Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1400

Introduced by

Representatives R. Kelsch, Mueller, Wall

Senators Flakoll, Holmberg, Taylor

A BILL for an Act to create and enact two new sections to chapter 15-20.1, two new sections to chapter 15.1-06, a new section to chapter 15.1-07, chapter 15.1-18.2, four new sections to chapter 15.1-21, sections 15.1-21-02.2, 15.1-21-02.3, 15.1-21-02.4, and 15.1-21-02.5, two new sections to chapter 15.1-27, and four new sections to chapter 15.1-37 of the North Dakota Century Code, relating to school personnel, program and course requirements, assessments, career development facilitation, state aid payments, and early childhood education; to amend and reenact sections 15.1-06-04, 15.1-09.1-10, 15.1-21-02, 15.1-21-02.1, 15.1-27-03.1, 15.1-27-04, 15.1-27-07.1, 15.1-27-07.2, 15.1-27-11, 15.1-27-19, 15.1-27-35, 15.1-27-41, 15.1-32-18, and 15.1-37-01 of the North Dakota Century Code and section 55 of chapter 163 of the 2007 Session Laws, relating to school calendars, course requirements, state aid payments, special education, and early childhood education; to provide for teacher compensation increases; to provide for the distribution of transportation grants, reorganization planning grants, regional education association grants, baseline recalculation grants, deferred maintenance grants, and contingency payments; to provide for a contingent transfer; to provide for reports to the legislative council; to repeal sections 15.1-21-02.2, 15.1-27-20.1, and 15.1-38-01.2 of the North Dakota Century Code, relating to high school graduation requirements, the minimum mill levy offset, and new immigrant English language learners; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

Career development facilitation - Certificate - Qualifications.

1. The department shall develop a program leading to a certificate in career development facilitation. The department shall award the certificate to any individual who:

a. Holds a baccalaureate degree from an accredited institution of higher education;

b. Has at least a five-year employment history; and

c. Successfully completes the department's programmatic requirements.

2. An individual holding a certificate awarded under this section is a career advisor.

SECTION 2. A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

Career development facilitation - Provisional approval.

1. The department may provisionally approve an individual to serve as a career advisor if the individual:

a. Holds a baccalaureate degree from an accredited institution of higher education;

b. Has at least a five-year employment history; and

c. Provides the department with a plan for completing the department's programmatic requirements within a two-year period.

2. Provisional approval under subsection 1 is valid for a period of two years and may not be extended by the department.

SECTION 3. AMENDMENT. Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-04. School calendar - Length.

1. a. During ~~each~~ the 2009-10 school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:

~~a.~~ (1) One hundred seventy-three full days of instruction;

~~b.~~ (2) Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;

~~c.~~ (3) Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours; and

~~d.~~ (4) Two days for professional development activities.

b. Beginning with the 2010-11 school year, a school district shall provide for a school calendar of at least one hundred eighty-one days, apportioned as follows:

(1) One hundred seventy-four full days of instruction;

(2) Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;

(3) Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours; and

(4) Two days for professional development activities.

2. a. In meeting the requirements for two days of professional development activities under subsection 1, a school district may require that its teachers attend the North Dakota education association instructional conference and may pay teachers for attending the conference, provided attendance is verified.

b. In meeting the requirements for two days of professional development activities under subsection 1, a school district may consider attendance at the North Dakota education association instructional conference to be optional, elect not to pay teachers for attending the instructional conference, and instead direct any resulting savings toward providing alternate professional development opportunities.

c. For purposes of this section, a "day for professional development activities" means:

(1) Six hours of professional development activities, exclusive of meals and other breaks, conducted within a single day; or

(2) Two four-hour periods of professional development activities, exclusive of meals and other breaks, conducted over two days.

3. If a school district offers a four-hour period of professional development activities, as permitted in subdivision c of subsection 2, the school district may schedule instruction during other available hours on that same day and be credited with

providing one-half day of instruction to students. The provisions of this subsection do not apply unless the one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.

4. A school district may not require the attendance of teachers in school or at any school-sponsored, school-directed, school-sanctioned, or school-related activities and may not schedule classroom instruction time nor alternate professional development activities on any day that conflicts with the North Dakota education association instructional conference.

5. a. ~~During the 2007-08 school year, a full day of instruction consists of:~~

~~(1) At least five and one-half hours for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and~~

~~(2) At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.~~

~~b.~~ ~~Beginning with the 2008-09 school year, a~~ A full day of instruction consists of:

(1) At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and

(2) At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.

b. Beginning with the 2010-11 school year, up to four of the days of full instruction required by subsection 1 may be configured as follows:

(1) At least four hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction and at least one and one-half hours during which students are not required to be in attendance but teachers are required to participate with other teachers in collaborative or cooperative activities pertaining to curriculum, classroom practices, and the interpretation and use of formative testing data; and

(2) At least four and one-half hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction and at least one and one-half hours during which students are not required to be in attendance but teachers are required to participate with other teachers in collaborative or cooperative activities pertaining to curriculum, classroom practices, and the interpretation and use of formative testing data.

6. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
7. A school that does not qualify under ~~the provisions of~~ subsection 6 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.
8. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.

SECTION 4. A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

Counselor positions - Requirement.

1. Each school district must have available one full-time equivalent counselor for every three hundred students in grades seven through twelve.
2. Up to one-third of the full-time equivalency requirement established in subsection 1 may be met by career advisors.
3. For purposes of this section, a "career advisor" means an individual who holds a certificate in career development facilitation issued by the department of career and technical education under section 1 of this Act or an individual who is

provisionally approved by the department of career and technical education under section 2 of this Act to serve as a career advisor.

SECTION 5. A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

Career advisor - Duties. A career advisor shall meet with students in grades seven through twelve, discuss the student's academic assessments and career interest surveys, and pursue with the student career development and work-planning activities. A career advisor shall use computer-assisted career guidance systems and work at the direction and under the supervision of the school district counseling staff.

SECTION 6. A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

Student performance strategist - Verification - Qualifications. Beginning with the 2010-11 school year, each school district must have available one full-time equivalent student performance strategist for every four hundred students in average daily membership in kindergarten through grade three. Each school district shall submit documentation to the superintendent of public instruction, at the time and in the manner directed by the superintendent, verifying the amount of time that each student performance strategist expended in tutoring students on a one-to-one basis or in groups ranging from two to five, or in providing instructional coaching to teachers. For purposes of this section, a "student performance strategist" must meet the qualifications of an elementary school teacher as set forth in section 15.1-18-07 and serve as a tutor or an instructional coach.

SECTION 7. AMENDMENT. Section 15.1-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09.1-10. State aid - Payable to a regional education association - Obligation of district.

1. The superintendent of public instruction shall forward the portion of a school district's state aid ~~that~~ which is payable by the superintendent under subdivision q of subsection 1 of section 15.1-27-03.1 as a result of the district's participation in a regional education association directly to the association in which the district participates. The superintendent shall forward the amount payable under this

subsection at the same time and in the same manner as provided for other state aid payments under section 15.1-27-01.

2. If the superintendent of public instruction determines that a school district failed to meet any contractual or statutory obligation imposed upon it as a result of the district's participation in a regional education association, the superintendent shall subtract the amount for which the district was not eligible from any future distribution of state aid to the district under section 15.1-27-01.

SECTION 8. Chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

15.1-18.2-01. Professional development plan - Adoption - Review by school district.

1. Each school district shall adopt a professional development plan. The plan must include a description of the professional development activities that the district offers or makes available, the district's requirements for participation by teachers, and the manner in which participation is documented.
2. Each school district shall review and if necessary modify its plan at least once every five years.
3. Each school district shall file a copy of its most recent professional development plan with the superintendent of public instruction.

15.1-18.2-02. Professional development plan - Review by superintendent of public instruction. The superintendent of public instruction shall review each school district's professional development plan to ensure that the plan meets the requirements of section 15.1-18.2-01, is designed to improve the quality of teaching and learning in the district, and is implemented in an efficient and effective manner.

15.1-18.2-03. Professional development advisory committee - Duties - Staff support.

1. The superintendent of public instruction shall appoint a professional development advisory committee to:
   a. Examine the delivery of professional development in this state;
   b. Review professional development needs from the perspective of teachers, school administrators, school board members, and parents;

c. Review the professional development plans filed by school districts and propose changes to improve the opportunities for professional development; and

d. Advise the superintendent regarding regulatory and statutory measures that could be pursued to improve the quality and availability of professional development opportunities.

2. The superintendent shall provide staff support to the professional development advisory committee.

SECTION 9. AMENDMENT. Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-02. High schools - Required units.

1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
   a. Four units of English language arts;
   b. Four units of mathematics;
   c. Four units of science;
   d. Four units of social studies, including one of world history and one of United States history;
   e. One-half unit of health;
   f. One-half unit of physical education during each school year, provided that once every four years the unit must be a concept-based fitness class that includes instruction in the assessment, improvement, and maintenance of personal fitness;
   g. Two units of fine arts, at least one of which must be music;
   h. ~~Two~~ Three units of foreign or native American languages, at least two of which must be of the same foreign or native American language; and
   i. Two units of career and technical education.
2. In addition to the requirements of subsection 1, each public and nonpublic high school shall make available to each student, at least once every two years, one-half unit of North Dakota studies, with an emphasis on the geography, history, and agriculture of this state.

3. Each unit which must be made available under this section must meet or exceed the state content standards.
4. For purposes of this section, unless the context otherwise requires, "make available" means that:
   a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least those required by this section;
   b. If a student selects a unit from the list required by this section, the public high school or the nonpublic high school shall provide the unit to the student; and
   c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.
5. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
6. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
   a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
   b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
7. The requirements of this section do not apply to alternative high schools or alternative high school education programs.
8. The requirements of subdivisions g and h of subsection 1 do not apply to the North Dakota youth correctional center.

