Education Legislative Report

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The General Assembly adjourned the 2015-2016 biennium on the evening of May 6, having passed an education tax rate bill, funding for a special education pilot project, tweaks to the Open Meeting Law, and broader exemptions from school construction aid repayment. This year's legislative session was dominated by the General Assembly's consideration of marijuana legalization, which ultimately failed to garner enough support in the House to become law. The conclusion of this biennium was most notable for the number of legislative leaders who will not seek re-election this year. House Speaker Shap Smith, Senate Pro Tempore John Campbell, Lt. Governor Phil Scott and several House committee chairpersons will not return to the State House, at least not in their current roles, next year.

In This Issue

Overview

The following bills affecting education passed in 2016:

H.853 – Establishes the non-residential tax rate, homestead property dollar equivalent yield, income dollar equivalent yield
Act 65 – (S.233) Repeals the Allowable Growth Rate for FY18, adds .9% to districts' FY17 AGRs, exempts low spending districts
H.859 – Changes special education funds reimbursement rules, creates pilot program for 10 supervisory unions
S. 66 - Establishes a bill of rights for children who are deaf or hard of hearing
H. 529 – Eliminates the requirement to repay school construction aid upon sale of a school building until 2020
H. 280 – Lowers the minimum required foot-candles standard for lighting in new school construction
Act 77 – (H.747) Clarifies the State Treasurer's authority to intercept state funds when a district defaults on repayments to the Municipal Bond Bank
S.214 - Prevents large employers from entering Vermont Health Connect.
S.114 – Amends the Open Meeting Law

The following bills were the subject of substantial testimony by our organizations but *did not pass* this year:

H.622 – Amends the Mandated Reporter statute
S.217 – Removes certain dual education and clinical licenses from the Agency of Education and transfers that authority to the office of Secretary of State
S.241 – Legalizes and regulates recreational use of marijuana
S.194 – Makes suspension and expulsion as a last resort in student discipline cases
H.830 – Amends the definition of bullying to include conduct by adults

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House Rates/Yields Pass Along with Compromise on Spending Thresholds

H.853, the yield bill, was the second-to-last bill passed in the 2016 session. It sets the following tax rate and dollar equivalent yields:

Dollar equivalent yield on homestead property	$9,701
Dollar equivalent yield on income	$10,870
Non-residential property tax rate	$1.535

For much of the last day of the session, the Senate and the House were at impasse over whether to apply $18.8 million in unallocated surplus funds to lower property tax rates for FY17, or to save some of those funds for FY18. The House demanded that all the money be applied this year, while the Senate was pushing to apply only two-thirds of the money, saving the rest to smooth out next year's property tax rates. The more surplus funds that get used, the higher the dollar equivalent yield, translating to lower property tax rates in the year they are applied. The two bodies finally agreed to compromise on the House-passed tax provisions (using all available surplus) and the Senate's preferred cost containment provision.

The House-passed yield bill lowered the excess spending thresholds in FY20 from 121% of average statewide education spending per pupil to 119%. In 2013, the legislature established the current excess spending threshold at 121% of FY 2014 average statewide education spending per pupil, plus an annual inflation factor. The compromise reached by the conference committee eliminates the provision that would have further lowered the thresholds to 119%, and changes the anchor year to FY 2015 average statewide education spending per pupil. The final yield bill also adds a new exemption to the excess spending thresholds: funds budgeted for dual enrollment and early college programs. This will be the twelfth exemption on the list of expenses not counted as education spending for purposes of determining whether a budget exceeds the threshold.

Also in the final yield bill are several studies. First is a study of the implementation of S.175, which proposes an education tax on income, rather than property value, for all payers. Second is a study of the implementation of H.846, a bill proposing an education funding formula that

levies excess spending penalties on all districts with above-statewide average education spending, while extending tax relief to all districts with below-statewide average education spending. Third is a study of whether newly-merged school districts can have one common level of appraisal among all member towns.

