



April 30 - Issue #8

Legislature Expected to Adjourn May 8th

As the calendar turns to May this weekend, the Legislature appears committed to adjourning next Saturday, May 8th. As is typical with little more than a week left in the session, there are several major unresolved topics both related to and unrelated to education. The pace of decision-making has naturally quickened, and Committees of Conference that resolve differences in House and Senate bills are exercising wide latitude to shape legislation. It is not too late to contact your local legislators via phone or email and share your perspective on issues affecting public education; yours may be the last voice they hear on a particular topic this session.

To deliver a phone message to any legislator, call the Statehouse Sergeant-At-Arms at 802-828-2228. To view legislators' email addresses and other contact information, visit <http://www.vtvsba.org/legis/legbysu.pdf>.

In this report we will review the status of all unresolved legislation pertaining to public education. This includes:

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Senate Proposes .87/1.36 Tax Rates

"The temptation by state officials to balance the state budget on the backs of local property tax payers has a long history."

Times Argus editorial, April 29

In a sometimes-contentious debate, the Senate approved its version of H.783, the miscellaneous tax bill, on Tuesday. One of the points of disagreement among Senators centered on the statewide education property tax rates proposed by the legislation, 87 cents for homestead property, and \$1.36 for nonresidential property. The House had previously approved rates that were one cent lower, and the increase proposed by the Senate appeared to be driven by a need to balance the state budget and not a need to adequately fund public education.

In recent years, education funding policies proposed by both legislative bodies and the governor have directly lead to increased property taxes despite plentiful rhetoric regarding the need to alleviate the burden of the property tax on Vermonters. The proposals have generally worked in one of two ways: (1) by shifting new costs onto the property tax-supported Education Fund, or (2) by reducing General Fund support for the Education Fund, requiring property taxes to cover the deficit. The combined effect of these actions contributed to the 68 percent of Education Fund revenues expected to be generated by property taxes in fiscal year 2011, compared with 61 percent in 2005, *and* the Education Fund is now paying for at least \$25 million of costs annually that were previously funded through the General Fund.

Therefore, our Associations were not shocked by the Senate's proposal to increase base education tax rates despite the fact that local school officials and voters approved school budgets for fiscal year 2011 that resulted in essentially no spending increases over 2010. We believe the proposed rates are approximately two to three cents higher than the minimum necessary to fund public education; the remainder is the result state-mandated cost shifts.

The Senate's version of H.783 also retained approximately in \$6.9 million in school-based Medicaid reimbursement money in the General Fund; the House proposed using that money to reduce the property tax burden. Both the House and the Senate Committee also recommended changes to income sensitivity, but the changes they recommended were not the same. The House proposed that property taxes for residential house value in excess of \$425,000 be paid based on value, regardless of the owner's income. The Senate did not include this provision, but did insert language that would reduce income sensitivity payments to homeowners with significant interest or dividend income.

Regardless of the outcome of the tax rate debate between the House and Senate next week, we urge local school officials to continue to talk to legislators about the long-term effect of "bailing out" the state budget with Education Fund revenues. The state is facing very large budget deficits in each of the next several years, and recent history has proven that policymakers are prone to quietly offloading expenses onto the Education Fund despite frequent outcry from citizens regarding increased property taxation.

Voluntary District Merger Bill in Home Stretch; Supervisory Union Functions Reorganized

Both the House and the Senate Education Committees have spent a significant portion of the legislative session crafting bills that would provide incentives to school districts that choose to merge while meeting certain conditions. The full House is expected to formally consider one version, H.782, on Friday, and the Senate Education Committee appears poised to approve a similar bill as early as Friday afternoon. The most current versions of the bills have much in common as well as a few significant differences. The House Education Committee approved its version of H.782 on a vote of 6-4-1; the Senate Committee has not voted on its bill as of this writing.

Duties of Supervisory Unions & Superintendents

Both versions of the bill would make changes to the roles of supervisory unions (SUs) and superintendents across Vermont, not just in districts that voluntarily merge. Because these changes, to be effective by 2012, will largely require SUs to manage and provide services that currently may be offered by the SU or individual districts, these proposed changes will have a greater effect on the operations of more decentralized SUs.

Supervisory unions would be required to provide financial management, student data management, professional development for staff, student transportation, procurement, and special education. The bill would provide for a waiver process for special education if an individual SU believes it could provide the services more efficiently or effectively at the district level. The Senate version also provides waiver options for other areas of SU operations. Both versions of the bill include transitional language to account for shifting the employment of special education staff from the district to the SU.

