

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2205

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2205

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 1/22/08

Recorder Job Number: 7557

Committee Clerk Signature *Kate Oliver*

Minutes:

Senator Bakke: See testimony # 1.

Senator Dever: we are not talking about the ability of citizens to contact their legislatures but the ability of their use of publically owned computers to email, correct?

Senator Bakke: Basically what has happened is in using the computers there are certain employees that have been told that they can contact but other employees have been told that they can't. Or they will say that EduTech policy says prevents them from using it to contact legislators and I think we need to be clear on what is political activity and if one group is allowed to use it than I think that all should be allowed to use it.

Senator Horne: Who does this affect? Which employees are using the EduTech equipment?

Senator Bakke: Teachers, superintendants, administration, supports staff all use EduTech.

Senator Dever: Would this prevent schools from having policy stating that you can't do it during school time?

Senator Bakke: I think that it's pretty clear that in working with a group of professionals they understand that when you are supposed to be working it would not be appropriate. But after school, in many districts they are furnished with a computer that they use at home, times like that they should be free to use that equipment for those sorts of purposes. Now I know here at

the legislature we pay a \$10 fee to do business of that nature and I think that would be reasonable thing to do. I don't think that when a teacher contacts me about legislation that is coming before the Education Committee that it is outside the realm of their profession. That is not a personal use; I need to hear their feelings about the legislation so I can make an informed decision. And to only allow one section of that group to communicate with me is skewing the information that I am getting and not giving me a clear picture of what the picture of the education profession as a whole.

Senator Cook: The bill that talks about political subdivisions, yet the conversation seems to focus around EduTech and teachers and administrators. Is EduTech a unique policy for the education field?

Senator Bakke: I believe EduTech is not only in the education arena but I think it also refers to public employees here in the Capitol.

Senator Cook: The superintendant contacts me regularly from his school computer, is he breaking the law?

Senator Bakke: No he is not, because he is doing what century code says he can do. Some superintendants are saying to the teachers "I can use it because it is in my job description, but you can't because it is not in your job description. According to EduTech you can't use it for political purpose. So that is where there is a miss interpretation of Century Code and this is to clear it up so that everybody knows that the superintendant can contact you but so can the school secretary. EduTecch's policy should not supersede Century Code

Senator Dever: I don't think that any of us have a problem with them contacting us; I guess the question is the use of the computer and the use of their email.

Senator Bakke: I think that you are right, what I think is happening is that a lot of our constituents are being told that they can't because of the acceptable use policy.

Senator Dever: Are they aware that they can use their personal email to contact us?

Senator Bakke: They have been, but we do have a lot of people in the lower income brackets where they don't have a personal computer.

Senator Dever: Are they aware that anything that they put on their public computer is public information?

Senator Bakke: I think that they are aware of that, but if they are lobbying us for a particular issue it shouldn't be anything that their employer shouldn't be able to see because they are entitled to their opinion.

Senator Horne: If I received an email from a superintendant, or anyone else, would I know it was EduTech system or does it just come in as a normal email?

Senator Bakke: It would come in as a normal email. Often times EduTech would have send it on it. There might be other people behind me that may be able to answer that for you.

Greg Burns: See attached testimony #2.

Senator Nelson: Who and what is EduTech? Why do they have this control, can things be changed by administrative rule?

Greg Burns: This gets tangled into EduTech policy which further has roots in the defense department this is kind of a federal issue. Now, the way I understand how this has been happening is there are school districts around the state who are telling teachers, paraprofessionals, and so on they based on what is in the EduTech policy which requires the person have lobbying in their job description and unless that is listed in their job description, they can't use the EduTech System to talk to legislators about matters of education policy.

What this legislation seeks to do is to direct those in the state of North Dakota who communicate with EduTech to say that the provision can't be upheld in North Dakota.

Senator Nelson: But who is EduTech and what gives them the right to control all this stuff?

Greg Burns: They own the system. My understanding is that the system was put in place many years ago through a Defense Department contract and this is why it is so hard to chase down. Sendit works off of EduTech and if you push you way though all this stuff you find out at the end of the day that the reason for denial is an EduTech requirement that lobbying is in a job description for someone to use the system to lobby a legislator. So we are hoping that this is a way to fix it.

