NEW YORK STATE EDUCATIONAL CONFERENCE BOARD

# Tax Cap adjustments can help schools balance student needs, fiscal stability, and taxpayer concerns

All New York residents have a stake in a public education system that is stable, adequately-funded, and makes progress on behalf of children and the state's economic prospects. This depends upon a sustainable approach to school funding, which comes primarily from two sources: state aid and local property taxes. Schools depend on both to meet student needs. Meeting these needs while also being responsive to taxpayer concerns requires sufficient state aid. Three years into the state's first-ever property tax cap, it is clear that the law has resulted in some fundamental challenges with the school budgeting process and the efforts of schools to sustain quality programs for all students. These challenges have been exacerbated by state aid losses of recent years.

The New York State Educational Conference Board (ECB) – comprised of the seven leading educational organizations representing parents, classroom teachers, school-related professionals, school business officials, building administrators, superintendents, and school boards – is issuing this set of recommendations designed to help schools continue to seek the right balance between giving students the best chance at success while being responsive to taxpayer concerns. This paper and its recommendations apply to independent school districts – those outside the Big 4 cities and New York City – and do not represent the position of the Conference of Big 5 School Districts, an ECB member.

All other ECB member groups opposed the property tax cap when it was introduced, believing there were better options. This paper is focused on fixing some of the most damaging elements of the existing tax cap for schools, based on three years of experience. The recommendations fall into two categories: (1) changes to the policy framework that supports the tax cap and (2) technical corrections that adjust for shortcomings that are now evident.

## Tax Cap Recommendations

**Change the framework of the cap in a way that respects New York's tradition of community budget votes, but looks to tax cap models from other states and rules for New York's municipalities**

1. Redesign the override requirement so that it is a separate ballot question, put directly to voters for simple majority approval
2. Modify the uniquely restrictive zero percent contingent budget cap for schools
3. Make the allowable levy growth factor a consistent 2 percent, regardless of CPI
4. Address instances where a district's maximum allowable tax cap is negative

**Make technical corrections and adjustments to the tax cap calculation based on three years of practical experience**

1. Include PILOTs in the tax base growth factor
2. Count general fund transfers to a Capital Reserve Fund in the capital exclusion
3. Adjust the carryover provision so it is a more meaningful factor in school budget planning
4. Account for enrollment growth in the tax cap calculation
5. Count BOCES capital costs in the capital exclusion
6. Exclude significant tax certiorari judgments
7. Adjust the pension exclusion to more accurately account for rate increases

NEW YORK STATE EDUCATIONAL CONFERENCE BOARD ● John Yagielski, Chair
c/o NYSUT ● 800 Troy-Schenectady Road ● Latham, NY 12110

## New York's Property Tax Cap for Schools

The tax cap that lawmakers approved in 2011 is uniquely restrictive for school districts, which – unlike towns, villages, cities, and counties – must submit budgets directly to voters for approval. In order to exceed their cap, school districts are required to receive the support of a 60 percent supermajority of voters. At the municipal level, this supermajority only applies to the governing body. (In the case of five-member boards, common in municipalities, a supermajority is the same as a simple majority.) Consider that more than a quarter of all municipal governments have voted to exceed their cap over the last three years. On the other hand, data cited in a recent report from the State Comptroller reveals that an average of only 5 percent of school districts per year have exceeded the cap and the number doing so has dwindled each year. The report also found high need districts were only half as likely to over-ride compared to average and low need districts. With one unique exception, no high need small city or suburban school district has succeeded in an override attempt. In Massachusetts and New Jersey, school districts are only required to hold public votes when they exceed the cap – and the threshold for approval is a simple majority, 50 percent of all voters plus one.

New York's tax cap is also extremely restrictive for school districts that are unable to gain community support for a budget. Prior to 2011, the contingent budget rules capped expenditure growth at the lesser of 4 percent or 120 percent of the Consumer Price Index (CPI). With the tax cap, the tax levy in a contingent budget is frozen at the same level as the prior year – ***a zero percent cap***. This puts school districts in the unique position of needing voter approval to raise any additional revenue through local taxes.

