

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### EDUCATION COMMITTEE

Thursday and Friday, June 6-7, 2002  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Dwight Cook, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Dwight Cook, Layton Freborg, Jerome Kelsh, David O'Connell, Terry M. Wanzek; Representatives Larry Bellew, James Boehm, Lois Delmore, Howard Grumbo, C. B. Haas, Lyle Hanson, Kathy Hawken, Bob Hunsakor, Dennis E. Johnson, RaeAnn G. Kelsch, Lisa Meier, David Monson, Phillip Mueller, Darrell D. Nottestad, Dorvan Solberg, Laurel Thoreson

**Members absent:** Senator Tim Flakoll; Representative Thomas T. Brusegaard

**Others present:** See Appendix A

**It was moved by Senator O'Connell, seconded by Representative Meier, and carried on a voice vote that the minutes of the previous meeting be approved.**

At the request of Chairman Cook, committee counsel presented a bill draft [30071.0200] that called for the provision of \$50,000 to the Superintendent of Public Instruction so that the data envelopment analysis project can be completed. She said the background memorandum regarding school transportation defined data envelopment analysis as a method for measuring and encouraging efficiency. She said because data envelopment analysis involves the analysis of comparable operating units, it can also be used as a basis for funding. She said under data envelopment analysis, all school districts in the state would be divided into categories or peer groups that have comparable circumstances. She said the next step involves the standardization of inputs such as costs for administration, drivers, mechanics, repairs, fuel, etc. She said through use of a mathematical formula, variables are then analyzed to determine the relative efficiency of each district.

Committee counsel said each district is then compared to the other districts in its category and funding is then based on the operational cost of the most efficient district in the category. She said through formula application, data envelopment analysis can also be used to assist school districts in reconfiguring their transportation routes so that they provide transportation in the most efficient manner possible.

Chairman Cook recognized Mr. Tom Decker, Director, School District Finance and Organization,

Department of Public Instruction. Mr. Decker said it is the data envelopment analysis that needs to be completed. He said the school mapping project is already finished. He said upon completion of the project, Department of Public Instruction personnel will be able to bring forward a suggested formula for calculating transportation payments.

In response to a question from Senator Freborg, Mr. Decker said he believes the project can be completed for \$50,000.

In response to a question from Senator Wanzek, Mr. Decker said he does not know why the Legislative Assembly did not appropriate the necessary funds during the previous two sessions.

**It was moved by Senator Freborg and seconded by Representative Haas that the bill draft [30071.0200] to appropriate \$50,000 for the completion of the data envelopment analysis project be approved and recommended to the Legislative Council.**

In response to a question from Senator O'Connell, Mr. Decker said there needs to be statistical analysis of the districts in order to determine the peer groups for funding purposes. He said the resulting groups will have a great deal in common.

In response to a question from Representative Thoreson, Mr. Decker said once the analysis is complete, it will result in a bill draft that creates a new system for transportation payment. He said the payment will be based on the most efficient district in each peer group. He said it will ensure that the state has a more efficient system of school district transportation. He said there is a tremendous amount of cost difference between school districts that otherwise appear to have similar characteristics.

In response to a question from Representative Hawken, Mr. Decker said if the 2003 Legislative Assembly would enact the recommended appropriation, the Superintendent of Public Instruction would offer a new transportation funding formula to the 2005 Legislative Assembly for its consideration.

In response to a question from Representative Mueller, Mr. Decker said data envelopment analysis is a statistical process in which all the aspects of transportation are considered. He said the formula would be built on those cost factors that have the highest correlation to outcome.

**The motion carried on a roll call vote.** Senators Cook, Freborg, Kelsh, and Wanzek and Representatives Bellew, Boehm, Delmore, Grumbo, Haas, Hanson, Hawken, Hunskor, Johnson, Kelsch, Meier, Monson, Mueller, Nottestad, Solberg, and Thoreson voted "aye." Senator O'Connell voted "nay."

Senator Cook distributed a bill draft [30101.0100] relating to knowledge-skills-based pay. He said knowledge-skills-based pay is a system for compensating teachers. He said it has been implemented at a variety of sites across the country. He said any school district could employ this method of compensating its teachers. He said this bill draft would make available \$150,000 to each of two school districts to pursue knowledge-skills-based pay. He said each participating school district would also be eligible to receive an additional \$20,000 to cover any direct and indirect expenses relating to its participation.

In response to a question from Senator O'Connell, Senator Cook said the bill draft describes eligible participants as school districts having over 2,500 students in average daily membership. He said there are six or seven school districts that would be eligible for participating in the pilot project.

In response to a question from Representative Thoreson, Senator Cook said the greatest chance of this being successful will occur in the large school districts. He said this will be available to smaller schools through joint powers agreements. He said some of the smaller school districts might find it cost-prohibitive to engage in the evaluation process required by this bill draft.

Senator Freborg said this bill draft should be recommended so the Legislative Assembly can have some more discussions regarding the concept.

**It was moved by Senator Freborg and seconded by Senator Wanzek that the bill draft [30101.0100] to provide an appropriation for a knowledge-skills-based pay pilot project be approved and recommended to the Legislative Council.**

Representative Delmore said we need to be looking at the whole state budget. She said we need to look at setting budget priorities. She said if we need to allocate money for knowledge-skills-based pay, we should consider what that means for other budget requests, including continuation of the teacher compensation package.

Representative Hawken said there is no law that would prevent any school district from providing compensation for its teachers through a knowledge-skills-based pay system. She said anything that has a price tag is a concern. She said the Fargo School District is more concerned about receiving its hold harmless money.

Senator Cook said this type of compensation is attractive to young teachers. He said such individuals can reach a higher level of pay much earlier than if they were forced to adhere to the standard salary

steps. He said people need to know the pros and cons of this payment system.

Representative Delmore said she is interested in recruiting and retaining teachers. However, she said, this bill draft carries with it an expensive price tag, especially considering that school districts can already do this.

Representative Thoreson said he is concerned about what it would take to sustain this type of compensation in a meaningful way.

Senator Cook said the \$300,000 would go directly to teacher pay, provided a majority of the teaching staff would, through negotiations, agree to this type of compensation. He said the issue of sustaining salary increases is an issue under any compensation system.

Senator Kelsh said the large cities are not having a difficult time recruiting teachers. He said difficulty is encountered in the rural areas. He said this bill draft would make the problem worse, not better, for the small school districts.

Representative Haas said we are jumping to conclusions about what money is available for what projects during the next legislative session. He said if the idea has merit, it should be thrown into the mix for further consideration. He said a pilot project is designed to help decisionmakers determine whether or not it should be replicated. He said this bill draft will allow us to examine the merits of the knowledge-skills-based pay concept.

Representative Thoreson said if we find out that knowledge-skills-based pay will work in a big school district, we still will not have the data to tell us whether it will work in a small school district. He said it would make sense to have a small school district and a large school district in the mix.

Senator Cook said it will cost about \$20,000 to implement this program. He said a consortium of 2,500 students would provide the necessary information.

