Prepared by the North Dakota Legislative Council
staff for the Education Finance Committee
August 1997

EDUCATION FINANCE - BACKGROUND MEMORANDUM

Section 4 of 1997 Senate Bill No. 2338 (attached as an appendix) directs the Legislative Council to study the financing of elementary and secondary schools and the availability of state support for school construction. The committee is to review the formulas used to equalize state aid to education, including transportation and special education, to review funding sources that might be alternatives to property taxation, and to study any other issues related to education finance.

EDUCATION FINANCE - A HISTORICAL PERSPECTIVE

A foundation program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, at which time the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the 1959 Legislative Assembly recognized that property valuation demographics and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted aid payments that favored schools with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

Until 1973 the foundation aid program remained essentially unchanged. At that time, the Legislative Assembly reacted to a growing crisis in the field of education finance. The funding program became more sophisticated and the state assumed a proportionately greater share of education costs. The base support payment per student, the amount used to determine the sum that each school district receives, was increased from $260 to $540 per student and the flat weighting factor for all high schools was changed to provide four classes of high school weighting factors. Some adjustments were made in elementary school weighting factors as well. Another modification made by the 1973 Legislative Assembly was the reduction of the maximum mill levy for high school districts from 34 to 24 mills and the requirement that those districts with excess levies or unlimited levies had to reduce those levies. The 1973 changes came at a time when federal and state courts were considering whether the level of spending for a student's education should depend upon the wealth of the student's school district.

Although the 1973 amendments to the foundation program were due to expire at the conclusion of the 1973-75 biennium, the 1975 Legislative Assembly made most of the modifications permanent. The base payment was increased from $540 to $640 per student for the first year of the 1975-77 biennium and to $690 per student for the second year. Further adjustments were made in the weighting factors used to calculate aid for elementary school programs and a new classification for seventh and eighth grade students was added. Another change involved the fiscal protection of school districts with declining enrollments. As a result, no district could receive less in foundation aid payments for a current year than that district would have received based on its enrollment the previous school year. Districts with this enrollment profile were given a buffer period within which to adjust their fiscal circumstances and minimize the revenue losses associated with declining enrollments. The foundation aid program grew from $118 million during the 1973-75 biennium to $153.4 million for the 1975-77 biennium.

The 1977 Legislative Assembly raised the base payment per student to $775 for the first year of the biennium and to $850 for the second year. The total appropriation for foundation payments, including those made for transportation, rose to $186.8 million.

The 1979 Legislative Assembly again raised the base payment per student to $903 for the first year of the biennium and to $970 for the second year. The total foundation aid appropriation was $208.4 million. An additional $1 million was appropriated for the funding of free public kindergarten during the second year of the 1979-81 biennium.

The next major development affecting educational finance in North Dakota occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level.

Since the electorate approved the concept of funding public education at the 70 percent level, the

1981 Legislative Assembly amended the text of the initiated measure to allocate 60 percent of the oil extraction tax revenues to the foundation aid program.

Initiated measure No. 6 precipitated a change in the structure of the foundation aid program by providing for a tax credit that made the 21-mill county levy inapplicable to all but the owners of extremely high-valued property. Initiated measure No. 6 allowed the property tax revenue lost to school districts because of the credit to be made up by additional state appropriations. Rather than continue to maintain the 21-mill county levy in its significantly modified form, the 1981 Legislative Assembly eliminated the levy altogether and committed an increase in state aid to compensate districts for all the revenues that would have been derived from the levy and to bring the state contribution closer to the aspirational 70 percent level. The foundation aid appropriation in 1981 was $388.7 million. Aside from this modification, the 1981 Legislative Assembly did not restructure the state school aid program. Instead, it took the position that any significant changes in the manner of financing education should be undertaken only after an extensive interim study.

During the ensuing interim, the system of education finance was subjected to substantial criticism because of purported funding inequities. Districts spending similar amounts per student and having similar assessed valuations were not levying similar amounts in property taxes to raise their portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations would seem to justify.

The 1981-82 interim Education Finance Committee spent much of its time examining a new school funding concept known as the "70-30" concept. This proposition took into account the costs of education incurred by each school district. It was a significant departure from the existing formula in which the Legislative Assembly established specific dollar amounts as the educational support per student.

