent Baesler indicated up to 10 million dollars potentially that the foundation could work with. That donation needs money to successfully operate.

(21) **Chairman Flakoll:** We are thinking of some changes with the per diem, the requirement to be a North Dakota resident, and 7 members instead of 11. I'd be inclined to remove page 3 subsection 2. Then one required report in the first biennium and also something about an administrative fee.

Senator Oban: Would that fee go to DPI or the foundation members?

Chairman Flakoll: I see it for the foundation's function and services.

Senator Davison: If you remove section 2, doesn't this have to say "the foundation shall report to the superintendent of public instruction in all manners pertaining to the

foundation"? Shouldn't there be a written obligation for reporting from the foundation to the superintendent and the superintendent to legislative management?

Thomas: On the bottom of page 2, the report is done by the foundation together with the superintendent. To debate the previous topic, when you're talking about the administrative fee you're talking about a percentage of a grant. That would be something agreed on by the granter. I don't know if it would be appropriate to put into legislation that the foundation keeps a certain percentage of a grant.

Chairman Flakoll: I would see it as a "not to exceed" more so.

Thomas: We could.

(26:26) **Senator Davison:** Being involved in the HESS grant and understanding the level of having more accountability from funders rather than giving away money, I don't see how that work gets done. Most funders who give 10 million dollars understand why there would be an administrative fee. It's bigger than just diving out

Chairman Flakoll: For example if they give a 10 million dollar grant to art in the schools, they could contract with FHI 360 like HESS to work on that. They spend x number of dollars to carry out those duties. In some cases, that is the advantages of donating it through certain entities with the right actors.

Senator Oban: Do we want to clarify that they are subject to open records? Is it assumed that they will follow all of those conditions since they are being paid by tax payers?

Thomas: It would be advisable to have an exception to the open records. Despite it being private money, you are right that tax payer's dollars are provided for the compensation and services. That might be enough to provide an argument that open records should apply.

Chairman Flakoll: It would have to be specifically in their dealing with the foundation?

(30) **Thomas:** Correct, as the law currently stands and is interpreted. What were you thinking for the administrative fee?

Senator Schaible: I would like to see up to 1% upon receipt.

Chairman Flakoll: Let's hog house the bill, and we will get you the previously adopted amendments with the North Dakota residency and the legislative payment rate.

Senator Davison: We have to fix other language in the bill to meet the relation of transitioning from 11 members to 7 members.

Thomas: 4 would then be a quorum and you would need 4 out of the 7 as a majority to pass. We can draft it.

Chairman Flakoll ends the discussion on SB 2088.

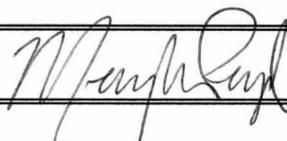
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2088
1/20/2015
Job # 22220 (11)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE ACTION

Minutes:

2 Attachments

Chairman Flakoll called the committee to order at 11:30am with all committee members present for committee work.

(see attachment #1)

Senator Oban: The green will reflect what we as a committee adopted for amendments that we drafted with Anita Thomas. On page 1 line 13, we thought 11 was a little excessive so we brought the foundation size down to 7 members. We also added that the members are to be residents of North Dakota.

On page 2, because of dropping the number of members, it changed the 5 terms to 3 of what the quorum would be. Lines 24-26 reflect that we felt the payment should not exceed the amount that we get as legislatures. Page 3, lines 6 and 7, add the language that the foundation can keep up to 1% of a grant for administrative purposes.

Lines 8-12 show that we would like to go back to the language previously written. We are proposing removing some language. It would read "The foundation together with the superintendent of Department of Public Instruction shall provide a report to the Legislative Management at the time and in the matter directed by the Legislative Management regarding distributions made under this section. This report must include direct and indirect benefits to school districts".

It was necessary to completely remove lines 13-19. That was an amendment previously adopted by the committee. We added the language on lines 25 and 26 to reflect the addition of the "up to 1% administrative fees". The Department of Public Instruction will cover the cost of administering this program until the foundation begins collecting. Then as we talked about, we will completely remove what is numbered as section 8 on the bottom of page 3 lines 27-31. The sections are not numbered properly. There are currently 2 section threes in this draft, so we have asked to have it number appropriately which would leave us with 8 total sections.

Senator Davison: Why did we eliminate section 8?

Senator Oban: We don't know why it was in there in the first place.

(8:30) **Senator Oban** makes a motion to accept the amendments (see attachment #2)

Senator Schaible seconds the motion to accept the amendments.

A vote was taken: Yes: 6, No: 0, Absent: 0

Senator Oban makes a motion for a do pass as amended and a rerefer to Appropriations.

Senator Marcellais seconds the motion.

A vote was taken: Yes: 6, No: 0, Absent: 0

Senator Oban will carry the bill.

Chairman Flakoll ends the hearing on SB 2088.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 18, after "individuals," insert "who are residents of this state,"

Page 2, line 20, after "exceeding" remove "one hundred thirty-five dollars per day" and insert immediately thereafter "the amount established for members of the legislative assembly in accordance with Section 54-03-20"

Renumber accordingly

January 19, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 1, replace "seven" with "nine"

Page 1, line 9, replace "7" with "9"

Page 1, line 13, replace "eleven" with "seven"

Page 1, line 19, after "who" insert "are residents of this state and who"

Page 2, line 4, replace "five" with "three"

Page 2, after line 15, insert:

"**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Quorum.

A majority of the committee constitutes a quorum for the purpose of conducting business.

Page 2, line 20, replace "one hundred thirty-five dollars per day" with "the amount per diem established for members of the legislative assembly in accordance with section 54-03-20."

Page 2, line 26, overstrike "a."

Page 2, after line 29, insert:

"2. The foundation may retain up to one percent of any moneys received under this section for administrative purposes."

Page 2, line 30, replace "b." with "3."

Page 2, line 30, replace "The" with "No later than September 1, 2016, the"

Page 2, line 31, remove "at the time and in the manner"

Page 3, line 1, remove "directed by the legislative management."

Page 3, remove lines 3 through 9

Page 3, line 15, after "members" insert ", until such time as administrative fees retained by the foundation in accordance with section 6 of this Act are sufficient to fund its operating costs"

Page 3, after line 15, insert:

"**SECTION 8.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Foundation records - Exempt.

All records of the foundation are exempt from the open record requirements of section 44-08-18."

Renumber accordingly

70
1/20/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 1, replace "seven" with "eight"

Page 1, line 9, replace "7" with "8"

Page 1, line 13, replace "eleven" with "seven"

Page 1, line 19, after "who" insert "are residents of this state and who"

Page 2, line 4, replace "five" with "three"

Page 2, after line 15, insert:

"**SECTION 5.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Quorum.

A majority of the appointed members of the committee constitutes a quorum for the purpose of conducting business.

Page 2, line 20, replace "one hundred thirty-five dollars per day" with "the amount per diem established for members of the legislative assembly in accordance with section 54-03-20."

Page 2, line 26, overstrike "a."

Page 2, after line 29, insert:

"2. The foundation may retain up to one percent of any moneys received under this section for administrative purposes."

Page 2, line 30, replace "b." with "3."

Page 3, remove lines 3 through 9

Page 3, line 15, after "members" insert ", until the administrative fees retained by the foundation in accordance with section 7 of this Act are sufficient to fund the operating costs"

Renumber accordingly

**2015 SENATE EDUCATION COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2088**

Senate Education _____ Committee

Subcommittee

Amendment LC# or Description: Page 1, line 18, after "individuals," insert "who are residents of this state" ; Page 2, line 20, after "exceeding" remove "one hundred thirty-five dollars per day" and insert immediately thereafter "the amount established for members of the legislative assembly in accordance with Section 54-03-20"; renumber accordingly

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Davison Seconded By Vice Chairman Rust

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: to ensure foundation members are residents of North Dakota and their pay rate is weighted.

**2015 SENATE EDUCATION COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2088**

Senate Education _____ Committee

Subcommittee

Amendment LC# or Description: 15.8011.01002 _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Oban _____ Seconded By Senator Schaible _____

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 _____ No 0 _____

Absent 0 _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: to change the number of members, ensure foundation members are residents of North Dakota and that their pay is weighted

REPORT OF STANDING COMMITTEE

SB 2088, as amended: Education Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2088, as amended, was placed on the Sixth order on the calendar.

Page 1, line 1, replace "seven" with "eight"

Page 1, line 9, replace "7" with "8"

Page 1, line 13, replace "eleven" with "seven"

Page 1, line 19, after "who" insert "are residents of this state and who"

Page 2, line 4, replace "five" with "three"

Page 2, after line 15, insert:

"SECTION 5. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Quorum.

A majority of the appointed members of the committee constitutes a quorum for the purpose of conducting business.

Page 2, line 20, replace "one hundred thirty-five dollars per day" with "the amount per diem established for members of the legislative assembly in accordance with section 54-03-20."

Page 2, line 26, overstrike "a."

Page 2, after line 29, insert:

"2. The foundation may retain up to one percent of any moneys received under this section for administrative purposes."

Page 2, line 30, replace "b." with "3."

Page 3, remove lines 3 through 9

Page 3, line 15, after "members" insert ", until the administrative fees retained by the foundation in accordance with section 7 of this Act are sufficient to fund the operating costs"

Re-number accordingly

2015 HOUSE EDUCATION

SB 2088

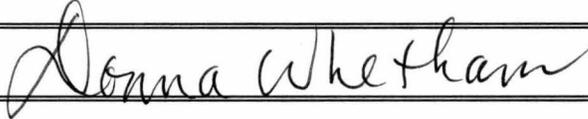
2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2088
3/4/2015
24310

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorization for the creation of a North Dakota education foundation; and to provide for a report to legislative management.

Attachment # 1.

Minutes:

Chairman Nathe: opened the hearing on SB 2088.

Kirsten Baesler: State Superintendent of the Department of Public Instruction, introduced SB 2088. (2:00-5:55). (See Attachment #1).

Rep Hunskor: Would you go into more detail on the role of legislators, what would their function be other than being responsible for the selection of the foundation committee?

Kirsten Baesler: That would be their primary role. We would receive the applications for the people that want to serve on the foundation board. We would interview them and the final selection of the members would be by the legislative management.

Rep Hunskor: That is it then, that would be their role?

