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Excellence in North Dakota public education through local school board governance ■ VOL XXXVII ISSUE 2

Congressional House Committee Releases ESEA Draft Legislation

The House Committee on Education and the Workforce released its Elementary and Secondary Education Act (ESEA) draft legislation to address accountability, teacher effectiveness, and remaining components of the current No Child Left Behind (NCLB) law.

The proposed law includes some of the same steps as a Senate rewrite of NCLB. Both would entirely scrap the law's signature yardstick--Annual Yearly Progress (AYP), while largely keeping NCLB's current testing schedule.

This House committee legislation appears to provide greater flexibility to states and local school districts than either the Senate proposal or Education Secretary Duncan's Waiver Plan. The draft puts forward the following:

- Requires states to craft standards in math and reading but avoids use of the term "college and career ready standard" and specifically **prohibits** the U.S. Secretary of Education from doing anything to promote a specific set of standards, such as the common core
- Keeps annual testing requirements in place but allows states to scrap AYP and design

their own accountability system

- Requires disaggregation of data by subgroups but does not require achievement targets either for subgroups or entire schools
- Eliminates current requirement that teachers be "highly qualified" according to a federal definition
- Requires states or individual districts to develop teacher evaluation systems that include student achievement, have more than two categories for rating teachers, and use teacher evaluation in making personnel decisions
- Requires states to help low-performing schools improve but does not require them to focus on a certain percentage of schools and **eliminates federally mandated school improvement interventions**
- Consolidates several programs allowing for money to be transferred from program to program as necessary to meet local needs
- Does **not** authorize Race to the



Top, Investing in Innovation, or Promise Neighborhood grant programs

Most provisions above closely align with priorities and recommendations of school boards. However, the draft contains language that could have long-term effects on public school funding.

Draft language restricts future federal funding to the FY2012 base and a percentage of the Consumer Price Index. According to the

National School Boards Association, "Such an approach could ultimately eliminate any priority for public education funding, fail to give any recognition for enrollment growth in general and with respect to high-need subgroups, and ultimately eliminate special funding and grants for school improvement and rural school districts."

The proposal also eliminates Maintenance of Effort (MOE) requirements for state funding levels. While there is recognition that most states and local districts are experiencing economic challenges, eliminating MOE requirements would, over time, significantly lower government investments in education at a time when more expectations are being placed on public schools.

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REMINDERS

Election Deadlines

North Dakota election laws are specific as to dates and deadlines. Relevant election law is found in NDCC 15.1-09. Election deadline information and a sample calendar were included in the January *Bulletin* and are posted on NDSBA's website at www.ndsba.org under "Quick Clicks."

Superintendent Evaluations

North Dakota law requires that a school board complete the superintendent's summative evaluation process **before March 15**.

3 and 5-Year Planning Documents

Documents to assist in your district's 3 and 5-year planning process are available on NDSBA's website at: www.ndsba.org under "Quick Clicks."



from the director's chair

■ by Jon Martinson, NDSBA Executive Director

Guidelines for School Boards Regarding Measure 2

Political subdivisions in North Dakota (including school boards) are prohibited from spending public funds in support or opposition to a ballot measure in the absence of expressed statutory authority to do so. (There is none.) School boards can expend public funds to create a document, such as flyer, in which factual information is presented regarding a ballot question solely for the purpose of educating voters—provided the information is neutral and does not advocate for or against the ballot question. Furthermore, school boards should not vote to support or oppose Measure 2 because it could be argued that public funds (heat, lights, etc.) were expended during the vote.

However, since state law requires

school districts to develop a long-range (3 and 5 years) plan this year, boards will certainly discuss Measure 2 and its implications. It's impossible to plan next year's budget—operational expenses, administrator and teacher salaries, etc.—without mentioning the measure and for individual board members to voice their personal opinion. This is perfectly acceptable behavior at a board meeting. While school **boards** do not have express authority to “take a stand” on a political issue, individual school board members are not bound by the same restrictions.

