

# Education Legislative Report

March 9, 2018 – Issue #6

## **General Assembly Pushes to Make Progress before Town Meeting Day**

The General Assembly worked long days last week to pass legislation out of their committees before leaving for Town Meeting Day break. House Committees approved education funding, special education, and open meeting and public records act changes. Senate Committees advanced pre-K and independent schools bills. Both chambers addressed gun reform legislation, albeit in different forms.

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. Yet, 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, 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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## ***Voters Approve 96% of School Budgets on Town Meeting Day***

Through Town Meeting Day 2018, 96% of school budgets were approved by voters in 142 school districts. With 141 districts reporting results, 136 district budgets passed and five failed. Districts that failed to pass their budgets include: Alburgh, Cabot, Fletcher, Green Mountain Unified, and North Hero. Twenty districts will vote on their budgets in the coming months. Town Meeting Day vote results are being awaited in one district.

Since the conclusion of the 2018 legislative session, our Associations have expressed an interest in working collaboratively with our members, the General Assembly and the Governor to take responsible steps to address FY 2019 fiscal concerns while preserving a strong public education system.

At the local level, school boards and administrators rose to the challenge of keeping spending growth below the state's target of 2.5%. FY 2019 statewide education spending growth is estimated at 1.5%, with education spending per equalized pupil coming in at under 1%. The responsible actions of school officials were clearly recognized by overwhelming voter support of school budgets this year.

Last week, the House Ways and Means Committee approved a bill that, if enacted, would alter the funding formula for FY 2019, potentially undermining the hard work of local officials whose proposed budgets were approved by large margins yesterday. Our Associations call upon the General Assembly to acknowledge the work of school boards and administrators – who clearly have the support of their communities – and take no action to affect the education funding formula or school district budgets for FY 2019.

## ***House Ways & Means Committee Passes Bill Shifting Ed Funding Formula***

Despite indicating that changes to the education funding formula would not take place in FY 2019, last week the Ways and Means Committee approved an education funding bill that would do just that. The bill still has a long way to go before it becomes law - it will next be reviewed by the House Education Committee before it moves on to the full House for a vote. It will then likely be modified by the Senate.

The bill, [H.911](#), is now in the House Education Committee.<sup>1</sup> The bill diverges from the previous proposal, with changes that would begin FY 19. Chairman Sharpe aims to vote the bill out of the Education Committee during the week of March 12. A summary of the bill can be found [here](#).

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<sup>1</sup> Legislative counsel testified to corrections in the existing bill that are not yet included on the General Assembly's version of the bill online. The corrections can be [found here](#), and are fairly minimal. Legislative counsel anticipates that Rep. Ancel, Chair of the House Ways & Means Committee, will move to amend the bill accordingly once it is on the House floor.

The bill proposes to change two funding systems: 1) Vermont's personal income tax; and 2) the education financing system. The bill would make the following changes to the **education financing system** for FY 2019:

1. Sets a base spending amount of \$11,916.00/equalized pupil for taxpayers who pay based on property; any amount a district spends above \$11,916.00/equalized pupil would be divided by a property dollar equivalent yield of \$8,500.00
2. Sets a base income percentage of 1.66% for taxpayers who pay based on income; the base percentage is increased by an education property tax adjustment (similar to current law)
3. Sets the nonresidential rate at \$1.591
4. Adds a School Income Tax Surcharge, built upon the reformed income tax system. Rates are 0.1% on income taxed at 3.35%, 0.5% on income taxed at 6.6%, 0.5% on income taxed at 7.6% and 1.0% on income taxed at 8.6%. This new tax raises approximately \$59 million for education, which is used to lower property taxes statewide
5. Eliminates the excess spending penalty
6. Eliminates the General Fund transfer to the Education Fund; replaces it with 100% of sales and use, 25% of rooms and meals and transfers adult education, flexible pathways, community high school of VT, and the renter rebate program to the General Fund
7. Separates municipal and education tax bills
8. Eliminates the "5% provisions" in Acts 153, 156 and 46 that limit a town's equalized homestead property tax rate from increasing or decreasing more than 5%

The proposal makes the following change for FY 2020:

1. Requires school districts to account for the normal costs of teachers' retirement payments (the projected cost for benefits in the current plan year – in fiscal year 2018 the cost was \$7.9 million) as part of their education spending

The proposal differs substantially from the concept being reviewed by the Committee for most of the months of January and February. Most notably, it retains the income sensitivity program, raises less revenue from a proposed income tax, and reduces the base spending amount. It also shifts the cost of teachers' retirement to local districts, although that change does not take place until next fiscal year.

### ***House Appropriation Committee Reviews Special Education Bill***

The House Education Committee unanimously approved its bill that shifts special education funding from a reimbursement model to a census-based model beginning in

FY 21. The current bill, H. 897, can be [found here](#). The bill has now moved to the House Appropriations Committee, which heard testimony from the Agency of Education (“AOE”) and the House Education Committee.

