

**New Hampshire School Boards Association
Legislative Bulletin
March 9, 2007**



Yes Virginia, there is more to this session than educational adequacy!

While the House Education Committee continues to review and deliberate on educational adequacy, there are many other issues of importance to school boards.

Bills of Concern to Local Boards and Why Opposed by NHSBA

Collective Bargaining:

SB 88, relative to public employee terms of employment, bargaining units, and dispute resolution. This bill changes several aspects of the current collective bargaining law, RSA 273-A. It adds, "matters directly related to safety considerations" as items to be bargained under the terms and conditions of employment, and removes "number of personnel" from managerial policy, making it subject to bargaining. The bill also reduces the minimum number of employees for a bargaining unit from 10 to 3, and requires the continuation of any pay plan in an agreement if a new agreement is not reached when the contract expires (statutory evergreen clause). This amended version of **SB 88** was recommended Ought to Pass as Amended (OTP/A) by the Senate Commerce & Labor Committee on a 4-1 vote: it is scheduled for consideration by the full Senate on March 15.

ACTION ITEM: Please contact your local senator and urge defeat of this bill, which tips the balance of negotiations and unilaterally implements pay raises without local voter approval. Remind your senator that HB 89, which already passed the House, creates a study committee on dispute resolution between local political subdivisions and public employees, specifically including the issue of evergreen clauses.

Special Education:

Several bills relating to special education were considered by the House Education Committee.

HB 677, relative to special education procedural safeguards and the dispute resolution process. This bill puts in statute the right for parents to collect expert witness fees. In June 2006, the US Supreme Court ruled that IDEA does not allow a parent to recover such fees. **HB 677** would negate the Supreme Court interpretation and place an unfunded mandate on school districts.

HB 678, revising the special education program approval and monitoring process. This bill has very punitive monitoring and corrective action procedures, requires districts to pay for corrective actions, to board children as close as possible to the institution when placed out-of-district, pay for implant, replacement and maintenance of medical devices, and use district staff to provide services to county prison inmates, all of which are

additional costs on districts.

HB 679, revising the procedures for delivery of special education services by school districts and other agencies. This bill would replace the term "educationally related services" in RSA 186-C with the term "related services". IDEA uses the term "related services", but defines it; using the term "educationally related services" in NH law currently clarifies that a child does not qualify for such services unless they are educationally necessary. The bill also exceeds federal law by requiring that each child's IEP include short-term objectives and benchmarks; this requirement was removed by the IDEA amendments of 2004.

HB 766, making changes in the statutes relating to special education. This bill also makes changes to the term "related services" as well as amending sections relating to the juvenile justice statutes. The change is ambiguous in how it uses the term "disability" and also allows juvenile courts to overrule state hearing officer decisions.

While these bills contain many good technical corrections and language to bring state law into compliance with the new IDEA standards, they also contain provisions with significant impact on school districts. Mapping for cochlear implants would become a district responsibility; IDEA currently excludes these costs. The 2004 reauthorization of IDEA also relaxed requirements regarding benchmarks for alternative assessments; these proposals seek to make them a required part of the IEP. Children in county correction facilities currently receive services at no cost to the local district; these proposals would require local districts to provide services. The bottom line is that the proposals seek to expand state requirements beyond those established in federal law, raising unfunded 28-A questions. These bills are all scheduled for review by a House Education sub-committee next Monday and Tuesday: the full Education Committee is scheduled to consider the bills on March 20. Members on the sub-committee are Representatives Nancy Stiles (R, Hampton, Chair), Kim Casey (D, E. Kingston), Claire Clark (D, Boscawen), Sharon Carson (R, Londonderry) and Judith Day (D, N. Hampton).

ACTION ITEM: Comments and concerns relative to these additional costs should be directed to these and other members of the House Education Committee, available at

<http://gencourt.state.nh.us/ns/billstatus/commdetails.asp?txtcommcode=H05>.

Legal Issues:

HB 143, relative to the apportionment of damages in civil actions. This bill requires damages in a lawsuit to be allocated among those defendants who remain in the case at the time of the verdict. This creates an undue pressure for settlements when a defendant, who may be minimally liable, could inherit the full financial responsibility for an award if the remaining defendants settle prior to a verdict. It is possible that a defendant with a majority of the responsibility, e.g. 90% at fault, could settle prior to a verdict; the remaining defendant, with only 10% fault, would then be liable for the entire award, less any money paid the plaintiff by the settlement, despite being minimally responsible for the injury. The bill passed the House on a 202-150 roll call vote and now goes to the Senate.

ACTION ITEM: Please contact your senator and explain the potential increased exposure for school districts.

