



# North Dakota Legislative Council

Prepared for the Education Funding Committee

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## ELEMENTARY AND SECONDARY EDUCATION STATE AID AND FUNDING FORMULA STUDY - BACKGROUND MEMORANDUM

[Section 14 of House Bill No. 1388 \(2021\)](#) provides for a Legislative Management study of kindergarten through grade 12 school funding, including transition minimum reduction impacts to reorganized and consolidated school districts. The study must include:

- A review of school districts that have multiple buildings in the district and districts that have built a new building without using traditional bonding methods as a result of a multidistrict reorganization;
- An analysis of high-cost students, including students who are high cost due to special education needs, medical reasons, agency placements, or any other reasons that increase the cost to educate the students beyond the state threshold;
- An ongoing review of the impacts of school districts that are off of the funding formula as they transition onto the formula;
- An analysis of human resource allocation and the duties and needs in elementary and secondary school buildings with a targeted focus on student academic health, behavioral health, and social and emotional health; and
- A review of student performance data relevant to students participating in virtual learning.

### HISTORY OF FUNDING FOR ELEMENTARY AND SECONDARY EDUCATION North Dakota Constitutional Directives

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 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 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."

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."

Since the 1930s, the state, to meet its constitutional directives, has provided 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 Sections 1 and 2 of Article VIII and Sections 21 and 22 of Article I 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 House Bill No. 1003 (1993). 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 1<sup>st</sup> year of the 1993-95 biennium and at \$1,636 for the 2<sup>nd</sup> 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 5-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the 1<sup>st</sup> year of the biennium and at 50 percent of the difference for the 2<sup>nd</sup> year of the biennium;
- Capped state transportation payments at 100 percent for the 1<sup>st</sup> year of the 1993-95 biennium and at 90 percent for the 2<sup>nd</sup> year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the 2<sup>nd</sup> 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 v. State of North Dakota* 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, Section 4 of Article VI 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.

The Education Finance Committee recommended 27 pieces of legislation 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 (ADM); 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 ADM. 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 1<sup>st</sup> year of the biennium and to 32 mills for the 2<sup>nd</sup> 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 5-year average cost of education per categorical student, were left at 50 percent of the difference for the 1<sup>st</sup> year of the biennium and then raised to 65 percent of the difference for the 2<sup>nd</sup> 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 1<sup>st</sup> 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, \$41,561,941 more than the 1993-95 appropriation.

### **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 5-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, \$41,680,570 more than the 1995-97 appropriation.

### **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 1<sup>st</sup> year of the 1999-2001 biennium and at \$2,230 for the 2<sup>nd</sup> year. The total appropriation was \$582,234,476, 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 brought a directional shift in the discourse surrounding education funding. Much of that discourse was generated by demographic data. For the most part, the baby boomer 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 20<sup>th</sup> century, over two-thirds were residing in the 17 "urban" communities having more than 2,500 residents.

Birth rates, death rates, 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.

Enrollment reached its lowest level of 93,406 students in the 2008-09 school year before rebounding to 110,842 students in the 2018-19 school year, an increase of 18.7 percent in 10 years.

#### **Reliance on Property Taxes**

The 1995-96 interim Education Finance Committee learned school districts receive revenue from two primary sources--the state general fund and local property taxes. The committee also learned 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 learned 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, resulting in only 28.9 percent of the state's total school districts

having the level of 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. (Public school district fall enrollment for the 2018-19 school year indicated 23 percent or 40 of the 174 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.

### **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 1<sup>st</sup> year of the biennium and up to \$3,000 per teacher during the 2<sup>nd</sup> 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.

### **Education Finance - 2003 Legislative Session**

Teacher compensation continued to be a topic of discussion during the 2001-02 interim. 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 2012 fall enrollment was 99,192, and in 2018 fall enrollment totaled 110,842.) 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 filed. 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 (DPI) 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 Senate Bill No. 2200 (2007).

### **Education Finance - 2007 Legislative Session**

Senate Bill No. 2200 provided for a 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 1<sup>st</sup> year of the biennium and fewer than 155 mills during the 2<sup>nd</sup> year of the biennium.

Special education payments were increased and the state took on the full obligation of paying any amount over 4 times 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 biennium funding for elementary and secondary education had been increased by \$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 4 to 6 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 ADM for 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 4 to 6 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 Legislative Assembly. House Bill No. 1400 (2009) was the vehicle by which many of the policy recommendations were enacted. House Bill No. 1013 (2009) 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 2-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 2 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)

North Dakota Commission on Education Improvement - Recommendations	2009 Legislation (House Bill Nos. 1400 and 1013)
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 3 years of mathematics, 3 years of science, and 3 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 2 years of mathematics, 2 years of science, and 3 years of focused electives, for a total of 21 units	Enacted
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 4 year old attending an approved program for at least 2 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 2 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 3 <sup>rd</sup> 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

North Dakota Commission on Education Improvement - Recommendations	2009 Legislation (House Bill Nos. 1400 and 1013)
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 1 <sup>st</sup> -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 4-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 11<sup>th</sup> 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 ADM 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 1<sup>st</sup> year of the biennium and by an additional \$100 per-student for the 2<sup>nd</sup> year.

### **Education Finance - 2011 Legislative Session**

As its predecessors, Senate Bill No. 2150 (2011) incorporated the recommendations put forth by the North Dakota Commission on Education Improvement and with the enactment of Senate Bill No. 2013 (2011), 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 and \$48.5 million for transportation. 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 legislative session. Senate Bill No. 2032 (2007), 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 3-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.

Senate Bill No. 2199 (2009) embodied the Governor's conceptualization for providing property tax relief through statewide school district mill levy reductions. At a cost of \$299 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 legislative session, the legislative effort to continue providing property tax relief culminated with the passage of House Bill No. 1047 (2011). Originally recommended by the interim Taxation Committee, the bill provided \$341.8 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 legislative 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, as did 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. 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.

2. 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.

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 as a recommendation from the Governor. Introduced as House Bill No. 1319, the new proposal for funding elementary and secondary education was defeated on the morning of the 80<sup>th</sup> day of the legislative session. Later that day, the content was attached as an amendment to House Bill No. 1013 and enacted.

The legislative appropriation for the state school aid program followed substantially the executive budget recommendation to integrate property tax relief in the K-12 state school aid funding formula. The formula change discontinued the mill levy reduction grant program and provided the state will determine an adequate base level of support necessary to educate students by applying an integrated payment rate to the weighted student units. This base level of support will be provided through a combination of local tax sources, local revenue, and state integrated formula payments. The local funding requirement is set at 60 mills and a percentage of identified local in lieu of property tax sources and local revenues. Base level support not provided by local sources is provided by the state through the integrated formula payment. In addition to the 60 mills, school districts are allowed an additional 10-mill levy for general fund purposes, an additional 12-mill levy for miscellaneous purposes, and a 3-mill levy for a special reserve fund.

Conceptually, the legislation provided for a district's weighted student units to be multiplied by integrated formula payment rates of \$8,810 during the 1<sup>st</sup> year of the biennium and \$9,092 during the 2<sup>nd</sup> year. Minimum and maximum payment levels were established using a statutorily defined baseline funding level that included:

- 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 called for a subtraction of 60 mills multiplied by the district's taxable valuation, not to exceed the amount in dollars subtracted the prior year plus 12 percent, and a subtraction of the specified portion 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' Fund for Retirement 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 3 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 were to be multiplied (\$8,810 during the 1<sup>st</sup> year of the biennium and \$9,092 during the 2<sup>nd</sup> year), were an inflationary increase based on total expenditures per student suggested by Picus during the aforementioned study conducted for the North Dakota Commission on Education Improvement. Given the passage of time and circumstances since the recommendation by Picus, the formula payment rates set forth were not otherwise examined with respect to their applicability during the 2013 legislative session.

The legislative appropriation for the state school aid program included integrated formula payments totaling \$1,752,100,000. The new formula resulted in an increase of \$491.9 million from the state school aid and mill levy grants, totaling \$1.26 billion provided during the 2011-13 biennium. Integrated formula payments related to state school aid totaled \$1.096 billion, an increase of \$177.2 million from state school aid provided during the 2011-13 biennium. Integrated formula payments related to the mill levy buydown totaled \$656.5 million and provided for a buydown of 125 mills for the 2013-15 biennium (50 mills more than the 75 mills provided during the 2011-13 biennium) and an increase of \$314.7 million from the \$341.8 million provided for mill levy reduction grants from the general fund during the 2011-13 biennium.

### **Education Funding Committee - 2013-14 Interim**

The Education Funding Committee was assigned a study, pursuant to Section 58 of House Bill No. 1013 (2013), of state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in this state.

The dollar amounts by which a district's weighted student units were multiplied, in order to arrive at a funding level for the 2013-15 biennium (\$8,810 during the 1<sup>st</sup> year of the biennium and \$9,092 during the 2<sup>nd</sup> year), were determined by applying an inflationary increase to the "adequate" funding level that the Picus study recommended as part of its final report to the North Dakota Commission on Education Improvement in 2008. Given the intervening 5 years and changes in the state's economic and demographic circumstances, the Legislative Assembly deemed it appropriate to seek a review and clarification of state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education.

To meet its study directive, the interim Education Funding Committee asked Picus to review its earlier efforts and conduct a recalibration using an evidence-based model and the most recent data available.

#### **Evidence-Based Model - Picus**

The main principle behind the state's school funding formula, as articulated by Picus, is that every elementary and secondary student in North Dakota should have a base of financial support that allows the student's school district to provide a quality education. This should be the case regardless of where the student lives or how much taxable valuation is available to the school district.

To determine what that level of financial support should be, Picus uses an evidence-based model that relies on reviews of research pertaining to the effects of major elements or strategies on student achievement and studies of schools and school districts that have dramatically improved student performance over a period of 4 to 6 years.

Picus' premise is that if school districts expend the recommended amounts to support the various student improvement strategies embedded in the model, the result will be large improvements in the academic achievements of their students.

In addition to advocating the use of 10 strategies for student improvement, the evidence-based model articulates the resources needed by prototypical elementary, middle, and high schools, as well as by prototypical districts. A prototypical elementary school consists of 450 students in kindergarten through grade 5. A prototypical middle school consists of 450 students in grades 6 through 8 and a prototypical high school consists of 600 students in grades 9 through 12. A prototypical district of 3,900 is used to identify district resources. The model must utilize specific sizes for the prototypes to indicate the relative level of resources in the schools. Although the model is based on such prototypes, Picus underlines that this configuration in no way implies that North Dakota should adopt any new policy on school or district size.

### **Recalibrated Payment Levels and Weighting Factors - Picus Recommendations**

Based on all available information and assumptions, Picus recommended that the recalibrated payments should be increased from the 2013-15 levels of \$8,810 and \$9,092 to \$9,347 and \$9,442. Based on all available information and assumptions, Picus also recommended recalibrating certain weighting factors. While Picus maintained many of the weighting factors were appropriate, the recommendation included increasing the weighting factor for at-risk students and eliminating the weighting factors for migrant summer school, home education students, and cross-border attendance students. The recommendation was to include migrant summer students in the regular summer school program count.

### **School District Response to Picus Report and Recommendations**

School district officials and representatives informed the committee that while some of the recommendations included in the original Picus study published in 2008 were implemented, others were found not to be a "good fit" for the students or the state of North Dakota. As a group, school district officials and their representatives affirmed their commitment to students. They recognized the need for accountability, but expressed concern that accountability not result in placing blame on teachers and administrators for not doing their jobs. It was suggested that accountability should require "change agents that foster the intrinsic motivation of teachers and students, change agents that engage educators and students in continuous improvement in instruction and learning, change agents that inspire collective or team work, and change agents that affect all teachers and students." It was further suggested that public education in general should be driven by capacity building, rather than accountability in the form of test results and teacher evaluations; collaborative work or group solutions, rather than the promotion of individual teachers and leadership quality; quality of instruction, rather than the latest technology; and systemic strategies, rather than fragmented strategies.

Within this framework, educational leaders expressed concern that in implementing Picus' evidence-based model for student achievement, school districts would be required to eliminate a large number of individuals who teach elective courses. The committee was told that this reduction in personnel would extend to instructional aides, special education aides, and certain core teachers. On the other hand, the committee was told, if school districts would be expected to increase personnel such as instructional coaches, support staff, core teachers, nurses, and supervisory aides, achieving that end would take a period of time.

