

Education Legislative Report



January 9, 2009 - Issue #1

The 2009 session of the Vermont General Assembly commenced this week. Lawmakers convened in Montpelier to observe swearing-in ceremonies and hear the Governor's inaugural address. The first day of committee work will be next week. Wednesday, the committee appointments were announced. Rep. Johannah Donovan will chair the House Education Committee. Rep. Donovan of Burlington served as the Committee's ranking member in the prior biennium. Sen. Robert Starr, representing Essex and Orleans counties, will chair the Senate Education Committee, where he has previously served as a member for several consecutive terms.

For a complete list of senators and representatives by supervisory union, visit:
<http://www.vtvsba.org/legis/legbysu.pdf>

Again this year, the professional associations representing educational leaders will pool resources to provide regular reports on legislative activities of particular importance to public schools. Through the publication of our Education Legislative Reports, we will provide timely information to Vermont's school board members, superintendents, principals and other school administrators. Our intent will be to inform, and our purpose will be to equip school leaders with the information you need to communicate effectively with your local legislative representatives.

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We know from experience that there is no substitute for constituent communication with legislators when it comes to effective State House advocacy. Legislators want to know how their proposals are received at home, and they understand that the best sources of information about the effects of their proposals are the people they represent.

The Education Legislative Report will be distributed primarily through email, with an Adobe Acrobat PDF file also available on each association's web site. Our publication schedule may vary. When possible, we will publish in time to enable you to talk with your legislative representatives on weekends or Mondays, when the Legislature generally

does not meet. In addition to Education Legislative Reports, we will publish Legislative Bulletins when a shorter, more concise format is called for due to developments of immediate importance to our members.

It is imperative that school officials understand and participate in these public policy deliberations. As bona fide experts on the delivery of public education through our local schools, you have both the obligation and the right to have your expertise considered in these discussions.

The quality of the discourse on public education issues will improve if you communicate your thoughts to your legislators. Our job is to keep you informed on what is happening in the State House so that you know when and how to weigh-in.

Please do not hesitate to contact us with your comments about the Education Legislative Report. We look forward to hearing from you. You will certainly be hearing from us!

Governor's Inaugural Address

Governor Douglas made reducing the cost of education the major theme of his inaugural address, on Thursday afternoon. "It is clear that our public education system is on a collision course with economic reality," he said, before calling for both short- and long-term changes to the state's education funding system. "Act 60 and Act 68 are fundamentally broken and beyond repair... Only a wholesale transformation will return control to communities and put education funding on a sustainable course for the future." Douglas listed school consolidation, governance, and special education as some areas to examine in designing a new funding system that he desired to be, "simple, transparent, and sustainable."

Demanding prompt action, the Governor proposed immediately freezing per pupil education spending at current levels on a district-by-district basis. Describing this measure as a "bridge year," Douglas said that any education spending above the frozen level should be raised entirely through local residential taxes. A per pupil spending freeze would mean an expenditure cut for a majority of Vermont districts, those with declining enrollment. In a statement to the Associated Press, VSBA Executive Director John Nelson questioned the implications for equity should a freeze be enacted:

"As the Governor said in his speech today, 'Each school district must determine what is best for its students.' This is a vitally important concept to Vermonters, and it should not be abandoned. [Also] the ability to determine what is best for students in each community is dependent on a funding system that is not only as the Governor said today, 'simple, transparent, and sustainable.' It also must be equitable. That is, voters in all school districts should have substantially equal access to the funds they need to achieve the goals they set for their schools."

Douglas also called for changes in income sensitivity criteria (reducing the maximum benefit threshold from \$90,000 to \$75,000 in household income) and the teachers retirement system. He proposed that the annual employer share of the state teacher's retirement system be withdrawn from the Education Fund rather than the General Fund. A significant portion of this obligation,

estimated to be \$40 million next year, would then be paid by property taxes rather than the broad-based revenue sources that feed into the General Fund.

