

# Education Legislative Report

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## **General Assembly Dives Deep into Diverse Range of Education Issues**

The General Assembly continues its dynamic session by addressing a host of education issues: funding, special education, pre-K, radon testing in schools, and open meeting laws, among others. Legislators seem motivated to consider changes to general education and special education funding, with the hope to contain costs and provide better services.

As leaders of your school systems, you serve as a voice for public education. As your state associations, we work to strongly represent education officials' concerns. That stated, there is no substitute for contact by constituents with their legislators. We encourage you to read our *Reports*, keep abreast of issues, and stay in touch with your house members and senators. Here is a link to Legislators' contact information, organized by supervisory union/district:

[http://docs.wixstatic.com/ugd/b44bfd\\_c9e309b3f77449bda14c5f3cf152c469.pdf](http://docs.wixstatic.com/ugd/b44bfd_c9e309b3f77449bda14c5f3cf152c469.pdf)

Throughout the session, you will receive regular issues of this *Education Legislative Report*. The *Report* is a collaboration of the Vermont School Boards Association (VSBA), the Vermont Superintendents Association (VSA), the Vermont Principals' Association (VPA), the Vermont Association of School Business Officials (VASBO), the Vermont Council of Special Education Administrators (VCSEA) and Vermont School Boards Insurance Trust (VSBIT).

If you have questions regarding the content of this *Report*, contact your Association's executive director or Katherine Hope, Legislative Analyst for the Education Legislative Collaborative and author of the *Report* at [kwhope@gmail.com](mailto:kwhope@gmail.com).

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## ***House Ways & Means Looks to Change Education Funding Formula***

The House Ways & Means Committee has taken a great deal of testimony over the past two weeks on options for changing the education funding formula. Testimony has come from VSBA, VSA, the Joint Fiscal Office, the Tax Department, VLCT, and the Vermont NEA. The Committee has developed a proposal that outlines their ideas on how to change the funding formula, which can be [found here](#). The Chair of the Committee, Rep. Ancel, has stressed that this proposal is a work in progress. She has also distributed a commentary on the proposal, which can be [found here](#).

The Committee aims to simplify the funding formula for greater transparency, maintain the progressive system of taxation, and replace the general fund transfer to the education fund with 100% of the sales and use tax. As currently written, the proposal's goals are: 1) lowering the average property tax rate on homesteads from \$1.594 to \$0.909; 2) simplify the education tax system; 3) create an education tax based on adjusted gross income (AGI); 4) eliminate the general fund transfer to the education fund through a neutral swap of revenue and/or expenditures; 5) provide tax relief to homeowners currently eligible for the homeowner rebate; and 6) separate billing for the education and municipal property tax.

Currently, the education fund draws from four sources: the homestead property tax, nonresidential property tax, the general fund transfer, and general purpose taxes. At the time of writing this report, the Committee is working closely with the Joint Fiscal Office to model different versions of components of the proposal, to see how small changes impact Vermonters of different income levels. The Committee is committed to minimizing the negative effects on low- and middle-income Vermonters.

Currently, the Committee is waiting for numbers on school budgets that have been approved by boards for voter consideration in March. Once the proposed budget figures are known, the Committee plans to develop a yield bill incorporating the funding formula changes. The Committee is leaning towards one, all-encompassing bill with the changes beginning in FY19.

## ***House Education Committee Drafts Special Education Funding Bill***

The House Education Committee has drafted a bill that would change the way the state funds special education, which can be [found here](#). The bill is in response to the UVM and District Management Group (DMG) studies that suggest Vermont currently spends significantly more on special education than other states and that changes in instructional practices could lead to better outcomes for students and lower costs. The

Committee has stated that this bill is a working draft, and will change, possibly significantly, before its final iteration.

The current funding system is mostly a reimbursement model, with the State reimbursing SUs/SDs for 60% of special education costs after the application of federal dollars. The Committee's bill shifts to a census-based block grant, instead of a reimbursement model, for most special education services – excepting extraordinary special education expenditures. This means that, rather than reimbursing SUs/SDs for special education costs, the state would provide a block grant known as an “educational support grant” to SUs/SDs based on average daily membership, adjusted by a factor for poverty.

The bill includes six sections. The bill eliminates the reimbursement model, and replaces it with a educational support grant, adjusted for poverty. Poverty is defined as a child that lives with a family that gets nutritional benefits, and SUs/SDs educational support grant would be increased by a poverty factor in the following manner. 5% per student will be added for SUs/SDs at or above the 75<sup>th</sup> percentile, and 2.5% per student will be added for those between the 50<sup>th</sup> and 75<sup>th</sup> percentile. 30% of the educational support grant must be spent on students with IEPs. The State Board would be required to promulgate rules for administering this 30% requirement.

