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ROLL NUMBER

DESCRIPTION

1046

2007 HOUSE EDUCATION

HB 1046

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1046**

House Education Committee

Check here for Conference Committee

Hearing Date: **8 January 2007**

Recorder Job Number: **709**

Committee Clerk Signature



Minutes:

Chairman Kelsch opened the hearing of HB 1046.

Representative Keith Kempenich of District 39 introduced the bill. HB 1046 was introduced after being brought to our attention by the Golden Valley School District in Beach on court ordered students that were at Home on the Range where they ran into some problems collecting tuition to the receiving school district. This bill is to address that so that receiving district can get their tuition money. It was also brought to our attention last week that YCC (Youth Correctional Center) were not receiving foundation aid for their students. The committee may want to look into that too.

Chairman Kelsch: There are some people here from YCC who will address that. We will let you and Senator Bowman come forward and make comments and then ask the particular question.

Senator Bill Bowman of District 39 spoke on behalf of the bill. Beach is in our legislative district and we understand that this summer that they were having some problems on tutoring charges and disbursement of funds to that district. They, working with us, worked up the law. We wanted to make sure the law was extremely clear on this so that we could correct the problem. They deserve to be paid or reimbursed. They should be no different than any other school district that does the same thing. You also have to remember that out in Western

North Dakota where they have Home on the Range they get a lot of kids that come from there that go to the Beach School District. There is extra care needed in tutoring for some of the children that come from Home on Range. Hopefully this will correct the problem. If it is corrected in the law, it should be clear henceforth.

Representative Solberg: Whose responsibility is it to pay these tutoring charges?

Senator Bowman: I believe it all comes through the department of public instruction.

Misty Farnstrom, Business Manager of the Beach School District: The main reason and the largest concern is that thousands of dollars remain unpaid to the Beach School District. The Beach School District operates a treatment program where about 100% of the students come from Home on the Range. When the tuition goes unpaid from the resident district where the student came from, the program must be temporarily funded by local taxpayer funds. The Beach School District is in arrears to 2004. We have school districts that refuse to pay the tuition and they have made the determination themselves and no amount of legitimate paperwork, legal documentation or administration provocation will persuade them to even look in to these fees. When contacted by mail, the district of resident does not respond; when contacted by phone, they refuse to acknowledge the paperwork; and the refuse to remit the payment for whatever vast variety of reasons that they may see fit. We have exhausted our efforts. DPI acknowledges that it is a legitimate bill. The notification of placement they get is paperwork that is required when a student is placed at Home on the Range. On that notification, the district of residence is determined by the Department of Corrections and Rehab, the Division of Juvenile Services, Child Protection Services, and the case manager. They determine the district of residence. We accept the kids through Home of the Range to the Beach School. We then bill back the cost of their education to that resident district. That

district may, for whatever reason, upon their own determination, determine that it's not their responsibility and they just refuse to pay.

Representative Haas: How many districts are you working with right now that have refused to pay the tuition charges?

Farnstrom: I think we are down to one because we have contacted the attorney general and legislative representatives and some have paid because they know we are taking further steps than the law provides.

Representative Herbel: The way this reads now the statute says they have to pay tuition and you are adding the tutoring charges to this. Legally they have to pay tuition and now we are adding tutoring.

Farnstrom: I want to say our main concern is tuition, but something can happen and they are placed in the St Joseph Hospital in Dickenson and they are tutored there until they are released from the hospital. So when we bill that district they get tuition charges and tutoring charges that we did not provide but are being billed from St Joseph's. So, yes they do get tuition and tutoring charges.

Representative Mueller: How many dollars are you in arrears from these problems that you outlined for us?

Farnstrom: It was much higher until they learned of what we were doing. Right now it is about \$5000.

Representative Mueller: What was it?

Farnstrom: We were at \$15,000.

Representative Johnson: You said that your numbers back in 2004 were getting big. Do you have any beyond 2004?

Farnstrom: We have always had trouble. Through good communication, through administration conversation, we have always been able to clear most of them up. We just started encountering problems in 2004. It has a snowball effect. If one district doesn't pay their bills other districts do likewise and there's no recourse.