The "70-30" concept began by determining the "adjusted cost of education" for each school district. It took into account the gross expenditures of a school district and subtracted the following items:

1. Capital outlay for buildings and sites or debt service.
2. Expenditures for school activities and school lunch programs.
3. Expenditures for transportation, including the cost of schoolbuses.
4. Expenditures from state funds paid to the district for vocational and special education.
5. Expenditures from state tuition fund distributions.
6. All expenditures from federal funds except funds in lieu of property taxes.

When school district expenditures from all the above-mentioned funding sources were subtracted from each district's gross expenditures for the preceding school year, the result was the "adjusted cost of education." The "70-30" concept provided that the "educational support" for each year was to be the adjusted cost of education times an adjustment factor that would account for inflation. The amount of "educational support" for a school district, as calculated pursuant to this procedure, would represent the dollar amount equal to 100 percent of the total cost of education of the district.

Because the aspiration of initiated measure No. 6 was for the state to provide 70 percent of the cost of education on a statewide basis, the "70-30" concept contained an equalization factor designed to provide fair treatment to districts with different costs and assessed property valuation profiles. The mechanism in the "70-30" concept provided for the computation of a 30 percent equalization factor to be used as the basis for determining each district's state funding entitlement. The equalization mechanism was determined as follows:

1. The total of all school districts' adjusted cost of education for the previous fiscal school year times the inflation adjustment factor. This equaled the estimated statewide cost of education.
2. The estimated statewide cost of education for the current school year times 30 percent.
3. Based on the total valuation of all taxable property in the state for the previous year, the mill levy necessary to raise the dollar amount derived according to step 2, multiplied by the latest available taxable valuation of each school district. The product so obtained was known as the "equalized 30 percent local share." A district's equalized 30 percent local share was subtracted from the district's adjusted cost of education to arrive at the district's state school aid funding entitlement.

Proponents of the concept maintained that the central strengths of the approach were its comprehensive equalization mechanism and its consideration of each district's own expenditure levels in determining the amount of state education aid to which the district was entitled. Opponents, however, argued that the scheme was structured in such a manner that it rewarded high spending school districts. Since a district's prior expenditure level provided the base for allocation of state education

aid, a district that had previously spent more on education would have received a correspondingly larger state aid payment than a district that had spent less. The system would have penalized school districts that had been operating on extremely restricted budgets and which had made cost control a priority. The committee did not recommend this funding concept to the Legislative Council.

The Legislative Assembly in 1983 left in place the existing educational funding mechanism and set the per student payment at $1,400 for the first year of the biennium and at $1,350 for the second year of the biennium.

The 1983-84 interim Education "A" Committee also studied the financing of elementary and secondary schools. Weighting factors, increases in the equalization factor to 40 mills, and the excess mill levy grant concept were among the specifics studied by the committee. The committee recommended an increase in the per student foundation aid payments but declined to adopt recommendations regarding an increase in the equalization factor and the provision of excess mill levy grants. Although the committee recommended foundation aid payments of $1,524 and $1,595 for the biennium, the Legislative Assembly reduced those figures to $1,425 and $1,455, respectively.

The 1985-86 interim Education Finance Committee also considered matters of educational finance, but it was the 1987-88 interim Education Finance Committee that set specific goals and guidelines to be taken into account during its deliberations on educational finance issues. These goals included:

1. That the committee take a futuristic view when examining issues such as transportation, reorganization, consolidation, and teacher salaries.
2. That the committee define the qualities that young people are expected to possess once they have gone through the educational system and define the skills that teachers must develop in order to ensure this outcome.
3. That an educational system provide all children with access to an equal educational experience.
4. That an educational system require financial input from both local school districts and the state.
5. That all aspects of the current educational system be classified as viable or nonviable.
6. That steps be taken to eliminate or reduce existing disparities in the educational finance system.
7. That any educational program incorporate technology and acknowledge the different ways in which individuals learn.
8. That an educational finance system provide incentives rather than disincentives or directives.
9. That proposals be examined in terms of their statewide effects rather than their impact on individual districts.
10. That any proposed legislation readily accommodate change.

