

VSA/VSBA/VPA EDUCATION LEGISLATIVE BULLETIN

February 29, 2008

***Foreword:** This Education Legislative Bulletin includes information about the status of education related legislation as members of the General Assembly leave for their Town Meeting break. Town Meeting week presents an essential opportunity to discuss the issues reviewed in this Bulletin with your legislative delegation. In particular, it will be important this week to talk with Senators about the action taken by the House to repeal the two-vote provisions of Act 82. Senators must be left with the impression that we expect them to take the House action seriously and that the enactment of even more unfunded mandates through S.348 (described below) is unacceptable. It will also be important to talk with your Representatives in the House. If they voted to repeal the two-vote provisions of Act 82, thank them. If they did not, it is quite appropriate to express disappointment.*

House Supports Repeal of Act 82 Think Twice Provisions—H.864

The House Education Committee sent the “Miscellaneous Amendments to Education Law” bill (H. 864) to the House floor on February 21st. As reported in our legislative bulletin at the end of last week, the bill was sent back to the Education Committee, apparently to avoid voting on an amendment to the bill that called for a repeal of the two-vote requirement in Act 82. When the Committee reconvened after receiving the bill, discussion immediately turned to the possibility of replacing the two-vote requirement with a reduction in the excess spending threshold—the Act 68 device that requires districts that spend more than 125% of the statewide average per pupil to raise from the local tax base \$2.00 for every \$1.00 of spending over the threshold.

Last year, the House approved, as its contribution to the cost-containment debate, a bill that would have reduced the threshold from 125% to 123% in FY 2010 and 120% in FY 2012. During the negotiations leading to Act 82 two-vote “compromise” the House abandoned its preference for reducing the threshold and agreed to the two-vote requirement. After revisiting the reduced threshold idea last week and earlier this week, the House Committee approved an amendment to H.864 that would replace the two-vote requirement with last year’s reduced threshold measure. The Committee vote in favor of the amendment was 7-3-1, with Representatives Ancel, Hosford, Peltz, Mook, Donovan, Gilbert and Oxholm voting in favor of the amendment and Representatives Kilmartin, Crawford and Clark voting against it. Representative Barnard was not present for the vote.

On Thursday, the House adopted the Education Committee’s proposal by a vote of 99 to 38. The rationale provided by the leadership to support repeal of the two-vote requirement showed that board members and administrators who have discussed the two-vote requirement with their legislators ultimately succeeded in bringing about a change of heart. When the Speaker addressed the Democratic caucus prior to the vote, she said that she now believes that the two-

vote requirement would confuse voters. She said that “cost-containment that happens because voters are confused is not good.”

The Douglas administration declared the House action “shameful,” and will no doubt continue to characterize it as an abandonment of a “fair and square deal” made on the last day of last year’s session. Also, Peter Shumlin, President Pro Tem of the Senate, announced his opposition to the House action immediately after the vote was taken. This means that the road ahead is entirely up hill. **Senators must be contacted during Town Meeting week, and give a message urging support of the House bill when it arrives at the Senate.** Please help us to ensure that no Senator returns to Montpelier on March 11th without having received this message from numerous constituents.

H.864 Also Repeals Act 31 of 2007—The Statewide Calendar Bill

H.864 was originally labeled as this year’s “Technical Corrections” bill, meaning that its content would be restricted to matters that do not involve changes in policy, such as wording changes in existing statutes intended to clarify their meaning. As the House Education Committee worked on the bill, however, its name was changed from “Technical Corrections” to “Miscellaneous Amendments to Education Law” in order to allow inclusion of sections clearly dealing with policy changes. This change allowed the inclusion of sections that repeal last year’s statewide calendar bill (Act 31 of 2007) and replace it with revisions to the existing regional calendar system.

H.864 amends the existing regional calendar statutes by making it clearer that regional calendars for the next school year are to be developed in each technical center service region, prior to April 1st each year, by the superintendents and tech center directors in the region. Once agreed upon, the regional calendars must be observed by each school district in the region. H.864 specifies that the Commissioner may withhold state funds from non-complying districts. As part of the regional calendar development process, superintendents and tech center directors would, under H.864, be required to make “provisions for the transportation of students attending a technical center in the region.”

