

02-10-11

February 10, 2011

## One Very Bad Idea Down, More to Come?

Senate Bill 113 sponsored by Republican Senator Mark Boitano was tabled in the Senate Education Committee Wednesday morning. This move effectively kills the measure. It would have been a backdoor voucher providing a direct \$500 tax credit (deduction from the final tax bill) to individuals who make a contribution to an organization that provides scholarships to allow students to attend private and religious schools. Senate Bill 113 would have provided a new "tuition scholarship tax credit" for a contribution made to a school tuition organization, provided that the taxpayer produces a receipt from the organization certifying that the contribution will be used for educational scholarships. This credit could have been claimed in an amount equal to total contributions but is not to exceed \$500 in a taxable year and can be taken against New Mexico's personal income tax. The Taxation and Revenue Department estimates a cost to the general fund of some \$7.5 million dollars.

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 Boitano, 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.

The vote was a straight party-line vote, with all 7 Democrats voting to table and all 3 Republicans voting against the tabling measure. Thank the 10 Committee Members who supported us.

### Yet Another One, this Time by a Democrat

A similar bill has been introduced by Senator Gerald Ortiz y Pino. His bill, Senate Bill 398, 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, allowing taxpayers to take credit for one half of their total tax bill. 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 same arguments apply, this one just costs the general fund and, thus, public schools a whole lot more! This one isn't scheduled for a hearing yet, but is slated for Senate Education Committee and Senate Finance Committee.

## And Rumors of More to Come

There are rumors that two House Democrats plan similar introductions! Stay tuned!

## House Joint Resolution One Preserves School Funding, Passes First Hurdle

Representative Jim Trujillo's House Joint Resolution One, if passed, 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. This measure received a do-pass recommendation from the House Taxation and Revenue Committee on February 7. It passed on a straight party-line vote:

**TAXATION & REVENUE COMMITTEE**

Name	Party	Vote on Do-pass	Name	Party	Vote on Do-pass
Chair Edward C. Sandoval	D	YES	Tim D. Lewis	R	no
Vice-chair Jim R. Trujillo	D	YES	Ben Lujan	D	YES
Donald E. Bratton	R	no	Rodolpho "Rudy" S. Martinez	D	YES
Ernest H. Chavez	D	YES	Dennis J. Roch	R	no
Anna M. Crook	R	absent	James R.J. Strickler	R	no
George Dodge	D	YES	Thomas C. Taylor	R	no
Thomas A. Garcia	D	YES	Bob Wooley	R	no
Sandra D. Jeff	D	absent			

Thank committee members who supported us in trying to prevent future cuts to public schools. Urge the "no" votes to change their minds and support the measure if it makes it to the House floor. HJR 1's next hearing will likely be Tuesday the 15th in the House Voters and Elections Committee. Tell committee members to support this important legislation.

#### Some points in support of HJR 1:

1. If the distribution from the land grant permanent fund for public schools were 5% this year, rather than the current 5.8%, some \$60 million dollars would be added to the cut to school funding anticipated in all proposed budgets. The legislature would have no ability to make up this amount from the general fund without substantial revenue increases.
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 underfunding, 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.

### Budget Proposals All Cut, Cut, Cut

The House Education Committee continues work on House Bill 3, the Education Appropriation Act this week. After they complete their work, the bill will move to the House Appropriations and Finance Committee where it will likely be folded into House Bill 2, the General Appropriations Act. The word of the day remains cut. NEA-New Mexico continues to argue against cuts and that any cuts which are made should allow decision making at the local level through collective bargaining. Stay tuned and tell members of both committees that any more cuts to school funding and employee salaries are just plain wrong.

The budget recommendations of the Governor, the LFC, and the Legislative Education Study Committees (LESC) all recommend cuts to public school spending. Tell members of the committee, "No more cuts!"

Although the LESG budget for basic school funding through the State Equalization Guarantee is slightly higher than the other two, it still recommends a cut of \$26.8 million plus an additional cut of \$27.7 million to force school employees to pay an additional 1.75% of salary as retirement system contributions for total cut of \$54.5 million.

The LFC budget cuts \$47.6 million plus the \$27.7 in the retirement increases for a total \$75.3 million cut.

The Governor cuts \$29.5 plus a new twist on the retirement increase by holding classroom personnel (teachers and educational assistants) harmless from the increase that is estimated as between \$10 million and \$16 million. So the Governor's cut is between \$39.5 million and \$45.5 million. The Governor asserts that \$30 million of her proposed cut can come out of public school "administration."

While all the cuts are unconscionable, the Governor does at least attempt to prioritize public school funding.

## The Constitution and School Funding

New Mexico's Constitution in Article XII section one mandates that the state create and fund our public schools by stating:

"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained. "

We've got the established part down, it's the "maintained" portion where the legislature has been falling short! The cuts of recent years have made the quest for sufficient funding even more remote. Tell legislators that it's not just the right thing to do when they fund our schools; it's their constitutional duty!

Section two and four of Article XII create the permanent and current school funds from the proceeds of state lands given to New Mexico upon its entry into the Union. The permanent school fund is usually referred to as the Land Grant Permanent fund and the constitution further restricts how these funds can be spent by stating in section 3:

". . . no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university. "

In a special election in 2003 we increased school funding by allowing an increase in the portion of investment income that we spend rather than save. That constitutional amendment moved the amount from 4.7% to 5% permanently and temporarily increased it to 5.8% through 2012 and 5.5% through 2017 when it drops back down to 5%. When and if these decreases occur base funding for public schools will drop by about \$10 million dollars for each tenth of a percent. We need to head off these drops in funding by making the 5.8% permanent before the decreases begin. Representative Jim Trujillo has proposed a constitutional amendment to do just that. House Joint Resolution 1 will make the 5.8% permanent and prevent the cuts to school funding that will occur in 2012 and 2017. It's next hearing will be in the House Voters and Elections Committee. Let committee members know how important this amendment is to prevent even more cuts to school funding.

## When Does Getting More Money for Early Childhood Become a Bad Idea?

Speaking of the Constitution, some very good people with some very good motives have come up with a very bad idea! Early childhood advocates want to use the permanent fund described above to fund their programs, many of which are provided by private and religious entities! They plan a competing amendment to cut school funding to 5.5% permanently and raise an additional 1.5% from the permanent to spend on early childhood programs. That raises the payout from the fund from the current 5.8% to 7%. The cut to school funding is bad enough, but giving the funds to private and religious providers would require changing the provision in Article XII section 3 that forbids "support of any sectarian, denominational or private school, college or university. " This opens the door to school vouchers and other raids on funds intended for public schools! You may have seen the reports of the "yellow umbrella" rally for early childhood. What you probably didn't know is that it's your money they want!

This measure Senate Joint Resolution 10 is awaiting a hearing in the Senate Rules Committee. Tell committee members that this is a very bad way to fund a very good cause and sets up a conflict between early childhood programs and public schools.

While supporting early childhood programs is a good idea, the funding mechanism that these advocates seek devastates a major part of school funding and must be opposed. Tell legislators not to put school funds in jeopardy even for a very worthy cause! Tell them to support all programs for children, public schools and early childhood supports in a legal and constitutional manner. Tell Legislators that House Joint Memorial One, preserving school funding, is the only change we need in the funding formula.

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