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NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

MARCH 2019

Excellence in North Dakota public education through local school board governance ■ VOL XLVIII ISSUE 3

Extraction Tax Allocations Debated



The Senate Finance and Taxation Committee heard SB 2362 on Wednesday, March 13. This bill is the delayed bill introduced by Senator Dwight Cook

(R-Mandan) to clarify language that directs how oil and gas extraction tax revenues are deposited and follows discussion of an alleged allocation error discovered by Jodi Smith, North Dakota Land Commissioner. Specifically, the issue involves the state's share of oil extraction tax revenue generated by activity on the Fort Berthold Indian Reservation. Commissioner Smith said she discovered that two constitutional funds—Common Schools Trust Fund and Foundation Aid Stabilization Fund—were not receiving allocations over the last decade. The Water Resources Trust Fund was also not receiving allocations over that time period. Approximately \$262 million was instead deposited into other state funds. The Common Schools Trust Fund and Foundation Aid Stabilization Fund benefit K-12 education and are an

important source of funding for all public schools in the state. State Treasurer Kelly Schmidt, whose office is in charge of the allocations, has said that, while the statutory language directing the allocations is ambiguous, her office was acting on guidance of the Attorney General.

As currently written, the bill clarifies language in North Dakota Century Code to ensure the Common Schools Trust Fund and Foundation Aid Stabilization fund receive 10 percent each of the state's share of extraction tax collected from oil and gas production on the Fort Berthold Reservation. Senator Cook and Kelly Schmidt, ND State Treasurer and Land Board member, testified in support of the clarified language. Following their testimony, Land Department Commissioner Jodi Smith testified in support and encouraged the committee to consider including amendments appropriating money that would make the Funds whole.

In addition, water representatives and education stakeholders, including

NDSBA, testified in support of the clarification and making the funds whole. The committee and legislative leadership will continue to work on the bill over the coming weeks. While SB 2362 is a delayed bill, it will still need to be heard and voted on by both bodies. Watch NDSBA's weekly legislative updates for further developments.

Weather-Related Closure Update from DPI

It is now March and it seems like winter just keeps going. We have had temperatures way below average and several snowstorms. The Department of Public Instruction has received many questions on how to make up the days missed so far and how to request forgiveness in making up storm days.

The Governor is conscious of protecting taxpayer dollars and has not yet waived a school closing day. School districts have storm days built into their calendar and have other opportunities to make up instructional time.

However, with the harsh winter this year, the Governor's office is willing to review the totality of circumstances when it comes to a waiver application. The Governor will look at the number of major weather incidents districts/regions experienced and what efforts the district made to ensure students receive as much instruction as possible. If and when your district applies for a waiver, it will be critical to provide as much specificity as possible so the Governor can make an informed decision.

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Senator Dwight Cook presents SB 2362 to the Senate Finance and Taxation Committee on March 13.

2019 Annual Convention – Request for Clinic Topics



The 2019 Annual Convention Clinic Session proposal form is available online at www.ndsba.org (under Quick Clicks) to submit suggestions for a convention clinic session and/or presenter. The deadline for session proposals is **May 1, 2019**. For additional information, contact Alexis at alexis.baxley@ndsba.org.

MARCH 2019



Legal Spotlight

A Refresher on the Recognition Process

by Amy De Kok, NDSBA Legal Counsel

It is that time of year again— negotiations season.

Chances are that by the time most read this article, the negotiation process has already begun in your district. Before the board gets too far into planning for the actual negotiations meetings with teachers, it is important to review and understand the required steps and deadlines that must be completed before negotiations may begin.

In order to negotiate, either the board or the teachers must provide notice to the other party of their desire to negotiate at least sixty (60) days before the contract anniversary date (typically July 1). There are some districts whose negotiated agreement provides for a different (often earlier) deadline to provide such notice. Thus, you should always be aware of this initial deadline well in advance and plan accordingly. If notice is not provided by the deadline, the other party is not required to negotiate. If the board initiates negotiations, the board should issue a notice to the teachers and request that petitions describing an appropriate negotiating unit and seeking recognition of a representative organization should be filed with the business manager by a specific date. Regardless of who initiates the negotiations process (board

or teachers), there are certain steps required by law. During these steps, the board recognizes the group of employees with which it will negotiate and recognizes the organization representing this group. These steps are referred to as the “recognition process.” In practice, the teachers typically file one petition with both requests. While there is nothing improper about this, it is important that the board still handle each step in the appropriate order.

The first step is recognition by the school board of an appropriate negotiating unit. This involves the teachers submitting a description of the group (unit) wanting to negotiate with the school board. The negotiating unit means teachers or administrators who form a group (unit) for the purpose of negotiating with the school board. Typically, the petition should define the negotiating unit as “all employees licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board and employed by the School Board primarily as classroom teachers.” It is important to appropriately define the negotiating unit so that it is clear who the board is negotiating with and who will be subject to the terms of the negotiated agreement eventually reached between the parties.

