

Legislative Committee Meeting  
Wednesday, October 8, 2014 3:30 PM  
Country Inn & Suites 5353 N 27th Street  
Lincoln, NE 68521  
6949 South 110th Street  
LaVista, NE 68128

1. Call to Order  
Chair of Committee
2. Roll Call  
Chair of Committee
3. Agenda Item  
Chair of Committee
  - 3.1. ESUCC Action Plan  
Executive Director - David M Ludwig
  - 3.2. Distance Ed/BlendEd Funding  
Executive Director - David M Ludwig
  - 3.3. ESU Levy Limits (JPA - Joint Partnership Agreement)  
Karen Haase - Board Attorney
  - 3.4. Budget Goals  
Chair of Committee/Executive Director
  - 3.5. Legislative Hearings  
Chair of Committee
4. Next Meetings Agenda Items  
Chair of Committee
5. Executive Session
6. Adjournment

2009 Nebraska School Law Seminar  
Kearney  
Friday, June 12, 2009



Session Four

## **Innovative Ways to Build: Public Facilities Construction**

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**Innovative Ways to Build:  
Public Facilities Construction  
PUBLIC FACILITIES CONSTRUCTION AND FINANCE ACT**

Recently, Western Nebraska Community College and Education Service Unit 13 completed the construction of a 40,000 sq. foot learning center in Scottsbluff, Nebraska. This building was completed in January 2009 and is currently being used 75% by WNCC and 25% by ESU 13. This building cost approximately \$5 million, of which \$3.5 million was financed through the Public Facilities Construction and Finance Act found at §72-2301 et seq. At TAB 1 is a copy of this Act.

The Public Facilities Construction and Finance Act, hereinafter referred to as "Act," became effective on September 4, 2005. The Act provides an alternate method of financing, other than the bond election, and is available to any city, village, municipal county, community college, county, educational service unit, rural or suburban fire protection district, hospital district, school district, and sanitary improvement district (§72-2303).

The Act authorizes the issuance of bonds to be paid by property taxes for the acquisition, construction, finance, operation, and ownership of public buildings, and also information technology for libraries, which portion of the Act is not covered by this paper.

In addition to public buildings, the Act authorizes issuance of bonds for improvements to real estate, recreational facilities, and related improvements, flood control and storm water drainage, and street and road construction (§72-2302).

**REQUIREMENTS FOR JOINT PROJECT**

The Act specifically requires a joint project, which is defined as a project financed and operated by at least two or more qualified public agencies, cooperating as a joint entity or joint public agency, for the construction of the public building and related improvements to the real estate. In other words, the Act requires at least two political subdivisions to work together to jointly finance and build a facility.

**AUTHORIZATION TO ISSUE BONDS**

The Act, at §72-2304, requires that the second largest participant in the joint project has a financial contribution in the joint project of at least 25% of the debt serviced. In the case of WNCC/ESU 13 Technology Center, the ratio was 75% for WNCC and 25% for ESU. The Act further provides that the principal amount of the bonds which may be issued by a qualified public agency, such as the school district, etc., shall not exceed \$5 million, the total amount of such bonds that may be outstanding at any time and, further, that the annual amount due by reason of such bonds shall not exceed 5% of the restricted funds of the obligated qualified public agency in the year prior to issuance.

**NO REQUIREMENT FOR BOND ELECTION  
BOND PAYMENTS OUTSIDE PROPERTY TAX LEVY LIMITS**

The Act further provides that, after the expiration of a 60-day remonstrance period, the bonds may be issued to finance the joint project without the need for a bond election. The Act provides that the bond payments shall be serviced by property taxes regardless of restrictions on issuance of debt contained and other statutory provisions, home rule charters, or the limitations set forth in §77-3442 (Limitations on Property Tax Levies).

