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## Budget in Senate as House Spends Day Squabbling

After passing two budget bills Wednesday, the House ground to a halt at the end of the day while supporters of Governor Martinez forced a rare maneuver by forcing a bill repealing immigrant drivers licenses out of committee to the House Floor. That divisive debate consumed all of today's House activities as well. The final outcome will be decided tomorrow when HB 78, which requires a Social Security number to get a drivers license, will be the first piece of legislation debated in the House.

House Bill 2, the General Appropriations Act, passed the House by one vote late Wednesday. One of the two other pieces of this shaky puzzle, House Taxation and Revenue Committee Substitute for HBs 607 and 622 also passed after much, often acrimonious, debate. This legislation is a compromise to use \$25 million from film tax credits. Several House members gave voice to our shared concern about why the film industry (and public employees-see below) were singled out for budget balancing pain when the oil and gas industry get a \$1 billion in tax credits and subsidies! The other piece of the puzzle has yet to pass, but is on today's agenda. It requires you to pay more into your retirement (see below).

The budget passed adds \$25 million that was not in the original House Appropriations and Finance Committee (HAFC) proposal. Of this \$25, \$7.5 million was added to school public school support the rest of the \$25 million freed from the film credit compromise goes to Medicaid, corrections, various other social services, and public safety.

Before the cut from the retirement swap, public school support is cut by about 1.5%, while the rest of state government's cut is nearer 3%. The final version of the budget cut the equivalent of \$15 million from the State Equalization Guarantee and then created another \$5 million dollar cut on top of that to allow the Secretary of Education to impose "efficiencies."

The two bills, will be in the Senate Finance Committee, before moving to the Senate floor.

## Unfortunately, You Are Still Required to Pay

Another piece of the puzzle is House Appropriations and Finance Committee (HAFC) Substitute for HB 628; this bill creates the shell game of \$27 million in pension swaps for school employees (and \$22 million for other public employees) as proposed by the Legislative Finance Committee to increase employees' share of retirement by 1.75%. The legislature pretends that the School Equalization Guarantee has this money in it, then, in another section of the budget reduces school appropriations by an amount equal to that saved by the passage of this bill, thus passing the increase passed on to employees. Without enabling legislation, this reduction won't happen. HAFC Substitute for HB 628 is the enabling legislation. It extends the two-year 1.5 percent contribution shift implemented for FY10 and FY11 from the employer to the employee for those employees making more than \$20,000 another two years (FY12 and FY13); It also makes a one-year contribution shift of 1.75 percent from the employer rate to the employee rate for those making more than \$20,000 for FY12. This changes the percentage of retirement withholdings for members of ERA and their employers (as well as employees covered by the Public employees Retirement Association). This legislation "swaps" an additional 1.75% of salary with the state to reduce their share of retirement withholdings and increase yours. This swap is all about budget balancing and does nothing to increase the solvency of the Educational Retirement Fund. In fact, we think it harms the fund. Employee dollars always add less stability to retirement than employer funds, since employees who choose not to retire can remove those dollars from the fund.

At least this version has a sunset on both the 1.5% added two years ago and this additional 1.75%. Balancing the budget on the backs of employees is still wrong, even if good friends in the legislature think there is no other way. Let them know that you don't think that cuts should be targeted at employee salaries! If the legislature and the Governor don't have the courage to fund education, they at least ought to send the cuts to the school district level and let employees, local school boards, and administrations decide where best to make the cuts, rather than requiring that the cuts come from increased payroll taxes for employees!

A similar bill awaits a hearing in the Senate Finance Committee. Senator Stewart Ingle's Senate Bill 248 also requires a pension swap, but targets employees who make \$50,000 or more with a 2.25% increase, while raising the withholding for lower paid employees by 1.25%. Right now it seems likely that one of the retirement swap bills will pass to complete balancing the budget on the backs of children and public employees. Even in the face of this likelihood, we still need to let legislators know that we don't agree with this method of balancing the budget with cuts alone.

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.

Send the Message: NO MORE CUTS!

## Two Tax Credit Bills in House Education Committee Friday

House Democrat Representative Moe Maestas' House Bill 427, which will allow tax credits for contributions to tuition scholarship organizations that provide scholarships to students, is back on the House Education Committee's schedule this morning. After lengthy debate Wednesday, the committee postponed action until Friday when they will also hear Representative Ray Begaye's House Bill 510, which is very similar to Senate Bill 398. 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. Chairman Rick Miera led the debate attacking most of the points listed below while defending school funding. Thank Chairman Miera for his leadership and ask other Committee Members to table these dangerous bills on today.

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.

#### **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 House Education Committee members to table both of these bad ideas.

### **Three Tax Credit Bills Tabled in the Senate Education Committee**

Senate Bill 113 sponsored by Republican Senator Mark Boitano was tabled in the Senate Education Committee last week. 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.

A similar bill was introduced by Senator Gerald Ortiz y Pino. His bill, Senate Bill 398, would have provided tax credits for taxpayers who contribute to tuition scholarship organizations that provide scholarships to students with special needs. Senator Ortiz y Pino's bill and a similar proposal, Senate Bill 433, by Senator Pete Campos were both tabled in the Senate Education Committee last week.

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.

### **House Joint Resolution One Waiting on House Calendar**

We are still counting votes and waiting on Representative Jim Trujillo's House Joint Resolution One, to be debated in the House. 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 moved out of the House Voters and Elections Committee on February 17. It's is on the House Calendar. Exactly when it will be debated is unknown, but it is important to 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

## Senate Version of Constitutional Amendment Now OK

After working with the sponsor and early childhood advocates, NEA-New Mexico now supports Senate Joint Resolution 10. This measure essentially does the nearly same thing as HJR 1. It maintains the public school portion of the payout at 5.5% until 2024, when it returns to 5.8% permanently and raises 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%. While we are a little concerned with the 7% payout number, we believe that the corpus of the fund will still maintain an adequate growth. Several amendments made in the Senate Rules Committee met our concerns with privatization and the level of school funding. This bill could be heard in Senate Finance Committee as early as Friday. Ask Senate Finance Committee members to support this important funding mechanism for public schools and early childhood programs.

## Teacher Evaluation Bill Waiting for a Hearing in Senate Finance

Senate Bill 502 revamps New Mexico's teacher evaluation and has been sent from the Senate Education Committee to the Senate Finance Committee. Senate Bill 502 is sponsored by Senator Cynthia Nava. One good point of the bill is its 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 have working to make changes to the proposed legislation. The bill has been passed out of the Senate Education Committee and is still waiting for a hearing in the Senate Finance Committee. We are able to support the latest version, which incorporates most of NEA-NM's suggestions. We have been especially concerned about maintaining the current levels of due process for all school employees!

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