Neither classified staff members nor administrators should be part of the negotiating unit comprised of teachers. Administrators may form their own negotiating unit and request to be recognized by the board; however, it should be a separate process from the teachers. Once the board receives the petition for recognition of an appropriate negotiating unit, it should, at an open meeting, review the unit description and, if acceptable, approve the negotiating unit.

Once the board has recognized the appropriate negotiating unit, the unit must choose a representative organization to negotiate on its behalf and file a petition with the school board asserting that the organization represents a majority of the teachers within the unit. Again, this request is often times combined with the initial request to recognize the negotiating unit. Teachers must sign up to be represented by the organization. The petition filed with the board must be accompanied by evidence (i.e., a list of signatures) substantiating that the organization represents a majority of teachers within the negotiating unit. In this instance, a majority means 50 percent of negotiating

unit plus 1. If the representative organization does not represent a majority of teachers, it cannot be recognized. In most instances, the representative organization requesting to be recognized will be the local teachers’ association, although this is not required. Any organization that represents a majority of the individuals in the negotiating unit can petition to be recognized. Indeed, North Dakota law contemplates a situation where there may be multiple groups that want to be recognized. NDCC 15.1-16-11(2) provides: “[i]f any organization has an interest in representing a group of teachers or a group of administrators and wishes to contest the claim of representation made in the petition under subsection 1, the contesting organization must file with the board of the school district a petition containing a written statement of contest, together with substantiating evidence, within ten days from the date on which the board posted the notice of intent to consider the original petition.”

Within ten (10) days of receipt of the petition for recognition by the representative organization, the board is required to post notice of its intent to consider the petition in each school within the district wherein members of the negotiating unit are employed. Once the notice of intent is posted, the board must act on the petition no sooner than ten (10) days and no later than twenty (20) days from the date of posting. Unless the board finds in good faith that there is a reasonable doubt that representation exists and if the petition is not contested, the board must recognize the petitioner as the representative organization. Once the representative organization is recognized, the board must post notice of its determination in each school wherein members of the negotiating unit are employed. At that point, the recognition process is complete and negotiations must begin within thirty (30) days, unless both sides agree otherwise.

It bears repeating – it is very important that the above-referenced steps are followed and all deadlines met. If not, it is possible that negotiations would not move forward or it could open up the possibility of a claim that the representative organization is not authorized to negotiate on behalf of the negotiating unit or that the negotiated agreement is invalid. It is also important to strictly adhere to the meeting notice requirements set forth in NDCC chapter 44-04. NDSBA has prepared a Negotiations Basics Handbook that provides valuable information to assist school boards through the negotiation process. Please contact us if you are interested in receiving a copy.

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Proposed 2019-2021 Legal Notice Rates

This following information is provided by Sherry Neas, North Dakota Office of Management and Budget, concerning legal notice rate increases.

Background Information

State law requires OMB to compute a standard price for legal notices. The Consumer Price Index (CPI) is commonly used to calculate price changes. This methodology uses an average of the annualized rate of change for the Newspaper/Magazine CPI Index, the All Consumer CPI, and the Midwest All Consumer CPI.

Summary of 2017-19 Legal Notice Rates

Due to state budget cuts, the North Dakota Newspaper Association (NDNA) agreed to a 0% increase for 2017-2018 and a 1.5% increase for 2018-2019. In review of the 2017-2019 rates, the actual CPI indexes for the Newspaper/Magazine, All Consumer, and Midwest had a 4.23% rate of change.

2019 -2021 Rate Calculations

An analysis of forecasted CPI for the 2019-2021 biennium was completed and shown at right.

News/Mag Forecasted Change Rate	5.42%
All Consumer Forecasted Change Rate	3.53%
Midwest Consumer Actual Change Rate	1.77%
Avg. forecast increase for 2019-2021	3.57%

After analysis of these factors, OMB recommends a 3.5% increase effective for the entire 2019-21 biennium. This increase is reasonable based upon CPI and the fact that legal notice rates were not increased on July 1, 2017, and had a 1.5% increase on July 1, 2018.

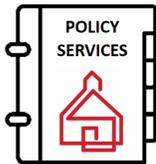
State law requires OMB to consult with representatives of state and local units of government when considering an adjustment of legal notice rates. Government entities are invited to provide OMB with comments regarding these proposed rate increases. **Please submit any questions or comments to infospo@nd.gov by April 1, 2019.** If you have any questions, call Christy Schafer at 701-328-2740.