A remonstrance petition is a petition filed with the clerk or secretary of each qualified entity, signed by the required number of registered voters—objecting to the issuance of bonds. If such a remonstrance petition is filed, a bond election is necessary. The number of signatures required on a remonstrance petition is equal in number to at least five percent of the number of registered voters of the qualified public agency at the time the remonstrance petition is filed or the number of signatures listed on a chart which is provided in §72-2304 (5). It should be noted that the number of signatures required for a Class III school is 500; for an ESU, 250; and for a community college area, 1,500. If no remonstrance petition is filed, the Act states at §72-2304(3) that no election is required prior to the issuance of bonds

In the situation of issuing of bonds for WNCC/ESU 13 Technology Center, no remonstrance petition was filed; therefore, no bond election was needed.

### **FINANCING OF WNCC/ESU 13 TECHNOLOGY CENTER**

The 40,000 sq. foot learning center in Scottsbluff cost approximately \$5 million. \$1.5 million was provided by a grant from the U.S. Department of Commerce, and \$3,500,000 was financed through the Public Facilities Construction and Finance Act.

It is my understanding that this is the first time that this Act had been used. Procedurally, representatives of WNCC and ESU agreed as to the need for a facility for additional classrooms and discussed joint programs. (See handout from Dr. Jeffrey D. West / Joint Projects and Use of the Facilities)

After it was determined that WNCC would own and operate 75% of the joint facility, and ESU 13 would own and operate 25% of the joint facility, an interlocal cooperative agreement was established pursuant to the Interlocal Cooperation Act (§13-801 et seq.). At TAB 2 is the Interlocal Cooperative Agreement established between WNCC and ESU 13 for this project. This Interlocal Cooperative Agreement acts as the joint entity as set forth in §72-2304. After the Interlocal (joint entity) was established, ESU #13 passed a resolution authorizing the issuance of bonds in the amount of \$875,000 to the WNCC/ESU #13 Technology Center (Interlocal), and WNCC passed a similar resolution authorizing the issuance of bonds in the amount of \$2,625,000 to the WNCC/ESU #13 Technology Center (Interlocal). (See TAB 3)

After the passage of the resolutions authorizing the issuance of joint public facilities building bonds for both ESU #13 and WNCC, Notice of Intent to Issue Bonds was published by each entity pursuant to the Act. (See TAB 4) The publication of this Notice of Intent to Issue Bonds started the remonstrance time period. For a period of 60 days the parties took no action. During this 60-day period, no remonstrance petition was filed, after which time the ESU bonds and the WNCC bonds were issued to the Interlocal

After the ESU bonds and the WNCC bonds were issued to the Interlocal, the Interlocal issued \$3.5 million worth of bonds, which were sold to the public by Ameritas (See TAB 5), and the project moved forward to the construction stage.

Construction was completed in January 2009. The facility is now occupied by both WNCC and ESU #13.

The parties are now in the process of completing a condominium agreement, which will define the common areas and the areas owned in fee simple by each party.

### SUMMARY

The Facilities Construction and Finance Act provides a method for financing which is outside the levy limit, and which also, after the remonstrance period, provides a means for financing without the need for bond election. The project is limited to \$5 million debt per qualified public agency (school district, etc.) and an aggregate of \$5 million total outstanding at any time.

The one restriction per public entity is that the annual amount due by reason of such bonds shall not exceed 5% of restricted funds.

In the case of WNCC and ESU 13, the Public Facilities Construction and Finance Act provided a means to build a 40,000 sq. foot education facility, which bond payments are outside the lid, and which facility was constructed without the expense or risk of a bond election.

The bond counsel for this facility was Lauren W. Wismer of Gilmore & Bell in Lincoln, Nebraska. Ameritas Investment Corporation acted as underwriter.

**NOTES**

**ESU 13/WNCC Technology Center  
Joint Projects and Use of Facilities**

The Facilities Act, Chapter 72, Article 23 not only allows public entities to build brick and mortar, but provides opportunities to build and develop partnerships.

