

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION FINANCE COMMITTEE

Monday, December 8, 1997
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Senators Layton Freborg, Dwight C. Cook, Les LaFountain, Terry M. Wanzek; Representatives Rick Berg, James Boehm, Michael Brandenburg, Lois Delmore, Pat Galvin, William E. Gorder, Bette Grande, Howard Grumbo, Lyle L. Hanson, Dennis Johnson, RaeAnn Kelsch, Richard Kunkel, David Monson

Members absent: Senators Tony Grindberg, Jerome Kelsh, Rolland W. Redlin, Jim Yockim

Others present: See Appendix A

It was moved by Representative Grande, seconded by Representative Kunkel, and carried on a voice vote that the minutes of the previous meeting be approved.

At the request of Chairman Freborg, Mr. Tom Tudor, Executive Director, Municipal Bond Bank, presented testimony regarding the state school construction fund loan program. A copy of his testimony is attached as Appendix B. He said the current school construction fund program is at its capacity and the Legislative Assembly will have to inject more money into the current program or look at alternatives if money is to be made available to school districts.

In response to a question from Representative Berg, Mr. Tudor said if school districts are unable to obtain state-supported loans, the school districts may issue bonds and pay the requisite interest rates. He said the bond bank is not involved in the school construction loan program. Under that program, he said, a loan is approved by the Superintendent of Public Instruction and, if the loan qualifies under the program, the Superintendent sets the interest rate and the Board of University and School Lands funds the loan.

Representative Berg said there are two issues--whether there is a need for the construction and whether there is the ability to pay for the construction. He said we need to determine whether the state is treating equally the school districts that have the ability to pay and those that do not.

In response to a question from Representative Monson, Mr. Tudor said if a school district obtains a loan and dissolves before the loan is paid off, the property in the district is still the responsible entity with respect to the payment of the loan.

At the request of Chairman Freborg, Mr. Tom Decker, Director of School District Finance and

Reorganization, Department of Public Instruction, presented testimony regarding school district capital construction funding. A copy of his testimony is attached as Appendix C. Under the current system, he said, state assistance is not dependable. He said this makes it very difficult for school districts to undertake long-term planning for capital construction.

Mr. Decker said the resources are not available to treat every school district equally. He said it would be nice if there were enough money to bring every district up to the level of ability enjoyed by the wealthiest district. Because that is not likely to happen, he said, we need to concentrate our assistance on those districts having severely restricted local resources. In some circumstances, he said, we might have to consider implementing a grant program. He said such might be appropriate if there is rapidly growing enrollment or if construction is needed to encourage consolidation.

Mr. Decker distributed a document entitled *School District Revenue*. A copy of the document is attached as Appendix D. The document shows the fall 1997 K-12 enrollment, the five-year total district revenue excluding federal impact aid, the average district revenue per year based on the most recent five years, the average revenue per student, the current year's general fund levy, the current year's total school district levy, the current year's total taxable valuation, and the taxable valuation per student for each district.

Mr. Decker said the suggestion that the state pool school district construction loans and guarantee them with a state fund makes a lot of sense. He said we need to deal with equity in the lending of school construction funds. He said we also need to be realistic about demographic factors. If the state spends millions of dollars on a school construction project, he said, it would be nice to know that the building will have people available to use and enjoy it in a few years.

In response to a question from Representative Berg, Mr. Decker said loans should be based on a district's ability to pay. A district's demographics should be a consideration at the construction approval phase. He said the developing trend is to hold states liable for equity in the area of school district capital construction. He said the reality is we cannot provide money to everyone. If we opted for a revolving loan fund, he said, we would not be doing anything to ensure equity. He said we need to focus our limited

resources on school construction projects that are truly necessary, given the demographics.

Mr. Decker distributed a document showing high school enrollment by size categories and a document entitled *Public School Enrollment Projections*. A copy of each document is attached as Appendices E and F, respectively. He said the enrollment in the midsize Class B schools will also continue to decline. However, he said, there are places that will require educational services, regardless of how sparse their student populations become.

In response to a question from Representative Berg, Mr. Decker said in other states local bond issues are being replaced with a more stable, predictable state fund. He said that would not be a problem if there were a strong state approval mechanism in place. He said we need to identify where long-term school construction is needed. He said we have had numerous construction projects within the last 20 years which are now empty or which are used in a fashion that is not near capacity. He said there is a tendency for people to assume that if they build a new facility, they will breathe life into their town. In most instances, he said, this does not happen.

