

Education Legislative Report

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Scott Administration Continues Push for Budget Proposal

In a press conference last week, Governor Scott restated his intent to close the General Fund budget gap by shifting \$118 million in liabilities to the Education Fund. His plan would pay for these and new Education Fund costs with a combination of one-time funds, savings from level-funded school spending, and requiring teachers to pay a minimum of 20% of the premium for employer-provided health insurance.

As reported in an *Education Legislative Report* [Special Bulletin](#) on February 10, action in both bodies of the General Assembly last week foreclosed Governor Scott's plan for level-funding this year's (FY18) budgets. However, cost containment measures for future fiscal years will continue to be considered this session. Several committees have taken testimony about Governor Scott's budget proposal from the [Department of Finance and Management Commissioner Andy Pallito](#), [Commissioner of Taxes Kaj Samsom](#), and [Secretary of Education Rebecca Holcombe](#). These three officials indicated that the Governor will not offer an alternative budget plan, and that the General Assembly will need to craft its own proposal to level-fund state government if it rejects the Governor's plan. The Governor has stated that he will veto any budget that raises taxes or fees.

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As committees learned more about the Governor's proposals, other concerns surfaced. VSBA

Executive Director Nicole Mace noted in [testimony](#) to the House Education Committee that the proposal which would allow local communities to spend 5% above a level-funded budget raised constitutional questions. Allowing school districts to exceed a level-funded budget by raising revenues from their local educational grand list would return to the pre-Act 60 method of

funding education. That system has already been ruled unconstitutional by the *Brigham* decision. Legislative Counsel Peter Griffin [testified](#) in the House Appropriations Committee with [similar concerns](#).

The Governor's proposal to [shift](#) General Fund costs to the Education Fund could measurably increase property taxes, not lower them. The proposed budget would transfer \$35 million in liability for the state teachers' retirement system and retired teachers' health care from the General Fund to the Education Fund. Vermont State Teachers Retirement System carries a \$1.2 billion unfunded liability, the highest of any of the state's three public retirement systems. A plan that shifts costs from this fund on to the property tax would require extensive legislative study.

The [proposed budget](#) would also likely raise property taxes in subsequent years due to the use of \$31 million in one-time funds to pay for programs shifted from the General Fund to the Education Fund. \$26 million of those one-time funds are an Education Fund surplus from FY17. In the absence of ongoing surpluses in the Education Fund, property taxes would increase to fund the early education and post-secondary education obligations that the Governor proposes to shift to the Education Fund.

The Governor's budget also changes the annual transfer from the General Fund to the Education Fund. In current law the dollar amount of the transfer is set by statute, and adjusted for inflation each year. Under the Governor's [plan](#), the legislature would be free to determine the transfer amount each year, with no minimum requirement for funding. This could result in property tax dollars being used to make up for General Fund shortfalls in future state budgets.

Finally, the governor's budget proposal would require teachers to contribute 20% of health care premiums, which, under the current VEHI plans, means \$15 million in costs shifting from employers to employees. That \$15 million in savings to employers would be deducted from the education payment from the state to local districts. In other words, those savings would be returned to taxpayers.

While we share the governor's interest in realizing savings through health care provisions of collective bargaining agreements, it is apparent that the Governor's team was not aware that all school employees are transitioning to new health plans as of January 1, 2018. This transition is

complex, and involves decisions at the bargaining table that go well beyond premium share. One scenario the [VSBA shared](#) with the Ways and Means Committee could result in savings of over \$26 million to taxpayers, while keeping school employees whole with respect to their health care coverage and out of pocket costs.

Having the legislature intervene in the collective bargaining process at this stage could delay or derail progress being made at the bargaining table. One useful contribution would be a clear signal that, if employees can be kept whole with respect to cost exposure in the new plans, savings should be returned to taxpayers.

We expect that the education and finance committees to spend significant time in the remainder of the session discussing cost containment measures.

