

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## EDUCATION COMMITTEE

Monday, October 4, 2004  
Brynhild Haugland 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 Cook, Gary A. Lee, Constance Triplett; Representatives Merle Boucher, Lois Delmore, Pat Galvin, C. B. Haas, Gil Herbel, Bob Hunsakor, Dennis Johnson, RaeAnn G. Kelsch, David Monson, Jon O. Nelson, Mike Norland, Margaret Sitte, Clark Williams

**Members absent:** Senators Robert S. Erbele, Tim Flakoll; Representatives Thomas Brusegaard, Lyle Hanson, Kathy Hawken, Lisa Meier, Phillip Mueller

**Others present:** See Appendix A

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

### SUPPLEMENTAL PAYMENTS FORMULA AND IMPACT AID

At the request of Chairman Freborg, committee counsel presented three bill drafts regarding the supplemental payment formula and impact aid. She said the first bill draft [50177.0100] takes the reference to unrestricted federal revenue out of the supplemental payment formula. She said if this bill draft would pass, the current payment mechanism would remain in effect until the end of the biennium. She said the second bill draft [50178.0100] also takes the reference to unrestricted federal revenue out of the supplemental payment formula. However, she said, this bill draft carries an emergency clause. She said if the bill were to become law in March 2005, the Superintendent of Public Instruction would distribute the remainder of any supplemental payments in accordance with the new language. She said the third bill draft [50179.0100] removes the reference to unrestricted federal revenue and includes an emergency clause. She said the third bill draft also includes a hold harmless provision, whereby any district that lost funds as a result of the 2003 amendment would be reimbursed. She said any district that gained funds as a result of the 2003 amendment would not be required to return those funds to the state.

In response to a question from Representative Sitte, Mr. Jerry Coleman, Department of Public

Instruction (DPI), said the amount payable or retainable by the Bismarck Public School District would depend on which of the bill drafts becomes law.

In response to a question from Representative Monson, Mr. Coleman said the first-year payments have already been completed. He said until the Legislative Assembly amends the supplemental payment formula, DPI is obligated to follow the law as it currently appears.

In response to a question from Representative Delmore, Mr. Coleman said if DPI would have paid too much in state aid to a school district, it would be recouped from the district. He said DPI did not err in calculating the formula. He said DPI paid out what it was directed to pay out in accordance with state law.

Representative Delmore said a letter was sent from DPI to the Grand Forks School District assuring the district it would be getting \$500,000 under the supplemental payment formula.

Senator Triplett said even if school districts are held harmless, some districts will have benefited as a result of the state violating the federal law.

In response to a question from Senator Freborg, Mr. Coleman said he is not aware of the ending fund balances maintained by the affected school districts.

Representative Nelson said the 140-mill issue seemed to fall on unsympathetic ears. He said he wonders if considering a hold harmless in this situation is setting a precedent that could be used to remedy other problems.

Senator Freborg said the Grand Forks School District had an ending balance in the range of \$13 million. He said he is not certain that any of the school districts would suffer or not be able to cover the funds that they anticipated.

**It was moved by Representative Delmore and seconded by Senator Triplett that the bill draft which removes the phrase "unrestricted federal revenue" from the supplemental aid formula and contains an emergency clause be approved and recommended to the Legislative Council.**

Representative Sitte said the Bismarck School District would prefer to see passage of the version that contains the hold harmless provision.

Representative Monson said removing the reference to unrestricted federal revenue at least gets us square with the federal requirements. He said school

districts can come and make their case for a hold harmless provision in the 2005 legislative session.

Senator Cook said the draft that removes the phrase "unrestricted federal revenue" from the supplemental aid formula and which carries an emergency clause is the best one to recommend at this time. He said he too agrees that the hold harmless provision can be addressed during the 2005 legislative session. He said if the committee recommended the hold harmless provision, it would be reordering priorities that were established during the 2003 legislative session. He said we do not have a firm handle on how much money will actually be left over for contingent uses.

Chairman Freborg called for a roll call vote and announced that **the motion carried**. Senators Freborg, Cook, Lee, and Triplett and Representatives Delmore, Galvin, Haas, Herbel, Hunskor, Johnson, Kelsch, Monson, Nelson, Norland, and Williams voted "aye." Representative Sitte voted "nay."

