



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

April 20, 2012

The Honorable Michelle L. Fischbach
President of the Senate
226 State Capitol
St. Paul, Minnesota 55155

Dear Madam President:

I have vetoed and am returning Chapter 191, Senate File 2183, a bill that prohibits the Commissioner of Education from enforcing unadopted rules. This bill is a disappointing attempt to strip away the powers expressly granted to the executive branch by the Minnesota Constitution.

Education Commissioner Cassellius and her staff have repeatedly expressed their concerns to your members that Senate File 2183 interferes with one of the primary functions of the Minnesota Department of Education (MDE): ensuring that both state and federal laws and rules are followed. According to Article V, § 3 of the Minnesota Constitution, the Governor must "take care that the laws be faithfully executed." This constitutionally granted executive authority is carried out by executive agencies. By rendering MDE pronouncements unenforceable, this bill effectively eliminates the ability of MDE to provide interpretation, clarification, and guidance to schools and districts, and conflicts with the functions of the executive branch. It is clear this attempt to strip away this executive authority is in violation of the doctrine of separation of powers under Article III, § 1 of the Minnesota Constitution.

The bill also undermines MDE's ability to oversee, implement and enforce federal education laws, thereby putting Minnesota's federal education funding in jeopardy. MDE is required to submit assurances to the U.S. Department of Education that it enforces federal education laws as a condition of continued federal funding. This bill, requiring notice to districts that virtually any written statement by MDE is unenforceable, calls into question MDE's assurances to the federal government that it has the authority or ability to enforce federal laws.

Furthermore, this bill could adversely affect the education some students receive. Through the years, the legislature has taken great care and deliberation to craft laws that protect Minnesota's students. By stripping away MDE's ability to properly enforce those statutes, this bill leaves children without the protections of law. Under this bill, if MDE received a complaint from a parent who believed their child was not being provided adequate education services under the law, MDE could issue support and guidance to comply with current law, but the school could simply choose to ignore that guidance as unenforceable if they disagreed with MDE's interpretation of the law. This could leave the parent in limbo and the child deprived of an equal and adequate education. This bill could also result in reduced educational expectations for some students. If MDE received a complaint that a school was graduating students who had not met the required academic standards, MDE could issue a corrective action; but the school could ignore the action as unenforceable.

I should also point out that this bill is a solution in search of a problem. The Administrative Procedures Act (APA), states "an agency determination is not considered an unadopted rule when the agency enforces current law or rule by applying the law or rule to specific facts on a case-by-case basis." Minn. Stat. § 14.381, subd. 1(b). However, if a school or district believes MDE has overstepped this authority, § 14.381 provides a remedy. The APA and the Office of Administrative Hearings (OAH) were established to provide a fair, prompt, and impartial hearing process for citizens who disagree with actions taken by the government. Under the APA, any person may petition the OAH if an agency enforces a pronouncement that is outside the bounds of existing law or rule. An OAH administrative law judge has statutory authority to determine if an agency pronouncement is being enforced as an unadopted rule. This bill is unnecessary because a remedy already exists in law.

Commissioner Cassellius and her department have worked diligently over the past year to foster a spirit of school support, rather than one only responsible for strict monitoring and enforcement. As such, MDE exercises its authority to issue pronouncements cautiously, evidenced by the very few pronouncements that have been issued over the course of the past year. While the use of these pronouncements is limited, they are a proper use of executive agency authority and an essential tool in ensuring legislation created by your body is enforced properly. This attempt to strip away that important executive authority is unacceptable.

For these reasons, I am vetoing this bill.

Sincerely,

Mark Dayton
Governor

cc: Senator David H. Senjem, Senate Majority Leader
Senator Thomas M. Bakk, Senate Minority Leader
Senator Dave Thompson
Representative Kurt Zellers, Speaker of the House
Representative Paul Thissen, House Minority Leader
Representative Connie Doepke
The Honorable Mark Ritchie, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Albin A. Mathiowetz, Chief Clerk of the House of Representatives