MEMBER MEETING

Maine South High School Board Room
1131 South Dee Road, Park Ridge
Tuesday, September 24, 2013
6:00 – 7:00 p.m.

Please note: dinner will be available starting at 5:30 p.m.

AGENDA

1. Call to order
2. Introductions
3. Approval of Minutes
4. New Business
5. Legislative Update
   Special Guests: Brandon Williams, Director of Performance Data & Accountability, ISBE
   Joyce Karon and Debra Strauss, Members, Illinois P-20 Council

   We are pleased to partner with the Illinois P-20 Council to provide our membership
   with a deeper understanding of the new Illinois School Report Card -- which will be
   released on October 1, 2013. The P-20 Council actively participated in discussions over
   several years to inform the development of the new report card and the
   communication tools that will be available to the school community. Join us to learn
   about the variables/content areas that will appear on the 2013 report card, what areas
   will be explored in the future, and how your district can use it as a tool to highlight
   successes in your district.

7. Adjourn

Next scheduled meetings:

- ED-RED Finance-Legislation Meeting – Friday, October 4, 1:30-3:00 pm, Maine South Board Room
- ED-RED Member Meeting – Tuesday, October 15, 5:30-7:30 pm, Maine South Board Room (dinner included)
MINUTES
ED-RED Member Meeting
April 23, 2013
6:00 p.m. – 7:30 p.m.

The meeting was called to order at 6:00 p.m. by ED-RED Executive Director Erika Lindley.

Those in attendance were Becky Allard (64-C)*, David May (102-C)*, Paul Hertel (62-C), Nelson Gray (62-C), Cathy Lauria (31-C), Carol Rahim (72-C), Phyllis Bower (72-C), Jacqui Parisi (89-C), Vicki Lee (64-C), Eric Miller (69-C), Michael Robey (89-C), Alva Kreutzer (214-C), Anita Crockett (89-C), Frank Mott (91-C), Julie Anastos (38-C), Christine Stoll (38-C), Terry Cmeron (64-C), Anne Hoffman (ED-RED), and Erika Lindley (ED-RED)*

*Denotes ED-RED Exec Board Member

New Business:
Dues Structure Update: Erika reviewed the history of the ED-RED dues structure and the Exec Board’s proposal to implement a structural change in FY 15. Erika reviewed several scenarios under review and listened to feedback from members.

Legislative Update:
Erika reviewed the following legislation:

HB 89 requires that districts in PTELL (tax capped) communities for which the total taxable Equalized Assessed Valuation (EAV) is less than the previous year, the allowable increase in a district’s extension would be 0% or the rate approved by voters. HB 89 was approved in the House Revenue Committee but failed on the House floor by a vote of 43-65.

SB 1403 provides that if a property owner has a pending tax appeal, they may either pay the amount included on the tax bill or subtract the amount that they are disputing from the bill and pay the remaining amount. The sponsor offered an amendment in the Senate Revenue Committee but did not have support to move the bill forward.

SB 2213 allows districts to offer Drivers Education programs by contracting with commercial driving schools without a waiver. SB 2213 failed to receive enough votes in the Senate Education Committee due to heavy opposition from the IEA and IFT.

HB 2944 allows private school students to take the ISAT. For test security, the idea is that this would need to occur in public school buildings during the testing window established for public school students. HB 2944 was approved in the House Education Committee but was not called for a vote on the House floor prior to the deadline.

Pension Reform Update:

HB 98 includes the pension reform proposal developed by Rep. Nekritz and Rep. Cross. The bill shifts the normal cost to school districts at a rate of 0.5% of creditable earnings each year until the normal cost is the full responsibility of the district. Benefit changes include increasing the retirement age for employees under 45, delaying the COLA until the earlier of 5 years after retirement or age 67, applying the COLA to the first $25,000 of an annuity only (annual adjustment is capped at $750), increasing employee contribution by 2% (from 9.4% to 11.4%), and capping the pensionable salary at the rate in the final year of the current contract or the Social Security Wage Base (currently $113,700), whichever is higher. The bill has not been considered in committee but is viewed as a framework for further discussion.

