



SCHOOL BOARDS ASSOCIATION

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Property Taxes & Funding Our Schools

Testimony of David A. Little, Esq., Director of Governmental Relations
Governor's Albany Regional Hearing on Real Property Taxation
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Empire State Plaza, Meeting Room One
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1-3:00pm

Good Afternoon.

My name is David Little. I'm the Director of Governmental Relations for the New York State School Boards Association. Our association, NYSSBA, was created by the Legislature to foster the efficiency of school districts and the improvement of public school leadership. Our charge is to help provide the most effective and efficient public educational programs possible while maintaining wise stewardship of public funds.

Before I say anything else, please know that we support the real property tax as an important revenue source for fulfilling our mission to educate the public elementary and secondary school students in New York State. We think a fair and reasonable real property tax should be in the mix for funding our public schools. But by no means should that be understood to mean that we think improvements cannot be made to the real property tax. We would support measures that reduce the reliance on property taxes by increasing fairness, stability and integrity within the system.

We do not think it is good policy to overburden the real property tax with exemptions or to excessively rely upon it as a source of revenue. Some costs just become too burdensome in many of our communities with a small tax base and taxing capacity. The deeper pockets of the state and federal government must be part of the mix.

We support measures to update the real property tax circuit breaker, to make PILOT agreements fair across all involved municipalities, to fairly compensate localities with significant tax exempt property, such as state forest lands and office complexes, and, among

24 Century Hill Drive, Suite 200
Latham, New York 12110-2125

other measures, to ban permissive property tax exemption mandates at the local level and to instead make affirmative state-funded policy in lieu of local real property tax exemptions. The model for this approach is the volunteer firefighter income tax credit effective for 2007.

Now we all know that the real concern driving this hearing on the real property tax is the growing reliance on it, particularly for funding our schools. No argument here on that. The question is what to do about it? I think the time has come to join together and collaborate in tackling the underlying cost drivers in the first instance.

Scapegoating local officials whose hands are tied is not constructive and the shifting around and the subsidization of the costs has not worked. It appears to me that rather than devoting the energy, creativity and political will to addressing the root causes of our high property taxes and finding remedies, our state has instead fixated on palliatives to paper over the problem or ways to avoid a meaningful discussion of the real cost drivers. The last section of my remarks will address what has not and will not work.

With all due respect, the problem does not lie with a real property tax per se, but rather with the burdensome expectations placed upon it and the lack of will to address the costs driving it up. We need to collaboratively explore the ways and means to reduce the pressure on this tax, because this is not something that can be accomplished unilaterally at the local level. Let's take a quick look at the pieces to this problem and some solutions in the short time I have. I refer you to my written testimony for my complete remarks and thoughts on the matter.

RESOURCES MATTER

State Resources Matter

We think that the single biggest and most important initiative taken in a generation that promises to significantly ease the real property tax burden on the citizens who support our schools is the state aid funding reform law enacted earlier this year. Indeed, if the promise to adhere to the scheduled phase-in of increased school aid called for under the law is kept through 2010-11, local property taxpayers will realize substantial tax relief. Many school districts simply didn't have the property tax capacity to raise the revenues required locally under the old system. And without the ability to generate significant cost savings in the current system most other districts will continue to need substantial assistance to fund state and federal requirements.

I can tell you that the increase in DIRECT state operating aid as part of the foundation aid reform this year DIRECTLY contributed to the ninety-five percent passage rate of our school budgets, the highest percentage by far in a number of years. It can be compared with a historical average of 82% since 1969. As you may be aware, our state has long under-funded education relative to other states. In fact, we ranked 35th nationally before this year's budget.

As a result, our local taxpayers have been forced to pay a greater share than local taxpayers in other states. The infusion of state school aid has made a real difference and will continue to do so if the contract with property taxpayers is honored.

But increased state school aid, while crucial to a "work out" of the local property tax burden issue in New York, is far from the entire story. I'm not here today just in support of a fairer level of state support, because without other measures, that would simply constitute a reverse tax shift back to the state with no net benefit to the taxpayers in New York as a whole. Many argue that our state's relatively competitive income tax rating at the national level is in large part attributable to a huge tax shift to the state's local governments over the past several decades, including our schools. That is not a solution, and it has got to stop. I think all of you recognize that and this year's historic school aid foundation aid agreement is testimony to that.

