FUNDING OF ELEMENTARY AND SECONDARY EDUCATION - STATE AND LOCAL RESPONSIBILITY - ACCOUNTABILITY

Section 58 of 2013 House Bill No. 1013 (Appendix A) directed the appointment of a committee to examine and clarify state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in this state. Specifically, the legislation mandated that the committee:

- Define what constitutes "education" for purposes of meeting the state's constitutional requirements;
- Examine the distribution of financial and managerial responsibility for transportation, athletics and activities, course offerings beyond those that are statutorily required, and other nonmandatory offerings and services;
- Examine the distribution of financial and managerial responsibility for school construction;
- Examine the organizational structure for educational delivery in this state, in light of demographic changes, to ensure effectiveness and efficiency;
- Examine the benefits and detriments of statutorily limiting school districts in their ability to generate and expend property tax dollars; and
- Define what constitutes "adequacy" for purposes of funding education.

In addition to directing that the committee examine education funding responsibilities, the legislation also prescribed that the committee:

- Examine concepts of accountability in elementary and secondary education;
- Examine the performance of North Dakota students in state and national assessments to determine whether recent legislative efforts have effected measurable improvements in student achievement; and
- Examine high school curricular requirements, content standards, and teacher training and qualifications to determine whether North Dakota students are being adequately prepared for the various assessments and for their first year of enrollment in institutions of higher education.

FUNDING OF ELEMENTARY AND SECONDARY EDUCATION - A HISTORICAL PERSPECTIVE

North Dakota Constitutional Directives

Article VIII, Section 1, of the Constitution of North Dakota, provides:

> A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

The words in Section 1 have been unchanged since their enactment in 1889.

Article VIII, Section 2, of the Constitution of North Dakota, follows with the directive that:

> The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Article VIII, Section 3, of the Constitution of North Dakota, further requires that "instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind."

Article VIII, Section 4, of the Constitution of North Dakota, directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

Since the 1930s, the state has attempted to meet its constitutional directives by providing some level of financial assistance to local school districts. In the mid-1950s, a legislative interim Education Committee determined that the state assistance was set at arbitrary levels. The committee also noted that existing statutes did not require "uniform minimum local efforts through the taxation of all property by the local school districts in an effort to support their own education systems, to the degree that is believed desirable by the Committee." It was the 1957-58 interim Education Committee that recommended passage of a state foundation aid program.

Foundation Aid - Initial Program

A foundation aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, when the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the Legislative Assembly recognized that property valuations, demographics, and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher-cost school districts in the state must continue to operate regardless of future school district reorganization plans. Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted aid payments that favored districts with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

The 1970s

For the next several years, the foundation aid program remained essentially unchanged. However, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt the issue in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. The state more than doubled the per student payments and replaced the flat weighting factor with one that recognized four classes of high schools. Elementary weighting factors were altered as well. Adjustments continued to be made during the mid-1970s. A new category encompassing seventh and eighth grade students was created and fiscal protection was instituted for school districts experiencing declining enrollment. For the 1975-77 biennium, the foundation aid appropriation was $153.4 million. In 1979, the Legislative Assembly appropriated $208.4 million for the foundation aid program and added an additional appropriation of $1 million to pay for free public kindergartens.

The 1980s

The next major development affecting education finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill county levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that would otherwise have been derived from the levy.

During the early 1980s, discussions continued to center around purported funding inequities. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations would seem to justify.

In response, during the 1981-82 interim, the Legislative Council's Education Finance Committee examined a method of funding education known as the "70-30" concept. This proposal was a significant departure from the existing foundation aid formula in that it took into account the cost of providing an education in each school district. The formula required a determination of the adjusted cost of education and then required the computation of a 30 percent equalization factor, to arrive at each district's entitlement. It was contemplated that a local mill levy would be employed to raise the district's share of the cost of education.

Proponents touted this approach as one that included a comprehensive equalization mechanism and which recognized local variances in the cost of education. Opponents argued it did nothing more than award high-spending districts and penalize those that had been operating on restricted budgets. The interim committee did not recommend the concept.

Discussions regarding the many aspects of education finance continued through the 1980s. Legislative Council interim committees explored weighting factors, considered the effects of increasing the equalization factor, and explored the excess mill levy grant concept. During the 1987-88 interim, the Education Finance Committee established specific goals and guidelines within which the committee would deliberate matters of education finance. While numerous interim committees articulated the need to alter the state's education funding system, little agreement was reached beyond recommending increases in the level of per student aid.

Litigation - *Bismarck Public School District No. 1 v. State of North Dakota*

In 1989, legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity and that these disparities were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and examining over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. The court listed these "constitutionally objectionable" features of the school financing system:

- Disparities in current revenue per student are the result of variations in school district taxable wealth;
- The equalization factor in the foundation aid formula fails to equalize for variations in district wealth because the equalization factor is below the state average school district tax rate for current revenue and leaves much of the school millage outside the foundation formula;
- The low level of foundation educational support fails to ensure substantial equality of resources for students in similarly situated school districts;
- The use of cost weightings that are inaccurate unjustifiably benefits districts with large amounts of taxable wealth;
- The flat grant allocation of tuition apportionment ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts;
- The transportation aid program exacerbates existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation and requires other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources;
- The special education funding program exacerbates existing resource disparities by giving higher-spending districts an advantage in obtaining state reimbursement of special education costs and requiring school districts to fund a large share of the excess costs of special education programs from their disparate tax bases;
- The state aid for vocational education exacerbates existing resource disparities;
- The state system for funding school facilities relies on the unequal taxable wealth of school districts;
- The payment of state aid to wealthy districts enables them to maintain large ending fund balances; and
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota students, rather than on the unequal taxable wealth of North Dakota school districts.

The district court declared the North Dakota school financing system to be in violation of Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22, of the Constitution of North Dakota. The Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Response to the Litigation

In response to the district court's order, the Superintendent of Public Instruction presented the following recommendations to the Legislative Assembly:

- Raise the per student payment to $3,134;
- Fund special education by dividing the 13 disabilities categories into three broad categories and assigning weighting factors to each;
- Fund vocational education by assigning weighting factors to high-cost and moderate-cost programs;
- Provide transportation reimbursements based on six categories of density;
- Provide state funding of education at the 70 percent level;

- Establish a uniform county levy of 180 mills;
- Distribute tuition apportionment in the same manner as foundation aid;
- Provide that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount;
- Allow districts the option of levying 25 mills above the 180-mill uniform county levy;
- Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit; and
- Provide $25 million for a revolving school construction fund.

