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Education Funding Bill: A 1B Redux

On Thursday last week the Taxation Committee and the Education Committee sat together to host a public hearing on Governor Baldacci's proposal to transform the system of distributing state funding for K-12 education.

It is all about the new and evolving Essential Programs and Services school funding system (EPS). It's easy to get buried in the details (as the length of this article may suggest), but nothing less than the foundation of sustainable property tax relief is at stake.

LD 1924, *An Act To Reduce the Cost of Local Government through Increased State Education Funding and Provide Property Tax Relief*, is a modified version of the "1B" proposal that the Legislature put on the ballot last fall to compete with the citizen-initiated "1A" *School Finance and Tax Reform Act of 2003*.

As municipal officials will remember, the "1B" competing measure would have scheduled the state to be paying for 55% of the cost of K-12 education (as measured by the evolving Essential Programs and Services (EPS) school funding model) by the year 2010.

The financing ramp under "1B" was structured so the state would make minimal additional contributions in the first few years and offer (on paper) more ambitious financial "targets" in the outlying years.

In addition, the "1B" proposal would have transformed the way state education funds are distributed to each school system by implementing a "mill rate expectation" system whereby each municipality would be expected to levy no more than 8.5 mills to cover its share of the school budget as long as that budget did not exceed the EPS-defined benchmarks.

The point has to be made that the "mill rate expectation" system under the "1B" proposal set up a false expectation during the entire transition period between now and 2010. The political marketing of the "mill rate ex-

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Tax Reform Working Group Finds Consensus

Consensus is a precious metal in the State House these days. It's hard to find, hard to mine, and there are plenty of expeditions to find it that yield only a fool's gold in the pan.

But an ad hoc group of 10 legislators , the so-called "Tax Reform Working Group", found real consensus yesterday with its unanimous endorsement of an education funding plan that works. The panel was appointed by the presiding officers of the Legislature, the President of the Senate and Speaker of the House, and they were drawn from both sides of the aisle in both chambers.

There has been a lot of talk about the state recommitting to its "55% promise" six years from now. That re-amortization of the 1984 promise was part of the Legislature's "1B" competing measure to the "1A" citizen initiated *School Funding and Tax Reform Act of 2003*. The biggest flaw in the "1B" proposal was the absence of any meaningful or effective state commitment to education funding over the six intervening years.

The plan agreed to by the "Tax Reform Working Group" would not only commit the state to be providing 55% of the cost of K-12 education (as measured by the "EPS" school funding model) by the year 2010, but it plugs in the state's commitments to funding that model in each of the intervening years according to what can fairly be called a "straight line" ramp.

This bi-partisan endorsement of an effective school funding plan represents a tremendous first step in putting the foundation of sustainable property tax relief in place, but it is just the first step. In the wording of the working group's recommendations, great care is taken to point out that the endorsement of the appropriate level of state commitment can not be and should not be interpreted to mean that the actual means of funding the plan have been agreed to.

The working group's consensus agreement is now being prepared as a letter back to the presiding officers. When that letter is finalized and becomes available, we will share it with *Bulletin* readers.

EPS (cont'd)

pectation" system is that it acts as a property tax cap for education…a maximum limit on the amount that would have to be raised locally for the school budget. Unfortunately, during the entire 6-year transition period, the state would only recognize a fraction of the full EPS model. Until 2010, the mill rate cap would only apply to the fraction of the EPS model recognized by the state. The rest of the model would have to be covered by each town on its own nickel, without any state participation. Most municipalities would have to exceed the "mill rate expectation" just to cover the state's funding model.

LD 1924 roughly parallels the "1B" proposal, with some significant differences.

Ramplessness. A resoundingly negative element of LD 1924 is that it replaces the poorly constructed school funding ramp of "1B" *with no ramp whatsoever*…it goes from worse to worser. Under the terms of LD 1924, the state commitment to its newly constructed EPS model would be completely undefined and unknown until the year 2010, when it would magically pop out at the 55% level.

Transition issues. The implementation of the mill rate expectation system will have sharply negative impacts on some municipalities unless certain transition provisions are developed. The Department of Education and the Legislature has been slow to recognize that fact, and there seems to be a reluctance to address the transition needs in law, prospectively, before the problems manifest.

The "1B" competing measure, for example, neither recognized nor addressed any transition issues at all, which led to the odd result of some legislators in certain regions of the state publicly supporting "1B" last fall even though "1B" would have decimated state financial support in their districts.