Senator Ohelke: You mentioned a lawsuit, tell me about that.

Greg Burns: We spent a long time studying it as an organization and we were advised that a lawsuit would not get it done unless we sought a lawsuit seeking equal protection, that would have denied administrators the use of the system and we didn't want to do that.

Senator Ohelke: Ok, so there is not a lawsuit?

Greg Burns: There is no lawsuit.

Senator Ohelke: You say in your testimony that there is and should be a clear distinction between political activity and the exchange of views of on educational policy between constituents and legislators, do you have a definition of a clear distinction?

Greg Burns: It is in Century Code. It clearly delineates between lobbying and political activity what this bill seeks to make clear to EduTech is that school personal and other constituents use of this is lobbying and should be permissible regardless of what the job description says.

Senator Ohelke: In my office the bank owns the computer system and limits what I can do with it, is that any different?

Greg Burns: These are very clearly computers that belong to the employer and belong to the state and we are not resisting that. But we are trying to address what has been an excuse offered by certain administration, school district that says that it is EduTech, not us who is

making the decision. We want it made clear that as far as North Dakota is concerned everybody who works in education has the right to express their views to legislators.

Senator Cook: Is this restriction new?

Greg Burns: My understanding is this has been within EduTech for a long time and someone found it last session and used it to say that unless you were an administrator you could no longer use the system to lobby a legislator.

Senator Cook: So someone found it and EduTech changed their policy?

Greg Burns: I don't think that there was a change made in policy all I know is that the end of the session, more and more of our members were told that they could not use the system to lobby legislators. That is was an EduTech problem not an employer policy and the reason given was that lobbying was not in the job description of teachers.

Senator Cook: Is it a possibility that maybe the use of these computers by teachers got abused?

Greg Burns: I did not hear anything about that. That does not mean that someone didn't say that, nothing that I have seen in my research of the issue has indicated that.

Senator Cook: I remember a previous session where I would come to the capitol around 6:00am to clean through all the emails I was getting. I have got a lot of good friends that are teachers in Mandan and I had to give them passwords that they could put in the subject so when I went through my email I could pull them out right away. What I was getting bombarded with one particular session was hundreds of emails all coming from a state computer, they were all form letters that had been sent by the NDA to the teachers and instructed them to send to us. I guess my question is, is that the issue that generated this bill?

Greg Burns: I am not sure.

Senator Dever: Given the number of email that we receive from teachers it is difficult to understand that there might be some suppression out there.

Senator Cook: I want to be able to hear from my teachers.

Greg Burns: I agree with you and we are trying to be careful about methods that have tried and failed.

Senator Dever: A few sessions ago the chancellor told the presidents that they were to speak with one voice and he was to be that voice. Some presidents ignored that and some held to that. Is that appropriate?

Greg Burns: Without getting into the employers right to set policy there is a difference between policy that makes sense and policy that just has to be. In the education field, and I will include higher education in this, for the life of me I cannot understand who purports to be an educator, and who purports to be the head of a high educational system to say my voice is the only voice on education matters. Usually educated people know better. This is important because employers do have the right to set workplace rules. Employers, especially in education, do not have the right to say, "My belief is the only belief that counts in matters of educating children." I hope we don't have an education community like that, I don't think that we do.

Senator Dever: And we legislators try and get our information from anywhere and everywhere and make our own decisions. Thank you. Anyone else to speak in support of SB2205? Anyone here to speak in opposition to SB2205? Anyone here to speak in a neutral position on SB2205?