The Legislative Assembly offered its response by way of 1993 House Bill No. 1003. The bill was the appropriations bill for the Superintendent of Public Instruction. As the bill progressed through the legislative process, the bill became the principal 1993 education funding enactment. The bill:

- Set the state support for education at $1,572 per student for the first year of the 1993-95 biennium and at $1,636 for the second year;
- Raised the equalization factor from 21 to 23 mills and then to 24 mills;
- Set weighting factors at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium and at 50 percent of the difference for the second year of the biennium;
- Capped state transportation payments at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the second year of the biennium be used by the Superintendent of Public Instruction to increase the per student transportation payments;
- Reiterated the existing statutory requirement that school districts admitting nonresident students charge tuition but exempted school districts that admit nonresident students from other districts offering the same grade level services; and
- Directed the Legislative Council to conduct another study of education finance and appropriated $70,000 for purposes associated with the study, including necessary travel and consultant fees.

1993-94 Interim Study

The Legislative Council's interim Education Finance Committee began its efforts during the 1993-94 interim before an appeal of *Bismarck Public School District No. 1* was taken to the North Dakota Supreme Court. The committee was aware that many of the issues addressed by the trial court had been the subject of interim studies and legislative deliberations for many years. However, the committee also realized that the requisite number of Supreme Court justices might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court issued its decision on January 24, 1994--*Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). Although three of the five justices held that the state's education funding system was unconstitutional, Article VI, Section 4, of the Constitution of North Dakota requires four members of the court to declare a statute unconstitutional.

A majority of the Supreme Court indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. The court did not, however, mandate specific legislative action. The court indicated the areas of concern and left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice Gerald W. VandeWalle stated:

> . . . [T]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

The Supreme Court decision was issued midway through the 1993-94 interim. By the time the Education Finance Committee had completed its work, the committee had considered 35 bill drafts and 3 resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; establishment of an additional Governor's School; appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; reclassification of special education categories; distribution of tuition apportionment according to average daily membership; an increase in transportation payments from 28 cents to $1 per day for all students transported by schoolbuses; and an $80 million increase in the level of foundation aid over that appropriated during the 1993-95 biennium.

Education Finance - 1995 Legislative Session

Although the Legislative Assembly in 1995 enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills--Senate Bill Nos. 2059, 2063, and 2519.

Senate Bill No. 2059 dealt with the funding of transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses and added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the Legislative Assembly in 1993, was left in place.

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that $10 million must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low incidence or severely disabled students, and for certain boarding care. The bill also provided that $400,000 must be used to reimburse school districts for gifted and talented programs approved by the Superintendent of Public Instruction, and $500,000 must be used to reimburse school districts with above-average numbers of moderately or severely disabled students. Any amount remaining in the special education line item must be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was $36,850,000. The bill also provided that, during the 1995-96 school year, no district or special education unit could receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit could receive less than 90 percent of that amount.

Senate Bill No. 2519 provided an increase in the per student payment for isolated elementary schools and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 to 28 mills for the first year of the biennium and to 32 mills for the second year of the biennium, and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not be permitted to fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year. High school districts whose taxable valuation per student and whose cost of education per student were both below the statewide average could receive a supplemental payment, again based on a mathematical formula. The sum of $2,225,000 was appropriated for supplemental payments. Per student payments were set at $1,757 for the first year of the biennium and at $1,862 thereafter.

In 1995, the Legislative Assembly appropriated $517,598,833 for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education. That figure exceeded the 1993-95 appropriation by $41,561,941.

Education Finance - 1997 Legislative Session

In 1997, the Legislative Assembly incorporated the substantive provisions of its education finance package within Senate Bill No. 2338. That bill set the per student payments at $1,954 for the 1997-98 school year and at $2,032 for the 1998-99 school year. The equalization factor, which was raised to 32 mills by 1995 legislative action and thereafter tied by a mathematical formula to future increases in the level of foundation aid, was left at 32 mills. All references to formulated increases were removed. Weighting factors, which were set at 65 percent of the difference between the statutory factor and the five-year average cost of education per categorical student, remained at 65 percent for the 1997-98 school year and increased to 75 percent for the 1998-99 school year.

Supplemental payments to high school districts whose taxable valuation per student and average cost of education are below the statewide average were maintained by House Bill No. 1393, but the mill range for eligible districts was raised from the 1995 level of 135 to 200 mills to the 1997 level of 150 to 210 mills. Payments to school districts for the provision of services to students with special needs were increased from the 1995-97 appropriation of $36,850,000 to $40,550,000. Ten million dollars of this amount was set aside for student contracts, $400,000 for the provision of services to gifted students, and the remainder was to be distributed on a per student basis. The total amount appropriated for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education was $559,279,403. That figure exceeded the 1995-97 appropriation by $41,680,570.

Education Finance - 1999 Legislative Session

In 1999, the Legislative Assembly appropriated $479,006,259 for foundation aid and transportation aid, $3,100,000 for supplemental payments, $53,528,217 for tuition apportionment payments, and $46,600,000 for special education payments. The per student payments were set at $2,145 for the first year of the 1999-2001 biennium and at $2,230 for the second year. The total appropriation was $582,234,476, i.e., a biennial increase of $22,955,073.

Directional Changes - Exploring Alternatives in the Mid- and Latter 1990s

Initial Discussions

Although significant changes to the foundation aid program were still several years away, the mid- and latter 1990s heralded a directional shift in the discourse surrounding education funding. Much of that discourse was generated by demographic data. For the most part, the Baby Boom Generation had finished having children and their successors had chosen to delay starting families and to have significantly smaller families. This decline had been especially noteworthy in an area covering 279 counties in six states. The area included the states of Wyoming and Montana, one-half of Kansas, approximately three-fourths of Nebraska, and most of South Dakota and North Dakota.

In this state, much of the demographic decline had been attributed to changes in agriculture. What was once a highly labor-intensive industry was rapidly becoming a highly capital-intensive industry. People who at one time resided in rural areas because of their involvement in agriculture had to move elsewhere to take advantage of job opportunities. In 1900, over 90 percent of this state's population resided in rural areas. By the waning years of the 20th century, over two-thirds were residing in the 17 "urban" communities having more than 2,500 residents.

Birthrates were examined, death rates were examined, and outmigration rates were examined. Best estimates indicated that the state's elementary and secondary student population would decline from a 1997 level of 121,708 to 100,152 by the year 2007. Legislators were told that fewer children and fewer taxpayers would affect the number of school closures, the number of school district consolidations, and the educational opportunities for children. The legislative discourse, therefore, focused on three evolving topics:

- The reliance on property taxes as a principal funding source for education;
- The multitude of school districts; and
- The ability to provide quality educational services into the future.

