

# Education Legislative Report



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## Legislature Overrides Budget Veto; Completes Work for 2009

The 2009 legislative session was marked by two major overrides of gubernatorial vetoes, each of which occurred with the minimum number of votes necessary to override in the House (i.e., two-thirds of the members present). The first was the Civil Marriage Act from earlier in the session. The second override concerned the state budget for fiscal year 2010 (H.441); that override occurred on June 2<sup>nd</sup> during a special two-day summer session. Independent House member Paul Poirier joined all 94 Democrats and five Progressives in voting to override the budget veto 100-50 (the Senate vote was less dramatic, 23-5). It was the first time in Vermont history that a governor vetoed a fiscal year budget.

Subsequent to the override vote, the Governor signed H.12, which sets the education tax rates in 2010 and freezes the base education payment at \$8544 for 2010 and 2011. During the special two-day session that concluded Wednesday night, the Legislature also passed H.442, a companion bill to the budget bill; none of H.442's provisions directly affects school operations other than to adjust unemployment benefits law.

What follows is a description of all the relevant education-related provisions of enacted legislation in 2009.

*Editor's note: Because we reported extensively on H.427, H.12 and H.441 before they were enacted, nearly all of the following report is reprinted from our May 12<sup>th</sup> Education Legislative Report.*

## Education Fund to Support the State's Budget Obligations

The State of Vermont is facing very large tax-revenue shortfalls as a result of the recession, and the Education Fund has been tapped to cover some expenses that have heretofore been supported by the General Fund. One notable provision is a two-year freeze (fiscal years 2010 and 2011) in the annual transfer from the General Fund to the Education Fund at \$240.8 million (existing statutes would have required a transfer of \$297.8 million in 2010). Federal stimulus money will contribute \$38.6 million to the Education Fund in fiscal year 2010, and likely the same amount in 2011. **Therefore, the state allocation to the Education Fund, including the federal stimulus, will be \$18.4 million less in fiscal year 2010 than required by existing statute. In fiscal year 2011, the reduced allocation will be greater than \$18.4 unless further legislative action occurs.**

**The Legislature also chose to freeze the base education payment for fiscal year 2011 at its 2010 amount (\$8544), rather than allow the payment to increase by inflation as required by existing statute.**

Reducing the base education payment in this manner will increase every school district's spending adjustment in fiscal year 2011 if the district's spending increases or equalized pupils decline, resulting in a greater yield in property tax revenue for the Education Fund from homestead property tax payers, including those payers who are income-sensitized.

The Legislature also approved the following statewide education property tax rates for fiscal year 2010: **(1) 86¢ for homestead property, and (2) \$1.35 for nonresidential property.** These rates are one cent lower than the rates in fiscal year 2009, but are greater than the minimum rates that would be necessary to support traditional Education Fund expenses. A list of new expenses, other than the \$18.4 million reduced allocation

from the General Fund, can be found in the “Other cost shifts” section below. Estimates suggest that without those shifts the tax rate could be approximately two cents lower.

Although less of a cost-shift than was proposed by the Governor in January (see below), these three changes will result in increased property taxes for all Vermont payers. The tax rate and base education payment freeze were approved in the tax rate-setting bill (H.12) that was approved by the Legislature on the last day of the regular session, and signed into law by the Governor following the budget veto override. These actions will allow for non-traditional uses of Education Fund revenue during the next two fiscal years.

### **Teachers’ Retirement System**

The discussion of this cost shifting began with the Governor’s budget address in January, when he proposed to shift the state share of the teachers’ retirement system to the Education Fund (approximately \$60 million in fiscal year 2010). The Legislature considered this concept very seriously, as we have previously reported, but ultimately did not approve the shift. Communication from local school officials, municipal officials, and tax payers to their senators and representatives certainly contributed to the decision not to shift teachers’ retirement this year. However, the budget bill does create a commission to study the teachers’ and state employees’ retirement systems, including the funds’ funding sources and sustainability:

*The commission is charged with making recommendations about plan design, benefit provisions, and appropriate funding sources, along with other recommendations they deem appropriate for consideration, consistent with actuarial and governmental accounting standards, as well as demographic and workforce trends and the long term sustainability of the benefit programs.*

The commission will include representatives from the Legislature and the Administration, including the State Treasurer and the Commissioner of Education. Our associations will monitor and report on the activities of the retirement commission, particularly with regard to recommendations regarding funding sources.