Federal Resources Matter Too!

While I'm on this point of costs being pushed down to the local level because of the absence of sufficient outside aid, let me say that our federal government is not blameless. In fact, there are two key programs where the federal government has shortchanged us and failed to live up to the promise of its laws: IDEA (Individuals with Disabilities Education Act) and Title I of NCLB (The No Child Left Behind Act). In New York, the IDEA program shortfall alone is estimated to exceed \$900 million year! Our federal government only reimburses us here in New York at less than half of the 40% promised in the authorizing legislation. With respect to the Title I shortfall in New York, another \$1.2 billion per year never makes it to our doorstep. Together these programs are shorting our property taxpayers over \$2 billion a year; more than the historic state aid increase of this past year! You can well imagine the impact on local taxes if the federal government were to honor its funding commitments. We need our state leaders to join us in our efforts to advocate for full federal funding of federally required programs and services.

Unfortunately, there are new threats knocking on the door as I speak. The most critical is the arbitrary cut-off of federal Medicaid dollars to our schools for transportation and administrative services to eligible IDEA students, proposed by the Center for Medicare and Medicaid Service (CMS) in the Department of Health and Human Services (HHS). Congress is battling with the President right now on this matter and the threatened extension of the Medicaid cut-off to other school-based medical services. Two vetoes of congressional initiatives to impose a moratorium on this CMS fiat have already sustained. The loss of these funds could be very costly to the state's high need school districts.

We need your help working with our congressional delegation to fix these problems at the federal level. These federal funds translate into lower local property tax burdens. Successfully stopping this federal action and successfully advocating for the dollars promised for our children will not only help our school districts, but help you at the state level with your competing resource demands as well.

COSTS MATTER TOO

Saving Taxpayer Dollars in the First Place

It is true that resources are very important to our educational enterprise. In fact, our state's highest state court determined that at a minimum an adequate level of resources is required to provide a sound basic education, let alone reaching a level of academic excellence statewide. But resources don't always have to be about more and more tax dollars. Being able to save tax dollars in the first place by spending wisely, honestly, and efficiently is similarly vital.

Our association's members have not just been sitting around complaining about our fate of having to wrestle with unfunded and under funded state and federal mandates and barriers to cost savings that we know could be achieved if only the state would get out of the way. We have, in fact, been proactively investigating the multiple dimensions of the cost issue for several years. We have already concluded work in four areas: pension costs, charter school costs, real property tax costs, and 3020-a tenured teacher discipline costs. The reports are included with my testimony. A fifth report on school construction costs is being prepared. We have consulted with a number of experts in preparing our reports, including for example, then State Budget Director John Cape. Upcoming task forces will focus on energy costs, health insurance costs, and a general category addressing such items as procurement, collective bargaining, curriculum mandates, and testing costs.

I hasten to add that our recommendations are not "pie in the sky" or politically unrealistic measures that you won't be able to swallow. Some ideas may challenge you initially until you take the time to understand what we're saying and why. I encourage you to take the time to understand our points and recommendations because they will indeed pay off. But frankly we realize that there are still many barriers to realizing the savings I'm about to discuss. These obstacles range from lack of technical know how and technical assistance, to the perceived going of special interests to realize meaningful savings, to the lack of available resources to invest toward savings, and yes, even to inertia and tradition. We all need to be honest here or change simply will not happen. We also need to put responsibility and accountability for the costs drivers where they lay, in order to identify the levers for effective change. We think that there are effective measures to realize the changes we need to implement and to do so in ways that are beneficial to all concerned.

First, Do No Harm

As I mentioned earlier, New York has not been as generous as 34 other states with its aid to public education and our local taxpayers have had no choice but to make up the difference for a long time. A major contribution that the state can make is to not impose any new costs on school districts. Sounds simple enough but the truth is that well-intentioned mandates are imposed all the time and they have a cost. Whether its overriding the US Supreme Court by enacting a state law to put the burden of proof on local school district

taxpayers to pay the costs of special education curriculum disputes or possibly assume the costs of pre school special education from counties, further burdens on school taxpayers will not be productive. Locally elected school officials recognize as well as state officials the need to act in the interest of children. However, they know far better how and when to incorporate programs and services into existing efforts. Universally applied state directives are the well meaning result of a desire to use the public schools to address any number of public health, child welfare and other community concerns. This dramatic expansion of the role of public education comes at a cost and all too frequently, the state passes on more than the idea. It passes on a requirement and the cost of implementation.

