

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EDUCATION COMMITTEE

Tuesday, October 24, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Layton W. Freborg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Layton W. Freborg, Robert S. Erbele, Tim Flakoll, Gary A. Lee; Representatives Stacey Dahl, C. B. Haas, Gil Herbel, Bob Hunsakor, Dennis Johnson, RaeAnn G. Kelsch, Lisa Meier, Phillip Mueller, Mike Norland, John Wall

Members absent: Senators Michael A. Every, Tom Seymour, Harvey Tallackson; Representatives David Monson, Steven L. Zaiser

Others present: See Appendix A

It was moved by Senator Flakoll, seconded by Representative Kelsch, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

Chairman Freborg called on Mr. Mark Lemer, Business Manager, West Fargo Public School District, to present the October 2006 draft report of the North Dakota Commission on Education Improvement. Mr. Lemer distributed a copy of the report. The report is on file in the Legislative Council office.

Mr. Lemer also distributed a copy of his testimony, which is attached as Appendix B, and a document entitled *ND Governor's Commission on Education Improvement Draft Recommendation as of September 6, 2006*, which is attached as Appendix C.

Mr. Lemer said Lt. Governor Jack Dalrymple had hoped to present the report of the Governor's commission to the interim committee. However, he is involved with an international trade mission and was not available.

Mr. Lemer said the proposed formula combines funds previously distributed as foundation aid, teacher compensation, tuition apportionment, special education per student payments, and supplemental equity. He said in the proposal, weighting factors are used to account for programs that have added costs and to reflect differences in efficiencies between schools of varying sizes. He said increases in state funding per student are also limited.

Mr. Lemer said the proposed formula eliminates the mill deduct and the supplemental payment but creates a new equity payment. He said the proposed formula will increase the allocation of per student payments for special education and will guarantee the excess cost reimbursement on student contracts for the 1 percent of most costly special education students. He said over time there will be a reduction in the number of special education units. He said the proposed formula will also include increased state

support for school construction and for career and technical education.

Mr. Lemer said there will be at least \$60 million in new funding for elementary and secondary education. He said that funding will be distributed according to a student-based formula. He said 70 percent of new per student money will be set aside for increases in teacher compensation. He said there will be a minimum payment increase of 2 percent per new weighted student unit. He said the equity payment will be included in that calculation. He said a maximum payment of 7 percent will also be instituted. He said the equity payment is not included in the calculation of a maximum payment. He said the maximum level will increase by an additional 2 percent per year until all districts are on the formula.

Mr. Lemer said the payment factors are set forth on page 19 of the commission's draft report. He said per student payments will be reduced for districts that have a taxable valuation in excess of 150 percent of the state average and for districts that levy fewer than 170 mills.

Mr. Lemer said the mill deduct will be eliminated as the means of providing equalization. He said 90 percent of the school district superintendents who responded to a survey by the North Dakota Council of Educational Leaders indicated that the commission should recommend removal of the mill deduct. He said an equity payment system would bring districts that are below the state average up to 90 percent of the state average. He said an imputed taxable valuation includes 75 percent of mineral income and unrestricted tuition. He said the equity payment is limited to the amount of local tax that is raised and is reduced for districts that levy fewer than 185 mills. He said a safety net is put in place for districts that have a taxable valuation below 50 percent of the state average.

Mr. Lemer said special education will be given a categorical weighting factor of approximately .067 and special education payments will be increased by \$3 million. He said \$400,000 will still be set aside for gifted students. He said student contracts will see a threshold increase from 2.5 to 5 times the state average cost of education. He said all excess costs above that level will be paid by the state. He said there is currently a lower threshold. However, he said, school districts are required to apply coinsurance and copayments. He said the underfunding often leaves districts with approximately 16 cents on the

dollar of special education reimbursements. He said contingency funds and a deficiency appropriation will cover any costs above those projected by the Superintendent of Public Instruction. He said the support for special education contracts will be increased by \$1 million.

Mr. Lemer said regionalization will result in more access to services and, therefore, the commission will recommend a reduction in the number of special education units to 18 and realignment with educational associations governed by joint powers agreements.

Mr. Lemer said the commission would like to continue the requirement that approval be obtained from the Superintendent of Public Instruction prior to school construction efforts. He said to assist in the area of capital construction, it is proposed that an equity program be established. He said districts that are eligible for equity payments would be eligible for an interest rate buydown of 50 to 200 basis points and a 20-year repayment. He said districts involved in reorganization would also be eligible for assistance. He said there is a provision to distribute \$10 million to school districts for the purpose of addressing delayed maintenance issues.

Mr. Lemer said the commission had a goal of increasing access to career and technical education programs. Therefore, he said, the commission will recommend \$800,000 in additional funds for career and technical education programs and \$1.2 million for two new area career and technology centers.

