

Education Legislative Report

April 20, 2015 – Issue #8

Senate Education Committee Bill Close to Completion; Public Hearing this Week

The Senate Education Committee has spent the past several weeks working on a strike-all bill to H.361, an act relating to making amendments to education funding, education spending and education governance. The latest version of the bill tracks a series of [recommendations](#) that were submitted by the Agency of Education. The Committee is expected to vote out the bill this week; a public hearing is set for Wednesday, April 22nd from 5-7 pm at the State House. The following is a summary of the major sections of the bill as of April 17th.

Section 1 – Findings: The bill begins with a series of findings relative to Vermont’s declining student population, static staffing levels, and increasing student needs. The findings further state: “With 13 different types of school district governance structures, elementary and secondary education in Vermont lacks cohesive governance and delivery systems. As a result, many school districts are not well suited to achieve economies of scale and lack the flexibility to manage, share and transfer resources...to provide students with a variety of high quality learning opportunities.” The bill cites national research on optimal school and school district sizes, noting that a sizable proportion of Vermont’s schools and school districts are much smaller than what research suggests is optimal.

The findings section concludes with a statement recognizing “the important role that small schools play in the social and educational fabric of the community. It is not the State’s intent to close its small schools, but rather to ensure that those schools have the opportunity to enjoy the expanded educational opportunities and economies of scale that are available to schools within larger, more flexible governance models.”

Section 2 – Preferred Education Governance Structure: This section states that the preferred education governance structure in Vermont is a supervisory district that is responsible for the education of all resident PreK-12 students and that assumes one of the following common governance structures:

- a district that operates a school or schools for resident students in prekindergarten or kindergarten through grade 12;
- a district that operates a school or schools for resident students in prekindergarten or kindergarten through grade 6 and pays tuition for all resident students in grade 7 through grade 12;
- a district that operates a school or schools for resident students in prekindergarten or kindergarten through grade 8 and pays tuition for resident students in grade 9 through grade 12;

- a district that operates no schools and pays tuition for resident students in prekindergarten through grade 12.

The bill also recognizes that a supervisory district may not be possible or the best means of achieving the State's education goals. In such situations, a supervisory union with two or more member districts can meet the State's goals, particularly if:

- the member districts consider themselves to be collectively responsible for the education of all PreK-12 students residing in the supervisory union.
- the supervisory union operates in a manner that maximizes efficiencies through economies of scale and flexible management, transfer and sharing of resources among the member districts, and
- includes the smallest number of member school districts practicable.

Section 3 – Intent to Protect Small Schools and Tuition Payment: This section includes several statements of intent to make clear that it is not the intent of the State to close small schools or to encourage the closure of small schools. It also explicitly protects current school choice and school operating patterns, by stating that current non-operating districts shall not be forced to give up choice nor shall operating districts be forced to pay tuition.

Section 4 – RED Incentives: This section extends RED incentives to districts that become operational on or before July 1, 2020.

Sections 5-6 – Accelerated Merger Incentives: This section provides for increased tax incentives for supervisory unions that merge to form supervisory districts so long as the electorate of all “necessary districts” approves the merger on or after July 1, 2015 and prior to July 1, 2016. The new district must have a minimum ADM of 900, operate as a single supervisory district, be operational on or before July 1, 2017 and provide data to the AOE in order to assist the Agency to assess whether and to what extent the consolidation of its governance results in “increased educational opportunities, operational efficiencies, transparency and accountability.”

If the newly formed district meets the above criteria, it will be eligible to receive either a decreased equalized homestead tax rate (decreased by \$.10 in the first two fiscal years of operation, \$.08 in year three, \$.06 in year four, and \$.04 in year five) or a one-time grant equal to \$400.00 times the total number of resident students in the new district that year.

These new supervisory districts will be eligible to continue to receive small schools grants, if the new district includes at least one district that was eligible for the grant in FY 2016. The new district shall continue to receive these funds in the form of a “merger support grant” in each of the first five fiscal years of operation in an amount equal to the small school support grant(s) received by any of the merging districts in FY 2016.

The districts will also be eligible for a transition facilitation grant from the Education Fund equal to the lesser of: \$150,000.00, or five percent of the base education amount multiplied by the greater of either the combined enrollment or ADM of the merging districts on October 1 of the year in which the vote is taken.

