

**VSBA/VSA/VPA LEGISLATIVE REPORT**  
**March 17, 2008**

**Legislature Considers Changes to Education Laws in Several Areas**

Friday, March 14 was “cross-over” day at the State House, meaning that (with exceptions always possible) beginning the following week, only bills that have passed out of at least one committee can be considered by the General Assembly. This requirement creates a flurry of activity leading up to cross-over, as legislators and committees work to meet the deadline. This year, several potentially major changes to education law and policy were approved by either the House or Senate Education Committee prior to cross-over. Here is a status-review of some of the potentially significant bills still being considered as of the end of the day on March 14<sup>th</sup>.

**House Repeals Two Vote Requirement; Favors Strengthened Excess Spending Threshold**

When the Miscellaneous Education Amendments bill (H.864), developed by the House Education Committee, came up for a vote on the House floor on February 28, an amendment was introduced to repeal the “two-vote” requirement enacted last year as part of Act 82. A second amendment was introduced to support the repeal but also to lower the excess spending threshold from 125% to 123% in FY10 and FY11, and to 120% for FY12 and beyond. The House easily passed the second amendment and the repeal was approved by the House on a vote of 99 to 38.

The House acted to repeal the “two-vote” requirement after hearing from school board members, school officials and others about how the requirement would be misleading to voters and disrespectful towards the work of school boards, among other concerns. Given a strict choice between the excess spending threshold and the “two-vote” requirement, the former is a more equitable, predictable and preferable device for cost containment. Full repeal of “two-vote” has a long road to travel. The Governor has not disguised his displeasure, calling the House action to undo last year’s law “shameful,” and has promised to veto the bill should it get to his desk. The House vote was strong enough to make override of a veto by that body at least possible.

H.864 is now in the Senate. Last year, the “two-vote” scheme had significant support in the Senate, where it passed with 23 Senators supporting it, four opposing, and three absent. Nevertheless, at least some Senators have been listening to their constituents and might yet be persuaded to consider an alternative to the Act 82 two-vote provision. Within a few weeks, we should know a great deal more about the Senate’s willingness to re-think the rhetoric that surrounded Act 82 from the outset.

**Senate Committee Approves Dramatic Overhaul of State-Level Education System**

Frustrated by what they describe as a “lack of leadership and accountability,” the Senate Education Committee, by a 3-1-1 vote, has proposed sweeping and dramatic changes to the state-level education governance structure in Vermont.

Currently, the Governor appoints members to the State Board of Education for six-year terms, and the State Board is charged with the responsibility of hiring the Commissioner. A bill passed

out of the Senate committee on March 14<sup>th</sup>, would eliminate the State Board altogether, “elevate” the Department of Education to a cabinet-level agency, and empower the Governor to appoint a Secretary of Education. The Secretary would be a member of the Governor’s cabinet and be responsible for all the duties of the former State Board and Commissioner.

The VSBA has a long-standing Resolution supporting the current method of State Board and Commissioner appointment. The Resolution 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 20<sup>th</sup> century to allow the state to play its role without being subjected to partisan political influences. Moving toward the Senate Committee’s model would almost certainly politicize education at a time when partisanship is a driving force in Montpelier. Nevertheless, there is a strong contingent of policy makers who reject this logic. Some legislators question the utility of the State Board, claiming that it is “out of touch with reality,” others are convinced that a direct appointment will curb education costs and others believe that the Commissioner and State Board are removed from direct accountability to voters.

There is a real possibility that this change will be enacted this year. The Senate Committee considered passing legislation that would have required a study of various educational leadership models before making this move, but ultimately decided to stick with the initial bill. The Governor is said to be strongly in favor of direct appointment. The reorganization bill will next be considered by the full Senate.

### **Statewide or Regional Calendars?**

Another provision of the miscellaneous bill discussed above (see “House Repeals “Two-vote” Requirement) would repeal the statewide calendar mandate enacted last year in favor of strengthening the regional calendar system that has been in place for many years. H.864 would require technical center directors and superintendents within a technical service region to agree to a uniform calendar prior April 1<sup>st</sup> each year. The bill would give the Commissioner of Education authority to enforce regional calendars by withholding state aid. This amounts to a clarification of the existing regional calendar process. It requires superintendents and tech center directors to agree on a calendar for each region, and makes clearer that, once agreed upon by the administrators, school boards do not have the authority to make changes.