The Appropriations Committee thoroughly questioned House Education Committee members, Rep. Conlon and Rep. Webb. The Appropriations Committee expressed great concern that the bill would not lead to cost containment. Reps Conlon and Webb articulated the challenges in doing so, especially considering federal maintenance of effort issues. The Appropriations Committee did not appear concerned about the connection between savings and shifts in practice and the importance of school and educator buy-in before implementing the large-scale changes proposed in the bill.

The AOE cautioned the Appropriations Committee against approving the bill as proposed by House Education Committee. The AOE’s testimony can be [found here](#). The AOE testified that it does not believe it can feasibly implement the bill as written, and that the early adopter program for DMG schools would be very burdensome. Further, the AOE minimized the importance of the weighting study, citing UVM’s poverty weights in their study as sufficient for the new funding system.

### ***Education Committees Diverge on Approaches to Pre-K Changes***

The House and Senate Education Committees heard additional testimony on proposed amendments to Act 166 last week. The bill as drafted would eliminate a public school district’s ability to count pre-K students as part of its ADM and instead pay a tuition amount as is currently paid to private providers. The House Education Committee expressed concerns over how eliminating pre-K students from a district’s ADM would affect property tax rates.

The Senate Education Committee unanimously voted Act 166 amendments out of the committee in the miscellaneous education bill, S.257. The pre-K language of the [miscellaneous bill begins on page 9](#). The Committee elected to eliminate pre-K ADM for public school districts after the AOE testified that the proposed ADM changes would not lead to significant financial impacts to school districts over the long term. The rationale for this change is that local school districts will no longer be administering the pre-K program, as this bill directs the Agency of Education with providing administrative oversight for the program, including payment to both public and private providers.

The bill *would* allow a district in which a child resides to include within its ADM any child for whom it has provided prekindergarten education in excess of ten hours per week for 35 weeks annually and does not allow the district to charge tuition for these services. A district that is not the child’s district of residence may receive additional payment directly from the parent or guardian for prekindergarten education in excess of the publicly funded hours or for child care services, or both.

The State Board of Education is charged with developing rules governing the administration of the program, including documenting the progress of children enrolled in publicly funded prekindergarten education programs and developing health and safety regulations for school districts that align with the requirements for private providers, except to the extent that the Secretary determines that there are compelling reasons that are unique to the public school environment that justify applying different requirements.

### ***House Education Committee Considers Ethnic and Social Equity in Schools***

The House Education Committee heard testimony on [H.794](#), which would establish ethnic studies standards for public and approved independent schools and requires all schools to adopt a policy on ethnic and social equity in schools. The Committee heard from a variety of stakeholders with diverse testimony. The bill's supporters emphasized the importance of acknowledging the plural nature of the United States. Most stakeholders expressed support for the bill's goals of socially inclusive education and increased diversity training for educators. Yet, a number of stakeholders expressed concern about the bills proposed methods to achieve those ends.

The AOE is concerned that, if passed as written, the legislation will be another unfunded mandate for the schools. The AOE's testimony can be [found here](#). Further, stakeholders expressed concern about the proper and existing roles of State Board and AOE. Currently, the State Board adopts standards under [16 V.S.A §164\(9\)](#).

When pressed by the Committee about concerns over schools teaching standards that do not reflect social and ethnic diversity, the State Board testified that standards have already changed to include diverse viewpoints in instruction, and that many teachers no longer teach primarily from textbooks. The State Board's testimony can be [found here](#).

### ***Senate Education Committee Passes Independent Schools Bill***

The Senate Education Committee voted [S.229](#) out of their committee with a 5-1 vote, with Senator Bray as the dissenting vote. The bill is based on the recommendations of the Approved Independent Schools Study Committee and provides direction necessary for the State Board of Education to develop amendments to its rules for approval of independent schools.

S.229 requires approval of an independent school only on the condition that the school agrees to enroll special education students who are placed in or referred to it as an appropriate placement and least restrictive environment for the student by the student's individualized education plan team or by the local education agency. This requirement

does not apply to an independent school that limits enrollment to students who are on an individualized education plan or a plan under Section 504 of the Rehabilitation Act of 1973.

Under the bill, an approved independent school is not required to demonstrate that it has the resources to serve every category of special education in order to be approved to receive public funding for general tuition. The bill requires the Secretary of Education to establish minimum standards of services for students receiving special education services in independent schools. An approved independent school may bill the responsible LEA for excess special education costs incurred by the school in providing special education services beyond those covered by general tuition, subject to rates approved by the Secretary. The Agency of Education is required to publish specific elements that must be included as part of an independent school's invoice for excess special education costs.