Finally, Douglas asked for increased resources for both early and higher education. Praising the benefits of early education, he proposed a 20% increase in spending on “affordable, quality early care.” He also requested the same level of increase for higher education.

Legislative leaders immediately criticized Douglas’s proposals. Senate President Pro Tem Peter Shumlin told the *Times-Argus*, “We will not walk away from a system we have worked so hard to achieve that ensures that a student in Hardwick has the same access to education resources as a student of Stratton.” Also speaking to the *Argus*, Speaker of the House Shap Smith voiced support for local control of school budgets, saying, “We have control on spending. It is going to Town Meeting every year.”

Revenue Shortfalls Headline Pre-Session News

As Vermont is caught up in the worldwide economic crisis, revenue shortfalls in the state’s General Fund and Transportation Fund have captured the attention of policymakers. According to the Legislature’s Joint Fiscal Office, the General Fund is facing a \$64 million shortfall this year, and \$140-\$180 million or more in 2010. The figures combine estimates of a decrease in tax revenue and an unexpected increase in need-based state spending, particularly Medicaid.

The legislature’s Joint Fiscal Committee worked with the administration to identify spending cuts to implement before the 2009 General Assembly session commenced. The two sides announced cuts amounting to \$19.7 million on December 15. The administration was pushing for significantly greater cuts, but some legislative leaders felt that further spending reductions could wait until the 2009 session so that representatives of endangered programs and services could appear before legislative committees.

Some of the \$19.7 million in cuts announced by the Agency of Administration in a document titled “State of Vermont – FY2009 Rescission Plan #2” come at the expense of social service agencies serving children. Other cuts will directly affect public schools and the Department of Education, including:

- Five schools will not receive state aid for alcohol and drug abuse programs.
- All twelve Building Bright Futures district director positions will be eliminated.
- The Department of Education will reduce operating expenses by \$691,870 (5% of its general fund budget). Some of these cuts were specified:

\$12,439 is to be saved by reducing meetings, travel, and supply costs.

Adult Education & Literacy’s funding will be reduced by \$102,229, which will result in decreased program capacity.

The Teacher Quality Initiative will be internalized within the Department.

Some payroll costs will be shifted into special and federal funds.

Some payroll savings will be recognized from the residual vacancy of the Commissioner position.

Early Education Initiative grants will be reduced 3.8% (or \$1,151 per service provider).

Grants for students competing in national competitions will be eliminated.

Some funding will be provided through a cash transfer from the Conference Fee Special Fund.

When committee work begins next week, legislators will be examining options to eliminate the remaining deficit. This will presumably include consideration of further spending reductions and ideas to increase state revenue. We will report on these developments as they occur.

Speaker and Treasurer Discuss Bonding for Public Works Projects

House Speaker Shap Smith and State Treasurer Jeb Spaulding met with the House Ways and Means Committee on Friday afternoon to introduce the Speaker's proposed \$150 million two-year bond-based public works program, which would utilize the Treasurer's suggestion for the issuance of \$120 million in revenue bonds to fund needed transportation projects. The remaining \$30 million in the Speaker's proposal would come from general fund bonding. Because revenue bonds must rely on a dedicated new source of revenue for repayment, the Speaker asked the Ways and Means Committee to look at the Motor Fuels Distributor Infrastructure Assessment or other assessments that could be used to create a revenue bonding initiative as the Treasurer has suggested. Both Spaulding and Smith expressed reluctance to increase general fund bonding capacity if the result would be a reduction in the state's AAA bond rating.

While school construction is not one of the uses for the increased bond capacity specifically sought by the Speaker, Spaulding indicated to the Committee that the use of a new revenue source for transportation projects (roads, bridges, public transit and park and rides) would allow the use of \$10 to 15 million of the proceeds from the general obligation bonds formerly directed at transportation needs to other state infrastructure needs, including schools, parks and state buildings. Spaulding noted that compared to transportation, where much of the costs are related to materials and a significant portion of the work is done by out of state firms, school construction, parks and state building improvements would possibly result in greater job growth for Vermonters.