Reliance on Property Taxes

The 1995-96 interim Education Finance Committee was told that school districts receive revenue from two primary sources--the state general fund and local property taxes. The committee was also told that property taxes were traditionally favored as a significant component in the funding of elementary and secondary education because they were a stable source of dollars. Unlike income taxes, energy taxes, or sales taxes, property taxes were not subject to economic fluctuations. They were, however, becoming subject to concerns regarding the continued ability of property owners to meet the ever-increasing demands being placed on that form of taxation.

In response, the Superintendent of Public Instruction proposed placing a 2 percent earmarked tax on North Dakota taxable income. Seventy-five percent of the amount raised was to be returned to school districts so that they could lower property taxes, and the remaining 25 percent was to be retained by the state and redistributed through the foundation aid formula. The school district mill levy cap would have been lowered from 185 to 110 mills. Proponents of this concept suggested that issues of sales tax regressivity would be avoided, cities levying sales taxes would not be as opposed to an income tax hike as they would to a state sales tax hike, and the Legislative Assembly could change the distribution percentage to provide less property tax relief but a higher state-level investment in education. At the time, the state share of education revenues was 42 percent, and the local share was 46 percent. This proposal would have increased the state share to 62 percent.

Opponents suggested that the proposal would have no impact on districts that had unlimited taxing authority and stated there was no guarantee that the money raised would not be redirected by the Legislative Assembly to other state needs, as opposed to being dedicated to elementary and secondary education. They stated that the end result could in fact be an increase in income taxes with no long-term reduction in property taxes.

The North Dakota Stockmen's Association also had proposed an increase in the personal income tax rate, together with an increase in the corporate tax rate. Like the Superintendent of Public Instruction's proposal, this too would have raised $100 million annually. It was suggested that 20 percent could be considered new money for education while 80 percent could be returned in the form of property tax relief. School districts would have had their mill levies lowered by the property tax replacement funding, and they would be allowed to increase their mill levies by only 2 percent each year. The committee again dismissed this proposal as merely a way of shifting the burden of taxation from those who own property to those who are generating income.

The committee did, however, discuss the possibility of capping school district mill rates, provided the state appropriation grew by a certain percentage each biennium. This too was rejected. The belief was that while a specific state appropriation would serve to prevent school districts from increasing their mill levies, nothing was being done to prevent other local taxing entities from laying claim to property tax revenues for their purposes.

Multitude of School Districts

The 1997-98 interim Education Finance Committee was told that a declining student population results in a declining budget. A declining budget results in a declining number of staff. A declining number of staff results in a declining number of programs and services. A declining number of programs and services results in declining educational quality and opportunity and eventually leads to a further decline in the number of students. Research at the time pointed to 12 factors that signaled the need to restructure a school district:

- A small critical mass of students;
- Declining student enrollment;
- Declining fund balances;
- Prior or projected budgetary reductions;
- Escalating property taxes;
- Inflation;
- Class sizes that were not cost-effective;
- Minimal or declining course offerings and programs;
- Minimal or declining educational support services;
- Staff members teaching multiple preparations;
- Antiquated facilities and equipment; and
- Physical plants that were not cost-effective.

Research at the time also listed the potential benefits of reorganization:

- Reduced tax rates or more equalized tax rates and therefore greater equity;
- Expansion of or improvement in the quality of courses, programs, and services;
- Fewer course preparations per teacher and therefore greater specialization and enhanced teaching quality;
- Cost-effective class sizes;
- Higher quality facilities;
- Greater access to more modern equipment, textbooks, references, and computer technology;
- Enhanced curricular development;
- Enhanced professional development;
- Increased instructional support personnel;
- Higher levels of compensation; and
- A more attractive atmosphere for businesses and homeowners.

Research at the time defined a viable school district as one having at least 120 students in grades 9 through 12. In 1998, the state had 228 operating school districts, 180 of which were high school districts. Only 66 school districts had at least 120 students in grades 9 through 12. In other words, in 1998, only 28.9 percent of the state's total school districts had the student enrollment necessary to be considered "viable." While it was predicted that the number could drop to as few as 37 districts by the 2010-11 school year, in fact that year, 46 districts met the viability threshold. (As of June 2012, however, 122 or 68.2 percent of the state's 179 operating school districts met the definition of viability.)

Although the interim committee considered a variety of ways in which cost-savings could be achieved through administrative consolidation, and even recommended such a path in the interest of educational equity and adequacy, concerns were voiced regarding the distance that students might have to travel if certain schools were closed and the amount by which property taxes would be increased if those in low-taxing districts were forced to join neighboring districts.

Quality Educational Services

North Dakota legislators recognized that the most significant factor affecting student achievement was the quality of the teacher. They believed that each teacher had to have a command of the subject matter and strong pedagogical skills. They began to express concern about the anticipated number of teacher retirements and the need to recruit and retain teachers. Discussions centered around five potential initiatives:

- Increasing teacher salaries, with particular attention to rural areas that tended to be less competitive than their urban counterparts;
- Offering student loans and other incentives to individuals who made a commitment to teach in needed academic areas or in rural areas;
- Supporting teacher mentoring programs, particularly for first-year teachers attempting to make the transition from the expectations of a college-based environment to the expectations of a school system;
- Supporting the licensing and oversight functions of the Education Standards and Practices Board; and
- Supporting professional development activities for teachers in all stages of their careers.

North Dakota legislators acknowledged that the pursuit of quality and the challenges of recruitment and retention did not stop at the classroom teacher, but in fact extended into the ranks of school administrators. Legislators recognized that school districts needed to make available early career workshops and aspiring administrator workshops. They recognized that participation in instructional leadership classes must be encouraged so that individuals in administrative roles would be better able to develop the supervisory relationships that were necessary with both new and experienced teachers. They also recognized that providing opportunities for growth, recognition for achievement, and professional advancement must be promoted as ways of attracting individuals to administration and motivating those individuals to remain in administration.

Education Finance - 2001 Legislative Session

In 2001, the Legislative Assembly increased per student payments, transportation payments, supplemental payments, tuition apportionment payments, and special education payments by $11,074,892 over the previous biennium. The Legislative Assembly also provided an additional $35,036,000 for teacher compensation. As enacted, school districts could be reimbursed up to $1,000 for each teacher who received an increase in compensation during the first year of the biennium and up to $3,000 per teacher during the second year of the biennium. In addition, the Legislative Assembly set minimum base salaries of $18,500 and $20,000 during the respective years of the biennium.

Teacher Compensation

Teacher compensation continued to be a topic of discussion during the 2001-02 interim. In the earliest times, teacher compensation rarely involved anything more than the provision of room and board by the community. This arrangement was reflective of the barter economy and had the added benefit of providing the teacher with a strong incentive to maintain positive relations in the community.