### DATA ENVELOPMENT ANALYSIS

At the request of Chairman Freborg, committee counsel presented a bill draft [50176.0100] relating to the use of data envelopment analysis as the basis for calculating school district transportation funding. She said the bill draft would provide for block granting of transportation payments for one additional year and then the data envelopment analysis-based calculations would begin on July 1, 2006. She said that gives school districts approximately 20 months to work toward levels of efficiency.

Representative Sitte said we are paying on a formula that is already five years old. She said we should not delay the process any longer.

With the permission of Chairman Freborg, Mr. Tom Decker, Director of School Finance and Organization, Department of Public Instruction, distributed a document entitled *Transportation Payments Based on DEA*. The document is attached as Appendix B.

Chairman Freborg called on Dr. Kendall E. Nygard, Chairman, Department of Computer Science, North Dakota State University, who presented testimony regarding data envelopment analysis. Dr. Nygard said the handout does not reflect the addition of any new money for school district transportation payments.

In response to a question from Senator Cook, Dr. Nygard said the total number of student rides is one of the fundamental outputs.

Senator Triplett said it is one thing to distinguish between paved roads and gravel. However, she said, we also need to distinguish between good gravel and bad gravel roads.

In response to a question from Senator Triplett, Dr. Nygard said there are uncontrollable factors that were taken into account. He said student density in a district, i.e., students per square mile, was the single most significant factor. He said the density of usable

roads was also a factor. He said this includes gravel and paved roads. He said the state Department of Transportation identifies improved gravel roads that are usable all year. He said the raw size of a school district was the third significant factor. He said by forming and analyzing peer groups to establish expected efficiencies, there is a built-in fairness for each school district. He said if there is a disadvantaged district in terms of roads, one would expect to find other similarly disadvantaged districts in its peer group.

Dr. Nygard said the major effort of establishing the computer-based formulas is now complete. He said the work now will be to ensure the continuation of accurate data regarding roads, finance, ridership, and school enrollment. He said he believes this can be done every year.

In response to a question from Representative Monson, Dr. Nygard said square miles was one of the uncontrollable factors.

Representative Monson said he was interested in finding out how districts that had large numbers of open-enrolled students were treated, especially since some of those districts go considerable distance outside their boundaries to pick up the students.

Dr. Nygard said the student density calculation would take open-enrolled students into account. He said that calculation is based on students enrolled in a district. He said it does not account separately for students residing outside the district. He said an open-enrolled student is treated as if the individual were enrolled in the district. Dr. Nygard said he does not know of a more reasonable way to pull in data regarding open-enrolled students.

Representative Monson said that calculation works against a school district that has a lot of open-enrolled students.

Senator Cook said he wanted to see a printout that assumed every student rode the bus two times a day. He said that would certainly impact the efficiency of a district.

Dr. Nygard said he would prepare that information and provide it for the committee.

In response to a question from Representative Sitte, Dr. Nygard said he thought a three-year phase-in effort would provide a first-year payment that would be one-third of the way between what a school district receives under a block grant formula and what it would receive under a data envelopment analysis. He said the second-year payment would be 50 percent of the way between the amount that the district received during the first year of the data envelopment analysis payment and the amount that it should actually be receiving under data envelopment analysis. He said the third-year payment would provide the actual amount to which a district was entitled using data envelopment analysis.

Mr. Decker said a district that enrolls a student under open enrollment is not required to provide

transportation to the student. He said the current transportation reimbursement system does not take into account the type of roads traveled.

Mr. Decker said large districts have been receiving reimbursement in the 30 to 40 percent range. He said data envelopment analysis determines transportation costs objectively and then allocates the resources fairly. He said the districts that would get the large sums under data envelopment analysis would arguably be getting their fair share.

Mr. Decker said the data envelopment analysis formula is far more objective and much more closely related to districts' actual expenditures for transportation. He said concerns about the validity of data apply to the old system as well. He said only swipe cards would take the concern about reporting accuracy out of the discussion. He said data envelopment analysis is a defensible payment system.

In response to a question from Senator Cook, Mr. Decker said transportation payments are based on the past year because of data collection requirements. He said by doing that, we can use actual data as opposed to estimated data. He said transportation costs tend not to change that much from year to year.