On the afternoon of cross-over Friday, the Senate Education Committee approved a regional calendar stand-alone bill that incorporates the provisions in H.864, but also requires that any countable school day must have a majority of students in each grade from 1 to 12 present for at least five and one-half hours. In so doing, the Senate Committee has expressed its agreement to a return to the regional calendar system and at the same time kept alive its belief that the General Assembly should mandate hours of attendance. If the Senate approves the bill passed out by its Education Committee, the calendar issue will be positioned for negotiations between the House and the Senate.

### **Allergy & Asthma Medication**

The House Education Committee has passed H.748, a bill that would authorize students to carry and administer their own life-saving medications under certain conditions. Annually, parents must provide the school with written authorization, and a written order from the child's physician that approves and authorizes the student to self-medicate. Only "life-saving" allergy and asthma medicines are covered by this bill. The bill does not include a definition of "life-saving," leaving that determination up to each child's physician. School nurses would be required to cooperate with the parents of affected children to develop plan of actions when possession and/or self-administration of medication by students is necessary. The parent would be required to release, in writing, the school from liability from any injuries resulting from the self-medication, except in the case of gross negligence or intentional misconduct on the part of a school employee. H.748 will now be considered by the full House of Representatives.

### **High School Completion**

The Senate Education committee has passed a bill (S.348) that would increase the age of compulsory school attendance from 16 to 18. Under S.348, a "Personal Education Plan" would be developed by the school's educational support team for any student deemed at any age to be at risk of dropping out sometime in the future. The school would be then be required to offer an expanded network of alternative education programs and choices to the student. The bill also contains a mandatory process for students between the age of 16 and 18 to complete before being allowed to leave school prior to graduation. The process includes requests for "waivers" from administrators and, in some cases, school boards. Leaving school without a waiver would constitute truancy.

The Senate bill contains no funding to support its many process and programmatic requirements. As boards struggle to stay below the excess spending threshold, and away from the "two-vote" requirement, programs like these with new, mandated costs increase the likelihood that the budget process will include more "Hobson's" choices, requiring taking from one worthy or necessary function and giving to another. As of March 14<sup>th</sup>, S.348 was scheduled for review by the Senate Appropriations Committee, which is charged with identifying its cost implications.

### **Supervisory Union Study**

After consideration of S.175, a bill introduced last year that would require voter approval of supervisory union budgets, the Senate Education Committee has approved a "strike-all" amendment to the bill that would initiate a study of the supervisory union structure in general and require a report to legislature at the beginning of the next biennium. The study would be lead by the Commissioner of Education and would have the following mandatory components.

- 1) Whether the services provided by supervisory unions in areas including special education, compensatory education, centralized purchasing, construction management, budgeting and financial management, teacher negotiations and transportation should be mandatory functions of all supervisory unions or should be statutorily assigned to member school districts;
- 2) Whether any other duties assigned to supervisory unions should be clarified or reassigned;

- 3) Whether supervisory union boards should be given any duties not currently assigned to them;
- 4) Whether representation on supervisory union boards should be more closely aligned with one person one vote principles;
- 5) Whether supervisory unions should be designated as municipal entities with separate electorates;
- 6) Whether supervisory union budgets should require approval of member school district boards or the electorate of member districts; and
- 7) Whether supervisory unions should be empowered to borrow money.

The bill approved by the Committee would require that the VSBA, VSA and VPA be among the members of the study committee created by the bill.

### **Removal of Tuition Costs From Penalty Calculations**

The Senate Education Committee also approved a strike-all amendment to S.15 on the day of the cross over deadline. S.15 is a bill that would remove tuition costs from the calculations used to determine whether districts are subject to the excess spending penalty. The Committee's version would take tuition out of the calculations related to the "two-vote" penalty as well as the excess spending threshold.

The Committee had a brief discussion about removing other "uncontrollable" costs from these calculations, but not to expand the bill's coverage beyond tuition, which is arguably the "most uncontrollable" of cost-drivers.

### **Streamlining, Mandates and Cost-Saving Incentives**

The House Education Committee approved H.879, a bill that addresses several potential cost-saving and efficiency measures, prior to the cross-over deadline. The major parts of H.879 are the following.