House Education Committee Considers Act 166 Adjustments

Last week, the House Education Committee began work on a committee bill that would amend Act 166. The committee [bill](#) addresses elements of prekindergarten delivery that, based on testimony by VSA, VSBA and VCSEA, should be evaluated to determine whether PreK education is serving children with the greatest needs.

In [testimony](#) before the committee, Jo-Anne Unruh of VCSEA stated that there is potential within Act 166 for strong statewide, regional and district systems that allow all families to participate in a program that matches their child's developmental needs. To that end, representatives from VCSEA and [VSA](#) stressed that any Act 166 proposal should: increase affordability and access for the most vulnerable students, enable a supervisory union or supervisory district to establish PreK regions and collaboratives, ensure single agency oversight of Act 166, and allow publicly operated PreK programs to receive parent-paid tuition for services in addition to the 10 hours of education, to enable districts to operate full or half day education and care programs.

The current committee [bill](#) seeks to address the concept of affordability and allocating resources where most needed by raising the prospects for means testing for tuition assistance. Currently, ten hours of PreK education are supported with a fixed dollar amount. This dollar amount supports any PreK eligible child, irrespective family socio-economic status. As currently written the bill would establish means testing and make tuition resources available on a sliding scale

basis. The bill also designates the Agency of Education as the single agency with authority for Act 166 implementation, consulting where appropriate with the Agency of Human Services.

Finally, the committee bill enables boards of supervisory unions or supervisory districts to vote to establish a PreK region after consultation with private PreK providers and parents and guardians of PreK students. If a PreK region is established, school districts within it would only be authorized to pay tuition to providers within its boundaries. The district(s) or supervisory union would be required to form a PreK collaborative within the region, which would meet regularly to coordinate delivery of PreK services.

The committee is expected to take further testimony on its draft bill in the coming weeks.

Free Speech Bill Approved by Senate Education Committee

Last week, the Senate Education Committee unanimously voted to approve [S.18](#), a bill that would grant students expanded freedom of expression in school-sponsored media. The bill defines “school-sponsored media” as material, whether written, broadcast, or published as part of a school-supported activity that is distributed beyond the classroom in which it is produced.

Under the bill’s provisions, school administrators or employees may not limit publication of any material in school-sponsored media unless the content falls into one of the following categories: material that is libelous or slanderous; constitutes an unwarranted invasion of privacy; is obscene, profane, threatening or intimidating; content that may be defined as hazing, harassment or bullying under Vermont law; content that violates state or federal law; or creates an imminent danger of materially disrupting the ability of the school to perform its educational mission.

S.18 went through many drafts addressing the material that would be included in the list above. Our associations testified that language allowing schools to continue prohibiting content that would constitute hazing, harassment and bullying should be included in the bill. [Ken Page](#) of VPA and [Nicole Mace](#) of VSBA testified on that point. The committee also heard from Vermont Law School professor [Peter Teachout](#), who spoke to the committee about First Amendment law in public schools.

The bill as introduced applied to public schools as well as independent schools. The bill that the committee approved applies only to public schools. The committee's legislative counsel testified that the legislature does not have the clear authority to protect student speech in private schools, even if they receive public funds. That testimony ran counter to Professor Teachout's testimony, which stated there is a need for applying this bill to independent schools, since otherwise, students attending these schools would have no First Amendment protections. Independent schools in Vermont are, under current law, required to follow similar laws to the requirements of S.18. They must adopt certain policies that are required by state law, such as Hazing, Harassment and Bullying prevention. Independent schools also must follow many of the same health and safety requirements as public schools under current law. The committee did not take any testimony from representatives of independent schools regarding the question of the bill's application. The bill will be presented for a vote in the Senate later this week.

Senate Education Committee Bill Makes Act 46 Adjustments

Since the outset of the legislative session, the Senate Education Committee has conducted a thorough review of Act 46 implementation by visiting four regions of the state to hear from study committees, school officials, and community members. The chairs of both the Senate Education Committee and the House Education Committee agreed that the Senate would consider a package of Act 46 amendments first, with the House to follow in the second half of the session if the Senate approves a bill.

