

EDUCATION COMMITTEE

The Education Committee was directed by Section 16 of House Bill No. 1013 to study the state's elementary and secondary education system, including key measurements of student progress, programs that address the state's competitiveness with other states, costs incurred by the state relating to implementation of the No Child Left Behind Act, and the most effective means of using taxpayer dollars at the state and local levels to ensure the best possible education for the children of this state.

The Legislative Council assigned to the committee the responsibility to receive reports regarding the financial condition of schools, school district employee compensation, student scores on recent statewide tests of reading and mathematics, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, the failure of any school board to meet the statutory threshold for increasing teacher compensation, implementation of a policy to assess the English communication skills of faculty members and teaching assistants at institutions of higher education, and the State Board of Higher Education's long-term finance plan.

Committee members were Senators Layton W. Freborg (Chairman), Robert S. Erbele, Michael A. Every, Tim Flakoll, Gary A. Lee, Tom Seymour, and Harvey Tallackson and Representatives Stacey Dahl, C. B. Haas, Gil Herbel, Bob Hunsakor, Dennis Johnson, RaeAnn G. Kelsch, Lisa Meier, David Monson, Phillip Mueller, Mike Norland, John Wall, and Steven L. Zaiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

PROVISION OF EDUCATION STUDY

Background

Constitution of North Dakota

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.

Section 1 has not been changed since its 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 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."

Finally, 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."

Although the Constitution of North Dakota makes no reference to the manner in which education should be funded, the system that was enacted by the Legislative Assembly has twice been the subject of a lawsuit.

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 education finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the state's 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 also identified the following "constitutionally objectionable" features of the state's education funding system:

- Disparities in revenue that resulted from variations in school district taxable wealth;
- A 22-mill equalization factor that failed to equalize because it was so far below the state average general fund mill levy;
- Resources that were not taken into account by the education funding formula;
- A level of state support for education that failed to ensure substantial equality of resources for students in similarly situated districts;
- Inaccurate cost weighting factors;
- A flat-grant distribution system for tuition apportionment;
- A transportation aid formula that allowed some districts to obtain reimbursements in excess of their actual costs;

- A special education aid formula that advantaged some higher spending districts;
- A vocational education aid formula that exacerbated existing resource disparities;
- A school construction aid formula that was based on the unequal taxable wealth of districts;
- The maintenance of large ending fund balances by some wealthy districts; and
- The state's failure to ensure that resource differences among school districts were based on factors relevant to the education of students rather than on the unequal taxable wealth of 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 court directed the Superintendent of Public Instruction to prepare and present to the Governor and the 1993 Legislative Assembly plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

1993 Legislative Proposal by the Superintendent of Public Instruction - Legislative Response

The proposal that was prepared by the Superintendent of Public Instruction and presented to the Legislative Assembly in 1993 recommended:

- Per student payments be raised to \$3,134;
- Special education be funded by reducing the 13 disability categories to 3 broad categories and assigning weighting factors to each;
- Vocational education be funded by assigning weighting factors to high-cost and moderate-cost programs;
- Transportation reimbursements be based on six density categories;
- The state fund education at the 70 percent level;
- There be a uniform county levy of 180 mills;
- Tuition apportionment be distributed in the same manner as foundation aid;
- Federal and mineral revenues in lieu of property taxes and districts' excess fund balances be considered in the funding aid formula;
- Districts be allowed to impose an optional levy of 25 mills above the 180-mill uniform county levy;
- All land be part of a high school district;
- Districts having fewer than 150 students be eliminated; and
- \$25 million be placed in a revolving school construction fund.

Rather than implement the proposal of the Superintendent of Public Instruction, the Legislative Assembly increased per student payments to \$1,572 and \$1,636 for the first and second years of the biennium, respectively; increased the mill equalization factor from 21 to 23 and then 24; set weighting factors at 25 percent and then 50 percent of the five-year average cost per category; and capped transportation reimbursements at 100 percent and then 90 percent of the actual costs incurred by districts. The response of

the Legislative Assembly generally was guarded because the case was on appeal to the North Dakota Supreme Court.

Bismarck Public School District No. 1 v. State of North Dakota - Appeal - North Dakota Supreme Court Decision

On January 24, 1994, the North Dakota Supreme Court issued its decision in *Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). A majority of the Supreme Court justices indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. Three of the justices voted to declare the state's education funding system unconstitutional. Article VI, Section 4, of the Constitution of North Dakota, however, requires the affirmative vote of four justices before a statute can be declared unconstitutional.