One of the more significant concerns came about as a result of the recommendation for smaller class sizes, particularly at the elementary level. It was perceived that this would generate a shift in capital from the high school to the elementary level and result in exponential construction costs, due to the need for additional classrooms.

As for professional development, the committee was told that each school district should be permitted to articulate its own needs and that those needs should be met through job-embedded learning and not necessarily through a multiday summer academy or institute.

Finally, the committee was told that there is support for the funding of aides, principals and assistant principals, central office administration, and operations and maintenance, as well as for instructional coaches, tutors, substitute teachers, librarians, and secretarial staff. If determined to be appropriate and advantageous and if well funded, there would be support for extended-day programs, summer school programs, English language learner programs, gifted and talented programming, and alternative schools.

### **Committee Consideration**

The committee decided not to recommend an imposition of the Picus evidence-based funding model. Philosophically, however, the committee noted that Picus presented an educational framework and a cost for delivering educational services within that framework. If that framework is not to be adopted and if there are no

requirements that school districts adhere to the components of that framework, then the end result could be described as nothing more than funding plus local flexibility.

Other committee members viewed the element of local flexibility as indisputably necessary to the provision of education in North Dakota, arguing that what works in a large urban school district is not necessarily that which will ensure success in a small rural school district.

### **Committee Recommendation**

The committee recommended Senate Bill No. 2031 (2015) relating to the funding of elementary and secondary education. The bill set per-student funding rates of \$9,482 for the 1<sup>st</sup> year of the 2015-17 biennium and \$9,766 for the 2<sup>nd</sup> year. The rate of \$9,482 was derived using the Picus recommendation for the 2014-15 school year of \$9,442, subtracting \$236, which represents the 8 days of professional development that Picus had recommended, but which the committee did not require, and then increasing the remainder by 3 percent to arrive at \$9,482. A 2<sup>nd</sup> year increase of 3 percent resulted in a rate of \$9,766 for the 2016-17 school year.

The bill added a 3<sup>rd</sup> day of professional development, beginning with the 2016-17 school year. While the first 2 days of professional development are included within the funding formula, \$22 million was made available for additional payments to those school districts that offer a 3<sup>rd</sup> day of professional development, beginning with the 2015-16 school year. The payment was provided through a factor of 0.01. The 4<sup>th</sup> and 5<sup>th</sup> days would each generate factors of 0.005. Payments for professional development days were to be forwarded only upon the activities approved by the Superintendent of Public Instruction.

The bill increased the factors for English language learners. Recognizing that certain school districts are required to address the needs of a disproportionate number of English language learners, the bill provided for a \$2.5 million grant. The grant was limited to the six school districts that have the largest number of Level I and Level II English language learners. Money provided through the grant must be used to enhance the services provided to such students through the hiring of additional teachers, interpreters, and social workers and through the provision of other ancillary support services approved by the Superintendent of Public Instruction.

The bill funded a percentage of at-risk students in kindergarten through grade 3 using a factor of 0.20 and a percentage of at-risk students in grades 4 through 12 using a factor of 0.025. This created a \$45 million impact. Increasing the funding level for regional education associations from 0.002 to 0.0022 came at a cost of approximately \$425,000. Alternative middle school funding was retained using a factor of 0.15. Alternative high school funding was retained using a factor of 0.25, with the clarification that eligibility extends to all students in grades 9 through 12, not just to those who have reached the age of 16.

When totaled, the recommended commitment to elementary and secondary education exceeded \$2.038 billion.

### **Education Finance - 2015 Legislative Session**

In 2015 the Legislative Assembly considered Senate Bill No. 2031. As approved, the bill did not include the Picus adjustment, but provided increases in the integrated payment rate of 3 percent per year during the 2015-17 biennium, based on the integrated formula payment rates provided during the 2<sup>nd</sup> year of the 2013-15 biennium. Integrated payment rates were set at \$9,365 during the 1<sup>st</sup> year of the biennium and \$9,646 for the 2<sup>nd</sup> year of the 2015-17 biennium.

In addition, Senate Bill No. 2031 removed the sunset on the K-12 integrated formula for state school aid, adopted by the 2013 Legislative Assembly, and adjusted certain formula provisions, including the following:

- Increased formula minimum and maximum payments;
- Removed the 0.003 PowerSchool weighting factor;
- Removed the 0.20 cross-border weighting factor;
- Decreased the migrant weighting factor from 1.00 to 0.60 by combining it with the summer education factor;
- Increased the English language learner weighting factors from 0.30 to 0.33 for Level I students and from 0.20 to 0.22 for Level II students for the 2015-17 biennium and to 0.40 for Level I students and 0.28 for Level II students effective July 1, 2017; and
- Added an additional school district size weighting factor of 1.36 for high school districts with an ADM less than 110.

The Legislative Assembly provided an appropriation of \$1,916,640,000 for integrated formula payments during the 2015-17 biennium. This level of funding represented an increase of \$164.5 million from the 2013-15 biennium appropriation for integrated formula payments of \$1.752 billion. Increases approved by the Legislative Assembly and other adjustments to the state school aid formula are summarized as follows:

Integrated Formula Payments 2015-17 Biennium	2015-17 Biennium Increase (Decrease)	Integrated Formula Payments
Base budget integrated formula payments:		\$1,752,100,000
Base adjustment for unobligated 2013-15 appropriation	(\$25,600,000)	
Cost-to-continue 2 <sup>nd</sup> year integrated formula payment increase	62,000,000	
Projected 2015-17 biennium student growth	104,000,000	
Increase in local cost-share, including local property tax and income relating to estimated oil tax production and distribution	(73,000,000)	
Increase per-student integrated formula payment rates to provide for 3 percent per year increases	103,320,000	
Remove PowerSchool weighting factor	(6,360,000)	
Remove cross-border weighting factor	(200,000)	
Decrease the migrant weighting factor from 1.00 to 0.60 by combining it with the summer education factor	(260,000)	
Increase school district size weighting factor	390,000	
Increase English language learner weighting factors <sup>1</sup>	250,000	
Total adjustments to base budget integrated formula payments		164,540,000
Total 2015-17 biennium integrated formula payments		\$1,916,640,000

<sup>1</sup>The Legislative Assembly, in Section 9 of Senate Bill No. 2031, provided for additional increases to certain English language learner weighting factors effective July 1, 2017.

### Use of Foundation Aid Stabilization Fund

In 2015 the Legislative Assembly also approved Senate Concurrent Resolution No. 4003, which proposed a constitutional amendment to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for education-related purposes. In addition, the Legislative Assembly approved Senate Bill No. 2039 (2015), which included certain provisions effective December 1, 2016, based on the approval of Senate Concurrent Resolution No. 4003 by voters. Those provisions of Senate Bill No. 2039 established a scholarship endowment fund and a school construction assistance loan fund and provided for transfers from the foundation aid stabilization fund to the school construction assistance loan fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016) and to the scholarship endowment fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016). Other provisions of Senate Bill No. 2039 provided any accessible funds that remain in the foundation aid stabilization fund, after completion of the required transfers to other funds, must be used for education-related purposes, including state aid to school districts and education-related property tax relief to school district patrons. However, in 2017, the Legislative Assembly approved Senate Bill No. 2272, which provided for uses of the foundation aid stabilization fund and repealed Sections 9 and 10 of Chapter 153 of the 2015 Session Laws related to the transfers to the scholarship endowment fund and the school construction assistance loan fund.

In February 2016 the Governor ordered a 4.05 percent budget allotment and in March 2016, \$71,758,143 was transferred from the foundation aid stabilization fund to DPI to offset state school aid, transportation, and special education reductions as a result of the general fund budget allotment. In August 2016 the Governor ordered another 2.5 percent budget allotment and an additional transfer of \$44,295,150 was made from the foundation aid stabilization fund to DPI later that month. Transfers from the foundation aid stabilization fund to offset foundation aid reductions made by executive action due to revenue shortfalls during the 2015-17 biennium totaled \$116,053,293.

### Education Finance - 2017 Legislative Session

In 2017 the Legislative Assembly approved House Bill No. 1324 to increase formula minimums and maximums and adjust the integrated payment rate to \$9,646 for each year of the 2017-19 biennium, the same as the 2<sup>nd</sup> year of the 2015-17 biennium. The Legislative Assembly, in House Bill No. 1318 (2017), provided for a Legislative Management study of how state aid for elementary and secondary education is determined and distributed under the state aid funding formula; the impact of state aid; potential changes to the funding formula to ensure equity, adequacy, and sustainability; the delivery and administration of elementary and secondary education in the state; and the short- and long-term policy and statutory changes that may result from or be necessitated by 21<sup>st</sup> century

technological advances and global economics. In addition, the Legislative Assembly approved House Bill No. 1423 (2017) to provide for a Legislative Management study of the in lieu of property tax portion of the elementary and secondary education funding formula for the purpose of identifying and addressing any inequities in the application of the formula.

Integrated formula payments during the 2017-19 biennium were estimated based on 2017-18 school year ADM of 108,591 students and 2018-19 school year ADM of 110,351 students. The Legislative Assembly provided an appropriation of \$1,935,204,163, of which \$1,334,657,258 is from the general fund, \$295,000,000 is from the foundation aid stabilization fund, and \$305,546,905 is from the state tuition fund for state school aid integrated formula payments. Of the \$295,000,000 provided from the foundation aid stabilization fund, \$185,000,000 was considered one-time funding. This level of funding represented an increase of \$18,564,163, including a decrease in funding of \$246,795,449 from the general fund and increases in funding of \$178,946,707 from the foundation aid stabilization fund and \$86,412,905 from the state tuition fund, from the 2015-17 biennium adjusted appropriation for integrated formula payments of \$1,916,640,000.

The Legislative Assembly approved an increase in state school aid integrated formula payments totaling \$18.6 million, including cost-to-continue the 2015-17 biennium 2<sup>nd</sup> year integrated formula payment increase (\$54 million), cost of projected student growth (\$57.7 million), and cost associated with an increase in the English language learner weighting factors approved by the 2015 Legislative Assembly and effective July 1, 2017 (\$900,000). Increased costs were partially offset by an increase in the local cost-share, including local property taxes and local revenue. Increases approved by the Legislative Assembly and other adjustments to state school aid integrated formula payments are summarized as follows:

<b>Integrated Formula Payments 2017-19 Biennium</b>	<b>2017-19 Biennium Increase (Decrease)</b>	<b>Integrated Formula Payments</b>
Base budget integrated formula payments:		\$1,916,640,000
Base adjustment for unobligated 2015-17 biennium appropriation	(\$22,048,863)	
Cost-to-continue 2 <sup>nd</sup> year integrated formula payment increase	54,023,780	
Projected 2017-19 biennium student growth	57,693,368	
Increase in local cost-share, including local property tax and income relating to estimated oil tax production and distribution	(71,705,637)	
Increase English language learner weighting factors <sup>1</sup>	901,515	
Removed funding for regional education association coordinator grants (\$800,000) and provided funding for annual state aid grants to regional education associations totaling \$500,000	(300,000)	
Total adjustments to base budget integrated formula payments		18,564,163
Total 2017-19 biennium integrated formula payments appropriation		\$1,935,204,163

<sup>1</sup>The Legislative Assembly, in Section 9 of Senate Bill No. 2031 (2015), provided for increases to certain English language learner weighting factors effective July 1, 2017.

In addition to \$1.935 billion provided for integrated formula payments, the Legislative Assembly provided the following funding for state school aid during the 2017-19 biennium:

<b>Additional State School Aid</b>	<b>2017-19 Biennium</b>
Transportation aid payments	\$55,400,000
Special education - Contracts	19,300,000 <sup>1</sup>
Rapid enrollment grants	6,000,000
<b>Total</b>	<b>\$80,700,000</b>

<sup>1</sup>The 2019 Legislative Assembly allowed DPI to transfer up to \$4 million from the integrated formula payments line item to the grants - special education line item for the purposes of providing special education grants during the 2017-19 biennium, to provide a total of \$23.3 million.

