

## **EDUCATIONAL EQUITY AND FUTURE EDUCATIONAL DELIVERY - BACKGROUND MEMORANDUM**

Section 13 of 1999 Senate Bill No. 2162 (attached as an appendix) directs the Legislative Council to study the provision of education to public school students in this state and the manner in which education to public school students will be delivered in the ensuing 5, 10, and 20 years. The section also directs the Council to address demographic changes as they affect equity of educational opportunities with respect to courses, facilities, and extracurricular activities; equity with respect to teacher availability and qualifications; equity with respect to the organization and administration of school districts; and taxpayer equity in both rural and urban school districts.

### **BACKGROUND**

#### **North Dakota Constitution**

Section 1 of Article VIII 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 set forth in Section 1 have been unchanged since their enactment in 1889. Section 2 of Article VIII 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.

Section 3 of Article VIII 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." Finally, Section 4 of Article VIII 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."

At least 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.

#### **Initiation of the Foundation Aid Program**

A foundation aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, at which time 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 school districts with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

#### **Statewide Study of Education - The Alm Report**

In 1965, House Bill No. 815 directed the Legislative Research Committee to study "the requirements, standards, procedures, and laws governing school districts in North Dakota as they relate to a comprehensive State educational program, comprehensive local educational programs, assessed valuation, problems of low-populated areas, rising educational costs and financial ability of districts to meet requirements, and potential educational needs." Consideration was to be given to "terrain, roads, trading centers, population centers, and any and all other factors relating to

needs of education in the coming years." The study was assigned to the Legislative Research Committee's Subcommittee on Education. The University of North Dakota agreed to participate in the study and assigned Dr. Kent Alm to the project. A federal grant provided matching funds for the study, which became identified as the Statewide Study of Education.

In his preface to the final report, Dr. Alm states that:

The study team confronted the fact that North Dakota has modest resources for public services; moreover, the State is losing some of its most precious human resources through migration to other states. It needs to conserve the resources it has. Above all, it needs to use its present and future resources with as much skill and imagination as can be assembled in the public administration of its education system.

After two years of study, the team found that the "public system of education in North Dakota in certain key respects may be demonstrated to be inadequate, ineffective, inefficient, and inequitable." The team tried to get at the root causes of the "unsound educational condition."

They ascertained that "two basic and powerful deterrents mitigate against significant improvements in the education system. The first constitutes a steady drain upon the State's capacity to use its limited resources wisely. The other makes the development of quality programs--particularly at the elementary school level--virtually unfeasible. These root causes are:

- An overly elaborate system of local school district organization, comprised chiefly of small, high cost, low quality, twelve grade, elementary, and one-teacher school districts.
- Undue reliance--particularly in the small and medium size districts--upon underprepared, and therefore partly unqualified, educational personnel."

The study team was:

Forced by the evidence to conclude that additional funds for public education alone would not correct these basic root conditions. Indeed, additional spending within the present structure could not materially alter these conditions. The root causes have to be attacked directly by legislative and administrative action. . . .

Among the team's recommendations were:

- The energies of the state's colleges and universities be consolidated and focused on a new program of personnel development, research, and service, thereby making the classroom teacher a vital part of a continuing research and improvement effort;
- Each of North Dakota's schoolchildren be placed in a reasonably organized and administratively effective school district containing at

least 12 grades of instruction and enrolling at least 200 students in high school;

- The Department of Public Instruction administer seven regional service centers which would energize and facilitate local district study, planning, evaluation, reorganization, and program improvement;
- The state foundation aid plan equalize inequities among local school districts;
- The state government assume responsibility for the extraordinary cost of education services such as school construction, debt service, transportation, and special services for rural isolated students; and
- State funds be used to reward those local districts that take the initiative to improve the quality and efficiency of their operation.

The results of the Statewide Study of Education were not available for action by the 1967 Legislative Assembly and the final reports were not distributed until September 1968. The 1967-68 interim Subcommittee on Education recommended three bills, relating to school district reorganization and school construction, as a result of this study. A bill on school construction passed while two bills on school district reorganization, one of which would have created a regional committee system for school district reorganization and the other of which would have required reorganization of all school districts into high school districts, were defeated.

### **The 1970s**

In the early 1970s, 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 payment 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 for schools experiencing declining enrollments was instituted. This latter provision ensured that no school district could receive less in foundation aid payments for a current year than that district would have received based on its enrollment during the previous school year. 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 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 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 justified.

In response, the Legislative Council's Education Finance Committee, during the 1981-82 interim, 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 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 local 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 even established specific goals and guidelines to guide its deliberations on matters of education finance. While the interim committees articulated the need to alter the state's education funding system, they reached little agreement beyond recommending increases in the level of per student aid.

### District Court Litigation

### and 1993 Legislation

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 which 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 22-mill 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.

- 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 the Constitution of North Dakota, Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22. 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 1993 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.
- Provide \$25 million for a revolving school construction fund.

