



Independent Democratic Conference

A Discussion on Mandate Relief for New York State Schools

February 2011

I. Introduction

On January 31st, 2011 the New York State Senate passed S.2706 a comprehensive property tax bill which would cap taxes at 2 % or the Consumer Price Index (CPI) whichever is lower. Although a recent Siena Poll indicates that 83% of New Yorkers support a 2% tax cap as was passed in the Senate, many have begun to point out that without immediate and meaningful mandate relief for school districts severe cuts to programs and curriculums will be required by each school district. While the effects of the tax cap on each individual municipality and school district are being debated in the press, in local town halls and at school board meetings, what is certain is that mandate relief for school districts and municipalities is necessary in order for any tax cap to be effective.

School districts comply with hundreds of mandates annually. Few of these mandates are without merit and many have been endorsed by the New York State Council of School Superintendents.¹ However, when one examines the cumulative effect of these mandates on school districts one can't argue that every year's school budget is an exercise in diverting resources from areas that educators feel are important to cover mandates which may have less than equal value. That is why it is imperative on the State Legislature to not only be conscious of those pieces of legislation which impose mandates on school districts without corresponding funding streams, but to also do due diligence each legislative session to take the time out to review those mandates that are already in place. Furthermore, the State Legislature must also make a concerted effort to find new ways to make sure services are delivered efficiently and economically to our school districts as well as to give the resources and tools to our school boards to educate the children of New York at the highest possible level.

In order to achieve these goals the Independent Democratic Conference (IDC) has introduced a slate of legislation targeting specific areas for school districts where costs can be shared, services can be rendered more effectively and mandates can be lifted with little or no corresponding detriment to the children. Furthermore, the IDC is also proposing a list of recommendations to the newly designed Mandate Relief Redesign Team which they feel should be considered before issuing their report on March 1st, 2011. It is the hope of the Independent Democratic Conference that these recommendations will be explored and used in determining how New York State can provide support and relief to school districts throughout the state.

II. Legislative Proposals

Regional Collective Bargaining

In New York State, nearly 700 school districts separately negotiated collective bargaining agreements. While school districts can use BOCES to help them negotiate, this is a shared service supporting the existing district-by-district approach, and there are no regional contracts per se among school districts. Regional or statewide systems do exist in other states, including

¹ "Choices have Consequences: Mandate Relief for New York Schools" New York State Council of School Superintendents, January 2004

some that have a statewide salary schedule for teachers. In fact, in the majority of states that provide education on a county basis, one could say that something close to regional salary schedules exist.²

The fact that there are so many school districts, each doing their own negotiating individually, means there is no coordinated collective bargaining strategy, and each district has the duty to negotiate in good faith. Information sharing among districts has also been poor. In contrast, teachers (and some other employee groups) are represented by statewide unions which are in their nature coordinated. As a result, they are able to set regional negotiation strategies, using one negotiation to pursue benefits, another to pursue a particular wage increase; then driving both precedents for remaining regional negotiations.

Many individual school districts are under-prepared for the task of negotiating a complex labor agreement with a local bargaining unit that is well-supported by a statewide union. Allowing school districts to bargain collectively by region would level the playing field somewhat, and could help hold down increases in school taxes. Regional contracts would also pave the way for consolidation of districts.

Giving school districts the option, not mandating this system, allows for a tool to arrive at uniform agreements which would level the playing field and allow teachers to have more flexible career paths as well as enable possible consolidations for districts. It also will encourage information-sharing between districts which have to bargain with teachers who are organized at the statewide level.

The legislation being introduced by the Independent Democratic Conference will allow for any member of the component school districts to elect to delegate to a supervisory district for collective bargaining of wages, salaries and benefits paid to teachers. This shall apply to new hires and those hired after the negotiation of the collective bargain. It will allow the office of employee relations to promulgate rules and regulations for the implementation of the supervisory district-wide agreements. It also provides for the office supplying assistance and personnel to each board of cooperative educational services for implementation.