**It was moved by Representative Monson, seconded by Senator Wanzek, and carried on a roll call vote that the previous motion be amended to provide that the Legislative Council staff be requested to redraft the bill draft [30101.0100] relating to the provision of an appropriation for a knowledge-skills-based pay pilot project so that eligible participants include one school district having at least 2,500 students and one consortium having at least 2,500 students.** Senators Cook, Freborg, Kelsh, O'Connell, and Wanzek and Representatives Bellew, Boehm, Delmore, Grumbo, Haas, Hanson, Hawken, Hunskor, Johnson, Kelsch, Meier, Monson, Mueller, Nottestad, Solberg, and Thoreson voted "aye." No negative votes were cast.

Chairman Cook said the committee will review the redrafted language and reconsider the bill draft at its next meeting.

At the request of Chairman Cook, Mr. Steve Swiontek, Superintendent, Devils Lake School District, presented testimony regarding education funding in North Dakota. A copy of his testimony is attached as Appendix B.

Mr. Swiontek said the superintendents from Mandan and Surrey were unable to be present today. He said he is presenting information applicable to the school districts listed on the copy of his testimony.

Mr. Swiontek said the Constitution of North Dakota requires that the Legislative Assembly provide for a uniform system of free public schools. He said since the conclusion of the state's education funding lawsuit, the Legislative Assembly has managed to raise the mill deduct from 22 to only 32 mills and to create a supplemental equity fund. He said the Legislative Assembly needs to be reminded of the 1917 case of *Haig v. Hauge*, in which it was stated by the court that all taxes for education are state taxes.

Mr. Swiontek said in North Dakota there is a large variation in the taxable value per student. He said there is consequently a large variation in the amount of money that can be levied per student. He said the taxable valuation per student has gotten even more diverse during this past year.

Mr. Swiontek said he wonders why junior high school students are assigned the same weighting factor, regardless of the size of school district they attend. He said the Edmore School District has a mill levy of 140.8 and the Starkweather School District has a mill levy of 149.81. He said the Devils Lake School District has a mill levy of 190.39. He said given that range of mill levies, there is no way that the people living in the Edmore and Starkweather School Districts would ever consider consolidating with Devils Lake.

In response to a question from Senator Cook, Mr. Swiontek said just because one district is spending \$4,000 per student and another district is spending \$8,000 per student does not necessarily mean that one student is getting a better education. However, he said, he would certainly like to have the opportunity to spend \$8,000 on each of his students.

Chairman Cook recognized Mr. Steve Johnson, Superintendent, Lisbon Public School District. Mr. Johnson said as a result of the high school weighting categories, the Department of Public Instruction determined that the Lisbon Public School District lost 41.95 weighted students last year. He said this happened without the district losing so much as a single actual student. He said small schools in categories that have few students can easily skew the weighting factors. He said the Legislative Assembly needs to reconfigure its weighting categories.

In response to a question from Representative Delmore, Mr. Swiontek said some of the school districts that participated in the first lawsuit have improved their conditions. He said that is not the

case with respect to Devils Lake and the other school districts appearing before the committee today.

Mr. Swiontek said smaller school districts with fewer students receive more teacher compensation dollars per student than do those larger districts that have a ratio of 22 students per teacher.

Mr. Swiontek said he does not want to pursue a lawsuit at this time because he believes that the Legislative Assembly would like to pursue the options that are available. He said the Devils Lake School District is beginning to lose students.

Chairman Cook recognized Mr. Paul Stremick, Superintendent, Grafton Public School District. Mr. Stremick presented testimony regarding education funding in North Dakota. He distributed a document listing educational funding statistics for the school districts of Grafton, Park River, Minto, Cavalier, St. Thomas, Drayton, Langdon, Nash, and Lisbon. A copy of the document is attached as Appendix C. He said the only thing that should be excluded in considering local resources is categorical federal aid. He said the state aid per student is relatively close for the districts of Grafton, Park River, Minto, Cavalier, St. Thomas, Drayton, Langdon, Nash, and Lisbon. He said there is a great deal of variation in the local tax dollars that can be raised per student in those districts. He said Grafton receives \$2,504 per student in state aid and Drayton receives \$2,490 per student. However, he said, the local tax dollars that are raised per student in Grafton amount to \$1,915 as compared to \$3,837 in Drayton. He said total revenue per student is \$4,419 in Grafton and \$6,335 in Drayton. He said with some districts having very low mill levies and others needing to levy much more, there is no incentive for low mill levy districts to consolidate with districts having high mill levies.

Mr. Stremick said the Grafton Public School District has the third highest mill levy in the state. He said unfortunately Grafton ranks eighth from the bottom in spending per student.

Mr. Stremick said the present method of distributing education dollars fails to provide some school districts with the dollars they need to fund the education of their students. He said if he had the extra \$1,000 per student to which his neighboring districts have access, he would have \$2 million per year to spend on the students of Grafton. He said that would certainly allow the Grafton Public School District to provide some additional and certainly better educational opportunities.

Mr. Stremick said tuition apportionment is based on the census times \$300. He said those districts that have numerous children in private schools receive tuition apportionment dollars. He said the costs they incur in providing educational services to those students are minimal.

Mr. Stremick said the state should move to a 185-mill deduct. He said that would help. He said the other option would be to require a 185-mill levy and

have a recapture provision. He said there is no fairness and equity in the current education funding method.

Mr. Stremick said the Nash Public School District levies 140 mills. He said that district might have to levy an additional 10 mills to stay open. He said the Grafton Public School District has to levy 200 mills just to stay even.

In response to a question from Representative Hanson, Mr. Stremick said the Grafton Public School District spends about 56 mills on its building.

In response to a question from Representative Hawken, Mr. Stremick said he does not believe that changing the current special education formula with respect to average daily membership reimbursement would matter a lot. He said he is looking at the payments for regular education students.

In response to a question from Senator Kelsh, Mr. Stremick said the Grafton Public School District needed to borrow \$275,000 to close out its books in June 2001. He said some school districts can easily raise a few more mills and very quickly have a substantial interim fund.

Senator Kelsh said the smaller school districts have to pay more per student to operate their schools.

Representative Kelsch said she applauds school districts for their efforts to look for solutions. She said she is concerned about where the additional dollars would go if the districts had them.

In response to a question from Representative Kelsch, Mr. Stremick said the superintendents believe that consolidation should be a local decision once the education funding formula has been equalized. He said if at that time the smaller school districts want to pay the bill and stay open, that should be their local decision.

In response to a question from Senator O'Connell, Mr. Stremick said a recapture provision would eliminate the huge differences in the taxes paid by landowners in the Nash Public School District and in the Grafton Public School District. He said if the state were to incorporate an income tax in the formula, it would help, provided the new dollars are not used just to supplant property taxes. He said the state still needs to equalize the dollars.

