Fiscal Policy Work Group - Commission to Study School Funding

Notes 8/3/20 10AM

Attendees: Dave Luneau, Chris Dwyer, Rick Ladd, Mel Myler, John Beardmore, Mary Heath, Bill Ardinger, Jay Kahn. Also in attendance: Jordan Hensley, Bruce Mallory, Carrie Portrie. 11 public attendees.

Just after 10am Dave Luneau called the meeting to order.

The discussion began with a conversation of Sirell v New Hampshire from 2001, and the idea that the state's process to levy, raise, and allocate property tax burdens in towns is now much more consistent than it was 20 years ago. John mentioned that this is not an area where the fiscal policy group will need to spend much more time. Rick asked whether it was intentional discrimination to have towns raise more than they need for education via the property tax. Dick noted that in Sirell they were looking at a property tax that recaptured the excess captured from so called "donor" towns. The NH Supreme Court ruled that this system does not discriminate against those towns because once dollars arrive at the state, there is broad discretion for the state to use funds as it sees fit. Today the consideration is reverse, where some towns raise more money from the education property tax than needed, but after it is retained locally it not affirmatively addressed what must happen with that money, despite that money being classified as state dollars. Dick notes that this is something we should understand as we launch into a discussion of how SWEPT might be an added resource as we try to fund an adequacy cost. Dave asked what might be the basis of a legal challenge to excess SWEPT, and Dick noted that it would be unreasonable to rebate to property tax owners with that money, because taxpayers in wealthier towns would then be paying at an effectively lower rate than others. John noted that in relation to Sirell the DRA does a good job. The donor town issue needs to be addressed, whether legal or not, does not think it's appropriate tax policy. John noted that this could be addressed in various ways, including (as Dick noted) flow of monies, a status quo system where money is raised and retained locally except where excess dollars are raised, delink education and the property tax and credit meals and rooms aid, for example (though some localities would need to remit money). Not suggesting net effect would be zero on those towns but could approach it that way. Alternately, you could send all the state property tax back to the state, but would need to have a robust discussion with town finance directors about how that would work – there would be cash flow implications for the local and state levels. Or the state could administer the property tax itself, but that would be a large administrative challenge. Mary – seems like the structure is already set in place, with towns raising different amounts through various rates. Couldn't we just adjust the local property tax to send money to the state, isn't the structure already in place? Dave – you raise a good point and John mentioned too; if we are going to understand the moving parts of the state property tax we have to discuss with local fiscal managers. John – two issues: do we want all the statewide property tax collected locally remitted to the state for redistribution? If so, have to engage state office and local CFO types. If we are OK with the current structure generally where the state has a liability to school districts for adequacy, that liability we fulfill first with SWEPT and then send a grant if property tax doesn't fill that bucket, then we don't need to discuss as much. Current formula says that if you have very high property values per pupil you get extra state aid. If you change that, it's a state aid cut, and those communities would see a net loss of revenue, but they may see extra aid in a changed adequacy formula. Dave – given that this commission has adopted an all issues on the table approach, if we were to consider what some have suggested being a way of working with the statewide property tax remitted to the state, we may want to schedule the state treasurer, someone from the municipal association, etc. Rick – prior to making the change where the state allows SWEPT funds to stay with municipalities and communities were passing money to the state, were there cashflow problems then? John can't speak for those towns, but that system did exist for a number of years. Gave a hypothetical example and noted that giving excess revenues back does not create the same cashflow issues as remitting totally. More a policy/political issue than a technical administrative one. Dave – do members think that having someone meet with FP to review cash flow impact would be good? Dick – yes, but broader range of situations should be part of that agenda (if adequacy costs more, what would funding that through a higher state property tax look like). A higher adequacy cost would ramp up the excess fund issue. To the extent to which there is added reliance on a property tax done locally, the state should start paying for that work as it pays restaurants to collect Meals & Rooms tax. Dave – since education funding is so reliant on property taxes it makes sense for commission to consider property tax models. Would have to understand cash flow impacts with state and local obligations. Monica Mezzapelle may be someone to speak with.