Shared Purchasing Contracts

New York is currently one of only three states that do not allow cooperative contract use. The ability to leverage the aggregate purchasing power of larger, national procurement cooperatives and out of state contracts let by other states and local government entities has proved to be a highly successful, equitable, cost effective fiscal tool for other states; including Maryland, Florida and Illinois. An example of a significant cost savings includes 10% savings in the cost of goods and services by the City of Los Angeles through US Communities administered contract negotiated by the County of Los Angeles producing a savings of approximately \$1.8 million dollars.

² “Regional Collective Bargaining for School Pay and Benefit Scales” New York State Commission on Local Government Efficiency and Competitiveness, <http://www.nyslocalgov.org>, February 10, 2011

The current law is silent regarding the ability of a political subdivision to competitively shop for the best price and contractual conditions that might exist under master contracts negotiated by other political subdivisions outside New York State. However the authority to award service contracts based upon best value already exists with the State pursuant to Section 163 of the state finance law. **Senate Bill 624** would simply extend such authority to individual political subdivisions such as school districts. This new subdivision 13 of the General Municipal Law would allow for political subdivisions to consider favorable contractual purchasing conditions outside New York State and to "piggy-back" on to those contracts that exist where the conditions are better than that which is available within the State.

Implementation of this measure would be as effective as state aid or a local property tax increase. Authorizing schools and local municipalities to utilize the option of piggy backing on other states and local government-let contracts or the option of purchasing through national purchasing cooperatives will provide immediate relief to school districts. Cooperative contracts provide a 10-15% cost savings per contract. Reform of school purchasing rules has the ability to save taxpayers \$2 billion per year in New York State.³

This legislation would authorize political subdivisions including school districts to award contracts for services on the basis of "best value" as defined in section one hundred sixty-three of the state finance law to responsive and responsible bidders. In addition, the legislation would permit school districts to procure technology related products and services through the federal General Services Administration schedule seventy. Finally, the legislation would authorize political subdivisions to enter into certain shared purchasing contracts with another state or political subdivision, while taking into consideration applicable MWBE requirements.

Supported by the New York State School Boards Association, the New York State Association of Municipal Purchasing Officials, Inc. , New York State Conference of Mayors and Municipal Officials

School District Employee Benefit Accrued Liability Reserve Fund Refunds

A school district's annual budget identifies the resources the school district has to spend in the coming year, and how those resources will be expended. Any fund balance that remains can be legally reserved for a specific statutory purpose, or can be maintained, up to a statutory limit as unreserved fund balance to promote cash flow and help school district officials manage unexpected costs. Unreserved fund balance can also be used to reduce the tax levy in following year's budget.

Reserved portions of fund balance are committed for specific legal purposes. Reserve funds are created under various laws which determine how the reserves can be established, funded, expended or discontinued. School districts can establish an Employee Benefit Accrued Liability Reserve (EBALR) under Section 6-p of General Municipal Law (GML) and use EBALR monies to pay employees for accrued leave time due to them when they leave district employment. Interest earned on money in the EBALR must become part of the reserve fund.

³ "Cooperative Purchasing" NYSSBA Issue Brief, New York State School Boards Association, <http://www.nyssba.org>
February 10, 2011

A 2008 Audit by the New York State Comptroller ⁴found that school district officials have reserved far more money than necessary in their EBALR funds. Their audit determined that 251 school districts across the State could have as much as \$407 million more in these reserve funds than they need to pay for compensated absences liabilities.

Finally, school districts have increased taxes over the past few years even as they moved far more money than needed into their EBALR fund. From 2002-03 to 2006-07, the 19 school districts reviewed by the Office of the State Comptroller in detail collectively increased their EBALR reserves by about \$100 million (136 percent); during the same period, property taxes in these districts increased by 30 percent, or by about \$243 million.⁵ Excess EBALR funds represent money that could be redirected to other purposes to benefit taxpayers.

During the testimony of the New York State School Boards Association to the Joint Legislative Fiscal Committees on the 2010-2011 Executive Budget, it was stated very clearly that access to these funds would be a great asset and that they strongly support the proposal to allow districts to withdraw funds in order to maintain educational programming in the 2010-11 school year. Given the severity of this fiscal crisis, making use of these funds to offset program cuts and higher local taxes is of paramount importance to districts across the state.

