

Fact Sheet

Mandates

October 2011

Our country's public education system is complex and can be confusing. To help demystify it, the Broadalbin-Perth Board of Education is providing a series of fact sheets designed to help residents better understand key parts of the system, as well as current issues that are affecting Broadalbin-Perth schools.

What is mandate relief and why should I care about it?

New Yorkers have been hearing a lot about mandate relief over the last few years. But chances are, many people have no idea what mandate relief actually is—and therefore don't know if they should be for it or against it.

In broad terms, "mandate relief" refers to repealing or modifying certain state laws that require municipalities, including school districts, to operate in specific ways. The laws described on this fact sheet, including the Wicks Law and Triborough Amendment, are examples of mandates.

Many education organizations, including the New York State School Boards Association (NYSSBA), are lobbying the state Legislature to repeal or modify certain mandates because they believe those mandates cost school districts a lot of money but don't provide enough value to justify their costs. For instance, NYSSBA would like to see the Triborough Amendment modified so that employees would *not* receive raises negotiated under an expired contract while a new contract is being negotiated. NYSSBA is also interested in seeing all state special education mandates scrutinized by an advisory committee that would recommend to the Legislature which mandates should be kept and which should be repealed.

In the most simple terms, mandates are laws. And in public education in the United States, just about everything is mandated. Special education? Check. Building projects? Check. Teacher contracts? Check. Purchasing recycled paper products? Yes, there's a law for that, too.

Like most laws, education mandates were passed with the best of intentions. It's hard to argue against a law that requires schools to provide an appropriate education for students with special needs, for instance. However, some education mandates have outlived their usefulness or taken on a life of their own, which is why many education groups are now calling for mandate relief (see sidebar, left).

Nearly everything that's taught in public schools is mandated. At Broadalbin-Perth, most of the district's academic program is mandated. The only academic programs B-P offers that are not mandated are pre-K and kindergarten. Those two programs are not required under New York State law.

While many mandates are important and necessary, they are also the biggest cost drivers for public schools. For instance, federal or state mandates dictate nearly 90% of the spending in Broadalbin-Perth's budget (look inside for details).

Even mandates that seem small and insignificant have a price tag attached to them: Someone needs to fill out and submit the required paperwork. And that someone needs to be paid.

With some mandates, school districts can't even predict their

costs. One such case involves the education and transportation of homeless children.¹ If a student attending Broadalbin-Perth becomes homeless or must live in temporary housing outside the district, that student can choose to continue to attend B-P. In cases where the student is staying within 50 miles, B-P is responsible for providing transportation. Unfortunately, homelessness can happen to a family at any time. Although school districts like Broadalbin-Perth will do everything they can to help families in such times of crisis, there is no way to predict how much mandates like this could cost from year to year.

continued on next page

Mandate Relief Resources

Want to learn more about mandate relief efforts in New York State? Here are some resources:

- ★ The New York State School Boards Association (NYSSBA) published its **Essential Fiscal Reform Playbook** in May 2011.
<http://bit.ly/NYSSBAplaybook>
- ★ A project of the New York Conference of Mayors, **Stop the Tax Shift** is devoted to showing "the direct connection between state actions—e.g., state aid and state mandates—and New York's real property tax burden."
<http://www.stopthetaxshift.org/>
- ★ The **New York State Education Department (NYSED) Mandate Relief** page includes an Excel spreadsheet list of the most talked-about mandates among school district administrators.
<http://www.p12.nysed.gov/fmis/mandaterelief/>
- ★ Gov. Andrew Cuomo's **Mandate Relief Team** submitted its preliminary report in March 2011.
<http://governor.ny.gov/mandaterelief>

¹ McKinney-Vento Homeless Education Assistance Improvement Act (federal); New York State Education Law § 3209.

In New York State, four sets of mandates have the largest impact on school budgets: Special education mandates, the Wicks Law, the Triborough Amendment, and the public employees retirement systems.

But you're probably curious about that law about the purchase of recycled paper products, right? Well, districts are allowed to purchase recycled paper products, but only if the recycled product is "reasonably competitive and costs no more than 10 percent more than the nonrecycled product, or 15 percent more than the nonrecycled product if at least 50 percent of the secondary material used to make the product was generated from the waste stream in New York State." Also, "each document printed on recycled paper must include the official state recycling emblem if such product has been approved by the state Department of Environmental Conservation (DEC). If the product has not been approved by the DEC, then it must contain a printed statement indicating the percentage of pre-consumer and post-consumer recycled material content of the product."²

And that's just one mandate. On the following pages, we'll give you the lowdown on the "Big Four."

