

Education Legislative Report

May 3, 2016 – Issue #9

2016 Legislation Session Drawing to a Close

This week the General Assembly is working to complete this biennium's work in time for a forecasted Saturday, May 7 adjournment. Both chambers met on Monday and the House of Representatives continued in session into the evening Monday night to debate two proposals on marijuana legalization. That debate was ultimately postponed until Tuesday, May 3. Many committees of conference have convened to reconcile House and Senate versions of legislation. The following issues affecting education are still in play as adjournment nears.

Senate Education Committee Amendment to Yield Bill

The yield bill, H.853 passed the House on March 30, and since then has been under consideration in two Senate committees. First, the Senate Education Committee approved an [amendment](#) to the bill that would leave \$5.3 million in surplus, while applying \$13.5 million in surplus to lower property taxes this year. The bill as it stands now sets different tax rates and yields than the House-passed bill. The differences between the two bills will need to be worked out in a conference committee.

House-passed H.853	Senate Education and Finance Amendments
Sets property dollar equivalent yield at \$9,701	Sets property dollar equivalent yield at \$9,645
Sets income dollar equivalent yield at \$10,870	Sets income dollar equivalent yield at \$10,803
Sets nonresidential property tax base rate at \$1.53	Sets nonresidential property tax base rate at \$1.539

The bill as passed by the Senate Education Committee does not include a provision in the House passed bill that would lower the excess spending thresholds from 121% to 119% in FY 2020. Additionally, the Senate Education amendment removes a process intended to reduce the number of unfunded mandates that the General Assembly passes on to school districts. The House-passed bill dictates that any legislation enacted into law that will have an associated direct cost to schools will be analyzed by the Joint Fiscal Office and the Emergency Board to estimate the cost to districts. That cost would be included in the Governor's proposed budget for the following fiscal year. The money to fund the mandate would then become a part of the General Fund transfer to the Education Fund.

The Senate Education amendment retains two of the House bill's finance proposals for further study. The first, introduced this year as [H.656](#), would move the education tax from a tax on property to an income tax for all payers. The second is a proposal, introduced as [H.846](#), that would make significant changes to the education funding formula, designed to incentivize less

than average education spending per pupil and to create a higher tax burden in districts with greater than average education spending per pupil.

The Senate Finance Committee took two days of testimony before voting out a further [amendment](#) to H.853. The Finance Amendment would remove a provision that allows study committees to provide for the transfer of debt from the school district to the town in the Articles of Agreement that are developed as part of the union school district formation process.

Finally, the amendment adds a provision designed to address a feature of the tax incentive language in Acts 153, 156 and 46. The language in Acts 153/156/46 creates the possibility that a newly unified district could significantly increase its education spending while having its tax rate increase capped at 5%. To address this potential liability to the Education Fund, the Senate Finance Committee's proposal would provide that once a town's tax rate reaches the unified tax rate, the 5% growth cap no longer applies.

Furthermore, the proposal states that when a district's tax rate has not yet reached the unified rate, if a new union school district's education spending per equalized pupil increases by more than the "yield change" above its education spending per equalized pupil in the prior fiscal year, then the five percent provision shall be adjusted by the difference between the yield change and the actual increase. The "yield change" is the percentage change in the property dollar equivalent yield from the year for which the equalized homestead property tax rate is being calculated, and the prior fiscal year.

Finally, the new language allows for an appeal process for districts that would provide districts with an exemption from the above requirements, if the Secretary determines that the increase was beyond the union school district's control or for other good cause shown.

These changes will apply to all merged districts created since July of 2010 that are eligible for tax rate reductions.

H.853 will now proceed to the Senate floor, and most likely to a conference committee between members of the House Ways and Means Committee, the House Education Committee, the Senate Education Committee and the Senate Finance Committee.

Special Education Bill Passes Without Pilot Program Provision

On Monday, the Senate passed its version of the special education bill, [H.859](#). It makes changes to the rules governing special education funds disbursement and provides an appropriation for a study of special education funding formulas.

