

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EDUCATION COMMITTEE

Thursday, December 15, 2005
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Senators Layton W. Freborg, Robert S. Erbele, Michael A. Every, Tim Flakoll, Gary A. Lee, Tom Seymour, Harvey Tallackson; Representatives C. B. Haas, Gil Herbel, Bob Hunskor, Dennis Johnson, RaeAnn G. Kelsch, Lisa Meier, David Monson, Phillip Mueller, Mike Norland, John Wall, Steven L. Zaiser

Member absent: Representative Stacey Horter

Others present: Bev Nielson, North Dakota School Boards Association, Bismarck

Duane Houdek, Governor's office, Bismarck

Douglas A. Bahr, Attorney General's office, Bismarck

Sandy Clark, North Dakota Farm Bureau, Bismarck

Gloria Lokken, North Dakota Education Association, Bismarck

Doug Johnson, North Dakota Council of Educational Leaders, Bismarck

Jerry Coleman, Tom Decker, Gary Gronberg, Bob Rutten; Department of Public Instruction, Bismarck

Wayne Kutzer, Board for Career and Technical Education, Bismarck

Dean Bard, Bismarck

Mike Hillman, Julie Schepp; North Dakota University System office, Bismarck

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

Chairman Freborg called on Mr. Douglas A. Bahr, Director of Civil Litigation, Attorney General's office, who presented testimony regarding *Williston Public School District No. 1 v. State*. Mr. Bahr said three weeks have been reserved for the trial, which will begin on the last Monday of February 2006. He said the parties are currently conducting expert depositions. Beginning next month, he said, there will be three weeks of depositions of school officials and other individuals.

Chairman Freborg called on Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, who presented testimony regarding the impact of fuel prices on school districts. Mr. Johnson's testimony is attached as Appendix A. He said he would like the North Dakota Legislative Assembly to seek every possible method by which to give school districts relief from the unanticipated and significant increases in fuel costs.

In response to a question from Senator Flakoll, Mr. Johnson said he would be happy to research what percentage of school district budgets are set aside for fuel costs. He said most building administrators try to use the most efficient fuel system possible. He said there is at least one school building that is heated using a geothermal system. He said he believes that most of the school buildings no longer use coal-powered heat.

In response to a question from Representative Zaiser, Mr. Johnson said he does not know how many school buildings have taken measures to conserve fuel through methods such as added insulation, automated light systems, etc. He said he believes that school districts will begin to look at conservation measures very closely.

Representative Kelsch said during the last legislative session, the school districts had been encouraged to implement efficient transportation systems. She said she wondered how many school districts were using their ending fund balances to carry them over this period of higher fuel costs.

In response to a question from Representative Kelsch, Mr. Johnson said school districts want to save their ending fund balances for "rainy days."

In response to a question from Representative Mueller, Mr. Johnson said if schools keep a close eye on fuel expenditures, perhaps during the 2007 legislative session they could request a retroactive appropriation to reimburse them for the excess fuel costs they incurred.

In response to a question from Representative Herbel, Mr. Johnson said some school districts are looking at four-day school weeks to save money on fuel costs. He said some smaller districts have less flexibility in their budgets with which to absorb increases such as those we are seeing for fuel.

In response to a question from Representative Delmore, Mr. Johnson said school districts that go through efficiency reviews find their initial costs are usually recouped within 10 years. He said there may be an initial cost to become efficient and some schools might have to borrow money to become more energy efficient.

Chairman Freborg called on Mr. Jerry Coleman, Assistant Director, School Finance and Organization, Department of Public Instruction (DPI), who presented testimony regarding school district ending fund balances. Mr. Coleman distributed a document entitled *School District Ending Fund Balances*. The

document is attached as Appendix B. He said annual school district revenues and expenditures total approximately \$700 million. He said taking into account the timing of state aid payments and the timing of local revenue collections and ensuring that the ending fund balance will not dip below zero, the total ending fund balance has to contain \$127 million. He said the total ending fund balance as of 2004 was \$163,582,059.

Representative Kelsch said she has difficulty listening to school districts talk about not being able to pay their fuel costs and at the same time maintaining rather large ending fund balances.

In response to a question from Representative Herbel, Mr. Coleman said many elementary school districts are in favorable tax categories. He said many have lower tax rates than high school districts.

In response to a question from Senator Lee, Mr. Coleman said ending funds have highs and lows and we need to account for that in determining an appropriate ending fund balance. He said one could conclude that there is extra money in the system. He said his scenario does not consider federal dollars, which are often provided on a reimbursement system.

In response to a question from Representative Haas, Mr. Coleman said there are 10 to 12 school districts that lose money as a result of the ending fund balance law.