Special Education

According to the New York State Commission on Property Tax Relief, New York has 204 special education mandates that go above and beyond what is mandated under the federal government's Individuals with Disabilities Education Act, which is usually referred to as IDEA. Here are two examples:

- ★ Public schools must provide a range of special education services to all students with disabilities—even those who are homeschooled or enrolled in nonpublic schools. This is known as New York's "dual-enrollment" provision, and it exceeds the requirements of the federal law.³
- ★ Parents who disagree with decisions made by their school district's committee on special education (CSE) can request an impartial due process hearing. During the hearing, the burden of proof is on the school district to disprove the parent's claim—rather than on the parent to prove his or her claim, as is the case under federal law. This mandate increases legal costs for school districts as they prepare their arguments. Plus, if the hearing officer finds in favor of the parents, in most cases the school district is responsible for paying the parent's legal fees.³

Although many of these mandates were passed with the best of intentions, they cost school districts a great deal of money. During the 2008-09 school year, school districts in New York State spent an average of \$26,551 to educate one special education student—compared with \$10,874 to educate one general education student. That same year, schools spent 27 percent of their instructional dollars on special education—even though only 13 percent of all students were in that category.³

However, according to a study published by the Center for Special Education Finance in 2003, the national average cost to educate one special education student in the U.S. was \$12,474 during the 1999-00 school year, the last year national data was compiled. Even though there's a nine-year gap between the national

and New York State figures, the data provides a sense of how much New York's 204 "extra" special education mandates cost.

Wicks Law

The Wicks Law, which was established in 1912, demands that municipalities—including school districts—collect bids from separate contractors on different parts of any building or renovation projects that cost more than \$500,000.

The three different parts are:

- ★ Plumbing and gas fitting;
- ★ Steam heating, hot water heating, ventilating and air conditioning; and
- ★ Electric wiring and standard light fixtures.⁴

This means that the district could end up contracting with three separate companies to do the work.

Originally, the Wicks Law was established to promote competition between contractors and to protect workers' rights. The law is still doing just that, allowing small and specialty contractors to bid competitively for municipal construction jobs without trying to gain favor with general contractors who might subcontract with them. Proponents of the Wicks Law say that, without it, costs for public building projects will rise dramatically as competition decreases and the possibility of corruption increases.⁵

However, studies have estimated that municipalities pay 8 to 30 percent more for projects under the Wicks Law.⁶ In addition, coordinating the work of separate specialty contractors can be a nightmare that often results in project delays and even lawsuits that add more costs to school districts' total bills.

Under the Wicks Law, school districts are responsible for the overall construction process, including overseeing and coordinating the work of each of their specialty contractors. However, few school districts have construction specialists on staff, so they're left with the option of hiring someone (in addition to the specialty contractors) to oversee the construction process or giving that responsibility to someone who has little or no expertise in that area. In the private sector—as well as in other states—school districts can hire general contractors to coordinate their projects and see that they are completed on time and within budget.⁶

Problems with coordinating the work of up to three separate contractors can also lead to delays, which are bad enough. But delays can also lead to lawsuits against the school district. If a subcontractor loses income because of a delay in a school district's building project, the courts will often hold the school district liable—even if the delay was the fault of another contractor.⁶

Although Broadalbin-Perth is not currently in the middle of a building project, the Wicks Law has affected B-P and other school districts during every building and renovation project since the law's passage.

Triborough Amendment

The Triborough Amendment to the Taylor Law requires that the provisions of existing or expired contracts remain in effect

² *School Law*, 31st edition, pp. 823-4, question 27:70. Refers to New York General Municipal Law § 104-a.