### **Other Cost-shifts and Revenue Changes in the Education Fund**

Annually, school-based Medicaid reimbursements that are not appropriated to school districts, the Department of Education, or the Agency of Human Services are to be transferred the Education Fund (16 V.S.A. 2959(g)), but the transfer will not occur in fiscal years 2009 or 2010. The effect of the change is approximately \$5 million of lost revenue for the Education Fund in both fiscal years.

The following three state obligations were shifted to the Education Fund:

- Community High School of Vermont (Dept. of Corrections): \$3 million;
- Early Education Initiative: \$1.1 million;
- Department of Education’s VISION computer accounting system: approximately \$250,000.

Tax-code changes, approved as part of the State’s tax bill (H.442), will marginally increase revenues to the Education Fund. The following are the projections for increased revenue in fiscal year 2010:

- \$1.2 million for a sales tax on liquor sales;
- \$200,000 for an increase in the motor vehicles Purchase and Use tax.

### **Other Education Policy Provisions in the Budget Bill**

The Tax Department will immediately stop including the insert “About Your 20XX Taxes: The more you spend the more you pay” in property tax bill mailings.

Five limited-service positions are authorized within the Department of Education to administer the federal stimulus money. The Legislature did not include requested authorization for one classified position to comply

with Act 1, the Child Sexual Abuse Prevention law.

## **Education Fund Stabilization Reserve to Decrease Below Maximum**

The total effect of the numerous adjustments to Education Fund expenditures and revenues will result in the fund's stabilization reserve decreasing below its maximum of 5 percent in fiscal years 2010 and 2011, according to projections from the Legislature's Joint Fiscal Office. Since Act 68's implementation in fiscal year 2005, the fund has maintained the maximum reserve every year, except in 2006 when it decreased to 4.6 percent. The JFO projects the stabilization reserve to be 3.9 percent in fiscal year 2010 and 4.3 percent in 2011. Existing law requires the stabilization reserve to be maintained between 3.5 and 5 percent.

## **Education Organization and Management Study**

A provision in the Legislature's appropriations bill creates a committee to "examine potential improvements to the structure and funding of the Vermont educational system in light of the state's limited financial resources." Among other related charges, the committee would:

*Examine the role and the effectiveness of the policy-making, management, and administrative structure that creates and implements Vermont education policy, including consideration of the functions of the legislature, the governor, the state board of education, the department of education, supervisory unions, local school boards, parents, students, community members, and other entities and individuals...*

*Identify and evaluate the long-range sustainability of current and potential funding sources and mechanisms...*

The committee will be comprised of 15 members including eight legislators, the Commissioner of Education, and six other appointees from outside state government (four appointed by the Legislature and two by the Governor). The committee's composition "shall attempt to ensure both that committee members have a broad understanding of the current education funding system and that the committee includes both supporters and critics of the system." The first meeting will be convened by July 30, at which point a committee chair will be selected. The committee is to meet no more than six times and is charged with reporting on its findings and recommendations by December 15 of this year. The Department of Education and the Joint Fiscal Office will provide staff support.

## **H.427: All-encompassing Education Policy Bill**

Other than in the budget bill detailed elsewhere in this report, all other education policy provisions were incorporated in the final version of H.427, including most provisions of S.136, the high school completion bill. The House and Senate approved the final version of the bill in the last 36 hours of the regular session, after their respective conferees negotiated the differences between the House- and Senate-approved versions of H.427 and S.136. Governor Douglas allowed H.427 to become law without his signature. He indicated that he disapproved of the exceptions to the Act 82 formula in H.427, and the provision allowing designation of public high schools. Douglas did approve of the high school completion provisions, and on balance, he chose not to veto the legislation.