To explain, the "mill rate expectation" system provides that if the town can raise the designated EPS-level of school spending with a property tax levy at or below the mill rate expectation amount (e.g., 8.5 mills), no state financial support to that municipality is necessary. Among the transition issues triggered by that policy, there is the question about the state's ongoing commitment to its previously established share of a school's debt service. Would the state just renege on its debt service contracts in zero-receiver towns? The mill rate expectation system also triggers the question about the "minimum subsidy" law, which requires some level of state support for all school systems. Is the end game of this policy to create true "zero-receiver" communities?

In addition, because the new system would calculate and respond to each municipality's individual financial responsibility and individual mill rate effort even when those towns are in school districts, there are transition questions surrounding the impacts of overriding existing cost sharing arrangements among municipalities within school districts.

The EPS model also results in a very sharp retraction of state financial support for small school systems and school systems with sharply declining enrollment. There apparently is a "declining enrollment adjustment" within the EPS model that performs some averaging of student count through periods of decline in order to blunt the negative subsidy impacts. In spite of that mechanism, there is a general recognition among education practitioners that the EPS model is structured to suggest that a X% reduction in student enrollment should automatically and immediately result in a X% reduction in the school budget, which fails to account for both the fixed costs of running any school and the distribution of the decline in enrollment across grade levels.

Of these four "transition issues", LD 1924 addresses just two: the state's debt service commitment would be honored and the minimum subsidy policy would be retained. The transition issues left unaddressed by LD 1924 are the divisive impacts, at least in some school districts, of overriding the existing cost-share agreements, and the overly aggressive negative impact of implementing EPS on schools with declining enrollments.

Modeling Transportation and Special Education Costs. LD 1924, in its third part, takes EPS on a shakedown cruise with respect to the ongoing integrity of the EPS model.

In its current form, EPS only "models" a school's general operating costs. LD 1924 calls for moving what are currently called school "program costs" (transportation, special education, vocational education, and early childhood education) into the modeling system. Under current practice, these specialized costs are subsidized on an actual-cost basis.

The schedule for moving those "program" cost centers into the modeling system is school year 2005-2006 for transportation and special education costs, and the year after that for vocational and early childhood education.

The bill takes a baby-step with respect to the task of modeling special education costs by laying down some generic guidelines ("equity", "flexibility", "identification-neutral") for designing the model, and further suggesting that the state will need to more strongly support schools that are exposed to the very high-cost special education situations.

LD 1924 is more explicit with respect to modeling a school's transportation costs by essentially adopting by reference a modeling plan developed by David Silvernail at the Muskie School that has been shared with the State Board of Education. The moving parts of that model are just two: the number of students and the number of

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EPS (cont'd)

road miles within the school system. Applied to that base of information is some standardized cost of operating school buses, yielding an EPS transportation allowance that typically falls into the $300-$500 range per student per year.

Work sessions update. LD 1924 falls under the oversight of both the Taxation and Education Committees, although it is not entirely clear to an observer which Committee has jurisdiction over which elements of the bill, or whether both have full jurisdiction. The two committees have met both separately and together in work sessions. Six major areas of LD 1924 have been identified as needing further work:

The ramplessness issue: There seems to be general agreement that the bill needs to identify the state commitment to the EPS model for each year from now until 2010, when the 55% threshold is reached. Most legislators appear to agree that the appropriate structure of that ramped-up commitment is the "straight line" ramp as proposed by the "Tax Reform Working Group" (see related article).

Transportation modeling: Concerns were expressed by the education and municipal community about the integrity of the transportation model. The concerns fall into two categories: (1) the model only purports to cover taking the student to and from school…there is no consideration in the model for out-of-district travel for vocational education, special education, class trips, sports, co-curricular or extra-curricular transportation, even though all schools are exposed to some or all of those transportation costs; and (2) the model does not take into account the individualized transportation circumstances that a community may have to deal with (towns bisected by highways, rivers, lakes; rural vs. urban traffic systems; dead-end roads, roads closed in winter, non-interconnected roadways, etc.)

The Department of Education responded to both categories of concern by indicating that the model is still a work-in-progress, and with increased surveying among school transportation directors, the model will be much improved by the time it is implemented next year.

Some Education Committee members are concerned with the "ready-fire-aim" approach of the bill, that puts the transportation model into law without really knowing what it is. Other Taxation Committee members expressed concern with not putting the model in the bill, expressing the fear that frustrating the modeling efforts will result in the state never being able to get a handle on school expenses. A functioning model that may be adjusted and improved over time is, from their perspective, a far more productive prospect than waiting for the perfect model that never arrives.

