
Sandown Feasibility of Withdrawal from TRSD

Bligh to Face Analysis

August 10, 2015

The Issue – Buyout of Sandown Schools

- TRSD is prepared to present a bill to Sandown of **\$6.4+ million** for the Sandown Central and Sandown North schools if the town withdraws from the cooperative.
- There is a strong case that Sandown is not liable for **ANY** buyout cost
- The buyout cost is the largest single financial issue with potential withdrawal.

How Does TRSD Calculate the Buyout Amount?

- TRSD has done a preliminary calculation of construction and capital improvements to Sandown schools since 2000 – including construction of Sandown North – about \$8 million after deducting State building aid. The district warns that this figure will grow as the analysis is pushed to earlier years.
- Sandown is, each year, allocated a share of the district costs to be taxed from the residents. Sandown's allocated share of the TRSD **capital** costs is about 16%.
- Since Sandown is allocated 16% of the capital costs, TRSD is “crediting” Sandown with 16% payment of the capital spending on *each individual district facility*, including Sandown's 2 schools.
- Sandown is asked to pay the TRSD for the remaining 84% of improvements to Sandown's 2 schools. The 16% which Sandown is “credited” to have paid toward improvements to the other district facilities does not offset Sandown's obligation to repay the 84% spent on the 2 Sandown schools.
- In round numbers, \$7.5 million has been spent on Sandown schools since 2000. Sandown is “credited” with \$1.1 million of that amount, and therefore owes **\$6.4 million** (and growing) upon withdrawal.

How Does TRSD Justify the Buyout Amount?

- Buyout is governed by RSA 195:28*. Key elements:

The cooperative school district shall transfer and convey title to any school building and land located in the withdrawing district to the withdrawing district upon payment by the withdrawing district of the **costs of capital improvements and additions** to said school building incurred by the cooperative school district, less **the share which the withdrawing school district has already paid toward such costs**. ... The withdrawing school district **forfeits its equity** in all other ... district facilities.

- “Cost of capital improvements and additions” is researched from the TRSD financial records
- “The share ... already paid toward such costs” requires some method of recognizing Sandown’s capital contributions to the TRSD and crediting those contributions to specific facilities
- “Forfeits its equity” is the justification for not counting any offsetting credit for Sandown’s contribution to other facilities.

* See Appendix for the full text of RSA 195:27 and 195:28

The Stakes

If TRSD is correct in their claim about the buyout calculation, it does not impact Sandown alone.

This buyout figure is NOT a conclusion that Sandown has made insufficient capital contributions to the district.

ANY town (pre-existing district) in a Cooperative School District which incorporates elementary schools would face a near-impossible obstacle to withdrawal, regardless of how much it has contributed to the capital improvement of the district.

This is clearly contrary to the State's interest in encouraging towns to organize cooperative school districts to maximize sharing of resources.

Now – A Different View of the buyout law

- Again, RSA 195:28*:
 - ... upon payment by the withdrawing district of the **costs of capital improvements and additions** to said school building incurred by the cooperative school district, less **the share which the withdrawing school district has already paid toward such costs**. ... The withdrawing school district **forfeits its equity** in all other ... district facilities.
- “The share ... already paid toward such costs” is **simply the share of capital improvement costs allocated to Sandown for the annual tax calculation, added up over the life of the cooperative district**.
- If Sandown’s capital contributions over the years total less than the amount spent on Sandown facilities, then Sandown owes a buyout fee.
- If Sandown’s capital contributions are more than the amount spent on Sandown facilities, then no buyout fee is owed, but Sandown forfeits its equity in the facilities of the remaining cooperative district.

* See Appendix for the full text of RSAs 195:27 and 195:28

On Proposed interpretation of the law – No Buyout Fee

Sandown's capital contributions **far exceed** the cost of capital spending on the Sandown schools.

- For the 2000-2020 period, Sandown has contributed \$11.5 million, versus \$8.2 million for construction of Sandown North and improvements to both SN and SC.
- Assuming withdrawal in 2017,
 - Sandown's capital contribution over the life of the district will have been about \$14.5 million. Improvements (net of State building aid) are likely to be in the range of \$10-\$11 million
 - **No** buyout fee justified
 - Sandown will forfeit approximately \$3.5 million equity in other district facilities.