Smith suggested that using the existing general fund bonding capacity, the newly constituted House Institutions Committee would develop a public works jobs program that "...puts Vermonters to work and increases the value of state assets...including improvements to State Parks, water quality projects or construction and improvements to state offices."

Education Fund Surplus in Focus

The Education Fund has surplus cash on hand from fiscal year 2008, and is expected to produce a very modest surplus in 2009 as well. According to the Joint Fiscal Office, the Education Fund surplus in fiscal year 2008 was \$18.3 million, and is expected to be \$2.4 million this year (fiscal year 2009). JFO projections suggest that there will be no surplus in fiscal year 2010. The surplus was caused by a confluence of several factors. School spending was less than had been projected. Property tax collections resulted in greater than anticipated revenue. Income sensitivity payments were less than had been projected. A change in the calculation of the required budget stabilization reserve for the Fund netted a one-time savings of approximately \$4 million.

Each December 1, Vermont state law requires the Commissioner of Taxes to examine projected surpluses in the Fund and recommend a corresponding tax rate adjustment. A surplus of greater than \$20 million is sufficient to reduce education taxes 2¢ from the FY09 rates of 87¢ for residential

property and \$1.36 for non-residential property. However, in a letter to legislative leaders, Tax Commissioner Tom Pelham did not recommend any specific tax rate. He wrote, "given the extraordinary fiscal choices before us, a recommendation from me regarding 2010 tax rates may be extraneous or even harmful to the flexibility you and the Governor need to craft an overall fiscal course for the state in these times."

The VSBA and the Vermont League of Cities and Towns responded to the Commissioner's action with a written request that called upon Commissioner Pelham to fulfill his lawful duty (32 V.S.A. § 5402b) and issue the rate reduction recommendation. School districts are required to include anticipated property tax rates in their budget proposals to voters. When the commissioner failed to acknowledge the VSBA/VLCT request, the VSBA, and the school districts of Otter Valley Union High School, Wallingford, Cornwall and U-32 High School filed a lawsuit on December 24th seeking a court order directing him to do so. The Commissioner immediately claimed that the suit was "groundless" (and the Governor's office dismissed it as "frivolous"). However, hours prior to the court hearing scheduled for Tuesday, December 30, Commissioner Pelham issued the expected recommendation to reduce the rates 2¢, to 85¢ for residential and \$1.34 for non-residential property. The VSBA subsequently withdrew the suit.

In an accompanying "side letter" to the Speaker of the House and President Pro Tempore of the Senate, the Commissioner claimed that his recommended reductions in tax rates would result in a \$31.2 million tax increase, and he urged the legislative leaders not to follow his recommendations. In doing so, he charged that locally elected school board members were "...seek(ing) immunity from economic woes..." and engaging in "...exuberant self-interest..." in an effort to "...preserve their privileged financial position." Commissioner Pelham's assertion that the recommended tax rates would result in a \$31.2 million tax increase are based on preliminary estimates before any school budgets have been approved, and ignores the fact that according to the Commissioner's own estimates, *not* reducing the rates would increase property taxes by approximately \$50 million. These charges, as well as several misleading statements in the side letter, compelled the VSBA to send a letter to the Speaker and President Pro Tempore correcting the record and stating a desire to engage in "more reasoned and productive discussions with you and your legislative colleagues in the near future."

Newspaper Editorial Regarding the Education Fund Surplus

Published in the Rutland Herald (Dec. 23) & Barre-Montpelier Times Argus (Dec. 29)

As revenues for Vermont's General Fund implode, legislators are looking for ways to cut expenditures and raise taxes. One source of funds already eyed by the Douglas administration is the Education Fund, which at the moment enjoys a small surplus that ought to finance a small property tax cut.