SECTION 10. AMENDMENT. Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-02.1. High school graduation - Diploma requirements. ~~Before~~ Except as provided in section 15.1-21-02.5, before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed ~~at least twenty-one~~ the following twenty-two units of high school coursework ~~from the minimum required curriculum offerings established by section 15.1-21-02. Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four~~:

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
   a. One unit of physical science;
   b. One unit of biology; and
   c. (1) One unit of any other science; or
      (2) Two one-half units of any other science;
4. Three units of social studies, including:
   a. One unit of United States history;
   b. (1) One-half unit of United States government and one-half unit of economics; or
      (2) One unit of problems of democracy; and
   c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
5. a. One unit of physical education; or
   b. One-half unit of physical education and one-half unit of health;
6. Three units of:
   a. Foreign languages;
   b. Native American languages;
   c. Fine arts; or
   d. Career and technical education courses; and

7. Any five additional units.

SECTION 11. Section 15.1-21-02.2 of the North Dakota Century Code is created and enacted as follows:

15.1-21-02.2. Merit scholarship - Technical honors. A student is eligible to receive a merit scholarship with technical honors provided the student completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:

1. a. Completes one unit of algebra II in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1;
   b. Completes two units of a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction; and
   c. Completes three additional units, two of which must be in the area of career and technical education;
2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;
3. Obtains a cumulative grade point of at least "B"; and
4. Receives a composite score of at least twenty-four on an ACT, a score of at least one thousand one hundred on the critical reading and mathematics portions of the SAT, or a score of at least twenty on the WorkKeys.

SECTION 12. Section 15.1-21-02.3 of the North Dakota Century Code is created and enacted as follows:

15.1-21-02.3. Merit scholarship - Academic honors. A student is eligible to receive a merit scholarship with academic honors provided the student completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:

1. a. Completes one unit of algebra II in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1;
   b. Completes one additional unit of mathematics for which algebra II is a prerequisite; and
   c. Completes:

(1) Two units of the same foreign or native American language;

(2) One unit of fine arts or career and technical education; and

(3) One unit of a foreign or native American language, fine arts, or career and technical education;

2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;

3. Obtains a cumulative grade point of at least "B";

4. Receives a composite score of at least twenty-four on an ACT or a score of at least one thousand one hundred on the critical reading and mathematics portions of the SAT; and

5. Completes one unit of an advanced placement course and examination or a dual-credit course.

SECTION 13. Section 15.1-21-02.4 of the North Dakota Century Code is created and enacted as follows:

15.1-21-02.4. Merit scholarship - Amount - Applicability.

1. The state board of higher education shall provide to any eligible student a merit scholarship in the amount of seven hundred fifty dollars for each semester during which the student is enrolled full time at an accredited institution of higher education in this state.

2. A student is not entitled to receive more than six thousand dollars under this section.

3. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.

4. This section does not require a student to be enrolled in consecutive semesters. However, a scholarship under this section is valid only for six academic years after the student's graduation from high school and may not be applied to graduate programs.

5. A scholarship under this section is available to any eligible student who graduates from a high school in this state or from a high school in a bordering state under chapter 15.1-29.

SECTION 14. Section 15.1-21-02.5 of the North Dakota Century Code is created and enacted as follows:

15.1-21-02.5. Optional high school curriculum - Requirements. If after completing at least two years of high school a student has failed to pass at least one-half unit from three subsections in section 15.1-21-02.1 or has a grade point average at or below the twenty-fifth percentile of other students in the district who are enrolled in the same grade, the student may request that the student's career advisor, guidance counselor, or principal meet with the student and the student's parent to determine if the student should be permitted to pursue an optional high school curriculum, in place of the requirements set forth in section 15.1-21-02.1. If a student's parent consents in writing to the student pursuing the optional high school curriculum, the student is eligible to receive a high school diploma upon completing the following requirements:

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Two units of mathematics;
3. Two units of science;
4. Three units of social studies, which may include up to one-half unit of North Dakota studies and one-half unit of multicultural studies;
5. a. One unit of physical education; or
   b. One-half unit of physical education and one-half unit of health;
6. Two units of:
   a. Foreign languages;
   b. Native American languages;
   c. Fine arts; or
   d. Career and technical education courses; and
7. Any seven additional units.

SECTION 15. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Summer school courses and programs - Eligibility for payment. The summer school courses and programs for which a school district may receive payment as provided in section 15.1-27-10 are:

1. a. Remedial mathematics provided to students enrolled in any grade from kindergarten through eight;
   b. Remedial reading provided to students enrolled in any grade from kindergarten through eight;
   c. Mathematics provided to students enrolled in any grade from five through nine;
   d. Reading provided to students enrolled in any grade from five through nine;
   e. Science provided to students enrolled in any grade from five through nine; and
   f. Social studies provided to students enrolled in any grade from five through nine; and
2. Any other high school summer courses that satisfy requirements for graduation, comprise at least as many clock-hours as courses offered during the regular school term, and comply with rules adopted by the superintendent of public instruction.