Each version also requires collective bargaining to occur at the SU level; individual district contract terms would still be allowed and the contracts would still be ratified by individual districts. The two current-law exceptions to the requirement that collective bargaining begin at the SU level would be deleted (i.e., there would be no exceptions).

Superintendents would have greater responsibility under both versions of the bill as well. They would be required to relieve their supervisory union and school boards of the duty to perform certain financial reporting now nominally required of school boards. More significantly, superintendents' duties regarding personnel management would be enhanced. Superintendents would have full authority to hire non-licensed employees and dismiss all employees subject to applicable due process and labor law. Regarding hiring of licensed employees, the superintendent would nominate a single candidate for board approval; if the board rejected the nominee, the superintendent would then nominate another individual.

Class Size Policies

Both versions of the bill contain references to average class size policies to be effective July 1, 2012. The House version is more directive, requiring all SUs and individual districts to adopt a "minimal and optimal average class size" policy. The House would also require the Commissioner of Education to develop at least two model policies by August 31, 2010. The Senate version would require superintendents to "work with schools boards" to develop and implement class size policies by the effective date.

Small Schools Grants (SSG) Study

The House version of H.782 would require the Commissioner of Education to develop and present a plan by January 15, 2011 for restricting the recipients of Small Schools Grants to districts that are geographically isolated. The report would include an analysis of what amount of supplemental financial support is required to allow these geographically isolated districts to provide an adequate education.

The plan would also include a timetable to withdraw grants gradually from districts that are not geographically isolated.

Voluntary School District Merger Incentives

Both the Senate and the House Education Committees developed legislation that would provide incentives to school districts that voluntarily merge. The merger process would occur using existing union school district formation law (chapter 11 of Title 16). Each supervisory union board, and potentially each school district board, would be required to discuss and vote on whether to formally explore a merger sometime in the next 12 months.

To earn the incentives, the merger would need to meet the following conditions.

- The Merged District (MD) must comprise at least four (Senate) or five (House) existing school districts, and/or comprise an average daily membership (ADM) of at least 1,250;
- The MD must operate a school or schools serving at a minimum grades K-6;
- The MD must be a “unified union district” that either operates, designates, or pays tuition for students in all grade levels K-12;
- The MD cannot close a school in the first few years of operation without the consent of electorate of the town in which the school is located;
- The vote to merge must occur by a date certain.

An MD that meets the above conditions, and some other minor provisions detailed in the bill, would be eligible for the following incentives.

House Version Incentives	Senate Version Incentives
<ul style="list-style-type: none"> • For homestead tax purposes and income sensitivity, the MD’s education spending per pupil would be reduced for the first four years. The amount of the reduction would be greater if the district’s annual education spending (ES) increase was lower. <ul style="list-style-type: none"> ES Increase < 0%: -\$875 ES Increase = 0%: -\$750 ES Increase < 1%: -\$600 ES Increase < 2%: -\$400 ES Increase < 4%: -\$200 • The district would have the option to operate using two-year budgets during the first four years of operation, and two- or three- year budgets thereafter, subject to approval from the electorate. 	<ul style="list-style-type: none"> • For homestead tax purposes, the MD’s tax rate and income sensitivity percentage would be reduced. The amount of the homestead rate reduction would be: <ul style="list-style-type: none"> Year 1: -8 cents Year 2: -6 cents Year 3: -4 cents Year 4: -2 cents For income sensitivity, the reduction would be proportional to the reduction in the homestead tax rate. • The merger planning committee can be reimbursed up to \$20,000 from the Education Fund to pay for the cost of planning a merger.

Incentives in Both Versions

- During the first four years of MD operation, each of the participating districts that comprise the MD would not see their homestead tax rate or income sensitivity percentage increase or decrease by more than 5 percent. This provision would smooth the transition from a participating district's tax rate to the MD's tax rate over time.
- If any of the participating districts were eligible for a Small Schools Grant prior to merger, the MD would receive state aid in the amount of the SSG for the first five fiscal years of its operation.
- If a MD or a participating district sells a school building, it would not have to repay the state the share of the sale price equal to the percentage of construction aid the state provided when the building was constructed.
- If in fiscal year 2018 a participating district was still owed school construction aid that it incurred from a project approved prior to 2008, the state would assume the MD's liability to pay the debt service.