Representative Hanson: Is your tuition the same for every student that comes in?

Farnstrom: It depends on what program they are in. If they are involved in special education or other special programs, there are additional charges.

Representative David Drovdal, District 39, the primary sponsor spoke in favor of the bill.

(His written testimony is attached.)

David Bickness, Superintendent of the Golden Valley Public School testified in favor of the bill. This bill will allow DPI to forward the money for unpaid tuition to our school district.

Representative Mueller: We have been explained as to how a student is assigned to a home district. When a disagreement arises do we hear from the home district saying they are not really the home residence? We have heard in this committee that there are often legitimate arguments as to where that student actually comes from. Do you get some of that?

Bickness: No we do not.

Representative Hunskor: If 1046 would pass does this go back to money DPI has from the past? If so, how many years?

Bickness: Just one year. 2006-2006. The money stays at DPI and does not go forward. You can not go back any further.

Morris Hardy, School Board Member of Beach School District testified in favor of the bill.

As Misty Farnstrom pointed out, the current laws seem to have the intent but the letter of the law didn't really complete that intent. It is the situation where DPI can withhold money but as the Attorney General determined, they cannot pay it out. I'm concerned for the school

providing education and not receiving payment for that education. This will help defray the costs that that district has already paid. It will also add consistency to budgeting. At one point in time we were owed \$60,000. In state dollars it doesn't sound like a lot, but in a small school \$60,000 is a lot. Especially for two years in a row. It makes it hard to plan. At the October state conference of the North Dakota School Board Association, they also supported passage of HB 1046.

Jerry Coleman, Department of Public Instruction spoke in opposition to HB 1046.

(**Testimony Attached.**) DPI's concern is that it places them in the position of being a bill collector for school districts without any consequences for the district responsible. Disputes should be resolved with the placing agency. The bill as proposed is narrow in scope as it covers only tutoring. The department recommends that they should withhold "all state aid" until fully paid.

Representative Mueller: Does DPI serve as bill collector in other instances.

Coleman: No

Representative Herbel: Where is the money that is withheld?

Coleman: It is distributed at fiscal year end under ADM

Chairman Kelsch: These monies are distributed under ADM even to the penalized districts.

Coleman: We hold until notified that we can release. We would not be able to carry that money over the biennium.

Representative Herbel: You are not really opposed to the intent of the bill; you are opposed to the way it is handled.

Coleman: That is true. It provides no incentive for the owing district. They are coming out even regardless. If we up the pressure by withholding all state aid, we hope for a more timely resolution.

Representative Karls: Is this a really widespread problem?

Coleman: It is. Last year we had a number of problems. Someone has to make determination and that is the placing agency and what they decide is what we will honor.

Chairman Kelsch closed the hearing on HB 1046.

(She later announced that DPI and Golden Valley and Beach will visit and prepare an amendment to this bill.)

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1046


House Education Committee

Check here for Conference Committee

Hearing Date: **24 January 2007**

Recorder Job Number: **1762**

Committee Clerk Signature



Minutes:

Representative Haas: As you recall the testimony on this bill, the Beech School District brought this in as regards those districts that owe tuition to the receiving district and they refused to pay. It creates financial problems for the receiving district. The original bill simply that the DPI would withhold the amount of money that is owed to the receiving district. The DPI didn't like that because they thought they would be put in the role of monitoring and being a bill collector. They thought it was better to put immediate and intense pressure on the owing school district by withholding all payments to that district until that bill is paid. When I discussed this with Representative Kelsch, I suggested that in addition to putting that language in, we needed something in the bill that put a reporting requirement on the receiving school district. If a sending district did not pay their tuition in a timely fashion, how would DPI know to withhold their payments? So the amendment includes that. I think this is clean and would get immediate results. **I move the amendment.**

Representative Herbel: Second.

Chairman Kelsch: I received an email from the Beech School District and they were satisfied with this. They thought it would be better if it were just the amount withheld. However, the DPI feels it is easier to withhold the total amount. Let's try this for a couple of years and see if it works.

Representative Hanson: What if Home on the Range says they sent two and the sending district says they only sent one. Is there any way to hold the thing up until the thing is settled?