The Senate Education Committee's focus has been on changes to address the needs of districts that either do not have a potential merger partner in their region, or whose voters have rejected an Act 46 proposal. For instance, the committee is considering a limited timeline extension for districts that can meet objective criteria establishing that more time is needed, such as a failed vote. The committee has also discussed modifying the requirements of certain merger structures, such as side-by-sides, with three districts coming together on one side, and a stand-alone district on the other.

The committee has signaled that it will not recommend major changes to Act 46 this year. Several members have cited the large number of districts that have complied with Act 46 as evidence that the law is working as written. S.15, a bill that would enact a blanket extension to all Act 46 timelines, has not yet received significant attention. This week, the Senate Education members will review a draft of a committee-sponsored bill of Act 46 amendments. Our

associations do not anticipate the committee bill to include major changes to either timelines or to the approval criteria for alternative structure proposals.

New Bills Affecting Education

In each Education Legislative Report, we report extensively on education bills under consideration in committees, and at the end of the Report, we regularly list all newly released bills that appear to have provisions related to education. In this Report, we have re-published the bills appearing in the two previous Reports, to ensure that our members are aware of the full landscape of education proposals.

As always, if you have questions regarding the content of the Report, contact your Association's executive director or Emily Simmons, Director of Legal and Policy Services at VSBA and author of the Report at esimmons@vtsba.org.

For a list of representatives and senators by supervisory union, click [here](#).

House Bills

[H.7](#) : *An Act Relating To Act 46 Timelines*. This bill would delay all Act 46 timelines by one year.

Sponsors: Representative Ancel, Mrowicki, Morrissey and many others.

[H.15](#) : *An Act Relating to amendments to Act 46 to facilitate the approval of alternative governance structures and extend time frames*. This bill would amend the State Board's requirements for approving alternative structures under Act 46, including removing the requirement that the alternative structure is the "best means" of meeting the goals of the Act. The bill would also extend Act 46 timelines by one year.

Sponsors: Representatives Ancel, Conquest, Mrowicki and many others.

[H.23](#) : *An act relating to building resilience for persons experiencing adverse childhood experiences*. This bill would, in its relevant portion, require school nurses to participate in training on the Vermont Family Based Approach to provide family wellness coaching. It also directs the Vermont Principals Association, Vermont Superintendents Association, Vermont School Boards Association, and the Vermont National Education Association to, with the Agency of Education, develop a plan for creating a trauma-informed school system throughout Vermont.

Sponsors: Representative Till and many others.

[H.28](#) : An act relating to creating a public option for health care coverage. This bill would create a publicly funded health insurance option available to all Vermonters. Public employers, including school districts, would be required to offer only the public option to their employees, and health insurance would no longer be a subject of collective bargaining.

Sponsor: Representative Poirier

[H.49](#) : *An act relating to the State Board of Education and Concurrence by the Secretary of Education of proposed rules.* This bill would require that the Secretary of Education give his or her concurrence to rules proposed by the State Board of Education as a prerequisite for the proposed rules to take effect on or after September 1, 2017.

Sponsors: Representatives Sullivan, Browning, Dunn and Gannon.

[H.98](#) : *An act relating to the elimination of strikes and imposed terms in connection with collective bargaining for teachers' and school administrators' contracts and the formation of a task force.* This bill would prohibit impositions of contracts by school boards and strikes in connection with teachers' and school administrators' contracts. It would require a study committee to examine other states' methods of contract negotiations resolution and make a recommendation to the General Assembly in November of 2017.

Sponsors: Representatives Wright, Brennan, Browning, Condon, Dakin and Myers.

[H.100](#) : *An act relating to sudden cardiac arrest prevention during school athletic activities.* This bill would require the Secretary of Education to publish informational materials about the nature and warning signs of sudden cardiac arrest to parents and students at the beginning of each school year. It would also require schools to hold informational meetings prior to the start of each athletic season for all participants in athletic activities. The bill would also stipulate that participants in sports who show symptoms of sudden cardiac arrest to be immediately removed from play. Finally, the bill would require annual training for athletic staff members and school board-adopted penalties for violations of the bill's provisions.

