

Education Legislative Report

April 19, 2016 – Issue #8

Adjournment Approaching

A telltale sign that the 2016 legislative session is drawing to a close occurred this week. Meetings of morning Senate committees met for the last time on Friday, April 15. Afternoon committees, including Education, Finance and Appropriations will continue to meet, with expanded time to finish the work of the session. More bills will be moving to the floor of both chambers in the coming two weeks, with extended periods of time on the floor. Committees of conference will begin to meet in the next week, to iron out the differences between House and Senate passed bills.

On March 30, Governor Shumlin appointed Chittenden County Senator Diane Snelling to the state Natural Resources Board, and appointed Senator Helen Riehle (R) of South Burlington to fill the vacancy in the Senate. The newest member of the Senate served previously in both the Senate and the House. Senator Riehle was appointed to sit on the Senate Education Committee, and Senator Degree was moved to the Senate Finance Committee to fill a vacancy there.

Marijuana Legislation Scaled Back in House

On April 5, the House Judiciary Committee took testimony from the VSA, VPA and VSBA on the Senate-passed marijuana legalization bill, S.241. Later that week, the House Judiciary Committee voted 6-5 to approve a [strike-all amendment](#) to S.241 that would not include full legalization and regulation, but would relax current marijuana laws. The House Judiciary bill would increase from 1 to 2 ounces the amount of marijuana subject to civil, rather than criminal penalties. It would also lower the DUI threshold from .08 to .05 if the driver is under the influence of marijuana. The House Judiciary amendment retained the Senate's creation of a Marijuana Advisory Commission, but changed the charge of that commission to study the future possibility of legalizing marijuana for recreational use.

The Judiciary Committee's strike-all retains the Senate's \$350,000 appropriation to the Department of Health to administer a marijuana education and prevention program targeted at youth and schools. It also provides one new position to the Department of Health, dedicated to substance abuse prevention. However, the language of the bill does not ensure that all \$350,000 will go to substance abuse prevention activities in schools, nor does it ensure a continuing appropriation to support that work moving forward. Testimony submitted to the House Judiciary and Education Committees illustrated the cuts that have been made to school-based substance abuse prevention initiatives across the state over the past decade. Our Associations testified that before the General Assembly moves forward with legalization, the state ought to ensure there are resources to support the implementation of a comprehensive system of substance abuse education and prevention in schools. Currently there are no positions at the Agency of Education devoted to supporting districts in this capacity.

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On Friday, April 15, the House Ways and Means Committee expanded the House Judiciary Committee's work, voting for an [amendment](#) to legalize the possession of up to two marijuana plants, capped at four plants per dwelling, regardless of the number of occupants. The Ways and Means amendment would require a \$125 license to grow marijuana, which would fund a newly created Substance Abuse Youth Prevention and Education Fund. The \$350,000 appropriation for the Department of Health's work in that area would come from the fund. The Ways and Means amendment would also require the Marijuana Advisory Commission, in developing its proposals for a marijuana regulatory framework, to develop proposals that, among other factors, identify effective educational, preventative and treatment strategies for reducing marijuana use by youth.

A key element of our Associations' position statement was the need for evidence that a legalization framework would indisputably reduce access to marijuana among youth under 21. Our Associations have concerns about the Ways and Means amendment, which would move forward with legalization before the Marijuana Advisory Commission has the opportunity to analyze the issues we and others have raised.

Work Continues on Yield and Tax Rate Bill

The House of Representatives passed [H.853](#), the education tax rate legislation on March 30, 2016. Since then, the bill was referred to and considered by the Senate Education Committee. That committee will likely finish its work on the bill early this week, allowing the Senate Finance Committee to consider the fiscal provisions of the bill.

As we have written in previous *Legislative Reports*, H.853 would set the nonresidential tax rate at \$1.53, the dollar equivalent yield on homestead property \$9,701 and the dollar equivalent yield on income at \$10,870. The rate and the yields rely on the use of \$19.7 million of one-time funds. For FY 2018, local districts appeared to rely on substantial amounts of fund balance in their FY 2017 budgets in order to stay below their allowable growth thresholds. The amount of surplus funds used at the local level could approach \$17 million. If the General Assembly decides to use the entire \$19.7 million in surplus funds to inflate the yield, then over \$35 million in one-time funds will have been used to cover operating expenses, that absent further reductions in spending, will need to be made up next year. Our Associations continue to have concerns about such reliance on one-time funds, which has the potential to create a sharp increase in education property tax rates next year.

Special Education Bill Moves Forward

[H.859](#), a bill that would change the special education reimbursement system and offer a pilot special education program to schools, passed the House in late March. It includes \$90,000 to pay for a study by the University of Vermont examining other special education reimbursement models. Previous *Legislative Reports* stated that figure as \$40,000; previous drafts of H.859 included a drafting error that misstated the amount of funding available for the study.