Legislative Response

Each session since the Supreme Court's decision, the Legislative Assembly has increased funding for elementary and secondary education and changed the manner in which that funding was to be distributed. In 2005 the Legislative Assembly provided for per student funding of \$2,765 for the first year of the biennium and \$2,879 for the second year. The equalization factor was set at 38 mills and the Legislative Assembly provided for an increase of 3 mills each year thereafter. Weighting categories were reconfigured as were supplemental payments. Only school districts that levied at least 180 mills and maintained ending fund balances of less than 35 percent of their actual expenditures plus \$20,000 could be eligible for supplemental payments. Minimum teacher salaries were set at \$22,000 for the first year of the biennium and \$22,500 for the second year, and \$50.9 million was appropriated for teacher compensation payments.

In 1995 the Legislative Assembly appropriated \$521,185,833 for elementary and secondary education. In 2005 the Legislative Assembly appropriated \$702,605,996 for elementary and secondary education, including \$33.5 million for transportation aid, \$52.5 million for special education, and \$71.6 million for tuition apportionment.

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

Allegations

Despite the ongoing efforts of the Legislative Assembly, another education funding lawsuit was filed in October 2003. In the case of *Williston Public School District No. 1 v. State of North Dakota*, nine school districts alleged that the state's system of funding education is inadequate and that it unfairly and arbitrarily results in widely disparate funding, inequitable and inadequate educational opportunities, and unequal and inequitable tax burdens. The districts also alleged:

- 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' education 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 of Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City suggested:

- 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 the plaintiff's right to an adequate and equal education.

The trial had been scheduled to begin in February 2006.

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:

[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 are met, they will not commence another action based upon the same or similar allegations before conclusion of the 2009 legislative session.

North Dakota Commission on Education Improvement

The North Dakota Commission on Education Improvement consists of the Governor or the Governor's designee, three school district administrators, a school district business manager, the chairman of the Senate Education Committee, the chairman of the House Education Committee, the Senate minority leader, one legislator appointed by the chairman of the Legislative Council, and the Superintendent of Public Instruction. The commission also has three ad hoc members--one representing the North Dakota Council of Educational Leaders, one representing the North Dakota Education Association, and one representing the North Dakota School Boards Association. Ad hoc members are entitled to participate in all discussions and deliberations but are not entitled to cast a vote. The commission is chaired by the Lieutenant Governor in his capacity as the Governor's designee.

Report of the Commission

The North Dakota Commission on Education Improvement 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 sources between the state and its school districts. The commission made periodic reports to the interim Education Committee. Although still in draft form, the report currently proposes an amalgamation of funding previously distributed as foundation aid, teacher compensation reimbursement, tuition apportionment, special education per student payments, and supplemental payments, with any new money appropriated by the Legislative Assembly in 2007.

Each school district would be given a single weighting factor that reflects the relative cost of providing education by that district and all current educational programs are likewise given their own factor. The base payment would be adjusted for school districts with per student taxable valuations that exceed 150 percent of the state average and for school districts that levy fewer than 170 mills. The amount of per student aid to which each school district is entitled is to be no less than 102 percent nor greater than 107 percent of the state aid allocated per new weighted student unit during the previous school year. The calculation for the 107 percent cap excludes equity payments received by a district.

The equity payment is a replacement for the existing supplemental payment and is designed to offset the loss of certain revenues by any school district whose imputed

taxable valuation per student is less than 90 percent of the state average. Changes in the area of special education would require the state to assume liability for all excess costs incurred by school districts in serving the most costly 1 percent of students with disabilities. Changes in the area of school construction involve new equity criteria to determine school district eligibility for low-interest loans and financial incentives for school districts that are considering a reorganization.

The commission is suggesting that the Legislative Assembly provide incentives for the development of area career and technology education centers and for other cooperative efforts resulting in the delivery of career and technology education. In addition, the commission is suggesting that the Legislative Assembly provide funding to defray the startup costs of two additional area career and technology education centers.

Educational associations governed by joint powers agreements were viewed as a means by which school districts could provide equitable and adequate educational services despite the challenges posed by declining student numbers. As a result, the commission is suggesting that the general fund appropriation for such associations be increased to \$2 million and that they be eligible for an additional \$1 million in contingency funds.

The commission directed its efforts this year toward educational equity. In the future, the commission will address educational adequacy.

Committee Consideration

In documentation submitted to the committee, it was stated that the "proliferation of [education] programs has created a lack of simplicity and transparency, thereby making it difficult to understand how much financial support is actually being given to each school district." The commission's proposal was touted as providing both simplicity and transparency.

Committee members found it challenging to envision the consequences of the proposed formula changes and to understand fully the impact that such changes would have on school districts within their legislative districts and on school districts across the state. More importantly, the committee recognized that the proposal it had been given was still considered a draft, subject to revision by the commission. Because the commission had not officially recommended the report by the conclusion of the committee's study, the committee determined that it would be inappropriate for the committee to support or elect not to support the proposal. Therefore, the committee makes no recommendation on the report.