In response to a question from Senator Freborg, Mr. Decker said we can fairly accurately identify strategically necessary school sites, i.e., school sites that will be necessary well into the future. Twenty years ago, he said, Napoleon had over 800 students in high school. Today, he said, Napoleon has approximately 200 students and by the year 2010, it is projected that the district will have less than 180. He said that is one site that is strategically necessary, regardless of the population.

In response to a question from Senator Freborg, Mr. Decker said we would need \$55 million in a fund to make available \$10 million in school construction loans each year. He said many districts do not have any building fund levies and very few districts are levying the maximum of 20 mills for building funds. Senator Freborg said if school districts would levy the 20 mills, they would have the dollars to pay for ongoing repairs and when bond issues are put to a vote, the cost would be considerably less.

In response to a question from Senator Freborg, Mr. Decker said we may need to give school districts the authority to levy the building fund mills without voter approval.

Mr. Jerry Coleman, Department of Public Instruction, distributed a document entitled *Foundation Aid Status*. A copy of the document is attached as Appendix G. He said the Department of Public Instruction is currently \$4.7 million under its budget. For 1996-97, he said, the school enrollment was 118,942 students and for 1997-98, the school enrollment is 117,310. He said there are 121,390 weighted student units for 1997-98.

At the request of Chairman Freborg, Professor Gerald R. Bass, College of Education and Human Development, University of North Dakota, presented

testimony regarding equity in education funding. If equity is chosen as a prominent value, he said, followed by choice and efficiency, the reality is that as the value on equity is increased, the value placed on choice and efficiency is decreased.

Professor Bass said education lawsuits have focused on education spending and the differences between the lowest and the highest spending district. If we want to move to near perfect equity in North Dakota, he said, one of the first things we need to do is review the weighting factors. He said the purpose of weighting factors is to approximate the overall financial needs of a school district in relation to all the school districts. He said there are factors that cause different expenditure levels for different students. In North Dakota, he said, we would need to determine whether our present weighting system adequately reflects all the factors that determine cost. He said we could examine whether the higher cost of special education students should be reflected in the weighting factors.

Professor Bass said many states have found that they cannot support every small school. He said states then determine which small school districts are truly necessary and accord them special status with respect to weighting factors. He said we could also look at whether there are any other factors that differentiate one class of school district from another in terms of financial need. If the factors can be identified, he said, they should be reflected in the weighting factors and adjusted to ensure greater equity.

Professor Bass said we need to examine the equalization factor if we are serious about ensuring equity. He said approximately one-sixth of the average operating levy is deducted in the finance formula. The higher one values equity, he said, the higher this deduction needs to be. He said true equity would require a deduction of 180 mills versus the current deduction of 32 mills. He said the original purpose of the equalization factor was to equalize across all school districts the revenue that is given by the state in combination with local property taxes. He said the effect of increasing the equalization factor is to increase the amount of money that could be distributed within the formula. He said the per student funding would then be increased for school districts.

Professor Bass said another aspect of equity is facility equity. He said there is a vast disparity in property tax bases and in mills levied. He said this disparity causes substantial disparity in capital construction. If you want equity, he said, you have to equalize the building fund levy. He said each district should levy a uniform amount for a building fund. He said the amount each district could levy should then be equalized. He said the equalization of a building fund levy would require a major increase in the level of state appropriation. If equity is a goal, he said, sinking funds would also need to be equalized. He said this would achieve equity but at a substantial cost to the state. In return, he said, the state would have to

significantly increase its overview of local capital construction. Professor Bass said there is often significant state oversight outside education. He said one example is state oversight of medical facilities and nursing homes.

Professor Bass said there is substantial variation of general fund levies from school district to school district. If there is a desire to achieve equity, he said, a consistent general fund levy is required, regardless of the district in which a taxpayer resides. He said this requirement would, in effect, establish minimum and maximum levies. He said there would need to be some flexibility because the needs of school districts rise and fall over time.

Professor Bass said there is a question as to what should be done with respect to both the funding level and the tax burden of the wealthiest of school districts. In order to avoid exorbitant levels of funding availability for the wealthiest districts, he said there needs to be a recapture provision. He said this is clearly not a very popular decision.

Professor Bass said another form of equity is program equity. If equity is desired, he said, the state needs to establish curriculum offering requirements, e.g., what courses do we expect every high school in the state to offer? He said there probably would be a desire to establish requirements for competency, e.g., what do we expect every child to learn in school? He said in a 50-student high school district, we cannot expect the wealth of courses that are available at the state's largest schools. In order to ensure equity, he said, the state needs to fund interdistrict cooperation and distance learning options, and it needs to encourage small school districts to offer courses in a creative manner.