Representative Haas: I don't think that can happen. When a district sends a student there is a paper tuition agreement that specifies the number of students, the amount of the payment, when the payment is due, etc., etc. There are quite a few things that take place before a sending district would actually receive a bill for tuition. The agreement precedes all that so both districts know exactly how many kids are leaving and how many are coming. That should not be a problem.

Representative Karls: From what I understand with the Beech students that are sent by Home on the Range, sometimes they are sentenced there by the court. I think some of the sending districts don't always claim them. Is that addressed?

Representative Haas: Yes, that is addressed. If the student is at Home on the Range as a result of court action, the Division of Juvenile Services makes the determination of the student's home. They notify the home district that they have an obligation to pay tuition. There have been some questions where districts did not agree with that but that should not have an impact on whether or not they pay the tuition to the receiving district. If they have an issue with the decision, they should go back to the court and not penalize the receiving district. That process has been in place for a long time.

Representative Karls: In talking to the business manager at the Beech School another problem she has is that the paperwork does not always follow the student. Sometimes it takes a long time to get that from the courts.

Representative Haas: I don't think we can address that in legislation. If the agencies who are dealing with this don't handle it with some sense of urgency, there will be delays. Even

this bill says we are going to allow the sending district 60 days from the time the receiving district sends the bill. These types of things sometimes go on for an entire school year.

Representative Hanson: Year in and year out we get bills. Who is actually the sending district? The mom might live in Taylor and the dad in Grafton and no one wants to claim him.

Representative Haas: Whoever determines the district of residence. If it's the juvenile system says it's a district, then that district is responsible. I don't care where the parents live. That determination is made. Once the determination is made by whatever agency, the district of residence is responsible. There are procedures in place for that determination to be made.

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

Representative Herbel: I move **Do Pass as Amended**.

Representative Johnson: I **Second**.

A roll call vote was taken: **Yea: 12, Nay: 1, Absent: 0**

HB 1046 passed as amended.

Representative Haas will carry the bill.

January 22, 2007

House Amendments to HB 1046 (70125.0102) - Education Committee 01/24/2007

Page 1, line 1, after "reenact" insert "section 15.1-29-04 and"

Page 1, line 2, after "tuition" insert ", transportation,"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 15.1-29-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-04. Payment of tuition and transportation by sending districts - Interest on late payments - Notification. If the board of a school district agrees to pay tuition under this chapter, if it is required to pay tuition under this chapter, or if it is required to pay tuition and transportation under this chapter, the board of the sending district shall pay at least fifty percent of the annual ~~tuition~~ charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due. If payment is not received by the admitting district within sixty days after the date on which payment is due, the admitting district shall notify the superintendent of public instruction."

Page 1, line 9, overstrike "an amount equal to the unpaid tuition"

Page 1, line 10, remove "and tutoring charges" and overstrike "from" and insert immediately thereafter "all"

Page 1, line 11, remove the overstrike over "~~until the~~", after "tuition" insert "total amount", remove the overstrike over "~~due has been fully paid~~", and remove "The superintendent"

Page 1, remove lines 12 through 14

Renumber accordingly

Date: 24 Jan 07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1046

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 70125.0102

Action Taken Accept Amendment

Motion Made By Haas Seconded By Herbel

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

Total Yes 13 No 0

Absent 0

Floor Assignment _____

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

70125.0102

Date: 24 Jan 07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1046

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 70125.0102

Action Taken also Pass as Amended

Motion Made By Herbel Seconded By Johnson

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

Total Yes 12 No 1

Absent 0

Floor Assignment Haas

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

70125.0102

REPORT OF STANDING COMMITTEE

HB 1046: Education Committtee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1046 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "section 15.1-29-04 and"

Page 1, line 2, after "tuition" insert ", transportation,"

Page 1, after line 3, insert:

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Page 1, remove lines 12 through 14

Renumber accordingly

2007 SENATE EDUCATION

HB 1046

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1046

Senate Education Committee

Check here for Conference Committee

Hearing Date: February 28, 2007

Recorder Job Number: 4058, 4113

Committee Clerk Signature



Minutes:

Chairman Freborg opened the hearing on HB 1046, a bill relating to the required payment of tuition, transportation, and tutoring charges. All members were present.