**Education Funding Committee - 2017-18 Interim**

The Education Funding Committee was established pursuant to House Bill No. 1318 (2017) which provided the Legislative Management appoint a committee consisting of five members of the Senate and six members of the House of Representatives. The committee was assigned the following studies:

1. House Bill No. 1318 (2017) provided for the Legislative Management to establish a committee to:
  - a. Examine how state aid for elementary and secondary education is determined and distributed under the state aid funding formula, analyze the impact of the state aid provided through the funding formula, and

consider potential necessary changes to the funding formula to ensure equity, adequacy, and sustainability; and

- b. Examine the delivery and administration of elementary and secondary education in the state and the short- and long-term policy and statutory changes that may result from or be necessitated by 21<sup>st</sup> century technological advances and global economics.
2. House Bill No. 1423 (2017) provided for a study of the portion of the elementary and secondary education funding formula which relates to the utilization of in lieu of property tax funds for the purpose of identifying and addressing any inequities in the application of the formula.

### **School District Hold Harmless Calculations - Transition Minimum and Maximum Adjustments**

The committee reviewed the use of transition minimum and maximum adjustments in the state school aid formula. When the state school aid formula was implemented during the 2013-15 biennium, hold harmless calculations were included to avoid disrupting school budgets. Districts with formula adjustments for transition minimum and maximum adjustments are not considered to be on the state school aid formula.

Transition minimum adjustments apply to those districts that were above the per-student payment rate when the formula was implemented. Districts above the formula amount were subject to a transition minimum to hold the districts harmless under the new formula. These districts received a 2 percent increase each year of the 2013-15 and 2015-17 bienniums to provide a minimum of 108 percent of the district's baseline funding per weighted student unit multiplied by the district's prior year weighted student units, or 100 percent of the district's baseline funding dollars whichever is greater. There were no increases in the transition minimum adjustment during the 2017-19 biennium. The committee learned two hold harmless minimum calculations--baseline funding per weighted student unit and total baseline funding dollars--guarantee school districts will not receive less funding per weighted student unit or in total than the funding received during the 2012-13 school year.

Transition maximum adjustments apply to those districts that were below the per-student payment rate in the 2012-13 base year when the formula was implemented. Districts below the formula amount were subjected to a transition maximum to avoid excess funding. For these districts the maximum was increased 10 percent each year of the 2013-15 and 2015-17 bienniums to 140 percent of the district's baseline funding per weighted student unit multiplied by the district's prior year weighted student units. There were no increases in the transition maximum adjustment during the 2017-19 biennium.

Districts on the formula--those not subject to minimum or maximum adjustments--were given 3 percent increases each year of the 2013-15 and 2015-17 bienniums as the integrated formula payment was adjusted annually. There were no increases in the integrated formula payment rate during the 2017-19 biennium.

During the 2018-19 school year, 94 of the 171 school districts receiving state school aid were not on the formula. There were 12 school districts subject to transition maximum deduction adjustments and 83 school districts subject to transition minimum increases--one school district was subject to both transition maximum and minimum adjustments. Of the 83 school districts receiving transition minimum funding, 22 school districts are subject to the minimum hold harmless in baseline funding dollars.

The total formula amount is adjusted for school district minimum and maximum calculations and the local contribution of 60 mills and local in lieu of revenue is deducted. State school aid is further reduced for districts with excess ending fund balances. The amount remaining after deductions is provided by the state. Hold harmless calculations are applied to total state and local funding, which is divided by total weighted student units to determine state and local funding per weighted student unit.

In 2019 the Legislative Assembly amended Section 15.1-27-04.1 related to state aid to:

- Reorganize the base funding calculation by grouping in lieu of revenues;
- Reset school district baseline funding to the 2018-19 school year;
- Reduce proportionately, beginning with the 2020-21 school year, the dollar amount baseline funding level for a school district that becomes an elementary district;
- Reduce, for the 2020-21 school year, the dollar amount baseline funding level for districts that became elementary districts after the 2012-13 school year;
- Phase out the dollar amount transition minimum beginning with the 2021-22 school year;

- Adjust baseline funding per weighted student unit when a district becomes an elementary district;
- Phase out baseline funding per weighted student unit beginning with the 2021-22 school year by providing for a 15 percent reduction of the amount by which the district's baseline funding per weighted student unit exceeds the payment provided per weighted student unit. For each year thereafter, the reduction percentage is increased by an additional 15 percent until it is equal to the payment provided per weighted student unit;
- Reimburse school districts for weighted student units over the baseline weighted student units at the formula payment rate, instead of the baseline funding per weighted student unit rate;
- Adjust the calculation of transition minimum payments to provide a 1 percent increase over the new baseline in the 1<sup>st</sup> year of the 2019-21 biennium and a 2 percent increase over the new baseline in the 2<sup>nd</sup> year of the biennium; and
- Increase transition maximum payments, based on new baseline funding, by 5 percent each year of the 2019-21 biennium.

### School District Mill Levy Limitations

The committee reviewed limits on property tax increases, the impact of limits on mills levied by school districts, and property tax revenue deducted in the state school aid formula. The committee reviewed the differences between property taxes levied by school districts and the property tax amounts deducted in the state school aid formula.

During the 2015-16 school year, statewide, school districts levied \$274.2 million on \$4.1 billion of 2015 taxable valuation for their general funds. During the 2016-17 school year, statewide, school districts levied \$289.2 million on \$4.4 billion of 2016 taxable valuation for their general funds. Based on the 2015 tax levy, the local property tax contribution deducted in the state school aid formula for all districts during the 2016-17 school year was \$219.7 million, \$54.4 million less than the property tax levied for the 2015-16 school year and \$69.5 million less than the property tax levied for the 2016-17 school year.

While dollars levied based on 2016 property valuations are distributed to school districts in the 2016-17 school year, the integrated state school aid formula uses 2016 property valuations for purposes of calculating the local property tax deduction for the 2017-18 school year formula payment. Based on the 2016 tax levy, the local property tax contribution deducted in the state school aid formula for all districts during the 2017-18 school year was \$237.9 million.

"Property poor" districts are required to meet a minimum local effort. If a district's taxable valuation per student is less than 20 percent of the statewide average valuation per student, the formula will use an amount equal to 60 mills times 20 percent of the statewide average valuation per student multiplied by the number of weighted student units. This results in computed mills in the formula that are higher than 60 mills for seven districts. The statewide average taxable valuation per student for the 2016-17 school year was \$33,396. During the 2016-17 school year the formula deduction for 41 districts was below 60 mills, 74 districts were levying below 60 mills, and 33 districts were levying 70 mills or more. The committee learned 89 school districts levy for miscellaneous purposes, generating \$22.5 million annually, that is not offset in the funding formula. The committee learned that if a district does not levy up to the same increase deducted in the state school aid formula, the district will lose the difference between the amount deducted in the formula and the actual amount based on the levy. The state school aid formula statutorily deducts up to the 12 percent increase whether it is levied or not.

The committee reviewed the impact of the 12 percent limit on the increase in property tax revenue assessed and deducted in the state school aid formula. Districts unable to tax at the full 60 mills, due to increases in school district property valuation that result in property tax revenue increases in excess of 12 percent over the prior year, could be considered not on the formula. The 12 percent restriction effectively lowers the mill rate to below 60 mills for districts with rapidly increasing property valuations. When growth in the taxable valuation of a school district exceeds the 12 percent limit on growth in the formula, the state is required to increase its share of state school aid because the local share of property tax deducted in the formula is below the 60 mills provided by the formula. Removing the 12 percent limit on the growth of the general fund mill levy would not change the total state school aid provided to districts, but would decrease the state's cost because more local property tax revenue would be deducted in the formula. If districts, for which the deduction is less than the full 60 mills due to the 12 percent annual limitation, were deducted at the full 60 mills in the formula in the 2017-18 school year, an estimated \$29.7 million in state school aid funding would be shifted from state to local resources. Removing the 12 percent limit on property tax increases would remove the taxpayer protection provision in the formula. Increasing assessments in all districts to 60 mills may create hardships for taxpayers in certain districts.



The committee reviewed the impact of new property growth on the limits placed on property tax increases. The committee examined school district general fund maximum levy worksheets presented by the Tax Department. More than one section of law determines the calculation of maximum general fund levy authority. The Tax Department's maximum levy worksheet for the school district general fund summarizes these calculations to determine which calculation provides the most dollars for the fund. School district general fund maximum levy worksheets are created by the headquarter county for each school district. If districts cross county lines, only one worksheet is completed for the district with information provided by the other counties. Mill levy rates are calculated by the headquarter county and shared with the other counties to apply to their tax statements. The committee reviewed the calculations of two sample school districts, one district experiencing significant growth in taxable value and one district with a relatively stable taxable valuation. The committee learned districts above 60 mills will likely use the prior year taxes plus 12 percent calculation, if there are no significant changes in taxable value due to property value added to or removed from the base year. A substantial amount of new property would have to be added to a district for the tax on the new property to exceed the 12 percent limit on growth.

In 2019 the Legislative Assembly adopted a plan to increase the local property tax deduction calculation each year beginning in 2020-21 to transition all districts to a deduction of 60 mills. The Legislative Assembly created, effective July 1, 2019, through June 30, 2025, Section 15.1-27-04.3 to increase the deduction for local property tax in the state school aid formula, each year over a 5-year period, beginning with the 2020-21 school year. The deduction is increased by a percentage of the difference between the amount calculated under current law and the amount based on 60 mills. The deduction of 60 mills from the state school aid formula is required beginning in the 2025-26 school year. Section 57-15-14.2 was amended, effective for taxable years beginning after December 31, 2018, to allow school districts to levy additional tax to recover the increase in the deduction in the state school aid formula pursuant to Section 15.1-27-04.3 and the phasing in of the 60-mill deduction from state school aid. Section 57-15-14.2 was amended, effective for taxable years beginning after December 31, 2024, to remove the additional levy authority when Section 15.1-27-04.3 expires and all districts are levying and deducting 60 mills in the state school aid formula.

#### **In Lieu of Property Tax Revenue and Other Local Revenue Deductions**

The committee gathered information regarding revenue from in lieu of property taxes and local revenue received by each school district in the state, compared to the contribution from in lieu of property tax and local revenue deducted in the state school aid formula. Information regarding in lieu of revenues is reported to DPI by counties each August.

Department of Public Instruction guidance relating to school district financial accounting provides 100 percent of oil and gas production, coal production, and coal conversion tax revenue be deposited in the school's general fund. Revenue from federal flood control and oil and gas production, coal production, and coal conversion tax revenue, deposited into the school's general fund, are deducted at 75 percent in the state school aid formula. In 2017, a majority of the remaining revenues, deducted in the state school aid formula at 100 percent, were deposited into various school district funds based on mill levy distribution. Some districts reported using oil and gas production revenue for capital projects. This could result in the deduction of certain revenue at 100 percent in the formula even if only a portion of the revenue is deposited in the school district's general fund.

In lieu of property tax and local revenues that are not for a specific purpose are not distributed by mill levy, but are deposited in the general fund pursuant to DPI guidelines. In some counties, the in lieu of property tax and local revenue is identified for school districts, but in other districts the amount is not delineated and is included in the funding provided by property tax assessments. The department provided an analysis of the effects of distributing the various types of in lieu of property tax and local revenue in the same proportion as property tax mills on the state school aid of select school districts. The effects of a policy change regarding the deposit of in lieu of revenues and the percent deducted in the formula would vary by school district, depending on the types of in lieu of revenue each district receives and the percentage of property tax mill levies deposited into the general fund. The department reported counties deposit the various in lieu of property tax and local revenue differently and any change to the deduction of in lieu of property tax and local revenue deposited in other funds in the formula would require legislation, including legislation to require counties to report the deposit data.

The committee received a statewide summary of in lieu of property taxes and local revenue received during the 2015-16 school year by revenue type deducted in the state school aid formula. Total revenue for these types of in lieu of property taxes and local revenue was \$68.0 million during the 2015-16 school year, resulting in a contribution from in lieu of property taxes and local revenue deducted in the state school aid formula of \$53.7 million during the 2016-17 school year. The committee learned the cost to the state of deducting 75 percent of all in lieu of property taxes and local revenue in the state school aid formula would be approximately \$3 million per year, or \$6 million

per biennium. If all in lieu of property taxes and local revenue were deducted at 100 percent in the state school aid formula, the state would save approximately \$15 million per year, or \$30 million per biennium.