Kirsten Baesler: Yes, as it is written at this time.

Chairman Nathe: If I am with company A and I want to donate money to this, can the company designate what they want the money for or is that something the board will designate it for?

Kirsten Baesler: Let's use the Hess foundation, when they donated \$25 million dollars. That was a challenge for Hess because they wanted to make sure that their improvements or progress would be spread throughout the state of North Dakota. Hess had some very specific ideas, they wanted to decrease some remediation classes and increase the number of students that were graduating on time from college and such. They had some

specific ideas and they remain today as part of the Succeed 2020 operation. Others have visited with me that have not donated yet. They come and say they have \$5 million and we want to increase the STEM opportunities or other things and we want to do that throughout our school system. The only answer I would have at that point is they would need to go through the individual school district foundations because we don't have a state foundation. They are limited then to the districts that have the foundations. The businesses most often walk away because they are not in the business of working with multiple foundations.

Rep Kelsh: On top of page 3 of the bill it talks about the moneys used for educational activities, would you say that is all academic activities or does it go beyond that?

Kirsten Baesler: I don't envision it going to extracurricular or co-curricular activities. That would be up to that foundation board if there was a donor that specifically said I want to enhance music or speech and drama as a co-curricular. The board has the authority and we as North Dakota retain the power to say no, that is not something we want to embrace in North Dakota.

Chairman Nathe: Are you envisioning using the foundation money and along with the school money to match it if such a proposal came in?

Kirsten Baesler: I do believe that would be the case. Several companies have thought a one to one match or a two to one match. With the private public partnership it does leverage the dollars the state gives to our school districts to have a private partner to assist in professional development or STEM activities. This only benefits our schools.

Chairman Nathe: It reminds me of the Higher Ed challenge grant we had here the first half.

Rep Rohr: On the bottom of page three of your testimony "education foundations in some form exist in every state" to support local school districts. Can you tell us about the research you did and how many school districts have this and how many states have foundations of this type? Also, what is the percentage of success of these foundations?

Kirsten Baesler: I don't know the percentage of success, I don't know what measures you might be looking for on success. If you can give me specifics I can get you that information.

Rep Rohr: Just how many states have a foundation like this in the local school districts?

Kirsten Baesler: Every state in the nation has foundations of some sort, whether they are colleges or universities.

Rep Zubke: You mention that this foundation board would also act as a resource for education policy, budget and department operation. Are you talking about an informal manner or is it a formalized process?

Kirsten Baesler: As an informal process, more of a dialog for us to learn their needs. They wouldn't be policy makers.

Rep Meier: Do we have some companies interested in donating and what would those companies be?

Kirsten Baesler: Yes, we have multiple companies, generally they are in the agriculture, building trades or energy industry.

Rep Meier: Are they in the state?

Kirsten Baesler: They have a presence in North Dakota, so they may be a regional or national company.

Rep. Olson: Back to the question Representative Rohr was asking. There are foundations in every state but are there any statewide foundations like this or do you have any examples that we could look at and how it has gone so far?

Kirsten Baesler: Yes there are, Kansas and Nebraska. I can get you some information on their successes. They are set up differently than North Dakota. Their Department of Education has a larger umbrella than we do. Our eight Regional Educational Association's (REA's), which is our professional development delivery system, are independent of the Department of Public Instruction and in both those states the professional development are under the umbrella. Career and Technology Education (CTE) is under their umbrella and that is not the case in North Dakota. This foundation would allow education to stream line more efficiently because our state is set up differently. This would allow for all educational entities to benefit from dollars.

Rep Hunskor: Suppose the foundation has decided an option for some money they will donate and we don't agree with them, what is your role in this and who has the final say?

Kirsten Baesler: I would have the final say.

Rep Meier: Page 3 of the bill under duties and reports could you explain where it states "Moneys distributed under this section are not public moneys for any purpose and are not subject to section 12 of article X of the Constitution of North Dakota."? What are your thoughts?

Kirsten Baesler: That is language that is borrowed from the commerce foundation and it was my understanding while working with Anita that that is pretty standard language for a foundation bill.

Vice Chairman Schatz: I am interested in not growing government and this appears to make government grow. What would stop the companies from giving to the REA's directly and not having this foundation?

Kirsten Baesler: Nothing stops that but companies don't view it as efficient. The capacity of the REA's are not consistent across the state and companies view the REAs as a good means as a delivery system for some areas and not as effective in other areas.

Chairman Nathe: You mention in your testimony that it would provide them with a tax deduction as well, but I don't see anything in the bill, can you explain that to us?

Kirsten Baesler: That is in tax law basically and companies know how to apply for those benefits. It is not anything that would impact the foundation.

Chairman Nathe: If they were to donate X amount of money to this foundation then they could go to the tax department and get a deduction?

Kirsten Baesler: Federal tax deduction but not state.

Chairman Nathe: When Hess set up the \$25 million donation, did they get a federal tax deduction?

Kirsten Baesler: I don't know. To visit about the REA's, why they couldn't work directly with the REA's, not all school districts are members of REA's. Dickinson, Cooperstown, Carrington are examples. Not all choose to participate in REA's and then don't have the benefits of the REA professional development.

Rep Mock: This is statutory language permitting the department to file paperwork and create a foundation recognized under IRS code 501- C3 is that correct?

Kirsten Baesler: Correct.

Rep Mock: So that is the tax deduction, it would be an educational foundation all requirements authorized and subject to everything required of any other 501-C3. Is there limitations of how much money can be raised or how that money could be expended?

Kirsten Baesler: Right now there are no limitations or how it could be expended.

Rep Mock: I like the idea of leveraging. There would be no limitation for this foundation to hire staff specialized in an area that could work or contract to school districts or REA's and they would not be subject to salary negotiations?

Kirsten Baesler: They would not be subject to negotiations. Our REA employees are not subject to negotiation.

Rep Mock: Theoretically this foundation could create academic and merit scholarships that could be administered that are separate from current North Dakota scholarships?

Kirsten Baesler: Yes, an example of that is Exxon offers scholarships in some states for math or science teaching.

Rep Mock: I serve on the legislative fiscal review committee, the committee voted to conduct a performance audit on educational foundations of NDSU, UND and DSU, they are 501-C3's. The question has arisen is it legal to require a performance audit of a private foundation. This would be a private foundation. Would this foundation be subject to the oversight of the legislative fiscal review committee?

Kirsten Baesler: I am not familiar with the foundations you are auditing and their structure and make-up. Since I would be the final decision maker if that would allow that government authority, it is a good question and one that needs to be answered. This is statutory language allowing me to begin this process. I am open to developing this in a pragmatic way that will cover those questions so we are doing this in a responsible checks and balances manner.

Chairman Nathe: I view this like the Challenge Grant bill that we had. We had some reporting requirements in that bill to the legislature. There is none on this bill right now but that is something the committee should look into. As far as what the committee can take and what they can spend, the board would decide those parameters when they first meet. They would lay down the ground rules and really spell out in black and white what this money would be used for.

Kirsten Baesler: Yes.

Rep Kelsh: As far as reporting requirements, Subsection 3 on page 3 line 8, does that. They have to report to the Legislative Management. Do you what section 12 of the Constitution of North Dakota says?

Kirsten Baesler: I don't know, again that is the language that Anita gave me that deals with foundations and I will certainly get that information to you.

Rep Kelsh: Would it be your intent that the money could go to private schools under this law?

Kirsten Baesler: If it is completely private dollars and requires no match there are no complications delivering money to private schools. When you start to mix in the private public partnership dollars and there is a match required, most often the matches come from title dollars or foundation aid, that is the challenge because public dollars cannot be delivered directly to private schools. There are many examples of private schools partnering with public schools. They work with the public schools to receive title services. So the reading teachers employed by Bismarck public schools do offer services at Shiloh and other private schools, but when the reading teachers who participate in professional development, even though they may be employed mostly at Shiloh school the payment of the professional development cannot go directly to Shiloh. It can be paid to Bismarck Public and then private schools contract with the public schools. We want to be as inclusive as we can and it would depend on what the donor's expectations are.

Rep Schreiber Beck: In all the foundations I am involved with there are bi-laws that hold you stringent to what they state. When you go to the match dollars that would complicate a lot of issues. I don't know that I would include match dollars in there because you can't attest to the fact they will be there. Bi-laws can be written and changed by the board but having those in order first would make this process easier.

Kirsten Baesler: We have already been working with the attorneys from the Attorney General's office. They will be working in concert with the Department of Commerce's Attorney General that walked them through this. There are very few donated dollars that

don't require a match. It is part of what companies expect to have the local school district have skin in the game. That is my most frequent experience.

Rep. Olson: The Section that deals with Section 12 of Article X of the Constitution. It would remove them from the requirement of having to send the money to the state treasurer and remove the moneys from being subject to an appropriation by the state legislature. It means by exempting this money from that provision in the Constitution the money is not subject to any appropriation by the legislature. You would be free to spend this as the foundation chooses.

Kirsten Baesler: Yes, that is the understanding of how foundations are set up. I worked with Anita on this and we followed the language of other foundations.

Chairman Nathe: We will have Anita come to explain this

Rep. Olson: What exactly is the board's authority?

Kirsten Baesler: The foundation is the one that reviews the opportunities from companies that wish to donate. They determine what scope and mission they have for the state of North Dakota. They would also evaluate opportunities and proposals that were brought to them.

Rep. Olson: In that evaluation would the board make the decision on a vote or how would the decision be made?

Kirsten Baesler: The decision for a recommendation would be made by the board, but as the chief school officer it would have to flow through me.

Rep. Olson: This board is advisory and has no actual authority.

Kirsten Baesler: Yes and advisory board and to have the business constituent perspective.

Rep. Olson: With regards to the bi-laws under review, who would decide what these bi-laws are?

Kirsten Baesler: That would be the task of the first board working with our attorney from the Attorney General's office.

Rep. Olson: How would they accept these bi-laws, would they vote?

Kirsten Baesler: Yes, generally that is how it works. There is a level of expectation when you become a board member that you become an advocate, someone who actually solicits funds and goes out and encourages proposals to come to your board. That is also a role in what their responsibility would be.

Chairman Nathe: As for the make-up of the board we are looking at 4 legislators and 3 members from the private sector. Who would select the private sector individuals? Is that your office?