Professor Bass said one of the reasons we are not likely to take these actions is that every single one of these actions has a negative impact on somebody. He said the first difficulty in achieving equity involves dealing with the people who will be negatively affected. He said the second difficulty in achieving equity is that the end result has to be a greater level of state control. He said every one of the actions suggested involves a shift in decisionmaking from local control to state control, e.g., the state would dictate the level of mill levies and the state would dictate whether a new facility could be constructed.

Professor Bass said, as a professor, he can argue that equity is a critical value and that the way to achieve it is to set a mill levy, taking into account all levels of funds, including mineral funds. He said, however, as a representative, the question is what will happen to "my district" if these policies are implemented. He said the most difficult perspective is that of a statesman. He said it is difficult to switch from what is in the best interests of one's constituents to what is in the best interests of the state and in the best interests of all the students. He said legislators need to determine whether they will be representatives or statesmen.

Professor Bass said school districts used to be funded solely by property taxes. In searching for a better way to fund schools, he said, states established a guaranteed number of dollars per student and multiplied that by the number of weighted student units in each district in order to approximate a school district's cost. From the guaranteed state amount, he said, there would be subtracted the amount of money that each district could raise locally. He said income tax was not considered when standard education funding was developed, because very few states had an income tax. Later, he said, income taxes and sales taxes became the mechanisms by which states could raise their portion of the education expenses.

Professor Bass said it would be preferable to keep the income tax at the state level and use it to support education at the state level. If there is a concern about the ability of people to pay their property taxes, he said, that is an issue that should be addressed through the property tax system. He said the income tax is a vehicle for equalizing, but there is no need for a school district to equalize the income tax burden. He said the goal is to equalize the education dollars available to each school district. He said total equalization means one has to look at all the revenue generated locally.

Professor Bass said a lot of issues that bear on small school districts have already been considered by this committee. He said there is substantial enrollment decline in our school districts. He said a parallel issue is what do we do with our small schools. He said we could identify in the funding system a method that gives adequate funding to the small, isolated districts. He said we could support consolidation in places where that is possible. From an education finance perspective, he said, we need to put the students wherever they need to be in order to best use our resources and to provide the best educational opportunities we can. He said the question is what do we do with the smaller communities? He said another question is what do we do with the larger communities? In the late 1960s, he said, he conducted a study that looked at the consolidation of certain rural school districts. He said he asked people where they would go to shop for a variety of products. He said those townships that had been the last to consolidate would travel six, eight, and sometimes 12 times farther to buy bread, milk, and groceries, rather than drive to the closest community, because the closest community had closed their school.

At the request of Chairman Freborg, Professor F. Larry Leistritz, Department of Agricultural Economics, North Dakota State University, presented testimony regarding the impact of school consolidation on communities. Professor Leistritz said during the latter half of this century the state's urban population increased while the state's rural population decreased. In fact, he said, during that time, 47 counties registered population declines. He said the normal population declines have been accompanied by

substantial outmigration. As a result, he said, the population in the rural areas tends to be older. He said this raises issues regarding who will pay for a whole array of social services, not just schools. While centers like Fargo are trying to determine how to build more schools, he said, rural centers are trying to determine how they will educate their remaining students.

At the request of Chairman Freborg, Mr. Randall S. Sell, Research Scientist, Department of Agricultural Economics, North Dakota State University, presented testimony regarding the socioeconomic impact of school consolidations. Mr. Sell distributed a document entitled *Socio-Economic Impacts of School Consolidation on Host and Vacated Communities*. A copy of the document is attached as Appendix H. He said the communities he selected for the impact of school consolidation study were Newburg-Kramer (Bottineau County), McHenry-Binford (Foster County), Braddock-Hazelton (Emmons County), and Kindred-Leonard (Cass County). In compiling the information in the study, he said, he interviewed community leaders and conducted a survey of the residents.

Mr. Sell said he found that while most people were in favor of consolidation, most were not in favor of having their school closed. He said while the residents of both host and vacated communities were very satisfied with their communities before consolidation, most were still satisfied after the consolidation. He said the residents of both the host and the vacated communities believed their students were better off academically and socially after the consolidation.

Mr. Sell said in the case of Leonard, there were a lot of public meetings. He said a 12-member factfinding commission had been established. He said the commission consisted of students, parents, teachers, and community leaders. He said they met once a week and the meetings were open to the public. By the time a decision had to be made, he said, no stone was left unturned.