SECTION 16. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Interim assessment. Each school district shall administer annually to students in grades two through ten the measures of academic progress test or any other interim assessment approved by the superintendent of public instruction.

SECTION 17. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Career interest inventory. A school district shall administer to students, at least once during their enrollment in grades seven through ten, a career interest inventory recommended by the department of career and technical education and approved by the superintendent of public instruction.

SECTION 18. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Summative assessment - Selection - Cost - Exemptions.

1. Except as otherwise provided, each student in grade eleven shall take the ACT, the SAT, or WorkKeys. The student shall determine which assessment to take.

The student's school district is responsible for the cost of one assessment and its administration per student.

2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.

3. A school district superintendent may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if the superintendent determines that other special circumstances exist.

SECTION 19. AMENDMENT. Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-03.1. Weighted average daily membership - Determination.

1. For each school district, the superintendent of public instruction shall multiply by:
   a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
   b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
   c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
   d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
   e. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
   f. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;
   g. 0.25 the number of full-time equivalent students enrolled in an isolated high school;
   h. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
   i. 0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are

determined to be least proficient and are enrolled in a program of instruction for English language learners;

j. 0.20 the number of students enrolled, beginning with the 2010-11 school year, in an early childhood education program that is approved under section 15.1-37-01, that meets the requirements of section 32 of this Act, and which provides at least two half days of instruction during each week of the school calendar;

k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;

~~j. 0.14 the number of full-time equivalent students enrolled in a new immigrant English language learner program;~~

~~k.~~ l. ~~0.067~~ 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services; ~~and~~

m. 0.05 the number of students representing that percentage of the total number of students in average daily membership, which is equivalent to the three-year average percentage of students in grades three through eight who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.];

n. 0.05 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;

~~l.~~ o. 0.02 the number of full-time equivalent students~~, other than those provided for in subdivision j,~~ who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in ~~an~~ a program of instruction for English language ~~learner program~~ learners; and

p. 0.004 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1.

2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

SECTION 20. AMENDMENT. Section 15.1-27-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-04. Per student payment rate.

1. a. The per student payment rate to which each school district is entitled for the first year of the biennium is three thousand ~~two~~ four hundred ~~fifty~~ twenty dollars.

   b. The per student payment rate to which each school district is entitled for the second year of the biennium is three thousand ~~three~~ seven hundred ~~twenty-five~~ seventy-nine dollars.

2. In order to determine the state aid payment to which each district is entitled, the superintendent of public instruction shall multiply each district's weighted student units by the per student payment rate set forth in subsection 1.

SECTION 21. AMENDMENT. Section 15.1-27-07.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-07.1. ~~Kindergarten~~ Early childhood education program payments - Determination. Notwithstanding ~~the provisions of~~ section 15.1-27-35, the superintendent of public instruction shall determine the payments to which a school district is entitled for providing ~~full-time kindergarten~~ an early childhood education program during the ~~2008-09~~ 2010-11 school year by using the district's ~~2008 kindergarten~~ 2010 early childhood education program fall enrollment count.

SECTION 22. AMENDMENT. Section 15.1-27-07.2 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-07.2. Baseline funding - Determination - Minimum and maximum allowable increases.

1. The superintendent of public instruction shall determine each school district's baseline funding per weighted student unit by:

   a. Adding together all state aid received by the district during the 2006-07 school year;

b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess cost reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in educational associations governed by joint powers agreements; and

c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.

2. a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for the ~~2007-08~~ 2009-10 school year, is at least equal to one hundred ~~three and one-half~~ eight percent of the baseline funding per weighted student unit, as established in subsection 1.

b. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for each school year after the ~~2007-08~~ 2009-10 school year, is at least equal to one hundred ~~six~~ twelve and one-half percent of the baseline funding per weighted student unit, as established in subsection 1.

3. a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for the ~~2007-08~~ 2009-10 school year, one hundred ~~seven~~ twenty percent of the baseline funding per weighted student unit, as established in subsection 1.

b. ~~Beginning with the 2008-09 school year, the maximum percentage of allowable growth in the baseline funding per weighted student unit provided in subdivision a must be annually increased by three percentage points, plus the district's share of any increased state aid for that year. Payments received by districts for the provision of full-day kindergarten do not constitute increases in state aid for purposes of this subdivision.~~ The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments

under section 15.1-27-11 per weighted student unit, does not exceed, for each school year after the 2009-10 school year, one hundred thirty-four percent of the baseline funding per weighted student unit, as established in subsection 1.

SECTION 23. AMENDMENT. Section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-11. Equity payments.