All U.S. citizens have the right

to freely express themselves under the First Amendment of the U.S. Constitution, are entitled to give their personal opinion on a measure, and may write letters to the editor. Those opinions do not have to be neutral. The prohibition is the expending of public funds, so giving an opinion which does not require expending funds is not in violation of the law. Board members might remind their audience that they are giving their personal opinion and are not speaking on behalf of the board.

Restrictions mentioned in the first paragraph do not apply to NDSBA since the association is not a political subdivision of the state. As a non-profit 501(c)(6) association, NDSBA is allowed to use funds for the purpose of promoting or opposing initiated or referred measures as long as the association follows proper reporting requirements identified in law. Therefore, NDSBA can advocate for the resolution passed last October by the Delegate Assembly calling for a NO vote on Measure 2.

Measure 2: The REAL Winners Would Be Out-Of-State Property Owners

It's becoming very clear who will benefit most if Measure 2 passes—non-resident property owners. Both individual and corporate owners will win big and their gain will be our loss.

Recent data collected from tax statements (December 2011) show that non-resident owners hold 16.7 percent of the total value of taxable property in North Dakota. Unfortunately, these out-of-state owners would likely pay little or nothing for services that support their property if Measure 2 is passed. North Dakota residents would have to pay for those services through other taxes.

According to research by the ND Association of Counties, 16.7 percent (\$126.8 million) of the total property tax collected in the state comes from outside the state. Counties are now mailing tax statements to Canada, the United Kingdom, South Africa, Dubai, and many other locations worldwide.

Out-of-State Ownership of ND Property		
Taxes Paid and Percent of Total		
Residential	\$7.7 million	2.3%
Agricultural	\$29.2 million	15.6%
Commercial	\$89.9 million	37.3%
All Property	\$126.8 million	16.7%

As indicated by the table above, the largest percentage of property owned by those living out-of-state is commercial property (37.3 percent) compared with residential (2.3 percent) and agricultural (15.6 percent).

Clearly, North Dakota's other tax collections would need to offset the loss of property tax revenue created by the fact that non-resident property owners will reap the full benefit of tax savings at the expense of those who live here. This will create greater inequity in our overall tax structure.



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MEASURE 2: Q & A

What is Measure 2?

It's a proposal to amend the North Dakota Constitution to prohibit political subdivisions (school districts, cities, counties, townships, park districts, water districts, irrigation districts, fire/police protection districts, soil conservation districts, etc.) from levying a tax on the assessed value of property. The measure will be on the primary ballot on June 12, 2012.

If Measure 2 passes, how will local services now funded by property taxes be funded in the future?

The measure provides that "taxes upon real property which were used before 2012 to fund the operations" of political subdivisions must be replaced by state resources.

The measure says taxes on real property used before 2012 to fund operations must be replaced by state resources. Does that mean the state-replaced revenue would be frozen at 2011 levels?

The measure requires funding to be determined "according to a formula devised by the Legislative Assembly."

Would all local operations require funding?

The measure's language requires funding of "legally imposed obligations" of political subdivisions.

How are "legally imposed obligations" defined?

The proposed measure does not define this term, nor does state law define this term for political subdivisions.

Would police and fire protection be considered "legally imposed obligations"?

There is no legal requirement in state law to provide police and fire protection.

Would local control of local budgets be affected?

Funding for political subdivisions would be determined "according to

a formula devised by the Legislative Assembly."

Would the measure affect special assessments?

Special assessments are based on the benefit to property--not on the value of property. However, the method of collecting (currently through property tax statements issued by the county) and the method of enforcing (currently through a sale conducted by the county for delinquent taxes) could be affected.

Would the measure affect the limit of public debt?

Currently, the debt limit is five percent of "assessed value of the taxable property." Measure 2 would change the debt limit to five percent of "the market value of the property." The public debt limit would increase significantly and market value would have to be determined on all property including churches, personal property, and other property not currently taxed.