SB 1 includes President Cullerton’s pension reform plan and requires employees to choose between two pension packages, largely hanging on the employee’s interest in maintaining access to state retiree health care or maintaining the current 3% compounded COLA. The amended bill passed the Senate 30-22-2 on 3/20/13. It is assigned to the House Personnel and Pensions Committee.
Program: The Affordable Care Act featuring Heather Brickman and Barbara Erickson (Hodges, Loizzi, Eisenhammer, Rodick, and Kohn). Heather and Barbara briefly discussed the politics of the passage of the bill and the implementation timeline for employers and the state exchanges. There are several federal agencies responsible for creating rules/implementation standards and the next set of rules are expected mid-summer.

There are four major issues receiving attention: nondiscrimination, employer pay or play, the Cadillac tax and new reporting obligations. Nondiscrimination (defined as favoritism of one employee over another) cannot occur to benefit highly compensated employees in insurance eligibility or benefits; districts will need to be mindful of the plans available to administrators vs. other employees. The IRS will not enforce the penalty for nondiscriminatory practices until the feds release the final rules. Pending this action, Heather and Barbara recommended three strategies for school districts including changing benefit levels now (vs. in the next contract) to eliminate discrimination, adding contingency language to contracts to allow changes in benefits if deemed discriminatory by future rules, and adding reopener language to contracts in the event that benefits are deemed discriminatory by future rules.

“Pay or play” may result in an accessibility payment or penalty tax for employers beginning in 2014. Whether or not tax is imposed depends on whether the large employer (at least 50 full-time employees) offers health insurance coverage to at least 95% of its full-time employees and also offers minimum essential coverage that is deemed “affordable” based on the provisions of the law. Districts that fail to comply will be hit with penalties, sometimes referred to as the “sledgehammer” and “pickaxe” penalties. Heather and Barbara recommended several strategies to minimize penalties including changing job descriptions to require less than 30 hours a week, determining the cost of offering/subsidizing coverage vs. paying the penalties, modifying insurance contracts and cafeteria plans to reflect the new 30 hour eligibility requirement, and starting to consider the potential impact of these changes on future contracts. Members discussed safe harbor provisions and the impact of the new law on seasonal workers.

Barbara and Heather agreed to join us again in the fall to provide an update on the summer rule making.

The meeting adjourned at 7:55 p.m.

Respectfully submitted by Anne Hoffman
ED-RED Finance-Legislation Meeting – September 24, 2013

Legislative Update

Conference Committee on SB 1 (Pension Reform)

- Expected to release a proposal shortly/timing of salary veto decision
- Major provisions under review
- Cost shift is not part of the conversation
- Theories on timing of bill passage/effective date

Senate Committee on Education Funding

- Two meetings so far, next meeting in mid-October, report due February 2014
- APA white paper/ISBE discussion focused on the PTELL adjustment, the calculation of the poverty grant, and eligibility for the poverty grant

Veto Session 2013

- ISBE supplemental appropriation
- ISBE professional development legislation
- Pension reform
- School Code Waivers
- Setting up Spring 2014

Upcoming meetings – more info at www.ed-red.org:

ED-RED Orientation for New Administrators and School Board Members
Monday, September 30, 5:30-7:30 p.m. (includes dinner)
RSVP to Erika at erika@ed-red.org

ED-RED Finance-Legislation Meeting – Update on Education Task Forces and Preview of Veto Session
Friday, October 4, 1:30-3:00 p.m.

ED-RED Member Meeting – Update on the Affordable Care Act
Heather Brickman and Barbara Erickson, Hodges, Loizzi, Eisenhammer, Rodick and Kohn
Tuesday, October 15, 5:30-7:30 p.m. (includes dinner)
Pension debate at 1970 Constitutional Convention echoes in today's crisis

Legislators must contend with guarantee made decades ago

By Bob Secter and Rick Pearson, Chicago Tribune reporters

6:14 PM CDT, September 22, 2013

Illinois' crushing public pension crisis has been literally decades in the making, but the present stalemate in Springfield over how to resolve it can be traced in great measure to a single point in time: July 21, 1970.

Richard Nixon was president, the war in Vietnam was raging, and it had been barely a year since man first walked on the moon and Illinois first imposed a state income tax.

Meanwhile, on that mid-summer day 43 years ago, the framers of a soon-to-be-approved new constitution for Illinois held their only substantive discussion of pensions. They signed off on a 40-word paragraph that backers and critics both agreed at the time was aimed at providing an ironclad guarantee to public workers that their pension benefits, once promised, could not be trimmed.