1. The superintendent of public instruction shall:
   a. Divide the imputed taxable valuation of the state by the total average daily membership of all school districts in the state in order to determine the state average imputed taxable valuation per student.
   b. Divide the imputed taxable valuation of each school district by the district's total average daily membership in order to determine each district's average imputed taxable valuation per student.
2. ~~a. If a school district's imputed taxable valuation per student is less than eighty-eight and one-half percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:~~
   ~~(1) Determining the difference between eighty-eight and one-half percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and~~
   ~~(2) Multiplying that difference by the district's total average daily membership.~~
   ~~b. Beginning July 1, 2008, if~~ If a school district's imputed taxable valuation per student is less than ninety percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:
   ~~(1)~~ a. Determining the difference between ninety percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and

~~(2)~~ b. Multiplying that difference by the district's total average daily membership.

3. Except as provided in subsection 4, the equity payment to which a district is entitled under this section equals the district's valuation deficiency multiplied by the lesser of:
   a. The district's general fund ~~mill~~ levy for the taxable year 2008; or
   b. One hundred eighty-five mills.
4. a. The equity payment to which a district is entitled may not exceed the district's taxable valuation multiplied by its general fund ~~mill~~ levy for the taxable year 2008.
   b. If a district's general fund levy for the taxable year 2008 is less than one hundred eighty-five mills, the superintendent of public instruction shall subtract the district's general fund ~~mill~~ levy for the taxable year 2008 from one hundred eighty-five mills, multiply the result by the district's taxable valuation, and subtract that result from the equity payment to which the district is otherwise entitled.
   c. If a district's imputed taxable valuation per student is less than fifty percent of the statewide imputed taxable valuation per student, the payment to which the district is entitled under this section may not be less than twenty percent of the statewide imputed taxable valuation per student times the school district's average daily membership, multiplied by one hundred eighty-five mills.
5. In determining the amount to which a school district is entitled under this section, the superintendent of public instruction may not include any payments received by the district as a result of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] and may not include in the district's average daily membership students who are dependents of members of the armed forces and students who are dependents of civilian employees of the department of defense.
6. For purposes of this section:
   a. "General fund levy" includes a district's high school transportation levy and its high school tuition levy.

b. "Imputed taxable valuation" means the valuation of all taxable real property in the district plus an amount determined by dividing ~~sixty percent of the district's mineral and tuition revenue by the district's general fund mill levy. Beginning July 1, 2008, "imputed taxable valuation" means the valuation of all taxable real property in the district plus an amount determined by dividing~~ seventy percent of the district's mineral and tuition revenue by the district's general fund mill levy.

c. "Mineral revenue" includes all revenue from county sources reported under code 2000 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08.

d. "Tuition revenue" includes all revenue reported under code 1300 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08. "Tuition revenue" does not include tuition income received specifically for the operation of an educational program provided at a residential treatment facility.

SECTION 24. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Reorganized district - Continuation of equity payment. If a school district that received an equity payment under section 15.1-27-11 becomes part of a reorganized district after June 30, 2010, the newly reorganized district is entitled to receive, for a period of two years, an amount equal to the greater of:

1. The equity payment received by each of the school districts during the school year immediately preceding the reorganization; or
2. The equity payment to which the newly reorganized school district is entitled under section 15.1-27-11.

SECTION 25. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Dissolved district - Continuation of equity payment. If a school district that received an equity payment under section 15.1-27-11 dissolves after June 30, 2010, any school district

that receives a portion of the dissolved district's land is entitled to receive, for a period of two years, an amount equal to the greater of:

1. That percentage of the dissolved school district's equity payment from the school year immediately preceding the dissolution which is the same as that percentage of the dissolved district's land which was attached to the receiving district; or
2. The equity payment to which the receiving school district is entitled under section 15.1-27-11.

SECTION 26. AMENDMENT. Section 15.1-27-19 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-19. Summer school courses and programs - Payments to school districts.

1. Before a weight may be assigned under section 15.1-27-03.1 for a student enrolled in a high school summer course, the superintendent of public instruction shall verify that the course ~~satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction~~ meets the requirements of section 15 of this Act.
2. Before a weight may be assigned under section 15.1-27-03.1 for a student enrolled in an elementary summer program, the superintendent of public instruction shall verify that the program meets the requirements of section 15 of this Act and complies with rules adopted by the superintendent of public instruction.

SECTION 27. AMENDMENT. Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-35. Average daily membership - Calculation.

1. a. ~~Average~~ During the 2009-10 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
   ~~a.~~ (1) The school district's calendar; or
   ~~b.~~ (2) One hundred eighty.

b. Beginning with the 2010-11 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:

(1) The school district's calendar; or

(2) One hundred eighty-one.

2. For purposes of calculating average daily membership, all students are deemed to be in attendance on:

a. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;

b. The two days set aside for professional development activities under section 15.1-06-04; and

c. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.

