

*Education Legislative
Report*



2010 Legislative Review

Vermont Superintendents Association

Vermont Principals' Association

Vermont School Boards Association

May 24, 2010

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Introduction

What follows is a description of all the education-related bills and provisions of law to emerge from the second half of the 2009-2010 legislative biennium. As of this writing, there is a small chance the Governor will exercise his option to veto one or more of these bills, but we have not received any indication he is likely to do so.

Challenges for Change Implementation (H.792)

The *Challenges for Change* budget-reduction methodology was contentious on all sides. Disagreements about how to proceed with the recommendations in the original *Challenges for Change* report issued in January occurred between the executive and legislative branch, between the political parties within the Legislature and between state and local governments. This tension is reflected in a requirement directing the executive branch to report quarterly to legislative committees on the status of *Challenges* implementation even after the Legislature adjourns. The process is designed to save the state \$38 million in FY2011, and more in FY2012, but as of this writing it is unclear what the final impact of *Challenges* will be on the state budget.

There was disagreement among state leaders as to whether the state should take a more active role in determining school spending or whether to respect traditional local authority. The actions school boards and voters took to level fund education spending in FY2011 clearly had a material effect on the state-local debate. Legislators frequently cited level-funded budgets as a reason to continue to respect local budgeting authority despite the state's difficult fiscal position. The policy that resulted from these deliberations, described in the following paragraphs, expresses the Legislature's specific expectations regarding school budgets without requiring that any individual district strictly adhere to a prescribed spending amount.

Voluntary Spending Reduction Targets

The Department of Education will develop a formula that will be used to assign voluntary spending reduction targets to each supervisory union (SU) and technical center school district for fiscal year 2012 budgets. The targets will total \$23.2 million statewide and will ask school districts collectively to cut approximately two percent from their fiscal year 2011 education spending.

The formula will not assign each SU an equal dollar amount or percentage as its target. Instead, the formula must favor SUs with districts that (1) have demonstrated fiscal restraint in recent years, (2) have low per-pupil administrative costs, (3) have high student-to-staff ratios, (4) have high percentages of students in poverty or who are English-language learners, or (5) have "other unique circumstances that affect education spending." The Commissioner of Education must notify SUs of their targets by August 1, 2010.

The board of each supervisory union *and* each district within it must notify the Commissioner by December 15, 2010 “whether their combined budgets will be able to meet recommended reductions.”

After receiving the information from SUs and districts on December 15, the Department of Education will develop a “detailed proposal” to “ensure” the spending targets for FY2012 overall will be met, presumably with Legislative action. There are no parameters given for the plan, other than that its dollar target will be \$23.2 million less the expected savings that SUs and districts report.

Voluntary District Mergers; Supervisory Union Functions Reorganized; Miscellaneous Education Law (H.66)

As the Legislative session progressed, H.66 was expanded from its once-limited scope to include many of the education policy provisions that were ultimately approved by the House and Senate. It includes reconfigured duties for supervisory unions and superintendents, incentives for a voluntary school district merger program, and several miscellaneous provisions. One new requirement, detailed below, will require all school districts and supervisory unions to adopt class size policies by next January.

Duties of Supervisory Unions

H.66 changes the roles of supervisory unions (SUs) and superintendents across Vermont, not just in districts that voluntarily merge. These changes, effective on July 1, 2012, will largely require SUs to manage and provide services that currently may be offered by the SU or individual districts; therefore, it will have a greater effect on the operations of more decentralized SUs.

The duties of supervisory union boards will be expanded to include:

- Establishing an SU-wide curriculum and ensuring its implementation;
- Providing for professional development for member district educators and staff;
- Providing special education and compensatory and remedial services;¹
- Providing financial and student data management services;
- Procurement and distribution of goods and operational services;
- Construction project management;
- Contract negotiations with educators, administrators, and other school personnel (contract terms may vary by district, and districts must still individually ratify agreements);

¹ There is language in the bill that specifies steps supervisory unions will need to undertake if and when they assume the employment contracts of their member districts for special education staff. These steps include recognizing existing bargaining units, and negotiating an agreement that clarifies issues of seniority, reductions in force, layoff, and recall among employees of the member districts.

- Providing transportation, or arrange for its provision, in districts that offer student transportation;
- Providing human resources management support.

The Commissioner of Education is authorized to grant waivers to individual SUs for any or all of the above requirements, except for curriculum and professional development, if an SU shows that it can provide the service more effectively and efficiently at the district level.