Kirsten Baesler: I have the ultimate responsibility

Chairman Nathe: Subsection 2 is where the other 3 would come in, who decides on those?

Kirsten Baesler: They are part of the 7 members that I appoint.

Rep Mock: The four legislative members, there is no requirement that they are four legislators but they would be four be recommended or chosen by one of the six members of the leadership of the legislature. Is that correct?

Kirsten Baesler: Correct. It is with the advice and the consent of those four legislators.

Rep Mock: Is there anything stopping this foundation from being formed without this bill? It isn't necessary to pass a bill for a foundation to be formed that serves this exact purpose. Is that correct?

Kirsten Baesler: Yes, but it would not have any state affiliation and assurance that all of our school districts would benefit. As an elected official of our state it is my responsibility that every zip code has equal opportunities.

Rep Mock: I believe there is a foundation created by the Treasurer's Office that is much like this one. That the legislature is just finding out about. It exists and the treasurer is involved in it and no one from that office had requested legislation from us. It is a 501-C3. Once it is created our oversight is incredibly limited. SB 2088 is our only vehicle to insure that if a foundation is done, that it is done right and it includes the proper checks and balances that we as a legislature would require. Thank you for bringing this before us. We need to see if we have everything we need in here before anything would be created.

Kirsten Baesler: This is the only manner in which I would go about this. If a 501-C3 would be created without the state, if they asked me to be on it I would be a member but I would not be commit the state in the way I think the state would need to be committed in order for it to ensure universal access.

Rep Mock: When I mentioned the foundation from the treasurer's office there was discussion regarding that foundations activities and the auditor's office had come in and had provided some disheartening testimony in the inability to oversee and audit that foundations activities. Have you been in contact with the auditor's office regarding oversight or reports and how they would oversee anything created under SB 2088 or a separate Educational Foundation?

Kirsten Baesler: I had a brief conversation with the auditor's office to make them aware of this bill depending on the outcome if I need to have further communication with him so he is aware of it and just out of courtesy and to know we doing everything correctly.

One thing I want to mention about the membership of the foundation board for your consideration and discussion is that I value the working relationship with the legislative branch. On most of the things I have done in the last two years I have asked two legislators to be involved, one from the House and one from the Senate. The principal teacher evaluation committee is one of the most prominent that has consumed most of their time. If it is within the thoughts of the legislature or legislative management I would welcome the presence of the legislative branch on this committee.

Chairman Nathe: We did have two members of the legislature on the Challenge Grant and it has helped out as far as keeping everyone informed so that is something we will discuss in committee.

Rep Meier: We currently have companies that actually donate back to the districts or their home towns. Such as Target used to. Does your department track those funds at all? If so how much was collected in the last year?

Kirsten Baesler: No we do not track individual school foundation donations.

Rep Meier: You don't know what companies donate either?

Kirsten Baesler: I would only know anecdotally speaking. I do know that Walmart, Starbucks and Microsoft do but nothing officially or report wise.

Rep Meier: Do you know if the districts track that information?

Kirsten Baesler: What I can tell you from my experience when I was the board president at Mandan. We had a newly created foundation and we did track the amount donated and the effectiveness of our foundation at that school. We wanted to see its impact.

Chairman Nathe: Speaking of the Hess grant, when does that run out?

Kirsten Baesler: 2017. We are three years into it and two years from expiration.

Chairman Nathe: I could for see Hess coming back with another amount of money, maybe another \$25 million. This would be the vehicle that would be preferred way to do it.

Kirsten Baesler: Yes, again to assure universal access. The Hess money went to the REA's and there are schools that do not belong to a REA.

Chairman Nathe: You said the Department of Commerce has something similar to this, what kind of moneys do they have in there foundation and how is that working for them? Are we learning from their mistakes in this bill, or how does that work?

Kirsten Baesler: I don't know the dollar amount. I do sit on their advisory group and I do believe they are one third of the way to meeting their target fund raising goal. I believe Justin Dever is very involved in this foundation.

Chairman Nathe: Do we need to put a definition in the bill of what this money should be used for? Such as not buildings or remodeling etc.? Do we need to spell out scholarships educational purposes?

Kirsten Baesler: I would hesitate to do that since we don't know what education might need in the future. It may limit a donor if they wanted to come and build a CTE center or other things. I am hesitant to put limitations on it.

Rep Schreiber Beck: When you start limiting you start limiting who will give, and we don't want to stifle the foundations and innovative ideas.

Rep. Olson: How would you respond to those that might be concerned that private money could be too influential say some big donor has an agenda that they want to push and they come in with a lot of money that is hard to say no to. What kind of assurances or answers would you give to people who bring up the question of influence?

Kirsten Baesler: Having served on several foundation boards and when a donor comes in and becomes too prescriptive with their donations generally the board would shy away from that. Most boards approve big idea goals and the language of the gift is pretty broad. Then the board has the final say and I have the final acceptance authority.

Rep Hunskor: You are assuming this one percent for administrative cost. What if the money coming in doesn't take care of your expenses you will need more money.

Kirsten Baesler: That was not included in the first draft of this bill to have any administrative costs. It was added by the Senate because that the \$25 million dollar donation came in there would be a lot of management that would need to take place. I didn't include it in the first draft of this bill because I didn't want it to be about the DPI, or be about do we have enough dollars to get this managed and delivered. I wanted it to be as clean as possibly could so we could create the foundation and seize the opportunities for our kids for donors.

Rep Hunskor: But the \$25,000 is intended to meet the expenses until you have enough funding from the one per cent, but if that doesn't happen you would need more money similar to the \$25,000?

Kirsten Baesler: We discussed this with our fiscal because they are the ones would need to manage the money and my unit directors. We realized that until we were up and running there would be an extra burden placed on our staff. Everyone in my department said it is worth it we can get this done and we want to get this done. We didn't want to have a fiscal note attached to it. We said we will absorb it.

Rep Hunskor: What is your position on the fiscal note now? The \$25,000 you would certainly want to maintain that in here now at this point?

Kirsten Baesler: The Senate convinced me that we should have some in here to not overly burden and overly tax my staff.

Rep Kelsh: On the first page line 15 and 16 where it designates the majority and minority leader of the house and senate. Would it be appropriate to put "or their designee" in the bill? Maybe they would want to appoint a teacher or superintendent or someone with an educational background? There could be some that never had much education experience. Would that be appropriate to put that in there?

Kirsten Baesler: I would be amenable to that. The way the language is written now it says it is with the "advice and consent" of at least four from among the following. I see that the way it is written is that is who I go to for permission for the final approval of this board. If we are talking about members or becoming members of the board, I think it would be very appropriate to say "majority, minority leader or their designee". Then they could choose someone that is familiar with education as part of that committee. I think that would be appropriate. I will get the information you requested earlier to the committee.

Chairman Nathe: Any other support for SB 2088? Any opposition? Seeing none. Closed the hearing on SB 2088.

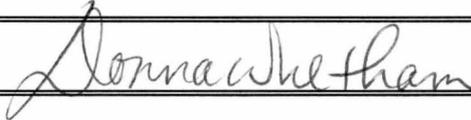
2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2088
3/24/2015
25335

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorization for the creation of a North Dakota education foundation; and to provide for a report to legislative management.

Minutes:

Chairman Nathe: reopened the hearing on SB 2088. This bill is the creates a North Dakota Education foundation. In section 2 it talks about the membership, there would be 7 members 4 of them would be from the legislative body. The bill sets up the rules in terms of chairman, vice chairman, compensation and duties and language that comes from the Department of Commerce Foundation bill that they have in there currently. They can retain 1% of the money they receive for administrative purposes. This would be used if DPI has a company has an "x" amount of money to donate and this is where they would put the money in and the committee of 7 members would decide how this money would be used towards improving education in North Dakota. Hess donated \$25 million dollars a few years ago and we didn't have this foundation so they hired a company to manage it and they get \$5million to manage it. The state and the board would manage this and that is the real reason for this. Hess is really serious about making another donation again and I know or another company in the energy field is looking very seriously at giving us a very sizable donation in the neighborhood of what Hess gave us before. This vehicle would be a perfect way to handle that money coming in. This is companies that want to help better the education system that we have.

Rep. Olson: What is to prevent Kirsten or other people interested in education from starting a non-profit foundation like this on their own time and on their own dime without the requirement of this bill?

Chairman Nathe: What is to stop them from doing this? We could look at that but this would be a board of 7 members again 4 from the legislative body so there would be plenty of vetting and oversight if that is your concern.

Rep. Olson: That is not exactly my concern, I am concerned how this bill is written. The seven members are not necessarily members of the legislature, they are simply appointed by the superintendent with the advice or consent of at least 4 from both houses.

I am not sure how consent is obtained, if they have to be appointed to a special joint committee or what this is. I don't see why this bill is necessary in order to create a foundation. I was looking at other foundations out there, there is a big one in Nevada, it looks very successful and it wasn't created through legislative action. In this bill it seems the legislature is being asked to give Kirsten, the superintendent, the permission to administer a private 501-C3 Foundation on her own time while she is performing her elected official duties and giving her the seed money like a grant to create this foundation. I am not sure why we should be passing a bill to make this happen when this is something they could accomplish on their own.

Rep B. Koppelman: The first question is on line 13 page 1 would it be better to say, if the superintendent is appointing the 3 members that are from Legislative Assembly, that probably makes sense but I would be interested in seeing that Legislative Management appoint the 4 legislative members. The question overall is when we had the REA bill I thought the purpose for changing their structure was so that they could receive grants like the Hess grant directly, if this will be the vehicle for the Hess grant why was the other one necessary?

Chairman Nathe: That wasn't for the Hess grant that was so they can pool their accounts together to hire one the business manager.

Rep B. Koppelman: Didn't you tell the committee that Hess was looking at donating again and that was important so they could receive that grant from Hess, or am I wrong?

Chairman Nathe: Yes, you are right, they would also help administer any future grants in a more uniform way. It would also cut out the consultant fee.

