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TO: Senator Ember D. Reichgott
FROM: Elizabeth V. Rice, Senate Counsel (296-3801) *ER*
DATE: January 22, 1991
SUBJ: Outcome-based Schools Bill

After our meeting on Friday afternoon, a number of questions occurred to me about the Outcome-based Schools Bill. All of the questions do not necessarily have to be addressed in the bill, although I think it's usually better to address issues in bills than not. Questions will arise at some point in time and there needs to be clear answers as you present and debate the bill.

1. Which state statutes are applicable to the schools? I recommend that the bill state either that all laws applicable to school districts govern the schools and list specific exceptions or that the schools are exempt from all statutes governing school districts and list specific exceptions. Some of the major statutes that should be applicable or exempted are:

- a. Open meeting law.
- b. Competitive bidding requirements.
- c. Governing (school board) requirements, including notices, agenda, minutes, records, and publication of minutes.
- d. Elections, if anyone is to be elected.
- e. Ownership of buildings and/or land. If they don't own real property, they probably shouldn't receive Capital Expenditure Facilities Revenue under Minnesota Statutes, section 124.243. See page 4, line 21 of the bill draft.
- f. Are the employees public employees with rights and duties under PELRA? Is the employer a public employer under PELRA?

- g. Does comparable worth apply to the employees?
 - h. Does the tenure law, with due process rights, etc., apply to personnel required to hold licenses? To the licensed teacher in charge of the school?
 - i. Which instructional personnel have to hold licenses?
 - j. Can instructional personnel participate in teacher retirement plans? Who makes the employer contribution?
 - k. Unemployment compensation, severance pay, salary limits?
 - l. Does the school have to operate at least some of the grades from kindergarten through 12? Can they offer, perhaps exclusively, adult education, pre-school, community education, etc.?
 - m. What curriculum is required? Do discrimination statutes and rules apply, i.e. athletic programs, physical education?
 - n. Is there a minimum number of days and hours per day that the school must provide instruction?
 - o. Who is liable for tortious acts related to the operations of the school? Is the school subject to tort liability as a political subdivision or other organization? Does the sponsor have any legal responsibilities?
 - p. Can the school sue and be sued?
 - q. Under what laws can the person or group operating the school be organized? Private corporation, partnership, sole proprietorship? Profit or nonprofit?
 - r. Is the school subject to the same financial audits as school districts?
 - s. Is data generated by the school government data and subject to data privacy laws in Chapter 13?
2. The funding for the school is more generous than that available to private schools receiving state money. School districts contracting with private schools under section 126.43 pay at least 85 percent of the basic

revenue of the district for each full-time student. Indian-controlled contract schools receive the state money which is comparable to basic revenue minus federal money; it has a cap of \$1,500. The bill allows a school to receive 100 percent of the state average of basic, training and experience, secondary and elementary sparsity, and supplemental revenue. In addition it receives compensatory revenue.

3. All school districts receiving less than the state average of general education would receive more money under the bill than under current law. Although I suspect it wouldn't happen, isn't there a financial incentive to convert all of these schools to outcome-based schools?

4. Revenue for facilities and equipment is paid to the school. Private alternative and Indian contract schools do not receive this.

5. Excess special education expenditures are unclear in the draft. See page 4, lines 33 to 35. Cooperatives are formed by school districts and certify excess costs to participants that levy for the costs. To whom would the school certify excess expenditures?

6. Can a school board sponsor existing private schools as outcome-based schools?

7. Is a sponsor required to take any action when things go wrong at the school? Is revocation of authority the only action a sponsor can take?

8. Should the contract between the sponsor and the individual or group forming the school be reviewed by the state or other organization? What incentives are there for the contract to be complete and enforceable?

My purpose in raising these issues is not to oppose the bill or to nit-pick it. When creating the authority for schools that are neither traditional public schools nor private schools as they currently exist, a number of issues must be addressed or procedures with adequate safeguards must be established.

EVR:dl