Duties of Superintendents

Superintendents will see their statutorily-required duties expand on July 1, 2012. These include:

- Reporting all financial operations of the supervisory union and/or its member districts;
- Hiring non-licensed staff and dismissing all staff, subject to all legal and contractual procedures;
- Nominating individual candidates for licensed positions for board approval. If the board rejects the nominee, the superintendent would bring forth another single nominee.
- Developing and implementing class size policies in conjunction with school boards (see more about class size policies below).

Virtual Merger Reimbursement

Supervisory unions will be encouraged to reach agreements to provide services jointly pursuant to 16 V.S.A. § 267. If the joint agreements include cost-benefit analyses demonstrating expected “financial savings or enhanced outcomes, or both,” the supervisory unions will be eligible for up to \$10,000 in reimbursement from the Education Fund for transitional costs including legal and consulting fees.

Class Size Policies and Student-Staff Ratios

Each supervisory union and member school board must adopt class size policies by January 15, 2011 specifying minimum and optimal class sizes. The policies may include differentiated minimum and optimum figures for various districts, courses, grade levels. The policies must be posted on the supervisory union website and messaged to the Commissioner of Education.

The Commissioner is required to develop at least two model class size policies and make them available online by August 31, 2010.

The Commissioner of Education has been directed to study student-teacher and student-staff ratios in Vermont public school systems and report on “cost-effective student-to-staff ratios” to the Legislature next January.

Voluntary School District Merger Incentives Program

H.66 provides temporary financial incentives to school districts that choose to voluntarily merge according to certain conditions. The merger process would occur using existing union school district formation law (chapter 11 of Title 16). A merged district will be known as a Regional Education District (RED).

Each supervisory union (SU) board is required to discuss by December 1, 2010 whether to formally explore a merger within the SU or with neighboring districts. By October of 2012, each supervisory union board must vote whether to engage in a formal merger planning analysis process.

To earn the incentives provided by H.66, the merger would need to meet the following **conditions**, in addition to the requirements in chapter 11 of Title 16:

- The RED must comprise at least four existing school districts, and/or comprise an average daily membership (ADM) of at least 1,250;
- The RED must be a unified union district that operates one or more schools for K-6, and operates one or more schools, designates a school, or pays tuition for students in grade levels 7-12. (Prekindergarten is optional.) In other words, the RED cannot be a union elementary or a union high school district only;
 - *Non-operating RED*: Notwithstanding the above requirement, if four or more non-operating K-12 districts merge to pool tuitions and administrative costs, it would be eligible to earn the financial incentives as a non-operating RED;
- The RED cannot close a school in the first four years of operation without the consent of electorate of the town in which the school is located;
- The merger plan must include a cost-benefit analysis that “shall identify cost efficiencies and improved educational outcomes that will result from merger...”
- The merger plan must include “structures and processes” that provide opportunities for local participation in the creation of policies and budgets for the RED.
- A RED will need to undertake specific steps when it assumes the employment contracts of the participating districts. These steps include recognizing existing bargaining units, and negotiating an agreement that clarifies issues of seniority, reductions in force, layoff, and recall among employees of the member districts.
- The vote to merge must occur by July 1, 2017.

A RED that meets the above conditions will be eligible for the following **incentives**:

- For homestead tax purposes, the RED's tax rate and income sensitivity percentage would be reduced for four years. The amount of the homestead rate reduction would be:

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.

Also during the first four years of RED operation, each of the participating districts that comprise the RED would not see their homestead tax rate or income sensitivity percentage increase or decrease by more than 5 percent annually. This provision is intended to smooth the transition from a participating district's tax rate to the RED's tax rate over time.

- The merger planning committee can be reimbursed up to \$20,000 from the Education Fund to pay for the cost of planning a merger.
- If any of the participating districts were eligible for a Small Schools Grant prior to merger, the RED would receive state aid in the amount of the Small Schools Grant for the first five fiscal years of its operation.
- The RED would have the option to operate with two-year budgets during the first four years of operation, and two- or three- year budgets thereafter, subject to approval from the electorate.
- If a RED 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 a school district is awaiting state aid for an construction project that was approved prior to July 1, 2010, and the district merges into a RED, and the RED has still not received that state aid in FY2017, at that point the RED would be reimbursed annually from the Education Fund for interest payments paid to a lender in anticipation of receiving the state aid.