Rep Mock: Rep. Olson brought up some good points on why couldn't be done on its own but what I did learn is the treasurer's office in the interim formed a foundation without the legislature knowing it and they found out about it as being part of appropriations. As the body that appropriates the dollars and hires the FTE's that was a little concerning myself, we were finding out staff using time supposed to be used for public work to administer a private foundation. It is a problem, I am concerned if we don't pass this, I do see a need for a foundation, I think there is a great opportunity. It could be done on its own but without some level of oversight and I think there should be some reporting mechanism to find out if it is working on its own that the legislature is kept in the loop in how the money is spent.

Chairman Nathe: There is a reporting requirement on page 3.

Rep Mock: Yes and that is the part that makes this bill a positive element compared to other activities we have seen.

Rep. Olson: With regards to the first issue with the treasurer, if they were conducting private business on public time that is not something that should be rewarded with what we are going to pass a bill to let you do that. If that is occurring that is an issue for discipline.

I am concerned with the logic that well they really want to do this and they might just do it anyway so we better give them permission and make it official. Whether there is a need for the foundation or not is beside the point. Whether this is appropriate use of public time and money to create and authorize the use of public time and money for the creation of a private foundation. With legislative oversight, I don't believe we have any actual control or oversight. I asked Superintendent Kirsten Baesler specifically if she understood what it meant in section 7 that said that the foundation money distributed are not subject to section 12 of article 10. She claimed she did not know what that meant. Which surprised me because that is the clincher of this entire bill. That is what makes this foundation independent, money given to this foundation is not subject to legislative appropriation nor do they flow back into the general fund. That is reiterating the fact this is a private foundation. The fact is this bill is giving DPI the permission to create a private foundation all these other things are window dressing to the fact that this is a private action. We are giving public sanction and public dollars to this. It may be a great idea and necessary but I think this is not appropriate for legislative action to create a private foundation with public money.

Rep Mock: You are right, it is a 501-C3 and the state does not oversee them, they are corporations that are recognized by the state but they are authorized to operate under the IRS code. We have no jurisdiction over how that money is spent. The difference is that this is established by this bill that we require a report submitted to us so in the end we do know how that is spent. We maintain the ability to appropriate other dollars so if the foundation dollars we to be used for supplementary educational needs that we were otherwise appropriating dollars for we no longer need to appropriate the money. If it is for scholarships that go above and beyond and if they supplement the dollars that we put in for scholarships maybe we don't need to provide as many scholarships. The important part is that we know how those dollars are being spent and there is some level of reporting that comes from the foundation to the state. Without this bill we would have no way of knowing how these private dollars are being spent. It could be created with or without us. Without us we have no way of having a thorough account of how those dollars are being spent. I agree to the bulk of what you are saying but I also see the importance of being proactive and recognizing the role of private foundations and of having the state at the table so that we are constantly in the loop of where the foundation activity lies.

Rep B. Koppelman: When you introduced this bill did you say 4 members where from the legislative body?

Chairman Nathe: They don't have to be but with the consent of the legislative body. I have in my notes does not have to be a legislator but to give input on who gets the appointment. But they could be legislators but they are not required to be. My feeling is the Minority or Majority leader would have a at least one legislator on there. That would be part of their input I assume.

Rep B. Koppelman: Would you support writing that into the bill do you think?

Chairman Nathe: I would rather keep it open and let that up to the discretion of the Majority and Minority leader, let them decide.

Rep B. Koppelman: In Section 8 of the bill it says that the Superintendent of Public Instruction will cover all the administrative costs including compensating and reimbursing the members of the group out of the funds we appropriate to them. If this is going to be a 501-C3 is that something we want the general fund dollars to be going to if we have no say how the dollars are spent? Which also brings to light the whole compensation piece, how we defined how much can they be compensated up to what the legislators are paid. How do we have the authority to do that if under the other section we can't decide how they spend the money. There seems to be some contradictions in here.

Chairman Nathe: My notes show this is set up like the foundation bill that they have in the Department of Commerce. They have used the same outline and template. Line 4 on page 3 Section 12 article 10 is what this pertains to. This foundation would then determine the compensation in accordance to 54-03-02, so it is already in code as far as the compensation. So the foundation board will be working off that section.

Rep B. Koppelman: If that is true, it says money distributed under this section is not public money for any purpose, does that suggest that the pay for the people who work on the foundation those moneys are not considered distributed, because it would be public money initially for that.

Chairman Nathe: It is my understanding that DPI will be paying it themselves, through their budget. There is a fiscal note of \$24,000 for compensation to the board for the transportation and meetings.

Rep B. Koppelman: I suggest we amend and remove Section 8. When you look at the description of the members that it consists of residents of the state who by training, experience and so forth they have a vested interest in education and like any 501-C3 that is created there is volunteer time that is given initially even if they pay members ultimately. I think I would like to see that here. **I move to amend SB 2088 to remove Section 8 from the bill.**

Rep Rohr: Seconded.

Rep B. Koppelman: That may remove the fiscal note as well.

Chairman Nathe: Yes.

Rep D. Johnson: By removing that then does that give them the ability to reimburse the membership after they get up and rolling, after the establishment?

Chairman Nathe: I am not sure.

Rep B. Koppelman: Page 2 line 23 in that section, talking about compensation would allow them to pay the compensation up to the per diem established for members of the legislative assembly. They could pay it but it would just take away the state money and make this truly its own entity without state funding.

Rep Kelsh: I am not sure how the sections tie together, but they are allowed the 1% for the administrative purposes. I am not sure if the compensation can come out of that 1% or not. Can the compensation in section 6 come out of the 1% or does that have to come out of the fiscal note. I am trying to figure this out. If they would set up a foundation they could be taking 5 % of the foundation for the administrative costs and this limits them to 1%. It has to go for education related activities. If they were out on their own they could use the money for anything. I just think if we have a foundation it is better for us to have a say in how the money is spent and that we get a report of the activities that they have. This is a better deal than the treasurer's foundation they started on their own.

Chairman Nathe: We will have Anita Thomas come down to explain.

Rep Meier: I don't know if this bill is really necessary right now. Currently through Career and Tech Ed we could do exactly what this bill is wanting to do. We are all set up through CTE and plus we would have legislative oversight .

Rep. Olson: To the comments made in using the money for education related activities, they are not bound to only use the money for education activities. That language just instructs them that they shall pursue and distribute private sector money for use in education related activities but it doesn't say they shall only distribute those funds for use educational activities. In order to have that granular level of control over an organization like this, it would have to be some form of a state agency because ultimately there will be by-laws, these are not the by-laws for this 501-C3 corporation and the members will vote and decide on the by-laws. Those are what will govern this corporation. The little bit of legal language we have in this bill doesn't really establish a form of governance within the organization. I am not sure where it says the foundation may retain up to 1% of any money received for administrative purposes. I am not sure how that is enforceable by anyone. We are going to see reports about distributions, but not reports about contributions or not necessarily administrative expenses. None of this money is going to flow back through into our general fund. When it says they will retain those moneys, retain from what, it is not flowing back into the general fund. This language all has the appearance of the kind of law we would use to create agencies, but it is just legal window dressing around what is ultimately a private 501-C3 corporation.

Chairman Nathe: This is language already in effect in the Commerce foundation, this is not new language and it has been worked before. We are not breaking new ground here. In regards to the administration purposes and the 1% if you remember the Challenge Grant it was ½ % and appropriations worked it down to ¼ % to be used for the administrative purposes and when they made their report they also reported how much they spent on that. It is up to the foundation board to make sure that when they make their report they also report the money coming in and out. That will be asked by Legislative Management. They will be asking all these questions you are concerned about expenses and what it is being spent on. That is the reason for the report to Legislative Management.

Rep. Olson: The Challenge grant is that a 501-C3 foundation or is that from the Executive Branch?

Chairman Nathe: It is not a private 501-C3 but it does require money for administrative expenses and a report to Legislative Management.

Rep. Olson: We have full control of that foundation and all the operations, full visibility, that is a state owned and managed operation as opposed to this.

Chairman Nathe: This is not new ground this has been in code for a while. Just remember it is not new ground it has been around for a long time.

Rep Schreiber Beck: Let's simplify this, you have organizations potentially to give millions of dollars, they want a vehicle to give this through, which they have expressed because it is beneficial for them to give to a foundation. It is just the way the law works, I like foundations too. We can make it extremely difficult for that institution they would like to see it handled at a state level with some state knowledge. 501- C3's are legal entities that can be established the legislature would have no control over it, which is absolutely fine, other than knowing the report. These work and there is a reason for them. All of our institutions of Higher Ed have foundations. There is some question because they cross over with some institution involvement with the foundations whether or not those foundations have to reveal a lot of information. That has been in question about the last 5 years but because there is such a close connection they will probably have to reveal the information. I don't think we are going to look at a foundation that hide what is going on otherwise they wouldn't have brought this out. To keep it simple someone wants to give millions of dollars and this vehicle is the method they want to utilize and Rep Meier brought up CTE but that apparently must not be the way they want to give. I don't know why but possibly because of the way that DPI works with some of the schools and how it can be administered properly. I have questions about convoluting and how that was being handled. I questioned Superintendent Baesler about it because I was concerned how that was being handled and how it was being done. She assured me this is the way the schools wanted it done or the people that were giving wanted it done. I think this bill, whether or not you take out the administrative costs, you could require those to be paid back if you want, would give us the ability to get something done. I love foundations.

Rep Meier: One of the concerns I have with the bill is we have over a \$2 billion dollar education funding budget for K-12, we have companies who want to donate funds into education. I have a hard time with the fact that at some point there is not going to be companies that want to donate without strings attached. Our state has chosen to direct funds the way they want to direct them and I have a concern with are we going to have companies that wants their funds directed to a certain direction that rubs against what we currently want to do with our K-12 funds in North Dakota.

Chairman Nathe: That would be the reason for the board, if the board saw that they wouldn't have to take the money. If Company A says we are going to give millions of dollars and here are the strings and this is what we want you to use it for. The foundation can have a meeting and say that is not in our mission for education in North Dakota. We have chosen not to do that. That is the reason for the board to make sure it does work and follow what we want for education in North Dakota. The board doesn't have to take the

money, the bill would give the board the ability to accept it, where they are all on the same page and working together, then this would be the vehicle to put it in and move it forward.

Rep Meier: We already have areas set up whether it is through CTE or REA's working with their local school districts where they can donate.

Chairman Nathe: Correct, but look at the consulting fees we are paying for that. \$ 5 million dollars on a \$25 million dollar donation for administration. This would take away that where we don't have to pay the consultant fee.