This return to the regional calendar system indicates an acknowledgement on the part of the House Education Committee that last year’s hastily adopted statewide calendar bill created a process and result that was unpopular and, in the eyes of many, unworkable. If the House passes H.864 in its present form, and the Senate agrees to the H.864 regional calendar provisions, it will mark the end of the attempt to put all schools in the state on the same 175 day schedule.

A summary of all of the provisions in H.864 as passed by the House on Friday should be on the legislative website, www.leg.state.vt.us, early next week.

Further Discussion of Cost-Containment in House Education Committee

The House Education Committee has also been reviewing several proposals intended to provide some “help” to school districts in the area of cost-containment. It is likely that a bill will emerge from these discussions with at least some of the following provisions.

1. **Special Education Audits.** After hearing, over a period of several years, about the onerous special education audit system, the Committee took testimony from representatives of the Department of Education on the audit process and the importance the Department places on being able to audit whenever a reimbursement system is used to support school expenditures. The Committee approved a draft proposal to collect more information through a study of, and report on, the current system by the Commissioner in consultation with the VSA, VCSEA and VASBO. The Commissioner’s recommendations are to include ways to “...improve the timeliness and efficiency of the audit process,” with specific recommendations: 1) on how to ensure that each audit is completed and provided to the district within one year of submission of the district’s expenditure report; 2) providing clear guidelines as to the type of records that will be audited and how to maintain those records; and 3) ensuring that audits result in recommendations to help districts correct deficiencies in their systems for claiming reimbursements.

The Commissioner’s report would be due on January 15, 2009 and the Department is to suspend its auditing of special education reimbursements during the 2008-2009 school year. In place of audits in the coming year, superintendents would be required to certify that supporting documentation of expenditures is on file and time studies have been conducted and are on file for all staff time for which reimbursement is sought.

2. **Cost Saving Incentive Fund.** This provision would establish a “cost-saving incentive fund” in the State Treasurer’s office and create a competitive grant program for projects in supervisory unions or school districts that “...have significant, demonstrable cost savings.” Grants would be available for projects to share services, equipment or facilities or to reduce energy consumption. The Vermont Economic Progress Council would administer the grant program and establish the criteria for grant awards. An appropriation from the general fund would be required to fund the grants, and the Committee has tentatively included a FY 2009 appropriation of \$1,000,000 in its proposal.
3. **Repeal of Mandated Reporting.** The House committee has also reviewed a list of statutorily required reports with an eye toward eliminating as many of them as possible. The list includes some reports required of the State Board and Commissioner, but almost all of the listed reports are required of either supervisory unions or school districts. Among the reports listed for possible elimination are school reports required by 16 V.S.A. § 165 on health and social well-being of students, early reading instruction, community support to families, student participation in technical education or regional

job opportunities and postsecondary activities of high school graduates. Also listed are the annual reports on the results of hearing and vision tests, the status of educational support services in each school and Commissioner's reports on technical education pilot projects, regional high school choice and special education cost-containment. The Committee has also expressed interest in reducing the annual Act 51 drug and alcohol teacher education requirements.

4. **Minimum Quality Standards for School Based Pre-Kindergarten Programs.** Act 62, the Pre-Kindergarten bill passed last year, and the proposed State Board rules on Pre-kindergarten programs, require that school based programs meet standards developed either by the National Association for the Education of Young Children (NAEYC) or the Step Ahead Recognition System (STARS) sponsored by the Vermont Department of Children and Families (DCF). Further examination of this requirement has shown that school programs have found the NAEYC accreditation program to be very costly and very process oriented. Several school districts have decided to discontinue affiliation with NAEYC as a result. The STARS program, on the other hand, is oriented toward private providers and is not applicable to public school programs in several ways.