Chairman Cook recognized Mr. Warren Larson, Superintendent, Williston Public School District. Mr. Larson presented testimony regarding education funding in North Dakota. He said Williston Junior High School has 350 students and two electives--band and choir. He said many students have two study halls each day. He said Williston High School is no longer able to offer a host of vocational and technology classes. He said the Williston Public School District cannot afford to provide an alternative high school. He said the district has worked on creating a distance learning cooperative of 15 school districts in the northwest part of the state, but the money to participate is not there. He said even if the Williston

Public School District would like to offer services to its neighbors, it does not have the staff or the resources to do so.

Mr. Larson said when students travel for school-related activities, they generally have to pay for their meals and motels. He said this prevents low-income students from participating in various activities.

Mr. Larson said there are significant inequities in what Williston can provide when compared to what other school districts in North Dakota can provide. He said the Williston taxpayers are paying far more than their fair share to support their schools.

In response to a question from Senator Cook, Mr. Larson said a parent could sue because a student in the Williston Public School District does not have access to the same educational opportunities as students in other parts of the state.

In response to a question from Representative Monson, Mr. Larson said there is no vocational center in Williston. He said the district would be willing to work cooperatively with Williston State College, but the funding to do so is not available.

In response to a question from Representative Thoreson, Mr. Larson said it would be accurate to say that in effect the district would like to see all available money put into a pot and then redistributed.

Chairman Cook recognized Mr. Curt Sinness, President, Devils Lake School Board. Mr. Sinness presented testimony regarding education funding in North Dakota. He said the Devils Lake Public School District levies 190.5 mills. He said the district is at the state cap. He said the district needs to figure out how to generate additional revenue without going to the people. He said there is a great inequity among school districts with respect to what each can spend per student. He said curricular and cocurricular opportunities, teacher salaries, and safe buildings are all at stake. He said all students in North Dakota should be worth the same.

In response to a question from Senator O'Connell, Mr. Swiontek said there is a substantial amount of property in the Devils Lake Public School District that is tax-exempt. He said this includes property of the National Guard.

In response to a question from Senator Cook, Mr. Swiontek said the Devils Lake Public School District offers German and Spanish at the high school level. He said the district offers three years of foreign language. He said the district has had to cut back on its vocational offerings.

Chairman Cook recognized Mr. Paul Houdek, Grafton Public School Board. Mr. Houdek presented testimony regarding education funding in North Dakota. He said he is also the tax assessor for the city of Grafton. He said there is a serious inequity with respect to local tax dollars per student. He said if consolidation is a goal of this committee, the committee and then the Legislative Assembly must equalize the tax dollars. He said without equalized

tax dollars, there is no reason for school districts to consolidate. He said there is too much diversity among the districts' tax levies.

In response to a question from Senator O'Connell, Mr. Houdek said agricultural land values in the Grafton Public School District increase about 5 percent each year. He said valuations in the city of Grafton have increased very little in the last decade. He said there has been about a 1.5 percent increase in valuations each year on Grafton properties. He said prior to the last couple of years the home values in Grafton were stagnant.

In response to a question from Representative Mueller, Mr. Houdek said this state is far too reliant on property taxes. He said however the committee needs to consider two issues. He said one issue is how the money is generated and the other issue is how the money is distributed.

Senator Cook said agricultural property values are currently being studied by the interim Taxation Committee. He said 20 years ago the average value of an acre of agricultural land in Morton County for tax purposes was \$144 and today it is \$145.

Senator Wanzek said agricultural land is capitalized and as interest rates have fallen the value of agricultural land has been increased.

Chairman Cook recognized Mr. Dan Gaustad, Grafton Public School District Board member. Mr. Gaustad presented testimony regarding education funding in North Dakota. He said he has four small children and they are not receiving the same educational opportunities as are other children in this state. He said a recent article suggested students in small schools were receiving an excellent education because the student-teacher ratios are very low and the students were in fact being home-schooled.

Mr. Gaustad said the Grafton Public School District is about two years away from a financial disaster because it is again losing students. He said there will be staff reductions and there will be another loss of educational opportunities.

Mr. Gaustad said years ago there was a relationship between property ownership and wealth. He said that is not the case anymore. He said his children are getting their basic reading, writing, and arithmetic. He said it takes more than that to succeed in today's world. He said our students need to be able to compete nationally and internationally. He said he is not bothered that some school districts can provide additional services to their students. He said he is bothered that the Grafton Public School District cannot provide those same services to its students.

In response to a question from Senator Kelsh, Mr. Gaustad said it would be onerous to tax every piece of property that a person owns.

In response to a question from Senator O'Connell, Mr. Gaustad said there should be more opportunity for school board members to participate in city council discussions regarding tax exemptions.

Mr. Swiontek said he believes the Legislative Assembly will try to remedy the tax inequities.

In response to a question from Representative Kelsch, Mr. Swiontek said the superintendents realize there are only so many dollars in the state budget. He said the Legislative Assembly needs to more equitably distribute the dollars that are available. He said our current system does not provide for equal educational opportunities for all students. He said we are not able to close the achievement gap between students of differing economic backgrounds.

In response to a question from Representative Nottestad, Mr. Swiontek said if we were to use sales and income taxes to support education, the money would still have to be collected at the state level and distributed equitably.

In response to a question from Representative Haas, Mr. Swiontek said if we went to a state sales and income tax to support education, we would have to make systemic changes in the way we deliver education.

Chairman Cook recognized Mr. Jon Martinson, Executive Director, North Dakota School Boards Association. Mr. Martinson presented testimony regarding joint powers agreements. He said the goal of joint powers agreements is to move public education forward by providing more educational opportunities for our students. He said there are currently four joint powers agreements in place. He said the one around Dickinson consists of 19 school districts, the one around Minot consists of four school districts, the one around Devils Lake consists of 14 school districts, and the one in central North Dakota, around Anamoose, consists of five school districts.

Mr. Martinson said common school calendars, shared technology, coordinated library services, staff training, school improvement, curriculum assessments, and standards are among the numerous features that can be offered and shared through a joint powers agreement.

Mr. Martinson said joint powers agreements are voluntary and are based on grassroots support. He said school district superintendents are already crossing district lines to provide services. He said joint powers agreements are not as far-reaching or as quick as some would like. He said others view joint powers agreements as an alternative to pursuing the more difficult concepts of reorganization. He said joint powers agreements have not yet done anything to advance educational equity. However, he said, the opportunity to advance in this area and in others exists with joint powers agreements. He said the agreements offer the flexibility necessary to provide such opportunities. He said joint powers agreements provide an alternative to the consolidation bills considered by the committee at its last meeting.

In response to a question from Senator Cook, Mr. Martinson said by including people in the

dialogues, joint powers agreements can be used to move equity forward.

Representative Kelsch said joint powers agreements are purely voluntary. She said while on one hand being voluntary sounds good, the reality is that joint powers agreements have not moved the state toward education funding equity and have not to date provided the educational opportunities our children need. She said the problem is school districts do not have to make a commitment to the joint powers agreements. She said school districts can participate as long as they want to and then they can leave when they believe it is not in their own best interest.

Mr. Martinson said certainly districts can do all of this without a joint powers agreement. He said it is helpful to have a piece of paper that shows the terms to which the districts have agreed.