So it's worth remembering why the Education Fund depends, not just on the property tax, but on taxes that otherwise would go to the General or Transportation Funds. That's because redirecting that money away from the Education Fund could end up pitting local governments against state government and hurt more than it helps.

At the time Act 60 was passed in 1997, the state budgeted hundreds of millions of dollars of broad-based taxes each year for state aid to education. The purpose was to ease the property tax burden. State aid was a major

but necessary expense because property tax inequities compromised the ability of many towns to finance their schools. State aid eased that burden.

Act 60 created a statewide pool of money for education by directing property tax revenue levied by town voters toward the Education Fund. The point of pooling the money was to redistribute it fairly, so a penny raised in one town would yield the same amount of money in all towns. And yet if the state did not continue to cough up a sizable contribution to the Education Fund from general revenue sources, the property tax would have suffered a major increase. So a mix of other taxes was tapped to augment the property taxes going to the Education Fund.

State policymakers – legislators and the governor – have responsibility for balancing the state budget, which means they are looking for every conceivable source of revenue for the General and Transportation Funds. Because property tax revenues do not fluctuate as wildly as income or sales taxes, revenues into the Education Fund have held steady even as income and sales tax revenues has plunged. So now Gov. James Douglas and some legislators are eyeing the Education Fund, with the idea of redirecting non-property tax revenue elsewhere.

This action runs counter to efforts from liberals to shift education spending away from the property tax and toward broad-based taxes. And it runs counter to the continuing cry of conservatives that the property tax must be contained. Shifting money away from the Education Fund would drive up property taxes, undercutting what Douglas has styled as his affordability agenda.

It's all money; what Peter doesn't pay, Paul will. But politicians are generally sensitive to the burden of the property tax because it is most burdensome on low- and middle-class taxpayers. A fairer approach to the current tax conundrum would be to maintain the Education Fund as a protection against higher property taxes and make up for the shortfall of money for the General Fund by raising the income tax, a more progressive form of taxation. Tilting the tax increase temporarily toward the wealthy would help get most Vermonters through the recession.

Those with less should not bear the burden of the economic crisis. Robbing the Education Fund would shift the burden to struggling homeowners. That's why non-property tax revenue was sent there in the first place.

Summer Study Reports

Harassment in Schools

Section 19 of Act 174 of 2008, a bill related to domestic violence, establishes a committee to study harassment and bullying in schools, to be convened and staffed by the Human Rights Commission. The committee studied current policies, laws and trainings related to harassment, including cyber bullying. Representatives from each of our Associations served on the committee. The report is now scheduled for release on January 15th.

Probably the key issue in the report deals with disciplining students for off-campus conduct, particularly “cyber-bullying.” The report will recommend changes to the student discipline statutes that would clarify that schools can discipline students for off-campus conduct that “...is shown to have the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating, hostile or offensive environment.” One member of the committee will

dissent from this recommendation on the grounds that it might clash with the free speech rights of students. The issue is sure to be debated during the coming legislative session.

Sexual Abuse Response System

Last month the Senate Judiciary Committee, chaired by Sen. Dick Sears of Bennington, released a 34-point plan to address sexual abuse in Vermont. The proposals include enhanced oversight of convicted sex offenders, court and sentencing reforms, and increased prevention education. The Senate President Pro Tempore, Peter Shumlin, has stated his intention to pass a bill in the Senate based on the Committee's recommendations early in the 2009 legislative session.

The 34-point plan would impose several requirements on the education community. One would require training for all school employees on "...the prevention, identification and reporting of child abuse." Another requirement would be that school boards should "...provide opportunities for parents/caregivers to receive information and education, based on materials recommended by the Agency of Human Services and the Department of Education, regarding child sexual abuse and sexual violence...". Another point would make sexual contact between teachers and students (regardless of the age of the student) a criminal offense on the part of the teacher. Lastly, one point would add a component to the required Comprehensive Health Curriculum that would teach students about the prevention of sexual abuse and sexual violence.