Rep Meier: It would possibly take away that but not necessarily take it away.

Chairman Nathe: In my opinion it would take it away.

Rep Mock: The debate right now should be on the amendment of Section 8.

Chairman Nathe: We are just talking about the bill while we were waiting for Anita to come down and explain, could you come up to the podium Anita. There is a motion to remove Section 8 the administrative expenses could you explain how that would play out and how it is related to the compensation, if we took that out what would be the ramifications?

Anita Thomas: Legislative Council: DPI may have a better insight on how they would see this happening. I have no way of commenting on what the fiscal impact would be. If you don't have someone to provide administrative services then the foundation members themselves would be sitting there taking notes and trying to keep minutes or whatever other record that they had. They would have to, on their own, develop some sort of mechanism for paying them. But this isn't really a state agency so we would not even be able to appropriate to the foundation, we would still have to appropriate to DPI and tell them to pay or to the Governor's office or somebody else.

Chairman Nathe: If we remove Section 8, that would be the case you are saying?

Anita Thomas: Yes.

Rep B. Koppelman: This is my amendment and what I was looking at is on page 2 line 23 and 24. It sets up how an individual is entitled to receive compensation, we could change that to may receive compensation, but it sets up the parameters for what they can be paid. Section 8 just sets up in my mind whether or not we will use public dollars to do it or whether the foundation would start by fund raising and paying out of that to administer once they have raised funds.

Anita Thomas: If you wanted to have the foundation literally raise its own money for its own compensation we would want to have some different wording. This is the standard wording that we would use for a state board or a commission. You could go that route but I wouldn't recommend this language in it.

Rep B. Koppelman: In Section 8 it reads right now is "until the administrative fees retained by the foundation in accordance with section 7 of this Act are sufficient to fund the operating costs". Is the board going to decide when they think they make enough money to operate and they want to stop taking the public money, is there some threshold that is set up in this bill that they have to cross? I didn't see that and that is why I am concerned?

Anita Thomas: It is not addressed in the bill, if that is something you wanted to add to further clarify how the foundation ought to operate would be up to you.

Rep. Olson: Why is the standard wording for a state board or commission being used for the creation of something that is not a state board or commission? That is part of my concern?

Anita Thomas: One of the things I have noted in twenty-five years of drafting bills form people is that sometimes I don't want to ask and I am not told why it is being created or envisioned the way it is.

Rep Kelsh: To get back to simple, the fiscal note is basically start-up money. In Section 8 it says they will be paid under Section 6, so much from that fiscal note until the time that 1% will cover the administrative costs and the pay of the board members. Is that the way it should be read in Section 8?

Chairman Nathe: That would be paid basically until the grant money comes in.

Rep Kelsh: My question is the fiscal note is really start-up money isn't it?

Chairman Nathe: Yes, the state would pay that until a big donation comes in then that would cover the costs.

Rep Kelsh: Then the 1% comes out and they can start paying out of that.

Chairman Nathe: Yes, that is how I understand it.

Anita Thomas: Along with that the compensation level is set by the foundation so it wouldn't have to be the standard legislative rate either.

Chairman Nathe: This would be set up and the fiscal note is set up for \$24,000 for 4 meetings, so if we set up this foundation and the state receives no money for a year, it would be \$24,000, but they could get a check 2 weeks later and then there would be no start-up money and then they would just use the 1% of the grant, correct?

Anita Thomas: Correct.

Rep. Olson: Since this is not a state board or commission or any state agency of any kind, does this bill actually bind the way they conduct their business and the way they spend their money because I don't see any penalty for if they don't comply to any of these provisions that we want to put into the Century Code regarding the North Dakota Education

Foundation. In your opinion how would the law go about actually binding this organization to any of this language aside from giving DPI the ability to define how?

Chairman Nathe: Could you save that question I would like to act on the motion. You can ask that question later. I want to stick to the amendment.

Rep B. Koppelman: If this is start-up money why are we funding it 4 years into the future. If it is a one-time deal like it would be this biennium and then they will be on their own, like fly or fail, but we are funding this in the 2017-2019 biennium according to the fiscal note, as well. So that brings up the question is that really start-up money?

Chairman Nathe: Any other comments on the motion for the amendment to remove Section 8 on SB 2088?

Rep. Olson: I would resist the motion to amend out Section 8. I think the bill should stand or fall on its own merits. I don't know if there is any way to make it better, I will resist the motion, I intend to resist the bill also and I don't want to amend a bill I would vote against.

Rep Hunskor: As I listen to the discussion, we have a company that is willing to give millions of dollars is one thing and my greater thought is you will have 7 members who have a responsibility to make some decisions and it sounds to me like we are trying to make decisions that they have to take care of. We are so afraid that the board of 7 members are going to do something wrong we are picking on a lot of things. I like the bill, leave it up to those people, they will be responsible, they will take care of what they have to do.

Chairman Nathe: Any other questions? Seeing none, clerk will take the roll on the motion to remove Section 8 from SB 2088.

A Roll Call Vote was taken. Yes: 3 No: 10 Absent: 0. Motion failed.

Rep Looyen: Moved Do Pass with a rereferral to appropriations.

Rep Kelsh: seconded.

Rep Kelsh: We have an elected official who would be responsible for administrating this along with the board and in their report, I don't know if they report how much money, I am sure they will, maybe not who from, but if they want to be re-elected they won't do something that will keep this above board and let the legislature know how they are operating and what they are doing.

Chairman Nathe: With the input from the Majority and Minority leaders about who to put on this board it would behoove DPI to put on maybe legislators and maybe not but they will put on some high quality people. In the reporting requirement that is in the bill on page 3, Legislative Management will give them a thorough vetting as far as what is the money coming in and what it is being used for. They will give it a good working over and I don't have any doubt that anything going on will be above board and be transparent.

Rep Meier: I have some concerns with setting up boards underneath state agencies with 501-C3's set up underneath them as well and for that I will resist the motion for the do pass.

Rep. Olson: May I readdress my question to Anita, since this is not a state board or commission or any state agency of any kind, does this bill actually bind the way they conduct their business and the way they spend their money because I don't see any penalty for if they don't comply to any of these provisions that we want to put into the Century Code regarding the North Dakota Education Foundation. We are putting into Century Code something which is specific to a 501-C3 corporation what is the enforceability of this law against the actual conduct of the business of this corporation which we are giving DPI the permission to create, can you comment on what that might be?

Anita Thomas: Many of our laws do not carry punitive sections with them. We work on the assumption, that whether we are directing government officials or even the private sector to perform certain functions, those will be performed. We look at oversight entities such as Legislative Management or reports to the Interim Committee as a way of assuring that what the Legislature establishes as its policies as its wishes is in fact being carried out. We don't put civil or criminal penalties in most of those instances.

Rep. Olson: If they were to fail to adhere to any of this language, what would be the method of recourse, what could we charge this organization with as far as crime if anything?

Anita Thomas: It would depend on the nature of what was done, if they took money that was given for a specific purpose and went on a vacation with it would be one set of circumstances but if they maybe didn't invest it or distribute it quite like someone else would have wanted them to, that would be another discussion.

Rep. Olson: That is my main question, not if they commit some other crime that actually is a crime but just if they are not to follow these specific rules that we are putting into the code whether that actually becomes an enforceable crime or whether this is simply a suggestion towards a private organization that we are going to put into the Century Code?

Anita Thomas: The directive is fairly broad in terms of use the money in education related activities. Again we would trust the board and who is appointing the board and the discussion within the board to make sure that they are not tone deaf in how they ought to exercise their responsibilities.

Rep. Olson: Trust the board that answers my question.

Rep Schreiber Beck: My understanding of 501-C3's is they are legal entities within the state of North Dakota as a corporation. There are laws regulating those entities as well so they would fall under the state laws that regulate those entities as well, correct?

Anita Thomas: That is my understanding as well.

Vice Chairman Schatz: Do we have any other state wide electeds that have foundations under them. The Treasurer's one was defeated I thought?

Anita Thomas: I believe Economic Development has something similar to this.

Vice Chairman Schatz: But they are not elected.

Anita Thomas: No but it is a state agency.

Vice Chairman Schatz: Right. Is that the only other place where you can donate money, if you have a cause, if you want to donate? In other words, if we pass this is the Attorney General's office or the Auditor's office going to have a foundation, is everybody going to have a foundation?

Anita Thomas: The merits of these types of foundations is really is what your policy discussion is about.

Vice Chairman Schatz: Is this a first time a state wide elected got a foundation, yes or no would be a first time deal?

Anita Thomas: To the best of my knowledge, yes.

Chairman Nathe: Any other questions? Seeing none the clerk will take the roll on a do pass motion for SB 2088 with rereferral to appropriations.

A Roll Call Vote was taken. Yes: 8 No: 5 Absent: 0. Motion Carried.

Rep Zubke: will carry the bill.

Date: 3/24/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2088**

House Education Committee

Subcommittee

Amendment LC# or Description: "Remove Section 8"

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunskor		✓
Vice Chairman Schatz	✓		Rep. Kelsh		✓
Rep. Dennis Johnson		✓	Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Looyen		✓			
Rep. Meier		✓			
Rep. Olson		✓			
Rep. Rohr	✓				
Rep. Schreiber Beck		✓			
Rep. Zubke		✓			

Total (Yes) 3 No 10

Absent 0

Floor Assignment _____

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

"Remove Section 8"

Motion Failed.

Date: 3/24/15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2088**

House Education Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Looyesen Seconded By Rep. Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz		✓	Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman		✓			
Rep. Looyesen	✓				
Rep. Meier		✓			
Rep. Olson		✓			
Rep. Rohr		✓			
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep. Zubke

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

REPORT OF STANDING COMMITTEE

SB 2088, as engrossed: Education Committee (Rep. Nathe, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2088 was rereferred to the Appropriations Committee.