"If a police officer accepted employment under a provision where he was entitled to retire at two-thirds of his salary after 20 years of service, that could not subsequently be changed to say he was entitled to only one-third of his salary after 30 years of service, or perhaps entitled to nothing," said Helen Kinney, of Hinsdale, a Republican delegate to the convention drafting the new charter and one of four lead sponsors of the pension clause.

The debate was whether to define pension benefits as "an enforceable contractual relationship" that "shall not be diminished or impaired." After hours, the convention voted 57-36 in favor of adding the language to the broader constitutional draft.

It was a strong affirmation that reverberates to this day, vastly complicating efforts of Gov. Pat Quinn and legislators to find common ground on how to reduce a state pension debt that has topped $100 billion, darkened Illinois' credit rating and sapped spending power on vital services like schools, health care and roads.

Why it matters is this: When — and if — lawmakers agree on how to slash that pension debt, the formula will almost surely have to tinker with benefits now pledged to hundreds of thousands of teachers and other public workers as well as retirees. And that will almost surely be challenged in court as an assault on protections guaranteed by the pension clause, which Illinois voters approved along with the rest of the new constitution in December 1970.
All of which shines a bright light on a concept commonly known as legislative intent — or technically, in this case, constitutional intent — that some in Springfield think will weigh heavily on the legal fate of any reforms. It boils down to assessing whether pension revisions adopted today violate what the constitution's framers set out to accomplish long ago.

And the transcript of the debate on that July day makes it clear that even the delegates who argued against the pension clause did so because they saw it as something that could handcuff state and local officials as they sought to prioritize spending in tough times.

"This innocuous little amendment sounds a lot like motherhood and strawberry shortcake," complained delegate John C. Parkhurst, of Peoria, who went on to deride it as "terribly, terribly mischievous."

Another critic wondered if the state might be locking its employees into a retirement anachronism if better and more lucrative funding mechanisms were developed. "To freeze this in the constitution might hurt the very, very people that we are trying to help at this time," said Southwest Side delegate Ted Borek. Eight years later, the federal tax code was changed to allow the first 401(k)-type retirement plans.

Ann Lousin, then a young lawyer on the convention staff, recalled in a recent interview that the intent of the clause was quite clear. "Both proponents and opponents were saying that this would be a very strong protection for public employees, even though some felt in the future it might be regretted," said Lousin, who now teaches Illinois constitutional law at Chicago's John Marshall Law School.

This spring, House and Senate lawmakers passed dueling pension reform plans aimed at easing the long-term fiscal drag on state finances. But reconciling the differences has proved difficult, with the aggressive House version wringing out more projected savings by demanding more financial sacrifice from current workers and retirees than the Senate plan.

No one can say for sure how courts will come down on the fate of any pension overhaul package, assuming a legislative conference committee that's been meeting for months can finally reach consensus.

What is clear, however, is that the atmosphere surrounding that summer day in 1970 will play a significant role in any coming legal battle over fixing the pension quagmire and with it the fiscal health of Illinois.

Believe it or not, the state's key pension funds were in almost as bad financial shape back then as they are now, and for the same reason: a chronic failure by lawmakers to pay enough money into the funds to cover projected pensions costs and keep them financially sound.

Prevailing case law in Illinois and several other states had defined pensions as essentially bounties offered up to public workers that government bodies were free to reduce or eliminate at will. Fearing that just might someday happen, employees at state universities began agitating for including a safeguard in the new constitution.

At the same time, police, fire and other local workers grew nervous about new home rule powers the convention appeared set to bestow on local governments. They feared municipal leaders, flexing newfound fiscal independence from state rules, would see that as a green light to back away from retirement promises and spend resources on other things.

Against that backdrop, an array of labor groups pushed to add pension protections to the convention agenda. In what might seem ironic given today's political sensibilities, the four principal sponsors who put together the
pension proposal were all Republicans.

They included Kinney, later a DuPage County judge; Anthony Peccarelli, that county's future chief judge and state's attorney; Henry Green, a land developer from Urbana; and Donald Zeglis, a lawyer and education advocate from Kankakee County. All are now dead.

The clause also had 15 co-sponsors, both Republicans and Democrats. One was future Chicago Mayor Richard M. Daley, whose stewardship led to the sharp decline in the fiscal health of city pension funds. Daley was not recorded as being present in the convention's attendance roll call the day the pension issue he advocated came up, and a transcript of the proceedings shows he also did not vote on the matter.