Representative Drovdal introduced the bill. Sometimes our young people express their independence in unacceptable ways and they are placed in special homes by the judicial system. We still have the responsibility to educate them. For example, at Sentinel Butte the residents at Home on the Range attend school in Beach. The dollars from the state follow the students to the Beach school district. Tuition should be paid by the sending district. The receiving district sends a bill for tuition to the sending district that usually pays the bill. When the tuition bill is not paid there are three options for the receiving district. The tuition can be paid by the taxpayers of the receiving district, the receiving district can take the sending district to court or the receiving district can petition Department of Public Instruction to withhold the amount due, as permitted by the last session of the legislature. However, an attorney general's opinion said that although the legislature did permit Department of Public Instruction to withhold the amount due from the sending districts state payments, it did not permit Department of Public Instruction to send the payment to the receiving district. So instead, Department of Public Instruction has divided the amount and sent it out to all school districts.

Department of Public Instruction does not want to be a collection agency. The bill was amended in the house so that Department of Public Instruction will withhold all state payments to the sending district until they have been notified that the past due tuition has been paid.

Senator Taylor said as the bill stands now, the money is coming from the sending district and if it is not paid, Department of Public Instruction withholds all the payments so Department of Public Instruction is not in the role of collection agent.

Representative Drovdal said that is correct.

Senator Flakoll said why don't we up the ante, charge a fine of 5%?

Representative Drovdal said that would harm the students in the sending district and he would not want to do that.

Senator Flakoll asked if we would be doing the harm or would the school district?

Representative Drovdal said in the final analysis it would be the school district but he would be giving them the authority.

Senator Bakke asked how often this happens.

Representative Drovdal said someone from Department of Public Instruction will answer that.

Several school districts testified on the House side. He knows of a case where an elementary district failed to pay tuition to the high school district where they were sending their students.

This particular district has been in the news recently for being charged with a crime.

Misty Farnstrom, business manager, Beach school district, testified in favor of the bill. The bill that passed last session does not instruct Department of Public Instruction to forward payments deducted from the sending districts state aid to the receiving district. The original bill asked for remittance from Department of Public Instruction. Changes have been made to the bill. They are willing to work with Department of Public Instruction and have agreed a problem does exist. The bill changes would have significant impact on the sending district. The original

problem is still not fixed. The receiving school needs payment in a timely fashion. There are currently no consequences for school districts that do not pay their tuition. Beach school district has delinquent tuition dating back to 2004 with little recourse. She would suggest that Department of Public Instruction withhold all state aid until the tuition is paid, as proposed by Department of Public Instruction. If the total amount of tuition has not been paid at the end of one year, Department of Public Instruction would then pay the tuition out of the withheld funds. The responsibility for educating these students needs to be removed from the local taxpayers and placed on the resident district. Some of these schools have moved responsibility to Bureau of Indian Education and the Bureau of Indian Affairs, federal programs located in New Mexico. That school district has told the Beach school district not to bill them directly any more, they should bill BIA or BIE directly. State aid can't be withheld from a federal agency. They have been working with Department of Public Instruction on this problem this morning. Senator Gary Lee asked what she would like added to the bill.

Ms. Farnstrom said at the end of one year of withholding state aid, if the tuition still was not paid, Department of Public Instruction would send a payment to the receiving school district. Some of these schools may receive little or no state aid and say they are no longer responsible for paying the tuition.

Senator Taylor asked if the sending district is Sentinel Butte, do they not have a high school? Is the main problem these federal students?

Ms. Farnstrom said the delinquent tuition bills are coming from a district affiliated with BIA, they are not located around Sentinel Butte.

Senator Taylor asked if it is because those students are at Home on the Range?

Ms. Farnstrom said yes.

Senator Bakke asked how many outstanding tuitions they have.

Ms. Farnstrom said they have three.

Senator Bakke asked the dollar amount.

Ms. Farnstrom said they annually collect \$650,000 in tuition. A concern they had about bringing this up is other school districts would see that some districts are not paying their tuition with no consequences. They do not want the problem to grow.