Representative Monson said school districts in his area have been accomplishing the same thing without a joint powers agreement for at least 20 years.

In response to a question from Representative Thoreson, Mr. Martinson said one of the main goals is to improve curriculum. He said he cannot give the committee specifics regarding how curriculum is being improved.

Senator Wanzek said agriculture and education are not all that different. He said there is room to achieve additional efficiencies through cooperative efforts and the sharing of resources.

In response to a question from Representative Thoreson, Mr. Martinson said there is a real strong reaction against state-mandated, top-down reform. He said joint powers agreements provide some opportunities for discussions.

At the request of Chairman Cook, Mr. Jerry Coleman, School District Finance and Organization, Department of Public Instruction, presented testimony regarding school district weighting factors. He distributed a document entitled *2001-03 State Aid to Schools - \$628 Million*. A copy of the document is attached as Appendix D.

Mr. Coleman said 69 percent of the total state education appropriation goes to foundation aid. He said to determine the effect of the mill deduct, one must multiply 32 mills by the total taxable valuation of a district and then subtract this amount from what is otherwise due.

Mr. Coleman said the weighting factor is a ratio that represents the cost of a particular category, divided by the state average for that category.

In response to a question from Representative Monson, Mr. Coleman said the medium-size districts are the ones that are the most efficient. He said their salary requirements are not as high as in the urban areas and they are filling up their classrooms.

In response to a question from Senator Cook, Mr. Coleman said as the average cost per student increases, the weighting factor will increase as well.

Mr. Coleman said in the net column the amounts in parentheses indicate losses to the districts.

In response to a question from Senator Cook, Mr. Coleman said the holding in the lawsuit had indicated that the weighting factors need to be addressed. He said we should not continue to apply inaccurate weighting factors.

At the request of Chairman Cook, committee counsel presented a bill draft [30075.0100] that proposes an increase in the mill deduct. She said the current mill deduct is 32. She said under this bill draft the mill deduct would be increased by two mills each year.

At the request of Chairman Cook, Mr. Coleman presented testimony regarding the bill draft to increase the mill deduct. Mr. Coleman distributed a document entitled *Mill Deduct Impact Example*. The document is on file in the Legislative Council office.

Mr. Coleman said the mill deduct generates \$39,449,912 for redistribution through the formula. He said without a mill deduct the Grafton Public School District would receive \$63,000 less than it does now. He said the Sargent Central Public School District is presently impacted negatively because that district's taxable valuation per student is quite a bit higher than the state average.

Mr. Decker said as long as you make the assumption that property value per student represents relative wealth, this is the best equalization vehicle we have and it is way too little.

Chairman Cook recognized Mr. Fred Johnson, Superintendent, Eight Mile Public School District. Mr. Johnson said the mill deduct takes about \$45,000 from the Trenton School District's foundation aid allotment. He said the school district is already at the maximum allowable mill levy. He said the district cannot generate any more tax dollars.

Representative Monson said the Eight Mile Public School District would gain \$6,152 if the Legislative Assembly would increase the mill deduct to 36.

Mr. Swiontek said while any kind of a mill deduct increase helps the Devils Lake Public School District, the reality is that such an incremental move would take too much time to achieve equalization. He said the committee will have to do more than increase the mill deduct by two mills a year.

**It was moved by Senator Freborg and seconded by Representative Haas that the bill draft [30075.0100] to increase the mill deduct by two mills each year be approved and recommended to the Legislative Council.**

Senator Freborg said the committee needs to keep this bill draft alive so it can be considered by the Legislative Assembly as a whole. He said if there is support among the legislators, the bill draft can be amended during the legislative session.

Representative Mueller said perhaps we need to go back and adjust the original weighting factors.

Senator Kelsh said the Sargent Central Public School District resulted from the reorganization of five school districts. He said until we can get to the point where we can help everybody, we are not going to have equalization. He said school districts are not land rich, they are student poor. He said we need to look at ways to pay for schools that rely on sources of income other than property.

Representative Solberg said all but one of the schools in his district would lose funding under an increased mill deduct. Therefore, he said, he will not support the bill draft.

Senators Cook and Freborg and Representatives Delmore, Haas, Hanson, Kelsch, Meier, Nottestad, and Thoreson voted "aye." Senators Kelsh, O'Connell, and Wanzek and Representatives Bellew, Boehm, Grumbo, Hawken, Hunskor, Johnson, Monson, Mueller, and Solberg voted "nay."

Chairman Cook said the motion to recommend the bill draft failed on a vote of 9-12.

At the request of Chairman Cook, committee counsel presented a bill draft [30100.0100] that would place in statute the requirement that a student successfully complete at least 21 high school credits before being eligible to receive a high school diploma. She said there seems to be a longstanding assumption that there currently is such a requirement, but that assumption is incorrect.

Committee counsel said this bill draft sets 21 credits as the floor. She said it does not preclude a school district from setting a higher requirement for its students.

Committee counsel said the bill draft carries with it an effective date of July 1, 2005. She said this means the requirement would be applied for the first time to the students who graduate in May 2006. She said those are the students who will be entering grade 9 in August or September 2002.

Chairman Cook recognized Dr. Gary Gronberg, Department of Public Instruction. Dr. Gronberg presented testimony regarding school district graduation requirements. He distributed a document entitled *ND Public [School] Districts and Their Graduation Requirements*. A copy of the document is attached as Appendix E.

In response to a question from Representative Nottestad, Dr. Gronberg said school districts still use Carnegie units.

**It was moved by Representative Monson and seconded by Representative Nottestad that the bill draft [30100.0100] that requires that a student successfully complete at least 21 high school credits before being eligible to receive a high school diploma be approved and recommended to the Legislative Council.**

In response to a question from Senator O'Connell, Mr. Milton Hoyt, Superintendent, Mohall Public School District said the Mohall Public School District already requires 20 credits for graduation. He said the district

requires its students to take at least six credits a year. He said until a year ago the district required only 17 units. He said the district found that all of its students were taking at least 20 credits. He said the concern is always with that one student who might struggle a little. He said the Mohall Public School District would not be adversely affected if the state required 21 credits prior to issuance of a high school diploma.

In response to a question from Senator Kelsh, Mr. Hoyt said the Mohall Public School District plans to have a seven-period day next year because the district will be participating in video conferencing. He said when the district had an eight-period day, two of the periods had to be shorter. He said that caused some difficulty with science courses.

In response to a question from Representative Mueller, Mr. Hoyt said he does not know of any schools that would view this bill draft as a real burden. He said most offer a comprehensive curriculum that allows students to take at least 21 units.

Representative Kelsch said we are one of the few states that does not impose a state-level requirement for high school graduation.

In response to a question from Representative Delmore, Mr. Decker said the Superintendent of Public Instruction does not collect data regarding which courses individual students take.

Senators Cook, Freborg, Kelsh, O'Connell, and Wanzek and Representatives Bellew, Boehm, Delmore, Grumbo, Haas, Hanson, Hawken, Hunskor, Johnson, Kelsch, Meier, Monson, Mueller, Nottestad, Solberg, and Thoreson voted "aye." No negative votes were cast.

