

01-31-12

Tuesday, January 31, 2012

Retirement Legislation in Senate Education Committee Wednesday!

Senate Bill 150, introduced by Senator Stuart Ingle, will be heard in the Senate Education Committee on Wednesday Morning. This measure enacts the Educational Retirement Board (ERB) plan, to which we are opposed. The ERB developed funding goals of 80% by 2030 and 95% by 2040 for our educator retirement plan. NEA-New Mexico believes that these goals are unrealistic and require changes to school employee retirement plans that are too severe. NEA-New Mexico urged the board not to adopt these extreme funding goals. However, the only member of the Board to vote against the goals was Mary Lou Cameron, NEA-NM's member of the Board (and the only active public school employee on the ERB).

These funding goals forced the plan changes recommended by the ERB. Their proposals make changes to the retirement qualifications of vested members by creating a mandatory minimum retirement age of age 55 for all members not within 10 years of meeting a current retirement qualification. Further, the plan reduces all future COLAs by 12.5%, including those of current retirees.

We have made our views clear. No changes that reduce promised benefits for vested active members are acceptable. No changes that reduce the Cost of Living Adjustment or other benefits of current retirees are acceptable. No changes that adversely alter the retirement eligibility rules for currently vested active employees are acceptable.

The unrealistic funding goals were adopted at least partly because the Governmental Accounting Standards Board (GASB) has proposed new reporting and accounting standards for public pension plans. GASB is a non-governmental organization that sets accounting standards for state and local government entities, including cities, counties, school districts, and the trust funds that they establish. GASB does not have the legal authority to compel compliance, but the accounting profession and investors view the standards as part of the baseline for proper accounting. GASB's statements become part of generally accepted accounting principles. Part of the rationale used by the ERB was that the new standards will affect the bond ratings of the state, school districts, or both. NEA has queried the bond and credit rating agencies on the validity of this argument and has found that there is no reason a pension plan has to make changes in anticipation of the new accounting standards' treatment of unfunded liabilities. In essence, the ratings agencies are saying that it's always been part of their job to look at and factor into their analyses pension plans' unfunded liabilities. As a result, the future inclusion of unfunded liabilities on an employer's balance sheet should not spur changes to pension plans in order to protect credit ratings.

We believe that our earned retirement benefits are a protected contract and a vested property right under the New Mexico Constitution. We firmly believe that Article 2, Section 19 and Article 20, Section 22 of the New Mexico Constitution make any diminution of benefits to currently vested members of ERA under current economic conditions unconstitutional.

Senate Bill 150, introduced by Senator Stuart Ingle, enacts the changes proposed by the ERB. Let Senators, especially members of the Senate Education Committee that you oppose this approach. Use the message below:

1. If you are vested, you already earned your benefit under the conditions in existence when you vested.
2. No one contributed a gift on your behalf. You paid for your retirement plan as deferred compensation that already belongs to you.
3. The ERB's funding goals are unrealistic and unnecessary, even in the face of new GASB rules
4. Changes to the benefits of currently vested or retired members are an impairment of constitutional contract and property rights.

If the facts don't work with policy makers, try these three quotes that politicians should understand, especially in an election year:

1. A politician is known by the promises he keeps.
2. There is no greater fraud than a promise not kept. ~ Gaelic Proverb
3. Losers make promises they often break. Winners make commitments they always keep. ~Denis Waitley

We are working with some Senate Education Committee members to amend the bill to solve the problem with more state contributions to the retirement system and minimal employee contribution increases of .5% over four years. This would preclude any COLA or eligibility changes. Call Senate Education Committee members today!!

House Joint Resolution Two in House Education Committee Wednesday

Representative Jim Trujillo's House Joint Resolution Two (HJR) is scheduled to be heard in the House Education Committee tomorrow. If passed, it will place a constitutional amendment on the November 2012 ballot allowing the 5.8% distribution from the state land grant permanent fund begun in 2003 to continue indefinitely. Ask members of the House Education Committee to support this important funding measure. The funding level is scheduled to drop to 5.5% next year and to 5% in 2014. Next year's drop represents some \$30 million dollars in public school funding that will need to be found before any increases in funding can be considered.

Some points in support of HJR 2:

1. If the distribution from the land grant permanent fund for public schools were 5.5% this year, rather than the current 5.8%, some \$30 million dollars would have been added to the school funding anticipated in all proposed budgets just to prevent cuts. The legislature would have no ability to make up this amount from the general fund without substantial revenue increases. When it drops to 5%, nearly \$60 million new dollars will be needed just to plug the funding hole!
2. When the original constitutional amendment was conceived in 2003, it was assumed that support from the general fund would continue to increase; gradually completely replacing the additional funds created by the increased distribution rate and allowing the reduction of the rate to 5% by 2017 since the natural increase in general fund revenues would have more than replaced these funds. No one anticipated that general fund support for the public schools would have three years of steady decline!
3. Should the 5.8% distribution level be allowed to sunset and the fund fail to show a return in the 8.5% range, public school funding from the fund would be greatly reduced and require even heavier commitment from a challenged general fund to avoid precipitous and devastating drop in school funding.
4. If the rate of return is realized, continuing the 5.8% distribution rate would actually move the legislature toward the increase that the 2008 funding formula task force indicated was required to provide sufficient funding of public schools. By 2019 the \$350 million increase called for in 2008 would be achieved, not enough to overcome the years of under funding, but a good effort nonetheless.
5. Clearly the 5.8% distribution rate has not endangered the corpus of the fund; it has continued to increase. The amendment would be logical to the voting public. Simply continue current practice of distribution and continue to help grow school funding without increasing taxes. If the amendment fails or is not sent to the public, it is clear that school funding will, in the worst case scenario, decrease or in the best case scenario, increase at a much slower rate in the near term, preventing the movement toward sufficient funding without a major effort from the general fund.
6. We are not asking the public to approve a tax increase, just to continue status quo to prevent a cut in school funding. Not passing this measure won't lower taxes, and in the long run will likely require a tax increase to prevent further cuts to public schools.