Mr. Sell said the community members he interviewed believed it was most important to put student welfare first and to communicate truthfully about future plans. He said both host and vacated community respondents suggested that civic organization participation did not decrease because of the consolidation. He said both community groups believed that retail sales and the number of businesses declined in the last 10 years. He said the reality was that they had been experiencing declining retail sales for years before the consolidation. He said one resident had said that the community was born long before the school opened and that the community died long before the school closed.

At the request of Chairman Freborg, Professor Kendall E. Nygard, Department of Computer Science and Operations Research, North Dakota State University, presented testimony regarding school district locations and data envelopment analysis. Professor Nygard distributed a document entitled *Procedure for Determining a Given Number of*

Centers. A copy of the document is attached as Appendix I.

Professor Nygard said in 1996-97 there were 107 districts out of 233 that had 75 or more students in grades 9-12. He said 75 was chosen as a breakpoint because of current weighting factors. He said the research shows that a district generally needs at least 120 students in high school to be viable. In 2010-11, he said, only 52 districts will have 75 or more students, and of those, approximately 37 will have 120 or more students.

Professor Nygard said the procedure for determining the appropriate number of educational centers begins by identifying a core group of the 65 largest districts. He said all other districts are viewed as satellites affiliated with their nearest center. He said there was an attempt to reduce the maximum distance from all satellites to their centers.

Professor Nygard said the distribution of the 65 largest school districts (those with at least 120 students) in 1997-98 is not consistent throughout the state. By 2010, he said, there will not be 65 districts that have 120 students. He said the numbers will be reduced and therefore the distribution of the school districts will be reduced too. If we accepted having 65 educational centers, he said, the maximum distance that students would have to travel to attend school is 77 miles. He said if one increases the number of educational centers to 78, the maximum distance that students would have to travel is 30 miles.

In response to a question from Representative Monson, Professor Nygard said the distances traveled are, at this point in the research, measured from the geographical centers of existing school districts.

Professor Nygard said when the number of centers is increased to 89, the maximum distance that students would have to travel is 25 miles. He said this is an important number in determining appropriate transportation routes. When the number of centers is increased to 116, he said, the maximum distance that students would have to travel is 20 miles. He said at this number 89.2 percent of all students would attend school at the educational centers and 10.8 percent of the students would attend school at the satellites.

Professor Nygard said the state is fairly well covered with 116 centers. Once the centers are established, he said, we need to determine the transportation arrangements. He said maximum student ride time, average student ride times, number of buses required, and efficiencies relative to other school districts are all issues that can be addressed using data envelopment analysis.

In response to a question from Representative Berg, Professor Nygard said the 233 districts consist of 182 high school districts and 51 K-8 districts.

In response to a question from Representative Brandenburg, Professor Nygard said although the maps show lines as the crow flies, the actual calculations assume right angles rather than diagonals. He said this assumption makes their

conclusions conservative. He said the data base is not yet in place to allow consideration of preferred roads. Because the data envelopment analysis is based on existing practice, he said, it uses the preferred roads to calculate ride times, etc.

In response to a question from Representative Delmore, Mr. Decker said the 15 largest school districts have 58 percent of the total student enrollment.

Senator Freborg said if we assume there should be 116 districts, we are suggesting that 117 districts should be eliminated. He said we could accomplish nearly half of this reduction by requiring that all land be in a high school district.

Dr. Wayne Sanstead, Superintendent of Public Instruction, said many of the smallest high school districts are having significant financial difficulties. Dr. Sanstead distributed a document entitled *ND Retirement and Investment Office - TFFR Member Retirement Eligibility Profile*. A copy of the document is attached as Appendix J. He said 166 teachers will be eligible to retire in 1998 and 450 teachers will be eligible to retire in 2010.

Dr. Sanstead said sports issues affect consolidation decisions. He said the Beulah School District has absorbed some of the surrounding districts. He said the increase in student population, however, has resulted in the sports teams having to compete with larger schools.

Dr. Sanstead said one of the most difficult situations he encounters is when a district comes with money in hand wishing to build. He said districts sometimes assume that if they build a new facility now, they will be the one to survive when consolidation efforts take place. In the past, he said, some school construction has been approved only when the district agreed to provide community access to the school facility. In one particular case, he said, the student numbers declined rapidly and dramatically. However, he said, the community at least had a community center.