To read the full report of the Senate Judiciary Committee visit the following website:

http://www.leg.state.vt.us/WorkGroups/sexoffenders/Senate_Judiciary_s_Comprehensive_Report.pdf

Other Summer Study Reports

Seven other education-related summer study reports are to be filed by January 15. At least two of these studies will not be completed due to time and budgetary restraints at the Department of Education. The first was to be a study of alternative education programs available to Vermont students. The second was to be a group report on ideas for an incentive fund that would award grants for property tax-reducing collaborations between school and town municipalities. We will report on the findings of the following reports when each becomes available:

- Inventory of Coordinated School Health Programs
- Technical Centers
- Designation of Public Schools as the Public School of a District
- Agricultural, Forestry, and Horticultural Education Needs Assessment
- Special Education Reimbursement Audits

Ballot Issues May be Discussed During Australian Ballot Voting

From the Secretary of State (Opinion of Opinions, Vol. 11, #1, January 2009):

Ballot issues may be discussed during floor vote. Vermont law was amended in 2008 to allow public discussions of [Australian] ballot issues (other than election of candidates) to be permitted on the day of the annual meeting regardless of the location of the polling place. 17 V.S.A. §2640. This means that at March Town Meeting, voters will be able to discuss budget articles and other public questions even while voting on these ballot questions is taking place by Australian ballot in the same room or building.

This opinion could have particular relevance for those districts that may propose two votes under the requirements of Act 82 when the voting is by Australian ballot. The school board or others may host discussions of the budget, including conversations about the second vote, during the voting period.

How to Work With Your Legislators

Just as school officials have a duty to listen and respond to citizens, members of the Vermont General Assembly have a duty to listen and respond to their constituents. Legislators will want to hear the perspectives of those who work at the local level to deliver education effectively and efficiently. Never assume that legislators have the information needed to make informed decisions. Make the time to share your thoughts. Sound communication is one key premise underlying democracy.

We have prepared a contact list of state senators and representatives by supervisory union. It is available at this web address: <http://www.vtvsba.org/legis/legbysu.pdf>

Here are some tips for working with your legislators.

- Become familiar with your legislators and help them become familiar with you and with the schools that you serve. Your efforts to support the work of your representatives and senators will be more meaningful and effective if you have established an ongoing relationship. It is unlikely that you will agree on every issue; however, you will be most effective and helpful if you maintain open and respectful lines of communication. School boards and administrators should meet with legislators as often as possible to share information and perspectives.
- Work with your respective associations to understand the issues under consideration by the General Assembly. Each legislative session, hundreds of bills are introduced. Some are taken up by committees while others are not. While the process by which a bill becomes law is carefully prescribed, the policies and the actions that affect any particular piece of legislation can vary substantially. Follow bills of interest to you, your community and your associations closely. Stay informed about the status of important bills.
- If your school board takes an official action on specific legislation by passing a resolution or formally adopting a position, be sure to notify your legislators. Provide an explanation of why the school board took the action it did. While most legislators will be interested in the perspective of individual school officials, they will pay particular attention to formal actions taken by locally elected officials.
- Make a brief discussion of bills under consideration in Montpelier a regular part of your board meetings. A public discussion of happenings at the State House is an effective way to keep the public, as well as yourselves, informed about legislative initiatives and reactions to those initiatives by local school officials.
- Assign responsibility for communicating with legislators. When you have decided that is appropriate to contact your legislators to share your views, make certain that there is a decided plan about how to do so. Things can move fast in the legislative process, especially once a bill is brought up for consideration on the floor of the House or Senate. Be prepared to contact your legislators quickly, for often “an opportunity missed is an opportunity lost.”

- When communicating with your legislators, be explicit about the reasons for your positions. Explain why you are concerned about or support a particular piece of legislation. Ask your legislator to be clear with you about the position that he or she is taking on a bill.
- Before contacting your legislator, be clear about the purpose of the call and your understanding of the issue under discussion. Use this Education Legislative Report to assist in your understanding of the legislation being considered.