The committee learned that of the \$68.0 million of in lieu of property tax and local revenue received by school districts during the 2015-16 school year, an estimated \$57.4 million (84 percent) was deposited into districts' general funds. The next year \$53.8 million was deducted in the formula, which allowed districts \$3.6 million of the in lieu of property tax and local revenue deposited in the general fund which was not deducted in the formula. Statewide, the average percent of property tax mill levies deposited into districts' general funds is 67.4 percent. The committee learned if the policy were changed to allocate all in lieu of property tax and local revenue based on property tax mills, \$45.9 million of the \$68.0 million would be deposited into school districts' general fund. The estimates were based on the statewide average for mill levies assessed and the amounts would vary when each district is calculated separately and totaled statewide.

The committee reviewed the effects on state school aid and property taxes of imputing in lieu of property tax and local revenue into taxable valuation in the state school aid formula. The Department of Public Instruction collaborated with the Tax Department to prepare an analysis for select school districts. Instead of deducting in lieu of property tax and local revenue from the state school aid formula, DPI was asked to determine the effects of imputing the taxable valuation of the in lieu of property tax and local revenue and adding it to the actual taxable value of the district prior to calculating the deduction for 60 mills. The committee determined if in lieu of property tax and local revenue is imputed for purposes of the state school aid formula, the effects of the increased property valuation on local property tax assessment and the 12 percent limit on property tax increases also would have to be considered. The calculations provided by DPI were an estimate of one way to implement the policy of imputing the in lieu of revenue into taxable valuation. The Department of Public Instruction reported there may be other methods, but establishing a base year was determined to be important. Because the level of funding per weighted student unit is set, any increase in property tax deducted in the formula will result in a decrease in the amount of state school aid paid by the state. The Department of Public Instruction reported that with the exception of hold harmless calculations and the 12 percent limit on annual increases, the current formula is easy to calculate, and imputing value from in lieu of property tax and local revenue would make the formula more complicated. In addition, because imputing value in the current formula would impact county levies, there was concern the calculation would require consistent application by county auditors, school superintendents, and school boards.

The committee also reviewed a report illustrating the impact of allocating, based on mill levies, a portion of fiscal year 2016-17 in lieu of property tax to school districts' sinking and interest funds and exempting the funding from the state school aid formula deduction. The committee received an analysis for school districts levying taxes for a sinking and interest fund. The analysis determined the sinking and interest levy as a percent of the school district's total levy and deducted that percentage of in lieu of property tax from total in lieu of property tax revenue before determining the amount of in lieu of property tax revenue deducted in the state school aid formula. Based on 2016-17 in lieu of property tax and district mill levies, if some in lieu of property tax revenues were allocated to school district sinking and interest funds and excluded from the state school aid formula deduction, the cost of the state's share of state school aid would increase by approximately \$1.23 million per year or \$2.46 million per biennium. The cost of exempting a pro rata share of in lieu of property tax related to bonding would vary each year based on school district debt.

In 2019, the Legislative Assembly amended Section 15.1-27-04.1 related to state aid to reduce the deduction for in lieu of revenue to 75 percent for all revenue types listed, exempt tuition from nonresident students residing in a state with which the state has not entered a cross-border education contract, exempt tuition received from an adjacent school district by certain accepting school districts, and reduce all in lieu of revenue types by the percentage of mills levied in 2018 by the school district for sinking and interest relative to the total mills levied in 2018. The Legislative Assembly also amended Section 15.1-29-12 related to tuition payments to require admitting school districts meeting certain criteria to charge 200 percent of the tuition payment calculated in the section or \$4,000, whichever is greater.

### **Rapid Enrollment Grants/On-Time Funding for State School Aid**

The committee reviewed the use of rapid enrollment grants and the benefits and challenges of on-time funding for state school aid. School districts expressed concern that a separate appropriation for rapid enrollment grants, based on forecasts, is subject to large variances in actual versus forecasted enrollments. Rapid enrollment grants, limited to \$3 million each year of the 2017-19 biennium, were intended to provide \$4,000 per eligible student for the 2017-18 school year, but instead provided approximately \$2,350 per eligible student. When rapid enrollment grant calculations totaled \$5.1 million for the 2017-18 school year, DPI was required to prorate the grant funds. Over 1,270 students qualified for the grant, 520 more than the 750 students estimated to calculate the appropriation.

The committee reviewed the benefits, challenges, and cost of transitioning the state school aid formula to on-time funding. On-time funding provides state school aid based on fall enrollment for each school year instead of funding based on the previous spring enrollment. State school aid based on fall enrollment would provide additional funding to districts experiencing increasing enrollment.

The committee considered a proposal to adjust the current funding formula to the greater of fall enrollment or the prior year's ADM. Full funding for on-time enrollment in the proposal provided support for growing districts, while maintaining the current model of paying for the prior year's student enrollment in school districts with declining enrollments. Assuming a hold harmless provision at 2017-18 school year levels, transitioning to "on-time" funding, using the higher of 2016-17 school year spring ADM or fall enrollment each year of the 2017-19 biennium, would have resulted in an additional one-time state school aid funding cost of approximately \$69 million in the 2017-19 biennium. The estimate was based on using property tax contributions from the prior year. If the formula were to use current year property tax contributions in each of the school years, the transition cost would be less. The Department of Public Instruction noted if the formula were transitioned to both "on-time" enrollment and "on-time" property tax contributions, the true state school aid formula payment amounts would not be known until property tax information becomes available in December or January. The department's "on-time" funding estimate provided schools with declining enrollment would be held harmless at the 2016-17 ADM levels. If all schools were moved to "on-time" funding for fall enrollment, the one-time cost would be less.

The committee considered options to provide funding for the transition to on-time funding, including a weighting factor applied to the qualifying number of students. The weighting factor could be set to provide funding per eligible student and increased over time until the incremental cost of moving to full funding is negligible. Any variable, including the weighting factor, percentage deduction, number of students deducted, or any combination of variables, could be modified to achieve on-time funding over a number of years. Adjustments could be made to the factor and thresholds for payment over time until eventually all districts would be receiving on-time funding and the factor could be removed. The committee also considered continuing the rapid enrollment grant program. Rapid enrollment grant funding per student could be adjusted while continuing to require minimum student and percentage increases.

The committee explored possible funding sources for the one-time cost of transitioning the state school aid formula to on-time funding, including unspent 2017-19 biennium general fund appropriations, rapid enrollment grant funding, or a weighting factor. In addition, the committee considered ways to mitigate the impact of a transition to on-time funding of state school aid on school districts with declining enrollment, including the use of the greater of spring or fall enrollment or a 3-year rolling average enrollment. Formula provisions could be adopted to require school districts to use the spring or fall enrollment count for a number of years, instead of having the ability to change each year.

In 2019 the Legislative Assembly provided a one-time appropriation of \$3 million from the foundation aid stabilization fund for rapid enrollment grants in the 1<sup>st</sup> year of the 2019-21 biennium and amended, effective July 1, 2020, Section 15.1-27-03.1 related to weighted student units to add a factor of 0.50 for the number of students by which the district's fall enrollment exceeds the prior year's ADM. In addition, effective July 1, 2021, the Legislative Assembly amended Section 15.1-27-03.1 related to weighted student units to increase the factor for the number of students by which the district's fall enrollment exceeds the prior year's ADM to 0.60 and provide for annual increases in the factor, up to 1.00. The Legislative Assembly added a 0.50 factor adjustment, beginning with the 2021-22 school year, for any over/under payment of the 2020-21 state school aid. The adjustment factor is also increased annually up to 1.00.

### **Cross-Border Tuition**

The committee reviewed policies related to the cross-border education of nonresident students. Cross-border education with South Dakota is addressed in an agreement; however, there are no agreements with Montana or Minnesota. North Dakota pays to educate all the students along its border with South Dakota, including South Dakota students. South Dakota pays to educate all the students along their northern border, including North Dakota students. At the end of the school year there is an accounting of the cost of cross-border students. Traditionally DPI has paid South Dakota because North Dakota has sent more students to South Dakota schools than it has received from South Dakota. The payment varies depending on the number of North Dakota students educated in South Dakota compared to the number of South Dakota students educated in North Dakota. The payment to South Dakota is allocated to each North Dakota school district sending more students to South Dakota than it received. Districts do not receive foundation aid for students educated in South Dakota, but are required to pay for the net allocation. For a school district that received more students from South Dakota than were sent to South Dakota, there is no payment but the district receives the state school aid associated with those students.

The committee reviewed Section 15.1-29-01 related to Minnesota and Montana students. Pursuant to this section, a student attending an out-of-state school is deemed to be enrolled in the student's school district of residence for purposes of determining ADM. School districts receive funding through the state school aid formula for North Dakota students attending Minnesota or Montana schools and it is the responsibility of the North Dakota school district to negotiate the tuition it will pay the out-of-state district. A North Dakota school district does not receive credit in its ADM for Minnesota and Montana students attending a North Dakota school, but negotiates tuition from the out-of-state school district sending the student. The tuition paid by the out-of-state school district for the nonresident child is subject to the 75 percent tuition deduction in the state school aid formula, leaving the district 25 percent of the tuition revenue to educate the student. Generally, North Dakota school districts accept only a few students from a neighboring state because of the 75 percent tuition deduction which causes financial shortfalls when educating more out-of-state students. When a neighboring out-of-state school closes and the number of students is significant, the 75 percent deduction can make absorbing the additional students too expensive for the North Dakota school district.

The committee considered excluding tuition related to out-of-state students from the local revenue deduction in the state school aid formula; or including nonresident students in the North Dakota school district's ADM, while continuing to deduct 75 percent of the tuition related to the out-of-state students from the school district's state school aid payment. The department has not collected data regarding the source of tuition payments, and the cost of any change to the formula for cross-border tuition is not known.

In 2019 the Legislative Assembly amended Section 15.1-29-02.1 related to a cross-border attendance contract with South Dakota to provide the Superintendent of Public Instruction use funding provided for state aid to pay South Dakota if more North Dakota students attend South Dakota schools. If South Dakota students exceed North Dakota students, the payment received by the Superintendent must be deposited in the general fund. Language requiring the Superintendent to withhold tuition payments made to South Dakota from school districts' state aid for students attending South Dakota schools was repealed. The Legislative Assembly also amended Section 15.1-27-04.1 related to state aid to exempt tuition, for nonresident students residing in a state with which the state has not entered a cross-border education contract, from deduction in the state school aid formula.

### **Integrated Formula Per-Student Payment Rates**

The committee reviewed the integrated formula per-student payment rate. For the 2017-19 biennium, the integrated payment rate remained at \$9,646 for each year of the biennium, the same as the 2<sup>nd</sup> year of the 2015-17 biennium. Stakeholders indicated increasing the per-student payment benefit is the most important funding challenge. Unlike other changes to the state school aid formula that may impact schools differently, all school districts benefit from a per-student payment increase.

The committee gathered information regarding the estimated cost to continue state school aid and of increasing the integrated formula per-student payment rate during the 2019-21 biennium. The Department of Public Instruction reported with no other formula changes, a 1 percent increase in the integrated formula payment each year of the 2019-21 biennium resulting in integrated formula payment rates of \$9,742 and \$9,839 during the 1<sup>st</sup> and 2<sup>nd</sup> year of the biennium respectively, would cost approximately \$31 million. With no other formula changes, a 2 percent increase in the integrated formula payment each year of the 2019-21 biennium, resulting in integrated formula payment rates of \$9,839 and \$10,036 during the 1<sup>st</sup> and 2<sup>nd</sup> year of the biennium respectively, would cost approximately \$62.9 million. These increases would be in addition to the estimated \$77.2 million cost to continue state school aid related to increased enrollment.

The 2017-18 interim Education Funding Committee did not recommend legislation for the 2019 legislative session, but much of the information gathered by the committee was the basis for Senate Bill No. 2265 (2019) introduced by several members of the interim committee.

In 2019 the Legislative Assembly amended Section 15.1-27-04.1 related to state aid to increase the per-student payment by 2 percent each year of the biennium, to provide \$9,839 per weighted student unit in the 2019-20 school year and \$10,036 per weighted student unit in the 2020-21 school year.