3. For purposes of calculating average daily membership:

a. A student enrolled full time in any grade from one through twelve may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

b. ~~During the 2007-08 school year, a student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 0.50. Beginning with the 2008-09 school year, a~~ A student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

c. A student enrolled full time, as defined by the superintendent of public instruction, in an approved early childhood special education program may not

exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

SECTION 28. AMENDMENT. Section 15.1-27-41 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-41. North Dakota commission on education improvement - Membership - Duties - Report to legislative council - Reimbursement for expenses.

1. The North Dakota commission on education improvement consists of:
   a. (1) The governor or an individual designated by the governor, who shall serve as the chairman;
      (2) One individual, appointed by the governor, who is employed as the superintendent of a high school district having more than one thousand students in average daily membership;
      (3) One individual, appointed by the governor, who is employed as the superintendent of a high school district having more than two hundred twenty but fewer than one thousand students in average daily membership;
      (4) One individual, appointed by the governor, who is employed as the superintendent of a high school district having fewer than two hundred twenty students in average daily membership;
      (5) One individual, appointed by the governor, who is employed as a school district business manager;
      (6) The chairman of the senate education committee or the chairman's designee;
      (7) The chairman of the house education committee or the chairman's designee;
      (8) The senate minority leader or the leader's designee;
      (9) One legislator appointed by the chairman of the legislative council; and
      (10) The superintendent of public instruction or an assistant superintendent designated by the superintendent of public instruction; and
   b. <u>The following nonvoting members:</u>

(1) One ~~nonvoting member~~ individual representing the North Dakota council of educational leaders~~, one nonvoting member~~;

(2) One individual representing the North Dakota education association~~, and one nonvoting member~~;

(3) One individual representing the North Dakota school boards association;

(4) One individual who is the owner or manager of a business located in this state, appointed by the governor from a list of three names forwarded by the North Dakota chamber of commerce; and

(5) The commissioner of higher education or the commissioner's designee.

2. The commission shall establish its own duties and rules of operation and procedure, including rules relating to appointments, terms of office, vacancies, quorums, and meetings, provided that the duties and the rules do not conflict with any provisions of this section.

3. ~~The members of the commission are entitled to reimbursement for actual and necessary expenses incurred in the same manner as state officials.~~ Each member of the commission, except the governor, the superintendent of public instruction, and the commissioner of higher education, or their respective designees, is entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission. The superintendent of public instruction shall use up to forty thousand dollars from moneys appropriated in the grants - state school aid line item in ~~section 3 of Senate Bill No. 2013~~ the appropriation bill for the superintendent of public instruction, as approved by the ~~sixtieth~~ legislative assembly, to provide the compensation and reimbursements.

4. The commission shall ~~examine~~:

a. Examine the current system of delivering and financing public elementary and secondary education and shall develop recommendations addressing educational adequacy, the equitable distribution of state education funds, the allocation of funding responsibility between federal, state, and local sources,

and any other matters that could result in the improvement of elementary and secondary education in the state;

b. Examine the state's high school graduation requirements, curricular standards, and assessments to ensure that students have the academic skills necessary to move seamlessly and without remediation from high schools to institutions of higher education or to meet the performance levels expected by employers;

c. Examine the measures enacted by the most recent legislative assembly to improve student performance, confirm their full implementation, and recommend future measures for continued improvement; and

d. Examine the measures enacted by the most recent legislative assembly to improve the quality of instruction, confirm their full implementation, and recommend future measures for continued improvement.

5. The commission shall provide periodic reports to the governor and to the legislative council.

SECTION 29. AMENDMENT. Section 15.1-32-18 of the North Dakota Century Code is amended and reenacted as follows:

15.1-32-18. Cost - Liability of school district for special education.

1. Each year the superintendent of public instruction shall identify the approximately one percent of special education students statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement beyond the multiplier that is established in subsection 3.
2. The excess costs of providing special education and related services to these students are the responsibility of the state and the superintendent of public instruction shall reimburse the school districts for any excess costs incurred in the provision of special education and related services to the identified students.

3. "Excess costs" are those that exceed four ~~and one-half~~ times the state average cost of education per student and which are incurred by the special education students identified in subsection 1.

4. All costs of providing special education and related services to those students identified in subsection 1, other than excess costs reimbursed by the state, are the responsibility of the student's school district of residence.

5. In addition to any other reimbursements provided under this section, if a school district expends more than two percent of its annual budget for the provision of special education and related services to one student, the district shall notify the superintendent of public instruction. Upon verification, the superintendent shall reimburse the district for the difference between:

   a. Two percent of the district's annual budget; and

   b. The lesser of:

      (1) The amount actually expended by the district for the provision of special education and related services to that student; or

      (2) The amount representing four ~~and one-half~~ times the state average cost of education per student.

SECTION 30. A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

North Dakota early childhood learning council - Membership - Terms.