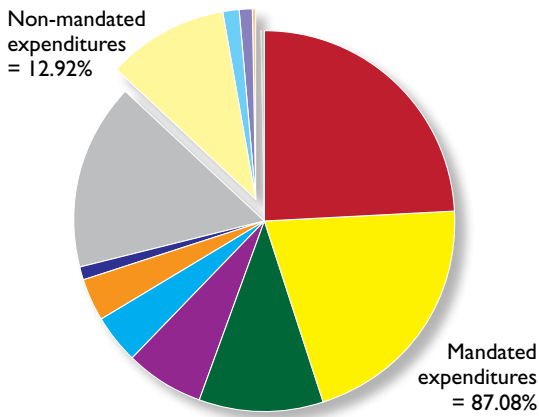
³ "Essential Fiscal Reform Playbook," p. 103. Published by the New York State School Boards Association (NYSSBA), May 2011.

³ "Essential Fiscal Reform Playbook," p. 103. Published by the New York State School Boards Association (NYSSBA), May 2011.

⁴ New York General Municipal Law § 101.

⁵ Conde, Clarke. "Wicks Law saves money, combats corruption." *Rochester Business Journal*, Jan. 22, 2010.

⁶ "The Wicks Law," www.stophthetaxshift.org. Stop the Tax Shift is a project of the New York Conference of Mayors and Municipal Officers.



What's Mandated in B-P's 2011-12 Budget?

The pie chart and corresponding table show the 87 percent of B-P's budget that is mandated. Each budget area is color coded—i.e., instructional costs are in yellow on both the pie chart and table. The pieces pulled away from the pie chart represent non-mandated expenditures. Please note that school districts are required to provide the mandated items listed, but school districts have some flexibility in the way they fulfill certain mandates.

| DISTRICT OPERATIONS | AMOUNT |
|--|-------------|
| Mandated: Superintendent, business administrator, data coordinator, auditing, budget vote, insurance, legal notices. | \$1,178,640 |
| Non-Mandated: Business office employees, supplies, public information, legal services, cell phones, association dues. | \$414,689 |
| MAINTENANCE & UTILITIES | AMOUNT |
| Mandated: Custodians, maintenance, supplies, heat, electricity, phone service. | \$2,011,085 |
| TRANSPORTATION | AMOUNT |
| Mandated: Drivers, mechanics, dispatcher, supplies, equipment, fuel. | \$1,124,000 |
| Non-Mandated: Field trips, athletic trips. | \$33,500 |
| INSTRUCTION | AMOUNT |
| Mandated: Most teachers (grades 1-12), building administrators, substitutes, textbooks. | \$6,209,500 |
| Non-Mandated: Teachers of art, music, pre-K and kindergarten; supplies, extracurricular activities and athletics. | \$3,011,020 |
| SPECIAL EDUCATION & ACADEMIC INTERVENTION | AMOUNT |
| Mandated: Teachers, aides, out-of-district programs, supplies, textbooks. | \$3,053,300 |
| Non-Mandated: AIS supplies. | \$2,800 |
| SUPPORT SERVICES | AMOUNT |
| Mandated: Counselors, psychologist, physician. | \$329,500 |
| Non-Mandated: School nurses, supplies. | \$343,500 |
| EMPLOYEE & RETIREE BENEFITS | AMOUNT |
| Mandated by law and current contracts. | \$7,125,500 |
| DEBT SERVICE | AMOUNT |
| Mandated: Payment on bonds for building and renovation projects, bus purchases. | \$4,645,954 |

while new contracts are negotiated. This means that employees will continue to receive “step” increases based on longevity during contract negotiations.

Opponents of the Triborough Amendment argue that, under the law, public employee unions have little incentive to negotiate because, even if contract negotiations remain at impasse for several years, their members will continue to receive annual step raises. This is a problem for public employers who will see their salary costs continue to rise even after a contract has expired.⁷ The New York State School Boards Association (NYSSBA) estimates that this provision costs school districts as much as \$93.5 million a year.⁸

Broadalbin-Perth will be negotiating a new contract with its teachers' union this school year. If the school district and union are not able to reach an agreement by June 30, the provisions of the Triborough Amendment would kick in, meaning B-P would pay approximately \$225,000 in step increases from the expired contract during the 2012-13 school year.

Public Employees' & Teachers' Retirement Systems

School district employees are public employees, and in New York State, public employees are entitled to participate in a defined-benefit retirement system. Defined-benefit retirement systems differ from the defined-contribution retirement systems that are commonly found in the private sector: Employees in a defined-benefit system will receive retirement benefits based on their age, years of service and final salary, whereas employees in a defined-contribution system will receive retirement benefits based on what they and their employers contributed to their retirement accounts, e.g., 401(k), 403(b) or IRA. The public employee retirement systems that exist for school district employees are the Teachers' Retirement System (TRS) and the Employees' Retirement System (ERS).