### **Education Finance - 2019 Legislative Session**

In 2019, the Legislative Assembly approved Senate Bill No. 2265, which included several funding formula changes and Senate Bill No. 2013, which provided \$2,098,202,429, of which \$1,610,438,429 is from the general fund, \$110,000,000 is from the foundation aid stabilization fund, and \$377,764,000 is from the state tuition fund, for state school aid integrated formula payments. This level of funding represented an increase of \$162,998,266, including increases in funding of \$275,781,171 from the general fund and \$72,217,095 from the state tuition fund offset by a decrease in funding from the foundation aid stabilization fund of \$185,000,000, from the 2017-19

biennium appropriation for integrated formula payments of \$1,935,204,163. Increases in integrated formula payments included \$54,000,000 for costs associated with projected student growth and other cost-to-continue adjustments and \$109,000,000 for state school aid formula changes. Senate Bill No. 2265 included adjustments to:

- Convert the school calendar from days to hours;
- Provide rapid enrollment grants in the 1<sup>st</sup> year of the biennium and for a phase-in of on-time funding beginning with the 2020-21 school year;
- Reset baseline funding to the 2018-19 school year;
- Provide increases in transition minimum payments of 1 percent over the new baseline in the 1<sup>st</sup> year of the biennium and 2 percent over the new baseline in the 2<sup>nd</sup> year of the biennium;
- Reduce, beginning with the 2020-21 school year, total baseline funding and baseline funding per weighted student unit for districts that become elementary school districts;
- Phase out, beginning in the 2021-22 school year, the baseline funding per weighted student unit minimum. The changes provide for a 15 percent reduction of the amount by which the district's baseline funding per weighted student unit exceeds the payment provided per weighted student unit. For each year after the 2021-22 school year, the reduction percentage is increased by an additional 15 percent until it is equal to the payment provided per weighted student unit. The changes also provide weighted student units over the baseline weighted student units are reimbursed at the formula payment rate, instead of the baseline funding per weighted student unit rate;
- Phase out, beginning in the 2021-22 school year, the dollar amount transition minimum. The changes provide for a 15 percent reduction in the dollar amount transition minimum for the 2021-22 school year and an additional 15 percent reduction each school year thereafter;
- Increase the per-student payment rate by 2 percent each year of the biennium, to provide \$9,839 per weighted student unit in the 2019-20 school year and \$10,036 per weighted student unit in the 2020-21 school year;
- Increase transition maximum payments by 5 percent each year of the 2019-21 biennium;
- Increase the local property tax deduction calculation each year over a 5-year period, beginning in the 2020-21 school year, to transition all districts to a deduction of 60 mills in the 2025-26 school year;
- Allow school districts, for taxable years beginning after December 31, 2018, to levy additional tax to recover the increase in the property tax deduction in the state school aid formula until all districts are levying and deducting 60 mills in the state school aid formula;
- Reduce the deduction for in lieu of revenue to 75 percent for all revenue types listed, exempt tuition from nonresident students residing in a state with which the state has not entered a cross-border education contract, exempt tuition received from an adjacent school district by certain accepting school districts, and reduce all in lieu of revenue types by the percentage of mills levied in 2018 by the school district for sinking and interest relative to the total mills levied in 2018;
- Provide the Superintendent of Public Instruction use funding provided for state aid to pay South Dakota if more North Dakota students attend South Dakota schools; and
- Require admitting school districts meeting certain criteria to charge 200 percent of the statutory tuition payment calculation or \$4,000, whichever is greater, and that the tuition received by these school districts is not deducted in the formula.

The fiscal impact of increases approved by the Legislative Assembly and other adjustments to the state school aid formula are summarized as follows:

Integrated Formula Payments 2019-21 Biennium	2019-21 Biennium Increase (Decrease)	Integrated Formula Payments
2017-19 biennium base budget integrated formula payments		\$1,750,204,163
One-time funding provided from the foundation aid stabilization fund during the 2017-19 biennium		185,000,000
Total 2017-19 biennium appropriation for integrated formula payments		\$1,935,204,163

<b>Integrated Formula Payments 2019-21 Biennium</b>	<b>2019-21 Biennium Increase (Decrease)</b>	<b>Integrated Formula Payments</b>
Base adjustment for estimated unobligated 2017-19 biennium appropriation		(12,790,123)
Increased funding for projected 2019-21 biennium student growth		105,725,516
Decrease in funding due to increase in local cost-share, including an estimated increase in local property tax and estimated decreases in local in lieu of revenue		(39,310,019)
<b>Total cost to continue integrated formula payments during the 2019-21 biennium</b>		<b>\$1,988,829,537</b>
Increased funding for a state school aid formula baseline reset	\$15,106,628	
Increased funding to provide a 2 percent increase in the per-student payment rate in each year of the biennium	62,145,048	
Added funding to increase formula maximum payments by 5 percent each year of the biennium	4,331,460	
Reduced funding for savings related to transitioning school districts from minimum payments	(2,031,496)	
Reduced funding for changes to funding for new students in school districts receiving the transition minimum per-student payment	(7,683,575)	
Added funding to transition the formula to on-time funding	17,709,901	
Reduced funding due to the phase-in of a 60 mill contribution for all school districts	(2,032,062)	
Added funding to reduce the deduction of in lieu of revenue relative to sinking and interest mill levies	12,335,458	
Increased funding due to the reduction of the local revenue deduction to 75 percent for all local revenue types	5,756,023	
Increased funding for other changes to the formula, including tuition deductions and adjustments to formula minimums	3,735,507	
<b>Total adjustments to integrated formula payments related to state school aid formula changes approved in Senate Bill No. 2265</b>		<b>109,372,892</b>
<b>Total 2019-21 biennium integrated formula payments appropriation</b>		<b>\$2,098,202,429</b>

In addition to the state aid formula changes, Senate Bill No. 2265 (2019) created a one-time Education Funding Formula Review Committee to study the kindergarten through grade 12 funding formula and report to the 67<sup>th</sup> Legislative Assembly; directed DPI, the Indian Affairs Commission, and the Kindergarten Through Grade Twelve Coordinating Council to study the effect of impact aid on the funding formula to reservation schools; and required the Education Standards and Practices Board to provide status reports to the Legislative Management during the 2019-20 interim and the 2021-22 interim regarding the number of teacher permits issued under an alternative teacher certification program and to provide a recommendation regarding the continuation of the program.

**Education Funding Formula Review Committee - 2019-20 Interim**

The Education Funding Formula Review Committee, established pursuant to Section 23 of Senate Bill No. 2265 (2019), provided the Legislative Management appoint a committee consisting of the Chairmen of the standing Education Committees of the House of Representatives and the Senate; three additional members of the Senate, two of which must be appointed by the Majority Leader of the Senate and one of which must be appointed by the Minority Leader of the Senate; and three additional members of the House of Representatives, two of which must be appointed by the Majority Leader of the House of Representatives and one of which must be appointed by the Minority Leader of the House of Representatives. Pursuant to Section 23, the committee was required to study the K-12 education funding formula, including the components, adjustments, and weighting factors of the formula. In addition, pursuant to Section 20 of Senate Bill No. 2013 (2019), the committee was also assigned a study of school transportation, including district routes, expenditures, reimbursement, and possible efficiencies.

When the state school aid formula was implemented during the 2013-15 biennium, hold harmless calculations were included to avoid disrupting school budgets. Districts with transition minimum and maximum adjustments are not considered to be on the state school aid formula. The committee reviewed the use of transition minimum and maximum adjustments in the state school aid formula and ways to bring all school districts onto the formula. The committee also reviewed deductions related to excess ending fund balance, school district mill levy, in lieu of property tax revenue, and other revenue.

**Transition Minimum Adjustments - School District Size Weighting Factors**

The committee reviewed school districts continuing to receive transition minimum payments. During the 2019-20 school year, 101 of the 173 school districts operating in the state received a transition minimum adjustment, of

which 49 school districts received the total dollar baseline minimum. In 2019, the Legislative Assembly approved a plan to bring all transition minimum school districts onto the formula over 7 years. Provisions were made to begin phasing out the baseline funding per weighted student unit minimum and the dollar amount transition minimum by reducing the adjustments by 15 percent each year beginning in the 2021-22 school year and weighted student units over the baseline weighted student units will be reimbursed at the formula payment rate, instead of the baseline funding per weighted student unit rate.

The committee recognized smaller school districts do not benefit from the economies of scale of larger school districts and school districts in certain sparsely populated areas of the state are considered essential to avoid unreasonable travel times for students. The committee reviewed information regarding viable school districts and small, but necessary, isolated school districts. The state has two definitions for isolated school districts. School districts with a land mass greater than 275 square miles and fewer than 100 students receive an additional weighting factor of .1 for each student. School districts with a land mass greater than 600 square miles and fewer than 50 students will be deemed to have 50 students for purposes of the state school aid formula. There are 16 districts that qualify for the .1 weighting factor for districts greater than 275 square miles with fewer than 100 students and no districts with over 600 square miles and fewer than 50 students.

The committee reviewed various methods of providing additional assistance to school districts anticipating significant state aid formula reductions when transition minimum adjustments are phased out, including a three-tiered sparsity funding system used by South Dakota and potential changes to the school size weighting factors.

The committee considered formula weighting factors and whether the factors accurately reflect the cost of services. Under the current formula school districts' ability to levy property tax is limited and school districts are not able to rely on property tax to supplement state school aid as in the past. Because smaller school districts are less efficient, the school size weighting factor has become more important under the new formula. A substantial number of school districts continue to receive transition minimum adjustments indicating weighting factors may not accurately reflect the cost of educating certain students.

The committee reviewed the impact of various sets of new school size weighting factors that could be applied to all school districts to eliminate or significantly reduce the transition minimum adjustment for most school districts. New school size weighting factors reviewed by the committee would increase the state's cost of state school aid. Although the factors would not increase funding for districts with a transition minimum, school districts on the formula would receive additional funding due to increases included in the proposed new sets of school size weighting factors. Even if the transition minimum adjustments for some districts were not eliminated, the adjustments could be reduced with a new set of school size weighting factors. Increasing the school size weighting factors would mitigate some of the negative impact of the phase-out of the transition minimum adjustments scheduled to begin in the 2021-22 school year. Some districts are close to being on the formula and the weighting factor adjustment needed is slight. However, other districts would require a significant increase in the size weighting factor to generate the same funding as the transition minimum adjustments.

The committee analyzed the cost of the various weighting factor scales based on data from the 2019-20 school year, which was based on 2018-19 enrollment. The data was used to analyze the phase-in of proposed sets of school size weighting factors over the same 7-year period the transition minimum will be phased out. Proposed sets of school size weighting factors reviewed by the committee resulted in net savings when analyzed with the phasing out of the transition minimum adjustments. The goal of the analysis was to keep the school size weighting factor adjustments cost neutral when compared to the reduction in transition minimum adjustments which was estimated to save the state \$8 million in the 1<sup>st</sup> year the adjustments are reduced. Reorganized districts benefit from a special factor for 4 years to prevent the school district from losing funding through reorganization or by entering a cooperative agreement.

In 2021, the Legislative Assembly approved a plan to increase school size weighting factors over 7 years beginning with the 2021-22 school year and to adjust the school size weighting factor calculation for the 2022-23 school year for school districts that operate multiple kindergarten through grade 12 buildings at least 19 miles apart, or multiple buildings at least 19 miles apart with no replicated grades.

### **Transition Maximum Adjustments**

The committee reviewed school districts continuing to receive the transition maximum deduction. During the 2019-20 school year, 11 school districts, mostly Native American schools impacted by federal funds, received a transition maximum adjustment, resulting in a reduction to the formula of \$10.5 million. During the 2013-14 school

year, 41 school districts received a transition maximum adjustment totaling \$19.5 million. As increases in the transition maximum adjustment have been approved, school districts have moved onto the formula.

The committee reviewed various methods of phasing out transition maximum adjustments and the cost of bringing all transition maximum school districts onto the formula. Given increases in the transition maximum payment, the length of time to get all school districts onto the formula will vary. If transition maximum school districts were given a percentage increase each year, a few school districts would take significantly longer to transition than the others. One school district, which accounts for more than one-half of the estimated 2020-21 transition maximum adjustment total of \$9.8 million, will take significantly longer to transition to the formula. The length of time to transition these districts also is dependent on the gap between the percentage increase in the transition maximum payment and the percentage increase in the per-student payment rate. If a 5 percent annual increase in the transition maximum payment were continued into the 2021-23 biennium, the cost to the state would be approximately \$5.4 million. If transition maximum districts received 10 percent annual increases during the 2021-23 biennium, the cost would be approximately \$10.2 million. The number of districts transitioning to the formula with the proposed increases would depend on potential changes to the per-student payment.