CURRENT STATE OF EDUCATION

At the same time that the committee was trying to comprehend the changes being proposed by the North Dakota Commission on Education Improvement, the committee also was examining the current state of education.

Student Enrollment

The fall enrollment reports for 2005 indicated that 97,120 public school students were enrolled in kindergarten through grade 12. The committee was told that preliminary reports from the fall 2006 count indicate that the student enrollment will be approximately 96,000.

Number of School Districts

During the 2005-06 school year, there were 204 school districts--159 high school districts, 34 graded elementary districts, 5 one-room rural districts, and 6 nonoperating districts. The committee was told that the number of school districts had fallen to 198 by the start of the 2006-07 school year--156 high school districts, 34 graded elementary districts, 5 one-room rural districts, and 3 nonoperating districts.

Statewide Average Levies - Ending Fund Balances

The latest available figures presented to the committee indicate a state average general fund levy of 194.33 mills and a state average total levy of 223.37 mills. School districts hold \$168,281,374--approximately 20 percent of school districts' general fund expenditures--as ending fund balances.

School District Employee Compensation

For the 2005-06 school year, the average amount of compensation paid to a teacher was \$51,693. This represented a 6.6 percent increase between the 2003-04 school year and the 2005-06 school year. The state average teacher compensation increase during that two-year period was \$3,195. The average teacher compensation in 107 school districts did not reach that state average. The average number of days a teacher was employed for purposes of calculating the base salary was 180 days, and 184 days was the average number of days a teacher was employed.

The total compensation paid to school district administrators for the 2005-06 school year averaged \$85,004 and represented an increase of 8.2 percent between the 2003-04 school year and the 2005-06 school year. The average number of days an administrator was employed ranged from 251 for a superintendent to 212 for a principal.

Student Achievement

The No Child Left Behind Act requires each state to demonstrate adequate yearly progress toward meeting academic achievement standards. This measurement is applied to the state itself, to each of its school districts, and to all of its public schools. During the 2004-05 school year, North Dakota administered state assessments to 53,000 students in grades 3 through 8 and 11. Alternate assessments were administered to 825 students with significant cognitive disabilities. Of the state's 486 public schools, 419 made adequate yearly progress, 43 did not make adequate yearly progress, and 24 had insufficient data for purposes of reporting adequate yearly progress. Among the state's 202 school districts, 168 made adequate yearly progress, 21 did not make adequate yearly progress,

and 13 had insufficient data for purposes of reporting adequate yearly progress. The adequate yearly progress report for each school and school district may be found on the Department of Public Instruction's web site.

Challenges - Solutions

The committee examined a variety of challenges faced by schools, school districts, and the state as a whole.

P-16 Education Task Force

The committee received a report from the P-16 Education Task Force, which was a joint effort involving the State Board of Higher Education, the State Board of Public School Education, the Education Standards and Practices Board, and the State Board for Career and Technical Education. The report indicated that most North Dakota students will go on to some form of higher education. It also indicated that most North Dakota students are not ready for college-level work. The committee was told that only 25 percent of North Dakota high school graduates are in fact prepared for college and that 27 percent of all college freshmen are enrolled in remedial courses.

It was stressed to the committee that there is a need for uniform, consistent proficiency standards and student support systems. This combination, it was said, would enable each student to achieve proficiency.

Full-Day Kindergarten

The committee considered other options, including full-day kindergarten programs. The committee was told that kindergarten should not be considered as a transitional year, but rather as a base for learning that will occur in the first and future grades. While many on the committee applauded the improvements in student achievement that are associated with full-day kindergarten attendance, others were wary that children who are not ready to learn might be stigmatized by possible failure in kindergarten.

Educational Associations Governed by Joint Powers Agreements

The committee was told that in five years, there will be fewer than 90,000 public elementary and high school students. Today, eight school districts educate 52 percent of those students. The rest of the students are spread among the remaining 190 districts. Teacher and administrator retirements are continuing at a significant rate and personnel recruitment is a challenge from both a geographical and a curricular perspective.

Nevertheless, school districts are constitutionally, statutorily, and socially expected to offer their students a full range of services. Without a critical mass of students, and without local support for large-scale reorganizations, many school districts had to turn to cooperative ventures with contiguous districts in order to serve their students.

Known colloquially as JPAs, these ventures are educational associations governed by joint powers agreements. They are nine in number and it is expected

that they soon will serve 98 percent of the state's students. Their services include staff development, curriculum development, technology support, and grant writing services. Educational associations governed by joint powers agreements are frequently used to provide summer school courses, English language learner programs, and advanced placement and dual-credit courses. These associations were described to the committee as comprehensive service agencies that can equalize access to educational opportunities and ensure a more uniform system of education, particularly when districts themselves cannot provide services.

