

MINUTES

Extraordinary Cost Fund for Special Education 2018 Interim Study Committee



Representative Mary Duvall, Chair
Senator Jim Bolin, Vice Chair

**Third Meeting, 2018 Interim
Tuesday, September 11, 2018**

**Room 413 – State Capitol
Pierre, South Dakota**

The third meeting of the Extraordinary Cost Fund for Special Education Study Committee was called to order by Representative Mary Duvall at 10:00 a.m. in Room 413 of the State Capitol. A quorum was determined with the following members answering roll call: Representatives Dan Ahlers, Hugh Bartels, Tom Holmes, Elizabeth May, Kyle Schoenfish, and Jamie Smith; Senators Ryan Maher, Jeff Monroe, Reynold Nesiba, and Jordan Youngberg; Senator Jim Bolin, Vice Chair; and Representative Mary Duvall, Chair. Excused: Representative Lana Greenfield.

Staff members present included Clare Charlson, Principal Research Analyst; Tamara Darnall, Chief Fiscal & Program Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Approval of Minutes

A motion was made by Senator Monroe, seconded by Senator Youngberg, to approve the minutes of the Extraordinary Cost Fund for Special Education Study Committee meeting held on July 26, 2018. Motion prevailed on a voice vote.

Juvenile Justice Reforms Update

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System, gave a PowerPoint presentation, "South Dakota's Juvenile Justice System" ([Document #1](#)). Mr. Sattizahn explained the landscape of juvenile justice prior to the reforms that emerged from 2016 legislation, compared to the juvenile justice system of today. Included in the reforms is an active oversight council that tracks the trends and makes adjustments as needed.

Mr. Sattizahn said one unexpected outcome of the reforms is that as the number of juveniles placed with the Department of Corrections decreases, the number of youth being committed to facilities through parents or schools has increased. As the in-state facilities reach full capacity, more youth are being sent to out-of-state facilities.

Representative Schoenfish asked if there are cost comparisons available regarding the cost of the courts placing a juvenile in a facility and the school placing a juvenile in that same facility. Mr. Sattizahn said he does not have those numbers but is aware that when a juvenile is referred through the corrections system, there is a performance-based contract in place. The schools do not have those types of contracts with the facilities which means the cost to the schools is double or triple that of the cost to the court system.

Draft Legislation

Representative Duvall said the extraordinary cost fund was implemented 21 years ago, and changes have been made to the system during that time. Over the last two years, however, the requests for funding have exceeded the dollars available. The increasing number of students and the increasing costs of services are why this committee

was established. After studying this issue, the following bills were requested by committee members for consideration:

- Bill Draft A – An Act to establish the Extraordinary Cost Oversight Board and to repeal the creation of the board by administrative rule making. [\(Document #2\)](#)
- Bill Draft B – An Act to revise the timing of the recalculation of the allocations for the disability levels in the state aid to special education formula. [\(Document #3\)](#)
- Bill Draft C – An Act to adjust for inflation the amount of the special education appropriation that may be set aside for extraordinary expenses. [\(Document #4\)](#)
- Bill Draft D – An Act to revise the recalculation of the allocations for the disability levels in the state aid to special education formula and to provide for inflationary increases in the extraordinary cost fund. [\(Document #5\)](#)
- Bill Draft E – An Act to revise the allowable balance of special education funds held by school districts. [\(Document #6\)](#)
- Bill Draft F – An Act to revise the child count used for the purposes of special education funding and to create a special education sparsity benefit. [\(Document #7\)](#)
- Bill Draft G – An Act to create the Special Education Task Force. [\(Document #8\)](#)
- Bill Draft H – A CONCURRENT RESOLUTION, Urging Congress to increase federal funding for special education. [\(Document #9\)](#)

Public Testimony Regarding Draft Legislation

Mr. Wade Pogany, Associated School Boards of South Dakota, said the draft legislation addresses two pressure points regarding special education: impacting the extraordinary cost fund, and how special education interacts with the funding sources. Mr. Pogany agrees with rebasing every two years because a lot can happen in three years. He noted there is some confusion in the fact that bill draft C uses \$5 million as the appropriation but the amount appropriated in bill draft D is \$5,259,700. Representative Ahlers explained that bill draft D uses actual cost changes and calculates the number accordingly. Representative Duvall added that the difference between C and D is something for the committee to address.

Mr. Pogany continued saying he is opposed to the change made in bill draft E, but supports bill draft F. Mr. Pogany suggested one change to bill draft G in that the task force should also include a school board member.