The committee was informed that to ensure all the school districts are on the formula, the transition maximum deduction could be phased out by a percent of the difference over 7 years rather than providing percentage increases each year. A hybrid method of bringing transition maximum school districts onto the formula could include allowing transition maximum school districts to receive the statutory per-student rate for new students as opposed to the lower transition rate or by providing a percentage increase, and also requiring the formula gap be reduced by a certain percentage to ensure all districts are transitioned to the formula over 7 years.

In 2021, the Legislative Assembly approved a plan to phase out transition maximum adjustments to the state school aid formula over 5 years, beginning in the 2023-24 school year (2023-25 biennium).

### **Excess Ending Fund Balance Deduction**

The committee reviewed school district ending fund balance limitations. The ending fund balance of a school district is limited under Section 15.1-27-35.3 to 35 percent of its actual expenditures, plus \$50,000 (\$100,000 if the district is in a cooperative agreement for 2 years). State school aid is reduced by the amount by which a school district's ending fund balance exceeds the limit. In addition, Section 15.1-07-29 provides the amount carried over by a school district in the ending fund balance may not exceed 45 percent of the current annual budget for all purposes other than debt retirement and amounts financed from bond sources plus \$20,000. There is no consequence for exceeding the threshold in Section 15.1-07-29.

The committee was informed the ending fund balance limitation is a challenge for transition maximum districts because the districts have little property tax revenue and funding is dependent on federal revenue, the timing of which may be inconsistent. The excess ending fund balance deduction in the state school aid formula also is problematic for school districts that receive significant unpredictable revenue.

A school district may reduce an ending general fund balance by transferring funds from the general fund to the building fund; however, transfers from the building fund to the general fund are restricted. The Coronavirus (COVID-19) pandemic, which closed school buildings in March 2020 and limited school districts to online instruction, resulted in some school districts, mostly smaller districts, being at risk of accruing larger than anticipated ending fund balances as of June 30, 2020. The early spring closure of several small school districts resulted in lower than anticipated expenditures and higher than anticipated amounts of cash on hand. In addition, ending fund balance limits were lower because the limits were based on a percentage of the lower than anticipated expenditures. The committee determined it was not prudent for school districts to spend funds unnecessarily to meet the limits set in statute when the districts may need the additional funding to address expenses related to the COVID-19 pandemic in fall 2020. The committee determined it would be appropriate to allow the excess ending fund balance to remain with school districts and not reduce state school aid during the 2020-21 school year.

The committee recommended House Bill No. 1028 (2021) to amend Section 57-15-17 to allow school districts, which transferred funding from their general fund to their building fund between March 13, 2020, and July 1, 2020, to avoid an excess fund balance deduction to their state school aid, to return the funding to their general fund, if the transfer is done before June 30, 2021. The exception would be temporary to allow school districts to keep excess funding resulting from school district closures during the COVID-19 pandemic. It was estimated 33 small school districts would benefit from the increased transfer flexibility. The committee determined school boards wanting to transfer excess funds related to the COVID-19 pandemic school facility closures, could identify those funds and the reason for the transfer in school board minutes. If a school district transfers excess funding from its general fund to the building fund before June 30, 2020, the district would not have an excess general fund balance at the end of



the 2019-20 school year and would not be subject to the excess ending fund balance deduction during the 2020-21 school year. If the bill draft were not approved by the Legislative Assembly in 2021, the funding would remain available to the school district in the building fund, where it will not affect the state school aid calculation. If the bill draft were approved by the Legislative Assembly, the school district would be able to return the funding to the general fund without limitation. In 2021, the Legislative Assembly approved House Bill No. 1028.

In addition to House Bill No. 1028, the Legislative Assembly also approved Senate Bill No. 2165 (2021), as an emergency measure, to repeal the ending fund balance limit in Section 15.1-07-29, suspend the deduction for excess ending general fund balance in Section 15.1-27-35.3 until the 2023-24 school year, and adjust the calculation of school district ending fund balance to exclude federal impact aid before deducting the excess balance from state aid formula payments.

### **School District Mill Levy, In Lieu of Property Tax Revenue and Other Local Revenue**

The committee gathered information regarding property tax revenue, in lieu of property tax revenue, and local revenue received by each school district and deducted in the state school aid formula. During the 2018-19 school year, property tax provided 20 percent of state school aid formula payments, in lieu of revenue provided 5 percent of state school aid formula payments, and the state provided the remaining 75 percent of the state school aid formula. The committee received information indicating while state funding has accounted for almost 80 percent of the state school aid formula in the past, higher property values have increased local funding. As property values increased during the 2017-19 biennium, there were no increases to the per-student payment rate, resulting in a decrease in the state's share of formula funding to approximately 75 percent. Increases in the per-student payment rate, approved in 2019, could increase the state's share of the formula. Federal funding and other sources, including a miscellaneous levy and other state grants, are not considered in the formula. When these additional sources of revenue are considered, the state's contribution to K-12 funding is approximately 60 percent. The funding sources vary significantly by district and the statewide percentage of 75 percent is not accurate in districts that receive significant amounts of local revenue. Local in lieu of revenue contributions are deducted in the state school aid formula; however, are not considered when determining the 60-mill requirement. The 60-mill deduction requirement and local in lieu of revenue deductions increase the percentage of local contribution in the state school aid formula.

The committee received a report regarding the general fund levy and value of one-mill levy in each school district in 2018 and the total 2018 taxable valuation, including taxable valuation per student. The value of one mill is equal to the taxable valuation of the school district multiplied by .001. In 2018, the value of one mill varied from just over \$3 at the Grand Forks Air Force Base to \$481,058 in Bismarck, the statewide average value of a mill levy was \$26,700, and the median value is \$11,500. The range of revenue generated by one-mill levy in school districts across the state poses funding challenges. According to the report, because mill levies raise more funding in property rich districts, those districts may be able to raise funding for school construction at a lower mill rate than property poor districts.

Annual increases in property tax are limited to 12 percent of prior tax or the amount of new growth, whichever is greater. Although new property qualifying as tax exempt is included in the new growth of the county in the year it is put into service, other taxable properties are paying the amounts related to the tax exempt property until it is taxed. The committee reviewed the maximum levy worksheet for taxable year 2019 for school districts' general fund, including example worksheets and worksheet instructions. Even with large commercial properties added to the tax base, the 12 percent increase calculation typically provides for the larger allowable increase, including in the western part of the state where there has been rapid growth. The committee was informed there was discussion before the 2019 legislative session regarding whether new property should be added to the 12 percent increase when determining the property tax increase limitation. Counties have been collecting data on new property, and if approved by the Legislative Assembly, the Tax Department could build the necessary changes into the maximum mill levy worksheet to apply the 12 percent increase limitation only to existing property. If school districts are allowed to exclude new property when determining the 12 percent limit on property tax increases, the same exclusion will need to be provided when calculating the local property tax deduction in the state school aid formula.

The committee learned an adjustment certified by DPI has been added to the 2019 worksheet to account for the phase-in of the 60-mill deduction from the state school aid formula. This adjustment is necessary for districts unable to levy 60 mills because of the 12 percent limitation on annual increases in both taxation and the state school aid formula deduction. If a school district is not on the formula because it does not levy 60 mills, state funding is provided to meet the total funding determined by the formula. The 2019 Legislative Assembly approved a provision to phase in the 60-mill deduction for all districts starting in the 2020-21 school year. The property tax deduction for districts deducting fewer than 60 mills will be increased by 10 percent of the difference in the first 2 years of the phase-in period and an additional 20 percent of the difference in each of the remaining 4 years of the phase-in period. The committee received information regarding the 60-mill local property tax contribution included in the state school aid

formula and the fiscal impact of changes to the 60-mill contribution for districts with a deduction below 60 mills. The analysis included districts deducting fewer than 60 mills during the 2019-20 school year and included the estimated property tax deduction each year of the phase-in period. Based on 2019-20 property valuations, the cumulative increase in the deduction for all districts currently deducting fewer than 60 mills would be a savings to the state of an estimated \$22.5 million. The difference between current deductions for local property tax and deductions at 60 mills could be higher as property values increase in future years resulting in additional savings to the state. The volatility of property values will make it difficult to budget for the 60-mill local property tax deduction in the formula.

The committee also reviewed the impact of the minimum local effort on state aid which requires if a school district's taxable valuation per student is less than 20 percent of the state average valuation per student, the Superintendent of Public Instruction, for purposes of determining state aid, must deduct an amount equal to 60 mills times 20 percent of the state average valuation per student multiplied by the number of weighted student units in the district. The committee received testimony that the minimum local effort deduction may result in further reductions in state school aid for certain school districts deducting the transition maximum adjustment. Because the local effort is based on the state average taxable valuation, 60 mills is deducted in the formula even though the "property poor" district does not collect the additional property tax funding. The 12 percent limit on increases in the deduction also applies when the taxable valuation is imputed.

In 2021, the Legislative Assembly approved a plan, in House Bill No. 1246, to phase out the deduction of tuition, received under an agreement to educate students from a school district on an Air Force base paid with funding received through federal impact aid, in the state school aid formula over 6 years beginning with the 2021-22 school year.

### **Elementary and Secondary Transportation**

In addition to the state school aid formula, pursuant to Section 20 of Senate Bill No. 2013 (2019), the Education Funding Formula Review Committee studied school transportation, including district routes, expenditures, reimbursements, and possible efficiencies.

The Department of Public Instruction provides reimbursement based on the rates in the department's appropriation bill. Reimbursement is limited to 90 percent of general fund transportation expenditures less equipment cost, plus the 8-year average of transportation equipment expenditures and an allocated percentage of the expenses of the school board, superintendent, and business manager offices. The department does not collect data regarding open enrollment rides. Transportation for open enrollment students is not identified and is reimbursed with resident students. The department does not audit the information provided by school districts.

Transportation grants are distributed on the same schedule as the state school aid payments. Payment for school transportation is based on data from the previous year. Transportation payments for the 2018-19 school year were based on 2017-18 rides and ranged from a low of \$6,352 paid to Earl 18 Public School to a high of \$1.2 million paid to Bismarck Public Schools. Separate payments also are made to numerous special education units for qualified transportation services.

The committee considered whether it is appropriate to reimburse school districts for the transportation of students participating in open enrollment and tuition waiver agreements. To prohibit reimbursement for these students, the committee determined legislation would be needed to establish the transportation formula which does not currently exist in statute.

The committee recommended House Bill No. 1027 (2021) to codify student transportation aid payment sections as the provisions existed on June 30, 2001, update provisions to reflect current practices and reimbursement rates, and prohibit school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements. In 2021, the Legislative Assembly approved House Bill No. 1027.

### **Education Finance - 2021 Legislative Session**

In December 2020, the executive budget recommendation for the state school aid program provided integrated formula payments totaling \$2.112 billion, an increase of \$14 million from the integrated formula payments provided during the 2019-21 biennium. When compared to the appropriation for the 2019-21 biennium, the increase of \$14 million included a decrease in funding from the general fund of \$121.2 million, which was offset by increases in funding from the state tuition fund of \$55.2 million and from the foundation aid stabilization fund of \$80 million. The executive recommendation included one-time funding of \$83 million from the foundation aid stabilization fund for integrated formula payments. The executive budget recommendation included an increase in funding for the cost-to-continue integrated formula payments and enrollment growth of \$14 million, but did not include any changes

to the state school aid formula and the integrated per-student payment rate would remain \$10,036 during both years of the 2021-23 biennium, the same as the 2<sup>nd</sup> year of the 2019-21 biennium.