Discrepancies in the House and Senate Versions of Voluntary Merger

- The House version of the bill would require the MD to be a supervisory district (i.e., to retain a superintendent to solely serve the MD). The Senate version allows the MD to be a supervisory district or a member of a supervisory union.
- The House version requires the participating districts to be contiguous; the Senate version does not.
- The Senate version of the bill would require the merger planning committee to develop a cost-benefit analysis that specifies the expected cost efficiencies and/or enhanced student opportunities the MD would be expected to provide.
- The Senate version of the bill would extend an existing piece of legislation that provides up to \$150,000 to any school district consolidation project; this existing law provides money with no additional conditions. This law is now set to expire on June 30, 2010.
- The Senate version of the bill would require an as-yet undetermined entity to study the fiscal impacts of greatly expanding school choice opportunities for Vermont students.

Miscellaneous Provisions Regarding Voluntary District Merger

- The Department of Education would be required to develop a merger template to assist districts in evaluating whether a merger would be beneficial to the district or its students.
- The James Jeffords Center at the University of Vermont would conduct analysis of districts that chose to merge, and would report to the Legislature on whether fiscal efficiencies or improved student opportunities and outcomes resulted from the merger.

Our Associations have testified in favor of the general concept of providing incentives to districts that chose to merge, and we have made extensive comments on the particulars of both bills. We will

monitor and report on the final phase of H.782's development. It appears likely, but not certain, that some form of the bill will be approved by the Legislature prior to the session's adjournment. Governor Douglas' administration has not publicly stated whether it favors or disapproves of the bills as currently constructed.

House Proposes Voluntary FY12 School Spending Reduction Targets

The House, acting on the recommendation of the House Education Committee, approved language that would direct the Commissioner of Education to create a formula that will assign voluntary education spending reduction targets to each school district to be effective for fiscal year 2012. The targets would total \$23.2 million in reduced education spending statewide as compared to fiscal year 2011, and the targets would have to be approved by a joint meeting of the Senate and House Education Committees on or before September 10th. The language is found in section 33 of [H.792](#) (beginning on page 37). H.792 is omnibus legislation designed to implement law changes that would allow potential efficiencies found in the *Challenges for Change* process to be realized.

Because \$23.2 million is approximately two percent of education spending, the formula that the Commissioner is directed to create is likely to determine that individual school districts' spending reduction targets would be somewhere between 0 and 4 percent of their fiscal year 2011 education spending. The formula would not apportion the spending reductions based on a simple calculation of per pupil spending, enrollment, or staffing. It would be designed to favor districts that:

- A. *Have demonstrated fiscal restraint during no fewer than the last three fiscal years;*
- B. *Have low per-pupil administrative costs;*
- C. *Have high student-to-staff ratios...*
- D. *Serve a high percentage of students from economically deprived backgrounds or for whom English is not the first language or both; or*
- E. *Have other unique circumstances that affect the district's level of education spending.*

H.792 would provide ample opportunity for members of the Senate and House Committees on Education to effect the formula. The Commissioner would be directed to present a preliminary formula to the committees jointly by July 15th for approval. If the preliminary formula is approved, it would be publicized and each school district, supervisory union, and technical center would be required to "submit written comments to the commissioner..." On before September 10th, the joint committee would meet with the Commissioner to review the comments and potentially give final approval the formula. The legislation does not specify a contingency in the event that the joint committee does not approve the Commissioner's targets.

Each school district, supervisory union, and technical center would be "urged to adopt a FY 2012 budget that reflects the individual reduction target..."¹ There is no specific reference to consequences for

¹ *Editor's Note:* Irrespective of this sentence in the legislation, supervisory union budgets are unlikely to have spending reduction targets because their expenses are assessed to local school districts.

districts that do or do not meet their voluntary targets; as always, local spending decisions will be reflected in homestead education tax rates.

In response to H.792, a senior member of Governor Douglas' administration, Tom Evslin, wrote to House Appropriations committee chair Martha Heath expressing concerns with specific aspects of the bill. What follows is Evslin's comments on education.

The committee language on education does not comply with the first challenges bill which specified that savings are to be administrative. Here all savings are eligible; if the intent had been to include all savings; [sic] the target would have been much higher. Moreover, since targets for FY12 are not mandatory, there can be no assurance that budget targets will be met. This was known to [the House Appropriations Committee] when the bill passed. We will push for change as the bill progresses.

H.792 was approved by the House two weeks ago. It is now under consideration in the Senate Appropriations Committee. The 99-page omnibus bill is potentially the final legislation the state must act on in order to balance its budget for fiscal year 2011. Therefore, we expect that its passage will be contentious and potentially unresolved until the final hours of the session. We will report on its status as soon as it emerges in a final form.