1. The North Dakota early childhood learning council consists of:

   a. A chairman appointed by the governor;

   b. The superintendent of public instruction, or the superintendent's designee;

   c. The state health officer, or the officer's designee;

   d. The director of the department of human services, or the director's designee;

   e. The North Dakota head start - state collaboration administrator, or the administrator's designee;

   f. The chairman of the senate education committee, or the chairman's designee;

   g. The chairman of the house of representatives education committee, or the chairman's designee; and

   h. The following gubernatorial appointees:

(1) The superintendent of a school district having at least one thousand students in average daily membership;

(2) The superintendent of a school district having fewer than one thousand students in average daily membership;

(3) The superintendent of a school district headquartered on a reservation or including reservation land within its boundaries;

(4) The principal of a school district;

(5) An individual employed as an elementary school teacher;

(6) An individual representing a non-religious-based provider of preschool education;

(7) An individual representing a religious-based provider of preschool education;

(8) An individual representing a center-based licensed child care provider;

(9) An individual representing a home-based licensed child care provider;

(10) An individual representing a reservation-based head start program; and

(11) An elected member of a school board.

2. a. The term of each member enumerated in subdivision g of subsection 1 is three years and begins on July first. The terms must be staggered by lot so that four of the terms expire each year.

b. If at any time during a member's term the member ceases to possess the qualifications required by this section, the member's seat is deemed vacant and the governor shall appoint another qualified individual to serve for the remainder of the term.

c. A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

3. The council shall meet at least twice each year, at the call of the chairman.

SECTION 31. A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

Council - Duties. The council shall:

1. Review the delivery of early childhood education in this state;

2. Conduct a needs assessment;

3. Review early childhood learning standards and propose revisions to the standards as needed;

4. Review opportunities for public and private sector collaboration in the delivery of early childhood education in this state;

5. Develop a comprehensive plan governing the delivery of early childhood education in this state; and

6. Provide a biennial report regarding its activities to the governor and the legislative council.

SECTION 32. A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

Council members - Reimbursement for expenses. Each member of the council is entitled to receive reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

SECTION 33. AMENDMENT. Section 15.1-37-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-37-01. Early childhood education program - Approval. Any person or school district operating an early childhood education program may request approval of the program from the superintendent of public instruction. The superintendent shall approve an early childhood education program if the program:

1. Is taught by individuals who are licensed to teach in early childhood education by the education standards and practices board;
2. Follows a developmentally appropriate curriculum; and
3. Is in compliance with all municipal and state health, fire, and safety requirements.

~~Per student funding will not be provided to individuals or school districts offering a prekindergarten program.~~

SECTION 34. A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

Early childhood education program - Eligibility for per student payments. To be eligible for funding under subdivision j of subsection 1 of section 15.1-27-03.1, an approved early childhood program must:

1. Use a screening test approved by the superintendent of public instruction to ensure the developmental readiness of each student seeking admission to the program;
2. Limit enrollment in the program to students who have reached the age of four before September first of the year of enrollment and who are not enrolled in an approved kindergarten program; and
3. Be operated by or on behalf of a school district.

SECTION 35. USE OF NEW MONEY - TEACHER COMPENSATION INCREASES - REPORTS TO LEGISLATIVE COUNCIL.

1. During the 2009-11 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new money received by the district for per student payments to increase the compensation paid to teachers and to provide compensation to teachers who begin employment with the district on or after July 1, 2009.
2. For purposes of this section, the superintendent of public instruction shall calculate the amount of new money received by a district during the 2009-11 biennium by:
   a. Determining the total amount of state dollars received by each district during the 2007-09 biennium as per student payments, provided that neither equity payments under section 15.1-27-11, transportation payments, mill levy reduction payments, regional education association participation payments, nor contingency distributions are to be included in the total;
   b. Determining the total amount of state dollars received by each district during the 2009-11 biennium as per student payments, provided that neither equity payments under section 15.1-27-11, transportation payments, nor contingency distributions are to be included in the total; and
   c. Subtracting the amount arrived at under subdivision a from the amount arrived at under subdivision b.
3. School districts providing educational services under a cooperative agreement approved by the superintendent of public instruction must be treated as a single district for purposes of this section.
4. a. This section does not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary

evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of the members of the board that complying with subsection 1 would place the school district in the position of having insufficient fiscal resources to meet the school district's other obligations.

b. Within ten days of the vote required by subdivision a, the school board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.

c. The superintendent of public instruction shall report all notices received under this subsection to the legislative council.

SECTION 36. TRANSPORTATION GRANTS - DISTRIBUTION.

1. During each year of the 2009-11 biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement at the rate of:
   a. Eighty-one cents per mile for schoolbuses having a capacity of ten or more passengers;
   b. Forty-two cents per mile for vehicles having a capacity of nine or fewer passengers; and
   c. Twenty-two cents per student for each one-way trip, provided that a "student" includes a participant in an early childhood education program that is eligible for funding under section 15.1-27-03.1.
2. The superintendent of public instruction shall use the latest available student enrollment count in each school district in applying the provisions of the transportation formula as it existed on June 30, 2001.
3. If any moneys provided for transportation payments in the grants - transportation line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, remain after application of the formula provided for in this section, the superintendent of public instruction shall prorate the remaining amounts according to the percentage of the total transportation formula amount to which each school district is entitled.

4. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

SECTION 37. SCHOOL DISTRICT REORGANIZATION PLANNING GRANTS. The superintendent of public instruction may expend up to $100,000 from the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing planning grants to school districts participating in reorganizations under chapter 15.1-12, for the biennium beginning July 1, 2009, and ending June 30, 2011. A grant provided under this section may not exceed $25,000 and may not be awarded unless the student and the recipient districts vote not to reorganize, the superintendent of public instruction shall withhold the grant amount that each district received under this section from any state aid payable to the district.

SECTION 38. REGIONAL EDUCATION ASSOCIATIONS - GRANTS. During each year of the 2009-11 biennium, the superintendent of public instruction shall expend up to $200,000 from the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing grants in the amount of $25,000, to each group of school districts which has been designated as a regional education association under section 15.1-09.1-02. Before September first of each year, the superintendent of public instruction shall divide each grant by the number of school districts in the respective association and forward that portion of each school district's individual grant directly to the association in which the district participates.

SECTION 39. FEDERAL IMPACT AID - BASELINE RECALCULATION - GRANT.

1. If the amount of federal impact aid received by a school district during the 2006-07 school year resulted in that district losing state aid under section 15.1-27-35.3 during the 2007-09 biennium, the superintendent shall reestablish that district's baseline by:
   a. Adding together the amount of state aid that the district would have received during the 2006-07 school year if in determining the district's ending fund balance the average amount of federal impact aid received by the district during the 2005-06 and 2006-07 school years had been used, rather than the actual amount received during the 2006-07 school year;

b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in regional education associations; and

c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.

2. On or before August 1, 2009, the superintendent of public instruction shall use up to $300,000 from moneys appropriated in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the legislative assembly, to provide to a school district a grant equaling the difference in the 2007-09 biennium state aid payments that resulted from the baseline recalculation required by this section.

SECTION 40. DEFERRED MAINTENANCE AND PHYSICAL PLANT IMPROVEMENT GRANTS.

1. By June 30, 2012, each school district that receives a deferred maintenance and physical plant improvement grant from the superintendent of public instruction shall:

a. Submit to the superintendent documentation detailing how the grant funds were expended; and

b. Return any unexpended grant funds to the superintendent for deposit in the general fund.

2. The superintendent of public instruction may provide a deferred maintenance and physical plant improvement grant only to a school district that:

a. Has a general fund levy equal to at least one hundred fifty mills for the taxable year 2008;

b. Is not precluded from receiving state aid by the provisions of section 15.1-27-35.3; and

c. Provides a monetary match equal to the grant amount.

SECTION 41. AMENDMENT. Section 55 of chapter 163 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 55. CONTINGENT MONEY - 2007-09.

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in Senate Bill No. 2013, as approved by the sixtieth legislative assembly, any money that was appropriated to the superintendent for special education contracts in Senate Bill No. 2013 and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009.

2. If any money that was appropriated to the superintendent of public instruction for state aid payments to school districts or added to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009, the superintendent shall:

~~1.~~ a. Use the first $1,000,000, or so much of that amount as may be necessary, to pay any state obligations in excess of the amount appropriated for special education contract charges;

~~2.~~ b. Use the next $2,000,000, or so much of that amount as may be necessary, for the purpose of providing additional per student payments to school districts participating in regional education associations under chapter 15.1-09.1;

~~3.~~ c. Use the next $550,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts serving English language learners and new immigrant English language learners, in accordance with chapter 15.1-38;

~~4.~~ d. Use the next $200,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts offering an adult education program during the 2007-09 biennium; and

~~5.~~ e. Use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

SECTION 42. CONTINGENT MONEY - 2009-11.

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, any money that was appropriated to the superintendent for special education contracts and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011.
2. If any money that was appropriated to the superintendent of public instruction for grants - state aid payments to school districts or added to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent shall use the money to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

SECTION 43. CONTINGENT TRANSFER BY BANK OF NORTH DAKOTA FOR SPECIAL EDUCATION. If during the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent of public instruction determines that, using all available sources, there are insufficient funds with which to fully reimburse school districts for the excess costs of serving the one percent of special education students statewide who require the greatest school district expenditures in order to be provided with special education and related services, the industrial commission shall transfer from the earnings and accumulated and undivided profits of the Bank of North Dakota the amount the superintendent of public instruction certifies is necessary to provide the statutorily required level of reimbursement. The superintendent of public instruction shall file for introduction legislation requesting that the sixty-second legislative assembly return any amount transferred under this section to the Bank of North Dakota.

SECTION 44. REPEAL. Sections 15.1-21-02.2, 15.1-27-20.1, and 15.1-38-01.2 of the North Dakota Century Code are repealed.

SECTION 45. EMERGENCY. Section 41 is declared to be an emergency measure.