

02-18-11

February 18, 2011

## Finance Committee Continues Work on Budget

As the legislature crosses the halfway point, the House Appropriations and Finance Committee (HAFC) continues to work on the budget bill, House Bill 2, the General Appropriations Act. We have seen no indication that deep cuts to public school aren't in the offing. The word of the day remains cut. The final measure will likely cut the equivalent of \$22.5 million from the State Equalization Guarantee and then create another \$5 million dollar cut on top of that to allow the Secretary of Education to impose "efficiencies."

As it left the HEC the current version of House Bill 3 is silent on an additional \$27 million cut proposed by the Legislative Finance Committee to increase employees' share of retirement by 1.75%. The HAFC will likely attempt to make this a part of the final budget.

NEA-New Mexico continues to speak out against cuts and to contend that any cuts which are made should allow decision making at the local level through collective bargaining. Tell your House Member that any more cuts to school funding and employee salaries are just plain wrong.

## House Joint Resolution One Moving to House Floor

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. HJR 1 move out of the House Voters and Elections Committee on February 17. It's next stop is the House floor, likely next Thursday. Tell your member of the House 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 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.

## Teacher Evaluation Bills Make Appearance

Two bills to revamp New Mexico's teacher evaluation system will be heard in the Senate Education Committee. Senate Bill 503 introduced by Senator Cynthia Nava would simply set up a process to create a new evaluation system; NEA-New Mexico supports this approach. Senate Bill 502 also introduced by Nava makes immediate substantial changes to teacher evaluation, some of which effect fundamental rights to due process and collective bargaining. One good point of the bill is it's requirement that evaluation systems be used to make employment decisions; this would add protections to prevent teacher terminations for reasons other than job related ones. This bill has been introduced on behalf of the Governor and Secretary of Education. They have been open to some compromise and we are still working to make changes to the proposed legislation, stay tuned.

## Bill to Cut Public Employee Pay Moves to Senate Finance

Senator Stuart Ingle is carrying Senate Bill 248 that will reduce the pay of all public employees by requiring that they contribute an additional 1.75% of salary to retirement, assuming a portion of the contribution that should be paid by the state and other public employers. If this or a similar measure passes, an additional \$27 million will be cut from the School Equalization Guarantee (see the budget story above). This bill was amended to reduce the burden on lower paid employees, but increase it on employees making over \$50,000. It will now move to the Senate Finance Committee. Tell members to reject this attempt to balance the budget on the backs of teachers and other public school employees.

## Governor's School Grading Bill Improved through Compromise

Senate Bill 427, A-B-C-D-F SCHOOLS RATING SYSTEM, sponsored for the Governor by Senator Vernon Asbill received a do-pass recommendation February 16 in the Senate Education Committee again on Wednesday morning. While still not perfect, enough improvements were agreed upon by the Martinez administration to allow us to offer support with concerns. The improvements included including removing the work merit from the description of pay awards available to teachers in "A" schools. Also there was a commitment from the new secretary of education to use this and other accountability measures as a way of highlighting the good performance of most of New Mexico schools. That will be easier with this measure than with the federal "no child left behind" requirements. This measure still brands so-called failing schools with a letter grade of F and allows students to transfer freely to a school graded with higher letter grade. It also gives financial incentives to grade A schools and says that they can be used for pay incentives. It states that the incentive awards are not subject to collective bargaining, but must be voted on by teachers and other school staff. The bill has our conditional support as it moves to the Senate Finance Committee.

## 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.

## Three More, One in the Senate

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.

Tell Senators to Tell House members to oppose these this back-door voucher.

## and Two More in the House

House Democrat Representative Moe Maestas has introduced House Bill 427, which allows tax credits for contributions to tuition scholarship organizations that provide scholarships to students. 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.

## Representative Ray Begaye has introduced House Bill 510, which is very similar to Senate Bill 398.

Tell House members to oppose these two back-door vouchers. Both measures will be heard in the House Education Committee first.

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