Bill Drafts - Considerations and Recommendations

The committee considered a bill draft that would have appropriated \$1,706,192 to assist school districts with high fuel costs incurred during the 2005-06 school year. The percentage to which a school district would have been entitled was linked to its ending fund balance. The committee elected not to recommend this bill draft for a number of reasons, including falling fuel prices, sufficient ending fund balances, inequities between school districts that expended funds to become more energy efficient and those that did not, and inequities in existing transportation arrangements.

The committee recommends Senate Bill No. 2030 to authorize the Superintendent of Public Instruction to implement a uniform system of accounting for JPAs, just as is currently done with respect to school districts. The bill also provides that the functions of a school district business manager can be performed by an individual, as is now the case, or by an entity such as an accounting firm or a JPA. The bill maintains the requirement that members of a JPA's governing board be elected school board members and extends that requirement to designees as well. The bill also directs the Superintendent of Public Instruction to prepare a report regarding the operations of the state's JPAs at the conclusion of the 2007-08 and the 2008-09 school years and to present those reports to the Legislative Council. The reports are to address the impact that JPAs have had on course offerings, student achievement, professional development opportunities, and the sharing of administrative and instructional personnel. The reports are also to address other resulting benefits and efficiencies. The committee recommended the bill because the committee viewed the provisions as supporting the continued growth of JPAs and because the bill maintained accountability through elected board members and designees of those board members and through ongoing reports to legislators via the interim process.

MISCELLANEOUS REPORTS

Reports regarding the financial condition of schools, school district employee compensation, and student scores on statewide tests of reading and mathematics were presented to the committee as part of its overall study of elementary and secondary education and were addressed earlier in this report.

Statutory and Regulatory Waivers

The Superintendent of Public Instruction received, for the 2006-07 school year, one request by an elementary district to continue its four-day school week and one request by a high school district to continue a pre-existing arrangement regarding professional development opportunities. These requests were approved because they pertained to previously authorized activities.

The Superintendent of Public Instruction received, for the 2006-07 school year, five requests to release students early for professional development activities. The requests were denied because the 2005 Legislative Assembly provided school districts with two days for unrestricted professional development activities.

The Superintendent of Public Instruction received, for the 2006-07 school year, one request to waive the accreditation standard regarding principal time so that one individual could function as both a superintendent and a principal. The request was denied because the district's enrollment required more time per position than one person had available during a normal workday.

The Superintendent of Public Instruction also received, for the 2006-07 school year, a request by a high school district to reduce its school week to four days. The request was denied because issues of class schedules, instructional changes, extracurricular activities, transportation arrangements, financial benefits, community considerations, and contractual provisions were insufficiently addressed. There were additional considerations regarding national trends to increase the number of schooldays and uncertainties about the impact that would be felt by the JPA in which the school district participated.

Teacher Compensation Notices

Chapter 167 of the 2005 Session Laws directed the board of each school district to use an amount equal to at least 70 percent of all new money received for per student payments under North Dakota Century Code Section 15.1-27-04 and tuition apportionment payments under Section 15.1-28-03 for the purpose of increasing the compensation paid to teachers and for the purpose of providing compensation to teachers who began employment with the district after June 30, 2005. This directive did not apply if a board determined by a two-thirds vote that compliance would place the board in the position of having insufficient fiscal resources to meet its other obligations. In the case of such a determination, the board was to notify the Superintendent of Public Instruction.

The Superintendent of Public Instruction received no notices under this section.

English Communication Skills - Faculty Members and Teaching Assistants

Since 1993 the State Board of Higher Education has had in place a policy governing the English communication skills of faculty members and teaching assistants. The policy was revised in 1999 and again following the 2005 legislative session. The policy requires that students be notified of the statutory

provision requiring English proficiency and that the students be told who they can contact if they believe that the requirement is not being met. During the 2005-06 academic year, four complaints were received. Two came from four-year institutions and two arose at two-year institutions. Institutional responses ranged from assigning a diction coach and providing monitoring and guidance to recognizing that there were other significant difficulties and nonrenewing the individual.

State Board of Higher Education - Long-Term Finance Plan

In 2001 the State Board of Higher Education adopted a long-term finance plan. A review of the plan was to be

conducted at least once every six years. In 2005 the Legislative Assembly also mandated a review of the long-term finance plan. MGT of America, Inc., served as the contracting agent and recommended that state funding for higher education be increased to equal at least 21 percent of the state general fund budget. The report also concluded that the Higher Education Roundtable was effective in improving higher education and in integrating higher education into the economy, that accountability measures were consistent and appropriate, and that the unified system of higher education is the most effective and efficient means of delivering higher education services in the state.