Mr. Lemer said the commission will recommend that the state continue the development of educational associations governed by joint powers agreements through an appropriation increase of \$1 million. He said there will also be a recommendation that another \$1 million be set aside from contingency funds.

Mr. Lemer said the commission also had optional funding recommendations. He said any increase in tuition apportionment is not now considered part of the \$60 million. He said the commission thought this should be distributed as additional per student payments. He said an additional \$5 million should be used to increase student payments during the second year of the biennium. He said \$3 million should be used for at-risk kindergarten programs and \$4 million should be used for additional special education payments.

He said as the commission moves toward adequacy, the discussion will turn to issues of class size, teaching staff, early childhood education, career counseling, special education, and curricula. He said future requirements placed on schools need to account for any costs incurred by the schools. He said the commission believes that weighting factors should accurately reflect the true cost of educating students with varying educational needs. He said the categories need to accurately reflect the types of students that are being educated. He said there needs to be a spending level that allows every child to

have access to programs necessary to meet state standards for achievement.

In response to a question from Representative Delmore, Mr. Lemer said risk factors are not funded out of the \$60 million in the 2007-09 biennium.

In response to a question from Representative Herbel, Mr. Lemer said the money for deferred maintenance would be distributed only if there is a certain amount available at the end of a fiscal year. Senator Flakoll said each school district would have access to \$20,000 and the remainder would be paid out on a per student basis.

In response to a question from Senator Lee, Mr. Lemer said 75 percent created the best balance in determining imputed values. He said over time the Legislative Assembly can determine whether that figure should be increased or decreased.

In response to a question from Representative Mueller, Mr. Lemer said if a school district enjoys a relatively low property tax rate because it has high valuation behind each student, that amounts to an inherent unfairness in the system. He said there are a number of similarly sized districts with very different tax rates in part because of the amount of money that can be generated from the property in those districts.

In response to a question from Representative Haas, Mr. Lemer said the commission understood that it had two charges--equity and adequacy. He said the commission has focused largely on equity up to this point. He said the adequacy focus will come next. He said over time the categorical weights will be one of the significant components of an adequacy formula. He said the categorical weights need to be developed based on cost modeling, so we know the true cost of educating a student in any category. He said the Augenblick and Palaich study was in fact an effort to try to assign costs for the provision of basic education, special education, and other categorical areas. He said accurately determining what those weights should be requires education policy decisions. He said there needs to be a comprehensive study and it needs to look not at historical costs but at what it takes to get the job done for every student. He said if we determine what we want students to know at the time of high school graduation, we need to start at kindergarten to move the students toward that end.

Senator Flakoll said the at-risk population is recognized by means of a placeholder weighting factor. He said early childhood education, summer school, and a variety of other factors all interface in determining factors for at-risk student populations.

In response to a question from Senator Freborg, Mr. Lemer said changes in teacher compensation and tuition apportionment will cause some districts to take a hit. He said the fact that we are changing distribution methods was the reason for including a hold harmless provision. He said any one of the changes has the possibility of impacting a district. He said the commission did not want a district to go backward on a per student basis. He said there will

be a great deal of discussion regarding how adequacy affects the money going to a district.

In response to a question from Representative Haas, Mr. Lemer said many of these initial decisions will become policy discussions for future years.

Representative Haas said if the new distribution formula is valid, at some point everybody has to be on the formula. Otherwise, he said, we are just tinkering with the variables to keep schools open.

Mr. Lemer said until we start looking ahead to see what the payment levels will look like, we will not be able to determine how many districts will remain on hold harmless payments. He said whether the number is acceptable or not is up to legislators to decide.

Chairman Freborg called on Mr. Jerry Coleman, Assistant Director of School Finance, Department of Public Instruction, to present testimony regarding the financial condition of schools. Mr. Coleman distributed a document entitled *Public School Districts Summary of Facts*. The document is attached as Appendix D. He said the publication is on the Department of Public Instruction web site. He said the document includes, on a district-by-district basis, student enrollment, general fund levy, total mill levy, total expenditures, and ending fund balances.

In response to a question from Representative Delmore, Mr. Coleman said there have not been dramatic shifts in ending fund balances over time. He said those balances have stayed around 20-21 percent statewide. He said ending fund balances do, however, vary dramatically among school districts.

Chairman Freborg called on Mr. Girish Budhwar, Management Information Systems, Department of Public Instruction, to present testimony regarding teacher compensation increases. Mr. Budhwar distributed a document entitled *North Dakota 2005-06 Teacher/Administrator Compensation Summary*. The document is attached as Appendix E. He said the average teacher compensation for the 2005-06 school year was \$51,693.