PROPOSED 2019-2021 RATES (Standard Rounding to the Nearest Cent)		
	CURRENT RATE	Proposed 2019-2021 Rates (3.5%)
Type	7/1/2017 – 7/1/18	7/1/19-7/1/21
Base Line Rate	.80	.80 x 1.035 = .83
Column Inch – Daily	13.23	13.23 x 1.035 = 13.69
Column Inch – Small Daily	8.99	8.99 x 1.035 = 9.30
Column Inch – Weekly	6.48	6.48 x 1.035 = 6.71

Policy Updates

Policy Services Develops Suicide Prevention Policy

by Rebecca Duben, Policy Services Director



Did you know that the Centers for Disease Control (CDC) reported in 2018 that suicide is the second leading cause of death for youth

ages 10-19? Between 2007 and 2016, the death rate has increased by 57 percent and continues to rise. This is alarming and disturbing! But even with these frightening statistics, many school districts do not have policies and procedures in place relating to suicide and its prevention. It is estimated that in a typical high school, three students will attempt suicide each year. Even more students seriously consider attempting suicide or report feeling sad or hopeless almost every day for weeks at a time. School district policies and procedures can help schools ensure that students in crisis are referred to supportive resources and that suicides within the school community are addressed appropriately. Policies and procedures concerning suicide prevention, intervention, and postvention provide

clear language and options so schools can reduce the risk of suicide and prevent suicide contagion.

NDSBA has developed a comprehensive policy (**FCAE, Suicide Prevention**) and Board Regulation (**FCAE-BR, Suicide Prevention Procedure**) to support federal, state, and local efforts in providing education on youth suicide awareness and prevention. They establish methods of prevention, intervention, and response to suicide or a suicide attempt and promote access to suicide awareness and prevention resources. These templates incorporate language from the Model School District Policy on Suicide Prevention (found at https://afsp.org/wp-content/uploads/2016/01/Model-Policy_FINAL.pdf), which was created in collaboration with the American Foundation for Suicide Prevention, the American School Counselor Association, the National Association of School Psychologists, and The Trevor Project. This policy and board regulation are meant to complement existing state laws requiring suicide

prevention training for school personnel or education for students. They are intended to be paired with other policies and programs that support the emotional and behavioral well-being of youth. Since suicide is very rare among elementary school youth, the language covered by these templates is most applicable to middle and high schools.

School personnel have a legal and ethical responsibility to recognize and respond to suicidal thinking and behavior. Because it is impossible to predict when a crisis will occur, preparedness is essential to guide school actions for all districts. NDSBA encourages the adoption and implementation of these comprehensive suicide prevention templates. Districts should also review the Model School District Policy on Suicide Prevention and other state resources to minimize district liability and protect the health and well-being of all students. For further information on these templates or to request a copy, please contact the NDSBA office at 1-800-932-8791 or rebecca.duben@ndsba.org.



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■ Weather-Related Closure Update

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Remember that every effort must be made to make up lost instructional time. Information on Weather-Related School Closings can be found on the North Dakota Department of Public Instruction (NDDPI) website, including a guidance document titled School Calendar, Storm Day and School Day/Calendar Length Information.

Once every reasonable effort has been made to make up the missed instructional time, the district may petition the Governor to forgive those additional days. This request must be submitted on State Form Number (SFN) 58126 and is due **by May 1**. The NDDPI will be accepting and processing waiver applications to submit to the Governor on a rolling basis. Districts may submit waivers now for processing. If, after submitting SFN 58126, your district misses more instructional days, you may submit an addendum.

If you have questions regarding this information, please contact Gail Schauer at (701) 328-2755.

Business Manager Certification Program Accepting Applications



The North Dakota School Business Manager Certification Program is now accepting applications for new students to begin courses this summer. Application forms are available online at <http://ndsbmcp.org/index.php/handbooks-and-forms/>

and will be accepted until **June 1, 2019**. For more information on the program, including cost of tuition, prospective students may download a program brochure at <http://ndsbmcp.org/index.php/handbooks-and-forms/>. Please contact rebecca.duben@ndsba.org regarding the program.



Current ND School Business Manager Certification Program students and instructor: front row, left to right, April Howatt, Valley-Edinburg; Tiffany Smith, Maddock; Michele Grenier, Rolette; Debbie Bucholz, Bowman County; Amy Betz, Garrison; Alyssa Conitz, Wishek; Superintendent Robert Lech, Jamestown. Back row, left to right, Darcy Lamoureux, Newburg United; Sarah Mondry, Minto; Dawn Hauck, Rugby; Connie Marcellais, Glenburn; Melissa Gauthier, Cavalier; Rachel Bopp, Northern Cass; Laura Dokken, Wahpeton; Lenita Larson, Central Valley; Kent Anderson, Dickinson.