

MONTANA TAXPAYER



MONTANA TAXPAYERS ASSOCIATION

HELENA, MONTANA

Volume 42

Number 4

May/June 2008

Upcoming Meetings

[Wednesday, June 4 – Joint LFC RATIC](#) Conference Call
[Thursday & Friday, June 5 & 6 – Legislative Finance](#)
[Tuesday, June 10 – EQC/WPIC Subcommittee on Water Policy](#)
[Tuesday & Wednesday, June 10 & 11 – Water Policy](#)
[Tuesday & Wednesday, June 10 & 11 – Children, Families, Health & Human Services](#)
[Thursday & Friday, June 12 & 13 – Education and Local Government](#)
[Thursday, June 19 – Fire Suppression](#) – Seeley Lake, Thompson Falls
[Friday, June 20 – Fire Suppression](#), Libby
[Monday & Tuesday, June 23 & 24 – State Tribal Relations](#) - Pablo
[Thursday & Friday, June 26 & 27 – Law & Justice](#)
[Monday & Tuesday, June 30 & July 1 – State Administration and Veterans' Affairs](#)
[Thursday & Friday, July 10 & 11 – Revenue and Transportation](#)
[Monday & Tuesday, July 14 & 15 – Environmental Quality](#)
[Thursday and Friday July 17 & 18 – Economic Affairs](#) - Bozeman
[Wednesday & Thursday, July 23 & 24 – Energy and Telecommunications](#)
[Tuesday, July 29 – HB49](#), Subcommittee-Special Purpose Districts
[Friday, August 1 – Law & Justice](#)
[Thursday, August 21 – State Tribal Relations](#)
[Friday, August 22 – Children, Families, Health & Human Services](#)
[Thursday, September 4 – Energy and Telecommunications](#)
[Thursday & Friday, September 4 & 5 – Education and Local Government](#)
[Thursday & Friday, September 11 & 12 – Revenue and Transportation](#) – may be rescheduled
[Friday, September 12 – Economic Affairs](#)
[Monday, September 15 – SAVA](#) (if necessary)
[Thursday & Friday, October 9 & 10 – Legislative Finance](#)
[Tuesday, November 18 – Legislative Finance](#)
[Monday & Tuesday, November 17 & 18 – Revenue and Transportation](#)

SCHOOL FUNDING LITIGATION

Justice Jeffrey Sherlock, has scheduled a trial for late September to hear arguments on whether the state is adequately funding schools. The Montana Quality Education Coalition (MQEC) returned to court earlier this year saying the state is still not meeting its constitutional obligation to fund schools. Sherlock had earlier refused to dismiss the plaintiffs request for a motion for supplemental relief and an order to show cause. He held the schools had “provided evidence that the same defective funding formula that was before this court and the Montana Supreme Court in 2004 and 2005 may not have been changed as required” by the courts.

He did say the schools will bear the burden to prove the current system is inadequate.

Justice Sherlock relied in part on two affidavits provided by the plaintiffs. In one, Tom Bilodeau, a representative of the MEA/MFT calculated that the additional funding represented only 5.4 percent of the statewide general fund. In his March 13th affidavit, he referenced Exhibit 190-08 in the plaintiff’s reply brief. Two pie charts compare school district general fund proportions in 2005 with those of 2008. The charts show four items added by the legislature since 2005 to the school district general fund representing in FY08 5.4% of the district general fund budget. These items as illustrated in the charts on page 5 are: educator payment, at risk payment, Indian education for all payment and achievement gap payment. This has led some to the conclusion that the state’s response to the court was only the 5.4% added by these items and provided support for the argument that the legislative response to the court decisions has been inadequate.

Jim Standaert of the Legislative Fiscal Division (LFD) has calculated changes to school funding formula made since 2005 represent 16.7% of the state aid and 22% of district maximum FY09 general fund budgets as illustrated in the table on page 6. The difference between the LFD and MEA/MFT calculations is that Bilodeau neglects the impacts of three year averaging, the yearly inflation factor, the addition of full time kindergarten, increases in special education and Per-ANB and Basic entitlements enacted since 2005. These items expand DSA (Direct State Aid), GTB (Guaranteed Tax Base), local share and special education rather than adding new slices to the pies depicted in the Bilodeau charts.