## **Act 82 Divided Question Ballot Language (Section 6)**

H.427 rewrites the required ballot language for those districts that are subject to the Act 82 divided question (i.e., two-vote) law. The new language is as follows:

*The total proposed budget of \$\_\_\_\_\_ is the amount determined by the school board to be necessary to support the school district's educational program. State law requires the vote on this budget to be divided because (i) the school district's spending per pupil last year was more*

than the statewide average and (ii) this year's proposed budget is greater than last year's budget adjusted for inflation.

#### *Article #1 (School Budget)*

*Part A. Shall the voters of the school district authorize the school board to expend \$\_\_\_\_\_, which is a portion of the amount the school board has determined to be necessary?*

*Part B. If Part A is approved by the voters, shall the voters of the school district also authorize the school board to expend \$\_\_\_\_\_, which is the remainder of the amount the school board has determined to be necessary?*

Existing law requires that the divided question provision of Act 82 be repealed following the fiscal year 2014 budget approval process. This year was the first that the law was in effect. Ten districts requested a second-question budget amount from its electorate and six were approved.

### **Exceptions to the Act 82 Divided Question Law (Section 20)**

The following expenses will not be considered part of education spending exclusively for the purpose of determining whether a district is subject to the Act 82 divided question (two-vote) law (i.e., the expenses will still be part of education spending for determining homestead tax rates):

- Capital construction costs that have approval from the Department of Education. This includes districts that have received preliminary approval from the Department, provided that the district will not receive state aid as a result of the moratorium on state aid for school construction, and districts that have received final approval from the Department and are receiving state aid. These costs may include interest paid on debt.
- Anticipated tuition costs for students in grade levels for which the district does not maintain a school. The law also allows districts to include these costs in the Act 82 divided question calculation, if the district chooses to do so.
- Spending attributable to the cost of planning a merger of a school with an average grade size of 20 students or fewer.
- Spending attributable to the district's share of costs for 21<sup>st</sup> Century Community Learning Centers after-school programs.
- "Spending ... attributable to the costs of providing alternative educational opportunities designed to encourage at-risk high school students to remain enrolled in and to graduate from high school, whether offered by the district or a contracting entity."

### **Exceptions to the Excess Spending Threshold (Section 20)**

The following expenses will not be considered part of education spending exclusively for the purpose of determining whether a district is subject to the excess spending threshold (i.e., the expenses will still be part of education spending for determining homestead tax rates):

- Capital construction costs that have approval from the Department of Education. This includes districts that have received preliminary approval from the Department, provided that the district will not receive state aid as a result of the moratorium on state aid for school construction, and districts that have received final approval from the Department and are receiving state aid. These costs may include interest paid on debt.
- Spending attributable to the cost of planning a merger of a school with an average grade size of 20 students or fewer.

## **Designation of Public High Schools (Section 13)**

Districts that do not maintain a public high school may now designate a public high school as the high school for the district by vote of the electorate. The board of the receiving school must vote to accept the designation. Existing law allows designation of approved independent schools only.

In a district that has designated either a public or an approved independent high school, a parent may petition the school board to pay tuition for his or her child to attend a different public or independent school. The board's decision is final, and tuition would be limited the least of (i) the statewide average announced tuition of Vermont union high schools, (ii) the per pupil tuition the district pays to the designated school, or (iii) the tuition charged by the enrolling school.

## **High School Completion (Sections 40-45)**

H.427 states that it is a "priority" of the Legislature and the Department of Education to "take all necessary measures" to increase the high school completion rate to 100 percent by 2020.

The bill will allow enrolled students to participate in the Act 176 high school completion program, whereby districts formulate a "Graduation Education Plan" for certain students and are reimbursed for contracted educational services provided.

The bill directs Educational Support Teams (ESTs) to determine which enrolled students at any grade level will require additional supports to graduate from high school based on guidelines to be developed by the Commissioner of Education, particularly "during times of academic or personal transition." For an identified student, the ESTs are to develop an individualized strategy to assist the student in completing high school, in consultation with the student's parents when possible. ESTs must also report annually to the Commissioner on how the team has addressed these students' needs, and the costs that it incurred.

The Commissioner is directed to develop an "accurate, uniform, and reliable method for defining and measuring secondary school completion rates on a school-by-school basis..." He is then to assess individual schools on meeting these benchmarks, and the districts must report to their taxpayers on their schools' progress in achieving a 100 percent completion rate.