The House Education Committee appears ready to discuss a bill that would provide a transition to use of the STARS system by school districts while the STARS requirements are being reviewed and revised to meet the needs of public school Pre-K programs. The draft bill likely to be considered would give "presumptive eligibility" to school districts and private providers of Pre-K programs that are not currently participating in the STARS program if they submit applications to the STARS program by August 15, 2008 and are in "good regulatory standing" with DCF. Private providers would also be required to show that they have a contractual relationship with a public school. Finally, the draft bill would require that the STARS program be subjected to the administrative rule-making process and that rules be in place by July 1, 2009.

Ways & Means Committee Proposes Education Income Tax—H.866

The House Ways & Means Committee is developing a proposal that would change how residential Vermonters pay for education. Currently, an education property tax is assessed on all residential property, although a majority of residents pay the tax based on their income (i.e. the income sensitivity program, also known as the property tax adjustment). The Committee's proposal would eliminate the residential education property tax and the property tax adjustment. Instead, all residents would pay based on income, as many do now, although the formula would be different from income sensitivity.

Significantly, for the purposes of income sensitivity, a resident property owner pays based on "household income." As envisioned in the bill (H.866), *all* Vermont residents would pay the education income tax. The base rate would be 1.82% for all income levels. The base rate would

be adjusted up or down annually to generate the necessary revenue to pay education costs. This process would be analogous to how the education property tax rate is adjusted annually now.

The education income tax rate would also be adjusted in each district in proportion to education spending per equalized pupil, as residential education property tax rates are adjusted now. For example, if a district spends 25% more than the base education amount per equalized pupil, under the current system, the district's residential education property tax rate would be 25% greater than the base rate. Under the Committee's proposal, the district's education income tax rate would be 25% greater than the base rate (i.e. 2.28% on a base rate of 1.82%).

The bill includes several other provisions, including a cap on tax liability for residents earning less than \$47,000, and a rebate for renters who would otherwise be double-paying education taxes (on rent paid and income earned). There would not be a cap on total tax liability for high-income taxpayers. Nothing in this bill would affect non-residential education property taxes; the rate would continue to be set and adjusted annually by the State, with an adjustment for common level of appraisal. Taxpayers would also continue to pay municipal taxes based on residential property value, as they do now.

The bill would apply an income-based formula to all residential taxpayers. Therefore, under the proposed system, we would expect increased tax bills for taxpayers with substantial incomes and modest domiciles, and decreased bills for taxpayers with modest incomes and substantial domiciles. The Committee's proposal is not in final form, and it is working to refine the details. However it was the Committee's intention to make this draft available for the general public's inspection in order to receive feedback during the Town Meeting break. You can view the text of the bill as it was introduced here:

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-866.HTM>

The Committee will hold a public hearing on the bill on March 13th.

Teen Parent Education Bill Approved by House Education Committee—H.812

The House Education Committee has passed a bill that would change the funding formula for teen parent education programs. As you may recall from past Legislative Bulletins, funding teen parent education programs has been a legislative topic for three years running, since a federal rule change prevented these programs from drawing down funds from the federal Temporary Assistance for Needy Families (TANF) program. In the past two legislative sessions, temporary measures were approved on a one-year basis, but the bill discussed here (H.812) would function as a permanent solution if enacted.

The bill calls for approved teen parent education programs to be paid for each attending student an amount equal to the prior year's net cost per pupil, as defined in 16 VSA § 825, if the pregnant or parenting teen attends the program for a full year. The amount would be pro-rated for teens that attend less than one full year. The pro ration would be based on a full-time

schedule of 27.5 hours per week of education services for a school-year (35 week) program, or 18.5 hours of educational services per week for programs that run year-round. Two key provisions of H.812 are that the district of residence would be allowed to count the teen in the district's average daily membership, and the Commissioner of Education would reimburse the district for all payments made to the teen parent education programs from the Education Fund.

H.812 envisions a partnership between the pupil, the teen parent education program, and the pupil's district of residence for the purpose of developing the educational services to be provided the student. The goal of this provision is to ensure that the student's education is relevant to the district of residence's curriculum, and to ensure that the student remains on a path towards high school graduation. These stakeholders would jointly determine the length of time that the pupil will be allowed to attend the teen parent education program, and any disagreement would be resolved the Commissioner.

