

# VSA / VPA / VSBA Legislative Bulletin

*May 4, 2011*

## **May 7<sup>th</sup> Adjournment Targeted**

The targeted date for the Legislature to adjourn is May 7; activity inside the Statehouse indicates the Legislature is likely to meet that goal. Major bills that typically are debated until the final days and hours of the session, including the State's appropriations bill, capital bill, and miscellaneous tax bill, have each gone to conference committee. However, nothing should be considered a complete surprise at the end of a session, two examples being last-minute provisions in bills and the date of final adjournment.

## **Twelve-Month Pay Provision Approved by Senate**

[S.95](#) includes a section that would allow *any* school district employee to elect to have his or her wages paid over the course of a twelve-month period beginning on the first day of school. Our Associations have raised several concerns with this section including the administrative complexity of adjusting payments to match hours actually worked, complexities regarding federal minimum wage requirements, potential for overpayment of employees, and accounting and auditing concerns regarding payment of wages across two fiscal years for a single year of work.

As of this writing, it is unclear what will happen with this section of law. S.95 was approved by the Senate yesterday, but no House committee has held any hearings on the bill. There is a realistic possibility that the twelve-month pay provision will be attached to another bill that will pass. In anticipation of last-minute action on the provision, we have informed a number of House and Senate members regarding our concerns with the language; the outcome remains to be seen.

## **Principal and Teacher Mentoring Bill Approved by Legislature**

[H.430](#), a bill that would require school districts to provide mentoring services for new principals and technical center directors, has been approved by the Legislature; it now awaits final approval from the Governor. H.430 would also direct a study to be completed on mentoring services for new teachers. The House concurred with amendments to the original language made by the Senate so no conference committee was necessary. Here is a link to the text of the bill as approved:

<http://www.leg.state.vt.us/docs/2012/bills/Senate/H-430.pdf>

## **Prekindergarten ADM Cap Repeal Bill Approved by Legislature**

[S.53](#), a bill that would repeal the current-law cap on the number of prekindergarten children that school districts can count in their average daily membership, has been approved by the Legislature. Governor Shumlin has long called for a repeal of the caps and will sign S.53, making it law effective for the FY 2012

school year. This change does not require districts to provide pre-K services, but ends the need to sort out which children receive services to stay beneath an arbitrary cap.

## **Delay Expected for Act 157 Hiring Requirements**

As we reported as our lead article in the [Education Legislative Report Issue #8](#), Act 157 of 2010 included extensive, prescriptive administrative procedures related to background checks for prospective employees who may have unsupervised contact with children or vulnerable adults (including all school district employees). The implementation date for those requirements in Act 157 is currently July 1, 2011. The House and Senate have taken different approaches to modifying this requirement.

The Senate Judiciary Committee amended H.264, a bill that primarily concerns illegal operation of motor vehicles. It now includes a simple section that delays the implementation date for those Act 157 provisions one additional year, to July 1, 2012.

The House Judiciary Committee, addressing the same issue earlier in the session, took a different approach, encapsulated in a bill the Committee introduced several weeks ago (H.450). We described the House Committee's approach in [Issue #8](#).

At this time, it is uncertain what approach the Legislature will ultimately take, although it appears that the Senate Committee's delay provision has a better chance of enactment than the House Committee's bill. If the delay provision is enacted, we expect some long-term solution would be developed in 2012, possibly incorporating some or all of H.450.

## **State-level Governance Bill Shelved for this Session**

H.440, the bill designed to restructure the state level governance of education in Vermont, has been returned to the House Education Committee for further work between now and January. In its most current draft, the bill would have transformed the position of Commissioner of Education to a Secretary of Education appointed directly by the Governor. H.440 would have also reconfigured the composition of the State Board of Education. The bill acknowledged that these transitions would have necessitated changes to the duties of both the education chief and the state board, but it did not delineate these changes in detail; instead, the bill left some of that work for the consideration of the 2012 Legislature.

It is our understanding that H.440 is not "dead." The Legislature appears likely to continue to work on developing and considering a more comprehensive bill that would clearly define the duties of a new board and secretary. We expect that the issue will continue to be debated in 2012.

Our Associations are supportive of the decision to delay action. The most recent draft of the bill raised concerns, chief among them that H.440 would significantly weaken the duties and responsibilities of the State Board. We support the decision to take more time to sort out the complexities of this very important matter.

## **“Two-vote” Repeal Appears Unlikely to Pass in 2011**

[H.299](#), a bill that would repeal the requirement that some school district budget proposals be divided and presented to the voters in a two-article format, was approved by the House earlier this year but the bill has not been taken up in the Senate.

In March, [Governor Shumlin stated his support](#) for the repeal bill and the House approved H.299 on a voice vote. Our Associations also gave strong support to H.299, consistent with our position that the two-vote provision is a confusing and arbitrary approach to cost containment that does not reflect real school costs and unnecessarily complicates the process of budget development and approval.

Since March, the bill has not progressed in the legislative process. At this point, it appears unlikely that the bill will be approved by the Senate this year. The original two-vote provision is set to expire following the FY 2014 budget approval process, so we were hopeful that H.299 would have hurried the two-vote provision’s repeal by two years.

## **Miscellaneous Education Bill Approved by Conference Committee**

S.100, a miscellaneous education bill has been approved by a conference committee of Senate and House members. The conference committee agreement is very likely to be ratified by the Legislature.

A number of the bill’s provisions make technical changes to Title 16 and others pertain solely to higher education. What follows is a description of the sections of the bill that substantively pertain to K-12 education.