Finally, the section directs the AOE to collect and analyze data from these new districts regarding educational opportunities, operational efficiencies, transparency and accountability following merger. The Secretary shall annual file a report with the General Assembly beginning in January of 2016 through 2021 regarding any conclusions drawn from the data collected and any recommendations for legislative action.

Section 7 – Organization and Adjustment of Supervisory Unions: This section makes some changes to the current statute on adjustment of SU boundaries, and allows for any group of school districts that have the approval of their electorate to request that the State Board of Education adjust existing SU boundaries “if such adjustment would assist the requesting districts to realign their governance structures into a unified union school district.” The requesting districts do not need to be members of the same SU. The changes to this section also authorize the State Board to designate a district as a supervisory district if it provides for the education of all resident students in PreK-grade 12. Current law says a supervisory district must “offer schools in grades K-12.” This change would explicitly allow for districts that operate some grades and tuition others to be classified as supervisory districts, so long as those districts are “large enough to support the planning and administrative functions of a supervisory union,” which is current law.

Sections 8-10 – Merger Support Grants; Small Schools Grants: Districts eligible for small schools grants under current law must form a supervisory district that meets the “preferred governance structure” criteria listed in Section 2(a) and be operational on or before July 1, 2020 in order to receive a merger support grant. The grant would be the amount equal to the small school support grant(s) received by any of the merging districts in FY 2016 for each of the first five fiscal years of operation.

If a district does not vote to create a new supervisory district, then its eligibility for continued grants will be based on whether the State Board of Education has determined it to be “eligible due to geographic necessity,” which means that lengthy driving times or inhospitable travel routes to nearby districts with excess capacity are an obstacle to transporting students. The State Board will adopt and publish guidelines by which it will determine eligibility. The determination of the State Board shall be final.

The section takes effect in FY 2017. There are provisions for transitioning districts that are no longer eligible to receive the grants, by phasing out the grant over two years.

Sections 11-14 - ADM Hold-Harmless Provision: The bill would apply the current 3.5% calculation to a district’s actual equalized pupils, rather than the prior year’s inflated equalized pupils, which is current law. The new calculation would be phased in over three years for those

districts that do require an adjustment to their ADM calculation based on a loss of more than 3.5% of their student population. In FY 2017, the district's equalized pupils will in no case be less than 90% of the prior year's equalized pupil count, and in FY 2018, the loss shall be no more than 80% of the prior year's equalized pupils.

Section 13 repeals the hold-harmless provision entirely effective July 1, 2020. However, Section 14 grandfathers districts who form a unified union school district or supervisory district eligible for incentives under the bill on or before July 1, 2020, so that the hold-harmless provision would continue to apply to those districts.

Section 15 – Applicability of Current Incentives: This section limits current incentives related to exploration and analysis of joint ventures and mergers including reimbursement of fees and transition funds to only those activities related to formation of a RED, unless the districts or supervisory unions involved complete the specific requirements for eligibility under current law on or before December 31, 2015.

Section 16 – Supervisory Union as LEA: This section designates the supervisory union, rather than the school district, as the LEA for purposes of compliance with federal accountability laws. Under current Vermont law, a supervisory union is also a supervisory district.

Section 17 – Penalties for Failure to Comply with Duties of SU's: This section states that "after notice to the boards of the supervisory union and its member districts, the opportunity for a period of remediation, and the opportunity for a hearing," if the Secretary determines that a supervisory union or any of its member districts is not complying with any provision of 16 VSA §261a(a), then the property tax rates will be increased by five percent in each district within the SU for each fiscal year the Secretary deems the districts to be out of compliance. If the Secretary determines that the failure to comply is solely the result of the actions of a single district, then the tax increase will apply only to the tax rates for that district. The effective date of this section is July 1, 2016; however, tax rates shall not be increased until FY 2018.

Section 18 - Transition of Employees: This section provides for a transitional board to appoint a negotiations council for a newly merged district or SU to negotiate with future employees' representatives and recognize the representatives of the "Realigning Districts" or "Realigning SUs" as the recognized representatives of the employees of the new district or SU. Negotiations would commence within 90 days after formation of the transitional board.

If a new agreement is not ratified by both parties prior to the first day of the new district or SUs existence, then the parties will comply with existing agreements in place until a new agreement is reached.