Ask members of the House Education Committee to support HJR2.

Education Funding Awaiting Final Action on Budget Bill

House Bill 2, the General Appropriations Act was supposed to be finalized today in the House Appropriations and Finance Committee (HAFC). That meeting was abruptly postponed. This likely means that Democrats are having trouble finding the votes to move the budget forward as the Governor tries to get more of her priorities funded; stay tuned.

House Bill 3, the Education Appropriation Act was heard last week in the HAFC. It was tabled there and eventually will become a part of House Bill 2, the General Appropriations Act when it is finalized next week. The measure approved in the House Education Committee (HEC) is only a framework the final budget and can be greatly modified by the HAFC. The measure, as it left the House Education Committee, will allocate nearly \$2.5 billion next year for school operations, the Public Education Department and other educational programs such as pre-kindergarten. That's an increase of \$93 million, or 3.9 percent.

The committee recommendation is close to the amount recommended by Governor Martinez. However, the committee wants to send a larger share of the money through the public school funding formula to allow more flexibility at the school district level, while the governor proposed earmarking money for various reform ideas she is pushing, letting the state decide how to distribute the funding.

The governor had requested about \$12 million to fund her anti-social promotion bill, but the committee scaled it back to \$7.5 million and will distribute the money through the state's school funding formula.

The Education Committee turned down several of the governor's budget requests, including \$5.5 million to fund last year's school grading bill. The governor also didn't get \$2.5 million requested for a teacher evaluation system and merit pay for teachers, or \$2.5 million for more frequent testing of student performance.

Of the committee's proposed \$93 million spending increase, about \$27 will add 1.75% to school employee salaries by eliminating last year's retirement contribution swap. Last year the legislature lowered the government's payroll contributions by 1.75 percent for public employee pensions and forced workers to offset that.

Let your legislators, especially members of the House Appropriations and Finance Committee know that we prefer allowing flexibility at the local level instead of the governor's earmarked reforms. Let them know that the amounts are still inadequate to make up for the cuts public schools have suffered since 2008 and need to be increased. Let them know that any reductions from the amounts recommended by the HEC would be disastrous!

Tuition Tax Scholarship Bill Moves with No Recommendation

Representative Ray Begaye has introduced HB65, SPECIAL NEEDS STUDENT SCHOLARSHIP ACT. This measure passed out of the House Education Committee (HEC) last Friday morning. This backdoor voucher measure would provide tax credits for taxpayers who contribute to tuition scholarship organizations that provide scholarships to students with special needs. This measure would have vast cost implications in the future, allowing taxpayers and corporations to take credit for one half of their total tax bill. The current measure caps the scholarships at \$5,000,000 dollars per year. It would also be a boon for the tuition scholarship providing organizations, allowing them to keep a full ten percent of the donation for expenses. The measure moved out of the committee to its next stop, the House Taxation and Revenue Committee.

The HEC vote was 8 to 3. No was the correct vote.

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| Representative Rick Miera | NO | Representative Jimmie C. Hall | YES |
| Representative Rhonda S. King | NO | Representative Dianne Miller Hamilton | YES |
| Representative Alonzo Baldonado | YES | Representative Andy Nuñez | YES |
| Representative George Dodge | YES | Representative Dennis J. Roch | YES |
| Representative Nora Espinoza | YES | Representative Sheryl Williams Stapleton | NO |
| Representative Mary Helen Garcia | YES | | |

In NEA-NM's opinion, credit against income tax is considered a tax expenditure in that, while it is not a direct payment from the state to the taxpayer, the taxpayer reduces the amount of tax paid to the state. Thus this measure violates the establishment clause of the US Constitution and several provisions of the New Mexico Constitution. As an expenditure of tax dollars it is a violation of Article IV, Section 31 of the New Mexico Constitution, which prohibits a direct educational appropriation to any person, corporation, association, institution or community not under the direct control of the state. Additionally, the measure also violates Article XII, Section 3 of the New Mexico Constitution because it prohibits the use of public money for the support "of any sectarian, denominational or private school..."

The vehicle for providing tax deductions could be abused by a school. A private school could set up a 501(c) 3 charitable organization for the purpose of collecting contributions and giving out scholarships or grants and give a \$500 worth of scholarships to the child or children of a parent who contributed \$500. In other words, a structure like this example would have the effect of passing \$500 of the tuition on to the state. People for the American Way (PFAW), a Washington DC advocacy organization, has reported that Arizona's tuition credit, which is similar to the one proposed by Begaye, is operating in this manner.

Other arguments against this effort:

On January 29, 1999, the New Mexico Attorney General Opinion 99-01 opined that "A school voucher program involving the use of public money to provide parents of private school children with tuition assistance raises serious and substantial state constitutional questions, most significantly under Article XII, Section 3, which proscribes the use of public money for the support of private schools, and the anti-donation clause of Article IX, Section 14."

In November 27, 2006, the U.S. Supreme Court refused to hear a challenge (by a writ of certiorari) to an April 2006 decision of the Maine Supreme Judicial Court that upheld a Maine law that prohibited the use of public funds to send students to private religious schools.

Tell members of the House Taxation and Revenue Committee to table this bad idea!