The voluntary merger incentive program also includes the following provisions:

- The Department of Education is required to develop a merger template to assist districts in evaluating whether a merger would be beneficial to the district or its students. The template will be made available by December 15, 2010.
- The James Jeffords Center at the University of Vermont will collaborate with the Department of Education and local school districts to conduct analysis of districts that chose to merge, and will

report to the Legislature on whether fiscal efficiencies or improved student opportunities and outcomes resulted from the merger.

Miscellaneous Provisions

- Students on IEPs or 504 plans may participate in **graduation ceremonies** with their peers even if they will remain enrolled for the purpose of receiving additional services. Those students will not be eligible to participate in graduation if they have not met graduation requirements for reasons unrelated to their disability.
- The Commissioner of Education will develop and present a plan by January 15, 2011 to restrict the recipients of **Small Schools Grants** to districts that are deemed geographically isolated. The report will include an analysis of what amount of supplemental financial support is necessary 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.
- The existing exceptions to the requirement that collective bargaining be conducted at the supervisory union level have been repealed (i.e., there will be no exceptions). Contracts can still have district-specific terms and individual school districts must still ratify contracts.
- A provision of existing law that provides up to \$150,000 to any school district merger or consolidation has been extended through 2014. Unlike the voluntary merger incentive program, there are no specific conditions, other than completing a merger, that need to be met to earn this incentive.
- The Commissioner of Education has been directed to request that the Regional Educational Laboratory Northeast and Islands study the expected fiscal and educational outcomes of providing all Vermont students with tuition vouchers. The report would include a summary of peer-reviewed research with a focus on Vermont and other similar states.
- Districts will be explicitly permitted to offer educational services by entering into contracts with distance learning providers that are approved by a nationally recognized accrediting agency or are approved by the state’s Department of Education.
- A senator and a representative who each serve on the Legislature’s education committees will be appointed to the Government Accountability Committee, which is overseeing the *Challenges for Change* implementation among other duties.
- The Commissioner of Education will develop and implement by July 1, 2011 an “integrated process for financial management and reporting that includes common accounting standards...”

- The Department of Education is directed to study tuition “bill-backs” (16 V.S.A. § 824(b)(1)) and propose alternative methods to address estimated, announced tuition payments to public schools that later necessitate a corrective payment.
- Three school districts (Pawlet, Rupert, and Wells) that have had long been allowed to designate a public high school in New York as the high school of attendance for the district will have this permission codified into permanent statutory law.

Employment Separation Agreements (S.292)

S.292 primarily concerns the corrections system and related issues, but during the last week of the session provisions concerning school and other employers were inserted. Those provisions:

- Establish a state policy prohibiting confidential employment separation agreements between an employer and employee when the employee has “engaged in conduct jeopardizing the safety of a minor or vulnerable adult.” This provision will be effective as soon as the Governor signs S.292 into law.
- Require prospective employees whose duties may include authority over, or permit unsupervised contact with, minors or vulnerable adults to sign waivers authorizing prospective employers to obtain information from previous employers involving “all factual information that would lead reasonable person to conclude that the prospective employee engaged in conduct jeopardizing the safety of a minor or vulnerable adult.” This provision will be effective April 1, 2011, and will cover the most recent ten years of the prospective employee’s work history.
- Require Legislative Counsel to report on “potential impacts on hiring practices in Vermont if the state were to grant civil immunity for prospective, current and former employers in connection with the disclosure of information concerning conduct jeopardizing the safety of a minor or vulnerable adult contained in a prospective employee’s personnel file...”
- The Department of Education and the Department for Children and Families are directed to examine the “effectiveness” of their memorandum of understanding concerning sharing of information regarding behavior of licensed educators. The Commissioners must report on their findings, and any recommended amendments, to the Legislature by December 15, 2010.

Capital Bill (H.790)

School districts and technical centers that are awaiting state aid for school construction or renovation projects should expect just under 30 percent of their remaining aid to be paid by the State in FY2011. The total amount of school construction aid awarded this year will be \$6.3 million. School districts that are awaiting state aid for an alternative energy (biomass) project will not receive any aid this year.

A provision of law that awards districts 50 percent state reimbursement aid for approved construction projects that consolidate two or more school buildings will be extended for one additional year, through June 30, 2011. (16 V.S.A. § 3448(a)(7)(C)) This aid is available notwithstanding the moratorium on state aid for school construction.