As costs rise and schools strive to meet increased expectations, the inability to raise any additional tax levy revenue can be a devastating scenario for a district. This is especially troubling in high need school districts that lack the resources to provide an adequate education to their students and that may have difficulty gaining voter approval. In times when the state is unable to provide sufficient aid to districts, as in recent years, a zero percent tax levy cap is untenable. Based on the budgets school districts put before voters for 2014-15, the average district would need to have cut about $500,000 in a zero percent contingent budget. This equates to the loss of teachers, critical services, and increased class sizes.

### 2013 Tax Cap Overrides

| Type of Local Government | Overrides (%) |
|---|---|
| Villages | 35% |
| Cities | 25% |
| Towns | 27% |
| Counties | 33% |
| Schools[1] | 4% |

[1] *Attempted overrides, May 2013 school budget votes. Source: NYS Comptroller's Office municipal data and NYSED school Property Tax Report Cards.*

## Recommended Changes to the Tax Cap Framework

### Framework Recommendation 1: Redesign the override requirement so that it is a separate ballot question – put directly to voters for simple majority approval

There is no doubt that New York's schools have respected the tax cap, just as they respect their voters. In the last three years, an average of 95 percent of districts have proposed

### The Tax Cap and State Aid

When New York implemented a tax cap, its school Foundation Aid formula was frozen and schools were incurring even deeper losses in state aid through the Gap Elimination Adjustment. The cuts were so severe that 51 percent of the state's school districts are still receiving less state aid this year than they did in 2008-09. The percentage of total school funding in New York provided by the state over the last two years is at its lowest levels since the late 1940s. The tax cap made it more difficult for schools to do what they have done in the past – turn to voters with the *option* of preserving services in the face of diminished state support. New York's schools reduced more than 30,000 educational professional positions over the course of the recent economic downturn. ECB members warned that the tax cap would only exacerbate disparities between districts. Unlike other states that implemented a tax cap, state funding has been notably absent as an equalizer. The long-term fiscal and programmatic health of our schools depends on a functioning state aid system ***and*** modifications to the cap recommended in this paper.

budgets at or below their cap. In fact, schools listened to their voters and restrained spending and taxes prior to the implementation of the cap: In the three years before 2012-13, the average annual school district spending increase was 1.7 percent and the average tax levy increase was 2.9 percent.

Under the following changes to the override requirement recommended by ECB, school districts would continue to be responsive and accountable to voters through public budget votes:

- All school districts would calculate a tax levy cap as they do under the current law.
- Districts would be required to propose a "basic budget" that stays within their cap as a first ballot question each May for voters to decide.
- They would then have the option of proposing a separate ballot question for an override amount to fund specific budget items. This override question would require a simple majority vote, similar to Massachusetts, New Jersey, and Wisconsin. In fact, New Jersey lowered its 60 percent override threshold to a simple majority in 2010.

This recommendation continues the direct influence voters have on school budgets, makes a transparent connection between an override amount and a specific purpose, and would often save the time and expense of a second budget vote.

### Framework Recommendation 2: Modify the uniquely restrictive zero percent contingent budget cap for schools

A tax cap should not be punitive. The goal should be to provide relative stability for taxpayers while accounting for the costs needed to provide services – many of which are required of public schools and supported by their communities. In recent years, schools lost state aid as they faced rapidly increasing cost beyond their control. Many made painful choices about student programs in order to pay these bills and live well within the limits of their cap. Districts should not have to risk having their tax levies capped at zero percent in order to propose a budget that funds student needs. The zero percent cap under the current contingent budget rules should be adjusted in a way that respects the will of the voters when a budget is defeated, but minimizes the damage that a cap at that level would do to student programs and the fiscal stability of a district.

## Tax Cap Comparisons for Four States

| State | Tax Cap Level | Public Vote Required? | Override Requirement |
|---|---|---|---|
| New York | 2% increase in levy or CPI (lesser of) | Yes | 60% Supermajority |
| Massachusetts | 2.5% levy increase[1] | Only to exceed cap | 50% plus 1 vote |
| New Jersey | 2% increase in levy (less can be banked for 3 years) | Only to exceed cap | 50% plus 1 vote |
| Wisconsin | State and local revenue limit increases by $75/pupil | Yes | 50% plus 1 vote |

[1]*Massachusetts also has a tax levy ceiling of 2.5 percent of total assessed value.*
*Source: New York State Association of School Business Officials, "New York State Property Tax Cap Implications for School Districts," December 2014, http://tinyurl.com/NYSASBO-FiscalStress*

### Framework Recommendation 3: Make the allowable levy growth factor a consistent 2 percent, regardless of CPI

Currently, the tax levy growth factor in the cap calculation is the lesser of 2 percent or the change in the Consumer Price Index (CPI). For the coming year, this will be 1.62 percent. Many fixed costs for schools, including pension contributions, salaries and benefits, fuel, and educational materials, bear little or no resemblance to the CPI factor used. Making the tax levy growth factor a consistent 2 percent is more predictable and fairer.