Currently there are legal restrictions on how the districts can use this money. The districts require legislative approval to remove these funds from the reserves and use them for other purposes. **Senate Bill 1524** will provide that school districts which have set aside excess ELBAR reserves to access their money without going through the New York State Comptroller's office. This legislation would allow the School Districts of New York State with excess funds in their EBALR accounts to use those funds to help support schools and relieve the burden placed on the taxpayers of New York State.⁶

If such legislation was passed, these funds should be considered as a one-time revenue stream which could potentially mitigate the impact of potentially lower State aid payments and provide property tax relief. For example, using the funds to pay one-time expenses, such as capital projects, pay off debt, or possibly to finance other post-employment benefits, would provide taxpayers relief today and reduce future costs.

Shared Services and Consolidation of Healthcare Initiatives

On January 18th, 2011 the IDC released a report titled “Recommendations on Streamlining Healthcare Cost Saving Measures at the Municipal level in New York State”. In this report the Conference highlighted their recommendations for easing the burden on local municipalities in the area of healthcare. This proposal would work similarly in school districts across New York

⁴ Office of State Comptroller, Division of Local Government and School Accountability, Employee Benefit Accrued Liability Reserve Funds, p. 4, October 2008.

⁵ Ibid.

⁶ In Governor Cuomo’s Executive Budget Proposal on February 1st, 2011, the Governor made the recommendation that school districts be able to access their EBLAR funds, but only up to the amount of their Gap Elimination Adjustment Funding.

Sate as well. Senate Bill 2483 will give schools the tools that they need to cooperatively provide services and administer school employee benefits.

When looking at reducing the burden on localities one must consider cost effective measures realized through the encouragement of shared services and consolidation. Given the fact that New York has 3,175 local governments, including counties, cities, towns and villages, school districts and fire districts, shared services present a viable option for reducing costs or slowing growth in spending without necessarily impacting service quality.⁷ Healthcare costs are one area where while there is an effort that has already begun to be explored as evidenced by the 10 Municipal Cooperative Health Benefit Plans (MCHBPs) currently active across New York. However all of the MCHBPs were established between the years 1979-1986 and to date there have been no new Municipal Cooperative Health benefit plans established since 1986.⁸

The purpose of **Senate Bill 2843** is to enhance the ability of school districts to join forces and cooperatively provide and manage employee benefits in a manner that reduces the cost of providing such, benefits but which is also able to give employees more choices in the benefits provided. Further, it clearly enables school districts to, cooperatively administer such employee benefits and other administrative personnel overhead costs to help lower the overall cost of municipal government.

The cost to school districts in New York continues to escalate, hence local real property taxes to support such school districts continues to increase. School employee benefits are a major part of the cost of running local school districts. This bill attempts to enhance the ability of schools to cooperatively provide employee benefits such as health insurance, and tax deferred employee plans such as retirement, health flex, and child care plans. Further, it will allow school districts to offer their employees the ability to participate in more health insurance plans that better reflect the needs of its employees. This increase in choice of plans can help to reduce the cost of providing benefits because employees will be able to better select the benefit plans that matches their family's needs (which can be at a reduced cost). Further, by increasing a school districts ability to offer different health plans, this can increase employee satisfaction and hopefully productivity.

The bill also allows school districts, either alone or in conjunction with others, to reduce premium rates if its employees to participate in Wellness programs. Not only will the participation in Wellness Programs help to reduce premium rates, it can increase the well being of its employees and hence, their work productivity via fewer sick days or injuries. Finally, this bill also authorizes school districts either alone or jointly, to offer the Healthy NY insurance product which is, on average 7 % cheaper than other health insurance products.

⁷ Office of State Comptroller, Division of Local Government and School Accountability, Research Brief: Shared Services Among New York's Local Governments Best Practices and Tips for Success, November 2009.