The Commissioner must also develop and publish guidelines to assist districts in identifying and supporting students to who require additional assistance to succeed in school.

## **Supplemental Reading Instruction (Section 40)**

H.427 amends 16 V.S.A. § 2903 to specify that schools must provide supplemental reading instruction to enrolled middle level and high school students "whose reading proficiency creates a barrier to the student's success in school." It also specifies that supplemental reading instruction must be provided to fourth grade students whose proficiency falls below third grade expectations.

## **Truancy (Section 46)**

The Commissioner of Education must develop comprehensive model truancy protocols that "confront truancy on a statewide, countywide, and supervisory unionwide basis and include the post-complaint involvement of both the State's attorneys and the court system under 16 V.S.A. § 1127." The Commissioner may present to the Legislature recommended statutory changes consistent with the model protocols.

Supervisory unions must adopt truancy policies by July 1, 2010 that are consistent with the model protocols.

## **Teen Parent Education Programs (Sections 32-38)**

H.427 codifies the fiscal arrangement first implemented last year, whereby the school that a pregnant or parenting student is enrolled in pays 83 percent of the prior year's statewide average net cost per pupil for a

full year of services at a teen parent education program.

The bill also adds three definitions to Title 16, in 16 V.S.A. § 11: a pregnant or parenting pupil, approved education program, and teen parent education program.

H.427 explicitly states that the educational plan at the teen parent program must be the substantial equivalent of that required by the school district to obtain a diploma, as determined by the district.

The bill also states that the district or the pupil may request a determination from the Commissioner of Education in the event of dispute, and that the Commissioner's decision will be final. If the dispute involves the equivalency of the teen parent education program to the high school curriculum, the Commissioner must consider certain criteria when making a decision.

### **Audits and Auditors (Section 3)**

16 V.S.A. § 323 and § 563(17) are amended to state that audits of supervisory unions and school districts are to be "conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting..."

H.427 also requires that the annual supervisory union board report to town auditors (16 V.S.A. § 261a(10)) shows actual or estimated special education-related expenditures, including how much was paid to each school district and a summary of services provided. Existing law requires that the report detail how much special education aid had been awarded and generated by the supervisory union's member districts.

### **Deadline for Tuition Rates Increases (Section 13)**

Notices of public school tuition increases must be announced 15 days earlier than existing law requires. The new deadline is January 15<sup>th</sup> preceding the academic year.

### **Procedure for Withdrawing from a Union District (Section 11)**

If the electorate of a member of a union school district votes to withdraw from the union, other member districts must vote to ratify or not to ratify the withdrawal within 90 days of receiving notice of the withdrawal. Existing statutes do not specify any particular timeline for this process.

### **Aid for Joint Contract Districts (Section 12)**

Through fiscal year 2010, districts that choose to operate a joint contract school will be eligible for the same state transition aid that is available to districts that form a union district. The amount is the lesser of \$150,000 or five percent of the base education payment multiplied by the combined enrollment of the districts in the year of the vote.

### **Tuitioning Elementary Students (Section 13)**

A student's parent can petition his or her school board to allow the student to attend a nearby but out-of-district public elementary school. The board may pay the tuition "if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic considerations." The parent may appeal the board's ruling to the Commissioner of Education, who will decide whether the board must pay all, some, or none of the tuition. The appeal to the Commissioner and the standard of "geographic considerations" are the changes from existing law.

If the district does not maintain an elementary school, a parent can notify the board that his or her child will attend an approved independent school by April 15 preceding the academic year. The board shall pay tuition not to exceed the least of (i) the statewide average tuition of Vermont union elementary schools, (ii) the average per pupil tuition the district pays for its other resident elementary students, or (iii) the tuition charged by the approved independent school. Existing law allows parents to choose public elementary schools, and

boards to decide whether a student could attend an independent school.

### **New Definitions of State-placed Students (Sections 14-15)**

H.427 will add two new categories of state-placed students: those students in the custody of the Commissioner for Children and Families and those students in the custody of a temporary legal custodian pursuant to 33 V.S.A. § 5308(b)(3) or 33 V.S.A. § 5308(b)(4). The new categories will allow the Commissioner for Children and Families more latitude in determining which public school a child should attend in order to provide for educational continuity. The bill also specifies which district or state agency or adult would assume responsibility for transportation and transportation costs for certain state-placed students.