Morris Hardy, Beach school board member and social worker at Home on the Range, testified in favor of the bill. The amended bill is better than what they have in current law. Home on the Range is located at Sentinel Butte which is in the Beach school district. More teeth in the law would be good.

Senator Taylor said if we go to the Department of Public Instruction remitting the payment for tuition after one year of withholding state aid, what if the school district receives no state aid?

Mr. Hardy said they have seen a recent transition to a change of responsibility for a placed child to BIA. They don't know if those schools continue to receive state aid. These same counties are trying to shift payment responsibility for other services at Home on the Range to BIA as well.

Senator Bakke asked if the three cases of outstanding tuition are all BIA? Is this exclusively a BIA problem?

Mr. Hardy deferred the question to Ms. Farnsworth who said primarily it is but when other school districts hear about this, the problem may grow.

Senator Bakke asked if most kids who come to the Home on the Range are there from a court order so they can't be turned away because their district doesn't pay tuition.

Mr. Hardy said as a school board member, he cannot tell a child they cannot attend Beach schools. They must be eligible to attend school in their home district, they cannot have been expelled. Kids are referred to Home on the Range by Division of Juvenile Services, County

Social Services and some tribal affiliation. Court orders, tribal or county court, usually stipulate the school district the child is coming from and stipulates they are responsible for paying the tuition to Beach. Two years ago, between counties, they made a kid homeless by switching between counties; that ended up in a court case.

Senator Bakke said what a wonderful thing to do to a child. Home on the Range does not offer educational services at their facility?

Mr. Hardy said they have a unique situation. They have a close relationship with Beach Public Schools. They have an on campus classroom that is staffed by Beach Public Schools, they have a day treatment program that is staffed by Beach Public Schools.

Senator Gary Lee asked if they can refuse kids at Home on the Range if they cannot pay?

Mr. Hardy said they can refuse kids but it is usually for medical, psychiatric or behavioral reasons. They try to accept kids that will best fit into the facility and are appropriate for the Beach Public Schools behaviorally and academically.

Senator Gary Lee said if BIA isn't paying, can you refuse to take them in the future?

Mr. Hardy said they could refuse, they have never used an economic reason to refuse a child. They were founded by 2 altruistic priests. There have been times they have kept a child for a month longer than the bill was paid because that was in the best interests of the child.

Senator Taylor asked what the tuition charges are?

Mr. Hardy said it is based on the needs of the child. 50% are on IEPs. There are three levels of school: on campus (more staff labor intensive), day treatment and regular classroom. The fee is based on where they are placed

Jerry Coleman, Department of Public Instruction, testified in favor of the bill. They call these placements "placements for purposes other than education" and are usually through court order. Sometimes placements are voluntary. A formal notice is issued at the time of

placement that notifies the educating district and the resident district (where the custodial parent lives) that has been defined as responsible for tuition. This is done at the time of the initial placement and then annually on September 15. Once that is established it remains in effect until the following September 15. If Department of Public Instruction gets a notice of non payment of tuition, they ask for this form. If there is a form to back it up, they would withhold all state aid for that school district until they are notified again the tuition has been paid.

Senator Flakoll asked if the first billing date is December 31, aren't the bulk of state payments issued by that point?

Mr. Coleman said yes, the current distribution plan is by November they get 60% of their entitlement for the year then 8% per month. They couldn't receive any state aid for any reason until the tuition was paid.

Senator Flakoll asked if we would be better off to change the date for the first payment to earlier than December 31?

Mr. Coleman said that section was written for a K8 district paying a 9- 12 district. A lot of the residential facilities do monthly billing. Beach does it on a semester basis.

Senator Flakoll said lines 13 and 14 have a 6% interest rate, where does that money go?

Mr. Coleman said it would be on the part of the billing district.

Senator Gary Lee said Beach has suggested Department of Public Instruction remit payment. Would this work?

Mr. Coleman said Department of Public Instruction isn't interested in getting involved in moving money from a resident school district to an educating school district. There are accounting concerns, there is no penalty on the residential district, and it would take countless staff hours.

They would fear any late bill would be dumped on Department of Public Instruction. It is not practical.