The committee reviewed several proposals to revise the existing education finance formula and generally agreed that any formula approved by the committee should increase state aid to school districts by $35 million. The committee also discussed various proposals that would have taken into consideration, as part of the foundation aid program, payments to school districts from sources other than the state in order to determine the local ability to support education. Because time was insufficient to consider these issues, the committee recommended that the Legislative Council study in lieu of property tax payments to school districts, school district revenues derived from oil, gas, and coal taxes, and other payments to school districts from the state to determine whether these payments should be included as local resources when measuring a school district's contributions to the foundation aid program. The committee also recommended a resolution directing a study of the use of various factors in addition to property wealth which could be embodied in an educational finance formula in order to equalize educational opportunities and to meet the state constitutional guarantee of a free and uniform system of public school education.

The 1989-90 interim Education Finance Committee considered several bill drafts regarding income factors and in lieu of tax revenues. One draft would have deducted from a school district's foundation aid the amount derived by dividing the five-year average aggregate adjusted gross income for North Dakota from state income tax returns into the product of 20 mills, times the latest available taxable valuation of property of the state, times the aggregate adjusted gross income from income tax returns for the school district.

Another bill draft would have deducted the following amounts from a school district's foundation aid payment:

1. The average North Dakota federal adjusted gross income per individual income tax return for the school district, divided by the average North Dakota federal adjusted gross income per individual income tax return for all school districts, times the latest taxable valuation of

all property in the school district, multiplied by 30 mills.

2. Three percent of the money that the school district received from the state tuition fund for students who did not attend public schools in the school district.
3. Three percent of all federal revenues that the school district received as payments in lieu of taxes, including federal impact aid, if deducting the federal impact aid would not result in the loss of federal funds to school districts.
4. Three percent of the revenue that the school district received from oil, gas, and coal taxes.

A third bill draft would have changed the deduction to an amount equal to the average federal adjusted gross income per student for the district, divided by the average federal adjusted gross income per student for the state, times the taxable valuation of property in the school district, times 20 mills. The concept behind use of the income factor was that if the average income of a school district's residents was higher than the state average, the ratio would be greater than one. A ratio greater than one would increase the amount that was to be multiplied by the mill factor and deducted from the school district's state aid.

While the 1989-90 interim committee recognized that changes in the educational funding system of the state should be made, the committee also believed the state's financial situation had to be better defined and understood before any alternative funding method could be pursued. Consequently, the interim committee made no recommendations regarding school finance issues.

The 1991-92 interim Education Committee was directed to study an educational funding formula that included all sources of wealth and revenue in order to measure a school district's ability to support education, and at the same time, incorporate enrollment factors, require a minimum level of local effort, and provide additional dollars for categories of students falling below the statewide averages for per student expenditures. Such a formula was embodied in 1991 House Bill No. 1563 and, because that bill failed to pass, was referenced in the committee's study directive.

The committee compared the per student payments provided for in 1991 House Bill No. 1563 with those provided for in statute and found that 129 school districts would have gained funds while 137 would have lost. Although in the end the committee made no recommendation regarding the proposed funding formula, the deliberations afforded the committee an opportunity to consider the meaning of "equalization." Testimony suggested that equalization means the process of compensating for differences in order to reach equality and that equity means there must be a direct and close correlation between a district's tax effort and the educational resources available to it, i.e., a district must have substantially equal access to similar revenues per student at similar levels of effort. However, testimony also suggested that equalizing the amount of education dollars available is simply not enough and that obtaining equal educational opportunities may very well require an unequal distribution of dollars.

The 1991-92 committee was less successful in defining "equal educational opportunity." The "committee found that to be an ethereal phrase, understood in its broadest general perspective, yet incapable of the definition needed for conceptualizing its application to various funding formulas."

BISMARCK PUBLIC SCHOOL DISTRICT NO. 1 V. STATE OF NORTH DAKOTA

Amid continuing discussions regarding the equity of educational finance, legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and receiving over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. Among the substantive conclusions were the following:

1. Under Article VIII, Sections 1 and 2, of the Constitution of North Dakota, the financing of public elementary and secondary education is a state responsibility in that the Legislative Assembly is irrevocably mandated to "make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control."
2. Article VIII, Section 2, of the Constitution of North Dakota, imposes a duty on the Legislative Assembly to "provide for a uniform system of free public schools throughout the state . . . ." Such a duty is a continuing duty requiring the maintenance of such a uniform system even as conditions of life and the state change over the years.
3. The constitutional standard of equal protection proscribes any system that makes the quality of a child's education a function of

district wealth rather than the wealthy (sic) of the state as a whole.