Mr. Pogany concluded saying this draft legislation is a great start to addressing the issues with the extraordinary cost fund and asked the committee members to remember the testimony from the schools and the growing number of high cost students. He said this proposed legislation is a good start to relieve some of the pressure on the schools.

Ms. Dianna Miller, Large School Group, said the large schools are not currently the users of the extraordinary cost fund because they can levy for the additional tax dollars needed. The cost of out-of-state placement is very high. If the large schools do need to start participating in the fund, it is beyond the realm of reason as what that would cost the state. Going from three years to two years in bill draft B is a positive step. The set aside in bill draft C is okay.

Some people think the extraordinary cost fund is misused, but that is not true. Special education is sacred, and schools do not pad accounts.

Ms. Miller continued saying she does have concerns with bill draft E and believes the current 25% should be left in place. Ms. Miller added that bill draft F is okay but does not need the sparsity section. Bill draft G is okay. Resolution H is a resolution and the federal government doesn't really react to resolutions. The important thing to remember is that all students need to be taken care of no matter what the disability.

Mr. Tom Culver, Superintendent, Avon, said the draft legislation is a great step in the right direction to help the schools with the rapidly growing costs for special education. The schools also need help with oversight of the out-of-district placement costs, and that is not addressed in any of this legislation. A few years ago, one facility informed the school district that the cost to use the facility was going from \$200 to \$225 a day. There was nothing the school could do about the cost increase. Mr. Culver suggested that perhaps the Department of Education could assist the schools with some type of oversight of these facilities and the rapidly increasing costs for placement.

Committee Discussion and Action Regarding Draft Legislation

Representative Duvall explained to the committee that all members who vote in favor of a bill moving forward to the Executive Board will be listed as sponsors of the bill.

Senator Maher presented bill draft A. The intent of this legislation is to add legislative oversight to the current extraordinary cost fund board. Senator Bolin further explained that this legislation removes the existing board from administrative rule and puts it into statute adding legislative participation.

A motion was made by Representative Holmes, seconded by Representative Smith, to amend bill draft A by requiring the legislator who serves on the extraordinary cost oversight board be a member of one of the two education standing committees. Motion failed on a voice vote.

A motion was made by Senator Maher, seconded by Representative Smith, to move bill draft A forward to the Executive Board for consideration. Motion prevailed on a roll call vote with 11 voting AYE, 1 voting NAY, 1 EXCUSED. Voting AYE: Ahlers, Bartels, Holmes, Schoenfish, Smith, Maher, Monroe, Nesiba, Youngberg, Bolin, and Duvall. Voting NAY: May. EXCUSED: Greenfield.

Representative Ahlers presented bill draft B, which changes the timeframe for recalculating the amounts of the allocations to every two years rather than every three years. Representative Ahlers asked to discuss bill draft D in conjunction with bill draft B.

Senator Bolin said he prefers bill draft C rather than bill draft D. Senator Bolin explained draft C adds one million dollars to the extraordinary cost fund allowing the task force established in bill draft G the time to find a more accurate solution.

Representative Ahlers explained bill draft D adds \$1.26 million to the extraordinary cost fund and that is based on actual costs, saying that using actual costs does more justice to the education program.

Senator Bolin said he believes drafts B and C would have a better chance of passing the full legislature than draft D.

Representative Duvall said a comparison of draft C and draft D can be found in the document titled "Explanations – Bill Drafts C,D,E,F" ([Document #10](#)).

A motion was made by Senator Nesiba, seconded by Representative Smith, to move bill draft D forward to the Executive Board for consideration. Motion failed on a roll call vote with 4 voting AYE, 8 voting NAY, 1 EXCUSED. Voting AYE: Ahlers, Schoenfish, Smith, and Nesiba. Voting NAY: Bartels, Holmes, May, Maher, Monroe, Youngberg, Bolin and Duvall. EXCUSED: Greenfield.

A motion was made by Representative Smith, seconded by Senator Youngberg, to move bill draft B forward to the Executive Board for consideration. Motion prevailed on a roll call vote with 12 voting AYE, 1 EXCUSED. Voting AYE: Ahlers, Bartels, Holmes, May, Schoenfish, Smith, Maher, Monroe, Nesiba, Youngberg, Bolin, and Duvall. EXCUSED: Greenfield.