Chairman Freborg called on Mr. Tom Decker, Director, School Finance and Organization, Department of Public Instruction, who presented testimony regarding school district enrollment. Mr. Decker said earlier estimates were optimistic. He said the state has lost 2,204 students between last school year and this school year. He distributed a document entitled *12/13/2005 MISO2 Enrollment History Percent*. The document is attached as Appendix C. He said this document includes the percentage of decline from the greatest to the lowest. He said the requirement that schools use individual student numbers to report enrollment has helped to tighten up the reporting accuracy.

Mr. Decker distributed a document entitled *12/1/2005 MISO2 Enrollment History*. He said this document lists the districts by their identifying numbers. The document is attached as Appendix D.

Mr. Decker distributed a document entitled *2006 Public School Fall Enrollment Count Enumerated as of September 10, 2005*. The document is attached as Appendix E. He said this document shows the enrollment by grade level in every school building. He said the trend in the rural areas is one of smaller numbers in the lower grades than in the upper grades. He said this is also evident in the larger urban areas. He said unless something changes, there will be enrollment declines into the future.

In response to a question from Representative Zaiser, Mr. Decker said significant urban growth in South Dakota is offsetting the decline in the rural areas. He said the rural areas in the middle part of the country are all experiencing the same challenges.

He said most have offsetting gains in their urban areas. He said we are the last state to shift from an agricultural-rural base to an urban base. He said other states transitioned earlier. He said many places in the South are experiencing record growth.

Senator Seymour said Minot and Fargo have declining school-age populations.

Mr. Decker said only West Fargo seems to be growing at some significant rate lately. He said other cities are flat or declining.

Representative Zaiser said there is growth in the number of young single people. He said those individuals are not bearing children.

Chairman Freborg called on Representative Haas who presented testimony regarding enhanced funding for elementary and secondary education. Representative Haas distributed a document entitled *Concept Paper for Committee Consideration Regarding Property Tax Reduction and Enhanced State Funding for Elementary and Secondary Education*. The document is attached as Appendix F. He said this attempt is to find a system of funding education that relies less heavily on property taxation. He said he believes there are other aspects of education funding that will be addressed by the interim Finance and Taxation Committee. He said there is discussion regarding the amount of money that would need to be raised if the state implemented a 70/30 cost-share concept.

Representative Mueller said there has been no discussion regarding enhanced revenues or more money coming into the system.

Representative Herbel said much of what is being discussed in the interim Finance and Taxation Committee should be shared with the interim Education Committee.

In response to a question from Representative Delmore, Representative Haas said it is his belief that legislators need to proceed with a solution to the education funding problem in isolation from the lawsuit. He said we know what the problems are. He said we have the knowledge and background to solve this problem and do not need to wait for the courts to intervene.

Representative Haas said it is difficult to have an equitable distribution of money under our current system. He said the only way that could be done is through implementation of a 185 mill levy. On the other hand, he said, if we go to a true adequacy-based formula, we remove any discussions about equity. He said that distribution is really a policy issue for the interim Education Committee, more so than for the interim Finance and Taxation Committee.

Representative Haas said the first step is to look at a revenue-neutral approach. He said the next step is to look at enhancing the level of revenue.

In response to a question from Senator Freborg, Representative Haas said approximately 11 percent of school district revenues come from the federal level. He said his efforts are focused on a 70/30 split between state and local dollars.

In response to a question from Senator Freborg, Representative Haas said there has been some discussion about efficiencies in school district organization. He said there has not been any substance to the conversation. He said legislators tend not to want to address the concept of consolidation. He said if we say we are not willing to address consolidation and we are not willing to discuss enhanced revenues until consolidation occurs, that puts us in a catch-22. He said we should probably be discussing both. He said there are some significant cost-savings that could be realized through consolidation.

In response to a question from Senator Flakoll, Representative Haas said the interim Finance and Taxation Committee has had lengthy discussions regarding the farmstead home exemption and sales tax exemptions. Ultimately, he said, if property tax is reduced by \$145 million to \$200 million a year, that revenue is going to have to come from somewhere. He said it is within the purview of the interim Finance and Taxation Committee to suggest alternate revenue sources to replace the money.

In response to a question from Senator Flakoll, Representative Haas said there are about \$500 million in sales tax exemptions.

In response to a question from Senator Flakoll, Representative Haas said the interim Finance and Taxation Committee has heard presentations from county and city assessors. He said the committee has not come to any conclusion regarding any of the issues, including whether there is the possibility of phase-ins.

Representative Herbel said there was also discussion about using a percentage of one's valuation as a cap.

Representative Kelsch said she believes the interim Finance and Taxation Committee should not be delving into the education funding formula.

Representative Haas said many legislators who have served on the Education Committees thought the enhanced funding study should have gone to the interim Education Committee. Representative Haas said he believes the interim Finance and Taxation Committee can look at how the money is to be raised to remain revenue-neutral and how it should be raised to achieve an enhanced funding level. He said we can make a clear-cut delineation regarding the area of each committee's responsibility.