The funding formula envisioned in this bill would be effective during the FY09 school year for all currently approved teen parent education programs and also those that are recognized by the Department of Children and Families. Policymakers are discussing a process for formalizing the approval of teen parent education programs that would likely take effect for the FY10 school year. The bill is now awaiting action in the House Appropriations Committee.

Senate Committee Considers Raising Mandatory School Age—And Placing Unfunded Mandates on Schools—S.348

The Senate Education Committee has passed out a bill that would increase the mandatory age of school enrollment from 16 to 18 and provide alternative learning environments for students who cannot, or choose not to, thrive in a traditional high school. **S.348** would also require schools to use their Act 117 Educational Support Teams to monitor their student population for signs that a student may be on a path to dropping out, and to intervene appropriately.

The heart of the bill is the proposed change to mandatory enrollment. Currently, students are only required to attend school until age 16, but under S.348, the student would either have to attend until age 18 (unless he or she has completed the requirements for high school graduation) or: attend a postsecondary school or technical education program, or a home-school program, or a workforce training program, or enroll in the high school completion program created by Act 176 in 2006. To attend these programs, other than postsecondary education, the student must be granted a waiver. The district's school board would identify a person with authority to grants waivers for students who meet one of the above criteria. If a student who does not meet one of the above criteria wishes to leave school before the age of 18, he or she would be required to appear before the school board to obtain a waiver from the school's attendance requirements. Failure to obtain a waiver would result in the student being considered truant.

S.348 would also require that schools utilize their educational support teams to identify students at any age who may be in danger of not completing high school. Students identified as such

would be given a personal education plan (“PEP”), to be developed and updated by annually by the team, with input from the student and his or her parents. The PEP would outline procedures for obtaining services as diverse as literacy instruction (if necessary), an adult mentor which may be a parent, applied learning opportunities, dual enrollment courses, outreach programs administered by the Vermont Student Assistance Corporation, or “any other service to encourage the successful completion of elementary and secondary school and preparation for life after graduation.” The bill also requires students who are imminently near dropping out to be informed of alternative paths to graduation, regardless of whether he or she had participated in a PEP.

Thirdly, S.348 would amend the statutes governing the high school completion program (16 VSA 1049a) to ensure that the “graduation education plan” includes services such as career exploration and workforce training.

S.348 imposes the above process requirements on schools without consideration of their costs. No effort has been made by the Senate Education Committee to quantify those costs, or to seek a source of funding support for its required activities. **Senators should be urged to vote NO when S.348 reaches the floor of the Senate.**

Senate Committee Proposes Restructuring Leadership of Education

Frustrated by what they see as a lack of leadership and accountability, the Senate Education Committee has proposed changing the way the Commissioner of Education is appointed in Vermont. Currently, the State Board of Education selects the Commissioner, with approval from the Governor. The Senate proposal would eliminate the State Board and require the Governor to appoint a Secretary of Education, whose duties would combine the purview of the former State Board and Commissioner. The Department of Education would also be elevated to a cabinet-level agency under this proposal.

The proposed change is a significant one, with potentially major effects for Vermont public schools, and there appears to be significant political will in Montpelier to affect this change. The Senate Education Committee appears willing to pass the legislation out, and we have not heard specific objections to the concept from the House. Governor Douglas has indicated he would strongly support such a proposal. With so much talk these days about school costs, education spending, and the statewide education property tax, many feel that allowing the Governor more direct oversight of public education would improve accountability for the system.

The VSBA has a long-standing resolution opposing this change. The opposition is based on recognition that education is a unique governmental activity. Local and state governments share responsibility for the delivery of educational services. The State Board of Education was created in the early 20th century to allow the state to play its role without being subjected to partisan political influences. The system has served Vermont fairly well, as state education governance mirrors local education governance. In both cases, non-partisan boards of lay people develop

education policy without undue political influence. Giving the Governor direct authority over education at the state level would increase political influences at the state level to the disadvantage of local school officials.