In 2021, the Legislative Assembly approved House Bill No. 1388 which provides various statutory changes related to the state school aid formula, including virtual learning and ADM of students enrolled in virtual instruction. House Bill Nos. 1246 and 1436 also include changes to the state school aid funding formula related to the deduction of tuition received through federal impact aid funds in the state school aid formula and students eligible to attend summer school. Senate Bill Nos. 2165 and 2269 exclude federal impact aid from the excess school district ending fund balance deduction and establish a postsecondary transitional grant program for students age 18 through 21 with documented intellectual or developmental disabilities. During the 2021 legislative session, the Legislative Assembly approved the following state school aid formula changes:

- **School size weighting factors** - Section 10 of House Bill No. 1388 amends Section 15.1-27-03.2 related to school district size weighting factors to adjust the school size weighting factor calculation for the 2022-23 school year for school districts that operate multiple kindergarten through grade 12 buildings at least 19 miles apart, or multiple buildings at least 19 miles apart with no replicated grades, and to phase in school size weighting factor increases over 7 years beginning with the 2021-22 school year.
- **Integrated formula payment rate** - Section 11 of House Bill No. 1388 amends Section 15.1-27-04.1 related to state aid to increase the per-student payment by 1 percent each year of the biennium, to provide \$10,136 per weighted student unit in the 2021-22 school year and \$10,237 per weighted student unit in the 2022-23 school year.
- **Transition maximum payments** - Section 11 of House Bill No. 1388 also amends Section 15.1-27-04.1 related to state aid to begin phasing out transition maximum adjustments to the state school aid formula over 5 years, beginning in the 2023-24 school year (2023-25 biennium).
- **Federal impact aid tuition** - House Bill No. 1246 phases out the deduction of tuition, received under an agreement to educate students from a school district on an Air Force base paid with funding received through federal impact aid, in the state school aid formula over 6 years beginning with the 2021-22 school year.
- **Summer school** - House Bill No. 1436 removes the remedial requirement for students in grades K-4 in mathematics and reading to attend summer school.
- **School district ending fund balance** - Senate Bill No. 2165, approved as an emergency measure, suspends the deduction for excess ending general fund balance until the 2023-24 school year and adjusts the calculation of school district ending fund balance to exclude federal impact aid before deducting the excess balance from state aid formula payments. A fiscal note prepared by DPI indicates, because the department does not budget for ending fund balance deductions in the state school aid formula, the fiscal impact cannot be determined.
- **Postsecondary transitional grant program** - Senate Bill No. 2269 establishes a postsecondary transitional grant program for students age 18 through 21 with documented intellectual or developmental disabilities and redirects foundation aid payments to approved postsecondary transitional programs by allowing postsecondary transitional programs to receive foundation aid money if the student is on an individualized education program and qualifies for services.

In addition to the state aid formula changes, House Bill No. 1388 (2021) provides for a Legislative Management study of transition minimum and maximum adjustments, reorganized school districts, high-cost students, human resource allocation in school buildings, and student performance relative to virtual learning. The Legislative Assembly also approved House Bill Nos. 1027 and 1028, relating to transportation aid and ending general fund balance limits, recommended by the Legislative Management.

Based on state school aid formula provisions approved in 2021 House Bill Nos. 1246, 1388, and 1436, the Legislative Assembly provided an appropriation of \$2,131,825,000, of which \$1,555,350,500 is from the general fund, \$143,454,500 is from the foundation aid stabilization fund, and \$433,020,000 is from the state tuition fund, for state school aid for integrated formula payments. This level of funding represents an increase of \$33,622,571, including a decrease in funding of \$55,087,929 from the general fund and increases in funding of \$33,454,500 from the foundation aid stabilization fund and \$55,256,000 from the state tuition fund, from the 2019-21 biennium appropriation for integrated formula payments of \$2,098,202,429. The Legislative Assembly, in House Bill No. 1013 (2021), requires school districts to use 70 percent of increased funding related to any increases in the integrated formula payment rate for compensation increases for nonadministrative personnel.

Integrated formula payments during the 2021-23 biennium were estimated based on 2021-22 school year ADM of 113,914 students and 2022-23 school year ADM of 116,898 students. The Department of Public Instruction estimates state school aid integrated formula payments will total \$2,815,768,538 during the 2021-23 biennium, of which \$610,698,957 is estimated to be provided through local property tax contributions, \$94,702,361 is estimated to be provided through local "in lieu of" taxes and revenue contributions, and \$2,110,367,220 is estimated to be provided by the state. In addition to the state's share of state school aid integrated formula payments, the appropriation for 2021-23 biennium integrated formula payments include funding for costs related to child placement, regional education association grants, the gifted and talented program, estimated cross-border tuition payments to South Dakota, and budget variances. The department estimates these expenditures and budget variances will total \$21,457,780, for a total of \$2,131,825,000 charged to the integrated payment line item for the 2021-23 biennium. Based on total integrated formula payments, the state's share of funding for state school aid is expected to shift from 54 percent in 2009 to 75 percent during the 2021-23 biennium.

For the 2021-23 biennium, the Legislative Assembly approved increases in integrated formula payments totaling \$33.6 million more than the base budget, including \$16.9 million of savings related to a reduction in the cost to continue and \$50.5 million for state school aid formula changes. Increases approved by the Legislative Assembly and other adjustments to the state school aid formula are summarized as follows:

Integrated Formula Payments 2021-23 Biennium	2021-23 Biennium Increase (Decrease)	Integrated Formula Payments
2019-21 biennium base budget integrated formula payments		\$2,098,202,429
Base adjustment for estimated unobligated 2019-21 biennium appropriation		(74,218,159)
Increase in funding for projected 2021-23 biennium cost to continue, including formula changes approved in 2019, cost to continue 2 <sup>nd</sup> year rate increase provided during the 2019-21 biennium and student growth		128,401,738
Decrease in funding due to increase in local cost-share, including an estimated increase in local property tax and estimated decreases in local in lieu of revenue		(71,052,020)
<b>Total cost to continue integrated formula payments during the 2021-23 biennium</b>		<b>\$2,081,333,988</b>
Increased funding for changes to the small school weighting factors (House Bill No. 1388)	\$7,600,000	
Increased funding for changes to the weighting factors of reorganized school districts (House Bill No. 1388)	3,591,012	
Increased funding to provide a 1 percent increase in the per-student payment rate in each year of the biennium (House Bill No. 1388)	34,300,000	
Increased funding due to anticipated increases in participation in summer school (House Bill No. 1436)	1,300,000	
Increased funding due to eliminating the formula deduction for tuition paid with federal impact aid (House Bill No. 1246)	3,700,000	
<b>Total adjustments to integrated formula payments related to state school aid formula changes</b>		<b>50,491,012</b>
<b>Total 2021-23 biennium integrated formula payments</b>		<b>\$2,131,825,000</b>

The state school aid integrated formula provides integrated formula payment rates are applied to school districts' weighted student units. The following is a summary of weighting factors in effect for the 2021-23 biennium:

Weighted Average Daily Membership	2021-23 Biennium Factor
Extended educational program in accordance with Section 15.1-32-17	1.00 multiplied by the number of FTE students enrolled
Summer education program, including migrant summer school	0.60 multiplied by the number of FTE students enrolled
English language learners - First of six categories of proficiency (least proficient)	0.40 multiplied by the number of FTE students enrolled
English language learners - Second of six categories of proficiency	0.28 multiplied by the number of FTE students enrolled
English language learners - Third of six categories of proficiency	0.07 multiplied by the number of FTE students enrolled and have not been in the third of six categories of proficiency for more than 3 years
Alternative high schools	0.25 multiplied by the number of FTE students under the age of 21 in grades 9 through 12 enrolled

Weighted Average Daily Membership	2021-23 Biennium Factor
Alternative middle schools	0.15 multiplied by the number of FTE students in grades 6 through 8 enrolled for at least an average of 15 hours per week
Home-based education program	0.20 multiplied by the number of FTE students enrolled and monitored by the school district under Chapter 15.1-23
Early childhood special education	0.17 multiplied by the number of FTE students enrolled
Isolated school districts	0.10 multiplied by the number of students enrolled in ADM, if the district has fewer than 100 students enrolled in ADM and the district consists of an area greater than 275 square miles, provided that any school district consisting of an area greater than 600 square miles and enrolling fewer than 50 students in ADM must be deemed to have an enrollment equal to 50 students in ADM
Special education services	0.082 multiplied by the number of students enrolled in ADM
At-risk students	0.025 multiplied by the number of students representing that percentage of the total number of students in ADM which is equivalent to the 3-year average percentage of students in grades 3 through 8 who are eligible for free or reduced lunches
Regional education associations	0.002 multiplied by the number of students enrolled in ADM in a school district that is a participating member of a regional education association
On-time funding	0.60 the number of students by which the district's September 10 enrollment report exceeds the number of students in the prior year's ADM, increasing the factor annually by 0.10, not to exceed 1.00
On-time funding adjustment	For districts paid based on September 10 enrollment in the prior year, 0.50 the number of students determined by deducting the number of students in the prior year's September 10 enrollment from the prior year's ADM, increasing the factor annually by 0.10, not to exceed 1.00. If the prior year's September 10 enrollment exceeds the prior year's ADM, then a deduction of 0.50 the number of excess students, increasing the factor annually by 0.10, not to exceed 1.00.
Small district size weighting factor	Factors vary for school districts with fewer than 900 ADM. Effective August 1, 2021, the Legislative Assembly began phasing in weighting factor increases over 7 years until the new rates are implemented for the 2027-28 school year. Factors for elementary school districts are determined based on ADM imputed at 60 percent. Effective for the 2022-23 school year only, for school districts that operate multiple K-12 buildings at least 19 miles apart or multiple buildings at least 19 miles apart with no replicated grades, weighting factors must be determined by each building separately, multiplied by the weighted student units in each building and then combined.

In addition to \$2.132 billion provided for integrated formula payments, the Legislative Assembly provided the following funding for state school aid during the 2021-23 biennium:

Additional State School Aid	2021-23 Biennium
Transportation aid payments	\$58,100,000 <sup>1</sup>
Special education - Contracts	27,000,000
Total	\$85,100,000

<sup>1</sup>The Legislative Assembly provided \$58.1 million from the general fund for transportation aid during the 2021-23 biennium. This level of funding is \$1.6 million more than 2019-21 biennium funding of \$56.5 million from the general fund and will allow reimbursement rates to remain the same as the 2019-21 biennium. In House Bill No. 1027 (2021), the Legislative Assembly codified student transportation aid payment sections as the provisions existed on June 30, 2001, updated provisions to reflect current practices and reimbursement rates, and prohibited school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements. Due to the impact of COVID-19 on transportation, the bill was amended to allow 2021-23 biennium transportation aid grants to be determined using the greater of 2018-19 school year miles and rides or prior year miles and rides. The fiscal impact of this change is estimated to cost \$1.6 million.

### Federal COVID-19 Relief Funding

In 2021 House Bill Nos. 1013, 1015, 1394, and 1395, the Legislative Assembly provided 2019-21 biennium appropriations and 2021-23 biennium appropriations of federal COVID-19 relief funding.

#### Federal COVID-19 Funding - 2019-21 Biennium

The following is a summary of federal COVID-19 funding appropriated by the Legislative Assembly to DPI for the 2019-21 biennium:

	<b>Federal Funds 2019-21 Biennium</b>
Federal coronavirus relief funds - Broadband grants (House Bill No. 1395)	\$500,000
Federal coronavirus relief funds - Education corps grants (House Bill No. 1395)	30,000,000
Federal coronavirus relief funds - K-12 COVID resiliency grants (House Bill No. 1395)	33,816,217
Subtotal federal coronavirus relief funds	\$64,316,217
Elementary and Secondary School Emergency Relief (ESSER) Fund I and II distributions - Grants allocated to school districts (House Bill No. 1394)	\$144,603,071
ESSER Fund I and II distributions - DPI - State discretionary (House Bill No. 1394)	13,661,117
Governor's Emergency Education Relief (GEER) Fund (House Bill No. 1394)	3,998,745
Subtotal ESSER Fund I and II distributions and GEER Fund	\$162,262,933
<b>Total 2019-21 biennium federal COVID-19 funding</b>	<b>\$226,579,150</b>

#### Federal COVID-19 Funding - 2021-23 Biennium

The following is a summary of federal COVID-19 funding appropriated by the Legislative Assembly to DPI for the 2021-23 biennium:

	<b>Federal Funds 2021-23 Biennium</b>
ESSER Fund III distribution - Grants allocated to school districts (House Bill No. 1395)	\$274,740,191
ESSER Fund III distribution - DPI - State discretionary (House Bill No. 1395)	30,526,688
Individuals with Disabilities Education Act grant (House Bill No. 1395)	8,632,569
Emergency Assistance to Non-public Schools grant (House Bill No. 1395)	4,151,371
Homeless Children and Youth program grant (House Bill No. 1395)	1,999,661
Federal coronavirus relief funds - Regional education association grants (House Bill No. 1013)	250,000
Federal Coronavirus Capital Projects Fund - Grant to a children's science center in Minot (House Bill No. 1015)	5,900,000
<b>Total 2021-23 biennium federal COVID-19 funding</b>	<b>\$326,200,480</b>

### Foundation Aid Stabilization Fund

Prior to December 8, 2016, the principal of the foundation aid stabilization fund was only available upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. Section 54-44.1-12 provided that the Director of the Budget may order an allotment to control the rate of expenditures of state agencies. This section provided that an allotment must be made by a specific fund and all departments and agencies that receive money from a fund must be allotted on a uniform percentage basis, except that appropriations for foundation aid, transportation aid, and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund.