Dr. Richard Ott, North Dakota School Boards Association, said there is conversation about the possibility of another lawsuit. He said that conversation makes him very nervous. He said the reality is that lawsuits take money and the school districts wanting to bring suit simply do not have those resources. He said we should concentrate more on doing what is right, rather than worrying about another lawsuit. He said the bonding laws and an increase in the school construction fund should be able, together, to accommodate any expansion in student numbers in certain districts. He said, however, other districts have more of an issue with renovation. He said the state school construction fund can help with this as well. He said the thing that would really help would be to allow school districts to levy a 20-mill building fund without voter approval.

Dr. Ott said the Individuals with Disabilities Education Act requires that school buildings be accessible to students who are handicapped. He said

the Americans with Disabilities Act requires that school buildings be accessible to everyone, not just students. He said Section 504 of the Rehabilitation Act requires that accommodations be made for employees with disabilities. He said we have an emphasis on fire safety. He said the State Fire Marshal bends over backward to work with the school districts, but at some point, if there is a dangerous situation, it has to be addressed. He said it would help school districts if school boards could have kind of an ad hoc levy to address unpredictable requirements. He said most people do not think that the state should be responsible for school buildings. He said that is presumed to be a local decision. He said we hear about the occasional questionable decisions made by school board members. However, he said, those are the exceptions. He said most school board members realize that they are accountable to the local electorate and take their decisionmaking role seriously.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Senator Freborg requested the Legislative Council staff be requested to arrange for a presentation on the criteria for building approvals and suggestions for strengthening the approval process.

Representative Delmore requested the Legislative Council staff be requested to provide information on 10 to 15 years of special education costs per student and per district.

Senator Freborg said districts can ask for voter approval of an additional 10 mills for their building funds. He said we could remove the asbestos levy. He said we might want to require unanimous consent of the board. He said we could require that all districts be in a high school district. He said we could enlarge the pool of dollars available for school construction. He said we could talk about imposing a minimum school district general fund levy.

Representative Berg requested the Legislative Council staff be requested to prepare a bill draft to establish a major pool of money for construction through the bond bank. While he does not want a subsidized interest rate, he said, by pooling the loans, the districts could each receive a lower interest rate. He said we should take the \$1 million a year we are currently spending and tie it to certain criteria like a safer school, or Americans with Disabilities Act requirements and use those dollars on an individual basis to buy down the interest rate for individual school districts. He said there are a lot of schools that would like to receive money. He said we probably do not have the criteria to ensure that the limited dollars are going to the school districts with the greatest need. He said perhaps we could include technology as an added purpose for which the bond funds could be made available.

Representative Brandenburg said with our decreasing student population, there is no question

that we will have fewer schools. He said we need to look at better utilizing technology, rather than building new schools.

Representative Kunkel said perhaps we could use the 20-mill building fund levy for technology. Mr. Decker said the purposes for which school districts can use their building fund levies depends on how the question was originally put to the voters. He said it makes a lot of sense to create a multipurpose building fund levy.

Representative Berg said we need to address equitable changes. Senator Freborg said if we really want to provide equity, we need to push up the equalization factor. He said the reality is that during the last session, people were very concerned about any increases. He requested the Legislative Council staff be requested to prepare a bill draft relating to a minimum levy. He said we should start at 125 mills and adjust the level during the session.

In response to a question from Representative Berg, Senator Freborg said if a district is not levying 125 mills, the difference between the district's levy and the 125-mill requirement would be subtracted through the foundation aid formula.

Senator Freborg requested the Legislative Council staff be requested to prepare a bill draft that requires all land to be in a high school district. Representative Monson said we have exemptions for elementary districts that now participate in various cooperative arrangements.

Representative Berg requested the Legislative Council staff be requested to provide information

regarding tuition payments for students attending high school in districts other than their district of residence, if their district of residence is an elementary district.

In response to a question from Representative Gorder, Professor Bass said the biggest problem we have in considering the use of a property tax is that the property tax does not necessarily relate to one's ability to pay. He said a number of states have looked at this issue. He said no state has adopted a local income tax to replace the property tax. He said California and Massachusetts placed caps on the level of property taxes that could be collected. He said those measures put pressure on the state to fund local services. He said the most common measure for limiting property taxes is to have the state replace the local property tax in part with greater state income taxes. He said allowing local school boards access to income tax dollars would create even greater inequity. If the school districts are given the ability to levy income taxes, he said, the state will have restricted its ability to raise income taxes, much as when it allowed local political subdivisions to raise sales taxes, it restricted its ability to raise sales taxes.

Chairman Freborg adjourned the meeting at 3:30 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:10