The other affidavit was prepared by John Myers, the consultant hired by the plaintiffs in the last round of litigation. In his opinion:

- the State of Montana has not yet determined the costs of providing the system of public schools as defined by the Legislature. The current funding formula does not reflect the costs associated with providing that system of public schools.

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- The 2007 legislative enactments continued to provide additional state funds while not recognizing the need (to) determine the costs of providing the educational programs and services identified in the legislative definition of a quality system of public schools. To establish a funding system that is based on the definition of quality, and which reflects the costs of meeting the definition, would require structural changes to the existing funding formula. APA (Augenblich, Palaich and Associates) could not find evidence that the legislature has implemented the types of structural changes that would be necessary to establish such a funding districts system. The revenues available to school districts continue to flow through a funding system that is fundamentally unchanged.

Note: The plaintiffs hired this same group of experts prior to the 2007 Session to estimate the cost of providing an adequate education in Montana. The results were never presented during any hearings during the session, as the costs were estimated to be as high as \$700 million in additional money per year).

Not all members of MQEC agreed to return to court as cited in the following statement from the MEA/MFT newsletter: "We voted against the motion to go back to court," explained MEA-MFT President Eric Feaver, who serves on the MQEC board of directors. "We believe Governor Schweitzer and the last two legislatures have made significant progress in school funding."

In addition, the Montana Rural Education Association discontinued their membership with the coalition. They have secured their own attorney to watch their interests in this newest round.

Proposed Remedy

MQEC has also designed a "remedy" they claim would adequately fund schools if phased in within three biennium's. The cost of the remedy is \$260 million per year or a 40 percent increase in the current level of funding. The remedy is no more than cherry picking various options that have surfaced during the past two years and mimic the methods used by the legislature to provide the additional funding to schools. These options are taken "out of context" of the total revision of school funding developed by the QSIC (Quality Schools Interim Committee). When added to the current school funding formula the result is to generate a higher level of funding than originally proposed by the QSIC model. The QSIC model was estimated to cost \$102.3 million annually.

A Conundrum?

It seems the plaintiffs could find themselves in a conundrum. While their attorneys and experts will be arguing in district court that the funding formula is unconstitutional, the lobbyists will be arguing for increased funding using almost the identical formula adopted by the legislature. Not one of the proposed additions influence or change the current funding formula as deemed necessary by Myers. The proposed \$260 million would merely plump up the cost while failing to resolve the constitutional issue. If the plaintiffs prevail in court, is this remedy proposal moot?

Constitutional Compliance?

MQEC argues that the components of their remedy proposal are designed to overcome their financial challenges and provide an education in compliance with Article X, Section 1 of the Montana Constitution:

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

The Quality Schools Interim Committee from the 2005 to 2007 Interim spent literally hundreds of hours attempting to identify ways to accomplish these requirements. In the end, the education leaders of Montana who had been involved in the discussions walked away. Now, those same leaders are back in court saying the solutions implemented by the legislature are patently unconstitutional.

Below are listed each of the remedy proposals and our comments.

Proposals

1. Quality Educator Payment Increase – Source: Where Montana was in 1984 rankings.

MQEC recommends an increase of \$7,250 per Quality Educator (QEP). The recommendation is in recognition of the current salary gap between Montana and the 25th ranked state in the nation. MQEC chose the benchmark of 25th because it is a moderate ranking among all 50 states and because Montana has historically demonstrated a capacity to fund teacher salaries at that level. MQEC's recommendation is also made in recognition of the focus of Judge Sherlock's ruling in *Columbia Falls Elementary v. State* on teacher salary rankings as a means of assessing the constitutionality of the current school funding system (see finding 160C). The increase of \$7,250 is intended to allow school districts to make progress on salaries and benefits for nonteaching employees as well. MQEC also recommends that the state apply 3 year averaging to the QEP payment in the same manner as currently provided for ANB (larger of actual FTE or 3 year historic average).

Estimated Annual Fiscal Impact: \$91 million

Comment: Increasing salaries by a set amount per educator is not the most effective way to distribute money. During the Special Session in December of 2005 a Per –Quality Educator component was added as a compromise. In 2007, the Legislature increased the amount. While it brought up the level of pay for most teachers, it does little to address the teacher retention and recruitment problems in Montana. This was documented by a study prepared for QSIC by Drs. Doug Young and Christiana Stoddard (2005 Interim Committees/[Quality Schools](#)).