Working from the presumption that we have excess costs in our special education system, the bill reduces the amount of the educational support grant steadily over a ten year period. The bill would decrease funding from \$1,837 per ADM beginning in 2020 to - \$989 per ADM in 2028. In 2028 support grant increases will be linked to the NIPA local government goods and services index. These amounts are multiplied by the SUs/SDs' ADM, plus whatever poverty adjustment (if any) they qualify for.

The draft bill also changes how the state reimburses SUs/SDs for extraordinary special education expenditures. Currently the state pays 90% of any special education expenditure in excess of \$50,000. The bill ties the new figure to average district education spending per equalized pupil (ADES/EP). There are two rates. The first rate is 4.62 x ADES/EP, for students who attend a school operated by their SU or by a member of the SU's regional collaborative. The second rate is 5.9 x ADES/EP, for students who attend a school that is not operated by their SU or by a member of the SU's regional collaborative. The 90% / 60% split from the previous model continues after this threshold amount, subtracting the base amount from any expenditure that goes into the 60% reimbursed. Students are eligible for these funds beginning at 3 years old.

The bill states that extraordinary special education monies will not be distributed until all other sources are tapped, including Medicaid, other federal and state programs, and

private insurance. The State Board will promulgate rules establishing the administrative process for approving these expenses. All requests for extraordinary reimbursement would be made to a review panel at the state level, which is charged with determining whether the claims are eligible for reimbursement. The decision of the review team would be final.

If passed as drafted, the substantive portions of the bill will become effective July 1, 2019. The Committee has heard testimony from VCSEA, VASBO, VSBA, VSA, VPA, disability and special education advocacy groups, and parents. Much of the testimony expressed concern about the proposed reduction in funding without commensurate reinvestment in general education or the Agency of Education to provide technical assistance to support shifts in practice.

### ***House Education Committee Aims to Amend Pre-K Laws***

Both the House and Senate Education Committees heard testimony on proposed changes to Act 166, the legislation that entitles children to ten free hours of prekindergarten education. The proposed bill can be [found here](#). The proposed bill plans to do three things: 1) eliminate joint administration by the AOE and AHS with AOE taking the lead role; 2) centralize pre-K accounting in the AOE; and 3) simplify and clarify the criteria for pre-K providers.

One of the more substantial of the proposed changes effects how pre-K students relate to schools' ADM. In a sense, for school-based pre-K programs, the proposed bill exchanges ADM for tuition. The proposed bill eliminates the ability of SUs/SDs to count the first ten hours of pre-K instruction occurring in their public schools *and* pre-K students attending privately provided pre-K in their ADM. The SUs/SDs will prorate any hours above the first ten mandated hours into their ADM for pre-K students attending their public schools. The House Education Committee raised questions with the Agency of Education about this specific issue, with an interest in how this will effect school budgets and the tax rates. Right now there is not consensus, and the AOE's financial office will testify again soon with further clarification.

Equity and access continue to be at the forefront in the conversation around the proposed changes to Act 166. Unfortunately, the proposed bill does not address the special education concerns raised by our associations last year. Emphasizing that under Act 166, students with disabilities do not have access to the same programs as their non-disabled peers, Traci Sawyers from VCSEA testified to this issue, and her testimony can be [found here](#).

One component of the proposed bill concerns agency oversight. Secretary Gobeille of the Agency of Human Services testified to the Senate Education Committee on AHS and AOE's combined decision for oversight to lie in the AOE. Yet, AHS's Child Development Division will continue to oversee safety inspections for private pre-K providers. Secretary Gobeille testified to his concern about adequate safety inspections for public school pre-K students, articulating the developmental gap between a pre-K child and high school senior.

At this point, it is not clear how quickly the General Assembly will move with this bill. Our associations believe that some of the concerns raised regarding implementation of Act 166 are not addressed in the proposed bill and additional testimony is necessary.

### ***House Government Operations Proposes Open Meeting & Public Records Changes***

The House Government Operations Committee is working on a bill that would make substantial changes to the Public Records Act and the Open Meeting Law. The committee worked closely with the Secretary of State to draft a bill that addresses four major issues:

- Clarify and amend what activities constitute a “meeting” under the Open Meeting Law.
- Amend provisions related to fees that a public agency may charge in connection with responding to a Public Records Act request.
- Clarify and update provisions related to time periods for responding to a Public Records Act request.
- Establish a position for an open government ombudsman who would be authorized to investigate and adjudicate acts of public bodies and public agencies that allegedly violated the Open Meeting Law and the Public Records Act, and also carry out other activities related to the sunshine laws.