2015 HOUSE APPROPRIATIONS

SB 2088

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2088
4/2/2015
25784

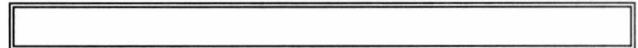
- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact eight new sections to chapter 15.1-02 of the North Dakota Century Code, relating to authorization for the creation of a North Dakota education foundation; and to provide for a report to legislative management

Minutes:



Chairman Jeff Delzer: Opened the hearing on SB 2088

Representative Nathe, District 30 Bismarck: We have before you SB 2088 it is a bill that give the Superintendent of Public Instruction the authority to set up the North Dakota education foundation. Currently there exists no mechanism at which you can give a donation. DPI has been approached by different companies and individuals who want to give money toward the betterment of education in North Dakota. As I said there currently is no mechanism that exist in which they can give a donation to ensure all students in North Dakota would have an opportunity to benefit from their gift. SB 2088 would give philanthropist interested in education to donate to the system to approve that advanced education. The system would also provide them for an opportunity for a tax deduction return it would be set up as a 5013C. The bill would set up a seven member foundation board. There would be input from both the majority and minority leader of the House and Senate, the president portend of the Senate and speaker of the House of Representative of four of those seven. They would have advise and consent to DPI to who they could put on that board. The other three remaining members would come from all different levels of society. On page 2 and 3 it just sets up the nuts and bolts of the foundation as far as the terms of office, the officers, corium, the compensation which is why we are here and then you see on the back page on line 6 that would give the foundation could retain up to 1 percent of any of the monies received to help for administration purposed and then there are some reporting requirements in there also. Line 4 on the back page where it says section 12 about article 10 of the constitution has to do with language from a foundation bill that is set up within the commerce department. For your information this is not new ground, this is very prevalent within the state government. There are 11 foundations right now currently set up in North Dakota. The reason why we are here is there is a fiscal note of 24,900 dollars that would be for the seven founding foundation members for their startup money, travel expenses, education meeting. You can see in the fiscal note they have four quarterly meetings per year. I will just let the committee know there are several companies

right now waiting in the wings with donations to donate to education. We had an energy company several years ago donate 25 million dollars which we are working on right now. This foundation bill would help that tremendously. What they had to do several years ago with the 25 million dollars was use a third party to help manage and consult that. In their rough budget they were getting 5 million of the 25 million dollars to manage this program. This bill with the foundation, these seven members would then control that 25 million and run the program at a fraction of the cost and thus keeping more money available to use. So again this would work in conjunction with DP, obviously when these companies make donations there are some strings attached so the foundation board can decide do we want that money with these strings attached yes or no, does it fit into the mission of education of North Dakota.

Chairman Jeff Delzer: Brady will you look and see what happened to the bill we had before us before about foundations.

Representative Nathe: It was killed. There was a big difference between that bill and this bill. That bill would let an office holder set up the foundation in that office holders name so they would have control.

Chairman Jeff Delzer: The issue is still that it is run by an elected official and I know that was pretty strong in the House. The Senate might not have agreed with it. You said there was a donation before and they hired somebody?

Representative Nathe: Yes the donation was the 25 million dollar Hess grant in 2009, they hired a consultant called FHI 360 and they are currently consulting it. We don't know the exact amount they are getting paid but we know in the rough budget when they started their line item said 5 million dollars for their consul tee and management fee.

Chairman Jeff Delzer: One of the problems I have with this is the fact that the Superintendent of Public Instruction can do it. If you were taking it and separating it totally from the elected position it would be a little harder to question it but when they appoint the people those people basically answer to them. That is an issue to me.

Representative Nathe: That was the main discussion whether they should give DPI the authority to do that but again in the bill by advice and consent of the legislature to put four people in there DPI would have to work with the foundation board as far as what to do. These other 11 foundations that we have in here use the same exact model that you are looking at right now.

Representative Skarphol: You referred to they hired, who are they?

Representative Nathe: That would be the donators. So in the Hess case it would be Hess that fired FHI 360.

Chairman Jeff Delzer: They chose to pay someone 20 percent of the donation. That seems like an awful high price to pay.

Representative Skarphol: Yesterday we had a discussion about blended component and discreetly presented component units and we are right back into that arena as far as I am concerned with this. As long as they hire and it is their money I don't think we have any recourse as far as auditing or performance auditing. With the mechanism you are proposing to put in place I think they fit that description.

Representative Nathe: I did talk to the auditor's office this morning about this and they could be subject to financial auditing under DPI.

Representative Skarphol: But not performance in their opinion at this point in time?

Representative Nathe: No but there is a reporting mechanism on performance in the bill.

Representative Dosch: Did you mention about a tax benefit?

Representative Nathe: Yes this would be set up as a 5013C so there would be a federal tax benefit for the donation.

Chairman Jeff Delzer: What about state?

Representative Nathe: We did not discuss that.

Representative Dosch: Did your committee talk about if you do this let's say you get a company such as the Gates foundation wants to make a sizeable contribution to DPI the potential influence that they may have over certain policies of DPI?

Representative Nathe: You can say that about anyone who makes a donation. Again the foundation board would vet that. They would vet that request for the donation to see what the strings were that were attached. If they think it is do able and they are comfortable with it they will approve it.

Representative Glassheim: Do you know the remainder of the money used for and what kind of things would they be funding?

Representative Nathe: I believe the money runs out in 2017 and that money was used for instance to set up REAs, development days, getting the money out there and Hess has been there every step of the way. They help school districts immensely not only with their donation but with their expertise and training that they have provided to these schools.

Representative Nelson: What amendments did they add to make this better?

Representative Nathe: We didn't add any amendments. There was discussion about reporting requirements but we see there is reporting in the bill already.

Chairman Jeff Delzer: Did you have any discussion on the words shall pursue on page 3 line 2, "the foundation shall pursue" to me that is a very scary set of words. If someone comes to you that is one thing but someone shall pursue that means you are going and

asking someone for something and if you are going to ask someone for something that probably means you have to give them something in return.

Representative Nathe: You are right and I think when a company is willing to give the state education system millions of dollars and if DPI knows they are out there a company XYZ may have money out there available and I think that is where the pursue comes.

Chairman Jeff Delzer: It says it's not subject to section 12 of the article of the constitution, I find that questionable. It also says you are not supposed to lower the state's share. The real question is if you do that is this going to take over some of the legislative authority of what education is?

Representative Nathe: That is something we would have to find some more information out. I go back to the Hess grant that helped set up some of these new programs that benefited the schools. In regards to article 12 that language there on page 3 is boilerplate language that was used to set up the foundation for the commerce department that is already in some law.

Chairman Jeff Delzer: Economic development is considerably different than education.

Representative Nathe: I agree.

Representative Dosch: Is there any discussion on the organization on education is a Bush foundation they provide a lot of dollars for education, they start education programs and their money goes away and the state is left with maintaining these programs. Did you committee talk about anything about that?

Representative Nathe: We did not we just discussed the bill as far as setting up the foundation and the mechanics and the benefit of setting it up. We didn't get to that point.

Representative Hogan: Did you talk about just having a totally free standing foundation of 5013C that wasn't directly linked to the government?

Representative Nathe: We did not we just dealt with the bill.

Representative Skarphol: I think it would be appropriate for you to mention what section 12 of article 10 is.

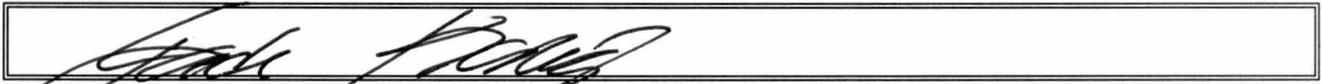
Brady, Legislative Counsel: That section requires that any funds that belong to the state must be deposited with the state treasurer and cannot be spent except in pursue of legislative appropriation.

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2088
4/8/2015
25946

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact eight new sections to chapter 15.1-02 of the North Dakota Century Code, relating to authorization for the creation of a North Dakota education foundation; and to provide for a report to legislative management

Minutes:



Chairman Jeff Delzer: handed out amendment .02001 from Representative Carlson. Personally I have some problems with the bill. I don't like the idea of a foundation being in our elected officials places. We did pass a bill out early on that said that couldn't happen, the Senate defeated that bill. What the amendments do from my understanding is they actually spell out if this bill passes that "the foundation shall obtain from the benefactor or detailed statement indicating the purpose of the contribution in expected results in the time frame within which expected results are to be achieved and present the statement record under subdivision 8 to the legislative assembly during a regular special session or a budget session of legislative management if the assembly is not in session and obtain the consent of the legislative assembly or the budget section before anything could go forward." It does put some restriction so at least the legislature would know if there was a donation being made, the purpose and the time frame which it is supposed to be done. It does, when you read it, allow the legislative assembly or the budget section to deny the foundation of receiving one of these gifts if they did not like the purposes it is intended for.

Representative Skarphol: I am not seeing where they give 2x dollars to the foundation, whatever that number may be, what is to prevent that foundation from still controlling the money?

Chairman Jeff Delzer: When I looked at it I'm not sure it does I think the foundation has full authority within that. I think that is part of the reason for the amendments is try to put that authority over towards the legislative assembly.

Allen Knutson: That would be my understanding to.

Chairman Jeff Delzer: It's pretty broad basis. It came out and I think I got the report it was 8-5 out of the education committee.

Representative Skarphol: I understand it says that the foundation my except the money but where does it say that they control the money? If the entity that granted the money wants to persist on retaining control what is to preclude them from doing that?

Chairman Jeff Delzer: Allen, would there be other language somewhere that deals with foundations that may do something because as Representative Skarphol says I don't see anything that says they have to take control of the money. Certainly they would put strings on it but I don't know if they would hang on to it.

Knutson: I'll do more checking if there is anything in the provisions and code that would speak to that but I don't believe there would be.

Vice Chairman Keith Kempenich: Plowing new ground with these foundations I think that if you are going to set up these foundations you need to have specifics. They are going outside of this and just forming a foundation that doesn't include any part but were are going to sanction this.

Representative Skarphol: I like the amendment and support the amendment but I don't think we should necessarily vote on the bill until we get an opinion from legal staff upstairs that it does what we hope it is going to do.

Representative Boe: This seems like the second furrow already this session. We had another agency in looking to start a foundation and we seemed to have had no taste for it and now we are addressing it again.

Chairman Jeff Delzer: We are addressing it because the bills in front of us I don't think anybody is strong about the bill going forward but we want it in the best shape.

