

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION FUNDING COMMITTEE

Wednesday, October 15, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Tim Flakoll, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Tim Flakoll, Howard C. Anderson, Jr., Joan Heckaman, Richard Marcellais, Nicole Poolman, Donald Schaible; Representatives Mark A. Dosch, Jessica Haak, Patrick Hatlestad, Jerry Kelsh, Ben Koppelman, Lisa Meier, David Monson, Mike Nathe, Karen M. Rohr, David S. Rust, Mark Sanford, Margaret Wall

Members absent: Representative Bob Hunskor

Others present: See [Appendix A](#)

BILL DRAFT RELATED TO EDUCATION FUNDING

Chairman Flakoll said the principal charge of the interim Education Funding Committee was to look at the base funding and the weighting factors. He said this is a very strong bill draft [[15.0291.03000](#)].

Chairman Flakoll said we have come a long way from the years in which there was excitement over a \$25 per student funding increase. He said this bill draft is possible because of the state's strong economy. However, he said, this is the start of a very long process. He said, in 2009, 104 amendments were added to the education funding bill.

Chairman Flakoll said the bill draft is long, in large part because a sunset was inserted on the new formula during the 2013 legislative session.

Chairman Flakoll said this is a \$2.038 billion bill draft. He said it is the largest education funding bill in the history of this state. He said it is, however, designed to focus money on those things that improve student performance. He said the bill draft contains more than \$400 million in new funding. He said approximately \$280 million of that amount is increased funding that follows the students and \$125 million is for new low-interest school construction loans.

Chairman Flakoll said the cost-to-continue funding under current law is approximately \$200 million. He said this is largely due to additional payments for increased enrollment across the state.

Chairman Flakoll said the proposed increase for at-risk students amounts to approximately \$45 million for the biennium.

Chairman Flakoll said increased funding for English language learners is approximately \$770,000. In addition, he said, there is a \$2.5 million grant for school districts that are impacted by high numbers of Level I and Level II English language learners.

Chairman Flakoll said increased funding for regional education associations will cost approximately \$425,000.

Chairman Flakoll said the consulting firm of Larry O. Picus and Associates (Picus) used an evidence-based model to recalibrate the funding numbers. He said, essentially, the bill draft contains a 3 percent increase for the first year of the biennium and a 3 percent increase to the adjusted base for the second year of the biennium.

Chairman Flakoll said the figures in the bill draft were derived from the Picus recommendation of \$9,442. He said, from that amount, he subtracted \$236 for the eight days of professional development that Picus had included. He said the cost of two days of professional development is retained in the base funding level.

Chairman Flakoll said the new adjusted base becomes \$9,206. He said a 3 percent increase is applied to that for the first year of the biennium and an additional 3 percent is applied to the first year figure for the second year of the biennium.

Chairman Flakoll said, in year one, the formula would go from the current level of \$9,092 up to \$9,482. He said that is a \$390 increase per student. He said, in year two, the formula would increase to \$9,766, which is an additional \$284 increase over the first year's level. He said the two year average is \$9,624. He said that is used to determine an approximate cost of weighting factors.

Chairman Flakoll said, again, two days of professional development is accounted for within the formula and weighting factors are added for the third, fourth, and fifth days. He said the weighting factors will be contingent upon having the professional development activities approved in advance by the Superintendent of Public Instruction. He said the third day is eligible for a weighting factor of 0.01 and days four and five will have a weighting factor of 0.005. He said the third day of professional development will cost \$22 million, if fully implemented. He said the third day will be mandated beginning with the 2016-17 school year. He said this will give districts sufficient time to adjust their budgets and their contracts. He said the number of school districts that might actually provide four or five days of professional development is at this time unknown. He said both of those factors are very generous. He said a factor of 0.003 is probably more accurate. He said, according to Picus, the cost is approximately \$30 per student per day.

Chairman Flakoll said the at-risk factor is to be increased from 0.025 to the Picus recommendation of 0.20. He said the greatest need for those resources exists between kindergarten and the third grade. He said the cost of this factor is \$45 million per biennium. He said school districts can get funding for students who are English language learners and at-risk, but not for students who are both at-risk and in an alternative middle school.

Chairman Flakoll said the bill draft raises the current factor for Level I English language learners from 0.30 to 0.40 and raises the current factor for Level II English language learners from 0.20 to 0.27. In addition, he said, one must remember that a \$2.5 million grant is included for districts impacted by high numbers of Level I and Level II English language learners.

Chairman Flakoll said regional education associations were given a 10 percent increase in their weighting factor. He said the current factor is 0.002. He said the proposed factor is 0.0022. He said this comes at a cost of \$425,000.