Finally, in section 9, the yield bill addresses concerns raised by the Agency of Education about the potential for a school district receiving Act 153/156/46 tax incentives to drastically increase education spending while only experiencing a five percent increase in their tax rates. No district to date has passed a budget that appears to take advantage of this feature of the so-called five percent provision.

Section 9 states that the General Assembly's intent in Acts 153/156/46 was not to limit fluctuations in a district's tax rates regardless of the spending decisions in the new district. It also stipulates that once a member town's tax rate hits the unified district's tax rate, the five percent provision no longer applies. The bill requires the Agency of Education, the VSBA, the VSA and the VT-NEA to report to the General Assembly in December 2016 on a way to calculate tax rates for member towns that are different from the unified rate.

Special Education Bill's Pilot Project Saved by Conference Compromise

In its consideration of H.859 the Senate Education committee removed a section providing for a pilot project of up to 10 supervisory unions to receive consulting services on the delivery of special education. That study was funded with a $200,000 appropriation out of the Education Fund in the House bill. A committee of conference was appointed between the Senate and House, and the members were able to come to an agreement that allocates $75,000 now, with a possible $100,000 from the likely year-end reversion of special education dollars to the Education Fund. (Each year the reversion is approximately $2-3 million with a large portion of that excess coming from over-allocation of funds for special education.)

The bill impacts special education services in two ways. First, it changes the law to require 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 special education services be provided by the 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.

January Amendments to Allowable Growth Rate Codified as Act 65

On January 29, 2016 the House gave final approval to a slate of modifications to the allowable growth rate (AGR) provision of Act 46. On that date, the General Assembly was under pressure

to reach a compromise regarding which changes to make to the AGR before the deadline for warning school district budgets, which fell on on January 31st.

The Senate passed a total repeal of the AGR in early January. Then, a procedural move resulted in the need for a midnight session in the House in order to pass a compromise provision. The final outcome was a set of four changes (outlined below) to the AGR for FY2017 and repeal of the AGR for FY2018.

Act 65 exempts any district with FY2016 education spending per equalized pupil below the FY2016 statewide average spending per equalized pupil. The FY 2016 per pupil figure is $14,094.73. Second, it raises each district's threshold by 0.9 percentage points, increasing the per pupil amount any district can spend before exceeding its AGR. Third, the Act directs the Agency of Education to apply the threshold calculation that is most advantageous to the district, either the initial AGR of August 2015 or the recalculated AGR of mid-January. Finally, it changes the penalty for any district exceeding its AGR. The original provision required a dollar-for dollar penalty; Act 65 creates a 40 cent penalty for every dollar spent above the threshold.

The AGR will not be applied to FY2018 budgets.

Bill Creates the Vermont Deaf, Hard of Hearing and DeafBlind Advisory Council

S.66 will create an advisory council of 16 members, including counselors, audiologists, designees of the VSA, VCSEA, the Department for Children and Families, and the Agency of Education to identify existing and needed education opportunities and family supports. The council will also assess the loss of services since the Austine School for the Deaf and the Vermont Center for the Deaf and Hard of Hearing closed. The advisory council will be administered by the Department of Disability, Aging and Independent Living.

Bill Gives Schools Exemption from Aid Repayment Upon Sale Through 2020

H.529 will exempt districts from the obligation to repay state aid for school construction. When a school building is sold, current law requires the district to repay a portion of the state construction aid it received. The percentage of state aid that funded the construction of the building is the same percentage that the district must refund to the state from the sale price.

Under H.529, all building sales will be exempt from the repayment provision until 2020. The bill is intended to provide more flexibility to districts seeking merger over the next four years under Act 46. The bill is not expected to greatly impact state funds for school construction aid, because these funds have not been available since 2007.