The moratorium on new state aid for school construction remains in effect indefinitely.

Miscellaneous Tax Bill (H.783)

- Base education property tax rates will be the same for FY2011 as they were in FY2010. Base homestead rates will be **86¢** per \$100 of assessed value, and the nonresidential rate will be **\$1.35**. (This rate is 2.2 cents less than the rates proposed by the Tax Commissioner last December, when education spending was projected to increase two percent.)
- There will be two new restrictions that limit property tax adjustments for certain Vermont residents (commonly known as income sensitivity):
 - 1) Regardless of income, all homestead property owners will pay taxes based on property value for the value of a housesite in excess of the first \$500,000.
 - 2) When calculating household income, interest and dividend income in excess of the first \$10,000 will be double-counted (i.e., homeowners with significant interest and dividend income will have their income artificially increased solely for the purpose of calculating income sensitivity).
- School revenue has been and will continue to be exempt from the state sales tax. However, a new law effective on April 1, 2011 clarifies that commercial vendors that sell goods or services on school grounds will be subject to the sales tax. Whether the school shares in the proceeds from the sale or not, and regardless of whom is the direct recipient of the sales receipts, a commercial vendor will be required to pay sales tax on the total sale price of the items or services sold on school grounds.
- The Department of Taxes must produce a “feasibility report” by July 1, 2011 regarding developing an electronic system that would allow the Department to directly administer and collect the education property tax.

Blue Ribbon Tax Structure Commission to Study Education Finance

An existing tax structure commission will be tasked with broadly examining and evaluating the education system and education finance in Vermont. Here is an excerpt from the commission's new charge.

- 1. Goals. In consultation with the house committees on education and on ways and means and the senate committees on education and on finance, identifying the five most important short-term goals and the five most important long-term goals for an education system, taking into account the following: student educational achievement, education governance, finance, spending controls, and cost savings; and design a quantifiable nonmonetary measure of whether schools provide a 'substantially equal education opportunity' for student educational achievement; and report its finding by April 1, 2011.*
- 2. Evaluation. Evaluate Vermont's current education governance, finance, and spending control systems in light of the goals established in subdivision (1) of this subsection, the current education governance model, and the proposed changes to education governance made by the general assembly and determine the elements of the current system which achieve these goals well and should be maintained and those elements which do not achieve these goals well and should be modified or eliminated, and report its findings by June 1, 2011.*
- 3. Proposals. Develop new system of education finance, spending controls, and cost savings guided by but not limited to the goals established in subdivision (1) of this subsection and the elements identified in subdivision (2) of this subsection to be maintained, modified, or eliminated, and report its proposals by September 15, 2011.*

The commission will also examine and propose an "appropriate" balance of Education Fund revenues between property taxes and other revenue sources. The Fund has become more property tax-dependent in recent years.

The commission may appoint an "advisory panel," which would be comprised of persons with a wide range of perspectives and expertise in the areas of public education, policymaking, and taxation. Legislative committees of jurisdiction are authorized to meet and prepare legislation based on the report prior to the start of the 2012 session of the General Assembly.

Fiscal Year 2011 Appropriations Bill (H.789)

Prekindergarten ADM Caps

School districts with schools that are making insufficient progress in improving student performance as determined by the Commissioner of Education will be exempted from the current-law limits on the number of prekindergarten children that a district can count in its average daily membership (ADM). The ADM limits can be found in 16 V.S.A. § 4001(1)(C). The Commissioner's determination is made according to 16 V.S.A. § 165(b) and is based on schools making Adequate Yearly Progress according to the No Child Left Behind law.

Education Fund Revenue

- The transfer from the General Fund to the Education fund will be \$240 million in FY2011, the same as it was in 2010. Federal ARRA (stimulus) money added \$38 million in additional revenue to the Education Fund in both of those years. There is no stimulus money expected in FY2012, and the level of General Fund support for public education figures to be a major issue in the next legislative session. In FY2009, the General Fund transfer was \$291 million.
- Other than the reduced General Fund transfer, this bill impacts the Education Fund in two other notable ways.
 - 1) \$7 million of school-based Medicaid reimbursement money will not be transferred from the General Fund to the Education Fund, as is otherwise required by 16 V.S.A. § 2959a(g). This will be the third consecutive year the reimbursement will not be transferred to the Education Fund.
 - 2) \$3 million will be paid out of the Education Fund to partially support the Community High School of Vermont (the corrections system school). FY2010 was the first year the Education Fund paid this expense.