Chairman Flakoll said the factor for PowerSchool participation was removed from the education bill draft because that money was literally passed through the districts. He said it will be included in the appropriation bill for the Superintendent of Public Instruction.

Chairman Flakoll said cross border attendance was removed. He said migrant summer school students are to be accounted for within the regular summer school program. He said the rate for alternative middle schools remains at 0.15. He said alternative high schools and the attached weighting factor should be available to all students in grades 9 through 12, and not just those who are 16 years of age or older. He said that has been clarified in the bill draft. He said the cost would be \$250,000.

Chairman Flakoll said the bill draft proposes another \$125 million from the strategic investment and improvements fund for low-interest school construction loans, provided a district can demonstrate an enrollment increase in each of the last three years. He said another stand-alone school construction bill will be "fast-tracked" in January 2015, so that the bidding procedure can start. He said the dollar figure in this bill draft may change based on what is in the "fast-tracked" bill.

Chairman Flakoll said Dr. Aimee Copas, Executive Director, North Dakota Council of Educational Leaders, conducted a survey to determine potential school construction projects. He said there are \$197.1 million in anticipated construction projects.

Chairman Flakoll said certain issues were not addressed in the bill draft. He said those include ending fund balances, assessments, reporting, transportation, instructional days, teacher shortages, rapid enrollment, retirement benefits, early childhood education, and institutional taxes.

Representative Nathe said everyone is well aware of Initiated Measure No. 5. He said, should that measure pass, all bets are off with respect to this bill draft. He said if Initiated Measure No. 5 should pass, legislators will have to think long and hard about how they are going to fund certain portions of this bill draft.

At the request of Chairman Flakoll, Committee Counsel presented the bill draft relating to the funding of elementary and secondary education. She said, despite the list of items that were not included in the bill draft, this effort still consists of 51 pages. She said many of those pages were necessitated because a "sunset"--an expiration date--was placed on the new education funding formula during the waning days of the 2013 legislative session. She said some were not certain of their commitment to the new funding proposal. She said, by inserting the sunset, the new provisions would literally have gone away as of June 30, 2015, and education funding would have reverted to the prior formula.

Committee Counsel said the committee members were provided with a memorandum entitled [Summary of Proposed Education Funding Bill Draft \(15.0291.030000\)](#). She said the provisions that are new are highlighted in yellow.

Committee Counsel said, in Section 2, the bill draft leaves the requirements for 175 days of instruction, 3 days of holidays, and 2 days of parent teacher conferences or compensatory time for that. She said, for the 2015-16 school year, the requirement for professional development days remains at two. She said, beginning with the 2016-17 school year, the requirement for professional development days will increase to three.

Committee Counsel said, in Section 5, the 1.0 factor for migrant summer students was removed. However, she said, migrant summer students would be included with regular summer education students at a factor of 0.60.

Committee Counsel said the factor for the monitoring of home-based instruction has been moved, but remains at the 2013-15 level of 0.20.

Committee Counsel said the factors for Level I and Level II English language learners would increase to 0.40 and 0.30 respectively. She said the factor for Level III would remain at 0.07.

Committee Counsel said the factor for alternative high school students remains at 0.20, but the verbiage indicates that this would be available for students in grades 9 through 12, and not just for those who have turned 16.

Committee Counsel said the factor for cross border attendance has been removed.

Committee Counsel said there is a new factor for at-risk students in kindergarten through grade three. She said applicability is determined according to the same percentage of students in grades three through eight who are eligible for free or reduced lunches. She said the factor is 0.20.

Committee Counsel said the factor of 0.15 is retained for alternative middle school students.

Committee Counsel said there is a factor of 0.025 for at-risk students in grades 4 through 12.

Committee Counsel said the PowerSchool factor has been removed from this bill draft and will be included in the appropriation bill for the Superintendent of Public Instruction.

Committee Counsel said, if a school district offers a third day of professional development, the district is eligible for a factor of 0.01. She said fourth and fifth days of professional development garner factors of 0.005.

Committee Counsel said the factor for regional education associations has been increased from 0.002 to 0.0022.

Committee Counsel said this bill draft includes additional criteria regarding the weighting factors. She said a school district can receive an alternative middle school factor for a student or an at-risk factor, but not both. She said a school district can receive an English language learner factor for a student and an at-risk factor. She said, before a school district receives a factor for professional development, the school district must have the activities approved by the Superintendent of Public Instruction. She said the superintendent is to develop rules regarding the approval and the rules must address content, the qualifications of presenters, and the application process, among other things.

Committee Counsel said there are subdivision reconciliations that need to be made with respect to page 12, lines 21, 25, and 27.