Our joint project with Western Nebraska Community College has allowed ESU 13 to construct a facility that has expanded the following essential programs:

- Alternative School VALTS (Valley Alternative Learning Transitioning School).
- The improvements in technology for the VALTS students and staff have enhanced the learning environment in ways that cannot be measured. This in and of itself has given students opportunities they would have never experienced in a traditional school or classroom setting.
- The move to the ESU 13/WNCC Technology Center located at the Harms Advanced Technology Center has given our students the opportunity to see, feel, and understand what they themselves could experience in the future by moving onto college or trade school. The environment at VALTS is conducive to excellent learning and mature decision making.
- LifeLink Nebraska Program. LifeLink-Nebraska, in partnership with Western Nebraska Community College, school districts, families, and community, provides unique learning opportunities to students with disabilities, ages 18 to 21
- To my knowledge, having WNCC act as a fiscal agent and lead organization in coordination of services with local school districts and ESU 13 (LifeLink-Nebraska) is the only and first such model in the state.
- Additional vocational partnerships with WNCC are underway with Career Academies which were begun this past Fall with students from Scottsbluff and Gering. Although this is not directly under the ESU 13 umbrella, it does move students in our service area forward with marketable employability skills.
- Staff Development Facilities. WNCC and ESU 13 are sharing rooms within our new facility with each other (free of charge) for professional development trainings requiring larger meeting rooms. Large group venues are very hard to find in the Scottsbluff-Gering area. This has helped us a great deal. We hope by letting them use our larger room in return is nice for them down the road. WNCC does have at least one training in our ESU 13 room right now.
- ESU 13 and WNCC are working collaboratively on P-16 projects for the Panhandle of Nebraska. P-16 meetings and planning sessions are held in our new facility.
- Student Event: Body Walk is held at WNCC/ESU 13 Technology Center—500-600 third graders come together to learn about good nutrition and the digestive system. WNCC nursing program loans their models (i.e. skeleton, etc) and sometimes the nursing students volunteer to help present along with the other 60+ medical volunteers we coordinate.

WNCC Department Chairman and administrator have asked to be invited to become members of our regional Curriculum Directors (PLACES) meetings.

- Smart Technology. Educational Service Unit #13 has installed the latest in 21st Century technology in its 6 classrooms at the WNCC/ESU 13 Technology Center in Scottsbluff.
- ESU #13 has two Smart Classrooms at the Technology Center. A smart classroom is a classroom that has an instructor station equipped with computer and audiovisual equipment, allowing the instructor to teach using a wide variety of media. These include DVD and VHS playback, PowerPoint presentations, document camera and more all displayed through a data projector.
- The ESU 13 Smart Classrooms also include a DVD recorder, Microphone and PA system, and an instructor camera, that allows presentations to be recording for playback later.
- The other 4 ESU13 classrooms at the Technology Center also have complete smart classroom capabilities, but also combine the latest in IP video conferencing features. This allows for greater flexibility for presenters to reach a broader audience.
- While using the smart room features to present to an audience in the classroom, these multi-media options also integrate into the video conferencing system to be broadcast anywhere in the ESU13 service area, the state, or the world that has the same video conferencing technology.
- NEVA (Nebraska Educational Virtual Academy) ESU 13 online high school. NEVA dual credit courses are being 'socially authored' by an ESU 13/NEVA teacher and a WNCC instructor – allowing for serious discussions to close the gap which occurs between grades 12 – 13, and to alleviate issues that might arise down the road when applying for dual credit status.
- The addition of the NEVA program is another positive change towards the future of education. ESU 13 now offers on line classes to students in this service area. The future of education is moving towards this form of on line learning. It not only allows students to choose classes that they may not be able to select in their school, but it also puts them a step closer to being prepared for college in the 21st Century.

