

# Education Legislative Report

March 17, 2015 – Issue #6

## ***H.361 Spending Caps Under Fire; Ways and Means Lowers Tax Rates***

After the House Education Committee unanimously passed [H. 361](#) (read the [full bill summary here](#)) the week before Town Meeting break, most of the pushback has focused on the 2 percent cap on education spending included in Sections 27 and 28 of the bill. The cap would prevent any school district from approving a budget that increases equalized per pupil education spending by more than 2 percent from the previous year's budget. Districts would be prevented from borrowing to pay costs in excess of the 2 percent cap. The cap would remain in place until December 31, 2018 and impact three fiscal years – FY2017, FY2018 and FY2019.

The Education Committee returned from the break with a charge to reexamine the spending cap and determine whether it could be tweaked in order to make it more palatable. Last week, the committee discussed a proposal to lower the cap from 2 percent to 1.5 percent, and to give districts the choice to apply the cap to total education spending or education spending per equalized pupil. The revised proposal would also allow districts to appeal the amount of the education spending cap to the Secretary of Education. The Secretary could grant an appeal based on a number of factors, including sudden and unpredictable fluctuations in student needs and emergency school repair projects. The Committee is continuing to refine the cap proposal and is expected to vote on a final version on March 18<sup>th</sup>.

While the Education Committee continues to evaluate the spending cap, the Ways and Means Committee has spent time on the yield and tax rate provisions of the bill. On March 12, the committee voted to move \$2 million from the Education Fund reserve to avoid a 2-cent rise in the homestead property tax rate and a 1-cent increase in the nonresidential rate this year. Rates will remain at 98 cents for homestead property and \$1.515 for nonresidential property. The base rate for household income will go up slightly from 1.80 percent to 1.94 percent. Other factors associated with the education fund, such as lower than anticipated increases in education spending for FY2016 contributed to the ability to hold the homestead property rate level.

The emphasis on immediate property tax relief is not unexpected, given voters' frustration with rising education costs and property tax rates. However, our Associations are strongly opposed to a spending cap as the mechanism to provide that relief.

## ***Bill to Eliminate Strikes Without Arbitration Passes Out of House Education***

After taking weeks of testimony on a pair of labor bills, H.76 and H.102, last week the House Committee on General, Housing and Military Affairs decided not to take action on either bill this session. H. 102, a bill that would create standards for the factfinding process, faced strong opposition from Vermont-NEA. H.76 would eliminate the right of teachers to strike and of board members to impose contract terms and as originally drafted would have required binding

arbitration. Vermont is one of the few states in the nation and the only state in New England that permits teacher strikes. The Vermont School Boards Association was opposed to provisions in H.76 that would have required disputes to go to final binding arbitration.

On March 17, the House Education Committee approved a [strike-all amendment to H.76](#) that eliminates the right to strike and impose contracts without requiring binding arbitration. The new language would establish specific timelines for bargaining to begin, and if the parties were unable to reach agreement within 90 days of commencing negotiations, they would have to proceed to mediation. If the parties fail to reach agreement through mediation, they would have to proceed to the factfinding process within 45 days. The factfinder would issue a report with its recommendations, and the parties would be expected to continue to negotiate to reach a final agreement.

If the parties still have not reached an agreement after the expiration of the contract, current contract terms remain in place, and automatic step increases would only be granted if the expired contract allows for them. If the impasse continues six months after the expiration of the contract, the parties would be required to submit their proposals and any relevant information to the Vermont Labor Relations Board, which would have the authority to make recommendations to the parties and may also attempt to mediate the dispute. If impasse continues twelve months after the expiration of the contract, then penalties would apply to both sides: teachers would be ineligible for retroactive pay for any increases agreed to as part of a final settlement, and the school district's base statewide education tax rate would be increased by one cent on all homestead property located within the district.

The approach taken by the House Education Committee is consistent with the approaches adopted in other New England states. H.76 is expected to be voted on by the full House within the next week.

### ***Governance Reform Gains Ground in House; Senate Approach Still Developing***

Section 17 of H. 361 is expected to undergo some minor changes before it hits the House floor for a vote next week. However, the substance of the governance section, which would move Vermont in the direction of forming larger districts serving a minimum of 1,100 students, will likely remain intact.

Section 17 requires that on or before July 1, 2019 educational opportunities shall be provided through integrated preK-12 education systems. Under the current version of H.361 these systems could be governed by a single board or multiple boards within a supervisory union structure, but all would have to demonstrate how they will ensure the equitable delivery of high quality education to all resident prekindergarten through grade 12 students and how they are designed to improve transparency and accountability and to promote stable, affordable education costs.

Districts would be required to form study committees with one or more districts to prepare a study report proposing how best to create either a new district or a prek-12 system of more than one district. The report should demonstrate how the proposed realignment will be capable of achieving the goals above and will be operational by July 1, 2019. The report must be approved by the State Board and the electorate by November 30, 2017.

The State Board would evaluate reports to determine whether a proposal is designed to create an integrated education system capable of achieving the above outcomes, and would work to ensure no districts are stranded as a result of a specific proposal.

Once the State Board approves a proposal, it would go to the electorate for final approval. If, by November 30, 2017, a district has not engaged in a process to create an integrated education system, or if the electorate fails to authorize the creation of that system, the Secretary of Education would be required to develop a plan realigning any remaining districts into integrated education systems, to be approved by the State Board, which will publish an order realigning the remaining districts. This provision would not apply to interstate school districts.