⁸ NYS Commission on Local Government Efficiency and Competitiveness, "Cooperative Health Insurance Purchasing", January 14, 2011, <http://www.nyslocalgov.org>.

III. Recommendations to the Mandate Relief Design Team

On January 5, 2011, Governor Andrew Cuomo announced the signing of an Executive Order to create a team of private and public sector individuals charged with finding ways to cut the unfunded and underfunded mandates. The Mandate Relief Redesign Team will review unfunded and underfunded mandates imposed by the New York State government on school districts, local governments, and other local taxing districts. The Mandate Relief Team – which will include representatives from private industry, education, labor, and government – will look for ways to reduce the costs of mandated programs, identify mandates that are ineffective and outdated, and determine how school districts can have greater ability to control expenses. It began its work on Friday, January 7, and is expected to issue its first report by March 1st this year.⁹ In addition to the legislation introduced and discussed in the beginning of this release which the Independent Democratic Conference is urging the Mandate Relief team to support, there are additional recommendations that the Independent Democratic Conference feels should be part of the mandate Relief Teams discussions as they move closer to releasing their final report.

Maximize Energy Efficiencies

Recommendation: Enforce current laws that would maximize energy efficiencies.

Current law allows school districts to be customers of the New York Power Authority (NYPA). Such membership would allow them, at a minimum, to avoid surcharges for stranded costs, systems benefit charges, and renewable energy portfolio costs. However, currently not all districts which seek this benefit (to which they are entitled) are being approved.

Curriculum Mandates

Recommendation: Curriculum decisions should be left to the purview of the board of regents and local school boards.

From skin cancer awareness to shaken baby syndrome, from the Irish potato famine to nutrition, there are a myriad of new legislative proposals every year to add new curriculum mandates to state education law. These mandates, while usually addressing important and significant issues, are inappropriate. Each time one is enacted schools are forced to rearrange and revise lesson plans and reallocate resources to meet new state mandates, many of which are enacted outside of the context of comprehensive state learning standards. Locally elected school officials are in the best position to determine the educational needs of the communities they serve.¹⁰

⁹ Governor Andrew M. Cuomo, “Governor Cuomo Creates Commission to Cut Government Agencies and Authorities by 20 Percent,” Press Release, January 5, 2011, retrieved January 7, 2011, from Governor’s website: <http://www.governor.ny.gov/press/01052011createscommission>.

¹⁰ Ibid, p. 8.

PILOT Revenues

Recommendation: The School District in a PILOT receives a reasonable portion of the proceeds of the agreement

Any agreement between the Empire State Development Corporation, or other municipal entity and a private corporation, should provide that the split of taxes between the school district and other taxing jurisdictions is in the same proportion with the PILOT (payment in lieu of taxes) agreement as if taxes were being paid.

Typically, the assessing authority (i.e., town or county) negotiates the PILOT agreement in conjunction with the Empire State Development Corporation on behalf of all concerned municipalities. One negotiated PILOT agreement between IBM and the town of Yorktown provided the Ossining Union Free School District no revenue, although the district would have received the largest share of IBM's tax payment. A school district should receive a proportional share of any PILOT payment equal to the proportion of property tax divided between other municipal governments. This loophole has been closed for industrial development agencies and should be fixed for the Empire State Development Corporation as well.¹¹

IV. Conclusion

This issue of mandate relief for our school districts is and should be a topic of conversation as we move forward in this legislative session and begin to discuss the tough choices and cuts that every New Yorker faces as we prepare to address closing the 9 billion dollar budget deficit. We are all being asked to do more with less in these difficult fiscal times, however, cuts to education funding in New York must come with solutions on how to ease the burden of certain mandates on our school districts. We are confident that the Governor's Mandate Relief Team will be engaged in discussions that revolve around the larger decisions that school districts are calling on the State to make with regards to mandate relief. However there are steps the State Legislature can do now to ease some of the burdensome restrictions on the spending of money by school districts and make the operation of the school districts more efficient and economically sound. These are not the only solutions, but the beginning of the dialogue which will hopefully bring real relief to school districts in The State of New York.

¹¹ Ibid, p.3.