Committee Counsel said the biennial funding levels are set forth in Section 7. She said, for the 2015-17 biennium, the proposed levels are \$9,482 and \$9,766. She said the floor and ceiling percentages are set at 106 percent and 130 percent for the first year of the biennium and at 108 percent and at 140 percent for the second year of the biennium.

Committee Counsel said section 12 of the bill draft addresses school construction loans. She said, since the late 1970s, money in the coal development trust fund has been used for school construction loans. She said it was suggested that the accounting effort would be made much easier if the school loans were sourced from a separate fund. She said this separate fund has been labeled the "school construction loan fund." She said it is a revolving fund. She said the bill draft reflects the challenge of referencing transfers that were made many years ago, in addition to the proposed transfer of another \$125 million from the strategic investment and improvements fund for low interest school construction loans to districts that can demonstrate three years of increasing enrollment.

Committee Counsel said Section 23 of the bill draft proposes a \$2.5 million grant for those school districts that have the largest proportion of Level I and Level II English language learners. She said grants under the section could be awarded only for the purpose of allowing school districts to enhance their services to such students. She said this would include the hiring of additional teachers, interpreters, and social workers, and for the provision of other ancillary support services and programs, approved by the Superintendent of Public Instruction.

Committee Counsel said Section 24 of the bill draft provides for the transfer of \$125 million from the strategic investment and improvements fund into the newly created school construction loan fund.

Committee Counsel said Section 25 of the bill draft states that if all other moneys provided for school construction are utilized, another \$100 million may be transferred from the strategic investment and improvements fund into the newly created school construction loan fund, provided the transfer is requested by the Superintendent of Public Instruction and approved by the Budget Section of the Legislative Management.

Comments by Others

With the permission of Chairman Flakoll, Mr. Pat Brenden, Superintendent, Dunseith Public School District, presented testimony regarding the funding of elementary and secondary education. He distributed a document entitled *Comparative Analysis of Inequities in the State Funding Formula* ([Appendix B](#)). He said the handout compares the Dunseith Public School District against another school district having similar weighted student units. He said, in 2012-13, the total formula amount and the total state aid is very similar. He said, in the 2013-14 school year, the state formula amount is within \$20,000 for both school districts. However, he said, the total state aid has a difference of more than \$1 million. He said the problem is the transition maximum.

Mr. Brenden said the transition maximum refers to North Dakota Century Code Section 15.1-27-04.1(1)(f)(9), which calls for the deduction of all revenue received by a district from payments in lieu of taxes. He said this means "impact aid." He said, however, to his school district, impact aid is its revenue. He said the school district has a large number of trust land acres that do not produce tax revenue. He said the federal government reimburses the school district through impact aid. He said the transition maximum for his school district was \$1.9 million. However, he said, the school district received only \$1.6 million in impact aid. He said his deduction was \$300,000 more than what the district actually received. He said this situation repeated itself in the following year.

Mr. Brenden said the school district is being penalized by a greater amount than it is actually receiving from the federal government.

Mr. Brenden said, last biennium, they were told that they would receive \$8,810 per weighted student unit. He said his school district actually received \$5,982, whereas the comparative school district received \$8,810 during the first year of the biennium. He said, this year, the payment difference is \$6,525 versus \$9,092.

Chairman Flakoll said the \$8,810 and \$9,092 are total state and local contributions.

Mr. Brenden said his figures are total state and local contributions.

Mr. Brenden said, two years ago, the school district had to eliminate an administrator and a full-time teacher, and it had to reduce a full-time teacher to half-time, just to balance its budget. In addition, he said, the district eliminated one office worker and one bus driver, and then consolidated the bus route. He said, last year, the district had approximately \$113,000 left over. He said the projections for this year are for an ending fund balance of approximately \$190,000. He said it will be difficult to balance the district's books and pay the district's teachers what they deserve, unless additional dollars come from somewhere. He said he would like the Legislative Assembly to make an exception for impact aid funds. He said the district is being penalized for having trust lands within its boundaries. He said that is not fair.

In response to a question from Representative Monson, Mr. Brenden said if they had been assessed the actual amount rather than the transition maximum, they would have benefited to the tune of \$300,000. He said the school

district had been told to budget 60 percent. He said the school district actually came in higher than that. He said, with the increase from the federal government, the school district was still \$270,000 below the deduction.

Mr. Brenden said impact aid is revenue in lieu of taxes. However, he said, deducting it feels like a penalty. He said there are 41 school districts that receive a similar deduction. He said, of that amount, 12 school districts receive federal impact aid.