Bev Nielson: I am Bev Nielson and I am with the North Dakota School Board Association. We however do not have a resolution regarding this and I stand here today more as a member of the Education Technology Council which Sendit and EduTech are under ETC. I was on the

council, still am, when this whole topic arouse. The only complaint that ETC got and the push for the change one was, it came strictly from legislators secondly, I urge you to get someone from EduTech in because it seems to me that there was an E-Rate issue. An issue of losing E-Rate if a certain types of political activity and their definition of political activities may or may not be the same as those in Century Code but we all live on E-Rate, we could never have internet services in this state without it nor could we have a state network. We didn't have this problem before we went on the state network, once it was a state network and all the schools were on a state supported network, understand that school districts pay nothing for that, our contributions was sheer numbers that got our rate down for the state agencies and E-Rate. So EduTech is the organization that provides technical support for Sendit.edu which is the education portion of the state network so when the complaints came in from legislator's research was done, but this was not an issue that school boards brought. The legislators wanted to know why they were receiving emails during what appeared to be work hours and they want it clarified. ITD would know more about the issue.

Senator Cook: It is federal policy and is starting to get a feel for what EduTech is.

Bev Nielson: They are actually located in Fargo, but Lisa Feldner is very familiar.

Senator Nelson: Several years ago the people who had sendit addresses were told that they could no longer use them for anything other than specific work, so those who had used it for personal email switch over to another provider. Is that all dealing with EduTech rules also?

Bev Nielson: Some schools have policy like that it is a time issue. You just assume that there is going to be some personal things going on. The problem comes if you are buying something from EBay no one would care, but if a legislator gets an email from you, the it rises to somebody noticed. I do think that it would help you if during one of your work sessions if you got Lisa or someone from EduTech to clarify that E-Rate thing. If it's not an issue fine, if so we

● have to figure it out.

Senator Dever: Anyone else to speak on SB2205? If not we will close the public hearing.

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Committee Clerk Signature

Kate O'Neil

Minutes:

Senator Dever: SB2205 is the one regarding EduTech.

Senator Nelson: I got a question after it was over asking why other states can use Sendit and it didn't affect the E-Rate.

Senator Dever: Sounds like we should have a conversation with Lisa Feldner.

Senator Horne: I think that we need to hear from someone in person to answer questions.

Senator Dever: Ok, and there is no money on that bill.

Senator Cook: I will take a stab and say David Crothers would have some insight on this E-Rate.

Senator Dever: I won't put you on the spot but I will bring you up to speed later.

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Committee Clerk Signature

Katie Oliva

Minutes:

Senator Dever: This is the bill that prevents employers from saying employees cannot use their school computers to contact legislatures.

Lisa Feldner: You asked me to talk about E Rate with regards to this bill. E Rate is an educational reimbursement that schools and the information technology department uses to reimburse for network services. We get about 4 million per biennium in E Rate funds. So the question was if this bill passed would it change the E rate. What this bill does is say no employee may directly or indirectly restrict from using their school computers and email to contact legislators. An E Rate interpretation they say if the state defines it as a purpose it is ok. If you pass this bill you would be saying it's ok, for an educational purpose, for teachers to contact you. Not sure if we can say it would change our E Rate. From a public property standpoint I have a hard time with this, now we are saying it is ok to use public property to do this. If it is in your job description, fine, but as a teacher you should be teaching.

Senator Dever: So if a teacher emailed a legislator and asked them to increase the requirements for physical education that would be appropriate, but if they email a legislator and asked them to increase teacher pay that would not be appropriate

Lisa Feldner: That is correct. If you recall 3 sessions ago that was the situation, a teacher pay bill, many of you got spammed by them. You can go home and do it there but it is not ok to use state resources to do that.

Senator Nelson: If a teacher had hotmail/yahoo account and only has computer own is the one the school provided, they would have to go to the public library and use it?

Lisa Feldner: That is up to school district, they have to set appropriate use of the computers.

Senator Nelson: Some people with sendit accounts were told that they couldn't use it unless they got yahoo or hotmail. Was that because you started with the Edu Tech program?

Lisa Feldner: It was due to extensive abuse a few sessions ago that raised the knowledge at the time. Years ago it was tolerated and now access to free email is widespread.

Senator Dever: Only way E Rate is jeopardized is if we saw wholesale abuse of it.

Lisa Feldner: It is a gray area. I would not like to be audited, if it is defined as an education purpose.