Public employee retirement benefits, or pensions, are guaranteed by the New York State Constitution. The state typically invests money from the various pension funds in the stock market and other interest-bearing accounts. When the economy is good, interest from these investments helps to pay the pensions of current retirees. When the economy is bad, public sector employers have to make up the difference.

Why does this responsibility fall solely on the employer and not also the employee? When a public employee is hired, he or she enters the retirement system at the current “tier.” The provisions of that “tier” are treated as a binding contract between the employee and New York State. So, employees in Tier 4 contribute 3 percent of their annual salaries to their retirement system for 10 years. They contribute nothing after that. Under the new Tier 5, which was enacted Jan. 1, 2010, employees contribute 3 percent of their annual salaries every year for the duration of their employment (teachers contribute 3.5 percent per year).

Now, back to employer contributions. Every year, each retirement system determines a percentage of payroll that each public employer must contribute to the system. That percentage has been steadily increasing for the past 10 years. For instance, during the 2010-11 school year, school districts contributed 8.62 percent of payroll to TRS. During the 2011-12 school year, school districts will contribute 11.11 percent of payroll to TRS. For Broadalbin-Perth, this will be a \$280,000 increase. Add in B-P's contributions to ERS, and the total increase is closer to \$400,000 (see table on next page).

Once Tier 5 employees have been in the retirement system for 10 years and continue to contribute to the system, employers may see some relief. In addition, some lawmakers, including Gov. Andrew Cuomo, are in favor of establishing a Tier 6 that would offer less generous benefits than previous tiers of the retirement system. However, changes to existing tiers, including Tiers 1-5, would be more difficult to bring about since they would require changes to the state Constitution.

⁷ O'Neil, Terry and E.J. McMahon. “Taylor Made: The Cost and Consequences of New York's Public Sector Labor Laws.” Published by the Empire Center for New York State Policy, a project of the Manhattan Institute for Policy Research. October 2007.

⁸ “Essential Fiscal Reform Playbook,” p. 4. Published by the New York State School Boards Association (NYSSBA), May 2011.