Chairman Cook said the motion to approve and recommend the bill draft passed.

## REQUIRED HIGH SCHOOL UNITS

At the request of Chairman Cook, committee counsel presented a bill draft [30078.0300] that the minimum course offerings that school districts must make available to their students. She said the North Dakota Century Code requires four units of English, and that remains the same. She said the North Dakota Century Code requires three units of mathematics, and that was raised to four units. She said the North Dakota Century Code requires four units of science, and that remains the same. She said the North Dakota Century Code requires three units of social studies, and that was raised to four units. She said the bill draft also raises the physical education requirement from one unit to two units, the music requirement from one unit to two units, and it imposes a foreign language requirement of three units.

Committee counsel said the bill draft also maintains the current reference to six elective units, but it requires that a student have at least six courses from which to choose at the student's particular grade level.

Committee counsel said the bill draft uses the phrase "shall make available" with respect to the required courses. She said the bill draft does not require that each of the listed courses be taught in a classroom by a teacher. She said "making available" could include interactive or distance learning options as well as correspondence courses. She said the bill draft leaves it up to each district to determine how best to make these courses available.

Committee counsel said this bill draft sets forth what each school must make available. She said it does not require each student to take these courses. She said that is still a decision that is made by the student, his or her parents, and his or her teachers.

Dr. Gronberg said this is the section of law that has been interpreted as being the state graduation requirement. He said the Superintendent of Public Instruction would prefer to have a reference to four separate grade level units of English, aligned to the state standards. He said this would be preferable to listing the content of the courses. He said rather than reference music and choir, we should reference the arts and thereby cover music, theater, and the visual arts.

In response to a question from Senator Kelsh, Dr. Gronberg said all the subjects would not have to be taught onsite. He said they would just have to be made available to students.

In response to a question from Senator Cook, Representative Monson said his school district offers chemistry one year and physics another year. He said there are probably some school districts that do not offer physics at all. He said the University System has some concern over our high school grading and content requirements.

Representative Hawken said we should never take out teacher input as to what a student learned in a particular class.

Dr. Gronberg said the universities are indicating that they can rely less and less on how teachers grade their students or on teacher-designated achievements such as the naming of valedictorians. He said the colleges are attempting to rate students from multiple backgrounds and districts that have no standardized system for grading. He said colleges are relying on placement tests more than they are relying on high school grades.

Representative Monson said he would prefer to have a reference to alignment to the state standards rather than to a specific listing of courses.

Dr. Gronberg said perhaps the foreign language requirement could be spread out over elementary as well as high school courses.

In response to a question from Representative Hunsdorfer, Senator Cook said this bill draft articulates the requirements that children must have available to them. He said there is an expected standard and an expected curriculum that legislators are trying to define.

Representative Mueller asked if the committee could have some of the articulated changes drafted for the next meeting.

**It was moved by Representative Kelsch and seconded by Representative Nottestad that the previous motion be amended to request the Legislative Council staff to redraft the bill draft to include Dr. Gronberg's suggestions regarding alignment to the state standards.**

Representative Kelsch said this bill draft is a first step toward finally giving each child in the state an equitable educational opportunity. She said we need to clarify in this bill draft that the required course offerings can be presented by school districts using a variety of means, including in-classroom instruction by a teacher, electronic and distance learning, and even by correspondence.

Representative Monson said three grade levels of a foreign language just to be an approved school is a bit high. He said we need to figure out how a school district proves that it made a course available, especially if no one took it.

Representative Kelsch said a school district offers a course by making it available in its published list of available courses.

Representative Hanson said there should be a reference to world geography and students should be required to take North Dakota studies.

Senator Cook said if we align the course requirements to state standards, then we will not need the course titles.

Representative Thoreson said we really should not list any electives, just require them.

**The motion passed on a voice vote.**

Chairman Cook said the committee will consider the amended bill draft at its next meeting.

At the request of Chairman Cook, committee counsel presented a bill draft [30073.0100] that would require each school district to offer kindergarten through grade 12 services and have a fall enrollment of at least 225 students. She said if a district did not meet either of these criteria, it would be given essentially three years within which to reorganize. She said if a district failed to reorganize within the required timeframe, the Superintendent of Public Instruction would direct a county committee to initiate dissolution proceedings.

Committee counsel said the bill draft is the result of a motion passed at the last meeting of the committee. She said that motion also called for inclusion of long-term planning. She said Section 2 of the bill draft therefore requires that school boards hold public hearings during the first half of each even-numbered year to consider the effects of changing demographics on the district and appropriate responses to such changes. She said the bill draft would require the board to file a report with the Superintendent of Public Instruction setting forth its plan for addressing the changes in the ensuing 5, 10, and 20 years. She

said the plan is to include anticipated academic, athletic, and extracurricular program changes, staff changes, and building and tax changes. She said these reports are to be made available to the public upon request.

Committee counsel said the motion also called for some elementary school closure safeguards. She said the bill draft therefore included a provision that prohibited the closure of an elementary school by the board of the newly reorganized district unless the board determined the closure was based on financial exigency or that the continued operation of the school was no longer financially justifiable and provided that no student enrolled in the school at the time of the reorganization would have to travel for more than 45 minutes one way, using the most efficient and timely means of transportation.

At the request of Chairman Cook, Mr. Coleman distributed a document entitled *School District Reorganization - Minimum Enrollment*. A copy of the document is attached as Appendix F. He said there are 92 school districts that have a kindergarten through grade 12 enrollment in excess of 225 students. He said these districts represent 88 percent of the students and 79 percent of the taxable valuation.

In response to a question from Representative Monson, Mr. Coleman said statewide there is about a 2 percent decline in the number of students. He said that percentage increases dramatically in the rural areas. He said the census data included in the document is from May 2001.

In response to a question from Representative Monson, Mr. Decker said as long as we continue to pay tuition apportionment based on census, we need to continue to compile the census. He said the position of the Superintendent of Public Instruction is that tuition apportionment should be a part of the education funding formula.

In response to a question from Representative Haas, Mr. Decker said school districts could continue to compile their censuses on an as-needed basis. He said births by school district and other vital information can be obtained from sources other than the school district census.

In response to a question from Representative Delmore, Mr. Decker said the bill draft does not make an exception for smaller school districts participating in joint powers agreements. He said 92 high school districts can be identified which have more than 225 students. He said because of declining enrollment, more districts will fall below the 225-student threshold.

In response to a question from Representative Haas, Mr. Decker said the Superintendent of Public Instruction can predict with a significant amount of accuracy where districts will be with respect to their demographics during the next five years.

Chairman Cook recognized Mr. Arden Haner, Max School Board member. Mr. Haner said it is impossible to fund education based on the present mill levy

system. He said if we are going to look at consolidation, we need to figure out what to do with the debt that school districts are already carrying. He said we should consider a sales tax earmarked for education. He said property taxes are failing because operations are getting larger and there are no children in the rural areas.