Sponsor: Representative Till.

[H.156](#) : *An act relating to the phase-out of the declining student hold-harmless provision.* This bill would delay the scheduled phase-out of the so called "hold harmless" provision for declining student enrollment for districts that entered into a study committee before July 1, 2017. It would also delay the scheduled repeal of the provision by one year.

Sponsor: Representative Haas.

[H.157](#) : *An act relating to a statewide calendar for public schools.* This bill would mandate that the Agency of Education establish a statewide public school calendar for all public schools.

Sponsors: Representatives Hubert, Beyor, Christie, Hebert, Lewis, Pearce, Savage and Viens.

[H.161](#) : An act relating to union membership fees for teachers and administrators. This bill would prohibit school districts from deducting the agency fee directly from employee wages or benefits.

Sponsor: Representative Viens.

[H.168](#) : *An act relating to special education reimbursement and weighted long term membership.* This bill would reduce the State reimbursement of special education costs. It would also increase the weighting factors for secondary pupils, for students living in poverty and for students for whom English is a second language.

Sponsor: Representative Beck.

[H.174](#) : An act relating to school district consolidation. This bill would create a new governance structure that would be eligible for incentives under Act 46. It would allow a side-by-side merger with three merging districts on one side and one district on the other.

Sponsors: Representatives Beck and Bartholomew

[H.183](#) : *An act relating to declining student enrollment.* This bill would create a grant for extraordinary declining enrollment transition grant.

Sponsors: Representatives Olsen, Long, Sibilias, Browning, Gannon and Partridge.

Senate Bills

[S.1](#) : *An act relating to determination of average daily membership for 2016–2017 school year and equalized pupil count for fiscal year 2018.* This bill would direct the Secretary of Education to account for prekindergarten students who attend a background check-compliant programs as of January 13, 2017 in the average daily membership for fiscal year 2018.

Sponsors: Senators Ashe, Kitchel, Mullin and Cummings.

[S.8](#) : *An act related to a State Ethics Commission and standards for ethical governmental conduct.* Section 5 of the bill would give advisory guidelines to municipal officials and municipal bodies for enforcing their own policies, such as conflict of interest policies.

Sponsors: Senators Pollina and White.

[S.15](#) : *An act relating to amendments to Act 46 to facilitate the approval of alternative governance structures and extend time frames.* This bill would extend Act 46 time frames by one year and make changes to the alternate structure approval process.

Sponsors: Senators Kitchel, Benning, Campion, McCormack, Pollina, Rodgers, Sears, Starr, and Westman.

[S.18](#) : *An act relating to freedom of expression for students.* This bill would place limits on the ability of schools to regulate the content of school-sponsored student publications.

Sponsors: Senators White, Balint and Baruth.

[S.24](#) : *An act relating to the State Board of Education.* This bill would eliminate the authority of the State Board of Education to adopt rules, and would transfer the rulemaking authority to the Secretary of Education. It would also eliminate the State Board of Education's nominating role in the selection of a Secretary of Education.

Sponsors: Senators Campion, Sears, Benning, Branagan, Degree, Floy, Kitchel and Westman.

[S.46](#) : *An act relating to Education Fund costs for fiscal year 2018.* This bill would implement the Governor's budget proposals for 2018, including moving school district budget votes to May 23, level-funding education spending, and requiring teachers to contribute at least 20% of the cost of health care.

Sponsors: Senators Collamore, Flory and Mullin.

[S.58](#) : *An act relating to education property tax that is adjusted by income for all payers.* This bill proposes to create an education property tax system that requires property owners to pay on the basis of income.

Sponsors: Senators Pollina and Pearson.

[S.64](#) : *An act relating to science-based drug education.* This bill proposes to require the Agency of Education to create a drug education curriculum that would be included in the minimum course of study.

Sponsors: Senators Rodgers and Starr.