Senator Cook said he is concerned about creative reporting regarding student rides. He said if we know the number and size of buses that go out, we should be able to calculate the required reimbursement.

Mr. Decker said those buses are also used for extracurricular programs, not just for getting students to and from school. He said some districts purchase larger buses for use in their activities. He said they would not need such large buses just to pick up students for school. He said by putting districts into peer groups, they are continually rated against efficient peers.

Senator Freborg said he has not heard a lot of people complaining about what they were receiving in transportation reimbursements. He said he was a proponent of getting the appropriation for data envelopment analysis. He said 75 districts would be very happy. He said about 20 districts will get approximately the same amount as they now receive and about 125 districts will be very upset. He said as those 125 become more efficient, money will be taken away from the 75 to give to the 125.

Mr. Decker said we need to provide transportation if we want people to live in rural North Dakota. He said we need to use our resources as efficiently as possible. He said our current transportation reimbursement system is not based on a careful analysis of the data. He said it benefits those districts that could afford to spend money on transportation. He said districts need to be encouraged to be efficient. He said the fact that money is shifted means we are finally catching up with the needs.

Mr. Decker said the percentage of reimbursement could be capped. He said if there is a cap of perhaps 75 percent, some of the lower-paid districts would

receive more money. He said the most important thing is to stick with an objective formula such as the data envelopment analysis. He said we do not want to reward inefficiency and we do not want to reward those districts that have the resources to provide elaborate transportation systems.

Representative Monson said both the Williston and Grafton School Districts lose under the data envelopment analysis formula.

In response to a question from Representative Monson, Mr. Decker said the Williston School District covers 14 square miles. He said it may very well have an inefficient transportation system or it may be picking up high school students from surrounding kindergarten through grade 8 districts.

**It was moved by Representative Sitte and seconded by Representative Kelsch that the bill draft be amended to require a one-third phase in during the first year and a two-thirds phase in during the second year.**

Representative Sitte said this way only three districts would lose money.

Representative Herbel said he wondered if under such a proposal those districts that are entitled to receive more money under data envelopment analysis would only receive one-third of those additional dollars during the first year.

Representative Monson said the effective date of the bill draft is July 1, 2006, which would have to be changed. He said he does not care for the bill draft at all.

Chairman Freborg called for a roll call vote on the motion to amend the bill draft and announced that **the motion carried**. Senators Freborg, Cook, Lee, and Triplett and Representatives Delmore, Galvin, Kelsch, Nelson, Sitte, and Williams voted "aye." Representatives Haas, Herbel, Hunsakor, Johnson, Monson, and Norland voted "nay."

**It was moved by Representative Williams and seconded by Representative Sitte that the bill draft, as amended, relating to the use of data envelopment analysis to calculate school district transportation payments be approved and recommended to the Legislative Council.**

Representative Williams said we always look for equity and efficiency in the use of money by schools. He said the amendment is a good amendment. He said the Legislative Assembly will find other ways to modify this bill draft. He said there is a sizable amount of money spent on school district transportation and this is a good vehicle for the Legislative Assembly to consider.

Representative Monson said he would support moving the bill draft if he had to. He said we spent money to conduct the data envelopment analysis study. He said there are problems with using data envelopment analysis and this bill draft will need a lot of tinkering. He said he does not think we will get the

data envelopment analysis formula into place even during the next legislative session.

Chairman Freborg called for a roll call vote on the motion and announced that **the motion carried**. Senators Freborg, Cook, Lee, and Triplett and Representatives Boucher, Delmore, Galvin, Haas, Herbel, Hunskor, Johnson, Kelsch, Monson, Sitte, and Williams voted "aye." Representatives Nelson and Norland voted "nay."

At the request of Chairman Freborg, Ms. Anita K. Decker, Department of Public Instruction, presented testimony regarding waiver reports. She said copies of the reports were handed out to the committee members prior to the meeting. She said she considers waiver requests each spring.

**It was moved by Representative Haas, seconded by Representative Nelson, and carried**

**that the chairman and staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.**

**It was moved by Senator Cook, seconded by Representative Delmore, and carried that the meeting be adjourned sine die.**

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L. Anita Thomas  
Committee Counsel

ATTACH:2