Comparison using estimated costs

	TRSD Claim	My Proposal
Capital improvements to schools in Sandown (deducting State building aid)	\$11 million (estimated - improvements prior to 2000 have not yet been researched by TRSD)	
Sandown capital contribution to TRSD	\$14.5 million	
Sandown contribution credited to Sandown schools	\$2 million (\$11 million x 18%)	\$11 million
Buyout fee owing from Sandown to TRSD	\$9 million (\$11 - \$2)	\$0
Sandown forfeits equity in remaining TRSD facilities	\$12.5 million (\$14.5 - \$2)	\$3.5 million (\$14.5 - \$11)

TRSD is preparing to tell Sandown to **forfeit \$12.5 million equity AND** to make a cash payment of **\$9 million**.

Support for the TRSD Claim is shallow

- TRSD's buyout calculation has been reportedly signed off by the TRSD attorney prior to presentation to the official Withdrawal committee on Aug. 6
- No written opinion provided, no supporting legal analysis
- There is no applicable case law on this issue
- None of the New Hampshire RSA 195 withdrawals from a cooperative school district had circumstances requiring a buyout fee

* See Appendix B for the detailed calculations

Support for the Proposed Buyout Analysis

The key phrase in the RSA:

the share which the withdrawing school district has already paid toward such costs

... has no meaning in the district financial accounting systems or the state handbook on municipal finances.

The funds contributed by the member towns of a cooperative district are based on the total capital expenditures regardless of the facility.

So the TRSD position “crediting” member town contributions to individual facilities based on the overall capital contribution share to the district is an *artificial construct with no basis in accounting or law*.

My proposed reading of the RSA as written:

“The share which the withdrawing school district has already paid” can be most logically interpreted as Sandown’s \$14.5 million capital contributions assessed and paid to TRSD over the years.

Did the State Intend to Block Withdrawals?

If the TRSD claim is correct, we can infer that the legislature intended to **make it almost impossible for a town to withdraw from a cooperative school district**

- ❑ Sandown's position is not unique in TRSD.
 - Danville's allocated percentage of district capital costs is about 12% - Danville would need to pay 88% of the capital expenditures on Danville facilities to withdraw
 - Atkinson's buyout would be about 68%
 - Plaistow's buyout would be about 64%
- ❑ The same would apply to any similarly-organized cooperative district, ***in which the co-op encompasses the town elementary schools***. If this was the intent, then why were similar obstacles not created for withdrawal from cooperative districts which do ***not*** have elementary schools?
- ❑ In all cases, this imposes a multi-million dollar obstacle to withdrawal which few voters would voluntarily incur

... Or Did the State Mean to Ensure Fairness?

On the other hand, if the Proposed interpretation is correct, we can infer that the legislative intent was to **ensure that a withdrawing town does not walk away with facilities paid for by the other members.**

Did the Legislature Mean to Create a Windfall for the Remaining District?

If the TRSD claim is correct, then the legislature intends to demand a multi-million dollar transfer from the withdrawing town to the remaining cooperative district ***unrelated to any specific cost borne by the district.***

A member of the Timberlane School Board described the claimed Sandown buyout fee as a “windfall” for the TRSD. It is poor public policy to create a windfall for one group of taxpayers to be funded by another group of taxpayers.

By contrast, chapter 195:27, dealing with bonded debt, clearly links the obligations of the withdrawing town to the specific ongoing financial obligations which the withdrawing town engaged as a member of the co-op.

The clear legislative intent of 195:27 is consistent with the interpretation proposed here, and contradicts the intent as implied by the TRSD claim.

Did the State Intend to Discourage Cooperative Districts from Including Elementary Schools?

Most other cooperative school districts resemble Exeter. Member towns have separate school boards at the elementary level. The co-op operates a Middle School and High School. Member towns tax themselves for elementary school improvements, and the co-op allocates taxes for improvement of shared facilities.

In this arrangement, a withdrawing town already owns its own elementary school. Withdrawal would not result in any buyout fees, but the withdrawing town would forfeit the investments they funded in shared district facilities.