With the permission of Chairman Flakoll, Mr. Jerry Coleman, Director of School Finance, Department of Public Instruction, said each school district starts with a baseline funding amount consisting of its state formula payment, its mill levy reduction grant amount, the general fund levies, and the requisite percentage of its in lieu of dollars. He said the total was divided by its weighted student units to arrive at an effective rate. He said the percentage adjustments are made to that amount. He said the maximum amount per student that a school district could get during the first year of the formula was 10 percent more than that rate during the baseline year. He said, for the second year, 10 percent was added. He said the recommendations going forward are 10 percent during each year of the 2015-17 biennium. He said that is all derived from the amount a district received in the base year--i.e., in the year before the new formula went into place. He said the minimums are a guaranteed percentage set at 2, 4, 6, and 8 percent.

Mr. Coleman said no federal dollars go into the in lieu of revenue line. He said the items that are included are all local--e.g., tuition income, oil and gas production taxes, telecommunication taxes, rural electric taxes, etc. He said federal impact aid cannot be included in the equalization formula, unless it meets certain criteria. He said North Dakota does not meet the criteria. He said those school districts that bump up against the maximum are districts that have very little tax base. He said, in many cases, that is replaced by federal impact aid, but is not included in the formula or in the workings of the minimum and maximum thresholds.

In response to a question from Representative Koppelman, Mr. Coleman said if Mr. Brenden's student numbers did not change, his rate should have increased by 10 percent each year, in accordance with the baseline. He said, in addition to the \$6,525 per student that Mr. Brenden mentioned, the district receives its federal impact aid. He said many of the school districts receive about \$6,500 per student in federal impact aid, just for a rough number.

Representative Koppelman said it seemed as if, to use simple numbers, Mr. Brenden was saying he had \$100 deducted, but received only \$80 from another source to replace that deduction.

Mr. Coleman said the formula funds school districts to an adequate rate. He said that comes from a combination of state and local sources. He said it considers local sources at the rate of 60 mills on the local property valuation plus other in lieu of dollars coming to the district. He said some of those dollars are considered at the 75 percent level and others are considered at the 100 percent level. He said that is all considered the local share of the \$9,092 rate. He said the state makes up the difference, regardless of what the local share generates.

Mr. Coleman said Mr. Brenden's district is limited to a 10 percent increase in the baseline funding each year. He said it sounds as if the federal impact aid went down significantly for Mr. Brenden's school district. However, he said, Mr. Brenden's state aid increased each year. He said that did not go backward. He said it is possible that revenue from other sources might have declined.

In response to a question from Representative Nathe, Mr. Coleman said eliminating the 10 percent maximum would cost approximately \$30 million per biennium. He said to eliminate the 2 percent minimum would amount to approximately \$80 million per biennium. He said about 80 districts are on the minimum.

Committee Discussion

Chairman Flakoll distributed a bill draft [\[15.0331.01000\]](#) that would lower the property tax for school districts from 70 to 65 and then 60 mills. He said this would cost approximately \$70 million in property tax reductions. He said this is being offered for people to think about and as a reminder that there are consequences to elections. He said he does not want to attach this concept to the funding bill draft now because that would probably be the first thing considered for removal in the event that Measure No. 5 would pass. He said this bill draft is an abridged version of what would be needed for introduction of this concept. He said he did not want to have the multiple other sections attached at this point.

Representative Nathe said this buydown would cost \$70 million. He said the 10 mills that were addressed during the 2013 session had a price tag of \$50 million.

Representative Rust said the school loan program provides true property tax relief. He said a \$10 million construction project at a 1 percent loan provides a significant savings to taxpayers over the life of the loan. He said

he cannot think of anything better that the state could do for its citizens. He said every dollar that is loaned out will be returned to the state. He said the only thing that the state loses is a little bit of interest.

MOTIONS

It was moved by Representative Nathe, seconded by Senator Heckaman, and carried on a roll call vote that the bill draft relating to the funding of elementary and secondary education, together with any necessary cross reference changes, be approved and recommended to the Legislative Management. Senators Flakoll, Anderson, Heckaman, Marcellais, Poolman, and Schaible and Representatives Dosch, Haak, Hatlestad, Kelsh, Koppelman, Meier, Monson, Nathe, Rohr, Rust, Sanford, and Wall voted "aye." No negative votes were cast.

It was moved by Representative Nathe, seconded by Representative Kelsh, and carried on a roll call vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and the recommended bill draft to the Legislative Management. Senators Flakoll, Anderson, Heckaman, Marcellais, Poolman, and Schaible and Representatives Dosch, Haak, Hatlestad, Kelsh, Koppelman, Meier, Monson, Nathe, Rohr, Rust, Sanford, and Wall voted "aye." No negative votes were cast.

It was moved by Representative Nathe, seconded by Representative Rust, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Flakoll adjourned the committee sine die at 10:30 a.m.

L. Anita Thomas
Counsel

ATTACH:2