The Senate Education Committee elected to remove the provision of H.859 that would have created a 10 supervisory union pilot project designed to increase efficiencies in the use of special education staff while also improving service quality. The participating districts or supervisory unions would be charged to work with the Agency of Education and an education consulting firm to create better models for special education delivery. Those districts would be required to

match 50 percent of the cost of the consultancy, but could have spread the cost over two fiscal years; the House included a \$200,000 appropriation to cover the cost of the other 50 percent. Now that the pilot has been removed from the bill, its fate is uncertain.

Like the House-passed bill, H.859 as passed by the Senate requires that special education funds be disbursed from the State to the entity that incurs the special education cost. In most cases, that will be the supervisory union. Current law requires funds to be disbursed to school districts. Since Act 153 of 2010 requires that special education services be provided by supervisory unions, concerns have been raised about the inefficiency of a system that disburses funds to school districts. The changes made in H.859 recognize that some special education costs continue to be incurred at the school district level; namely, the cost of some para-educators. The bill allows districts to continue to receive special education funds in those circumstances.

Finally, the bill as passed by the Senate directs the Agency of Education to contract with a third party to obtain a study of alternative statewide special education funding formulas. The study would evaluate the advantages and disadvantages and educational policy considerations related to using total enrollment as a basis for funding. Previous versions of the bill included a position within the Agency of Education for this work, but the position was eliminated because no funding was available. The report will be made to the education committees in December of 2017.

A committee of conference will be appointed to reconcile the two chambers' versions of the bill.

Senate Government Operations Bill Retains Licensing Status Quo

[H.562](#) creates a process that allows the Office of Professional Responsibility (OPR), within the Secretary of State's office, to review the licensing authority of other branches of state government. The bill would permit OPR to report to either the House Committee or Senate Committee on Government Operations regarding a profession not in its jurisdiction, along with a legislative proposal for moving the licensing of that profession to OPR's jurisdiction.

Over the last three months, the Senate Government Operations Committee took extensive testimony on the licensing of speech and language pathologists. The Agency of Education, Jo-Anne Unruh of VCSEA, Nicole Mace of VSBA and many educational speech and language pathologists provided testimony opposed to the removal of approximately 1,200 educators from the licensing jurisdiction of the Agency of Education. Last week, the committee gave its final approval to a version of the bill that does not include moving licenses away from the Agency of Education.

Our associations are supportive of H.562 as it passed the Senate Government Operations Committee. The bill will be reviewed by the Senate Finance Committee and sent to the full Senate this week.

Conference Committee Appointed on H.622

Different versions of a bill to clarify duties of mandated reporters, [H.622](#), passed in the House and the Senate. Representatives Mrowicki, Hass and McCoy along with Senators Lyons,

McCormick and Collamore were appointed to a conference committee to see whether the two bodies can come to an agreement.

The House-passed bill clarifies that a mandated reporter who knows that a report of child abuse or neglect has already been reported does not need to make an additional report. To relieve the obligation to report, the person must have written confirmation that the same incident of abuse or neglect has already been reported. He or she must also be reasonably certain that he or she has no additional information to add to original report.

The Senate-passed bill does not change the reporting language, but adds an affirmative defense that a mandated reporter may use once charged with failure to report suspected abuse or neglect of a child. The affirmative defense may be raised if the mandated reporter had written confirmation that a report has been made and that he or she had no new information to add. A prosecutor would be required to make reasonable inquiries about whether the defense would apply before charging a potential defendant.

Our associations submitted testimony to the conference committee in support of the House-passed bill.

S.214 Prevents Large Employers From Entering the Exchange

Earlier this legislative session, a study by the Green Mountain Care Board was presented to the General Assembly which found that allowing large employers to enter the exchange would result in higher premiums in both the small and the large group market. In several scenarios examined by the study, the smallest modeled increase to rates would be 6%, the maximum would be 59%.

The results of the study led many legislators to believe that large group employers should not be allowed to buy plans on VHC. On March 2, the Green Mountain Care Board recommended to the General Assembly that it take action to prevent large employers from entering the exchange. Both legislative bodies passed the bill on April 21. The Governor is expected to sign the bill into law.