HB 882, removing statutory provisions limiting the tort liability of governmental units in bodily injury actions. This bill would eliminate the cap on tort damages and potentially eliminate all local government immunity for tort damages. If the current damage cap under RSA 507-B:4 is eliminated, municipalities and school districts will have unlimited exposure to damages in personal injury actions. Governmental units would have to pay significantly higher costs to secure higher coverage. Since multi-million-dollar verdicts are now common, coverage would have to be in the millions of dollars to provide any level of security. Increased premium costs, as well as damages awarded beyond coverage, would ultimately be borne by property tax payers. During testimony, the sponsor indicated he did not intend to also remove discretionary function immunity.

However, as currently drafted, it is eliminated, and school districts would be subject to suit (and unlimited damages) for policy decisions, such as where to establish school bus stops and what kind of school security to use. **HB 882** was presented to the House Judiciary Committee on Thursday; the committee has yet to make a recommendation for consideration by the full House.

ACTION ITEM: Concerns and comments may be directed to Members of the Judiciary Committee at

<http://gencourt.state.nh.us/ns/billstatus/commdetails.asp?txtcommcode=H10> .

A Quick Update on Some Other Items of Interest

Adequate Education:

A few more bills on defining an adequate education were added to the list this week, including **HB 927**. This is the Governor's bill, sponsored by Representatives Emma Rous and Nancy Stiles, and Senators Joe Foster and Bob O'Dell. The bill sets forth criteria and specific educational programs to define an adequate education. The sub-committee reviewing all adequate education proposals has meetings scheduled for Monday, March 12 at 10 am, and Wednesday, March 14 at 2:30 pm.

The Joint Legislative Task Force on Defining "Adequacy" in Education will hold a final forum to gather public input on Monday, March 12, at the Claremont Maple Avenue Elementary School.

NH Public Television videotapes each forum and makes them available on its website via streaming video (<http://www.nhptv.org/outlook/edforums.asp>). Written public comment can also be submitted through the taskforce's e-mail address: adequacy@leg.state.nh.us.

State Funding:

Yesterday, the Governor changed his interim funding plan for education adequacy. In his February budget address, Governor Lynch proposed that communities be held harmless at the current (fy 2007) funding level, plus a 5% increase in their grant. Last November, districts were notified of funding levels reflecting current law, the 'Gatsas formula', adopted in 2005. That formula distributed \$472.8 million in education grants in fiscal years 2006 and 2007. For fiscal years 2008 and 2009, education grants were scheduled to increase by \$54 million annually to \$527.4 million. The Governor's initial proposal of a 5% increase would have increased state grants by approximately \$24 million for a total state commitment of \$497 million. The Governor's announcement yesterday would acknowledge the increase of \$54 million each year, but distribute the

money differently. The intent is two-fold: 1) those communities that were noticed of reductions in aid would be held harmless at current year funding, plus 5%, and 2) those communities that were noticed of increases in state aid would receive an amount closer to what they were originally noticed. The actual amount will be somewhat less since some of the money will be needed to hold harmless those districts that were scheduled for decreases in their state grants. Stay tuned – there's a long way to go and much can change between now and June!

Meanwhile, the Department of Education presented a revised budget to the Finance Committee. The overall budget request represents a 2.2% increase. Commissioner Tracey made an additional request for three (3) new positions, support for the Follow the Child Initiative, and restoring social studies assessments. The Department has included full funding estimates for state building and catastrophic aids, as well as increases in dropout prevention, tuition and transportation, local education improvement grants, and reading recovery. The estimated full funding of catastrophic aid is not expected to increase as much as previously anticipated, with the Department reducing the fy 2009 amount from \$38.3 million down to \$35 million. During the budget presentation, there was no discussion of the funding amount for adequate education grants: the Department's budget currently assumes the Governor's earlier funding level of 5% increases for all communities. Division II of Finance has scheduled a work session on the education budget for next Wednesday, March 14 at 11:00 am.

For the complete text of any bill, go to <http://www.gencourt.state.nh.us/ns/billstatus/quickbill.html> and enter the bill number, e.g. HB678, or SB88 (no spaces!), and make sure the Session Year is 2007.

Please note the ACTION ITEMS above and contact your local representatives, senators and/or committee members with your concerns regarding legislative proposals.

*Make sure your local representatives know where their school board stands on important legislative proposals. Keep your legislators informed and aware. **Remember that you, through NHSBA, are the only locally elected officials that "speak" exclusively for public education in NH.** Need some help?*

Learn how you can be involved in NHSBA'S Legislative Advocacy Network and make your board's voice heard. **Call NHSBA (800-272-0653) or (603-228-2061) today** and be part of the team. For more information or details, or for information on specific legislation, please call Dean Michener at 603-228-2061.

-- Dean Michener, Associate Director
N.H. School Boards Association
(603)228-2061 - deanm@nhsba.org