**Definition of Meetings.** The bill would broaden the definition of a “meeting” to include what are commonly referred to as “serial communications” of members of a public body. Specifically, it includes in the definition “each communication within a series of communications of any kind involving a quorum of the members, directly or through intermediaries, to discuss or take action on any business of the public body even if the individual communication does not involve a quorum of the public body.”

The bill also clarifies what does *not* constitute a meeting, by providing a list of examples that are not intended to be exhaustive: a gathering of a quorum of a public body at a public conference or meeting that involves a discussion of general or local interest; a

duly warned meeting of another public body, including a meeting of a committee of a public body; a ceremonial, social, or community event; a virtual gathering on an electronic platform as long as the platform is open and accessible to all members of the general public without obstacles such as fees or special permission.

**Public Records Act Changes.** The bill would also make substantive changes to the Public Records Act. It includes language that states that public agencies cannot charge or collect fees for staff time spent searching for a public record or otherwise include this time when calculating fees if the agency agrees to create a record.

The bill also defines how quickly a custodian of public records must respond to a Public Records Act request. Currently, the law requires the custodian to respond “promptly.” In the Committee’s bill, the term “promptly” would be defined as “immediately, with little or no delay, and, unless otherwise provided, not more than three business days from receipt of the request.” There is still an allowance for additional time for “unusual circumstances” to respond to requests. An “unusual circumstance” may be a case where records are located in other facilities, when legal counsel is needed to determine whether exemptions exist, and when a voluminous amount of separate and distinct records are demanded in a single request.

**Open Government Ombudsman.** The legislation would also create a new position called an open government ombudsman who would be an impartial and independent official within the recently created State Ethics Commission. The ombudsman would provide training and resources to help people comply with the Open Meeting Law and Public Records Act. Other duties include investigating complaints. The ombudsman would have subpoena power and be able to mediate disputes between public bodies and persons alleging Open Meeting Law violations or between a public agency and a person alleging an unlawful denial of records under the Public Records Act. He or she would also be empowered to adjudicate questions of compliance by issuing binding written determinations when mediation is unsuccessful. This ombudsman role is seen as a less costly and more accessible way for residents to grieve alleged violations of the Open Meeting Law and Public Records Act than going directly to court.

The Committee took testimony from a number of municipal attorneys and officials, including from the VSBA and VLCT. The Committee appears open to substantial modifications to the current draft in order to respond to concerns about the bill. You can read the current draft [here](#).

## ***Senate Education Supports Mandatory Radon Testing in Schools***

The Senate Education Committee revisited [a bill](#) proposing mandatory radon testing in schools this week. The Committee asked to have the bill redrafted in order to require the Vermont Health Department to test more schools annually – right now schools can volunteer to be tested. A suggested change to the proposed can be [found here](#). With this proposed change, the Department of Health would test forty schools each year, and the testing results would be shared with the greater community. Committee members raised many questions, especially about who would cover the costs of mitigation if elevated levels of radon are detected upon testing. The Committee will invite a new round of testimony once they have a re-drafted bill.

## ***Minimum Wage Bill Under Review in Senate Economic Development Committee***

The Senate Committee on Economic Development, Housing and General Affairs took testimony on S. 40, a bill to increase the minimum wage to \$15/hour by January 1, 2022 in increments. The Committee heard testimony both in support and in opposition of the bill. Brenda Fleming from VASBO testified to some of the effects of this proposed bill, which can be [found here](#) and [here](#). The Committee heard testimony from the Minimum Wage and Benefits Cliff Study Committee (Minimum Wage Committee), which was made up of legislators from both chambers. The Minimum Wage Committee made two recommendations: 1) the General Assembly should enact legislation to increase the minimum wage to \$15/hour in 2022, and 2) the legislation should contain a component that will shift the point “at which benefits provided through the Child Care Financial Assistance Program begin to decline by the same percentage as the increase in the minimum wage to ensure that affected families continue to receive the same child care subsidy.” The Minimum Wage Committee’s report can be [found here](#).

## ***Senate Agriculture Committee Considers Bill Requiring Use of Vermont Vendors***

The Senate Agriculture Committee heard testimony on [S. 276](#), an act relating to rural economic development. This bill would require schools that heat with wood or pellets to give preference to Vermont suppliers. Jeff Francis of the Vermont Superintendents Association provided testimony regarding the responsible procurement practices that school districts undertake in purchasing wood fuels. He outlined an array of factors that go into purchases and testified that giving preference to Vermont suppliers was not a simple concept, and could be problematic for some districts. It is unclear how the Committee will proceed with respect to this issue.