The new district or new SU will assume the responsibilities of any one or more of the Realigning Districts or Realigning SUs that have been participants in the Vermont Municipal Employees'

Retirement System. The membership and benefits of employees will not be impaired or reduced by the negotiations with the new district or new SU.

Section 20 – Coordination of Educational and Social Services: This section directs the Secretaries of Education and Human Services to consult with school districts, SUs, and social service providers to develop a plan for maximizing collaboration and coordination between the Agencies in delivering social services to Vermont public school students and their families. The Secretaries shall present their plan to the General Assembly on or before January 15, 2016.

Sections 21-22 – Quality Assurance and Accountability: Section 21 makes some changes to 16 VSA §165(b), which prescribes the actions the State Board of Education may take if a school or school district persistently fails to meet the Education Quality Standards. The changes include authorizing the State Board to require two or more school districts to consolidate their governance structures.

Section 22 directs the AOE to regularly review, evaluate and keep the State Board apprised of activities related to movement towards the “preferred governance structure” statewide, data collected from the districts that have adopted the preferred structure, and data and other information collected regarding compliance with the Education Quality Standards and related on-site education quality reviews.

Section 24 – Voluntary Self-Evaluations and Declaration to the State Board: This section authorizes districts who choose not to adopt the “preferred governance structure” to pursue one or more of the following actions by June 30, 2019:

- Self evaluation – a school board may evaluate the quality and variety of educational opportunities the district offers, and its operating efficiencies, including its ability to manage, share and transfer resources with other districts
- Meetings – a school board may meet with the boards of one or more other districts to discuss ways to promote improvement throughout the region with respect to educational quality, equity of opportunity, efficiencies in operations and transparency and accountability
- Declaration – a school board or boards may submit a letter to the AOE declaring the district’s intention to retain its current governance structure or to work with other districts to form a different governance structure or other joint activity. In the letter, the district(s) would be asked to demonstrate how their decision supports the district’s ability to provide high-quality and varied educational opportunities, maximize operational efficiencies, and promote transparency and accountability. The letter will also have to identify detailed actions that it will take to continue to improve its performance in each of those three areas.

Section 25 – Transition to Sustainable Governance Structure in FY 2021: This section directs the Secretary of Education to review the governance structures of school districts and supervisory unions as they will exist on July 2, 2020, including consideration of any declarations submitted by districts or groups of districts pursuant to Section 24. Based upon

that review, on or before April 1, 2020 the Secretary will present a proposed plan to the State Board of Education that would move districts into the more sustainable “preferred model of education governance.” If not possible to move all districts into the preferred structure, the plan may include alternative governance structures as necessary, such as a supervisory union with member districts or a supervisory district with a smaller ADM than 900.

On or before December 31, 2020 the State Board shall review and analyze the Secretary’s proposal, may take additional testimony or ask for additional information from districts and supervisory unions, and shall approve the proposal in either its original form or some amended version. The order shall take effect and require any newly formed districts to be operational on or before July 1, 2022.

At the end of the Committee’s discuss last week, there appeared to be agreement to amend Section 25 to make the General Assembly responsible for approving the final plan, rather than the State Board of Education.

Section 26 – Education Technical Assistant: This section creates a new position at the AOE for FY 2016 and 2017 for the purposes of working directly with school districts and supervisory unions to provide information and assistance regarding fiscal and demographic projections and the options available to address systems changes. The authority to hire is contingent on the AOE funding the position solely with non-state resources.

The Senate Education Committee is expected to finalize its version of the bill early this week. We encourage members of our Associations to consider attending the public hearing this Wednesday, April 22nd from 5:00-7:00. Once the Education Committee approves the bill it will then move on to the Senate Finance Committee, which has been reviewing the education finance provisions of H.361 over the past few weeks.

Lead Brigham Attorney: Spending Caps Likely Unconstitutional

Robert Gensburg, the attorney who brought the Brigham case in 1996 told the Senate Finance Committee last week that he believes the proposed caps in H.361 would not pass a constitutional challenge. The *Brigham* Court held that inequitable access to education funding violates the Vermont Constitution. The problem with the proposed caps under *Brigham* is that they would hold school district spending down relative to spending in prior years. The effect on budgets would be to hold them at inequitable levels, without the ability for districts to bring spending levels up to even out the disparities. Gensburg gave the example of a low spending district with a cap on its spending, compared to a high spending district with the same cap. The caps would freeze any gaps between individual districts’ budgeted spending, meaning that the two districts’ spending would not be able to level out, since the caps hold spending in place relative to one another.