Mel – until 2011 state collected statewide property tax. Why did that change? John – only change in 2011 was "excess" property tax. Otherwise collected and administered locally. Bill – Dick's legal analysis was very on. Right after Claremont II, Shaheen administration came up with A/B/C plan – trying to not turn topsy the whole education system. What the court determined first is that an automatic rebate to taxpayers was not constitutional. Court also did not allow a phase in, since that is a direct rate adjustment. If the government takes money and then "washes" it through appropriation process can the state take that money and use for public uses. If used for abatement, for instance, that would not work (a device). Court said that once you take money into a state account and pay for a valid purpose (ex: targeting aid) that is allowable. Interestingly, the state property tax has not had the same policy examination for exemptions and deductions that other state taxes have had (like meals and rooms). Those exemptions are tested under the NH constitution. For example, first and second homes – can those be different tax rates? There has never been a case. What Dick laid out was how the state property tax can be used, perhaps through exemptions in areas the legislature determines (circuit breakers). Can there be a phase in? Ultimately the donor town issue is red herring, in my opinion. New York claims to be a "donor state" to the federal government. Every tax can be examined that way. Meals and Rooms tax could be claimed that way. The commission would be doing a good service if it examined the donor town complaint more carefully and noted that it is a complaint about change. Not criticizing property tax as a mechanism for paying for schools – it involves the public in their school systems and the high quality of NH schools overall could be due to the vesting of the public in their local schools. Would hate to lose that. But property tax has openings for many ways to address holes. Dave – have talked in previous meetings about other mechanisms. How would a phase in work? And would that imply a phase out of burdens that towns like Claremont face? Bill – assuming that if we could all find the “perfect” funding system for NH it would have significant changes in the progressivity of aid. Any change that significant to a system like public schools that is deeply capital asset focused, it is important not to shock the system. In MA their commission came up with a substantial change but it took legislature 4 years to come to legislation and then there was a phase in process. Even though there might be a continued burden in towns like Claremont, there has to be a balance that we do not undermine quality anywhere. Dave – could you provide immediate relief for some towns (ex: Claremont) but other towns (ex: Hanover) move into the new system more slowly. Not trying to shift shock but rather relieve shocks and educational suffering while transitioning into a sustainable funding model that is more balanced and fair across the state. Bill – can we do it? Yes. But rule of physics applies. Start up costs to prefund it, have to get from somewhere. Dick – One piece of this, raised before, is moving to a state property tax where state collects. Close examination of this should be done – DRA can tell us what it would involve. Tax on individual property owners more than town. Dave asked Bruce and Jordan to contact Bruce and James at DRA again and get some more information – are other states doing this, how does it work with mortgage escrows, etc.

Bill – the utility property tax paying one rate, others paying a different rate (probably OK because they are a different type of property) is done through the state, is that accurate? John – yes, state does administer that ($6.60/thousand). DRA could tell you how many payers there are. When John worked there, there were two people whose primary job was utility assessments. Information public on the DRA website. Pay 4 times a year to DRA, appeal assessments to DRA. Expanding to all property would be expensive, duplicative, and confusing. Differences between state and local assessments would be a huge issue under that scenario. Bill – I think of your situation in Hopkinton, with great schools but taxpayers suffering. Can you imagine a property tax with exemptions for low and middle income homeowners. Think that fashioning decent exemptions that takes the immediate pressure off folks so important. Dave – it is very important, can see it being important across the state. Could imagine a piece of property on Lake Winnipesaukee having a certain value and home several miles off the lake having another, one that can’t take the tax shock if rates were to go up. DRA can give some examples of how we might want to change a program like the low and moderate income property program. Bill – seems that the history of exemptions would allow for that. Dick – I agree, and also agree with the promotion of a more substantial program for low and moderate income homeowners. Challenge is that NH has lousy income data. DRA does have income data.

The conversation then shifted to questions of what taxes (and combinations thereof) we would like to model and focus on. This discussion is not an endorsement of any particular taxes – but wanting to determine where our focus should be.