Mixed signals were sent on the issue of modeling co-curricular and extra-curricular transportation costs. The Department alleged that those costs were already in the basic EPS model, although it was widely acknowledged those flat dollar rates (between $30 and $70 a year per student) were extraordinarily low compared to real-life expenses. At the same time, the Muskie School's David Silvernail maintained that there is no correlation between extra-curricular activities and performance outcomes related to "Learning Results", sending the message that from his perspective extra-curricular activities are "non-essential" and should therefore be only locally funded as a general rule.

Special Education. Although the modeling of special education costs is on a slower track than transportation, the Department of Education is intending to adopt rules within the next few months governing the identification and assessment of students needing special education services. The theory is that the "policy" of special education should be put in place immediately, to be effective for the next fiscal year (FY 05). The financial model, working in parallel to the policy, would be implemented in FY 06, as the system of calculating the special education allocation is moved into EPS.

With several working groups already employed in the development of recommended guidelines designed to improve the uniformity of special education administration across the state, the Department of Education is insisting that rulemaking to codify those recommendations will be forthcoming. The Education Committee is suggesting that those policy changes should be implemented more slowly and not before the Legislature has the opportunity to review those recommendations first.

Transition issues: The impacts associated with disrupting local cost sharing systems by implementing the "mill rate expectation" system on each municipality within a school district is being further reviewed, especially by the Education Committee. The Department of Education takes the view that the impacts for most districts are minimal, and that the several districts where the impacts are significant enough to flag (about 20 out of 100 SADs and CSDs) would always be free to come back to the Legislature and work out their differences through special legislation. Easier said than done.

EPS impacts on schools with declining enrollments is an issue that isn't being discussed by either Committee.

Conclusion: Directly linking a municipality's mill rate effort for education to the EPS funding model implements EPS more aggressively than would otherwise be the case. The school budget benchmark that EPS defines as reasonable and appropriate for each school system becomes more effective, more controlling. For proponents of EPS, that is a good thing. That more aggressive implementation of EPS, however, can only be politically accomplished if three ingredients are in the mix.

First, the model has to be financially supported by the state, and thus far the Legislature has not demonstrated a willingness to back up the model with a reasonable financial commitment.

Second, the several transition issues must be formally recognized and properly managed.

Third, the EPS model has to retain its integrity. To retain that integrity, the model has to be both explainable and defensible.

AG's Written Opinion Says Palesky Proposal Deeply Unconstitutional

Last week's *Bulletin* described a presentation Maine's Attorney General Steve Rowe made to the Taxation Committee outlining what his Office believes are the unconstitutional elements of Carol Palesky's initiative that would roll-back property valuations and cap the property tax rate at 10 mills.

That opinion is now available in writing. Attorney General Rowe provided the Committee his 13-page opinion on Wednesday this week. The opinion reiterates the essential point that elements of the initiative pertaining to a valuation roll-back to 1996 property values and a limitation on all valuational increases are in direct conflict with Maine's Constitution, which requires property taxes to be assessed and apportioned according to "just value", which is defined as market value.

As was the case in his initial presentation to the Committee, Attorney General Rowe's written opinion suggests the distinct possibility that the entire initiative could be ultimately struck down by the courts if it is adopted by the voters because the legal principles that guide the process of "severing" unconstitutional sections of law could lead a court to conclude that the few pieces of the initiative left standing are legally incoherent after the unconstitutional elements are removed.

Immediately after the Attorney General's presentation, the Taxation Committee voted unanimously to recommend to the full Legislature that a "solemn occasion" be declared, which is a method provided in Maine's Constitution for either the Governor or the House of Representatives or the Senate to pose questions to Maine's Supreme Court Justices regarding the constitutionality of pending legislation. The specific constitutional language regarding the "solemn occasion process" reads:

"The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." (Article VI, Section 3)

The Attorney General's written opinion is available for review on MMA's website (www.memun.org), at the "Palesky News" link. Other information regarding the Palesky proposal that can be found at that link include:

- The actual initiative
- Town-by-town financial impact analysis
- A worksheet to calculate the local impact analysis
- A review of the technical and legal flaws of the proposal in addition to the constitutional problems
- "Frequently Asked Questions"
- Background and Talking Points

Code Update

Model Building Code Advances

LD 1025, An Act *An Act To Ensure Uniform Code Compliance and Efficient Oversight of Construction in the State* was passed by the House of Representatives and the Senate and is poised to become law. The bill establishes a model building code for Maine. The model code will be based upon the codes of the International Code Council (ICC). A floor amendment to the bill was offered that would have also allowed towns to adopt the National Fire Protection Association (NFPA) building code as well. Since the point of LD 1025 is to slowly progress toward more uniformity in building standards, the offered amendment was defeated.