Afterschool and Summer Meals (H.408)

21st Century Learning Center Afterschool Snacks

Every afterschool program funded by 21st Century Learning Center grants will be required to offer a snack using federal funds from the national school lunch afterschool snack program or the child and adult care food program. If the afterschool program requests it, a school within the district must provide "fiscal sponsorship" for the snack program. A school board or an afterschool program may apply to the Department of Education for a waiver from the requirement that it offer a snack; the waiver must demonstrate that it is "unduly difficult" to provide a snack. This section is effective October 1, 2010.

Summer Education Program Meals

Effective immediately, a school district will be required to offer a summer snack or meals program funded by the Summer Food Service or the National School Lunch programs if it meets *both* the following criteria:

- 1) The district operates a summer educational or recreational program or camp for at least 15 hours per week; and
- 2) At least one school in the district has a student population at least 50 percent eligible for free or reduced-price meals.

A school board may petition the Commissioner of Education for an emergency waiver of this requirement; the waiver must demonstrate that it is “unduly difficult” for the district to offer the summer meal.

Prekindergarten-16 Council (H.709)

A prekindergarten-16 council will be formed to “help coordinate and better align the efforts” of prekindergarten, K-12 and higher education in Vermont. The council will develop and update a statewide plan to increase postsecondary educational aspirations and achievement among elementary and secondary students; one goal of the plan will be to ensure that at least 60 percent of the adult population will have earned at least an associate’s degree by 2020.

The council will be comprised of sixteen members representing state government, higher education, elementary and secondary education, children’s advocates, business, and educators. The council will be required to elect a chair annually, meet at least quarterly, and report annually to the Legislature and the State Board of Education on its activities. The council will convene its first meeting prior to September 1, 2010. Superintendents or principals interested in serving on the council should contact their state association.

Act 74 State Teachers’ Retirement System (H.764)

This law adjusts the contributions and benefits of the Vermont State Teachers’ Retirement System (VSTRS). The adjustments will require many educators to work longer and for all to pay more into the system to receive full benefits, but would also increase the maximum benefits attainable for most educators. The combination of changes is expected to save the State \$15 million in FY2011 and at least \$15 million in future years. This law will be effective July 1, 2010.

Salary Contributions

For all educators, the percentage of salary that VSTRS members contribute will increase from 3.54 percent to 5.0 percent.

Pension

VSTRS members who are already retired, or who are at least 57 years old, or who have completed 25 years of service as of June 30, 2010 will be exempted from these pension changes. Members who are not 57 or do not have 25 years of service will now be required to work until they are 65 years old *or* have a combined age and years of service of 90 to receive full retirement benefits. For employees who are more than five years away from normal retirement, the maximum percentage of an employee's average final compensation (AFC) that he or she could receive as a pension is increased from 50 to 60 percent. However, those employees would have to work 34 years to earn the full 60 percent benefit; a 30-year career will result in a roughly 50 percent benefit, as it would under current law.

VSTRS members who are at least 57 years old, or who have completed 25 years of service as of June 30, 2010, can increase their pension from a maximum of 50 percent to 53.34 percent of AFC. These members would be required to work at least two additional years to achieve this benefit.

Healthcare Coverage

For new hires and VSTRS members who are not yet vested in the system, the health benefit for VSTRS retirees will now require more years of service to earn but will pay an 80 percent two-person benefit for the retiree and a spouse if the member serves for at least 25 years. Educators working at least 15 years will receive a lesser single-person benefit.

Vested VSTRS members will retain their retiree healthcare 80 percent single person benefit. Vested members will also be able to earn an 80 percent two-person benefit but it will require additional years of service.

Salary "Spiking"

The law regarding "spiking" will also change. Spiking refers to the alleged practice of significantly increasing an employee's salary in the last years of service for the purpose of enhancing his or her pension benefit. The maximum amount of salary increase that will be recognized for calculation of AFC in a single year is now limited to 10 percent without exception. This could potentially have a negative impact on educators who accept a higher-paying position for just one or two years at the end of their careers. VSTRS members who choose to work in a higher-paying position for three or more consecutive years at the end of their careers will not be affected by this change in policy.

Notable Education Bills That Were *Not* Enacted This Session

H.708 Sports Concussions

S.259 Designated School Tuition

S.193 Prekindergarten Needs Assessments

S.297 The Miscellaneous Education Bill

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