Remove State Barriers to Cost Savings

High employee costs are a major cost driver. But let's face it, schools are labor intensive and personnel cost money. From our perspective – 5,000 elected volunteer school board members trying to deliver a quality educational product to the state's public school children in our charge – resources do matter; a lot. In fact, our most important resource is our teachers. As school board members, we are stewards of public resources and care deeply about spending those resources wisely. We know however, that the bottom line is that the service and product we deliver has an intrinsic cost that (while it may vary by region) is highly correlated to our vitally important workforce. That is why we have already examined and made cost saving recommendations with respect to the tenured teacher discipline process and the pension system. And I should note that we did so while keeping our eye on the ball to improve public education, as well as service to our employees, in the process.

One pension recommendation, for example, would permit the additional option to offer a defined contribution plan for teachers; patterned after the highly regarded, successful and worldwide TIAA-CREF plan that is offered to our higher education personnel. This would save school districts money, true, but just as importantly, such an option would serve as a recruitment tool. At present the system fails to serve employees at every stage of their career. New employees that leave service within 10 years (up to one third of all teachers) leave with nothing more than their own contributions and no ability to transfer. Mid-career transfers of professionals entering teaching as a second profession have no financial incentive whatever to enter the existing retirement system and cannot transfer credit or funds. The estate of those who die prior to retirement receives a small fraction of the funds the state has set aside to pay for retirement benefits of that employee. For example, a defined contribution plan would facilitate recruitment of mid-career changers in the sciences and math who currently have little financial incentive to become teachers in New York State public schools where there is a shortage of such teachers. It would allow new teachers to teach for a number of years, then if and when they decide to change careers, would provide an equitable retirement allotment to place into a future account. Families of deceased retirement system members would be fairly compensated for the loss of benefits. This is a clear win-win solution. Who could possibly oppose providing such choice for bona fide reasons, particularly when it can be provided at a lower cost than the current system allows and when the current system does not need revenue

from new members to pay for benefits of existing members? Nonetheless, the state has imposed a barrier to such progressive change.

Another recommendation asks why taxpayers should bear the cost of a special disciplinary hearing legally required for a tenured teacher already convicted of a felony? Is it necessary to conduct such hearings (sometimes in a state prison) at taxpayer expense? Where is the sense in this? This is due process run amok and costly at that. There are other personnel related cost drivers that we will be exploring in more depth in a subsequent task force, but many are well known. Competition among school districts for high quality personnel and the Triborough Amendment (with its strong incentive to refrain from ever negotiating a percentage that reflects existing economic realities) lead to inflated salaries.

The state blocks progressive procurement practices. Another state imposed barrier restricts our ability to "piggyback" on other procurement contracts, even with the federal government, to get the best prices for our taxpayers. So even though we know how to save taxpayer money and could do so with all appropriate management controls (including bidding and public policy requirements like promoting women and minority owned businesses), our state prohibits this. New York State is the only state in the union that prohibits its local governments from obtaining such savings and precludes its business from participating in this national marketplace. The State Comptroller's office is reviewing this issue right now and we appreciate that.

The state imposes barriers to cooperative health insurance purchasing. School districts are also restricted from piggybacking on another municipality's single payer, self-insured health plan. This would save our taxpayers money by driving down health care costs while still providing our employees with the same or even better benefits! Albany County, for example, consolidated all of its health plans into one by taking the best features in each plan to offer a much better plan to every employee and saved \$2 million a year in the process! Why couldn't school districts join this plan? Such health insurance cooperatives for our municipal employees, as Suffolk County Executive Levy has proposed, would save millions of taxpayer dollars and provide excellent benefits. Again, a mutually beneficial approach to high property taxes. We are unaware of any legitimate public policy interest that would preclude the removal of such impediments to efficiency.

School construction requirements are a major cost driver. You know the issues here. Topping the list is the Wicks Law which drives up costs anywhere from 15-30%. The latter figure was provided by the Division of the Budget. The Wicks cost premium is shared by the state too and amounts to hundreds of millions a year. I submit that these monies could be better applied to improving education and saving taxpayer money in the process, but if you want to permit the continued subsidizing of subcontractors' profit margins then you are not serious about saving property taxpayers money. We have already carefully drafted legislation to protect subcontractors and their union employees and to offer Project Labor Agreements (PLAs) while saving taxpayer money in the process. The proposed reform on the table, we are sorry to say however, is not very helpful and would even do more harm than good.