Though not listed as a co-sponsor, another of the convention's delegates was Chicago Democrat Michael J. Madigan, the current Illinois House speaker, who back then was 28 years old. Madigan, now a key player in the push to slash benefits, voted in favor of including the pension protection language in the new constitution.

Backers of the pension clause bypassed committee consideration and brought it directly to the floor on that July 21, where Green argued for it as a matter of fairness.

"What we are trying to merely say is that if you mandate the public employees of the state of Illinois to put in their 5 percent or 8 percent or whatever it may be monthly, and you say when you employ these people, 'Now, if you do this, when you reach 65 you will receive $287 a month,' that is, in fact, is what you will get," Green declared.

Green said the wording of the pension clause was modeled after that added to the New York Constitution in 1938 to prevent that state's Depression-era lawmakers from cutting money owed pension programs. He said in New York it had led to full funding of pension programs.

But then, in a perhaps fateful declaration foreshadowing the present crisis, Kinney went on to stress that sponsors intended to protect benefits but did not consider their proposal a full-funding mandate. "It was not intended to require 100 percent funding or 50 percent or 30 percent funding or get into any of those problems," she said.

In short, state and local governments would be required to keep their pension promises but not be required to sock away enough money to cover payments years into the future. When it came to funding, officials of both parties in Illinois took significant advantage of the escape clause, helping them skate by for decades without having to make politically difficult decisions on raising revenues or cutting services to meet pension obligations.

In May 1971, just weeks before the new constitution would go in effect, an official state pension oversight panel of lawmakers and laymen issued a report warning that the new pension safeguards were a mistake.

The Illinois Public Employees Pension Laws Commission, which no longer exists, said it had opposed the language inserted into the constitution and had asked one of the sponsors to soften it or at least read a statement into the convention record that it wouldn't preclude "a reserved legislative power" to change benefits in order to keep retirement plans sound.

Nothing came of the request, the report noted.

"In the meantime, the provision will loom large and forbidding in future years in its effect upon the formulation of pension policy," the commission predicted.
The prolonged deadlock over pensions in Springfield is producing some awkward political alliances and splits, pitting Madigan against Democratic Senate President John Cullerton. Public employee unions, a natural Democratic constituency whose members stand to be most personally affected by reforms, are taking Cullerton's side.

Quinn is backing Madigan even while fighting with both the speaker and Cullerton in court. They both sued Quinn after the Democratic governor moved to withhold the pay of lawmakers until they resolve the pension mess.

The divide on pensions may be especially tough to bridge because critics of the Madigan/Quinn approach argue that it clearly violates the pension clause and so will almost certainly be struck down in court.

"If it's not constitutional, this is all for naught," said Eric Madiar, Cullerton's top lawyer. "That's why the Senate president is trying to give emphasis to both points, not just what passes a smell test set by some special interest group with no logical or legal basis."

State Rep. Elaine Nekritz of Northbrook, the Democratic point person on pension changes in Madigan's House, acknowledged the legal fate of any reform package is hovering over negotiations in the ongoing conference committee.

She, however, is more encouraged that a compromise can be crafted that meets legal muster. The bipartisan panel, she said, is "doing as much as we can to let the lawyers have as many (legal) arguments as possible."

Kwame Raoul, the Chicago Democratic senator who is co-chairing the conference committee, said the panel "certainly" has to keep the constitutional language in mind. At the same time, he said the expectation that any legislative compromise will end up in court is leading some pushing for sweeping changes to argue against getting hung up on constitutional questions.

"I think that's ill-advised," Raoul said. "I think you have to do something that will be upheld. And that's challenging when you're trying to negotiate."

The streamlined legislative path that sponsors of the pension clause took to get it passed might now make it harder to fight a more sweeping reform package should it become law, said Laurie Reynolds, an expert on public employee rights at the University of Illinois College of Law.

Reynolds said she's not sure that a court would find a single debate sufficient evidence of the clear intent of the drafters. What the court could do, however, is kick the reform package back to the legislature and tell it to try harder to come up with ways to bankroll pension promises before making cuts.

"If they had passed something two or three years ago we would have had the answer now," she said. "Either we would be back at the drawing board or have the reforms."

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