Chairman Freborg called on Mr. Tom Decker, Director, School Finance and Organization, Department of Public Instruction, to present testimony regarding districts that failed to use 70 percent of their new funding for teacher salary increases. Mr. Decker said no districts informed the Superintendent of Public Instruction that they would not meet this requirement.

In response to a question from Senator Flakoll, Mr. Decker said there is an honor system regarding school reporting. He said the North Dakota Education Association would certainly have brought any failing to the Superintendent's attention.

Chairman Freborg called on committee counsel to present a bill draft [\[70056.0100\]](#) that provided an appropriation for high fuel costs incurred by school districts. She said the bill draft has an appropriation of \$1,706,192. She said the amount that a district is eligible to receive is tied to the amount of state transportation aid payments that the district received

during 2005-06 and to the size of its ending fund balance.

In response to a question from Senator Flakoll, Representative Mueller said school districts that do not provide transportation have not experienced increased motor vehicle fuel costs.

Senator Flakoll said heating fuel has been an issue as well.

Representative Mueller said because of the variations in efficiencies and in the different types of heating fuel, he thought it would be tough to assist school districts with their heating costs. He said he did not know how to build in the cost of a new boiler versus an old boiler.

Representative Kelsch said she wonders if some of the school districts, because of the high fuel costs, imposed greater efficiencies on themselves or if they just continued to operate as usual.

Representative Mueller said there were some changes made by school districts. He said school district representatives spoke anecdotally about reducing the number of buses that are taken to extracurricular activities and they also spoke about consolidating routes.

Senator Flakoll said school districts have been block-granted for a couple of legislative sessions and so their payments would have been pretty steady.

Mr. Mueller said some districts run their own systems, whereas others contract for services. He said he believes that most contracts would have had an escalator clause governing increased fuel costs.

In response to a question from Representative Kelsch, Mr. Decker said school districts did not come to the Superintendent of Public Instruction and complain about their financial circumstances as a result of high fuel costs.

Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, said most school district superintendents said they had not planned for the increase in fuel costs. He distributed a document entitled *NDCEL 2005-06 Fuel Cost Survey*. The document is attached as Appendix F.

It was moved by Representative Mueller, seconded by Representative Hunsakor, and failed on a roll call vote that the bill draft providing an appropriation for high fuel costs incurred by school districts be approved and recommended to the Legislative Council. Representatives Hunsakor, Mueller, and Wall voted "aye." Senators Freborg, Erbele, Flakoll, and Lee and Representatives Dahl, Haas, Herbel, Johnson, Kelsch, and Meier voted "nay."

Chairman Freborg called on committee counsel to present a bill draft [\[70043.0700\]](#) that related to educational associations governed by joint powers agreements and required a uniform system for accounting and budgeting, allowed for various entities to perform the functions of a school district business manager, required designees of educational association board members to likewise be elected board members, required an accountability report to a

2007-08 interim committee, and directed that any state aid payable to a school district as a result of its participation in an educational association be sent directly to the association of which the district is a member.

Representative Kelsch said in her opinion the wording of Section 5 does not clearly reflect its intent.

It was moved by Senator Flakoll, seconded by Representative Kelsch, and carried on a roll call vote that the bill draft be amended by removing Section 5. Senators Erbele, Flakoll, and Lee and Representatives Haas, Herbel, Hunskor, Kelsch, Meier, and Wall voted "aye." Senator Freborg and Representatives Dahl, Johnson, and Mueller voted "nay."

It was moved by Representative Haas, seconded by Representative Herbel, and carried on a roll call vote that the bill draft, as amended, be approved and recommended to the Legislative Council. Senators Freborg, Erbele, Flakoll, and Lee and Representatives Dahl, Haas, Herbel, Hunskor, Johnson, Kelsch, Meier, Mueller, and Wall voted "aye." No negative votes were cast.

With the permission of Chairman Freborg, Mr. Mike Kraft, President, Apple Creek School Board, presented testimony regarding elementary school districts that pay tuition to a high school district. His testimony is attached as Appendix G. He said the

proposal by the North Dakota Commission on Education Improvement fails to give credit to elementary school districts for raising the taxes needed to pay tuition in support of their high school students. He said the Apple Creek School District pays \$300,000 to the Bismarck Public School District to educate high school students.

It was moved by Representative Haas, seconded by Representative Kelsch, and carried on a roll call vote that the chairman and staff of the Legislative Council be requested to prepare a report and the bill draft recommended by the committee and present the report and recommend bill draft to the Legislative Council. Senators Freborg, Erbele, Flakoll, and Lee and Representatives Dahl, Haas, Herbel, Hunskor, Johnson, Kelsch, Meier, Mueller, and Wall voted "aye." No negative votes were cast.

It was moved by Representative Kelsch, seconded by Senator Lee, and carried on a voice vote that the meeting be adjourned sine die.

L. Anita Thomas
Committee Counsel

[ATTACH:7](#)