A motion was made by Senator Bolin, seconded by Representative Ahlers, to move bill draft C forward to the Executive Board for consideration. Motion prevailed on a roll call vote with 11 voting AYE, 1 voting NAY, 1 EXCUSED. Voting AYE: Ahlers, Bartels, Holmes, May, Schoenfish, Smith, Maher, Nesiba, Youngberg, Bolin, and Duvall. Voting NAY: Monroe. EXCUSED: Greenfield.

Senator Monroe said the committee is not solving a problem, but merely plugging a hole for several months and then the number of special education students will escalate. The legislature needs to look at the causes for these costs. Since 1998, the number of students with level 4 disabilities (autism spectrum disorders) has grown exponentially and will take over the education budget within 20 years. The legislature is not paying attention, but just looking at how to fund it.

Representative Duvall agreed that level 4 does need more scrutiny and may be a topic for a future interim study. Representative Bartels said this is too big of a project to be taken on by this interim committee. The task force created in draft bill G could address this issue.

Representative Ahlers presented bill draft E. This draft is intended to stress the fact that more flexibility in reserves for the schools is needed. The cost for educating the special needs students is the same no matter what the size of the school district. Allowing for an increasing amount schools can have in reserve could help address the additional costs for these students when needed.

No action was taken on bill draft E.

Representative Bartels explained bill draft F. The intent of this bill draft is to amend when the child count is completed and when the schools receive the special education funding. Representative Bartels added that this legislation would make appropriating for special education very difficult.

Representative Duvall invited Department of Education staff to address bill draft F.

Ms. Linda Turner, Director of Special Education Programs, Department of Education (DOE), said the DOE is required by federal law to do the special education student count between November 1 and December 1, and DOE has opted to use the December 1 date. Moving the count to an earlier date could mean some students who are placed in special education are not counted.

Mr. Matt Flett, Director, Division of Finance & Management, DOE, said with this legislation DOE could not make a state aid payment until March and estimated payments would have to be made for nine months and real payments for three months. In response to questions, Mr. Flett said this legislation would make distribution of funding more difficult because it moves back the timelines.

A motion was made by Representative Holmes, seconded by Representative Bartels, that the committee not move forward with bill draft F. The motion prevailed on a voice vote.

Senator Bolin presented bill draft G which establishes a special education task force to meet over a two-year period. Membership on the task force is as inclusive as possible, and Senator Bolin said he has no objection to adding a school board member per Mr. Pogany's request. The estimated cost for the task force can be found in the document titled "Task Force Cost Estimate – Draft G" ([Document #11](#)).

Senator Nesiba asked the Interim Secretary of Education to comment on this draft legislation.

Ms. Mary Stadick Smith, Interim Secretary of Education, said she did not want to take a position on any draft legislation, but should the legislation move forward, the department would be willing to take part.

A motion was made by Representative Smith, seconded by Representative Holmes, to amend bill draft G by adding a school board member to the list of task force appointees. The motion prevailed on a voice vote.

A motion was made by Senator Bolin, seconded by Representative Holmes, to move bill draft G as amended forward to the Executive Board for consideration. Motion prevailed on a roll call vote with 11 voting AYE, 1 voting NAY, and 1 EXCUSED. Voting AYE: Ahlers, Bartels, Holmes, May, Schoenfish, Smith, Maher, Nesiba, Youngberg, Bolin, and Duvall. Voting NAY: Monroe. EXCUSED: Greenfield.

Senator Nesiba presented draft resolution H which urges Congress to increase federal funding for special education. Senator Nesiba said the South Dakota Congressional delegation needs to continue working on this issue. Federal mandates to the states should be funded by the federal government.

Senator Maher suggested adding to this draft resolution the need for the federal government to give the states more control over this issue. Senator Nesiba agreed and said adding the request for more state control to the resolution can be done at a later time.

A motion was made by Representative Smith, seconded by Representative Schoenfish, to move draft resolution H forward to the Executive Board for consideration. Motion prevailed on a roll call vote with 12 voting AYE, 1 EXCUSED. Voting AYE: Ahlers, Bartels, Holmes, May, Schoenfish, Smith, Maher, Monroe, Nesiba, Youngberg, Bolin, and Duvall. EXCUSED: Greenfield.

Adjourn

A motion was made by Representative Holmes, seconded by Senator Youngberg, that the Extraordinary Cost Fund for Special Education Study Committee be adjourned. The motion prevailed on a voice vote.

The committee adjourned at 2:15 p.m.