The bill does not preempt existing codes and does not mandate that the model be adopted. It requires that as towns voluntarily adopt building codes, they adopt the Maine model code as a starting point. Towns that do adopt the model are given the flexibility to amend it to meet local needs and concerns.

Model Energy Code Supported by Committee

The Legislature's Utility and Energy Committee recently recommended passage of a bill entitled *An Act Relating to Energy-related Building Standards, Materials, Equipment and Procedures*. This far-reaching bill establishes a model energy code in much the same way that LD 1025 (above) established a model building code. The model will likely be based upon the ICC's energy code, although the committee will await a formal recommendation from the Public Utilities Commission.

As with LD 1025, no existing municipal energy codes are preempted and towns without energy codes are not mandated to adopt the proposed model. However, towns that voluntarily adopt the code are not given the flexibility to amend it locally. This amendment authority was requested by MMA and was discussed and rejected by the Committee. This omission will undoubtedly make the local adoption and enforcement of the state model much less appealing since there will be no ability to adjust the code to suit the community's needs.

Roofing Contractor Licensing Bill

Finally, the Business Research and Economic Development Committee seems to have voted to support a limited contractor licensing bill. The bill, LD 1551, *An Act To License Home Building and Improvement Contractors*, was heard, worked twice, and finally rejected by the Committee over two months ago.

This week the Committee reconsidered, reworked and voted to support a new version of the bill. The new version of the bill is similar to the original bill in that it requires contractor licensing, including testing, fees and a complaint process for consumers. The bill is different in that it would only apply to roofers. It seems that the justification for this limited application is that roof jobs are a disproportionately high cause of complaint.

Regionalization: Committee Bill Heard

On Tuesday this week, several county, council of governments and municipal officials participated in the seven hour long public hearing on the LD 1930, *An Act to Promote Intergovernmental Cooperation, Cost Savings and Efficiencies*. The concept draft bill, authored by the *ad hoc* Committee on Regionalization and Community Cooperation, outlined ten recommendations for achieving efficiencies in the delivery of governmental services.

As proposed, LD 1930 would: 1) require each level of government to pay for the services it requires (i.e., address unfunded state mandates); 2) establish a 15 member Intergovernmental Advisory Group represented by state, regional (i.e., counties, planning commissions and councils of governments) and local (municipal, quasi-municipal and school) government officials charged with designing mechanisms to improve the efficiency and effectiveness in the delivery of services; 3) encourage the adoption of county charters and provide home rule authority to those counties that adopt a charter; 4) increase the real estate transfer tax from $2.20 to $3.00 and dedicate the additional revenue to fund programs promoting the delivery of government services on a more efficient basis; 5) create multi-municipal tax districts; 6) transfer the portion of the Highway Fund currently funding State Police patrol to towns that do not have local police and require those towns to contract with the county for sheriff patrol services; 7) encourage counties to work together on regional projects; 8) tie the award of transportation funds to municipalities that develop "coherent" regional land use policies; 9) remove statutory references to the salaries of county officials and the statutorily controlled schedules governing when county boards and commissions hold hearings; and 10) create four pilot projects to test the success of regionalization efforts.

The problem with the "concept draft" approach to legislation is that it allows the bill sponsor to float an idea to a committee and the general public without providing much of the detail. Although infrequently used, it is difficult to comment on a concept draft because the interpretation of the "concept" is left to the reader. Somewhat confined by the concept-draft nature of the bill, most of the testimony was generally supportive of the concept of working together to provide governmental services more efficiently. The increase to the real estate transfer tax and encouraging counties to adopt charters were the two most frequently opposed recommendations in the bill.

The Maine Realtors Association and several county registrars of deeds opposed the increase in the real estate transfer tax from the current $2.20 to $3.00. The opponents of the increase believe that the tax unfairly burdens a group of individuals (buyers and sellers) that are not specifically represented at the State House.

Several registrars of deeds opposed the section of the bill encouraging counties to adopt charters. The registrars are concerned that the adoption of a charter will lead to the appointment rather than election of several county officials, including the registrar of deeds. The registrars would prefer that the people of the county initiate a proposal to appoint rather than elect certain county officials, rather than having that issue become lost in the many changes proposed in a charter.

At its Thursday work session, the Committee developed and provided preliminary support for an amended version of LD 1930. The amended bill currently includes five recommendations.