The Legislative Assembly offered its response by way of House Bill No. 1003 (1993). The bill was the appropriations bill for the Superintendent of Public Instruction and, as it progressed through the legislative process, it 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 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 available under North Dakota Century Code Section 15-40.1-16.
- 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.
- 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 and Supreme Court Decision

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 (four) 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, the Constitution of North Dakota, Article VI, Section 4, 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 Supreme 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 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, it had considered 35 bill drafts and three 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 Assembly**

Although the 1995 Legislative Assembly enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills--Senate Bill No. 2059, Senate Bill No. 2063, and Senate Bill No. 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 it 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 1993 Legislative Assembly, 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 incidence 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 mills 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.

The 1995 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 Assembly**

The 1997 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 the 1995 Legislative Assembly and thereafter tied by a mathematical formula to future increases in the level of foundation aid, was left at 32. 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 the current appropriation of \$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 the foundation program, transportation, supplemental payments, tuition apportionment, and special education by the 1997 Legislative Assembly was \$559,279,403. That figure exceeds the 1995-97 appropriation by \$41,680,570.

### **1997-98 Interim Study**

The 1997-98 interim Education Finance Committee conducted a review of demographic trends in the central United States during the past two decades. The committee found that much of the baby boom generation has finished having children and that the members of "Generation X" have delayed starting families and have opted for significantly smaller families. The resulting decline in population has been most evident in an area covering 279 counties in six states. The relevant area includes the states of Wyoming and Montana, half of Kansas, approximately three-fourths of Nebraska, and most of South Dakota and North Dakota.

In this state, much of the demographic decline has been attributed to changes in agriculture. What was once a highly labor-intensive industry has become 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. Today, over two-thirds reside in the 17 "urban" communities having more than 2,500 residents.

In 1960 nearly one-quarter of the state's population was under the age of 10. Today, deaths exceed the number of births in 31 of the 53 counties. This decline in population can be seen even in relatively short periods of time. In 1990 children under the age of six comprised 9.1 percent of the state's population. By 1996 that figure dropped to 7.7 percent. Assuming a continuation of the downward trend in birthrates, coupled with outmigration, the state's kindergarten through grade 12 student population is expected to drop from a 1997 level of 121,708 to 100,152 within 10 years.

With these factors as a backdrop, the committee concluded that fewer children and fewer taxpayers will affect the number of school closures and school district consolidations. It will affect the availability of public and private sector services available in parts of the state. It will affect real estate prices and the availability of job opportunities, and it will result in increased migration of people toward economically viable centers.

### **1999 Legislative Assembly**

The impact of declining demographics found its way into a number of bills addressed by the 1999 Legislative Assembly. One of these bills, House Bill No. 1033, was recommended to the Legislative Council by the 1997-98 interim Education Finance Committee. The bill required that on or before June 30, 2002, each school district offer all educational grade levels from 1 through 12 or become attached, through a process of reorganization or dissolution, to a district that does offer those grade levels. The bill, which would have had the likely effect of reducing the number of school districts from 231 to approximately 182, was defeated in the House.

Another way in which declining demographics was addressed by the 1999 Legislative Assembly involved authorization for school districts to jointly employ school district superintendents. That concept was embodied in 1999 Senate Bill No. 2162. Senate Bill No. 2162 was enacted and signed.

Declining demographics found their way into discussions regarding school construction approval. Senate Bill No. 2162 provided that the Superintendent of Public Instruction may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility, unless the school district proposing the project demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district.

Declining demographics were the impetus behind the provision in Senate Bill No. 2162 which allowed school districts to terminate their operations, become nonoperating districts for up to three years, and during the period of "nonoperation" to provide for education of their students in other school districts.

Senate Bill No. 2162 also set aside up to \$2 million for school districts whose 1999-2000 fall enrollment is less than their 1994-95 fall enrollment and provided up to \$2 million in reorganization bonuses for school districts that reorganize with one or more contiguous districts or portions of districts, provided at least one of the reorganizing districts is a high school district and further provided that the newly reorganized district consists of at least 800 square miles.

The 1999 Legislative Assembly appropriated \$479,006,259 to the Superintendent of Public

Instruction for foundation aid and transportation, \$3,100,000 for supplemental payments, \$53,528,217 for tuition apportionment payments, and \$46,600,000 for special education payments. These appropriations are in the appropriations bill that includes the

appropriation for the Department of Public Instruction, Senate Bill No. 2013.

ATTACH:1

**SECTION 13. LEGISLATIVE COUNCIL STUDY OF EDUCATIONAL EQUITY AND FUTURE EDUCATIONAL DELIVERY.** The legislative council shall study the provision of education to public school students in this state and shall examine the manner in which education to public school students will be delivered in the ensuing five, ten, and twenty years. Within this study, the council shall address demographic changes as they affect equity of educational opportunities with respect to courses, facilities, and extracurricular activities; equity with respect to teacher availability and qualifications; equity with respect to the organization and administration of school districts; and taxpayer equity in both rural and urban school districts. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-seventh legislative assembly.