H.280 Updates School Lighting Standards for New Construction

H.280, a bill that was passed by the House in the 2015 session, passed the Senate this year. It aligns the State Board of Education's rules on classroom lighting in new school construction with national lighting standards, which decrease the minimum required foot-candles from 50 to

20. The change will apply only to new construction projects funded with state construction aid, funds that have not been available since 2007.

H.747 Clarifies Authority of State Treasurer in Case of District Default

A provision of Title 24 requires the State Treasurer to intercept state aid to a school district if the district is in default on its loan payments to the Vermont Municipal Bond Bank (VMBB). To date, the VMBB has never had a school district default on its loans.

Under the law as currently written, in the event a school district does default on a loan, the Treasurer is only allowed to intercept funds and does not have the authority to transfer the intercepted funds to the VMBB or its trustee. Meanwhile, the intercepted funds would not be released to the school district until it cured its default. The result would be that State funds are withheld while the district remains in default with even less funds available to make a payment. The school district's only recourse would be to obtain other funds to cure the loan default before the Treasurer could transfer the intercepted funds back to the school district.

H.747 gives the Treasurer the authority to withhold State aid from a school district and to make direct payment of all, or as much as is necessary, of the withheld amounts to the VMBB in order to cure the default or the interest on the bond.

The bill was supported by the Agency of Education, the VSBA and VASBO, primarily because the bill could result is an improved bond rating, which would lead to lower future borrowing costs for school districts. The Governor signed H.747 on April 19, 2016; it is now designated Act 77 of 2016.

S.214 Prevents Large Employers from Entering the Health Exchange

Earlier in the legislative session, the Green Mountain Care Board presented a study to the General Assembly suggesting 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 Vermont Health Connect. 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.

S.114 Changes Several Provisions of the Open Meeting Law

S.114 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 changes that requirement to require a roll call only when a vote is not unanimous.

A second group of changes 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 is required to either take a vote to ratify or to declare void actions resulting from the following violations of the Open Meeting Law: an improperly noticed meeting, wrongfully excluding a member of the public, or entering into executive session in error. Other violations do not require cure.

Bills That Will Not Become Law

Several pieces of legislation were seriously considered in committees this legislative session, but ultimately did not have enough support to reach the finish line by the end of the biennium. Our associations expect to see some of these issues return in the 2017 legislative session.

Mandated Reporter Reforms Stalled in Conference Committee

H.622 was the product of work the House Human Services Committee began in the fall of 2015. Last session, the General Assembly passed Act 60 (S.9), which increased protections for children against abuse and neglect, and addressed capacity issues at the Department for Children and Families (DCF). Act 60 included a clarification of the mandated reporter statutes, which was intended to increase the number of reports school employees and others made to DCF about suspected child abuse. When put into practice, the language in Act 60 resulted in many more duplicative reports to DCF without providing more helpful information to the Department in conducting investigations.

The version of H.622 that passed the House would have allowed 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 was designed to require reports to DCF in every instance of suspected neglect or abuse, while reducing the number of duplicative reports containing the exact same information.

Once the bill arrived in the Senate, it went to the Senate Health and Welfare Committee, which 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 failure to report abuse or neglect of a

child. The amendment required 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 was intended to prevent a mandated reporter from being charged with failure to report in instances of duplicate reports only. The Senate passed the Health and Welfare bill, and both chambers requested a committee of conference.

Our Associations submitted testimony to the conference committee members in support of the House-passed language. The members of the committee could not reach agreement on a compromise, however, causing the bill to die in the final days of the session. We expect another attempt at these needed reforms in the 2017 session.

Dual Education Licensees to Remain With the Agency of Education

This legislative session, the Senate Government Operations Committee took extensive testimony on S.217, a bill that would have would have completed the move of licensure for educational Speech-Language Pathologists (SLPs) and other dual-licensed professionals away from the Agency of Education and to the Office of Professional Responsibility (OPR). Last year, the General Assembly moved the clinical licensure process for SLPs from the AOE to OPR. Since that change, SLPs have had to go through two state licensing processes, one for the clinical credential from OPR and one for the educator endorsement from AOE. After the crossover deadline, the Senate Government Operations Committee added the language from S.217 into another bill, H.562, a miscellaneous licensing bill.