The Finance committee asked Gensburg to analyze alternative capping devices, including a cap on only the highest spending districts, with a sliding scale percentage cap. To each idea, Gensburg replied that any scheme that allows one district to spend more than another district

would likely be struck down by the Vermont Supreme Court. The only plan that Gensburg believed would pass a constitutional test was an absolute cap on district spending, of the same amount for all districts. The committee members admitted that such a plan would be not only politically untenable, but ineffective at lowering education costs.

Paid Sick Leave Bill Gets Renewed Attention in the House

The Senate declined to take action on its iteration of the bill, S.15, but now the House Committee on General, Housing and Military Affairs has taken up [H.187](#). Both bills propose to allow employees to earn sick leave, but the House version includes less stringent requirements for employers. For instance, the Senate bill would have required an employer to give employees one hour of sick leave for every 30 hours worked; the House bill changes that number to one sick leave hour every 40 hours worked. The bill would require employers to credit employees a maximum of 24 sick leave hours in a year until June 30, 2017, when the maximum would go up to 40 hours in a 12 month period. Employees would be allowed to use earned sick time when they are ill or injured, to obtain medical care, to care for a sick family member, or to obtain legal or social services for themselves or a family member. Unused hours from the previous year roll over to the next year, and employees can be paid for their unused hours on termination of employment, subject to agreement by the employer.

The bill applies to employees of school districts and supervisory unions, but not to temporary employees or substitutes who do not work more than 30 consecutive days on the same assignment. The bill also allows for collective bargaining agreements to include provisions that differ from the proposed requirements, so long as those agreements bestow equal or more generous sick leave benefits to employees. The House General committee is expected to vote on H.187 in the upcoming week. The bill has greater support from the business community than similar proposals in previous sessions, but some employers remain concerned that mandates from the state put too many financial strains on business.

House Judiciary Begins Work on Amended Child Protection Bill

Last week the House Human Services Committee finalized its amendments to [S.9](#). Those amendments included removal of the controversial provision for a new “Failure to Protect” felony and clarification of mandatory reporting triggers. Human Services voted 11-0 to remove the former Section 3, which caused widespread concern with its creation of a new ten-year felony for a person who fails to protect a child. The provision was replaced with changes to several provisions of law that govern mandated reporters of child abuse. First, in Section 4 of the new draft, a language change makes clear that every mandated reporter must actually make a report of suspected abuse by deleting words “or cause a report to be made” from the statute.

Next, the bill contains every section of law that impacts the duties of mandatory reporters, and increases fines imposed for failure to report. Section 18 would increase the fine for neglecting to report from \$500 to \$1,000. It would also impose an increased \$2,000 fine and a one year, rather than six month maximum sentence on someone who violates the reporting statute with

the intent of concealing abuse or neglect. Section 17 would increase the fine from \$1,000 to \$2,000 but would retain the maximum of one year imprisonment for an officer who willfully neglects the duty to report.

The bill is now in the House Judiciary Committee, which began taking testimony on Friday, April 17. If passed by the House in its current version, the bill will face significant work in conference committee between the House and Senate members. Members of the Senate Judiciary Committee felt strongly that a new crime of Failure to Protect a Child should be included in the bill, and will likely come to conference committee with concerns over the crime's removal from the House bill.

House Education Committee Moves Forward on Two Bills

The House Committee on Education continued to work on the many bills in its possession now that H.361 has passed the House. Two of those bills have gained traction with the committee members and will likely go to the full House for a vote before the end of the session.

The first, [H.448](#) would create a Universal Children's Savings Account to be used by Vermont-born children toward college costs. The money, \$250 for each child born a resident of Vermont after July 1, 2015, will come from the Vermont Student Assistance Corporation and private donations. An additional \$500 and a yearly match of up to \$250 will be available to children in families with income less than 250% of the federal poverty level.

The other bill likely to come out of House Education is [H.280](#), a bill proposing to lower the lighting standards for new school construction. The lower lighting requirements are in response to new recommendations and standards for energy efficient lighting in the electrical engineering field. The measure is expected to save schools money on both construction costs and lighting bills without impacting classroom environment, since many people prefer less light than the very bright lighting currently required.