The interpretation of 195:28 as proposed here creates a closely parallel situation for TRSD. In effect, each town's capital contributions would be "credited" (in the event of withdrawal) to its own elementary school first, and then to shared facilities. A buyout fee would be required ONLY if a town's capital contribution added up to less than the capital spending in that town.

Similar situations should result in similar treatment. The vast difference between a withdrawal with no fee (Exeter) versus a withdrawal with a \$9 million fee (TRSD claim) should support the interpretation which puts these situations on a similar footing.

Summary – Pros of the Proposed Interpretation

Of the two competing interpretations of RSA 195:28 my Proposal

- Is consistent with a legislative intent to ensure that a withdrawing town does not exit with facilities paid for by the other members.
- Is consistent with a state policy to encourage cooperative school districts which maximize sharing of resources for elementary education
- Does not create a windfall for some towns funded by taxpayers of the withdrawing town
- Produces generally comparable results for co-operative districts which have adopted similar but different organization.

Summary – Cons of the TRSD Claim

On the other hand, the interpretation behind the TRSD claim

- Creates a near-insurmountable obstacle, not only for a Sandown withdrawal from Timberlane, but for *any* town withdrawing from a cooperative school district which encompasses elementary schools.
- Mandates that the taxpayers of the withdrawing town pay a ransom unrelated to any tangible financial burdens of the remaining cooperative district
- Creates a vast difference in treatment between the members of cooperatives districts organized at the HS/MS level, compared to co-operatives which include elementary schools. This significant disincentive to organize TRSD-style cooperatives would appear to be contrary to the policy intent of the state.

Appendix A: RSA 195:27 Liability of Withdrawing District

Each withdrawing district shall **remain liable for its share of the indebtedness of the capital costs of the cooperative school district which is outstanding when the withdrawal vote takes effect**, and the withdrawing district shall pay to the cooperative school district annually (a) that percentage of the payments of principal and interest of such debt thereafter due which is the same as the percentage for which the withdrawing district was responsible in the school year immediately preceding the effective date of the withdrawal vote, and (b) all amounts of state aid for the purchase or construction of school buildings and any other state aids which are lost by the cooperative school district after the withdrawal of a district as a result of such withdrawal, as determined by the state board of education, except that **the withdrawing district shall not be liable for any indebtedness or loss of state aid or other aid contracted after the district has duly notified the remaining districts in the cooperative that a withdrawal study is being requested**. Payments in discharge of such liability shall be made in accordance with a schedule agreed upon by the school board of the cooperative school district and the withdrawing school district or, in the event they fail to agree, as fixed by the state board of education. Such payments shall be deemed to be trust funds and shall be applied by the cooperative school district solely in payment of its indebtedness which was incurred to finance cooperative school facilities and which was outstanding on the effective date of the withdrawal vote. **A school district which withdraws from the cooperative school district shall forfeit its equity in any cooperative district schools.**

Appendix B: RSA 195:28 Disposition of Property

If a pre-existing school district withdraws from the cooperative school district, the cooperative school district shall transfer and convey title to any school building and land located in the withdrawing district to the withdrawing district **upon payment by the withdrawing district of the costs of capital improvements and additions to said school building incurred by the cooperative school district, less the share which the withdrawing school district has already paid toward such costs and the share which the withdrawing school district is required to contribute toward such costs as provided in RSA 195:27.** The amount of said capital improvements and additions and the time of transfer of title shall be determined by the agreement for withdrawal between the cooperative school district and the withdrawing school district. The withdrawing school district forfeits its equity in all other cooperative school district facilities.

Appendix C: Note about Assumptions and Estimates

For those interested in the detailed calculations, I will be posting this material online with discussion of assumptions and estimates.

The figures provided by TRSD on July 30 are incomplete and in some respects incorrect. The principal issue with the figures as presented is that the Sandown contributions for debt retirement through 2020 are not incorporated in the contribution figures. A valid buyout calculation needs to include estimated costs and contributions through to retirement of the bond.

Readers should also be aware that the historical costs of capital expenditures are not available at the level of individual facilities. This information can only be obtained by the SAU retrieving paper financial records with these details. The SAU has done this analysis only as far back as the 2000 district-wide capital project.