4. Despite the fundamental character of education under the Constitution of North Dakota, the North Dakota school financing system classifies its recipients on the basis of the taxable wealth of a school district as measured by its taxable valuation per pupil and tax revenue generated from in lieu of property tax sources in violation of the equal protection and uniform system provisions of the Constitution of North Dakota.
5. The North Dakota school financing system also violates Article VIII, Section 2, of the Constitution of North Dakota, which requires the Legislative Assembly to provide for a "uniform system of free public schools throughout the state . . . ."
6. The dependency of the state on the vastly disparate tax bases of school districts to finance its constitutional obligation makes the definition of a "uniform" education a function of the tax base of school districts rather than constitutionally permissible criteria related to education.
7. The taxable wealth of a school district is a constitutionally impermissible factor in the funding of a "uniform" system of free public schools.
8. State and local governmental action drew the school district boundary lines that determined how much local wealth each school district would contain.
9. State sources of revenue are inadequate to remedy the unconstitutional defects of a school financing system based on widely varying school district tax bases.

Although the district court decision stated that the "equal protection and education provisions of the North Dakota Constitution do not impose requirements of absolute uniformity or equality" and that "unequal expenditures are constitutionally permissible if not related to the taxable wealth of school districts, if more resources are needed for some children to achieve an equal education opportunity than are needed by other children, and if based on legitimate cost differences among districts," the decision listed the following as "constitutionally objectionable features of the North Dakota school financing system":

1. Disparities in current revenue per student which are the result of variations in school district taxable wealth.
2. The 22-mill deduct in the foundation formula which fails to equalize for variations in district wealth because the deduct is below the state average school tax rate for current revenue and leaves much of the school millage outside of the foundation formula.
3. The low level of foundation educational support which fails to ensure substantial equality of resources for children in similarly situated school districts.
4. The use of cost weightings that are inaccurate and unjustifiably benefit districts with large amounts of taxable wealth.
5. The flat grant allocation of tuition apportionment which ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts.
6. The features of the transportation aid program which exacerbate existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation to the district and require other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources.
7. The features of the special education funding program which exacerbate existing resource disparities by giving higher spending districts an advantage in obtaining state reimbursement of special education costs and require school districts to fund a large share of the extra costs of special education programs from the disparate tax bases of school districts.
8. The features of state aid for vocational education which exacerbate existing resource disparities.
9. The state system for funding school facilities is the unequal taxable wealth of school districts.
10. The payment of state aid to wealthy districts that maintain large ending fund balances.
11. The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota children rather than on the unequal taxable wealth of North Dakota school districts.

In the order for judgment, the district court declared that the North Dakota school financing system was in violation of Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22, of the Constitution of North Dakota and directed the Superintendent of Public Instruction to prepare and present to the Governor and the Legislative Assembly plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Finally, the district court concluded:

In the event the defendants fail to establish, within six months from the date of entry of judgment, a public school financing system that will fully comply with the North Dakota Constitution, at the expiration of four years from the date of entry of judgment, the Court, upon a motion of one or more of the parties or upon the Court's own motion, will consider such additional relief as may be necessary to eliminate the disparities in educational funding and opportunity declared unconstitutional. Any decision by the defendants seeking to comply with the Court's Order must be retroactive to July 1, 1993, in terms of its financial compensation to school districts unless such is shown too impractical or impossible.

PROPOSAL BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In response to the district court order, the Superintendent of Public Instruction presented "A Plan Providing Educational Equity for North Dakota Students" on March 15, 1993. The plan included a number of recommendations.

Foundation Aid

Using a 12-point set of basic instructional standards, the Superintendent of Public Instruction determined that the instructional cost per student was $1,792. To that amount the superintendent added related costs such as school administration, general school district administration, plant operations, maintenance, etc., to arrive at a per student cost of $3,134. The superintendent then recommended this amount be the guaranteed per student foundation amount. It was presumed this amount would be composed of the state general fund appropriation, tuition apportionment, federal revenue in lieu of taxes, mineral revenue in lieu of taxes, excess school district general fund balances, and a uniform county mill levy.

Special Education

The Superintendent of Public Instruction recommended that special education be built into the foundation aid program by dividing the 13 disability categories of special education into three broad levels of funding. The mild level would be based on the statewide average of nine percent of all students and would be weighted at 1.0. The moderate and severe levels would be paid according to the actual number of students in those categories. The weightings would be set at 2.5 and at 5.0, respectively. Included was a level of funding for gifted student programs which was based on five percent of the total enrollment.