The Vermont Legislature's Web site is a very useful resource that provides contact information (including email addresses) for legislators and up-to-date information on the status of bills. The site can be accessed at www.leg.state.vt.us. Legislators can also be contacted by calling the Sergeant-At-Arms at (800) 322-5616 or by fax at (802) 828-2424.

Take Advantage of the Legislative Website

It would be difficult to overstate the variety and volume of useful information available on the General Assembly's web site. The address is www.leg.state.vt.us. We recommend that you bookmark this address and refer to it regularly as part of your effort to be informed about legislative activities.

Probably the most frequently used resource for followers of particular bills is the "Display the current status of bill" button. If you know the number of a bill, you can use this area to find out what action if any, has been taken on the bill. If you do not know a bill's number, you can search for it by entering key words or the names of sponsors. When you locate the bill, you will be able to determine what committee it has been assigned to, whether it has traveled from one committee to another, whether floor action has been taken on the bill and, if a roll call vote has been taken, how each member of the body voted. Roll call votes are also recorded through the home page at "Look up roll call votes by member or by bill."

It is important to note that you can not access information about bill amendments being considered as committees do their work. To obtain the current text of bills being "marked up" by committees, contact one of our offices in Montpelier or refer to our Legislative Reports or Bulletins.

By referring to the "Today's Bills, Calendars & Journals" site, you will be able to find out what action is anticipated on the floor of the House or Senate on a given day, as well as what action has been taken on any previous day. The text of bills introduced, as well as the text of any amendments proposed to bills during floor consideration will appear in the daily calendars and journals.

The legislative home page also links to the Legislative Directory, a comprehensive listing of all Senators and Representatives that includes biographical information about each. This can be particularly important if you want to find out about the interests and experiences of your representatives. It is useful to know, for example, that several legislators are current or former teachers or school administrators, and that a significant number of the members of the General Assembly have current or past experience as school board members.

The legislative home page can also be your gateway to the text of Acts or statutes adopted by previous legislative sessions. Click on the "Previous sessions, additional reports, and more" link,

and you will be able to read the text of Act 60, Act 68 or any other Act of interest to you. If you want to read any part of the state's statutory law, click on the "Vermont Statutes Online" link, located below the link to the Legislative Directory. The statutes online are organized by Title. The education statutes are in Title 16, and Titles 17 and 24 are devoted to election and municipal statutes.

Referring to an Act as opposed to a statute will allow you to see the full text of a law, including underlines and cross-outs showing how the previous law has been changed by the Act in question. Reading a statute is an easier way to determine what the law currently is with regard to a given subject.

New Education-Related Bills Introduced

The following bills pertaining to education have been introduced by one or more legislators as of January 7th. To read a bill as introduced, or to follow its progress after introduction, go to <http://www.leg.state.vt.us/database/status/status.cfm> and enter the number of the bill. The statements of purpose following each bill below may be abbreviated forms of the statements contained in the bills as introduced.

S.8 An Act Relating to Consolidation of Supervisory Unions

Introduced by: Sen. Mullin of Rutland

Statement of Purpose: This bill proposes to direct the state board of education to consolidate supervisory unions into 16 supervisory unions with approximately the same boundaries as the technical center regions.

S.9 An Act Relating to Requiring An Integrated Financial Management System in School Districts and Supervisory Unions

Introduced by: Sen. Mullin of Rutland

Statement of Purpose: This bill proposes to require an integrated financial management system with common accounting standards in school districts and supervisory unions to assist the sharing of information among these entities and with the department of education and the public.

S.13 An Act Relating to Improving Vermont's Sexual Abuse Response System

Introduced by: Senators Campbell, Cummings, Mullin, Nitka, Sears, and Shumlin

Statement of Purpose (abbreviated): This bill proposes to develop a comprehensive statewide approach to the prevention of child sexual abuse. *Editor's Note: See our write-up on the summer study report that led to this bill on page 6 of this Report.*

End