Furthermore, it is blatantly unfair to upstate school districts, cities, counties and towns. Why should a tiny village on Long Island get a higher exemption threshold than any upstate city or school district?

The Power Authority has abrogated its legal responsibility to make school districts their customers. This action, required by a 2004 law, would enable us to avoid millions in energy fees, a benefit currently only enjoyed by NYC schools and southern Westchester county school districts (who also benefit from cheap power not available to other school districts in the state.) We are not even asking for power. We are asking to have state law honored to make us NYPA customers so that we can avoid stranded cost assessments (which will soon expire anyway) and both the Systems Benefit Charge and Renewable Energy Portfolio charges that would be unnecessary were we NYPA customers. Talk about a way to save school property taxpayers some serious money; and just by honoring a law already on the books.

Allow the State Education department to streamline reporting requirements. SED now prepares the equivalent of a state report for every day of the school year. Modernizing SED's information technology capabilities could help the department, but the Legislature still needs to authorize eliminating outdated reports. Sadly, many of these individual reporting requirements are tied to members of the legislature. These members are loath to see their pet requirements discarded. Fortunately, all of these requirements are easily absorbed into a few, more comprehensive reports that are then sorted electronically into various categories. The result is two dozen, rather than twelve dozen state reports per year. The savings in personnel time and the ability of administrators to focus on other tasks would be enormous.

Facilitate State Technical Assistance

The state does not provide adequate technical assistance to school districts. SED still lacks resources to provide needed technical assistance to help districts (as it once did with its specialized management expertise.) SED need not and should not be all about regulation; it needs to be part of the solution. While last year's increase in SED funding was a milestone, the focus on accountability does little to provide local help in a demanding time for public education.

High energy costs, coupled with feeble state help are not a recipe for lower property taxes. We are in the business of educating, not being energy experts. State technical assistance is needed and appreciated, yet after rallying our members to get energy audits we come to find that there are insufficient energy auditors available to even start the process of saving schools money on energy costs. Furthermore, until recently and following active requests by our association, the various energy agencies in the state were still not providing one-stop shopping assistance to our schools. NYSERDA was charging for school energy audits but the NYPA was not. Interestingly, NYPA was billing back half of its cost to NYSERDA and subsidizing the rest because of a state law passed in 2004 requiring them to help schools. This situation is markedly improving from our collaboration, but energy costs are still climbing through the roof. Diesel fuel spiking for our buses is the latest energy cost

problem. So, since we may not be able to fix all cost drivers, it is all the more important to address the ones we can actually do something about.

SOLUTIONS THAT DON'T CURE

Unfortunately, to date, the underlying costs drivers have not been earnestly tackled. Top down measures like tax caps and forced mergers, state taxpayer subsidies like STAR and the two STAR rebate programs, and scapegoating locally elected volunteer school board members whose hands are tied, do not and have not contributed to an effective and long-lasting resolution of the cost issues. Let's review these solutions that do not address the root causes.

STAR and STAR Rebates

This is probably a good point to once again restate our association's long-standing opposition to the STAR program. While we object on a number of grounds, we nonetheless recognize the STAR program's clear political popularity. At the same time we appreciate that the program genuinely helps some of our taxpayers and that the state at least keeps our school districts financially whole. We take exception to assertions that STAR "motivates" (the Citizens Budget Commission's term) school districts to just spend more. We can't de-bunk this myth because in the real world such a cause and effect relationship is conveniently not testable. Correlations of circumstances are not the same as causal factors. But I can tell you that in the real world our costs are going up and not because school board members are insensitive, unaccountable spendthrifts.

Over the past ten years costs have gone up to meet the spiraling press of demands on schools, just as they have with Medicaid. In fact, I would be willing to bet that Medicaid has grown far more over the past decade than school taxes, even with the STAR subsidy. The point here is that the Basic STAR program and the two STAR rebate programs fail to deal with the real issue; the cost drivers. Rather than forthrightly addressing the root causes of the cost increases, energy and resources are instead being devoted to appeasing taxpayers through these programs. We are thankful that the programs help us pass our budgets, although cause and effect is tenuous here. The message is that you'll never get a handle on the tax issue if you don't address the root causes. Similarly, tax circuit breakers, allocated equitably would provide a more efficient, timely and direct means of assistance.