Vocational Education

The Superintendent of Public Instruction recommended the establishment of two categories of vocational and technical education, based on high cost and moderate cost programs. The high cost programs would be weighted at 0.6975 and the moderate cost programs would be weighted at 0.2824.

Transportation

The Superintendent of Public Instruction recommended the establishment of six categories of transportation reimbursement based upon density factors related to the number of students transported per square mile. Transportation payments would be based on the actual number of students transported and weighted at the density amounts listed below, times the guaranteed foundation amount:

Density	Weight
0.001 to 0.250	0.2495
0.251 to 0.500	0.2036
0.501 to 0.750	0.1720
0.751 to 1.000	0.1481
1.001 to 1.999	0.1308
2.000 +	0.1819

State General Fund Appropriation

The Superintendent of Public Instruction recommended that the state fund education at the 65 percent level for the 1993-95 biennium and at 70 percent by the end of the 1995-97 biennium.

Uniform County Mill Levy

The Superintendent of Public Instruction recommended that the local share of the guaranteed foundation aid amount come from a uniform county levy of 180 mills. The amount raised by this levy would be distributed to the school districts in the county on a per student basis.

Tuition Apportionment

The Superintendent of Public Instruction recommended that income from the common schools trust fund become a state funding source for the foundation aid program.

Federal Revenue in Lieu of Local Property Taxes

The Superintendent of Public Instruction recommended that federal funds in lieu of local property taxes become part of the guaranteed foundation aid amount.

Mineral Revenue in Lieu of Local Property Taxes

The Superintendent of Public Instruction recommended that mineral revenues in lieu of local property taxes become part of the guaranteed foundation aid amount.

Excess Fund Balance

The Superintendent of Public Instruction recommended that, for the 1993-94 school year, all school district general fund balances in excess of 75 percent of the prior year's general fund expenditures would be recaptured by the state. In subsequent years, the excess balance would become part of the district's guaranteed foundation aid amount. The percent of allowable fund balances would be set at 65 percent for 1994-95, 55 percent for 1995-96, 45 percent for 1996-97, and 35 percent for subsequent years.

Optional District Levy and Guaranteed Tax Base

The Superintendent of Public Instruction recommended that each school district be given the opportunity to levy an additional 25 mills above the 180-mill uniform county levy. Of this amount, 20 mills would be equalized to ensure that each mill would generate revenue at the level of 125 percent of the state average taxable valuation per student.

Minimum School District Size

The Superintendent of Public Instruction recommended that all land in North Dakota must be part of a high school district by July 1, 1996, and that all school districts with fewer than 150 students in kindergarten through grade 12 become part of a larger administrative unit by July 1, 1996. School sites having fewer than 150 students could receive supplemental payments if they qualified as an isolated school.

School Construction

The Superintendent of Public Instruction recommended the provision of $25 million for a revolving school construction fund and suggested that future assistance would be needed to provide equalization of capital construction costs.

1993 LEGISLATIVE RESPONSES

Senate Bill No. 2432

Senate Bill No. 2432, as introduced, provided that each school district would be entitled to receive the sum of $2,800 times the number of full-time equivalent students in kindergarten through grade 12, less the amount raised by the district in levying 150 mills on the taxable valuation of all property in the district, and less all in lieu of tax dollars received by the district.

The bill also allowed for a supplemental levy of 26.78 mills and provided that any district levying this amount would be entitled to receive from the state the difference between the amount raised by the levy and the amount arrived at by multiplying $500 by the number of full-time equivalent students residing in the district and attending kindergarten through grade 12 in the district. The bill also provided for an additional payment of $200 per student for isolated schools, i.e., schools that are 20 miles or more from the nearest public school.

Transportation reimbursements were set at 35 cents per mile, plus 50 percent of the difference between the mileage payment and the transportation operating expenditures reported by the school district to the Superintendent of Public Instruction for the most recent year, plus the five-year average cost of transportation equipment, as determined by the Superintendent of Public Instruction. The total transportation reimbursement was capped at 70 percent of a school district's actual costs.

Senate Bill No. 2432 also would have repealed North Dakota Century Code Chapter 15-27.6--the provisions relating to school district consortia--and eliminated weighting factors at both the high school and elementary school levels. Senate Bill No. 2432 was defeated in the Senate.