The Agency of Education, representatives from our Associations, and many educational speech and language pathologists testified in opposition to the bill, which would have removed approximately 1,200 educators from the licensing jurisdiction of the Agency of Education. The change would have also resulted in a $100,000 loss of licensing revenue for the Agency. Ultimately, the committee decided to remove the provisions of S.217 from the larger bill and H.562 was passed. No provisions of H.562 in its final form have an impact on educator licensing.

Legalization of Recreational Marijuana Dies in the House

At the beginning of the 2016 legislative session, the VSBA, VSA, VCSEA and VPA adopted resolutions or position statements on the potential legalization of marijuana for recreational use. As the Senate developed its legalization bill, S.241, we monitored the work in committees, but our Associations were not invited to testify on the bill. Once the bill arrived in the House, the VPA, VSA and VSBA were invited to give testimony in the House Judiciary Committee. The testimony focused on the lack of capacity at the Agencies of Human Services and Education to implement a comprehensive statewide substance abuse education and prevention program in schools, and concerns that Senate's approach to legalization would not have eliminated youth access to the drug.

S.241's progress stalled in the House after the Judiciary Committee drastically scaled back the bill to include only less severe civil penalties for marijuana possession, not full legalization. The Ways & Means Committee took the bill next, and added a state license that would allow the

holder to grow up to two marijuana plants at home. Finally, the bill arrived at the House Appropriations Committee, but the committee gave signals that the bill did not have the votes to pass.

In response, the Senate attached the full text of S.241 to a House-passed criminal procedure bill, H.848 and sent the bill back to the House. The House removed all the marijuana provisions except for a study commission after a long floor debate. The Senate eventually rejected the stand-alone study commission and instead agreed to keep studying marijuana legalization informally in the off-session.

School Discipline Reforms Stalled for Now

This session, the Senate Education Committee returned to the issue of school discipline, a topic that received extensive consideration in that committee in the 2015 session. One of the outcomes of last year's discussions was a report by the Agency of Education on the use of exclusionary school discipline in Vermont.

The report found that most exclusionary discipline is administered as in-school suspension (42% of all exclusions) and out-of-school-suspension (56% of exclusions). Expulsion accounts for a very small number of disciplinary actions, with only 67 expulsions in Vermont since 2013. The average length of out-of-school suspension is 2 days. The nationwide exclusionary discipline rate is around 15%. In Vermont, that figure is 5%.

The Senate Education committee took several days of testimony on a school discipline bill, S.194 early in the session. The bill proposed to limit the circumstances in which a student can be suspended out of school. Out associations opposed S.194 because it would require schools to use limited resources to implement new policies in line with the bill's statutory requirements. That work would further reduce the resources that school districts have available to implement programs that teach positive social behaviors, such as PBIS, that are proven to reduce the incidence of exclusionary discipline.

Several of our organizations participated in a stakeholder meeting to discuss ways to support school districts in adopting alternatives to exclusionary discipline such as professional development opportunities. We expect to offer an opportunity in the fall for school administrators to receive training in inherent bias recognition, which is one area that the Agency's study highlighted for improvement.

No Changes to Bullying Statutes this Year

The House Education Committee took several days of testimony on Vermont's bullying statutes and related policies in the second half of the session. H.830 would have expanded the definition of bullying to include behavior by adults directed at students. Current law defines bullying as student-student conduct.

The bill would have also provided 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 have required 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.

Several witnesses from our associations 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, including the adoption of a comprehensive integrated policy and procedure in the fall of 2015. In the end, it appears the committee was willing to let that work proceed. We expect that the committee will monitor this important issue in the next session, and our associations will continue to engage in productive work that supports school district officials in creating safe and supportive schools.