Representative Nelson: There is no question that we had this issue before us this session but the makeup of this is quite different than the first one. We take the word foundation and define it pretty loosely sometimes and I don't know if we should just say no because of the fact that we said no earlier in the session. I think we should give it a fair hearing and as I remember the testimony that we have heard in this committee there was a pretty significant gift that was proposed for the benefit of the students in North Dakota that could have resulted in some very good educational opportunities if they go through with this.

Chairman Jeff Delzer: There was a considerable gift given already and I think there were restrictions on how that could be used and then it went to the REA's and that's what this is trying to do is allow this foundation to do it into the system.

Representative Skarphol: I Agree it was substantial gift but it was relayed to meet half of the gift was given to the contractor that was going to distribute the money. My concern is that we do it right if we are going to do it so that the control lies with this foundation and they can distribute the money and not give half of it back to some other entity other than the

intended schools. I would move amendment .02001 in order to improve the bill for now and I would ask that we hold the bill until we get some reassurance from the legal staff in regards to it.

Representative Monson: Second.

Representative Dosch: Would putting a friendly amendment on to this by putting a sunset clause be amendable?

Chairman Jeff Delzer: Go ahead and put this on and then we can talk about further amending it with a sunset or anything but we should also get the information that was requested by Representative Skarphol before we finish the bill.

Representative Hogan: The concern I have is that in many foundations your donations are 200 dollars or 500 dollars where the donor doesn't really care where it goes if you trust the foundation. This assumes that they are going to have a very clear designated plan for small donors, would this discourage small donors?

Chairman Jeff Delzer: I would guess not they would probably just say we don't care and I would answer the question of what they expect out of it.

Representative Skarphol: What we could do is further amend it to say that gifts below a certain amount would accumulate without the need for a detailed statement indicating the purpose of the contribution.

Chairman Jeff Delzer: If it's a small one and the detailed purpose is just to help education that is pretty much a detailed purpose.

Motion to Adopt Amendment .02001
Motion made by Representative Skarphol.
Seconded by Representative Monson.
Voice vote.
Motion carries.

Representative Dosch: I make that motion that we put a two year sunset clause on the bill. If it does go through if there are any issues.

Representative Silbernagel: Second.

Motion to Further Amend SB 2088 adding a two year sunset clause.
Motion made by Representative Dosch.
Seconded by Representative Silbernagel.
Voice vote.
Motion carried.

Amendments approved; hold until tomorrow.

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2088
4/9/2015
25975

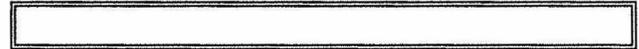
- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact eight new sections to chapter 15.1-02 of the North Dakota Century Code, relating to authorization for the creation of a North Dakota education foundation; and to provide for a report to legislative management

Minutes:



Chairman Jeff Delzer: You guy should have received a handout on 2088 .02002 and when I look at my note we had an amendment made by Representative Skarphol to amend 2088 with .02001. Then we had a further motion by Representative Dosch and Representative Silbernagel with a two year sunset. Representative Skarphol asked that we double check the control of the money.

Representative Skarphol: Anita Thomas came down and had a visit with me and she assures me that the control of the money is in the hands of the foundation board of the bill, so that the board will control whatever dollars they except.

Representative Nelson: I move a Do Pass As Amended.

Representative Holman: Second.

Motion for Do Pass As Amended on SB 2088.
Motion made by Representative Nelson.
Seconded by Representative Skarphol.
Total yes 8. No 13. Absent 2.
Motion fail.

Vice Chairman Keith Kempenich: I motion a Do Not Pass as Amended

Representative Brandenburg: Second.

Motion for Do Not Pass As Amended on SB 2088.
Motion made by Representative Kempenich.
Seconded by Representative Brandenburg.

House Appropriations Committee

SB 2088

4/9/2015

Page 2

Total Yes 14. No 7. Absent 2.

Motion carries.

Floor assignment Chairman Jeff Delzer.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2088

Page 3, line 1, after "**Duties**" insert "**- Acceptance of moneys - Consent**"

Page 3, line 3, after "activities" insert: "provided that before the foundation may accept moneys under this section, the foundation shall:

- a. Obtain from the benefactor a detailed statement indicating the purpose for the contribution, the expected results, and the time frame within which the expected results are to be achieved;
- b. Present the statement required under subdivision a to:
 - (1) The legislative assembly during a regular or a special session;
or
 - (2) The budget section of the legislative management, if the legislative assembly is not in session; and
- c. Obtain the consent of the legislative assembly or the budget section of the legislative management"

Page 3, after the underscored period insert:

"2."

Page 3, line 6, replace "2." with "3."

Page 3, line 8, replace "3." with "4."

Renumber accordingly

SK
4/14/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2088

Page 1, line 3, remove "and"

Page 1, line 3, after "management" insert "; and to provide an expiration date"

Page 3, line 1, after "**Duties**" insert "**- Acceptance of moneys - Consent**"

Page 3, line 3, after "activities" insert: ", provided that before the foundation may accept moneys under this section, the foundation shall:

- a. Obtain from the benefactor a detailed statement indicating the purpose for the contribution, the expected results, and the time frame within which the expected results are to be achieved;
- b. Present the statement required under subdivision a to:
 - (1) The legislative assembly during a regular or a special session;
or
 - (2) The budget section of the legislative management, if the legislative assembly is not in session; and
- c. Obtain the consent of the legislative assembly or the budget section of the legislative management

"2."

Page 3, line 6, replace "2." with "3."

Page 3, line 8, replace "3." with "4."

Page 3, after line 18, insert:

"SECTION 9. EXPIRATION DATE - RETURN OF UNSPENT MONEYS. This Act is effective through June 30, 2017, and after that date is ineffective. Any moneys not distributed by the foundation as of June 30, 2017, must be returned to the benefactor."

Renumber accordingly

Date: 4/9/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2088

House: Appropriations Committee

Subcommittee

Amendment LC# or Description: .D 2062

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By: Nelson Seconded By: Holmberg

Representatives	Yes	No	Absent
Chairman Jeff Delzer		✓	
Vice Chairman Keith Kempenich		✓	
Representative Bellew		✓	
Representative Brandenburg		✓	
Representative Boehning	✓		
Representative Dosch		✓	
Representative Kreltd		✓	
Representative Martinson	✓		
Representative Monson	✓		
Representative Nelson	✓		
Representative Pollert		✓	
Representative Sanford	✓		
Representative Schmidt	✓		
Representative Silbernagel	✓		
Representative Skarphol		✓	
Representative Streyle			AB
Representative Thoreson		✓	
Representative Vigesaa		✓	
Representative Boe			AB
Representative Glassheim		✓	
Representative Guggisberg		✓	
Representative Hogan		✓	
Representative Holman	✓		
TOTALS	8	13	2

Motion Fails

Floor Assignment: _____

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

Date: 4/9/15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2088

House: Appropriations Committee

Subcommittee

Amendment LC# or Description: 15. 8011. 0200 z

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By: Kempenich Seconded By: Brandenburg

Representatives	Yes	No	Absent
Chairman Jeff Delzer	✓		
Vice Chairman Keith Kempenich	✓		
Representative Bellew	✓		
Representative Brandenburg	✓		
Representative Boehning		✓	
Representative Dosch	✓		
Representative Kreidt	✓		
Representative Martinson	✓		
Representative Monson		✓	
Representative Nelson		✓	
Representative Pollert	✓		
Representative Sanford		✓	
Representative Schmidt		✓	
Representative Silbernagel		✓	
Representative Skarphol	✓		
Representative Streyle			AB
Representative Thoreson	✓		
Representative Vigesaa	✓		
Representative Boe			AB
Representative Glassheim	✓		
Representative Guggisberg	✓		
Representative Hogan	✓		
Representative Holman		✓	
TOTALS	14	7	2

Floor Assignment: Delzer

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

REPORT OF STANDING COMMITTEE

SB 2088, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (14 YEAS, 7 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2088 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "and"

Page 1, line 3, after "management" insert "; and to provide an expiration date"

Page 3, line 1, after "**Duties**" insert "**- Acceptance of moneys - Consent**"

Page 3, line 3, after "activities" insert: ", provided that before the foundation may accept moneys under this section, the foundation shall:

- a. Obtain from the benefactor a detailed statement indicating the purpose for the contribution, the expected results, and the time frame within which the expected results are to be achieved;
- b. Present the statement required under subdivision a to:
 - (1) The legislative assembly during a regular or a special session;
or
 - (2) The budget section of the legislative management, if the legislative assembly is not in session; and
- c. Obtain the consent of the legislative assembly or the budget section of the legislative management

"2."

Page 3, line 6, replace "2." with "3."

Page 3, line 8, replace "3." with "4."

Page 3, after line 18, insert:

"SECTION 9. EXPIRATION DATE - RETURN OF UNSPENT MONEYS. This Act is effective through June 30, 2017, and after that date is ineffective. Any moneys not distributed by the foundation as of June 30, 2017, must be returned to the benefactor."

Re-number accordingly

2015 TESTIMONY

SB 2088

TESTIMONY ON SB 2088
SENATE EDUCATION COMMITTEE

January 12, 2015

By: Kirsten Baesler, State Superintendent
701-328-4570

Department of Public Instruction

|

1/12/2015

Chairman Flakoll and Members of the Committee:

Good afternoon, my name is Kirsten Baesler, State Superintendent of the Department of Public Instruction. I am here to testify in support of Senate Bill 2088.

Senate Bill 2088 gives the superintendent of public instruction the authority to set up a North Dakota Education Foundation.

As State Superintendent I have been approached numerous times by companies, businesses and individuals who are interested in providing donations, scholarships or other means of support to our schools in North Dakota. I've discovered there are many people who support education and are looking for ways to express their support in dollars. The challenge they encounter is the fact that there currently exists no mechanism in which they can give a donation that would insure all students in

North Dakota have the opportunity to benefit from their gift. Senate Bill 2088 gives philanthropists interested in education a system to donate money to improve and advance education. In return, this system also provides for them the opportunity for a tax deduction.

Senate Bill 2088 authorizes the state superintendent to take the legal steps necessary to establish the Education Foundation. The concept and model for the Education Foundation came from a similar North Dakota foundation established through the Department of Commerce. That Commerce Foundation has experienced great success and many of you may be familiar with their current marketing project “Find the Good Life”.