In the 1900s, the preparation of teachers became more uniform and just as society had progressed from a barter economy into one that was industrially focused and cash-based, so too did the compensation of teachers move from the provision of room and board to a position-based salary system. Initially, this system paid elementary teachers less than secondary teachers, arguably because different levels of preparation were required for these positions. It also paid women and minority teachers less than nonminority male teachers.

As the century progressed, opposition to salary discrimination increased. In addition, greater skills were required for the job of teaching, regardless of the grade level taught or the gender or race of the teacher. Out of this recognition emerged the single salary schedule. Contrary to its name, the single salary schedule did not compensate every teacher in a like fashion or amount. Those with greater years of experience, educational units, and educational degrees received higher compensation than those with fewer. Likewise, those who coached sports, advised clubs, and coordinated various activities received higher compensation than those who did not. The rationale for the salary amounts was objective, measurable, and appropriate given the nature of the school systems at the time.

However, as the 20th century was approaching its denouement, the educational sector was facing increased demands for high standards and accountability. Teachers were being expected to develop and maintain high levels of instructional skills, managerial skills, and leadership skills. Within this environment, it was becoming recognized that while the traditional single salary schedule may feature fairness, equity, and ease of administration, it did not recognize results, nor did it provide incentives for any long-term career development that is linked to the knowledge and skills needed to teach in today's environment.

Legislators explored merit pay as a possible alternative to the single salary compensation system, but found themselves without answers to the same questions that plagued merit pay plans across the country--How does one determine who is a good teacher? How does one demonstrate competence in teaching? What precisely is meant by accountability? To whom must a teacher be accountable? For what? What is the applicable criteria?

Legislators also examined performance-based pay. In the private sector, compensation is frequently used as a management tool to achieve organizational goals. Payment for a specified performance level is a reward that may be given to individuals, groups, or entire organizations. When applied to an educational setting, performance-based pay generally refers to a salary structure that ties financial rewards to student achievement. Some performance-based pay models tie the financial rewards to an increase in an individual teacher's skills and abilities on the assumption that such assets have a direct correlation to students' learning and achievement. Other models combine both skill and performance-based incentives for teachers or for schools.

The committee reviewed the performance-based teacher pay plan that was being tried in Iowa at the time. The program consisted of four major elements:

- Mentoring and induction programs to support beginning teachers;
- Career paths with compensation levels designed to strengthen the recruitment and retention of teachers;
- Professional development designed to directly support best teaching practices; and
- Team-based variable pay that provides additional compensation when student performance improves.

The evaluation component of the Iowa program was based on a teacher's:

- Ability to enhance academic performance;
- Competence in content knowledge;
- Competence in planning and preparing for instruction;
- Strategies for delivering instruction that meet the learning needs of multiple students;
- Methods for monitoring student learning;
- Competence in classroom management;
- Demonstration of professional growth; and
- Fulfillment of professional responsibilities established by the school district.

The 2001-02 interim committee considered a bill draft that would have appropriated $340,000 for the implementation of a knowledge and skills-based pay system in two school districts having enrollments in excess of 2,500 students. Ultimately, the draft was not recommended by the committee. Some believed that such an appropriation would not be prudent given existing concerns about the state's ability to sustain its new commitment to providing dollars for teacher compensation. Others pointed out that nothing precluded a school district from implementing a knowledge and skills-based pay system on its own.

Education Finance - 2003 Legislative Session

In 2003, the Legislative Assembly set state school aid at $489,379,990--an increase of $15,400,000 over the previous biennium--and likewise increased teacher compensation payments by more than $16,800,000 to $51,854,000. With the addition of special education payments, tuition apportionment payments, and supplemental payments, the state's commitment to education funding was $665,628,056--a biennial increase of 5.9 percent.

Litigation - *Williston Public School District No. 1 v. State of North Dakota*

The state was providing educational services to 99,174 public school students--50 percent of whom were being educated in the state's eight largest school districts. The remaining students were distributed across 205 other districts. Best estimates indicated that within 10 years, by 2013, the number of enrolled students could fall to 89,980. (The June 2012 fall enrollment was 99,192.) Against a backdrop of continuing decline in the number of students, coupled with increased expectations for services and a belief that the available resources were both insufficient and inequitably distributed, another lawsuit was instigated. The plaintiff school districts were Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City.

Allegations

The plaintiff school districts alleged that the state's system of funding education was inadequate and that it unfairly and arbitrarily resulted in widely disparate funding, inequitable and inadequate educational opportunities, and unequal and inequitable tax burdens. The districts also alleged that:

- State funding for education is constitutionally inadequate, as evidenced by a 2003 Department of Public Instruction study, and further evidenced by the fact that school districts are forced to make up the difference through increased taxation;
- The No Child Left Behind Act requires states to adopt challenging academic content standards and student achievement standards and to develop an accountability system, and the plaintiff districts lack adequate funds to operate and administer the programs and services necessary to meet these standards;
- Per student spending in a majority of school districts falls below the level needed to provide an adequate education to students;
- Plaintiff districts have lower than average costs per student and therefore fall below the standard of adequacy imposed by the state's constitution;
- Plaintiff districts lack adequate funds to purchase necessary textbooks, equipment, and supplies;
- The state provides no aid for the capital costs of school facilities other than through a low-interest state loan fund;
- Even districts with high property values are unable to generate sufficient revenue to meet the adequacy standards imposed by the state's constitution;
- Plaintiff districts have significantly less taxable valuation per student and must therefore tax at a higher rate than property wealthy neighbors;
- Mill levies vary significantly from district to district;
- Some districts have the authority to levy unlimited amounts while others cannot exceed 185 mills without a vote of the people or legislative authorization;
- The equalization factor does not sufficiently equalize or provide for the maintenance of an adequate and uniform system of public education;
- Each mill of school tax above the deduct contributes to inequities in school spending based on taxable wealth;
- Certain types of taxable wealth, such as revenues from oil, gas, and coal taxes paid in lieu of property taxes, are not subject to any equalization;
- The disparity in taxable valuation among districts is increasing;
- Disparities in average costs per student are not adequately equalized;
- Wealthy and poor districts receive the same tuition apportionment payment per student;
- North Dakota students are at risk of failing to become active and productive citizens; and

- Property poor districts are not as able as property wealthy districts to meet their students' educational needs and to prepare them for college and the world of work.

The complaint included the following constitutionally objectionable features:

- Inadequate state funding;
- Disparities in costs per student;
- An equalization factor that fails to equalize;
- Low levels of state aid that fail to ensure adequacy and equality of resources;
- Inaccurate weighting factors;
- A flat-grant tuition apportionment payment that fails to recognize differences in taxable wealth;
- A special education funding formula that gives higher spending districts an advantage in obtaining state reimbursements;
- A vocational education funding formula that exacerbates existing resource disparities;
- A school facilities funding system that relies on the unequal taxable wealth of the districts;
- The payment of state aid to wealthy districts that maintain large ending fund balances; and
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of students and not on the unequal taxable wealth of districts.