A blanket increase rewards districts to retain staff even during times of declining enrollment and penalizes districts who choose to reduce or maintain a smaller level of staff.

Finally, Montana teacher salary rankings are consistent with the salaries of the state overall. Montana's rankings were higher in the 1980's and early 1990's and

fell as high paying jobs were lost in the natural resource areas. A recent study analyzed teachers' salaries as compared to other comparable occupations. The EPE Research Center found that public school teachers nationwide make 88 cents for every dollar earned in 16 comparable occupations. Ten states reach or surpass the pay-parity line, meaning teachers earn at least as much as comparable workers. In this study, the median public school teacher salaries as a percent of per-capita income came in at 110 with only Rhode Island higher at 111.8. (Education Week, Tapping into Teaching, January 10, 2008.)

2. Special Education Costs – Source: 1989 Levels– OPI special education program

MQEC recommends an increase in special education in an amount necessary to bring the state back to its previously-demonstrated commitment to special education of 80% of costs that existed in 1989. MQEC also recommends that the state add 3-5 year olds who qualify for services under IDEA to be included in the ANB count and made eligible for IDEA funds as any other K-12 IDEA student, and also recommends that the state set aside 5% of the increase in state special education funding to cover reimbursement of districts for disproportionate costs.

Estimated Annual Fiscal Impact: \$47.5 million

Comment: Special education students are currently counted in the enrollment for regular funding as well as for special education allocations.

3. At Risk Funding – Source: QSIC average weighting factor used by other states that provide at risk funding.

MQEC recommends implementation of a flat payment of \$1,000 per at risk ANB, with the designation of at risk based on eligibility for free or reduced lunch. School districts would be allowed to expend these resources on the research-proven strategies that help narrow achievement gaps and increase graduation rates for children living in poverty.

The recommendation in this area is in reliance on the Quality Schools Interim Committee's survey of other states' practices in setting ANB weighting factors for at risk children.

Estimated Annual Fiscal Impact: \$47.8 million

Comment: This is a case of taking QSIC recommendations out of context as cited previously.

4. Payment for Textbooks and Supplies—Source: QSIC Analysis of textbooks and supplies element in classroom entitlement.

MQEC recommends a new formula component for textbooks and supplies, set at \$260 per pupil. This amount, in combination with what school districts are already spending, should allow schools to get to a more regular rotation for textbook replacement consistent with the amounts identified for this category by the Quality Schools Interim Committee.

Estimated Annual Fiscal Impact: \$39 million

Comment: This is a case of taking QSIC recommendations out of context as cited previously.

5. Indian Education for All – SB390 from 2007 Session

MQEC recommends that the state increase funding of the Indian Education for All component consistent with the proposal advanced in Senate Bill 390, 2007 Legislative Session. That bill called for a \$50 per-ANB payment with a minimum of \$1000 for each district.

Estimated Annual Fiscal Impact: \$4.5 million

Comment: School officials continue to lament on earmarking funds. The Legislature allocated money for Indian Education for All in both of the last two Sessions.

6. A School Unit Allocation for Building Operations – Source: SB2 from 2007 Special Session

MQEC recommends that the State increase funding for building operations, distributed on a school unit allocation consistent with the one time only allocation for school units under Senate Bill 2 of the May 2007 Special Session. Under that section of law, school districts received a flat unit payment for every 250 elementary children, every 450 middle school children and every 800 high school children in the district. Each school district receives at least one unit per applicable grade levels served and school districts with more than the threshold ANB receive additional unit payments allocated in tenths.

Estimated Annual Fiscal Impact: \$29.9 million

Comment: The 2007 Legislature gave \$30 million in additional money for building operations. They also set aside \$52 million in a special account to be appropriated by the 2009 Legislature. In 2005, the Legislature appropriated \$2.5 million for a school facilities study. It is scheduled to be completed by July 2008. Distribution of additional money to schools should reflect the funding of the study.