Chairman Cook recognized Mr. Orlin Hanson, Economic Development Director, Renville County. Mr. Hanson said when this land was first settled, the people wanted to have a school and a church close to home. He said we are rural, but we are not isolated anymore. He said we need to keep our schools open if we want people to live in our communities.

**It was moved by Representative Solberg and seconded by Senator Kelsh that the bill draft [30073.0100] to require that each school district offer kindergarten through grade 12 services and have a fall enrollment of at least 225 students be given no further consideration by the committee.**

Representative Thoreson said what is missing from consideration is the quality of education students receive. He said there is a difference of opinion on whether a town dies first or whether its school dies first. He said we cannot continue to sacrifice students for the sake of keeping towns alive. He said these students may get individual attention, but they do not have access to the courses and offerings that give them the skills and knowledge that they need for their future endeavors. He said we need to ensure that their education provides them with a set of skills and knowledge that they can fall back on throughout their lives instead of just giving them the bare minimum necessary to graduate from high school. He said we are not mandated by the state constitution to save the towns of North Dakota. He said we are however constitutionally obligated to find the best way to educate the students of North Dakota. He said this bill draft is a start, and the committee should pass this bill draft and continue this discussion during the next legislative session.

Senator Kelsh said sometimes it is implied that because a school is small, it is not educating its students appropriately. He said the communities know best when the time comes to close a school. He said perhaps we might think that the communities keep their schools open a year too long, but there are always the voices out there which say this is enough.

Representative Haas said we need to look at this from the perspective of the student. He said if you asked the students whether they want the expanded opportunities, they would tell you that they do. He said the decision to close a school is not made by the students. He said in rural North Dakota there are macro-economic forces that none of us can control. He said it is unrealistic to think that we are going to turn around the population decline in rural North Dakota.

Representative Haas said we are allowing school boards to limit the opportunities for students. He said those limited opportunities will affect the student throughout his or her life. He said the Legislative Assembly has a duty to all the children of North Dakota. He said we can engage in provincial thinking and say we cannot support something because it will negatively affect our hometowns. However, he said, our greater obligation is to the children of this state. He said we have an obligation to ensure that they have every opportunity available to them.

Representative Haas said we need to rethink our definition of community. He said just because school districts consolidate, it does not mean that all the schools will close. He said elementary schools have to be located where the students are.

Representative Haas said we have over 400 athletic cooperatives in North Dakota and yet we cannot expand our definition of community to include academic opportunities for our children. He said we need to take this bill draft forward to continue the dialogue. He said maybe some amendments are needed, but at the very least we owe it to the children of North Dakota to bring it to the next legislative session for a good healthy debate.

Representative Mueller said we sometimes forget to acknowledge what has happened. He said in 20 years we went from 334 school districts to 222 school districts. He said that was done without anyone in Bismarck telling people that they need to do it. He said the people of North Dakota will do what they need to do when they need to do it.

In response to a question from Senator Cook, Representative Mueller said he believes that all children in North Dakota have access to an adequate education system. He said core curriculums, the things one needs to take in order to be successful, are being delivered in the small schools as well.

Senator Cook said many people have been speaking to the issue of educational opportunity with their feet. He said they are moving to places that provide the kind of educational opportunities they believe their children should have. He said students anywhere in the state should be able to take physics or a foreign language. He said we can throw a lot more money at education or we can find other ways to reach equity. He said reorganization is one of those ways. He said reorganization does not mean school closures. He said it means administrative efficiency.

Representative Monson said roughly 20 percent of his school district consists of students from other school districts. He said we should quit fooling around with consolidation. He said we should ensure that the best education for students is delivered and we should pass bills such as minimum curriculum requirements.

Senator Kelsh said we have spent millions of dollars on distance learning and now we are being

told that distance learning is not doing the job for our students. He said the reason people left rural North Dakota was economics. He said it was not because of the schools but because the people no longer had jobs. He said this type of bill draft just makes people leave rural North Dakota that much sooner.

Representative Nottestad said when he was an administrator, time and time again he enrolled families from rural North Dakota who came to Grand Forks because they wanted the opportunities for their children that only a larger district could offer. He said distance learning takes a great deal of motivation on the part of participating students. He said we need to move on. He said we need to recommend this bill draft to the Legislative Assembly and take another look at it. He said our rural areas are losing population very quickly. He said they are not going to regain it. He said those last students left in a rural school need the same opportunities as other students across the state. He said what students need is so much different and more advanced than what we had when we went to school.

Representative Kelsch said we are concerned about our communities but we are not equally concerned about our students. She said we have the constitutional obligation to provide an education for the children of North Dakota.

Representative Mueller said there are parts of the bill draft that are very good. He said he likes the part of the bill draft that provides for long-term planning. He said he believes that a lot of the issues would be taken care of if there was a more coordinated attempt to engage in long-term planning.

Senator Freborg said he hopes the committee will soon begin to expend its energy in ways that provide a better education for all the students in the state rather than trying to close small schools. He said all of our schools are trying to give our students a good education. He said it is our job to set a standard that requires all the schools to give our students a good education.

Representative Hawken said she does not believe that small schools do not do a good job. She said we need to figure out how all schools can do a good job and we need to figure out how to do it in a cost-effective manner. She said our challenge is figuring out how we fund a quality education for all the students in our state. She said we cannot lower standards in some school districts so we can bring everybody to the same level.

Representative Hunskor said many school boards are continuing to look for options to provide educational services. He said the local people are aware that they may have to close their schools, but they resent state-level mandates to close.

Senator Cook said we need to find a solution to the problem of equity. He said the committee heard from the superintendent of the Williston Public School District, who indicated he believed he was susceptible

to a lawsuit because he is unable to provide the educational opportunities to his students which are available elsewhere. He said the constitutional obligation to provide a uniform education still lies with the Legislative Assembly. He said even though this bill draft is a mandate, it is a proposed solution to the problem of equity.

Representative Nottestad said many students from small schools have gone on to successful college experiences. He said many of these students have the ability to do well despite their placement. He said if a student is in a school setting that does not have sufficient electives, that student will not be sufficiently challenged. He said, on the other end, there may be a student who is not four-year college material. He said we need to ask what that small school is able to provide by way of vocational courses for that individual. He said that student does not have the opportunity to experience vocational courses.

Representative Nottestad said we need to continue these discussions. He said a vehicle is needed which provides some level of competition for high school students. He said we are not talking about closing elementary schools. He said we may be talking about closing some high schools. He said very smart students may graduate at the top of their high school classes but do not have the advanced courses that would otherwise have helped them.

Representative Monson said the committee gave its blessing to a bill draft that called for a specific curriculum regardless of school size. He said this bill draft addresses nothing about a school other than its size. He said school size should not make a difference as long as the school is providing the required necessary subjects. He said we do not need this bill draft. He said his high school has 58 students and the school offers vocational classes that Williston High School is not able to offer.