**NOTES**

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## MEMORANDUM

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TO: Dave Ludwig, ESUCC Executive Director  
FROM: Steve Williams  
DATE: September 30, 2014  
RE: ESU Financing Outside of Levy Limits

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Some of the educational service units which make up the Educational Service Unit Coordinating Council have informed you that they need to construct facilities to better serve their member districts and ultimately students. However, Nebraska statutes do not give ESUs express authority to issue bonds. You have asked whether there are alternatives available that would allow ESUs to build so that the costs of the project could be paid for with funds outside current levy limits.

**Conclusion.** The Public Facilities Construction Finance Act, when used in conjunction with the Interlocal Cooperation Act or the Joint Public Agency Act, allows an ESU acting jointly with one or more specified political subdivisions (including other ESUs) to issue up to \$5,000,000 in bonds to finance certain joint construction projects, and the taxes levied for this purpose are outside levy limits. This is the same method used by ESU 13 and Western Nebraska Community College to complete the WNCC/ESU #13 Technology Center in 2009 and ESU 2 to complete the certified data center in 2014.

**Levy Limit and Exceptions.** The maximum property tax that an ESU is authorized to levy is one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy. See NEB. REV. STAT. § 77-3442(5). However, section 77-3442(10)(c) excludes “bonds as defined in section 10-134 approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts[.]” In

addition, taxes levied and collected to pay for bonds issued in accordance with the Public Facilities Construction Finance Act (discussed below) are not subject to the limitations in section 77-3442. See NEB. REV. STAT. § 72-2307.

**Public Facilities Construction and Finance Act.** Sections 72-2301 through 72-2308 are known as the Public Facilities Construction and Finance Act (“Act”). The Act provides ESUs and other “qualified public agencies” with a financing alternative for certain construction and technology purposes. More specifically, the purpose of the Act is:

to allow local governmental units which cooperate with other governmental units **to issue bonds** to finance joint projects which may be serviced by property taxes, regardless of the restrictions on the issuance of debt contained in other statutory provisions, home rule charters, or the limitations in section 77-3442, for the acquisition, construction, financing, operation, and ownership of (1) **public buildings and related improvements** to real estate, recreational facilities and related improvements, flood control and storm water drainage, and street and road construction and improvements and (2) **information technology for libraries** operated by counties, municipalities, school districts, educational service units, and community colleges.

Section 72-2302 (emphasis added).

**Definitions.** A **bond measure** is a resolution or ordinance authorizing bonds to be issued in accordance with the Act. A **joint project** is a project financed and operated by at least two or more qualified public agencies for (a) any public building or buildings and related improvements to real estate, including parking facilities, any recreational facilities and related improvements to real estate, any flood control and storm water drainage, and any street and road construction and improvements and related fixtures and (b) any item of hardware or software used in providing for the delivery of information, including the purchasing of upgrades or related improvements to information technology for the operation of libraries operated by counties, municipalities, school districts, educational service units, and community colleges. A **qualified public agency** is “any city, village, municipal county, community college, county, educational service unit, rural or suburban fire protection district, hospital district, school district, and sanitary and improvement district.”

**Authority to Issue Bonds.** Section 72-2304 authorizes qualified public agencies to issue negotiable bonds to any joint entity (created under the Interlocal Cooperation Act) or to any joint agency (created under the Joint Public Agency Act) in connection with any joint project that will be owned, operated, or financed by the joint entity or joint public agency for the benefit of the qualified public agency. The Act also sets forth the procedures required to issue the bonds. The qualified public agency must:

- Conduct a public hearing on the issuance of bonds.
- Publish notice of the hearing in a newspaper of general circulation within the territory of the agency at least 10 days before the hearing.
- Adopt a bond measure authorizing bonds after the public hearing.
- Publish notice of the intention to issue bonds (with certain statutorily required information) in in a newspaper of general circulation within the territory of the agency at least twice and at least three weeks apart.