What is the effective date if Measure 2 passes?

The effective date is January 1, 2012.

Since the effective date is January 1, 2012, how would political subdivisions fund local services before the 2013 Legislative Assembly meets?

Either the legislature would meet in special session or the method of funding would be unknown after June 12. The measure specifies funding "according to a formula devised by the Legislative Assembly."

Top 10 Reasons to Oppose Measure 2

1. Keep local government local. You should decide.
2. Local school boards know what's best for their students.
3. Measure 2 requires the legislature to determine what is best for local government.
4. Measure 2 makes the legislature responsible for determining funding for more than 2,000 political subdivisions.
5. School board members lose control over one of their most important functions—budgeting.
6. Elected school board members would be reduced to acting as pass-through officials for state money.
7. The measure creates a tax shift--not a tax savings. More than \$800 million in lost annual revenue needs to come from somewhere.
8. North Dakotans need to have balanced revenue resources.
9. School districts would be unable to issue bonds for buildings secured with property tax revenue.
10. The most visible services on which citizens are most dependent (public safety, education, and recreation) are funded by property tax revenue.

■ ESEA DRAFT LEGISLATION

Continued from page 1

Finally, while school districts would generally prefer state control over federal control, there is a concern that schools may not receive adequate resources to successfully carry out accountability responsibilities required by the state.

This House proposal is not a bi-

partisan effort so will likely meet with challenges, but it does move ESEA reauthorization discussions forward. School board members should communicate their priorities and suggestions to the North Dakota congressional delegation as the debate progresses.

Labor Relations Reminders

Every February, NDSBA begins receiving calls about procedures associated with negotiations, contract offerings, and nonrenewals. Below is a brief summary of legal dates and deadlines.

Offering of contracts to returning teachers	Contracts can be offered no earlier than March 1 or later than May 1 . If formal negotiations are in progress, the May 1 deadline does not apply. (NDCC 15.1-15-04)
Notice of contemplated nonrenewal	Notice can be given no earlier than March 1 or later than April 15 with hearing held on or before April 21. (NDCC 15.1-15-05)
Opening negotiations	Either party may give notice of desire to negotiate—notice must be given no less than sixty days before the annual anniversary date of the contract (NDCC 15.1-16-13). A district's negotiated agreement may have a notification deadline earlier than the sixty days, in which case that date would be followed. It is good to start early so you can have contracts out before the end of school or, at the very least, before school starts in the fall.

Director of Legal Services (Part-Time)

The North Dakota School Boards Association seeks an experienced attorney to provide legal services and direction to school boards. Starting at 15 hours/week, this at-will, part-time position involves responding to phone calls and emails from board members on a daily basis, reviewing policies, and presenting sessions on legal topics at seminars. Starting salary at 15 hours/week is \$30,000-\$40,000 based on experience and includes a Simplified Employee Pension (SEP) retirement plan. This position has the potential to become full-time. License to practice law in North Dakota is required; experience with school law and/or public employment law preferred. Apply by **March 15, 2012**. Background checks will be conducted on applicants selected for an interview. Application materials and job description are available at www.ndsba.org or call 701-255-4127.



Fargo School District

Contact: Ray and Associates, Inc.
319-393-3115

e-mail: glr@rayassoc.com

Apply online: www.rayassoc.com

Deadline: February 28, 2012

(Do not contact district directly)

Grenora School District

(Superintendent/HS Principal)

Contact: Jennifer McNamara, BsMgr.

PO Box 38

Grenora, ND 58845-0038

701-694-2711

Deadline: Open

Central Valley School District

Contact: Harriet Thoreson, BsMgr.

1556 Highway 81 NE

Buxton, ND 58218

701-847-2220

e-mail:

harriet.thoreson.1@sendit.nodak.edu

Review of applications begins March 1