Senators Freborg, Kelsh, and O'Connell and Representatives Bellew, Boehm, Grumbo, Hanson, Hunsdor, Johnson, Monson, Mueller, and Solberg voted "aye." Senator Cook and Representatives Delmore, Haas, Hawken, Kelsch, Meier, Nottestad, and Thoreson voted "nay."

Chairman Cook announced that the motion to give no further consideration to the bill draft that requires each school district to offer kindergarten through grade 12 services and have a fall enrollment of at least 225 students passed by a vote of 12-8.

At the request of Chairman Cook, Mr. Raymond Lambert, State Fire Marshal, presented testimony regarding school fire inspections. A copy of his testimony is attached as Appendix G. He said the State Fire Marshal's office has received compliance letters from all but three schools. He said those three schools are St. Alphonsus School in Langdon, Sheyenne Public School in Sheyenne, and Willow City Public School. He said personnel from the Willow City school have been in contact by telephone but, as

of the present time, there is no documentation on file nor is there any clear understanding as to what corrective action, if any, will be taken to fix the fire safety deficiencies cited in the report.

Mr. Lambert said 59 schools are working on compliance and 38 schools have stated that they are in compliance and are waiting for a followup inspection. He said 50 schools have been reinspected and all repeat deficiencies were shown to have been corrected.

Mr. Lambert said Fargo, Grand Forks, Dickinson, Bismarck, Minot, Jamestown, and Devils Lake schools show repeat deficiencies. He said the files from West Fargo, Valley City, Mandan, and Williston do not show any repeat deficiencies.

In response to a question from Representative Delmore, Mr. Lambert said the State Fire Marshal's office will be following up on the deficiency inspections cited in the large school districts.

In response to a question from Senator Cook, Mr. Lambert said it appears that all but three schools will be in compliance by or close to the start of the school year.

At the request of Chairman Cook, Ms. Sandi Tabor, Deputy Attorney General, presented testimony regarding the potential for liability resulting from inaccuracies in documents signed by school district officials. She said if a lawsuit were filed as a result of a school fire in which a child died, a school district superintendent might be called to testify regarding the fire inspections conducted at the school, the report listing the deficiencies, the corrective plan, the followup inspections, and the efforts undertaken to remedy the deficiencies.

Ms. Tabor said the facts would be laid out so that a determination could be made regarding the nature of the superintendent's actions. She said if the superintendent's actions were found to be willful, intentional, or knowing, then punitive damages could result.

Ms. Tabor said in such a lawsuit focus might also be placed on the self-declaration approval forms completed by the superintendent or other school official and whether or not those forms as completed would lead one to believe that the requirements of the law were being met.

Ms. Tabor said when an individual knowingly violates a law, that action may be considered to be outside the scope of that individual's employment. She said when something is outside the scope of an individual's employment, that individual is no longer covered by the state and in most cases, that individual would not be covered by the individual's insurance carrier either. She said the individual who committed a willful, knowing, or intentional act could be held personally liable.

Ms. Tabor said in addition to the potential liability at the school district superintendent's level and at the school board level, there is the role of the state to consider. Ms. Tabor said the Legislative Assembly

directed the State Fire Marshal to conduct the school inspections and to follow a specific process. She said the State Fire Marshal has made some changes to improve the process. She said the State Fire Marshal has changed some of the documentation and letters that are going out to school districts. She said the changes clarify the procedural requirements. She said the Superintendent of Public Instruction is now receiving copies of every document. She said the State Fire Marshal is now taking the corrective action plans and calling the schools to schedule reinspection when the school officials say they have the deficiencies remedied.

Ms. Tabor said the State Fire Marshal and his staff deserve a great deal of credit and thanks for the effort they have put in to both inspect and reinspect the schools. She said 70 schools were to have been inspected as part of the regular inspection cycle this year. She said those inspections were all conducted between February and April so those 70 schools could know whether or not they had repeat deficiencies and to give those schools sufficient time to remedy the deficiencies before the start of the next school year. She said the State Fire Marshal and his staff have worked unbelievable hours to try and get a handle on this issue and to try to provide a safe school environment for students.

Ms. Tabor said the problem is that there is a duty to ensure that schools are in compliance with the fire code. She said if schools are allowed to continue operating while they have these deficiencies, we need to reassess both the options and the consequences. She said the only option for dealing with schools that continue to operate with repeat deficiencies is to have the State Fire Marshal use the abatement process. She said the State Fire Marshal will be looking at the nature of the schools' violations and will determine whether the abatement process is appropriate. She said if a serious fire should occur, the state would have a potential liability as well. She said we need to determine what tools are available to ensure compliance with the law.

In response to a question from Senator Cook, Ms. Tabor said North Dakota Century Code (NDCC) Section 18-01-15 contains the language governing the abatement of conditions dangerous to persons. She said after looking at either a premise or a condition that the State Fire Marshal determines is a danger or a menace to the safety of the occupants, the State Fire Marshal can issue an order for the immediate removal or correction of the condition. She said failure to abide by the abatement can result in a Class B misdemeanor. She said if an order of abatement is issued to a school, the school can have an administrative hearing and can appeal to a state district court and ultimately to the state Supreme Court. She said it is a more lengthy process, but it is one that the State Fire Marshal may need to follow.

In response to a question from Senator Cook, Ms. Tabor said the liability for a fire could rest with school board members depending on what the members knew. She said the State Fire Marshal has not delved into which superintendents had what conversations with their school boards regarding the correction of fire safety deficiencies. She said such a determination would take place during a deposition process. She said a plaintiff's attorney would certainly depose the school district superintendent, the school board members, and any other individuals who might be responsible for fire safety decisions. She said such depositions will make clear who said what, who did what, and who was responsible for what. She said if the school board members knew of the problem but affirmatively determined not to make changes for a number of years, there may very well be liability on the part of the board members too. She said we all need to remember that the issue of fire safety deficiencies and their correction did not just happen. She said it has been going on for a number of years.

In response to a question from Representative Hawken, Ms. Tabor said looking at the legislative history, there was an attempt to tie compliance to funding, but the Legislative Assembly decided not to take that policy route. She said if the Legislative Assembly does not tie compliance to funding, she does not know what else can be done to ensure compliance. She said at the time the law was passed, there was discussion and an assumption that there would be a good-faith effort by the school districts and the school boards to comply with the law, but in retrospect there has not always been good-faith compliance with the law.

In response to a question from Representative Hawken, Ms. Tabor said there was a good-faith belief that the Department of Public Instruction could prevent schools from operating if they were not in compliance with the fire safety laws. She said the Department of Public Instruction believed that the approval process did put teeth in the law.

Ms. Tabor said the publication of lists indicating which schools were and were not in compliance with the fire safety requirements did generate compliance with the law. She said people were not very happy about seeing their school referenced on the list.

Ms. Tabor said the Attorney General's opinion made it clear that, given the legislative history, it was not the intent of the Legislative Assembly to close schools for fire code violations. She said there are currently a number of schools that have stated they will be in compliance before August 2002. She said she hopes they will be in compliance. She said their past actions do cast doubt on their sincerity. She said if legislators want to put teeth in this, they will need to do it legislatively. She said the legislative history clearly indicates that the Legislative Assembly chose to rely only on good-faith compliance.

