

H1031 Working Group Meeting #6
February 25, 2019 12:30pm–2:30pm

Participants

Working Group Members

- Amy Cannon Cumberland County Manager (Working Group Co-Chair)
- Pam Dubois Senior Deputy Cabarrus County Manager
- Susan Holder Assistant Sampson County Manager
- Jeff Hollamon CFO, Onslow County Schools
- Kimberly Honeycutt Finance Officer, Harnett County
- Ricky Lopes School Finance Officer (Retired)
- Jennifer Mace Catawba County Budget and Management Director
- Glynn Rollins Halifax County Attorney
- Pam Satterfield Executive Director, NCASBO (Working Group Co-Chair)
- Nick Sojka In-house Counsel, Cumberland County Schools
- Leanne Winner NC School Boards Association
- Mark Winters CFO, Wake County Public Schools
- Kyle Wolf Forsyth County Budget Director

Facilitators

- David Brown Research Director, ncIMPACT, UNC School of Government
- Kara Millonzi Professor of Public Law and Government, UNC School of Government

Agenda

- I. Discuss capital funding issue
- II. Outline draft recommendations
- III. Discuss process for drafting report
- IV. Identify next steps

Training Opportunity

The co-chairs announced that there is new training coming from the School of Government that may address some of the issues surfaced by the Working Group over the past several meetings. In particular, this will be an opportunity for school superintendents and county finance representatives to develop working relationships while learning about topics of mutual interest.

School System Capital Funding – Discussion Items

- One goal of this working group has been to make the funding dispute/litigation process unpalatable to both sides, so that it is used only as a last resort. [This default procedure](#) is offered as a substitute to the litigation process. [Mr. Rollins talked through his draft.]
- What happens if a determination is made that there's no ability to raise extra revenue due to a county's "fiscal policies" or "ad valorem tax rate"? Is that the end of the road for the school system's funding request, even if the system's needs are identified and deemed necessary by a third party assessor?
 - Yes, and this same limitation applies to everything counties fund, such as courthouses or jail facilities.
- The language would need to specify how a "third party consultant" is picked. It also would need to take into account other expenses that may make renovations not, in fact, a less costly alternative to new buildings in the long run (because of, e.g., higher maintenance costs on older buildings and systems).
- There are problems with relying on DPI's 5-year School Facilities Needs Survey. For example: (1) Some school systems don't submit one. (2) Some county commissioners don't want to sign off on the needs assessment before it goes to the state because they don't want to admit to that level of need.
 - But if a county and school system do agree on the 5-year plan, would you even need a third-party consultant?
- Referring to the proposed [default procedure](#), if (c1) (1) and (2) are in there, there's no need to have a new process. Giving the counties an "out" on fiscal policies and tax rates would defeat the purpose, as these policy choices are, historically, the root of the problem. Just because the county has a very conservative fiscal policy and tax rate, that doesn't mean they can't do more.

- Across the state, county ad valorem tax rates run from \$0.32 to \$1.00 per \$100 valuation.
- Could the LGC assess a county's financial position to determine its capacity to issue a bond? We need to strike a balance between school systems ("we want you to fund it") and counties ("we don't want to fund it").
 - The LGC advises on the appropriate size of the fund balance given the size of the jurisdiction. Rating agencies are open to justifications from counties that want to deviate from this recommendation.
- If county finance reps were to compromise, it would be on tax rates rather than fiscal policies. The reason is that rating agencies look at fiscal policies, and a county's bond rating depends upon the establishment of sound fiscal policies. Exceeding the policy affects your bond rating, which raises the cost of borrowing. Once we exceed the parameters of our policies for school system funding requests, it would open the door to commissioners' favorite projects.
 - But if we say that fiscal policies can't be violated for school needs, it opens the door for county commissioners to game the system. What if they change their fiscal policy to make it more fiscally conservative when they see significant school system needs coming in the near future? Policies can be manipulated, and the courts will be deferential.
- Another concern about giving too much deference to counties' fiscal policies and desired tax rates is the increasing resegregation in poorer counties. Further, the people who elect the county commissioners are not necessarily the people who use the public schools. What if counties adopt policies that prioritize, e.g., jails and economic development over schools because only 40 percent of "our" students go to public schools anymore?
 - Our reality has become increasingly partisan, with Republican county commissions and Democratic school boards – that is the unfortunate backdrop for these discussions.
- When talking about a county's ability to pay, does it make sense to use a percentage increase rather than a specific increase in the tax rate?
 - If a county has kept the tax rate arbitrarily low for many years, and a percentage increase is all that the schools get, that may not amount to much.
- Are we taking a sledgehammer to a gnat with these proposed changes? Could they have the unintended consequence of encouraging more use of this statute? If we leave the statute

like it is but build in additional steps prior to litigation, we would still be faithful to [our charge](#).

- Communication may be the answer to both questions (fund balance, capital outlay).
If we end up where we did on the fund balance topic, does that satisfy our charge?
 - It depends on how you read it. We have not devised a formula, but pre-emptive discussions could be presented as “other means.”
 - Is the legislative intent clear?
- Most people recognize the need for school construction, the question is how to pay for it.
- The NCACC did a presentation tracing 100 years of school capital funding. More recently, the data show that lottery funds don’t replace what was lost from the corporate income tax. Over the course of many years, school construction has become an unfunded mandate from the state.
- We haven’t really seen how this would play out under the new rules. The statute was changed for current expense after the Beaufort case. The judge and jury have to assess the bare minimum – “what is necessary.”
- If all of the available alternatives are likely to make things worse, then let’s install some additional process and see how that goes.
- The ultimate threat of litigation will tends to focus everyone’s minds.
 - But the threat is not the same for both parties, in that the statute doesn’t allow the county to sue the school system.
 - There is tremendous downside risk for the school system to file a complaint. It is the nuclear option.
- Why is removing the prospect of litigation such a grave concern, when it hasn’t happened very many times?
 - The consultant plan might make it easier for school systems to dispute their funding, by creating a lower barrier to entry.
- Summary from the county co-chair: “I’m hearing from you that having some recourse is important, and that you’re not open to considering anything that removes the possibility of litigation.”
 - Could we send the legislature both a litigation and a non-litigation option?

- Part of the purpose of forcing the parties to communicate regularly is to require staff from each of those parties to be familiar with relevant policies, fund balances, and school projects in the pipeline. To do nothing – to leave litigation as a final resort – would be unfortunate. If a draft comes out of this Working Group, it isn't binding on NCACC or NCSBA. It's just an attempt to get to what might work.
- We want to be careful not to create inconsistency across school systems.
 - But how is that different from now?
- The requirement now is for a judge or jury to consider various aspects but come up with only what is absolutely necessary (the constitutional minimum). So while the county can play games with its fiscal policies, the school system can likewise play games with its assessment of what is really needed.

Next Steps

- Gather examples from counties represented in the room about spending flexibility given tax rates and fiscal policies
- Dave will begin drafting the report

Next Meeting

- Monday, March 18th at 2pm