Claim for Relief

In their claim for relief, the plaintiff school districts suggested that:

- The state has a duty to establish an educational system and to maintain and adequately fund that system;
- Because of inadequate funding, the plaintiff districts cannot provide the educational opportunities mandated by the Constitution of North Dakota;
- The right to an adequate and equal educational opportunity is a constitutionally guaranteed fundamental right; and
- The present school finance system is constitutionally inadequate and infringes upon a student's right to an adequate and equal education.

Education Finance - 2005 Legislative Session

With another education funding lawsuit scheduled for trial in February 2006, the Legislative Assembly in 2005 largely maintained the existing method of funding elementary and secondary education. The 2005-07 appropriation was $702,605,996, which included $33,500,000 for transportation aid, $52,500,000 for special education, and $71,600,000 for tuition apportionment. It was an increase of 5.5 percent over the previous biennium and 34.8 percent since 10 years earlier. During that same period, student numbers had gone from 118,553 to 97,120--a decrease of 18.1 percent.

Agreement to Stay Litigation - Terms

One month before the start of the trial, the plaintiffs and the defendants in *Williston Public School District No. 1 v. State of North Dakota* determined that:

> [I]t is desirable and beneficial for them and for the citizens of the State of North Dakota to stay this Act and provide the North Dakota Legislative Assembly the opportunity to settle, compromise, and resolve this Action in the manner and on the terms and conditions set forth in this Agreement. The terms and conditions required that the Governor, by executive order, create the North Dakota Commission on Education Improvement and submit to the Legislative Assembly in 2007 an executive budget that includes at least $60 million more in funding for elementary and secondary education than the amount appropriated by the Legislative Assembly in 2005.

In return, the plaintiffs agreed to stay the litigation until the close of the 2007 legislative session and at that time to dismiss the action without prejudice, if the Legislative Assembly appropriated at least the additional $60 million and approved a resolution adopting the North Dakota Commission on Education Improvement as a vehicle for proposing improvements in the system of delivering and financing public elementary and secondary education. The plaintiffs also agreed that if the conditions were met, they would not commence another action based upon the same or similar allegations before the conclusion of the 2009 legislative session.

North Dakota Commission on Education Improvement

The North Dakota Commission on Education Improvement, as initially configured, consisted of the Lieutenant Governor--in his capacity as the Governor's designee, the Superintendent of Public Instruction, four members of the Legislative Assembly, four school district administrators, and three nonvoting members representing education interest groups. The commission was instructed to recommend ways in which the state's system of delivering and financing public elementary and secondary education could be improved and, within that charge, to specifically address the adequacy of education, the equitable distribution of funding, and the allocation of funding. The commission's recommendations became the basis for 2007 Senate Bill No. 2200.

Education Finance - 2007 Legislative Session

2007 Senate Bill No. 2200 was a revolutionary new education funding formula. The bill consolidated education dollars that had been assigned to a variety of previously existing funding categories and established new weighting factors that reflected the added costs of providing education to certain categories of students and the added costs of providing various statutorily mandated services. In addition, the new formula factored in the variable cost of providing services and programs in small, medium, and large school districts.

To ensure a relatively consequence-free transition from the prior formula to the new formula, provisions were inserted to require a minimum percentage growth in the per student payment and to likewise cap a potential windfall in a district's per student payment. The mill levy equalization factor, also known as the mill deduct, was repealed, as were supplemental payments. In their stead, the new formula required equity payments, which accounted for deficiencies in a district's imputed taxable valuation, and special provisions accommodating districts with abnormally low taxable valuations. The formula also included a reduction for districts that levied fewer than 150 mills during the first year of the biennium and fewer than 155 mills during the second year of the biennium.

Special education payments were increased and the state took on the full obligation of paying any amount over 4.5 percent of the average cost per student for the most costly 1 percent of special education students statewide.

Based on the commission's recommendations, the Legislative Assembly also increased the availability of capital improvement loans for needy school districts, provided increased funding for new career and technical education centers and programs, and provided funding for full-day kindergarten programs. Finally, the Legislative Assembly reauthorized the North Dakota Commission on Education Improvement and directed that it focus its attention on developing recommendations regarding educational adequacy.

The 2007-09 funding for elementary and secondary education had been increased by more than $92 million over the previous biennium.

Funding Schools Adequately in North Dakota: Resources to Double Student Performance - Picus Report and Recommendations

After the 2007 legislative session, the North Dakota Commission on Education Improvement contracted with Lawrence O. Picus and Associates (Picus) to identify the resources needed in order to ensure an adequate education for all students. Picus began with the premise that adequacy requires all students to be taught the state's curriculum and that strategies must be deployed to use resources in ways that will double student performance on state tests over the coming four to six years. Picus determined very early in its efforts that, while North Dakota students perform reasonably well on state tests, only 30 to 40 percent of North Dakota students perform at or above the proficiency standard measured by the national assessment of educational progress. It was Picus' determination that North Dakota students would need to achieve at much higher levels if they were to be deemed fully prepared, upon high school graduation, for either college or the workplace. Picus concluded that existing state per student payments, coupled with the yield of 185 mills on 88.5 percent of the state average imputed valuation per student, amounted to approximately $7,024 per student, whereas, in order to achieve adequacy, the expenditure per student would need to be $7,293.

Picus also insisted that expending a specific dollar amount per student would not achieve the desired results unless the expenditures were linked to certain programmatic strategies that guaranteed the desired results. Without such linkages the final effect would be nothing other than the existing education system at a much higher cost to taxpayers. Picus' recommendations, therefore, included the following:

- Class sizes for core courses (English language arts, mathematics, science, social studies, and foreign languages) should not exceed 15 students in kindergarten through grade 3 and should not exceed 25 students in the remaining grades;
- Specialists and elective teachers (art, music, physical education, health, etc.) should constitute at least 20 percent of the core instructional staff in kindergarten through grade 8 and at least 33 percent in the remaining grades;
- Instructional coaches for professional development should number at least 1 full-time equivalent (FTE) position for every 200 students;
- Tutors to assist students who are struggling academically should number at least 1 FTE position per prototypical school (kindergarten through grade 5, 432 students; grades 6 through 8, 450 students; and grades 9 through 12, 600 students) plus 1 FTE position for every 125 at-risk students;
- The weight applied to new English language learners should be increased to 1.0;
- Extended day programs should be funded;
- Each district should include $25 per student in average daily membership to cover the cost of increasing services to gifted and talented students;
- Substitute teachers should be funded by the state at the rate of 10 days per regular teacher;
- Guidance counselors should be provided at the rate of one for each prototypical elementary school and at the rate of one for every 250 students in prototypical middle schools and high schools;
- One FTE support position should be included for every 125 at-risk students and allocated according to a school's needs--social workers, nurses, psychologists, family outreach persons, caseworkers, or additional guidance counselors;
- Two noninstructional aides should be included for each prototypical elementary school and middle school and three noninstructional aides should be included for each prototypical high school;
- One librarian should be included for each prototypical school;
- Administrative staff should include one principal for each elementary school, one principal and one half-time assistant principal for each prototypical middle school, and one principal and one assistant principal for each prototypical high school;
- Clerical staff should include two positions for each prototypical elementary school and middle school and four positions for each prototypical high school;
- Professional development days should be extended from the current 2 days to 10 days, and $100 per student should be included for the cost of training and related expenses;
- Technology funding should be included at the rate of $250 per student to cover the cost of computers, software, hardware, and supplies;
- Student activity funding should be included at the rate of $200 per elementary student and $250 per middle school and high school student;
- Central office personnel and service funding should be included at the rate of $600 per student; and
- School and school district maintenance and operations funding should be included at the rate of $600 per student.

Whereas Picus' definition of adequacy would have required that all students be taught the state's curriculum and that resources be used in ways that would double student performance on state tests over the coming four to six years, the definition of adequacy used by the commission would require that all students complete a rigorous core curriculum established by the state, demonstrate proficiency on state assessments, and score above the national average on the ACT, the SAT, or WorkKeys.

Education Finance - 2009 Legislative Session

After reviewing the Picus report, the North Dakota Commission on Education Improvement made its own recommendations to the North Dakota Legislative Assembly. 2009 House Bill No. 1400 was the vehicle by which many of the policy recommendations were enacted. 2009 House Bill No. 1013 contained many of the appropriations.

North Dakota Commission on Education Improvement - Recommendations	2009 Legislation (House Bill Nos. 1400 and 1013)
Provide education funding "adequacy" by increasing the appropriation for elementary and secondary education funding by $100 million	Enacted
Provide $10 million for deferred maintenance	$85.6 million was appropriated as one-time state grants for maintenance
Increase the special education weighting factor from .067 to .07	Enacted
Establish an "at-risk" factor of .05	A factor of .25 was enacted (effective July 1, 2011)
Establish three levels of English language proficiency and assign weighting factors of .20, .05, and .02	Factors of .30, .20, and .07 were enacted
Discontinue the minimum mill levy offset, which was triggered at 155 mills	Enacted
Apply the school district ending fund balance deduct after all other calculations except those specifically excluded by law (and if depleted, apply the deduct to transportation payments)	Enacted (by statute and through rule)
Provide that the state aid per weighted student unit in 2009-10 should be no less than 108 percent of the baseline funding per weighted student unit and no less than 112.5 percent thereafter	Enacted
Provide that the state aid per weighted student unit in 2009-10 should not exceed 120 percent of the baseline funding per weighted student unit and should not exceed 134 percent thereafter	Enacted
Reauthorize school district planning grants	Enacted
Reauthorize the membership and duties of the North Dakota Commission on Education Improvement	Enacted
Continue the requirement that 70 percent of new money be used to increase teacher compensation	Enacted with an exclusion for one-time state grants for maintenance
Provide that if a district experienced an abnormal reduction in federal funds during the 2006-07 base year, that district could use a two-year average to compute its base year	Enacted
Retain the equity payments and provide that reorganized districts and those that receive property through dissolution should not have their equity payments reduced for two years	Enacted
Beginning in 2010, require one licensed tutor for every 400 students in kindergarten through grade 3, in addition to those funded through Title I and authorize the substitution of instructional coaches	Enacted (referred to as student performance strategists)
Increase staffing levels for counselors in accredited schools from 1 FTE position per 450 students to 1 FTE position per 300 students in grades 7 through 12 and authorize one-third of these positions to be filled by career advisors	Enacted
Appropriate $390,000 to the Department of Career and Technical Education for the training, certification, and supervision of career advisors	Enacted
Appropriate $123,618 to the Superintendent of Public Instruction for 1 FTE position to monitor career advisors	Enacted
Fund elementary summer programs for remedial mathematics and remedial reading and beginning July 1, 2010, fund summer science and social studies courses, as well as mathematics and reading, for grades 5 through 8	Enacted
Create a merit diploma that requires three years of mathematics, three years of science, and three years of focused electives emphasizing languages, fine arts, and career and technical education for a total of 22 units	Enacted (requirements for a high school diploma)
Authorize certain students to select an optional high school curriculum that requires two years of mathematics, two years of science, and three years of focused electives, for a total of 21 units	Enacted

North Dakota Commission on Education Improvement - Recommendations	2009 Legislation (House Bill Nos. 1400 and 1013)
Provide a scholarship in the amount of $750 for students who meet stated academic and assessment requirements	Enacted
Require a formative or an interim assessment such as the measures of academic progress for all students in grades 2 through 10	Enacted as a requirement for all students in grades 2 through 10 at least once each year
Require that a Career Interest Inventory be given to all students at least once in grades 7 through 10	Enacted as a requirement for all students at least once in grades 7 and 8 and once in grades 9 and 10
Require and fund the cost of a summative assessment before graduation	Enacted
Provide $560,000 in state aid for the summative assessments and $535,000 in state aid for the interim assessments	Provided additional state aid to reimburse districts for the cost of the required assessments
Require that all schools use PowerSchool by the beginning of the 2010-11 school year	Enacted without a specific date
Establish a North Dakota Early Learning Council	Enacted
Provide a factor of .20 for any four-year old attending an approved program for at least two half days per week	Not enacted
Provide $25,000 annually to each of the eight regional education associations and $2.6 million via a factor of .004 for each participating student	Enacted
Adjust the special education multiplier from 4.5 to 4.0 times the state average cost of education for the 1 percent of special education students requiring the greatest expenditures and appropriate $15.5 million	Enacted
Transfer savings from the special education contracts line item to the state aid line item at the conclusion of the 2007-09 biennium and at the conclusion of the 2009-11 biennium	Enacted
Authorize a transfer from the Bank of North Dakota to guarantee funding for special education contracts	Enacted
Authorize four early dismissal days beginning with the 2010-11 school year to provide for two hours of teacher collaboration	Enacted
Increase the number of instructional days from 173 to 174	Enacted
Increase the number of instructional days from 174 to 175 if resources allow	Enacted effective July 1, 2011
Add a third day for professional development activities	Not enacted
Require each school district to adopt a professional development plan and have it reviewed by the Superintendent of Public Instruction and a professional development advisory committee	Enacted
Appropriate $219,032 to the Superintendent of Public Instruction for individuals who will review and propose improvements to the professional development plans, manage instructional coaching grants, and oversee compliance with curricular requirements	Enacted
Provide $2.3 million to the Education Standards and Practices Board for the mentoring of first-year teachers	Enacted
Provide $500,000 for three pilot programs pertaining to model instructional coaching	Not enacted
Provide transportation funding at 81 cents per mile for large schoolbuses, 42 cents per mile for small school vehicles, and 22 cents per ride for students transported	Enacted at funding rates of 92 cents per mile for large schoolbuses, 42 cents per mile for small school vehicles, and 24 cents per ride for students transported
Increase transportation grants by $5 million	Enacted with a $10 million increase for transportation grants plus an additional $5 million, depending on the forecasted ending fund balance