Last week, the Senate Education Committee began examining its own [draft bill](#), which would allow districts to choose one of two paths on or before July 1, 2019: they must either form a PreK-12 single district, or become a member of a supervisory union serving at least 1,500 students. The bill provides greater incentives to districts that form a single district, but incentives are available to those who would form expanded supervisory unions as well. The draft bill would also eliminate the small schools grant unless a school is geographically isolated and would phase out the ADM hold-harmless provision.

The Senate Education Committee will take testimony on its draft bill and the governance provisions of H. 361 starting this week. H. 361 is expected to head to the House floor for a vote next week.

### ***House Committees Consider Felony for Failure to Protect a Child***

Before adjourning for Town Meeting Week, the Senate unanimously approved S.9, a bill designed to make improvements to Vermont's system to protect children from abuse and neglect. Now the House Judiciary Committee and the House Human Services Committee will begin their work on the bill.

Within its nearly 50 pages, S. 9 includes the creation of a new crime, Failure to Prevent Harm to a Child. The crime would allow the state to charge an individual with a ten year felony if the person fails to take action to protect a child from an enumerated list of harms: death, serious bodily injury, lewd or lascivious conduct with a child, sexual exploitation of children, and sexual assault.

Although S.9 as passed by the Senate is a positive development from the initial broad and vaguely defined crime, there are still significant concerns for school employees. First, the bill proposes that the new crime will apply to any person with "custody or care" of a child. It would clearly apply to the relationship between school employees and students. Second, the standard of care for the crime is negligence. In other words, the State would only need to prove that the defendant reasonably should have known that the harm would come to the child without the defendant intervening. The State would also need to prove that the failure to act was the cause of the harm to the child. Finally, while the committee added a couple of affirmative defenses to the crime, those defenses would not assist the defense of school employees.

The bill as written does not go far enough to ensure that unintended prosecutions do not result from the creation of the new crime. School employees are already mandatory reporters of child

abuse or neglect. S.9 elevates what might be a misjudgment on the part of a teacher or a principal to a felony punishable by up to ten years. The crime could be used as leverage against school employees who are hesitant to work with law enforcement outside the reporting structure already in place. Short of a school employee being convicted of the crime, a criminal charge in itself is damaging not only the individual reputation but that of the school district.

House Judiciary and Human Services will hold a joint meeting Wednesday, March 18 at 9:00 in Room 10. Both committees are expected to hold hearings on the bill, although it is not yet known whether both committees will take jurisdiction of the felony provision.

### ***Health Care Committee Reform Package Includes Payroll Tax***

Last week, the House Health Care Committee endorsed a comprehensive health care package that includes a compromise on the Governor's payroll tax proposal. Rather than a .7 percent payroll tax, the House Health Care bill would enact a .3 percent payroll tax and a sugar-sweetened beverage tax. These taxes are projected to raise close to \$34 million and \$30.5 million respectively on an annual basis, according to figures from the legislative Joint Fiscal Office and the Shumlin administration. Other provisions in the proposed bill would increase Medicaid rates and cost-sharing subsidies on the exchange, strengthen primary care and expand the budget and authority of the Green Mountain Care Board.

The bill would also eliminate the employer assessment, a fee employers pay for any uncovered employees. It should be noted that the .3 percent payroll tax will be greater than the savings from the elimination of the employer assessment for most school districts. In addition, while the payroll tax would go into effect January 1, 2016 any reduction in future VEHI health premiums resulting from the increase in Medicaid rates (partially addressing the "cost-shift") will not accrue to school districts until FY 2017 at the earliest. VSBA and VEHI have communicated with the Governor's staff regarding the need for school districts to be held harmless regarding the payroll tax until the savings offset is realized.

### ***Senate Bill Establishes Task Force to Examine Deaf, DeafBlind and Hard of Hearing Issues***

The Senate Government Operations Committee has taken extensive testimony on S.66 "An act relating to persons who are deaf or hard of hearing" and has amended the proposed bill to create a "Task Force on Persons Who are Deaf, DeafBlind, or Hard of Hearing." The Task Force will "assess and make recommendations concerning educational services, resources, and opportunities for children within the State who are deaf, DeafBlind, or hard of hearing and their families and to provide advice and oversight on matters of policy and administration of program for persons who are deaf, Deaf/Blind or hard of hearing."

The fourteen member Task Force includes persons who are deaf, DeafBlind or hard of hearing and parents, as well as a broad range of key professionals, including representatives from the Vermont Superintendents Association (VSA) and the Vermont Council of Special Education Administrators (VCSEA). The Division of Vocational Rehabilitation within the Department of Aging and Independent Living will convene the Task Force by July 1, 2015. The Task Force will advise the General Assembly, the Governor and the Agencies of Education and Human Services regarding resources, coordination, and appropriations, policy development, and program

administration. By January 15, 2016 a report will be issued with findings and recommendations for administrative and legislative action. After passage the title of the bill is proposed to be amended to read: "An act relating to persons who are deaf, DeafBlind, or hard of hearing."

S.66 is expected to go to the full Senate for a vote in the next week.

### ***Education-Related Bills***

[This document](#) summarizes all education-related bills that have been introduced by one or more members of the Legislature as of March 16, 2015. The deadline for individuals introducing new bills has passed; committees can introduce bills through the end of March. To read any bill's full text or see its status in the legislative process, go here:

<http://legislature.vermont.gov/bill/search/2016>