- Language in section 18 would retain collective bargaining rights of transportation workers when authority for provision of transportation transitions from school districts to supervisory unions pursuant to Act 153 of 2010.
- Section 22 would allow supervisory unions to receive state and federal foodservice grants on behalf of their member school districts.
- Sections 23 would add a section to Title 16 concerning dual enrollment (16 V.S.A. § 913). The section would state that secondary schools would award credit to students for successful completion of postsecondary courses when the student has received prior approval from his or her school. The secondary school would determine the amount of credit awarded, including to what extent the course may count towards the student’s graduation requirements. Section 24 of S.100 would declare that it is policy of the State to increase access to expanded learning opportunities for students, including dual enrollment courses.
- Section 32 would allow a school district electorate, in a special warned article, to authorize a five year window for its school board to incur debt for energy efficiency projects when the cost of the project is less than the energy savings. The cost savings would have to be certified by an

independent expert and the total debt incurred in any three-year period must be less than \$350,000 per school building.

- Section 34 would extend by one year the final date for full implementation of the new duties of supervisory union boards and superintendents pursuant to Act 153 of 2010, from July 1, 2012 to July 1, 2013.
- Section 35-37 concern off-campus harassment and bullying, including “cyberbullying.” Section 35 would expand the definition of harassment to include harassment by electronic means. Section 36 would expand the definition of bullying to include bullying by electronic means, and to include bullying that occurs off school grounds *if* the behavior “can be shown to pose a clear and substantial interference with another student’s right to access educational programs.” Section 37 would expand the definition of misconduct for which a school may suspend or expel a student to include misconduct off school grounds *if* the misconduct “can be shown to pose a clear and substantial interference with another student’s right to access educational programs.”
- Section 38 would direct the Department of Education, in consultation with other parties, to “integrate the value added food processing sectors, including meat cutting and processing” into programs of study at technical education centers.
- The school athlete concussion bill has also been inserted into the House version of S.100

## **Studies**

Both the House and Senate versions of S.100 includes three studies for the Department of Education (DOE) to investigate, with reports due January 15, 2012, in time for next year’s legislative session.

- The DOE, in consultation with other interested parties, would be directed to study options for how delivery of driver’s education could be restructured.
- The DOE would be directed to report on current and planned use of technology in schools, including a report on schools’ access to broadband internet and student’s access to flexible learning environments, among other issues.
- The DOE and the Department for Children and Families, in consultation with other interested parties, would be directed to study the statutes and rules regarding prekindergarten education with the intent of making recommendations to simplify the regulatory process.
- *Editor’s Note: The mentoring bill described above (H.430) includes a summer study as well, regarding the teacher mentoring system in Vermont.*

## **“Green” Cleaning Bill Approved by House**

The House has approved its version of [S.92](#), a bill concerning use of environmentally preferable cleaning products in public and approved independent schools. While the intent of the Senate and House versions of the bill are substantially similar in intent, the approach taken by the House differed from the Senate in several ways. We described the Senate version of the bill in our [Education Legislative Report Issue #7](#).

Antimicrobial pesticides (i.e., disinfectants and sanitizers) would not be regulated in the House version of the bill, in accordance with Environmental Protection Agency (EPA) regulations. The Senate version said that disinfectants would be regulated only at some time in the future when the EPA determined there to be an environmentally preferable disinfectant.

The House version of the bill would prohibit distributors, manufacturers, and school cleaning contractors from selling or distributing non-environmentally preferable cleaning products. The Senate version would prohibit schools from using non-environmentally preferable products. In both versions, “environmentally preferable” is defined as an environmentally preferable product used by the State’s Department of Buildings and General Services, or as a product certified as environmentally preferable by an independent third-party organization.

Both versions of the bill would allow schools to use non-environmentally preferable products that were already purchased up to one year beyond the implementation date of the proposed law (July 1, 2011). The House version would allow approved independent schools with less than 50 students one additional year to transition to environmentally preferable products.

The Senate version would prohibit air fresheners in school. The House version would allow air fresheners in schools only if they have been certified as environmentally preferable by an independent third party.

Both versions would direct the Health Department to include a workshop on green cleaning products and practices in its annual training for school custodial personnel.

S.92 is likely to end up in a committee of conference, and we will report on the outcome.

## **Military Children Education Bill Headed to Conference Committee**

The House and Senate have approved different versions of [H.38](#), a bill that would direct school districts to accommodate children of active duty military personnel. A conference committee has been appointed to resolve the different approaches to the legislation.

H.38, as originally introduced, is interstate compact language promoted by the Department of Defense and the Council of State Governments. Each state that enters the compact (by approving the bill in its state legislature) agrees to accommodate active duty military personnel with regard to the educational services provided to their children when personnel are relocated or deployed. Those accommodations

include swiftly enrolling children in school and retrieving their educational records, enrolling children in grade levels and courses comparable to their sending district, providing comparable special services if applicable, and emphasizing flexible pathways to on-time graduation. States that enter the compact also agree to abide by administrative rules promulgated by an interstate commission that was created to govern compact-related rules and disputes among participating states.

The House chose not to adopt H.38 as introduced, and instead approved substitute language that would direct school districts to make many of the same accommodations for children of active duty military personnel as prescribed by the compact. However, the House version would not have Vermont join the interstate compact and would not make it subject to rules promulgated by the interstate commission.

The Senate chose to adopt much of the language of H.38 as originally introduced, including that Vermont would join the interstate compact. The Senate did modify the original language to ensure Vermont's sovereignty was not mitigated by the interstate commission's rulemaking authority, and to limit its financial and legal liability to the commission.

At this point, it is unclear what approach the conference committee will favor in resolving the two versions of the bill. In any event, both versions would direct school districts to accommodate military children in a mostly common sense manner.

**END**