At the conclusion of the 2009 legislative session, the North Dakota Commission on Education Improvement began its third and final interim effort. The makeup of the commission had been statutorily changed to remove the school district business manager and to add the Director of the Department of Career and Technical Education as a voting member. In addition, the list of nonvoting members, which had previously included representatives of the North Dakota Council of Educational Leaders, the North Dakota Education Association, and the North Dakota School Boards Association, was expanded with the addition of the President of a private four-year institution of higher education, the owner or manager of a business, and the Commissioner of Higher Education.

The commission's recommendations to the 2011 Legislative Assembly included the following:

- Replace the .002 technology factor with a .006 data collection factor and provide that the money so raised would be forwarded directly to the Information Technology Department on behalf of individual school districts to assist with the costs of purchasing, installing, and supporting PowerSchool;
- Authorize the Superintendent of Public Instruction to waive the PowerSchool requirement for reservation schools that are required to use a specific program by federal law;
- Require that the state assume the cost of having every 11th grade student take either the ACT (including the writing portion) or WorkKeys;
- Require each school district to report the number of students who took either the ACT or the WorkKeys and explain the circumstances surrounding those students who took neither assessment;
- Clarify that the divisor referenced in North Dakota Century Code Section 15.1-27-11(6)(b) for the purpose of computing imputed taxable valuation is the district's general fund levy for the taxable year 2008;
- Reduce the volatility in determinations of statewide average imputed taxable valuation per student by disregarding any district having an imputed taxable valuation per student that is greater than three times the statewide average or less than one-fifth of the statewide average;
- Redefine an isolated school district as one that has fewer than 100 students in average daily membership and encompasses an area greater than 275 square miles and provide a weighting factor of .10 for qualifying districts;
- Provide a transition payment for school districts that currently have isolated schools but would not qualify for payment under the newly proposed definition;
- Increase the special education weighting factor from .07 to .073;
- Increase the funding for special education contracts by $500,000;
- Provide that for the 2011-12 school year, the total amount of state aid payable to a district per weighted student unit may not exceed 142 percent of the baseline funding and remove the maximum restriction thereafter;
- Increase transportation funding by $5 million so that the payment for large schoolbuses increases from $0.92 to $1.03 per mile, the payment for small buses increases from $0.44 to $0.46 per mile, the rate per student ride increases from $0.24 to $0.26 per mile, and family transportation increases to $0.46 for each mile over two miles per one-way trip, assuming that the $5 million contingent appropriation enacted in 2009 would not be triggered; and
- Increase the per student payment by $100 per student for the first year of the biennium and by an additional $100 per student for the second year.

Education Finance - 2011 Legislative Session

As its predecessors, 2011 Senate Bill No. 2150 incorporated the recommendations put forth by the North Dakota Commission on Education Improvement and with the enactment of 2011 Senate Bill No. 2013, the amount appropriated for the grants - state school aid line item was $918,459,478. In addition, Senate Bill No. 2013 contained $16 million for special education contracts, $48.5 million for transportation, and $304 million in the grants - other grants line item. During the course of the 2011 legislative session, concerns were articulated about the school district mill levy reduction program and about the state's ability to sustain its involvement in the program.

Property Tax Relief Legislation

Property tax relief is an issue that has received significant focus from the Legislative Assembly, at least since the 2007 session. 2007 Senate Bill No. 2032, as introduced, provided a general fund appropriation of approximately $74 million for property tax relief and provided for allocation of the appropriated amount among school districts. The bill provided adjustments to reduce school district property tax levy authority by the amount of property tax relief to be received by each school district. The bill also established an allocation process based on the number of mills levied by each school district above the threshold of 111 mills.

As enacted, however, Senate Bill No. 2032 was substantially different. The bill addressed income eligibility for the homestead property tax credit, addressed notices for assessment increases, capped the length of time for which voters could authorize unlimited levies, and required that a three-year comparative report be included with real estate and mobile home tax statements. The bill also provided an income tax marriage penalty credit, a homestead income tax credit, and a commercial property income tax credit.

For the 2007-09 biennium, the Legislative Assembly appropriated $3.6 million to the Tax Commissioner for the expansion of the homestead tax credit and $1.1 million for administrative costs related to the legislation's property tax and income tax changes. In addition, the Legislative Assembly transferred $115 million from the permanent oil tax trust fund to the state general fund to offset the anticipated revenue loss resulting from the income tax credits. The Tax Commissioner encountered various difficulties in administering the income tax credits and ultimately concluded that income taxation is not an appropriate vehicle for the provision of property tax relief.

2009 Senate Bill No. 2199 embodied the Governor's conceptualization for providing property tax relief through statewide school district mill levy reductions. At a cost of $295 million for the 2009-11 biennium, Senate Bill No. 2199 reduced school district property tax levies by up to 75 mills and replaced the revenue that the school districts would have lost through direct grants. The bill also required each school district with an unlimited or excess mill levy to obtain voter approval for their levy's continuation, at a specified number of mills, by 2015, and instituted statutory alternatives in the event that permission was not obtained. In 2010, $295 million was transferred from the permanent oil tax trust fund to the property tax relief sustainability fund for allocations that would occur after the 2009-11 biennium.

During the 2011 session, the legislative effort to continue providing property tax relief culminated with the passage of 2011 House Bill No. 1047. Originally recommended by the interim Taxation Committee, House Bill No. 1047 provided $341.7 million to extend the 75 mill school district property tax reduction concept through the 2011-13 biennium. The statutory parameters were similar to the 2009 enactment, except that the grant amount to which a school district was entitled was limited. A grant could not exceed the preceding year's grant by more than the percentage increase in statewide taxable valuation. The bill did make provisions for certain types of property that are not subject to traditional property taxes but which nevertheless provide revenue to school districts.