Dick – we have talked about a state property tax, clearly needs to be modeled. The predicate for this is new adequacy cost levels and need to work off a range until we zero in. The current cost of adequacy in the state is impossibly low – talking about filling the gap that develops when increasing adequacy. Capital gains tax – would add some amount of money, can look at other sources. The marijuana tax idea has many different numbers attached to it. Some smaller pieces that we shouldn't lose sight of, but statewide property tax, income tax, sales tax. Money generators. May generate other things. If you have an income tax you have to look at what comes off the table (for example interest and dividends, some parts of business tax). There is another idea, from MA – have a revised formula with base and weights determining adequacy per pupil, and per pupil costs varies by characteristics. They come to ~$12,700 average cost per pupil. MA has a concept of the local share and state share of adequacy. They have targets. The targets for the state share is 41%. With that number applied against statewide cost of adequacy, with the rest by localities, divided by an effort index including both property values and income. Ranges from very little to very much depending on property wealth. Unlike in NH, they have a cap on what the wealthy towns will have to contribute. In effect capturing local effort into the formula in a progressive fashion. The rest is state aid. A system to examine.

Dave – would like to get general consensus. Hearing that we should look at revenue sources, some of which state is using now and some state is not, but not hearing lots of interest in digging in to smaller and/or political charged items like casinos and marijuana. Chris – given the scope and scale of education funding complicating in that way doesn't make a lot of sense. Property, income, capital gains, sales tax could be interesting but problematic due to volatility. Have been trying to get legislature to agree to a local option for levying a hotel tax that would help communities pay on behalf of the state like fire. If we were to do something with sales it would be giving communities more local options for supplementing what they currently pay, not a new state tax. Mary – in Manchester have also been trying to get that as well. Dave – focused sales taxes, should we explore and model further? Chris – doesn't help with the base/statewide issue, but helps with the local relief when you have raised the other. An ancillary thing. We keep identifying these ancillary things to make a sensible system work. Schools are now required to report per pupil cost per school – have been looking at whether schools are spending more on schools with higher proportions on high need students? In some communities yes, in others no. If you don't even have districts allocating dollars to high need that is something that has to be in place to make the whole system work. Dave – may want to bring that up in the adequacy work group. Mary – rationale is that federal dollars fill in the gaps, but they do not. Chris – would encourage people to look at databases for schools they know. If you look at schools that have comparable poverty levels in towns, spending and achievement is so different. Because we are looking across the state it's helpful to ground ourselves to the data and thinking about ancillary things that we need to do. Dave – brings back some of our conversations about vertical and horizontal equity. State policy can effect how districts work internally. Chris – if it doesn't, this is all for naught – not getting money to kids who most need it. Dave – whole project our commission is on is a package deal, not just one piece. Fiscal policies make up so many things. All these things work together to hopefully put together a product at the end of the day that might not be perfect but moves the ball forward in a big way and is much more fair. Bill – perhaps the most complex system we have is schools, but important for commission to do what it is doing – focus on the spending/aid side to achieve outcomes. Some people say schools is a tax reform issue, but that is a separate part of it. Have to work on both separately and bring together. Sometimes the bundling if it happens too quickly it becomes a train wreck of what is the most important issue. Tax policy is a good issue, but going to focus on appropriations first. Important to unbundle issues for analysis and then put together. Mary – talking about opportunities for success – kids in Claremont have less of a chance to go to college, and there are so many factors for achievement. In a state like ours it is embarrassing that achievement levels among places are so different, even in towns next door to each other. Bill – AIR is about to generate the first data on outcomes this state has had. This is not to say that other issues are not important, but what is the TOP priority. Dave – Bill and Dick have talked about this issue of horizontal resource replication. Differential aid miniscule compared to the base amount, which is already low. Bill – even with differential aid. Turns out that wealthier communities are particularly good at recruiting eligible families to get help with those programs. Hopefully in the adequacy work group AIR can get into how we target aid to resolve those deficiencies in outcomes. Dave – hearing the challenge of being able to identify vulnerable students and not just relying on FRL to do that. Dick – in Massachusetts they have for other reasons moved off FRL eligibility, and do not have access to that data. Are now looking at a number of indicators of poverty. Dave – hearing state property tax, capital gains, income