House Bill No. 1512

House Bill No. 1512 was the product of a special committee that was commonly referred to as the House Blue Ribbon Committee. As introduced, the bill imputed in lieu of tax dollars with a discernible property value and then added varying percentages of the value to the total taxable valuation of a school district. The bill directed a gradual process by which weighting factors would come to reflect the five-year average cost of education per student. The bill set ever-increasing mill levies and provided that, beginning with the 1997-98 school year, the latest net assessed and equalized valuation of property in a school district would be multiplied by the number of mills equal to 30 percent of the state average school district general fund mill levy.

House Bill No. 1512, as introduced, would have also required that every school district be part of a high school district by July 1, 1996. Another provision would have required that school districts have a minimum of 150 students in full-time equivalent average daily membership.

The bill provided for special education reimbursements according to severe, moderate, and mild categories of disabilities and increased the per student transportation payments to $1.25 per day by the

beginning of the 1996-97 school year. Caps were placed on the amount of transportation reimbursement that a district could receive. The caps began with 100 percent for the first year and receded to 80 percent by the 1996-97 school year.

Distribution of the state tuition fund was altered so that by July 1, 1996, the fund would be distributed among the school districts of the state in the same proportion as the amount of foundation aid received by a district bears to the total amount of foundation aid distributed by the state.

With respect to school construction funding, House Bill No. 1512 would have required the Superintendent of Public Instruction to review and prioritize all construction projects to determine, in addition to existing requirements, the current and projected use patterns, the utility and condition of existing facilities, the appropriateness of a project's proposed scope, the existing and projected square footage per student, and the immediacy of construction needs.

Finally, the bill gradually reduced the size of school district interim funds so that by July 1, 1996, school district interim funds could not have exceeded 50 percent of the annual appropriation for all purposes other than debt retirement and appropriations financed from bond sources.

House Bill No. 1512 passed the House but was defeated in the Senate.

House Bill No. 1003

House Bill No. 1003, as introduced, was essentially an appropriation bill governing expenditures of the Department of Public Instruction. As it progressed through the legislative process, it became the vehicle for numerous offerings by the Senate Education Committee, and after consensus by the conference committee and final passage, it became the principal 1993 education funding enactment.

House Bill No. 1003 set the state support for education at $1,572 per student for the first year of the 1993-95 biennium and at $1,636 for the second year and raised the equalization factor from 21 mills to 23 and then 24 mills.

Weighting factors were set at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium, and at 50 percent of the difference for the second year of the biennium.

State transportation payments were capped at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium. Any savings resulting from imposition of the 90 percent cap during the second year of the biennium are to be used by the superintendent to increase the per student transportation payments available under North Dakota Century Code Section 15-40.1-16.

With respect to tuition payments, the bill reiterated the current statutory requirement that school districts that admit nonresident students charge tuition. However, the bill allowed an exception for school districts that admit nonresident students from other districts offering the same grade level services.

Finally, the bill directed the Legislative Council to conduct another study and appropriated $75,000 for purposes associated with the study, including necessary travel and professional consultant fees.

BISMARCK PUBLIC SCHOOL DISTRICT NO. 1 V. STATE OF NORTH DAKOTA

Appeal to the North Dakota Supreme Court - Response of the 1993-94 Interim Education Finance Committee

The 1993-94 interim Education Finance Committee began its efforts after the trial court decision was handed down, but before an appeal was taken to the North Dakota Supreme Court. The interim committee was aware that many of the issues addressed by the district court had been the subject of interim studies and legislative bills for many years. However, the committee also realized that the requisite number of Supreme Court justices might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court heard oral arguments in the case on August 11, 1993. When the decision was issued on January 24, 1994, only three of the justices had held that the state's education funding system was unconstitutional. According to Section 4 of Article VI of the Constitution of North Dakota, the consent of four justices was needed for such a determination.

A majority of the Supreme Court indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. The Supreme Court did not, however, mandate specific legislative action. The court indicated the areas of concern and then left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice VandeWalle stated:

> . . . [T]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

The Supreme Court decision was issued midway during the 1993-94 interim. By the time the Education Finance Committee had completed its work, it had considered 35 bill drafts and three resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; the establishment of an additional Governor's school; the appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; the placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; a reclassification of special education categories; the distribution of tuition apportionment according to the average daily membership; an increase in transportation payments from 28 cents to $1 per day for all students transported by schoolbuses; and an $80 million increase in the level of foundation aid over that appropriated for the 1993-95 biennium.