The legislative effort during the 2011 session was not able to allay existing concerns about the overall effectiveness of the mill levy reduction grant program as a mechanism for property tax relief, concerns about its potential to result in the rededication of locally generated revenues to other purposes also deemed meritorious, and concerns regarding long-term sustainability. One proposed alternative came in the form of initiated measure No. 2, which would have prohibited the Legislative Assembly and all political subdivisions from levying a tax on the assessed value of real or personal property. The measure provided that:

1. <u>Taxes upon real property which were used before 2012 to fund the operations of counties, cities, townships, school districts, park districts, water districts, irrigation districts, fire protection districts, soil conservation districts, and other political subdivisions with authority to levy property taxes must be replaced with revenues from the proceeds of state sales taxes, individual and corporate income taxes, oil and gas production and extraction taxes, tobacco taxes, lottery revenues, financial institutions taxes, and other state resources.</u>
2. <u>The legislative assembly shall direct as much oil and gas production and extraction tax, tobacco tax, lottery revenue, and financial institutions tax as necessary to fund the share of elementary and secondary education not funded through state revenue sources before 2012. The state cannot condition the expenditure of this portion of elementary and secondary education funding in any manner and school boards have sole discretion in how to allocate the expenditure of this portion of the elementary and secondary funding provided.</u>

Even though the measure was rejected by 76.54 percent of those voting in the June 2012 primary election, the circumstances that gave rise to the measure continued to retain their prominence up to and during the ensuing legislative session.

Education Finance - 2013 Legislative Session

When the Legislative Assembly convened in January 2013, the principal education funding package placed before it again came with the imprimatur of the Governor. Introduced as House Bill No. 1319, the new proposal for funding elementary and secondary education was defeated on the morning of the 80th day of the legislative session. Later that day, the content was attached as an amendment to House Bill No. 1013 and enacted.

Conceptually, the legislation provides for a district's weighted student units to be multiplied by $8,810 during the first year of the biennium and $9,092 during the second year. Minimum and maximum payment levels are established using a statutorily defined baseline funding level that includes:

- All state aid received by the district in accordance with Chapter 15.1-27 during the 2012-13 school year;
- The district's 2012-13 mill levy reduction grant, as determined in accordance with Chapter 57-64, as it existed on June 30, 2013;
- An amount equal to that raised by the district's 2012 general fund levy or that raised by 110 mills of the district's 2012 general fund levy, whichever is less;
- An amount equal to that raised by the district's 2012 long-distance learning and educational technology levy;
- An amount equal to that raised by the district's 2012 alternative education program levy; and
- An amount equal to:

    75 percent of all revenue received by the school district and reported under code 2000 of the *North Dakota School District Financial Accounting and Reporting Manual*, as developed by the Superintendent of Public Instruction in accordance with Section 15.1-02-08;

    75 percent of all mineral revenue received by the school district through direct allocation from the state treasurer and not reported under code 2000 of the *North Dakota School District Financial Accounting and Reporting Manual*, as developed by the Superintendent of Public Instruction in accordance with Section 15.1-02-08;

    75 percent of all tuition received by the school district and reported under code 1300 of the *North Dakota School District Financial Accounting and Reporting Manual*, as developed by the Superintendent of Public Instruction in accordance with Section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition received for the provision of an adult farm management program;

    75 percent of all revenue received by the school district from payments in lieu of taxes on the distribution and transmission of electric power;

    75 percent of all revenue received by the school district from payments in lieu of taxes on electricity generated from sources other than coal;

    All revenue received by the school district from mobile home taxes;

    75 percent of all revenue received by the school district from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3);

    All telecommunications tax revenue received by the school district; and

    All revenue received by the school district from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans' credit.

From the aforementioned calculation, the legislation calls for a subtraction of 60 mills multiplied by the district's taxable valuation and a subtraction of the "in lieu of" revenues listed in the preceding paragraph.

Until the enactment of House Bill No. 1013, the board of a school district was authorized by Section 57-15-14.2 to levy "an amount sufficient to cover [the following] general" expenses:

- Board and lodging for high school students as provided in Section 15.1-30-04;
- The teachers' retirement fund as provided in Section 15-39.1-28;
- Tuition for students in grades 7 through 12 as provided in Section 15.1-29-15;
- Special education program as provided in Section 15.1-32-20;
- The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in Section 32-12.1-08;
- A final judgment obtained against a school district;
- The district's share of contribution to the old-age survivors' fund and matching contribution for the Social Security fund as provided by Chapter 52-09 and to provide the district's share of contribution to the old-age

survivors' fund and matching contribution for the Social Security fund for contracted employees of a multidistrict special education board;

- The rental or leasing of buildings, property, or classroom space;
- Unemployment compensation benefits;
- The removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any method approved by the United States Environmental Protection Agency and any repair, replacement, or remodeling that results from such removal or abatement, any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36, any remodeling required to meet requirements set by the State Fire Marshal during the inspection of a public school, and for providing an alternative education program as provided in Section 57-15-17.1;
- Participating in cooperative career and technical education programs approved by the state board;
- Maintaining a career and technical education program approved by the state board and established only for that school district;
- Paying the cost of purchasing, contracting, operating, and maintaining schoolbuses;
- Establishing and maintaining school library services;
- Equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment;
- Establishing free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term;
- Establishing, maintaining, and conducting a public recreation system; and
- The district's share of contribution to finance an interdistrict cooperative agreement authorized by Section 15.1-09-40.

House Bill No. 1013 provided for a consolidation of these levies. The bill authorized the board of a school district to levy:

- A tax not exceeding the amount in dollars that the school district levied for the prior year, plus 12 percent, up to a levy of 70 mills on the taxable valuation of the district, for any purpose related to the provision of educational services;
- No more than 12 mills on the taxable valuation of the district, for miscellaneous purposes and expenses;
- No more than three mills on the taxable valuation of the district for deposit into a special reserve fund, in accordance with Chapter 57-19; and
- No more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition, in accordance with Section 15.1-29-15.

The limitations listed in the preceding paragraph do not affect mills levied for a building fund, as permitted in Sections 15.1-09-49 and 57-15-16, nor mills necessary to pay the principal and interest on bonded debt of the district, including the mills necessary to pay principal and interest on any bonded debt incurred under Section 57-15-17.1 before July 1, 2013. Districts that were authorized to maintain excess levies before the 2009 taxable year must reduce their levies by 115 mills as a precondition of receiving state aid and districts that were authorized to maintain excess levies during or after the 2009 taxable year must reduce their levies by 40 mills.

The dollar amount by which the weighted student units are to be multiplied ($8,810 during the first year of the biennium and $9,092 during the second year), was an inflationary increase based on the dollar figure suggested by Lawrence O. Picus and Associates during the aforementioned study conducted for the North Dakota Commission on Education Improvement. (The report that resulted from the Picus study is attached as Appendix B.)

During the 2013 legislative session, the dollar figures set forth in the preceding paragraph were not otherwise examined with respect to their applicability, given the passage of time and circumstances since their recommendation by Picus.

ATTACH:2