In November 2016 voters approved Senate Concurrent Resolution No. 4003 (2015), which amended the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for education-related purposes.

In 2017 the Legislative Assembly approved Senate Bill No. 2272 and House Bill No. 1155 which amended Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and Technical Education for grants to school districts due to allotment are also offset by funding from the foundation aid stabilization fund. In addition, Senate Bill No. 2272:

- Consolidated school construction loans in the school construction assistance revolving loan fund, administered by the Bank of North Dakota;
- Provided for a transfer of \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund, of which up to \$50 million must be used to repay the Bank of North Dakota for certain outstanding loans;

- Created a new section to Chapter 54-27 to provide, for purposes of Section 24 of Article X of the Constitution of North Dakota, education-related purposes means purposes related to public elementary and secondary education and state aid to school districts means general fund appropriations for state school aid, transportation aid, and special education aid in DPI, as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education; and
- Provided one-time appropriations from the foundation aid stabilization fund to DPI for rapid enrollment grants (\$6 million) and English language learner grants (\$500,000).

In 2019 the Legislative Assembly, in Senate Bill No. 2013, appropriated \$111.2 million from the foundation aid stabilization fund for integrated formula payments (\$110 million) and for a one-time state automated reporting system rewrite (\$1.2 million) during the 2019-21 biennium. In addition, the Legislative Assembly, in Senate Bill No. 2265, provided one-time funding from the foundation aid stabilization fund for music education grants (\$800,000) and rapid enrollment grants in the 1<sup>st</sup> year of the biennium (\$3 million). The Legislative Assembly also approved Senate Bill No. 2214 to provide for a transfer of \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the 2019-21 biennium. In addition to the transfer, Senate Bill No. 2214 also provided legislative intent that the 67<sup>th</sup> Legislative Assembly appropriate \$110 million from the foundation aid stabilization fund to DPI for providing ongoing funding for state school aid and transfer \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the 2021-23 biennium.

In 2021, the Legislative Assembly provided \$2,216,925,000 for integrated formula payments, transportation aid, and special education grants for the 2021-23 biennium, of which \$433,020,000 is from the state tuition fund, \$143,454,500 is from the foundation aid stabilization fund, and \$1,640,450,500 is from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education total \$26,837,780 for the 2021-23 biennium. Based on this level of funding from the general fund during the 2021-23 biennium, the required reserve balance in the foundation aid stabilization fund for the 2023-25 biennium will be \$250,093,242, \$7,235,691 less than the \$257,328,933 reserve required for the 2021-23 biennium. There were no other appropriations from the foundation aid stabilization fund for the 2021-23 biennium.

Based on the 2021 legislative revenue forecast, the ending balance available in the foundation aid stabilization fund as of June 30, 2023, is estimated to be \$140 million. An analysis of the foundation aid stabilization fund for the 2019-21 and 2021-23 bienniums is attached as an [appendix](#).

### Special Education Contracts

Section 15.1-32-18 provides each year the Superintendent of Public Instruction must identify the approximately 1 percent of special education students statewide who are not eligible for cost reimbursement under Section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement. Excess costs are those costs that exceed 4 times the state average cost of education per student and which are incurred by the special education students. The excess cost of providing special education and related services to these students is the responsibility of the state and the Superintendent of Public Instruction must reimburse the school districts for any excess costs. All costs of providing special education and related services to these students, other than excess costs reimbursed by the state, are the responsibility of the student's school district of residence. In addition, Section 15.1-32-18 also provides if a school district expends more than 2 percent of its annual budget for the provision of special education and related services to one student, the district must notify the Superintendent of Public Instruction and upon verification, the Superintendent must reimburse the district for the difference between:

1. Two percent of the district's annual budget; and
2. The lesser of:
  - a. The amount actually expended by the district for the provision of special education and related services to that student; or
  - b. The amount representing four times the state average cost of education per student.

During the 2017-18 interim, the Education Funding Committee received information regarding special education contracts and DPI reimbursement for special education contract services. The committee learned the student contract system is used to reimburse school districts for high-cost students and students that are in placement for reasons other than education. Placement in a residential facility may result from action by an agency or parents. When a student is placed outside of the district by an agency or parents, the resident school district is responsible

for the statewide average cost per student. However, if the school district makes the decision to place the student outside of the district, the school district is responsible for four times the statewide average cost per student for school placements. The Education Funding Committee learned costs related to special education contracts have seen significant increases in recent years. In 2017, the Legislative Assembly allowed the department to transfer \$1.2 million of excess funding available in the state school aid line item for the 2015-17 biennium to the special education line item for 2015-17 biennium to pay special education contract claims in excess of the \$17.3 million original appropriation. However, the funding transferred from the state school aid line item was not sufficient to pay all of the 2015-17 biennium claims. The department paid an additional \$2 million in remaining claims in August 2017 from special education contract funding totaling \$19.3 million provided for the 2017-19 biennium. The committee learned the number of qualifying special education contracts increased from 400 in the 2013-14 school year to 620 in the 2016-17 school year and that the reasons for the increase include increasing enrollments, transient population changes, increasing need for behavioral health services, lack of home- and community-based mental health services, medical advances that allow medically fragile children to live longer, increasing autism spectrum disorder diagnoses, and increasing special education child counts. The committee learned the number of students on an individual education program increased from 13,403 in 2013, to 14,429 in 2016, and the number of students with an autism spectrum diagnosis increased from 837 in 2013, to 1,174 in 2016. While the average contract cost of \$19,500 had not varied much, the average cost at residential facilities serving the most complex cases had increased significantly. The committee learned the average contract cost at one facility increased from \$57,433 per year during the 2014-15 school year to \$67,029 per year during the 2016-17 school year. The committee learned while the state had approximately 60 high-cost contracts, the number of small contracts also increased as schools became more aware of the cost reimbursement program.

In 2019, the Legislative Assembly provided \$24 million from the general fund for special education contracts during the 2019-21 biennium. This level of funding was \$4.7 million more than original 2017-19 biennium funding of \$19.3 million from the general fund. The department determined claims for special education contract grants during the 2017-19 biennium would exceed funding in the grants - special education line item; therefore, the Legislative Assembly allowed the department to transfer up to \$4 million from the integrated formula payments line item to the grants - special education line item for the purpose of providing special education grants during the 2017-19 biennium bringing the total provided for special education contracts to \$23.3 million. The Legislative Assembly, in Section 7 of Senate Bill No. 2013 (2019), provided the Superintendent of Public Instruction may expend funds provided for integrated formula payments and grants - special education contracts during the 2019-21 biennium for paying grants for educational services that were due in the 2017-19 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2019. To be reimbursed under this section, claims must be properly supported and filed with the Superintendent of Public Instruction by June 30, 2020. In addition, the Legislative Assembly provided, in Section 8 of Senate Bill No. 2013 (2019), if funds provided for special education contracts during the 2019-21 biennium are not sufficient to meet special education contract obligations, the Superintendent of Public Instruction must request supplemental funding from the 67<sup>th</sup> Legislative Assembly. In addition to special education contracts, the state school aid formula provides approximately \$215.2 million through the integrated formula payments line item for special education weighting factors and prekindergarten special education ADM and weighting factors.

During the 2019-20 interim, the Education Funding Formula Review Committee received information regarding DPI's study of the special education contract system. The committee learned the student contract system is designed to provide assistance for high-cost special education students and students that are in placement for reasons other than education. Challenges administering the special education contract grant system have been evolving and contract situations relating to resident and financially responsible school districts are becoming more complex. The student contract system has experienced a significant increase in the number and cost of special education contracts. In addition, daily rates for some facilities in 2020 increased nearly 10 percent. The committee learned state law does not address many of the contract situations that develop and it has become more difficult to determine which school district is responsible for some of the contracts. When there is a placement, the financially responsible school district is the district where the custodial parent or the legal guardian resides. Challenges include:

- The definition of legal guardian and whether a power of attorney for education decisions may establish legal guardianship for educational purposes. Occasionally, court orders and powers of attorney are not written consistently and language is not always clear;
- Timely and accurate notifications of placement because, although an online system for contracts exists, outdated paper notifications still are used causing a delay in contract notifications;
- New programs, created for individuals who turn 18 in a facility and age out of the foster care system, result in confusion regarding whether the program qualifies as a student contract, eligible for reimbursement, and which school district may be responsible for the student; and



- Whether preparation for GED testing, while in certain placement situations or after dropping out of school at age 16 and later enrolling in a GED program, should be reimbursed by the special education contract system. Funding provided to DPI for adult education is limited and is primarily used for staffing and testing at GED centers.

The committee learned expenditures during the 1<sup>st</sup> year of the 2019-21 biennium totaled \$11.9 million, of which approximately \$2 million was for prior biennium contracts; however, the department anticipates special education contract expenditures for the 2<sup>nd</sup> year of the biennium will remain within the \$24 million appropriation.

In 2021, the Legislative Assembly provided \$27 million from the general fund for special education contracts during the 2021-23 biennium. This level of funding is \$3 million more than 2019-21 biennium funding of \$24 million from the general fund. The Legislative Assembly, in Section 5 of House Bill No. 1013 (2021), provided the Superintendent of Public Instruction may expend funds provided for integrated formula payments and grants - special education contracts during the 2021-23 biennium for paying grants for educational services that were due in the 2019-21 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2021. To be reimbursed under this section, claims must be properly supported and filed with the Superintendent of Public Instruction by June 30, 2022. In addition to special education contracts, the state school aid formula provides approximately \$224 million through the integrated formula payments line item for special education and prekindergarten special education ADM and weighting factors.

### **PROPOSED STUDY PLAN**

The committee may wish to proceed with this study as follows:

1. Receive updates from DPI regarding 2019-21 biennium and 2021-23 biennium enrollment and state aid for elementary and secondary education.
2. Receive information from DPI regarding an analysis of the impact of state school aid formula changes approved by the Legislative Assembly in 2019 and 2021 on state school aid provided during the 2021-23 biennium.
3. Receive information from DPI regarding the impact of transition minimum reductions on reorganized and consolidated school districts.
4. Receive information from DPI regarding school districts that have multiple buildings in the district and districts that have built a new building without using traditional bonding methods as a result of a multidistrict reorganization.
5. Receive information from DPI regarding high-cost students, including students who are high cost due to special education needs, medical reasons, agency placements, or any other reasons that increase the cost to educate the students beyond the state threshold.
6. Receive information from DPI regarding school districts that continue to not be on the formula during the 2021-23 biennium, including an ongoing review of the impacts of school districts that are off of the funding formula as they transition onto the formula.
7. Receive information from DPI and other stakeholders regarding human resource allocation and the duties and needs in elementary and secondary school buildings with a targeted focus on student academic health, behavioral health, and social and emotional health.
8. Receive information from DPI regarding student performance data relevant to students participating in virtual learning.
9. Receive information from the Tax Commissioner and DPI regarding the impact of state school aid formula changes enacted to provide all school districts assess and deduct 60 mills in property taxes for elementary and secondary education in the formula.
10. Gather and review information from stakeholders regarding the impact of formula changes approved by the Legislative Assembly in 2019 and 2021 and challenges of the state school aid formula.
11. Receive updates regarding the use of discretionary federal ESSER funding by DPI.
12. Gather and review information regarding potential changes to the funding formula to ensure equity, adequacy, and sustainability.
13. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
14. Prepare a final report for submission to the Legislative Management.

ATTACH:1