Consolidation

Consolidation is viewed as a panacea by some, but the research simply doesn't bear that out. While we have an open mind to consolidation, let me state that there probably would not be any meaningful taxpayer savings at either the state or local level. We are not opposed to consolidation. In fact, the number of school districts in the state has decreased from 10,000 at mid 20th century to 700 today. Consolidation is still a viable option. Recently the Maplewood and North Colonie School Districts voted to merge. So consolidation clearly

remains in play for certain situations, and we support the option, despite the fact that even with state aid, few districts have consolidated within the past decade.

But past school mergers were not about saving money as much as necessity. Districts alone were too resource poor or too small. They lacked the critical mass necessary to efficiently meet the post war level and variety of educational services demanded. And these mergers and consolidations were accomplished where geography made them feasible. Sparsity remains a factor today primarily because of geographic barriers to consolidation, and parents understandably don't want their children on the bus all day.

I can tell you that the objective academic research on the cost savings potential of consolidations is that savings are not the likely end result. In fact, costs in the public sector usually rise to the highest denominator, as they would (for instance) to equalize labor contracts and health benefits. And while a superintendent position may be saved, or a principal, as the span of control of larger districts increase, the need for administrative staff to manage it usually rises with it. Research to the extent actual case studies have been made, suggests offsetting savings and costs with no net benefit on the cost saving dimension. We refer you to our schools of public administration to verify this. But that is not to say that a merger may nevertheless be judged worthwhile or necessary because of the improvements associated with the change.

At the recent CBC forum on local property taxes, Nassau County Executive Thomas Suozzi argued that school district consolidation is not the way to go. Rather, he said that working collaboratively with the school districts in Nassau County to find ways to share services and centralize benefits, just as County Executive Levy is doing in neighboring Suffolk, is the most fruitful approach. Both leaders are running into state barriers to realizing common sense savings, a fact we seriously and immediately need to address in this state.

A State Property Tax Cap

The imposition of an artificial cap on local property taxes is bad policy on a number of levels. It strikes me as coming from the same school of poor management that when faced with the need to make cuts in order to achieve the responsible goal of a balanced budget, throws up its hands and resorts to arbitrarily imposing an across the board 5% cut on all agencies in the interest of fairness. No matter that the real reason this course is taken is because management can't figure out how to make needed cuts scientifically or rationally. No matter that some agencies are already well-managed and have no slack while others are fat.

Proponents of a cap suggest curiously that perhaps a cap will force needed tough choices at both the local and state level in the name of more efficient operations. In other words, manufacture a crisis to get action not apparently obtainable otherwise. What a sad commentary on confidence in our elected officials and their ability to do the right things for all the people in the state.

In the case of a schools cap, even with some formula for annual increases, the very school districts with constitutionally inadequate resource levels would be most affected. Ironically that would perhaps force the state to pay them even more aid. And it would be unfair to all districts, including adequately funded ones, in the face of growing unfunded and under funded mandates from the state and federal government; just as they face greater and greater expectations for successful educational outcomes.

And a cap would be undemocratic. Our school districts are already the most transparent and accountable level of government in existence. We conduct annual budget votes and our board members run for election at the same time and on the same ballot with the budget. We have property tax report cards mailed to all residents. How many other levels of government do that? Just because the costs are pushed down to the level of government that cannot defend itself, that can't address the costs imposed on them (say, state mandated pension contributions), or the level at which the tax capacity is just plain inadequate, does not mean that the cause of the need for property tax increases lies there. Sure, a property tax cap may work by precipitating a crisis that will finally force state (and federal) leaders to face up to their own responsibilities to fund their mandates, lighten their mandates, and remove barriers to cost savings that school leaders have urged for years. But why do we have to make policy that knowingly forces school districts to cut programs and services at a time when more is being demanded, when the better course (I respectfully submit) is to take a hard look at the cost drivers and have the political fortitude to fix the root causes?

I trust this gives you a fair representation of the views of locally elected school officials throughout the state on the real property taxation issue. We ask that you join us and help us to truly address the cost drivers of high local property taxes.

Thank you for your kind assistance in this critically important endeavor.

David A. Little, Esq.
Director of Governmental Relations
New York State School Boards Association

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