### Framework Recommendation 4: Address instances where a district's tax cap is negative

A district's maximum allowable tax levy limit can result in a negative change from the prior year when districts have a new payment-in-lieu-of-taxes (PILOT) agreement or when local capital expenditures decrease. A negative change in the tax levy limit is a dramatic fluctuation for a district and for taxpayers. Under the current law, this puts districts in the position of needing a supermajority to increase taxes at any level – or in some cases needing supermajority approval to even decrease taxes. This undermines the public's ability to understand school finances and the true consequences of a budget vote. It complicates planning and stability for a school district. The law should provide for a floor of zero percent in the change of the levy – giving districts the ability to, at least, hold taxes steady from year-to-year.

## Technical Adjustments and Corrections to the Tax Cap Calculation

### Technical Recommendation 1: Include PILOTs in the tax base growth factor

The tax cap calculation does not allow districts to recognize any benefit from new construction and a broadened tax base when the growth is associated with a PILOT. This is especially problematic because growth and development related to a PILOT often causes the need for increased school services. The best way to remedy this is to recognize the new construction in the tax base growth factor in the cap calculation as soon as the PILOT comes online.

### Technical Recommendation 2: Count general fund transfers to a Capital Reserve Fund in the capital exclusion

Transferring a dedicated amount from a voter-established Capital Reserve Fund has been an important fiscal planning tool for districts to moderate the cost impact of capital projects while maintaining their facilities. The tax cap capital exclusion should recognize these transfers. Absent this adjustment, the result will be a greater impact on local taxes when voters approve capital projects because districts will have less in savings to apply to the cost of the project.

### Technical Recommendation 3: Adjust the carryover provision so it is a more meaningful factor in school budget planning

Current law allows districts to carryover "unused" tax levy when they don't increase taxes to their maximum limit. But as constructed, few districts have been able to use this provision. The carryover provision should be made more meaningful for schools by reflecting what districts actually levy compared with their tax levy limit plus permissible exclusions. This is the true comparison of whether a district "lived within its cap." Also, similar to New Jersey, districts should be able to bank any carryover for three years.

### Technical Recommendation 4: Account for enrollment growth in the tax cap calculation

There is no mechanism within the tax cap calculation to adjust for enrollment growth and associated cost increases. The calculation should include a student growth index, similar to the tax base growth factor, with a realistic trigger for when schools face greater costs associated with an increased number of students and their needs.

### Technical Recommendation 5: Count BOCES capital costs in the capital exclusion

Boards of Cooperative Educational Services (BOCES) work collaboratively with school districts to provide valuable educational services to students. The current tax cap formula does not include an exclusion for school districts' costs related to construction or renovations at BOCES facilities. This significantly impairs the ability of districts and BOCES to work together to invest in modernizing regional learning facilities. This is especially important to correct given the increased emphasis on career and technical education and the role it plays in the success of students and our economic competitiveness. BOCES construction costs should be counted as part of the tax cap's existing exclusion for local capital expenditures.

### Technical Recommendation 6: Exclude significant tax certiorari judgments from the calculation

If a major property owner in the district successfully challenges an assessment, the cap provides districts with no flexibility in how this loss can be absorbed. This could force districts to reduce student programs to offset the loss and stay within the cap. The exclusion for court orders and judgments should be expanded to include significant tax certiorari claims.

### Technical Recommendation 7: Adjust the pension exclusion to more accurately account for rate increases

The tax cap formula excludes those pension costs attributable to an increase in contribution rates greater than two percentage points for the pension systems. However, there can be a significant difference between a *percent* increase and a *percentage point* increase. For example, the TRS rate increase from 11.84 percent to 16.25 percent for 2013-14 represented a 37 percent increase in the rate. This exacerbates a situation in which schools need to cut programs and staff to pay required pension costs. The exclusion should apply when the employer contribution rate increases by 2 percent in either system.