**No Election, Unless . . .** No public election is required before issuing bonds unless petitioners file a “remonstrance petition” within 60 days after the first publication of the notice of the intention to issue bonds. The remonstrance petition must be signed by at least five percent of the number of registered voters of the qualified public agency or the number set out in section 72-2304(5) (250 voters in an ESU or Class II school district; 500 voters for a Class III school district), whichever is less. If the petition is successful, the agency must submit the matter to voters at a general or special election called for the purpose of approving the proposed bond issue. The same procedure applies to qualified public agencies that are not issuing bonds but are participating in a joint project.

**Limitations on Amounts.** The joint “construction” projects (those listed in section 72-2303(2)(a)) projects are limited to \$5,000,000. See NEB. REV. STAT. § 72-2305. Limits for joint projects for “information technology” (those listed in section 72-2303(2)(b)) range from \$50,000 to \$250,000 depending on the qualified public agency. School districts and ESUs are limited to \$100,000. See NEB. REV. STAT. § 72-2306.

**Mandatory Contributions.** Bonds may be issued only if the second largest participant in the joint project contributes at least 25% of the debt service. See NEB. REV. STAT. § 72-2304(1).

**Payment of Bonds.** Taxes levied and collected to pay for bonds issued under the Act are not subject to the limitations in section 77-3442. See NEB. REV. STAT. § 72-2307.

**Construction of Act.** The Unicameral went out of its way to make clear that the Act is independent of and in addition to any other provisions of the laws of Nebraska. Section 72-2308 states:

The [Act] shall be independent of and in addition to any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and bonds may be issued under the act for any purpose authorized in the act even though other provisions of the laws of the State of Nebraska or provisions of home rule charters may provide for the issuance of bonds for the same or similar purposes. The act shall not be considered amendatory of or limited by any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and bonds may be issued under the act without complying with the restrictions or requirements of any other provisions of the laws of the State of Nebraska or without complying with the restrictions or requirements of home rule charters. Nothing in the act shall prohibit or limit the issuance of bonds in accordance with the provisions of other applicable laws of the State of Nebraska or of home rule charters if the governing body determines to issue such bonds under such other laws or charter, or otherwise limit the provisions of any home rule charter.

I hope that this information is helpful to you and the Council. Please let me know if you have any additional questions.

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**ESUCC BUDGET GOALS**  
**2014-2015**  
**August 19, 2014**

- 1) Develop a systems thinking protocol regarding budget development, implementation and review.
  - A) Involve essential personnel within the budget development process. (i.e.-Executive Administrative Assistant, Program/Project Directors, ESUCC Committee Chairs)
  - B) Implement a monthly fiscal review to include essential ESUCC Personnel.
  - C) Provide a monthly fiscal update report to Program/Project Directors and ESUCC Committee Chairs.
  - D) Provide a monthly fiscal update report to members of the ESUCC Board through the Finance Committee.
- 2) Develop an ESUCC Budget that is fiscally responsible and responsive to needs of the organization; whereby, the needs of the organization drive the ESUCC Budget.
- 3) Develop a system of collaboration, cooperation, and communication with NDE regarding Core Funding Allocations.
- 4) Develop a long-range plan regarding ESUCC Core Funding Allocations.
- 5) Develop a plan for Distance Education/Blended Allocations and/or Incentive Funding through the collaborative efforts of the Blended Committee Chairs.
- 6) Develop a long-range legislative plan regarding ESUCC Funding. (i.e.-Medicaid, Blended)
- 7) Develop a long-range plan for the employment of an ESUCC Programmer; thereby, reducing the costs for current contracted services and increasing time for programming needs within ESUCC.
- 8) Develop a statewide support model for Network Operations and Programming through contracted services.
- 9) Develop a statewide model of collaboration, cooperation, and communication with higher education regarding Coop Software. (i.e.-UNL 's Department of Computer Science and Engineering)
- 10) Develop a system of Financial Service Support within the ESUCC Budget.