The Senate Education Committee has taken testimony over the last two weeks, but is not expected to make any significant changes to the bill. The final work on H.859 should conclude this week.

Potential Fix to Mandatory Reporter Law Removed by Senate Health & Welfare

[H.622](#), as passed by the House, would have amended a 2015 change to the mandatory reporter statute to address concerns raised by DCF regarding unnecessary over-reporting of suspected child abuse.

The House-passed H.622 would allow an exception for mandated reporters who have written confirmation that a report of the same incident has already been made to DCF when they have no additional information to add to the original report. The language is designed to require reports to DCF in every instance of suspected neglect or abuse, while reducing the number of duplicative reports.

The Senate Health and Welfare Committee [amended](#) H.622 to remove the exception for duplicate reports, but to add an affirmative defense if a mandatory reporter were to be charged with the failure to report abuse or neglect of a child. The amendment would require a prosecutor to make reasonable inquiries into whether the mandated reporter had written confirmation that the same incident had already been reported *before* filing charges. This provision is intended to prevent a mandated reporter from being charged with failure to report in instances of duplicate reports only.

Our Associations testified strongly in favor of the House-passed language in the House Human Services Committee. The amendment to H.622 will be debated by the full Senate tomorrow. Our associations believe the Senate Health and Welfare Committee's amendment to H.622 will not adequately address the concerns raised by DCF and educators, and therefore do not support that approach.

The potentially different House and Senate-passed bills would likely be resolved in a conference committee.

House Education Committee Looks at New Bullying Definition

As reported in our last *Legislative Report*, the House Education Committee has spent several days reviewing Vermont's bullying statutes and related policies in response to an incident that is currently making its way through the independent review process. The Committee is considering [H.830](#), which would expand the definition of bullying to include behavior by adults directed at students. Current law defines bullying as student-student conduct.

The bill would also provide for an independent review of the school's investigation of bullying. Independent reviews are available under current law for harassment allegations; these reviews are designed to ensure the school district followed the appropriate process in investigating and responding to complaints of harassment.

Finally, the current draft of H.830 would also require a school district to pay full tuition, within or outside of Vermont, for a student who has been bullied, if the independent review finds the district at fault.

Last week, several witnesses provided testimony to the committee detailing the extensive work that has been done in schools to combat hazing, harassment and bullying during the past several years. Bernice Garnett, a professor at UVM and chair of the Hazing, Harassment and Bullying Prevention Council, testified to the importance of channeling limited resources toward prevention, rather than new enforcement procedures. [Nicole Mace](#) of the VSBA and [Jo-Anne Unruh](#) of the VCSEA testified that priority should be given to prevention, and told the committee about the new comprehensive Hazing, Harassment and Bullying Prevention policy and procedures that districts have adopted and begun implementing just this past year.

Our Associations join the Agency of Education in asking the General Assembly to allow the new policy and procedures to be fully implemented before changing the requirements again.

Open Meeting Law Clarifications – S.114

In February, the Senate Government Operations Committee moved a bill forward, [S.114](#), that would make clarifications to the 2014 Open Meeting Law changes. Now the House Government Operations Committee has given its approval to the bill, and will report it to the full House next week.

The bill first addresses the procedures a public body must follow when one or more members participates by phone or other electronic means. Current law requires each vote to be taken by roll call. S.114 would change that requirement to require a roll call only when a vote is not unanimous.

A second group of changes in S.114 would rewrite all references to “days” or “business days” to read “calendar days.”

A third provision states that when public bodies maintain a website, the minutes that are posted to that website must remain on the site for a minimum of one year before they may be taken down. This provision excludes draft versions of minutes, allowing for the practice by some school boards to post a draft copy of minutes immediately following the meeting, and replacing that draft with finalized minutes after they have been approved at a subsequent meeting.

Finally, the bill clarifies the instances in which action must be taken to cure Open Meeting Law violations. Under current law, public bodies have a requirement to cure all violations of the Open Meeting Law. Under S.114, a public body would be required to either take a vote to ratify or to declare void actions that violated the Open Meeting Law by either: occurring at an improperly noticed meeting, occurring when a member of the public is wrongfully excluded, or resulting when the body has entered into executive session in error. Other violations would not require cure.

Senate Education Committee Passes School Lighting Standards Bill

On Friday, April 15, the Senate Education Committee gave its approval to [H.280](#), a bill that would align the State Board of Education's rules on classroom lighting in new school construction with national standards, which decrease the minimum required foot-candles from 50 to 20. The change would only apply to new construction projects funded with state construction aid, funds that have not been available since 2007.