House Education Considers Miscellaneous Education Bill

On Thursday, the House gave preliminary approval to its version of [S.297](#), the miscellaneous education bill that was approved by the Senate earlier in the session. Prior to consideration by the full House, the House Education Committee added a number of new provisions to the [Senate-passed version of the bill](#). The Committee also deleted one provision proposed by the Senate.

The Senate-approved provision that the House deleted concerned districts that designate a public or independent school as the high school for the district. In these districts, if a parent's request to enroll their child in a different, non-designated school is approved by the school board, current law limits the tuition the district would pay to the least of three amounts. The Senate version of S.297 would remove one of these three limits: the statewide average announced tuition for union high schools. The House Committee chose to leave all three limits in place, and its version would clarify that any difference between the tuition charged by the enrolling school and the district's tuition cap must be paid by the parent.

The following is a description of the provisions the House Education Committee added to the Senate-passed version of S.297.

- By July 1, 2013, public or independent schools that accept designation by a non-operating school district as the high school for the district would also be designated "for special education and technical education purposes."

- The Commissioner of Education would be required to “arrange” for the New England Association of Schools and Colleges to evaluate the effectiveness of each technical education center in Vermont. The bill does not make any references to potential cost implications from this provision.
- By July 1, 2012, supervisory unions would be the authority responsible for providing special education, unless the S.U. receives a waiver from the Commissioner of Education. The waiver would have to demonstrate special education “would be provided more efficiently and effectively in another manner.”

Supervisory unions would also negotiate with and employ special education staff; the terms of the contract may vary by district. Supervisory unions would be required to assume the contracts of special education staff who are employed by the S.U.’s member districts as of July 1, 2012. The S.U. would be required to formulate an agreement with the special education staff of member districts regarding seniority, RIFs, layoffs, and recall.

- By July 1, 2011, the Department of Education would be required to publish online best practices for implementing positive behavioral supports, response to intervention, co-teaching, and differentiated instruction. It would also be required to publish “guidelines to assist individualized education plan (‘IEP’) team decision-making for necessary services, paraeducator services, and placement.” By the same date, the Department of Education would be required to develop and make available training modules for IEP teams and the instructional models listed above.
- By July 1, 2011, the Department of Education would be required to develop training materials for local education agency representatives on IEP teams, and superintendents would be required to arrange for LEA representatives to receive training annually.
- By July 1, 2012 the Legislature’s Joint Fiscal Office would be required to evaluate alternative models for funding special education, including a block grant system. The JFO would consult with the Department of Education while developing the report.
- The Department of Education and the State Board of Education would immediately cease their existing roles in approving driver education and training courses. The Department of Motor Vehicles would still be required to approve driver education and training courses.

The Department of Education would be required to consider options “for restructuring the delivery of driver education to Vermonters between the ages of 15 and 20...” The Department would report on a “detailed restructuring proposal” to the Legislature by January 15, 2011.

- An existing state commission on taxes would be directed to examine the balance of Education Fund revenues between property taxes and other revenue sources. The commission would report to the Legislature prior to July 1, 2011, and its report would include analysis and a

recommendation for an appropriate education funding ratio of property taxes and other revenues.

The following is a description of the provisions of S.297 that is included in both the Senate and the House Education Committee versions.

- School boards would be explicitly permitted to contract with one or more distance learning program providers to offer educational services to its students. The provider must be approved by an accrediting agency recognized by the U.S. Department of Education or approved in Vermont under 16 V.S.A. 166(b)(6).
- Supervisory unions, not individual school districts, would become the designated recipient of school foodservice grants that flow through the Department of Education. The amount of the grants would not change. The supervisory union would also become the authority required to offer lunch in all school buildings. The House version of the bill includes a provision that would allow the Commissioner of Education to grant supervisory unions a waiver from this provision if the waiver application demonstrates that the supervisory union could perform the duties more efficiently using a different system.
- The Department of Education would be required to complete implementation of the statewide longitudinal student information data system in all districts by 2013, four years earlier than current law.
- The long-standing practice of allowing three Vermont school districts (Pawlet, Rupert, and Wells) to designate a public high school in New York state as the high school for the district would be codified in law.
- A technical amendment would be made regarding data errors in average daily membership counts; current law is not consistent with the functioning of the Act 68 education finance system.

Assuming the House gives final approval to the bill on Friday, the discrepancies between the Senate- and House-approved versions of S.297 would be resolved in a Committee of Conference next week.

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