### **Hearing and Vision Screening Law Modified (Section 31)**

At the behest of the Department of Health, the provision of law that prescribed in which school years children must have their vision and hearing screened has been eliminated (16 V.S.A. § 1422), and replaced with the following:

*Periodic hearing and vision screening of school-aged children shall be conducted by school districts and primary care providers pursuant to research-based guidelines developed by the commissioner of health in consultation with the commissioner of education. School districts and primary care providers will attempt to avoid duplicating services provided by the other and will share information as practicable and allowable by law.*

Testimony from the Department of Health indicated that the research-based guidelines would be from the American Association of Pediatrics.

### **Districts Encouraged to Seek Waivers from School Quality Standards (Section 25)**

H.427 “encourages” school district and supervisory union boards to request variances from the State Board of Education regarding specific school quality standards, while protecting school quality. The bill also authorizes the Commissioner of Education to act directly on variance requests, if the State Board fails to act on the request at its first regular meeting after the request is made.

### **Base Education Payment Renamed Base Education Amount (Sections 16-19)**

H.427 will rename the base education payment the *base education amount* wherever it appears in law. The new name will more accurately reflect the base education payment’s role in public education financing, because there is no “base payment” or “block grant” in the Act 68 system.

### **Existing Public High School Choice Codified (Section 27)**

Existing law on regional public high school choice (Act 150 of 2000) will be codified in the Vermont statutes as 16 V.S.A. § 1621-1622.

### **Statewide School Calendar Law & 40-day Census Repealed (Sections 28, 30)**

The uniform statewide school calendar law, which was never implemented, is repealed by H.427. Regional calendar regions organized around technical centers remains current law (16 V.S.A. 1071(e)).

The 40-day student census law, which has been succeeded in statute by a 20-day census, is repealed.

## **\$10.3 million for School Construction Aid**

The Legislature authorized \$10.3 million in state aid for existing school construction projects. The moratorium on state aid for new school construction projects remains in effect. After the \$10.3 million in payments, school districts are waiting for \$32.2 million in additional, obliged state aid.

## **ARRA Revenue Partially Supplanting State Funds for Districts**

A portion of the state's education payments to districts, as well as portions of reimbursements for special education and state-placed students, will be supplanted by federal revenues earmarked for local districts.

A portion of the regular education payments from the Education Fund to local districts will be reduced, and supplanted by separate checks that will be sent to districts with federal money provided by the State Fiscal Stabilization Fund (SFSF) portion of the American Recovery and Reinvestment Act of 2009. The total amount of SFSF money supporting education statewide will be \$38.6 million in fiscal year 2010.

Special education reimbursements paid to districts from the Education Fund will have a reduced allocation totaling \$6.1 million statewide. Districts will be expected to utilize enhanced federal reimbursements for special education to supplant the reduced allocation. State-placed student reimbursements will have a reduced allocation of \$500,000 statewide as well.

## **Internet Sex Offender Registry to Expand**

Approximately 1600 names of convicted sex offenders will be added to the available online database of 400 registered sex offenders, under a bill that will increase the number of crimes that qualify for online registration (S.125). Act 1 of 2009 prohibits any person from being a work-study student in public schools who is registered on the Internet database. Our associations will be updating our unofficial manual on criminal record check and abuse registry check procedures for school officials and providing our members with the updated manual before the next academic year.

S.125 also makes "sexting" (transmitting sexually provocative photographs on electronic devices like cell phones) between consenting teenagers a juvenile offense.

## **Department of Taxes to Transition to the Department of Revenue**

The Legislature's appropriations bill has a provision that will result in a three-year process that will likely reconfigure and rename the Department of Taxes; the new name will be the Department of Revenue. A committee is created to define the scope of the new department. The Commissioner of Taxes is charged with evaluating each state revenue source and determining whether the management of the revenue source should be administered in the new department or elsewhere. We expect that education property taxes will be part of this determination, and will report on developments in this area.

**End**