tax (and other effects), sales tax (potentially community-based), financing mechanism similar to MA Chapter 70 with caps and minimum local contributions. Not hearing much support for things like marijuana and casino taxes. Not an endorsement of any of these. John – not supportive of this course of action. Any tax examination should come after adequacy. Know that we are trying to run parallel courses, but this is also political. Not useful to survey broadest possible land of income sources without first looking at changes in adequacy formula. Conversation about property tax is more useful but until it is clear to me that the commission can agree on a formula that spends more and gives less to certain towns, modeling these other taxes isn't necessary. If it were me I would do marijuana first, then gaming, and income tax on the bottom of the list. But not worth spending time on. Rick – I've heard speak of a community sales tax, would not go down that road at all, businesses moved to different city lines. A strong support for gaming. An income tax and a sales tax going nowhere politically, would be wasting our time and destroying the NH advantage going down those roads. I think we have a distribution problem, as Bill has mentioned – need to distribute what we do have and look at statewide education property tax and diving in there but not supportive of income or sales tax. Dave – not asking people to be supportive, just eyes wide open. Don't want to see our commission challenged after making a recommendation and say did you even look at other taxes? I agree with everything you said, Rick, about political challenges. Rick – need better definition and understanding of adequacy. Want to find out first what the adequacy we are talking about. Feels like we're putting the cart before the horse with this. With limited time looking at income or sales tax not a good use of time. Dave – we know that education costs $3.2 billion, raised from various revenue sources, with about $2 billion from local property tax payers (non-inclusive of SWEPT). While we don't know what the cost of public education is statewide we know what we are spending now and how we are raising it right now, and have lots of discussion about inequity of how we are raising the money and how we distributing dollars. We are in August and getting close to a time where we need to begin writing reports on what we want to release by Dec. 1. Hopefully these reports are not just useful to whoever is in control of house and senate but useful to everyone, including governor's office and legislators of any party. Want our report to be an evidence-based, useful tool for various policies. Not asking for anyone around this table to take a position in support of any particular revenue sources. I agree, we are already raising money through the property tax and have to look at that heavily. Unless everyone else is saying Dave, you're nuts, I think there's some responsibility to take a look at this. Bruce – note that we agree to keep an open mind, and need to have a reason why we did not go down certain paths and it can't be just for political reasons. Need to have a rationale and say that we explored the pathways and here are why we did not recommend them. Has to do with transparency and integrity of the process. Chris – there is a timing question though, which John raised. We are going to see that financial modeling a second step process. We will see costs and weights prior to modeling. The very last thing is financial modeling – is that correct? Dave – that is correct. What we are ready to do now is not the modeling but the framework for modeling. Start with the DOE 25 spreadsheets and extend that to additional sheets that rely on that data. Can calculate what towns are spending, and then looking at different adequacy recommendations, can see how that spills out across cities and towns and the impact that has on state and local tax burdens. Framing this up once we are ready to model might be a little tight – would like to start building the spreadsheet now so that we can do some "what ifs" once we have further thoughts from AIR and adequacy. Bruce – this afternoon's adequacy work group meeting will be one more step toward framing adequacy. Current formula does not create adequate spending. Have other benchmarks from previous work, ConVal, and soon from AIR. The policy question will begin to move toward "what goes into base adequacy" and where the weights go. It's a sequential issue. Policy question also about the distribution framework – is it dynamic by where students are enrolled. Regarding not defining adequacy – we are taking the current functional definitions of what defines adequacy and not necessarily coming up with a new definition of adequacy but rather the cost elements. Dick – I agree with Dave that we need to forge ahead and try to inform ourselves on different options that are out there to fund a presumably higher education level, perhaps not. It takes time to figure this stuff out. Our choice some time ago to go down parallel tracks was a right choice, but implied in that is that the fiscal group would go down various options and scenarios. Dave – may find new reasons not to like certain things. Chris – have looked at individual financial report cards of various communities. The real variation I have seen is in teacher salary. Have never understood why states do statewide salary scales, but it does take out a big variation number and standardizes it. Differences surprisingly large and not necessarily where you think. As we think about adequacy and think about the average, it's something we need to consider in how we cost that. Bruce – one piece of analysis done by Reaching Higher NH.