It is important for every foundation to assure accountability in its fund-raising and its governance. This is essential and it was considered heavily as this bill was drafted. The bill establishes an eleven-member board of directors. These board of directors would be individuals who understand education’s impact on agriculture, the arts, commerce, manufacturing, natural resources, energy production and professional work of all kinds.

A system of checks and balances in government is also very important. Each board member would be vetted by the legislative leadership of both parties in the North Dakota House and Senate, so ultimately the North Dakota Legislature would have the power to decide the members of the board.

Directors of the foundation would serve two-year terms, and they'd be limited to two consecutive terms. The directors would elect their own officers and the chairman would be limited to two terms in that role.

Costs of this foundation would be minimal. Each member of the foundation would be paid up to \$135 dollars a day for meetings and days they are directed to do foundation work. Foundation board work would include reviewing grant applications as well as acting as a resource and advisory council to the state superintendent on education policy, budget considerations and department operations.

Education foundations in some form exist in every state. Some support colleges or universities, some support local school districts or private schools. Most of our schools do not have the benefit of an education foundation to promote and encourage public private partnerships in education.

This foundation will level the playing field in our state and act as a means to fully leverage state and private dollars to promote innovation in education.

There are a variety of potential uses of foundation dollars. Student college scholarships might be offered or grants for teacher professional development, or funding might promote student learning models beyond the traditional classroom. The projects that the foundation might support are broad and expansive.

As I stated, many inside and outside of our state want to support education in North Dakota and I believe it is our responsibility to provide them an efficient manner to donate their contributions, and provide an opportunity to support education in every corner of our great state. In some states, major retailers such as Walmart, Best Buy, Starbucks and Amazon give their customers a choice of making a donation to education when they make a purchase. The North Dakota Education Foundation would give them an outlet for doing that.

In conclusion this foundation will help promote and scale out innovation and best practices of education. It gives

individuals and businesses a way to support these efforts – and receive a tax deduction when they do.

Mr. Chairman and members of the Senate Education Committee, I ask you for a do-pass recommendation on Senate Bill 2088. I would be pleased to answer your questions.

#1
1/13/2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 18, after "individuals," insert "who are residents of this state."

Page 2, line 20, after "exceeding" remove "one hundred thirty-five dollars per day" and insert immediately thereafter "the amount established for members of the legislative assembly in accordance with Section 54-03-20"

Renumber accordingly

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2088

Introduced by

Education Committee

(At the request of the Superintendent of Public Instruction)

1 A BILL for an Act to create and enact ~~seven~~nine new sections to chapter 15.1-02 of the North
2 Dakota Century Code, relating to authorization for the creation of a North Dakota education
3 foundation; and to provide for a report to legislative management.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
6 and enacted as follows:

7 **North Dakota education foundation - Creation - Authorization.**

8 The superintendent of public instruction may create the North Dakota education foundation,
9 subject to the requirements of sections 1 through ~~7~~9 of this Act.

10 **SECTION 2.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Membership.**

13 1. The North Dakota education foundation is composed of ~~eleven~~seven members,
14 appointed by the superintendent of public instruction with the advice and consent of at
15 least four from among the following: the majority and minority leader of the house of
16 representatives, the majority and minority leader of the senate, the president pro
17 tempore of the senate, and the speaker of the house of representatives.

18 2. The foundation members must be selected to be a balanced and representative group,
19 consisting of individuals who are residents of this state and who by training and
20 experience have a familiarity with educational delivery at all levels and an
21 understanding of its impact on agriculture, the arts, commerce and finance,
22 manufacturing, mineral extraction, natural resources, and the professions.

23 **SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
24 and enacted as follows:

1 **Terms of office.**

2 1. The term of office for each member of the foundation begins January first and has a
3 duration of two years. The initial terms must be staggered by lot so that no fewer than
4 five~~three~~ terms expire each year.

5 2. An individual may not serve more than two consecutive terms.

6 3. If an individual is appointed to fill a vacancy, that service is not counted as a term for
7 purposes of this section unless that service exceeds one year.

8 **SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Foundation officers - Chairman.**

11 1. Annually, the foundation members shall elect from among themselves a chairman, a
12 vice chairman, a secretary, and a treasurer.

13 2. The chairman shall call all meetings of the foundation and shall call a special meeting
14 within seven days, if petitioned to do so by at least five of the members.

15 3. A chairman may not serve more than two consecutive terms in that role.

16 **SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Quorum.**

19 A majority of the committee constitutes a quorum for the purpose of conducting business.

20 **SECTION 5.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
21 and enacted as follows:

22 **Compensation.**

23 Each member of the foundation is entitled to receive compensation in the amount
24 established by the foundation, but not exceeding ~~one hundred thirty five dollars per day~~the

25 amount per diem established for members of the legislative assembly in accordance with

26 section 54-03-20, plus reimbursement for expenses as provided by law for state officers, if the
27 member is attending meetings or performing duties as directed by the foundation.

28 **SECTION 6.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
29 and enacted as follows:

1 **Duties - Report.**

2 1.a.—The foundation shall pursue and distribute private sector moneys for use in education-
3 related activities. Moneys distributed under this section are not public moneys for any
4 purpose and are not subject to section 12 of article X of the Constitution of North
5 Dakota.

6 2. The foundation may retain up to one percent of any moneys received under this
7 section for administrative purposes.

8 ~~b.3. The~~ No later than September 1, 2016, the foundation, together with the superintendent
9 of public instruction, shall provide a report to the legislative management, at the time
10 and in the manner directed by the legislative management, regarding distributions
11 made under this section. The report must include direct and indirect benefits to school
12 districts.

13 ~~2. The foundation shall provide advice and guidance to the superintendent of public~~
14 ~~instruction, in all matters pertaining to the administration and delivery of education in~~
15 ~~this state, including academic standards, accountability, budgetary and financial~~
16 ~~matters, managerial and operational matters, and regulatory and legislative matters.~~
17 ~~The foundation may form work groups, task forces, and subcommittees to seek~~
18 ~~additional information and outside expertise in order to fully and adequately perform~~
19 ~~the functions with which the foundation is charged.~~

20 **SECTION 7.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
21 and enacted as follows:

22 **Administrative services - Expenses.**

23 The superintendent of public instruction shall provide administrative services to the
24 foundation and is responsible for all costs incurred in its operation, including the compensation
25 and reimbursement of its members, until such time as administrative fees retained by the
26 foundation in accordance with section 6 of this Act are sufficient to fund its operating costs.

27 **SECTION 8.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
28 and enacted as follows:

29 **Foundation records - Exempt.**

30 All records of the foundation are exempt from the open record requirements of section
31 44-08-18.

January 19, 2015

2

1/20/2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 1, replace "seven" with "nine" ⁹

Page 1, line 9, replace "7" with "9" ⁹

Page 1, line 13, replace "eleven" with "seven"

Page 1, line 19, after "who" insert "are residents of this state and who"

Page 2, line 4, replace "five" with "three"

Page 2, after line 15, insert:

"SECTION 4. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Quorum.

A majority of the committee constitutes a quorum for the purpose of conducting business.

Page 2, line 20, replace "one hundred thirty-five dollars per day" with "the amount per diem established for members of the legislative assembly in accordance with section 54-03-20."

Page 2, line 26, overstrike "a."

Page 2, after line 29, insert:

"2. The foundation may retain up to one percent of any moneys received under this section for administrative purposes."

Page 2, line 30, replace "b." with "3."

Page 2, line 30, replace "The" with "No later than September 1, 2016, the"

Page 2, line 31, remove "at the time and in the manner"

Page 3, line 1, remove "directed by the legislative management."

Page 3, remove lines 3 through 9

Page 3, line 15, after "members" insert ", until such time as administrative fees retained by the foundation in accordance with section 6 of this Act are sufficient to fund its operating costs"

Page 3, after line 15, insert:

"SECTION 8. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Foundation records - Exempt.

All records of the foundation are exempt from the open record requirements of section 44-08-18."

Renumber accordingly

**TESTIMONY ON SB 2088
HOUSE EDUCATION COMMITTEE**

March 4, 2015

By: Kirsten Baesler, State Superintendent

701-328-4570

Department of Public Instruction

#1
SB 2088
3/4/15

Chairman Nathe and Members of the Committee:

Good afternoon, my name is Kirsten Baesler, State Superintendent of the Department of Public Instruction. I am here to offer information and testify in support of Senate Bill 2088.

Senate Bill 2088 gives the superintendent of public instruction the authority to set up a North Dakota Education Foundation.

As State Superintendent I have been approached numerous times by companies, businesses and individuals who are interested in providing donations, scholarships or other means of support to our schools in North Dakota. I've discovered there are many people who support education and are looking for ways to express their support in dollars. The challenge they encounter is the fact that there currently exists no mechanism in which they can give a donation that would insure all students in

North Dakota have the opportunity to benefit from their gift. Senate Bill 2088 gives philanthropists interested in education a system to donate money to improve and advance education. This system also provides for them the opportunity for a tax deduction in return.

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It is important for every foundation to assure accountability in its fund-raising and its governance. This is essential and it was considered heavily as this bill was drafted. The bill establishes a seven-member board of directors. These board of directors would be individuals familiar with education. They would understand its impact on agriculture, the arts, commerce, manufacturing, natural resources, energy production and professional work of all kinds.

Checks and balances in government is also very important. Each board member would be vetted by the legislative leadership of both parties in the North Dakota House and Senate, so ultimately the North Dakota Legislature would have the power to decide the members of the board.

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benefit of an education foundation to promote and encourage public private partnerships in education.

This foundation will level the playing field and act as a means to fully leverage state and private dollars to promote innovation in education.

The foundation might offer student college scholarships and grants for teacher professional development or promote student learning models beyond the traditional classroom. The projects the foundation might support are broad and expansive.

As I stated many inside and outside of our state want to support education in North Dakota and I believe it is our responsibility to provide them an efficient manner to donate their contributions, and provide an opportunity to support education in every corner of our great state. In some states major retailers such as Walmart, Best Buy, Starbucks and Amazon.com give their customers a choice of making a donation to education when they make a purchase. The North Dakota Education Foundation gives them an outlet for doing that.

In conclusion this foundation will help promote and scale out innovation and best practices of education. It gives individuals and businesses a way to support these efforts. Mr. Chairman and members of the House Education Committee, I ask you for a do-pass recommendation on Senate Bill 2088.