Additional Suggestions in Restoring the State’s Role in Funding K-12 Schools

1. Application of CPI-U Adjustment to All Formula Elements through a revision to the definition of present law. Also, present law should be amended to apply CPI-U inflation from the fiscal year most recently completed at the time the Executive Branch releases its official budget.
2. For the new entitlements funded at the state level (e.g. Quality Educator Payment, At Risk Payment, American Indian Achievement Gap Payment, Indian Education for All Component), add an additional 25% local option above the BASE budget funded by the state and include the additional 25% local option in the calculation of the Maximum Budget for each district. This will increase the amount that can be levied by \$36 million. ($\$91 + \$47.8 + 4.5 \text{ times } 25\%$)
3. Implement a permissive levy above BASE for up to 4% per year, any increase beyond 4% subject to voter approval.
4. Facilities. The State is in the middle of its facilities study. MQEC will track of the results of that study and any recommendations coming forth in the 2009 Legislative Session to help the state in determining adequacy.
5. MQEC recognizes and understands that its proposals would likely be phased in over time. If the State phased this relief in over three additional biennia, starting with FY10 and finishing with FY15, the new system would be fully implemented in time for the 10 year study of the system called for in section 20-9-309, MCA.
6. Appropriations for schools should be changed to a biennial appropriation to allow school districts additional flexibility in allocating money from the first year of the biennium to the second year. School districts should also be allowed to either transfer unspent money in its general fund to any other budgeted fund or carry over unspent money in its general fund budget from year to year. This has an effect on state equalization aid by reducing fund balances reappropriated and increasing district GTB levies and state GTB aid.

The additional dollars associated with these proposals has not been estimated at this time.

Who is the Montana Quality Education Coalition?

MQEC was formed to address concerns some education officials had with the state’s funding. Initially all

districts were encouraged to become members to help fund the coalition and subsequent litigation. Although the initial amount and the dollars expended cannot be determined officially, it has been stated the total cost of the first round of litigation was over \$1 million.

Some of the original members have dropped out of the coalition due to different opinions regarding the necessity of returning to court. Prior to returning to court, the coalition had a cash balance of approximately \$435,000. Their current revenues are from interest only (the financial statements show no membership revenues at this time). They have spent \$85,000 since September 1 of last year including \$35,000 in attorney fees.

Saga should come to an End

Make no mistake about... The Montana Taxpayers Association has long advocated for appropriate and adequate funding for public schools in Montana. Our analysis is not meant to be an argument against more funding for schools. In fact, last fall our association in conjunction with the Montana Rural Education Association helped coordinate discussions with school leadership and business people in Montana. We hoped this would be the beginning of an important relationship promoting healthy schools and businesses in Montana. The discussions ended abruptly when the new round of litigation began. Our hope is to continue the discussions prior to the session. The long saga of school litigation in Montana needs to end.

Ultimately the plaintiffs offer no specific set of improved outcomes nor identify consequences that would follow failure to achieve improvement. Their statements more often point to the need for the vast increase as a preventative from a deterioration in educational quality.

We believe that a major increase in expenditures for public schools should be about improving education. A debate either in the public media or in courts about such funding is seriously off course if the taxpayers who must deliver the funding are not given specific expectations about such improvements, how they will be achieved, how success will be illustrated, their cost, what results should be evidence of success and who is accountable for failure.

There is little doubt about the government's power to take hundreds of million from citizens and businesses and give it to schools however there is much doubt about government's ability to make a corresponding improvement in the effectiveness or efficiency of public schools.