1995 LEGISLATIVE RESPONSES

Senate Bill No. 2059

Senate Bill No. 2059 dealt with the funding of transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses and it added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the 1993 Legislative Assembly, was left in place.

Senate Bill No. 2063

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that $10 million must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low incidence or severely disabled students, and for certain boarding care. The bill also provided that $400,000 must be used to reimburse school districts for gifted and talented programs approved by the Superintendent of Public Instruction and $500,000 must be used to reimburse school districts with above-average incidence of moderately or severely disabled students. Any amount remaining in the special education line item must be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was $36,850,000. Senate Bill No. 2063 also provided that during the 1995-96 school year, no district or special education unit may receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit may receive less than 90 percent of that amount.

Senate Bill No. 2519

Senate Bill No. 2519 provided an increase in the per student payment for small but necessary elementary and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 mills to 28 mills during the first year of the biennium, to 32 mills for the second year of the biennium, and provided that thereafter it would be tied to increases in the level of foundation aid. The equalization factor would not fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year.

High school districts whose taxable valuation per student and whose cost of education per student are both below the statewide average are entitled to receive a supplemental payment, based on a mathematical formula. The sum of $2,225,000 was appropriated for supplemental payments. The payments are, however, effective only through June 30, 1997. Section 6 of Senate Bill No. 2519 requires that an interim committee review the supplemental payment provision and submit appropriate legislation if the payments are to be continued.

Per student payments were set at $1,757 for the first year of the biennium and at $1,862 thereafter. The total amount appropriated for the foundation program, transportation, supplemental payments, tuition apportionment, and special education by the 1995 Legislative Assembly was $517,598,833.

1997 LEGISLATIVE RESPONSE

The 1997 Legislative Assembly incorporated the substantive provisions of its education finance package within Senate Bill No. 2338. That bill set the per student payments at $1,954 for the 1997-98 school year and at $2,032 for the 1998-99 school year. The equalization factor, which was raised to 32 mills by the 1995 Legislative Assembly and thereafter tied by a mathematical formula to future increases in the level of foundation aid, was left at 32. All references to formulated increases were removed. Weighting factors, which were set at 65 percent of the

difference between the statutory factor and the five-year average cost of education per categorical student, remain at 65 percent for the 1997-98 school year and will increase to 75 percent for the 1998-99 school year.

Supplemental payments to high school districts whose taxable valuation per student and average cost of education are below the statewide average were maintained by House Bill No. 1393, except that the mill range of eligible districts was raised from the 1995 level of 135 to 200 mills to the 1997 level of 150 to 210 mills. Payments to school districts for the provision of services to students with special needs were increased from the 1995-97 appropriation of $36,850,000 to the current appropriation $40,550,000. Ten million dollars of this amount is to be set aside for student contracts, $400,000 for the provision of services to gifted students, and the remainder is again to be distributed on a per student basis.

The total amount appropriated for the foundation program, transportation, supplemental payments, tuition apportionment, and special education by the 1997 Legislative Assembly was $559,279,403. That figure exceeds the 1995-97 appropriation by $41,680,570.

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factor is 1.01 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

6. For each elementary school having students under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor 1.01 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of special education students in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.01 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, the amount of money resulting from multiplying the factor .50 adjusted by ~~fifty~~ sixty-five percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period must receive a proportionately smaller per student payment. Beginning July 1, ~~1996~~ 1998, the factor is .50 adjusted by ~~sixty-five~~ seventy-five percent of the difference between .50 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools.

Every school district must receive at least as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.

SECTION 4. LEGISLATIVE COUNCIL STUDY OF EDUCATION FINANCE. The legislative council shall appoint a committee to study the financing of elementary and secondary schools and the availability of state support for school construction. The legislative council shall ensure that the committee contains a balanced representation. During the 1997-98 interim, the committee shall review the formulas used to equalize state aid including formulas for student transportation and special education, funding sources that would be alternatives to property tax, and any other issues related to the financing of elementary and secondary schools. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-sixth legislative assembly.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $50,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of developing data envelopment analysis for North Dakota school districts, integrating the data envelopment analysis into the schoolmaps system, and updating the profiles of North Dakota school districts, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997
Filed April 8, 1997