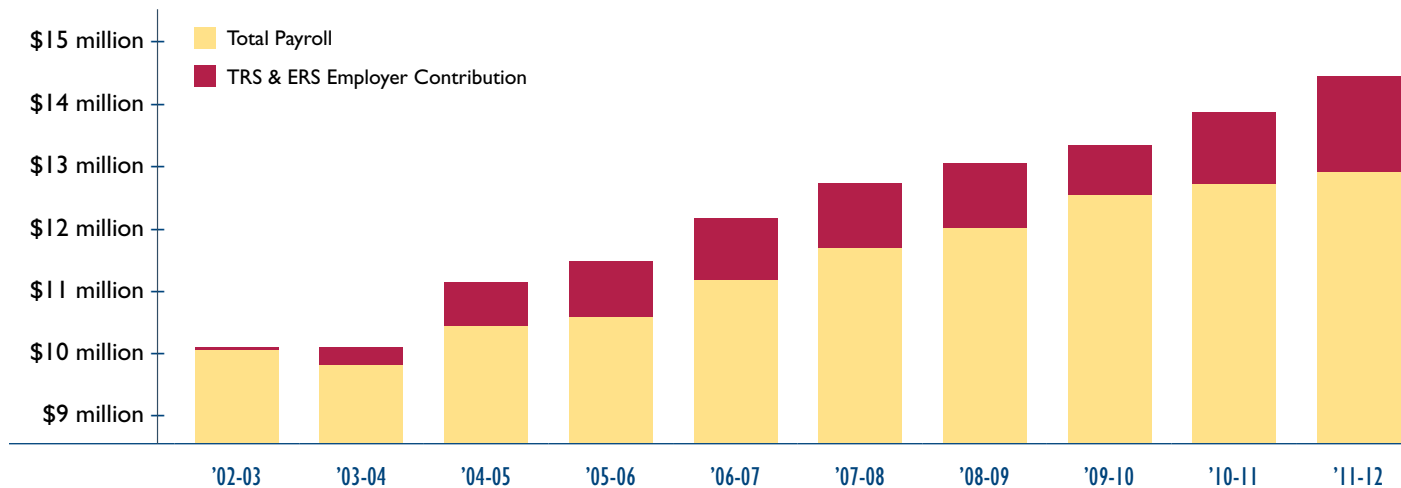
Rising Pension Costs

While employee contribution rates remain steady at 3 or 3.5 percent, employer contribution rates can change drastically, as much as 16 percent over two years, making long-term budgeting difficult. So, how much does Broadalbin-Perth contribute to the teachers' and employees' retirement systems? The table and graph below show B-P's annual contributions for the past 10 years. **If you want all the details, check out the table, but if you just want the gist of things, the bar graph below is for you.**

| FISCAL YEAR | TRS EMPLOYER CONTRIBUTION RATE | TOTAL TRS PAYROLL AT B-P | B-P'S TRS EMPLOYER CONTRIBUTION | ERS AVERAGE EMPLOYER CONTRIBUTION RATE | TOTAL ERS PAYROLL AT B-P | B-P'S ERS EMPLOYER CONTRIBUTION | B-P'S TOTAL PAYROLL | B-P'S TOTAL EMPLOYER CONTRIBUTIONS | YEAR-TO-YEAR TRS & ERS EMPLOYER CONTRIBUTION DOLLAR CHANGE | YEAR-TO-YEAR TRS & ERS EMPLOYER CONTRIBUTION PERCENT CHANGE |
|--|--------------------------------|--------------------------|---------------------------------|--|--------------------------|---------------------------------|---------------------|------------------------------------|--|---|
| 2002-03 | 0.36% | \$ 8,560,000 | \$ 30,816 | 0.91% | \$1,513,413 | \$ 13,778 | \$10,073,413 | \$ 44,594 | — | — |
| 2003-04 | 2.52% | \$ 8,290,516 | \$ 208,921 | 4.50% | \$1,553,487 | \$ 69,908 | \$ 9,844,003 | \$ 278,829 | \$234,235 | 525% |
| 2004-05 | 5.63% | \$ 8,824,494 | \$ 496,819 | 11.95% | \$1,644,054 | \$196,501 | \$10,468,548 | \$ 693,320 | \$414,491 | 149% |
| 2005-06 | 7.97% | \$ 8,829,009 | \$ 703,672 | 10.57% | \$1,778,937 | \$188,046 | \$10,607,946 | \$ 891,718 | \$198,398 | 29% |
| 2006-07 | 8.60% | \$ 9,314,267 | \$ 801,027 | 9.96% | \$1,891,906 | \$188,349 | \$11,206,173 | \$ 989,376 | \$ 97,658 | 11% |
| 2007-08 | 8.73% | \$ 9,716,644 | \$ 848,263 | 9.04% | \$2,010,273 | \$181,740 | \$11,726,917 | \$1,030,003 | \$ 40,627 | 4% |
| 2008-09 | 7.63% | \$10,306,684 | \$ 786,400 | 8.10% | \$2,167,577 | \$175,682 | \$12,474,261 | \$ 962,082 | -\$ 67,921 | -7% |
| 2009-10 | 6.19% | \$10,245,541 | \$ 634,199 | 7.08% | \$2,326,893 | \$164,774 | \$12,572,434 | \$ 798,943 | -\$163,139 | -17% |
| 2010-11 | 8.62% | \$10,403,483 | \$ 896,780 | 10.95% | \$2,338,411 | \$256,169 | \$12,741,894 | \$1,152,949 | \$353,976 | 44% |
| 2011-12 | 11.11% | \$10,615,961* | \$1,178,372* | 15.22% | \$2,329,458 | \$354,571 | \$12,945,419 | \$1,532,943 | \$379,994 | 33% |
| TOTAL INCREASE, 2002-03 TO 2011-12: | | | | | | | | | \$1,488,349 | |

*TRS contributions are paid the following fiscal year. B-P's 2011-12 contributions will be paid in 2012-13.

10 Years of Payroll Plus TRS & ERS Employer Contributions



Questions?

The superintendent of schools is happy to meet with you to discuss any questions you may have about mandates in general or how education mandates affect Broadalbin-Perth in particular. Please contact him to set up an appointment.

Stephen Tomlinson

Superintendent of Schools

Email: tomlinsons@bpcsd.org

Phone: (518) 954-2500