Representative Kelsch said perhaps when the interim Finance and Taxation Committee decides how revenue could be enhanced, a report should be made to the interim Education Committee so its members can look at any changes that might need to be made to the education formula.

Representative Herbel said many of the education people on the interim Finance and Taxation Committee are aware of Representative Kelsch's concern. He said there is difficulty coming up with a formula on which most people can agree.

Senator Freborg said a joint meeting is wonderful but that is not where any discussions regarding distribution will take place and be resolved.

Representative Zaiser said perhaps the interim Finance and Taxation Committee should have a deadline for passing their conclusions to the interim Education Committee.

Representative Mueller said the interim Finance and Taxation Committee is the group that needs to address things such as exemptions. He said the members of both interim committees have tried to address the problem of high property taxes. He said if we take the local contribution down to 30 percent, we will not have eliminated the problem regarding high property taxes but we will have reduced the problem significantly.

Chairman Freborg called on Mr. Bob Rutten, Director of Special Education, Department of Public Instruction, who presented testimony regarding DPI's study of special education. Mr. Rutten's testimony is attached as Appendix G. He said the primary concern motivating this study has been a shortage of state funds for serving students requiring high-intensity services. He said school personnel are typically not involved in the placement of youth that are considered by the student contract system as "agency"-placed. He said the special education finance study working group will meet again in January 2006 and then later in the spring. He said it is anticipated that recommendations will be submitted by the consultants at the spring meeting.

Mr. Rutten said there are currently 31 special education units.

In response to a question from Representative Delmore, Mr. Rutten said more than \$28 million in federal funding is received for special education. He said special education is not unfunded but it is underfunded.

In response to a question from Representative Kelsch, Mr. Rutten said there are 14,681 special needs students in North Dakota.

In response to a question from Senator Flakoll, Mr. Rutten said the special education study was started without preconceived notions. He said there are various ways in which special education can be funded. He said one option is to use a weighting system based on the severity of a student's disability. He said they do not want to create an incentive for districts to diagnose students as having disabilities.

Representative Mueller said there is insufficient money with which to pay for the student contracts.

Mr. Rutten said the shortfall is in the range of 60 to 65 percent. He said the difference has to be made up with local funds. He said approximately \$13.5 million had been set aside in recent years for student contracts. He said in 2005 DPI requested \$17 million for student contracts. He said \$15.5 million was appropriated.

Chairman Freborg called on Mr. Coleman who presented testimony regarding alternate funding systems. Mr. Coleman distributed a document

entitled *School District Costs and Funding*. The document is attached as Appendix H. He said eligibility for supplemental equity payments is calculated annually and is based on a statutory formula. He said the document shows how much would be received by school districts if the supplemental equity appropriation was set at \$2.5 million, \$5 million, and \$10 million, respectively. He said it also shows which school districts would get how much if that same amount of money was distributed on a weighted student basis.

COMMITTEE DISCUSSION

Representative Mueller said he would like a bill draft to retroactively reimburse school districts for the amounts they spent on excess fuel costs.

Senator Freborg said the Legislative Council staff should work with staff members from DPI and prepare bill drafts that the Superintendent of Public Instruction believes are necessary for the advancement of educational associations governed by joint powers agreements.

Representative Kelsch said she would like to hear what various school districts have done to address their fuel costs for both heating and transportation. She said she is still seeing a lot of empty schoolbuses on the highways. She said DPI staff should be able to compile data regarding this request.

Senator Flakoll said he would like to explore the possibility of providing reimbursement to those districts that pursue efficiencies such as boiler replacements, new insulation, etc.

Representative Zaiser said we would need to establish priorities for those efficiencies.

Representative Herbel said we would need to make sure that we are not providing reimbursement to school districts that are not likely to be operational in two to five years.

Representative Kelsch said she would like to explore the possibility of going to a four-day school week.

Representative Herbel said the Lemmon, South Dakota, School District is operating on a four-day basis. He said he does not know what impact this has on testing.

Representative Wall said he would like to hear from individuals who are superintendents in districts that are affected by high fuel costs. He said he would like to know what they are doing to address the situation and have them discuss whether they are utilizing their ending fund balances in the short term.

Senator Flakoll said he would like to explore payment for an optional all-day kindergarten program. He said he would also like to see the latest teacher compensation data.

Chairman Freborg said staff members from the North Dakota University System were to make a presentation regarding P-16 initiatives. He said because the road conditions were worsening and committee members were becoming anxious about having to travel later in the day, he had asked that the presentation be postponed and placed on the agenda for the next interim committee meeting.

Chairman Freborg adjourned the meeting at 1:30 p.m.

L. Anita Thomas
Committee Counsel

[ATTACH:8](#)