Chart 1

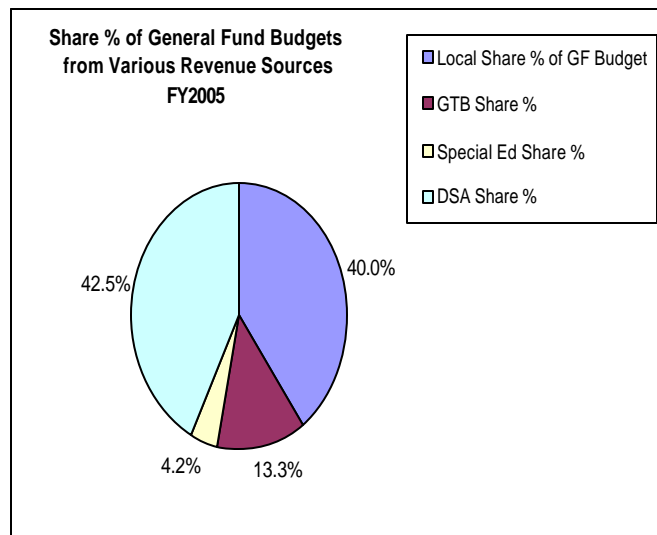
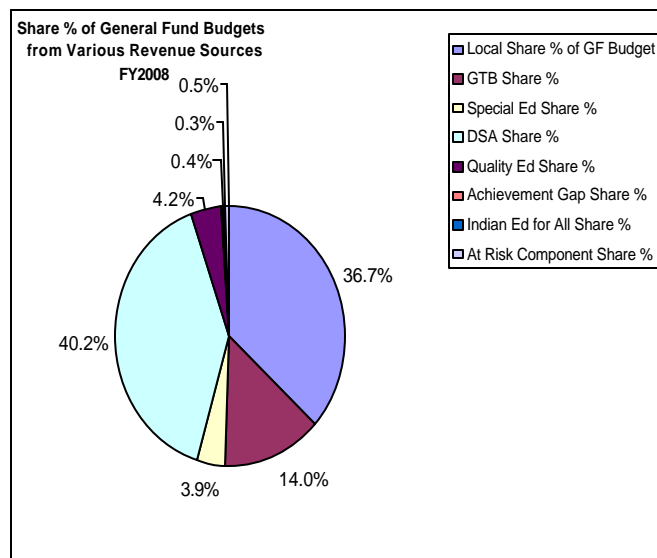


Chart 2



Plaintiffs Exhibit 190-08, BDV-2002-528

Table 1

**Impact of Legislative and Executive Actions on K-12 State Costs and Maximum Budget Since FY 2005
In FY 2009**

Prepared by Jim Standaert - Legislative Fiscal Division

Things that have Changed Since FY 2005	Fiscal Year 2009 without Change	Fiscal Year 2009 with Change	Difference	Percent of District General Fund Budget FY 2009 (\$932 M)
4 New Payments				
State Cost (4 Payments)	\$ -	\$ 48,886,540	\$ 48,886,540	5.2%
Maximum Budget	\$ 913,331,427	\$ 962,217,968	\$ 48,886,540	5.2%
3-Year Averaging				
ANB	146,956	148,298	1,342	
State Cost (DSA + GTB)	\$ 499,488,036	\$ 508,467,781	\$ 8,979,745	1.0%
Maximum Budget	\$ 947,753,195	\$ 962,217,968	\$ 14,464,772	1.6%
Inflation of Per ANB and Basic Entitlements Since FY 2005				
Elementary Basic Entitlement	\$ 19,859	\$ 21,922	\$ 2,063	
High School Basic Entitlement	\$ 220,646	\$ 243,649	\$ 23,003	
Elementary Per-ANB Entitlement	\$ 4,031	\$ 4,716	\$ 685	
High School Per-ANB Entitlement	\$ 5,371	\$ 6,037	\$ 666	
State Cost (DSA + GTB)	\$ 441,889,936	\$ 508,467,781	\$ 66,577,845	7.1%
Maximum Budget	\$ 856,307,707	\$ 962,217,968	\$ 105,910,261	11.4%
Increase GTB Ratio to 193% from 175 %				
State Cost (DSA + GTB)	\$ 497,497,985	\$ 508,467,781	\$ 10,969,795	1.2%
Maximum Budget	\$ 962,217,968	\$ 962,217,968	\$ -	0.0%
Full Time Kindergarten				
State Cost (DSA + GTB)	\$ 493,367,781	\$ 508,467,781	\$ 15,100,000	1.6%
Maximum Budget	\$ 937,051,301	\$ 962,217,968	\$ 25,166,667	2.7%
Special Education				
State Cost (Spec Ed)	\$ 36,448,452	\$ 41,647,331	\$ 5,198,879	0.6%
Maximum Budget	\$ 72,896,904	\$ 83,294,662	\$ 10,397,758	1.1%
All Items				
State Cost (DSA + GTB+4 Pmts+Spec Ed)	\$ 443,288,847	\$ 599,001,652	\$ 155,712,805	16.7%
Maximum Budget	\$ 757,391,970	\$ 962,217,968	\$ 204,825,998	22.0%