Senator Dever: OK

Senator Cook: I move a Do Not Pass

Senator Ohelke: I second

Senator Dever: I have a couple of concerns and it is not to do with teachers' ability to email us but the ability of state agencies and school districts to set the policy on use of equipment that is publically owned. It could be argued that it gives teachers an advantage that the general public doesn't have in the use of it.

Roll was taken and bill received a do not pass with a vote of 3-2 with Senator Dever carrying the bill to the floor.

REPORT OF STANDING COMMITTEE

SB 2205: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
SB 2205 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

SB 2205

SB2205 – Relating to governmental entities restricting the use of computer network services of the state or a political subdivision to contact members of the legislative assembly.

Chairman Dever and members of the Government and Veteran Affairs committee, for the record my name is Senator JoNell Bakke and I represent district 43. I bring before you today SB2205 which addresses a North Dakota eductech acceptable use policy that contradicts century code. This has resulted in preventing constituents from contacting their elected officials.

Let me explain what is currently out there. In Century Code 34-11.1-02, entitled political activities, it states that:

Except when on duty or acting in an official capacity and except as otherwise provided by state or federal law, no employee may be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

Eductech policy has an acceptable use policy that states:

Use of computer system and databases shall be limited to the purpose(s) for which access was granted. Use of services for political (lobbying) purposes, for gaining business contacts or for personal or private profit is prohibited. Organizations may not use any EduTech service for increasing their membership or gaining additional contacts.

This issue is further complicated by Century Code 16.1-10-02 which defines political purpose as:

"Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or a position taken in any bona fide news story, commentary, or editorial.

Several employers in the state have been telling their employees that they cannot contact their legislators because of eductech's indication that lobbying is political activity yet lobbying is not mentioned in the century code definition of political purpose.

This bill is an attempt to clarify this misinterpretation and make sure that eductech policy does not interfere with the constitutional right of our citizens to contact their elected officials. This bill still does not allow them to use the network for campaigning purposes which is as it should be. This bill would make it clear that under no circumstances should a citizen of our state be prevented from contacting their elected official when they wish to express an opinion or discuss a bill. That is their constitutional right.

Thank you for your attend to this matter and I would stand for any questions at this time.

Chairman Dever and members of the Senate Government and Veteran Affairs Committee, for the record my name is Greg Burns and I am the Executive Director of the North Dakota Education Association. The NDEA supports Senate Bill 2205 and on behalf of our members I would to express our gratitude to the sponsors of this bill and to the GVA Committee for hearing the bill.

This legislation is important for two reasons: public policy and fairness. Any prohibition of communication between educators and legislators on matters of education policy is not sound public policy. We know that education policy is important to all legislators and it is of prime importance to those who work in the classrooms, hallways, cafeterias and busses with our students every day. Legislators ought to hear from the people who work on a daily basis with our children and I think that most legislators welcome the insights that such people can provide. To block that vital communication is not, and cannot be construed to be, sound public policy.

This is also an issue of fairness. Under current policy administrators routinely use Edutech accounts to email legislators. This is because the current policy of Edutech indicates that only those employees whose job description contains a reference to lobbying are allowed to use the system for those purposes. We do not contest the right of administrators to use the system to lobby, but we believe that it is unfair for administrators to use the system for this purpose, while those who are most greatly impacted by legislative decisions, the classroom teachers and education support professionals, cannot. This discrimination by the system must come to an end and Senate Bill 2205 will accomplish that.

Some have asked why educators cannot use their school computer to access their hotmail or other personal email account to communicate with legislators during breaks or before or after student hours. The problem is that these accounts are routinely blocked by the school district servers, so that educators cannot access their personal email accounts while they are in school. Their accounts are blocked for the school district's system security.

The NDEA would also like to state for the record that we do not support the use of the system for political purposes as outlined in Century Code 16.1-10-02. There is and there should be a clear distinction between political activity, and the exchange of views on education policy between constituents and legislators. We have always reminded our members and we will continue to remind our members that the system is not to be used for political purposes.

Mr. Chairman, members of the Committee, our members want to share their views of education policy with you, and we believe that you value the insights that educators can bring to education issues. Please remedy an unfair situation and bring important voices into education decision-making by passing Senate Bill 2205.