The VPA recently conducted an informal poll of its members, and many more opposed the concept than supported it, but “I would need more information” was the most popular response. The VSA does not have an official position, but its many of its members may be inclined to support the change.

In a heated exchange in the Senate Committee room last week, Senators strongly questioned the usefulness and practicality of the State Board of Education. With the House leadership inclined toward making this change, this may be a historic year for education governance in Vermont.

The Committee will hold a public hearing on this concept at 6:30 P.M. on Wednesday, March 13th in the State House.

Requirements for Hiring Architects—S.211

At the end of the first week in February, the Senate Education Committee took testimony on a bill that would require school districts to solicit proposals from at least three qualified architects before hiring an architect to provide services related to construction or renovation of a building. The bill would require that each proposal include a delineation of the percentage of the architect’s bid that are attributable to the architect’s base fee, the cost of change orders due to action by the school district, by action or error on the part of the architect and due to action or error on the part of the contractor. Bids would also include rates and charges for reimbursable expenses such as mileage and telephone charges.

The Committee invited testimony from three architects with experience working on school construction projects. Each of the invited architects expressed opposition to the bill, primarily on the grounds that architectural services are comparable to legal or other professional services not generally susceptible to a “lowest bid gets the job” approach. Comments of committee members and architects frequently referred to the problem of “school boards not knowing enough to effectively manage construction projects.” The testimony of the School Boards Association was that, 1) it isn’t the job of school boards to manage construction projects and 2) the legislature should not micro-manage in an area where the state has cut off financial aid for school construction projects through the unilateral declaration of a “moratorium” on state aid for school construction.

The Senate Committee has not returned to S.211 since early February, but we expect that it could be taken up again soon.

Public Assets Institute Dispels Act 60 / 68 Myths

Two weeks ago, the non-profit Public Assets Institute released a report on school spending patterns under Act 60 and 68. Their findings support the view that the education finance system is successfully decreasing spending disparities among districts, while ensuring the consequences of spending decisions rest firmly in the hands of those taxpayers who voted for the spending. In particular, the research found that when towns choose to increase per pupil spending, the tax consequences are, on average, 200 times greater on the district's homestead taxpayers compared with taxpayers in other districts.

The report's authors, policy analysts Deb Brighton and Jack Hoffman, write that, "There is no incentive for a community to increase its spending in order to shift costs onto those outside the community. In fact, there is a strong reward built into the system to restrain spending – lower taxes." PAI explored the tax consequences for a \$100,000 homestead if one average sized Vermont district chose to increase per-pupil spending by \$500. They found that for taxpayers within the district, taxes would rise by \$56, while for taxpayers outside the district, the total effect would be an increase of 25¢ (on the tax *bill*, not the tax rate). In other words, the effect would be at least 200 times greater on those taxpayers who voted for the spending increase, or there is no "free lunch" when it comes to school spending in Vermont.

The authors also successfully dispelled another myth about our tax system. They investigated whether towns that received the most money from the system relative to what they raised in homestead education taxes chose to spend more than other towns (i.e. are the towns that are benefiting the most from Act 60/68 increasing their spending more than other towns?). PAI found the opposite to be true. Districts that received the most back from the education fund are spending less than other districts. Spending per pupil is actually correlated with individuals' income within a school district.

It appears that net gain from the education fund is not a factor when determining how much the school should spend, but the income level of residents was. Taxpayers are funding education based on their ability to pay. And strong local tax consequences have assured that districts are not spending revenue frivolously. This research supports our belief that, although complicated, the Act 60/68 system is a fair and equitable method for generating the necessary revenue to pay our educational costs.

The Vermont School Boards Association provided a financial grant to partially defray the cost of producing PAI's independent report. You can view the full report here:

http://www.scribd.com/slurp?url=http%3A//www.publicassets.org/PAI-RPT0801.pdf&publisher_id=pub-43690652874856687801&public=false&view_mode=fullscreen

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