- 1) **Streamlining the Union School District Formation Process.** H.879 would amend sections of 16 V.S.A. §701 and 706 to clarify and simplify some of the processes required to form union and unified school districts. Among the provisions are ones that would allow school boards to undertake union district formation studies in certain cases without prior voter approval, would clarify the process required to withdraw from a union or unified union school district and would clarify the steps necessary to transition to a newly formed union or unified union school district. While H.879's streamlining provisions are not apt to result, in and of themselves, in the immediate formation of more union districts, they will make the process more approachable for school districts interested in exploring union formation options.
- 2) **Mandated Reporting Repeals and Act 51 Training Revisions.** H.879 marks nine current requirements for reports from school districts or the Department of Education for repeal. Among the reports that would be eliminated under H.879 are: school district annual reports to the Commissioner on alcohol and drug abuse; superintendents' annual reports on vision and hearing tests; annual reports from districts on the status of education

support services and the DOE's annual report of regional high school choice. The bill would also require that the Act 51 in-service training programs on alcohol and drug abuse prevention provided by or through the DOE include at least one on-line program, and would authorize superintendents to "...determine the content, duration and frequency of training on issues of alcohol and drug abuse for the districts in his or her supervisory union."

- 3) Special Education Audits and Reimbursements. H.879 also addresses special education audits performed by the Department of Education by requiring the Commissioner to "...make recommendations to improve the timeliness and efficiency of the audit process," and lists specific topics for review. The Commissioner is also required under H.879 to make recommendations to "...amend special education funding provisions...in order to streamline the process by which districts document costs and submit claims for reimbursements. Finally, the bill would suspend DOE special education audits in connection with the 2007-2008 school year, provided that superintendents certify that appropriate documentation of expenditures are on file and that time studies have been conducted and are on file for all staff time for which reimbursement is sought.
- 4) Education Incentive Fund. Considered with H.879, but not included in the version approved by the Committee is a section that would establish an incentive fund, managed by the State Treasurer, the Secretary of Administration and the Commissioner of Education. The fund would be used for "...projects in which two or more entities share or merge services, equipment, or facilities by, for example, entering into an arrangement for whole-grade sharing, centralized purchasing, coordinated provision of special education services, or other collaborative initiatives." Funding would also be available for projects that reduce energy consumption. The Committee decided not to include this in H.879, but rather to refer it to discussions with the House Appropriations Committee in order to determine the feasibility of funding the proposal.

### **Hiring Architects and Engineers**

The Senate Education Committee has approved a bill that adds process requirements to school districts seeking to hire an architect or engineer for professional services.

The bill, sponsored by Education Committee Chair Don Collins includes the following requirements:

- 1) Before hiring an architect or engineer the school board must solicit a statement of qualifications from at least three persons that provide architectural or engineering services.
- 2) The school board must also adopt written criteria for the selection of semifinalists and finalists from among the persons submitting the statement of qualifications. The statement of qualifications must include; prior similar experience; past performance on public and private projects; willingness to meet time and budget requirements; capacity to meet requirements; and any other criteria deemed relevant by the school board.
- 3) Based on the qualifications presented, the school board must select the three most qualified applicants and rank them in priority order. The board must send written

notification of the selection and the order of preference to all persons and firms that responded to the invitation to submit qualifications.

- 4) The School Board must negotiate a contract with the most qualified person at a level of compensation that is “fair and reasonable.” If a satisfactory contract cannot be negotiated with the most highly qualified person, then the school board may terminate negotiations and commence negotiations with the next most qualified person.

The requirements of S. 211 do not apply to projects initiated in any fiscal year in which state aid for school construction is suspended. A school board may retain an architect or engineer or both for a period not to exceed three years without adhering to the aforementioned process if the total project costs do not exceed \$500,000. S. 211 will be considered by the full Senate during the upcoming week and will be sent to the House for consideration if it is approved by the Senate.

VSA and VSBA opposed S. 211 in the Senate Education Committee as we believe that it imposes unnecessary process requirements on school boards.

### **House Education Approves Helpful Fix to Pre-Kindergarten Issue**

The House Education Committee has given its approval to a fix that will prove helpful in the implementation of Vermont’s prekindergarten education laws. The bill approved by House Education grants presumptive eligibility for pre-kindergarten education programs offered by a school district for the 2008-2009 years provided that the school district is in good regulatory standing with the Department of Children and Families.

The bill is helpful because provisions of last year’s Pre-kindergarten Education Law (Act 62) and the associated regulations require that programs operated by schools have either STARS (Step Ahead Recognition System) certification or NAEYC (National Association for the Education of Young Children) accreditation. The STARS approval process, which is administered through Department for Children and Family Services is not currently designed for efficient application by schools. Given the short time line to July 1, 2008 (the date by which school district programs were supposed to be certified), it was impractical to expect that school districts could be efficiently enrolled in the STARS program. The House Education Committee action sets up a more orderly process for certification school programs without compromising quality.

The House- passed provision also specifies that the STARS program will be subject to rulemaking undertaken by the Departments of Education and Children and Family Services with final adoption of rules by Children and Family Services prior to July 1, 2009.

The bill will be considered by the full House in the near future.