First, the amended bill creates the 15-member Intergovernmental Advisory Committee (IAG), which includes representation from state, local, county, council of government and special purpose district officials. The IAG is charged with, among other tasks, the promotion of communication, cooperation and the efficient delivery of governmental services. The State Planning Office, Maine Municipal Association and the Maine County Commissioners Association, through the creation of a memorandum of agreement, would provide necessary staffing and other forms of financial assistance to the IAG.

Second, the amended bill encourages counties to adopt charters and rewards the adoption of a charter by authorizing the county to set their own budget processes, rather than utilizing the process currently in statutes.

Third, the amended bill authorizes a charter commission to be initiated by either the county commissioners or by a citizen's petition. Regardless of who initiates the process, the voters of the county retain the final vote on the adoption of the charter.

Fourth, the amended bill clarifies that the Interlocal Cooperation law authorizes counties to provide services jointly with municipalities as well as with other counties.

Fifth, the amended bill removes statutory reference to the salaries of county officials and the involvement of the legislative delegation in the county budget process.

During the Thursday work session, a member of the Committee requested that one other change be made to the bill. Responding to testimony from Greater Portland Council of Government executive director, Neal Allen, the Committee was asked to include a provision in LD 1930 providing a property tax exemption for any entity funded in part by municipal revenues. In Allen's testimony on LD 1930, he suggested that the ability of some communities to assess property taxes on councils of governments and regional planning commissions was a barrier that needed to be "addressed by the Legislature if the collective pleas to work together are to be taken seriously". When the specific language amending the law governing property tax exemptions becomes available, it can be more clearly reviewed for its impacts.

Is Bigger Necessarily Better?

Last week's *Bulletin* described LD 1921, *An Act to Encourage Voluntary Efficiency in Maine's School Systems and Related Costs Savings,* which was heard by the *ad hoc* Committee on Regionalization and Community Cooperation.

As that article describes, the primary purpose of the bill is to encourage efficiencies in the delivery of school services. The encouragement is the prospect of increases in GPA funding and state payment of a percentage of the school unit's non-state supported school construction debt over a five-year period.

In order to qualify for this increase in GPA funding, school administrative units would have to consolidate and get bigger. The two target sizes are either 2,500 + students or 1,000 to 2,500 students. (For detailed information on qualifications, efficiency programs, incentives and penalties in LD 1921, please refer to the description provided in the March 12, 2004 and March 19, 2004 editions of the *Bulletin*.)

The underlying premise is that efficiency and cost savings can be accomplished by consolidation. A reasonable question is whether the premise is valid.

A committee appointed by Governor Baldacci submitted a report to the Legislature that asserts that when it comes to schools, bigger is in fact better. The Final Report of the Governor's *Task Force on Increasing Efficiency and Equity in the Use of K-12 Education Resources* ("Report") provided a table (Table 1, page 7) that demonstrated a clear correlation between the size of the school administrative unit ("SAU") and the average per-pupil cost of those school systems in each size category. The table identified 5 size categories for SAUs: 2500+, 1000-2500, 500-1000, 125-500 and less than 125 students. It also identified the per pupil expenditures for the SAUs in those categories. According to this Report, the costs consistently increased as the size of the school system decreased.

The Report, which was published in January, did not clearly identify how "Table 1", its main finding, was assembled. A month ago, upon request, MMA was given the data used to calculate the per pupil expenditures ("Per Pupil Data"). Missing from those data were the actual school systems that were included in the "Table 1" analysis. This week, after several follow-up requests, we received a break-out of the specific school systems included in each category. MMA is now in the process of trying to replicate the "Table 1" findings. A preliminary review has raised some questions.

To begin, it is now clear that Table 1 of the Report is based upon K-12 school systems only. According to the Report there are a total of 286 school systems in Maine, but only 117 of these SAUs are K-12. The others are either K-6, K-8, 7-12, 9-12 or tuition systems. Those 169 school systems were not included in the study.

The eight smallest K-12 school systems upon which this study is based – the sample of small schools used to support the general claim that small systems are disproportionately expensive – are the schools in North Haven, Islesboro, Rangely, Lubec, Danforth, Jackman, Vinalhaven and Easton. The eight largest school systems upon which the study was based include Portland's, Auburn's, Bangor's, Lewiston's, Sanford's, and three SAD's (#6 in the Buxton/Standish area, #57 in the Alfred/Waterboro area, and #75 in the Topsham-Harpswell area).

Anyone interested in obtaining these specific data regarding the analysis that provides the foundation public policy behind Governor Baldacci's school regionalization/consolidation bill should feel free to contact MMA's Jeff Austin at 1-800-452-8786 or jaustin@memun.org. As we begin working with these data, we will prepare a more thorough analysis of the Report's methodology for the *Bulletin*.