The bill requires the Secretary to apply the principle of treating an approved independent school and a public school with parity in the amount of federal, State and local contributions to cover the costs of providing special education services. An independent school must demonstrate the following in order to be approved as eligible to receive State funding: (1) demonstrate an understanding of special education requirements, including provision of a free and appropriate education, provision of education in the least restrictive environment, characteristics and educational needs associated with any of the categories of disability or suspected disability, and procedural safeguards and parental rights, including discipline procedures (2) commit to implementing the IEP of an enrolled student with special education needs, (3) employ or contract with staff who have the required licensure to provide special education services, and (4) agree to communicate with the LEA concerning the IEP, services provided under the IEP, recommendations for a change in services, the student's progress, maintenance of the student's enrollment in the independent school and the identification of students with suspected disabilities.

Under the bill, an approved independent school that enrolls a student requiring special education services is required to enter into a written agreement with the LEA committing to the above requirements. If the school enrolls a student but does not have the staff or State Board certification to provide special education services in the specific disability category that the student requires, then the LEA is required to provide and fund additional staff and other resources to the approved independent school until such time as the approved independent school is able to directly provide these services and has appropriate State Board certification. The school is required to have all required staff and resources and appropriate State Board certification within nine academic months after the date of the student's initial enrollment.

The bill also states that the State Board’s rules must, at a minimum, require that the school has resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that comply with State and federal laws and regulations. Upon certain triggers, the State Board could establish a review team to assess the school’s financial capacity and submit a report to the Board.

### ***House Government Operations Committee Approves Open Meeting & Public Records Bill***

The House Government Operations Committee unanimously voted to approve changes to the Open Meeting Law and Public Records Acts. The approved draft bill can be [found here](#). The significant changes to the Open Meeting Law are:

(1) Defining business of a public body as “the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.”

(2) Clarifying that meetings shall not mean “occasions when a quorum of a public body attend social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers as long as the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.”

(3) Clarifying that meetings shall not mean “a gathering of a quorum of a public body at a duly warned meeting of another public body as long as the attending public body does not take action on its business.”

(4) Prohibiting serial communications, stating “A quorum of the members of a public body shall not use a series of less-than-a-quorum communications of any kind, directly or through intermediaries, intended by any of the members to reach agreement or take action on the business of the public body.”

The significant changes to the Public Records Act include:

(1) Amending the definition of the term “promptly” when used to describe how soon a custodian of a public record must respond to a record request. “Promptly” means “immediately, with little or no delay, and unless otherwise provided in this section, not more than three business days from receipt of a request.”

(2) Extending the “promptly” respond language to responding when records are in active use or in storage, and when a custodian considers the records to be exempt from inspection and copying.

Through the changes to the legislation, the Committee aims to make the law easier to understand.

### ***Senate Education Creates Radon Study Committee***

The Senate Education Committee affirmed its commitment to advance radon testing in schools by including language creating a school radon mitigation study committee in its miscellaneous education bill. The five-member study committee would focus on obtaining funding for mitigation in cases where radon is detected in schools. Members would consist of the State Treasurer, Secretary of Education and Health Commissioner (or their designees), and one member selected from the VSBA and VSA. The study committee would present a report with viable funding sources for remediation to House and Senate Education Committees by December 15, 2018.

The Committee acknowledged that the radon language is a ‘placeholder’. The radon language in the miscellaneous bill does not require mandatory radon testing in schools, but the Committee discussed their intention to amend the bill to do just that. The language can be found beginning on [page 26 of the miscellaneous education bill](#), S.257.

### ***Momentum Builds for Gun Reform Legislation***

As the country processes the recent school shooting in Parkland, Florida, gun reform legislation gains momentum in the Vermont State House. Last week, the Senate unanimously passed [S.221](#). The bill would allow a State’s Attorney or the Attorney General to request that a court issue an extreme risk protection order that would prohibit a person from possessing, purchasing, receiving, or having a dangerous weapon. Extreme risk of harm consists of inflicted or attempted bodily injury, threats or actions that puts others or themselves in fear of physical harm, or actions that present danger to a person in their care.

The Senate also approved a bill requiring universal background checks. The bill would require background checks for all gun sales, including second-hand gun sales. Sellers who fail to complete the required check would be subject to criminal penalties, including fines or imprisonment. The Senate is also likely to pass legislation increasing the legal age to purchase a gun from 16 years old to 21.

In the House, the Judiciary Committee voted to approve an amendment to H.675, which would make it a felony to carry a firearm onto school grounds with the intent to harm.

Under current law, doing so is a misdemeanor. The House is expected to work on any gun legislation that passes the Senate when they reconvene after Town Meeting break.

Governor Scott continues to signal that he will consider all proposed gun reform legislation. His administration is also pursuing non-legislative paths to enhancing school safety. Earlier this week the Secretary of Education and the Commissioner of Public Safety sent a [communication](#) to all superintendents and principals indicating that during the month of March county and local law enforcement will be conducting school safety assessments. The purpose of the assessments is to identify common school emergency preparedness gaps and areas to focus future planning, training, exercise, and equipment initiatives. The assessments are expected to take 30-45 minutes per school and will be completed by March 30<sup>th</sup>.