In response to a question from Senator Cook, Mr. Martinson said the North Dakota School Boards Association has not followed up on its initial comments to board members regarding the importance of complying with the fire safety code. He said anything that decreases the confidence in school board members on the part of any North Dakota citizen, let alone on the part of legislators, is taken very seriously by the North Dakota School Boards Association. He said it would be important for the Legislative Assembly to consider putting teeth in the current legislation.

Senator Cook said the way the 59 school districts respond in the next six months with respect to remedying their fire safety deficiencies will be watched very closely and will certainly impact any legislation that is introduced during the upcoming legislative session.

Representative Nottestad said the interest groups should pass on the potential liability issues to school boards, superintendents, and principals.

At the request of Chairman Cook, Ms. Anita Decker, Director of School Approval and Accreditation, Department of Public Instruction, presented testimony regarding the school approval process. A copy of her testimony is attached as Appendix H. She said the Superintendent of Public Instruction is to supervise the provision of education in North Dakota. She said that supervision takes place in the form of approval and accreditation. She said the Superintendent of Public Instruction and the Department of Public Instruction staff have always operated under the assumption that there were defined standards to be an approved school and that there were penalties if those standards were not met. She said based on the recent Attorney General's opinion, that appears not to be the case anymore.

Ms. Decker said NDCC Section 15.1-06-06 requires that all schools must be approved. She said schools must have licensed teachers, teach all subjects required by law, and be in compliance with all local and state health, fire, and safety laws. She said school calendars are required of nonpublic schools and therefore the Superintendent of Public Instruction and the Department of Public Instruction staff have applied the school calendar requirement to public schools as well. She said there may be an inconsistency in the statutory sections governing this matter.

In response to a question from Representative Delmore, Ms. Decker said all schools have through self-reporting indicated that they are in compliance with the statutory requirements for approval. She said there are instances when Department of Public Instruction staff suspect there may be inaccuracies in the self-reporting mechanism.

In response to a question from Senator O'Connell, Ms. Decker said according to the recent Attorney General's opinion, there are no meaningful teeth in the approval law.

In response to a question from Senator Cook, Ms. Decker said the compulsory attendance law puts the penalty on the parent for sending the child to an unapproved school. She said the difficulty with that provision is that it is left up to the county state's attorney to determine whether the penalty should be pursued.

Ms. Decker said she is suggesting that there be a school licensure procedure rather than the current approval process. She said this would enable schools to be licensed, like bars, hospitals, restaurants, etc. She said before a school would be allowed to operate, it would have to be licensed. She said a certificate of licensure would be issued by the Department of Public Instruction and displayed by the school. She said licensure would be based annually on the four pillars of the current approval process.

Ms. Decker said the self-declaration form would have to be signed by both the school district superintendent and the school board president. She said during the discussions regarding school fire inspections, some superintendents indicated their boards refused to take action. She said likewise some board presidents indicated they did not know of the situation. She said opportunities for confusion and miscommunication would be eliminated if both individuals would have to sign the report. Ms. Decker said under the proposed approval law the 173-day calendar should not be allowed to start running until the school becomes approved.

Ms. Decker said the school licensure process should also include a whistle-blower provision. She said if someone indicates to the Department of Public Instruction that a school is not complying with the conditions for licensure, that individual's identity should be kept confidential.

Ms. Decker said schools will be subject to random, unannounced visits to verify the self-reporting requirements. She said school licensure would be valid only so long as a school is in compliance with the statutes. She said the statutes should give schools a period of time within which to correct any deficiencies that could result in licensure loss.

Ms. Decker said because of declining student enrollment and the difficulty of recruiting teachers, there is likely to be an increase in licensure or approval-related issues. She said if a school is not approved, it should not be able to expend any district funds during the period of time it is not approved. She said she is not certain whether federal dollars can be provided to a school that is not approved. She said if a school becomes unapproved, parents should be able to enroll their children in another school. She said the foundation aid that should normally go to the unapproved school should follow the child.

Ms. Decker said this proposal is a first step--a thought piece. She said the Superintendent of Public Instruction and the Department of Public Instruction

staff are concerned about what to do regarding noncompliance by schools.

At the request of Chairman Cook, Representative Monson presented testimony regarding proposed changes to the state aid distribution formula. He distributed a document entitled *Funding Formula*. A copy of the document is attached as Appendix I. He said the Fargo School District has a very high mill levy. He said the state continues to send considerable state support to the Fargo School District. He said the Fargo School District is a wealthy district with very high spending per student. He said the Fargo School District has not tried to reduce its spending per student. He said the attached document shows gains in parentheses and losses without parentheses.

Representative Monson said his proposal assumes a 40-mill deduct. He said there is a type of recapture provision whereby state aid to certain districts would be reduced given certain circumstances. He said those circumstances include excess expenditures per student and excess mill levies per student. He said there is also a recapture provision for school districts that have very low mill levies.

Representative Hawken said the Fargo School District's expenditure per student is only \$500 more than the state average. She said the Fargo School District's English as a second language population alone would constitute the 15th largest school district in the state. She said the Fargo School District's annual share of special education costs is in excess of \$7 million. She said after June 11, 2002, the Fargo School District will not have an unlimited mill levy. She said asking Fargo to pay for the other school districts is not okay.

Representative Monson said this does not take into account special education or tuition apportionment. He said the Fargo School District gets into trouble with its excess levy. He said we need to concern ourselves about sending dollars to districts that have no way to raise those dollars locally.

Senator Cook said it would appear that districts such as Billings County and Spiritwood, just to name a couple, would have to reimburse the state for the amount that would be recaptured.

Mr. Coleman said the distribution of state aid in Representative Monson's proposal was based on the assumption that those school districts would have to

send money back to the state and that the state would then redistribute that money.

Representative Monson said it was his intent that school districts would not have to write checks to the state. He said many of the districts whose representatives testified that they need a reconfiguration of the education funding formula would in fact be helped under this proposal.

Representative Delmore said some of the larger school districts are beginning to incur major costs for special education and English as a second language students. She said we need to look at balances in a number of different education aspects.

Representative Monson said this plan looks at three pieces--the mill levy deduct, school districts that serve as tax shelters, and school districts with very low valuations.

Representative Nottestad said impact aid is given to school districts in lieu of property taxes. He said in some years impact aid covers the cost of educating the students and in other years the funds do not cover the cost.

Representative Mueller said he would like the committee to consider a bill draft that calls for long-range planning by school districts.

Senator Cook said the committee needs to receive testimony regarding border school districts that can work better with school districts in other states than they can with North Dakota school districts.

Mr. Decker said there are no statutory provisions that would allow school districts to enter into cross-border operating agreements.

Representative Nottestad said we need to check and see if there are any cross-border agreements in other states.

Chairman Cook adjourned the meeting at 12:00 noon.

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L. Anita Thomas  
Committee Counsel

ATTACH:9