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MEMORANDUM

TO: Vermont State Board of Education
FROM: Robert Stirewalt, Director of Policy, Programs and Legislative Affairs
SUBJECT: Summary of Education-related Legislation for 2017
DATE: May 15, 2017

2017 Legislative Wrap Up

NOTE: As of May 15, only S.1 (Act 2) has been signed. All other items are pending and may change.

S.1 (Act 2)

This Act authorizes the Secretary of Education to conduct and use a secondary data collection to determine average daily membership for the 2016-2017 school year, and the equalized pupil count for fiscal year 2018. The bill was necessary because of fingerprinting delays in private providers that provided Act 166 prekindergarten education. The law requires superintendents and their contractors to complete fingerprint-supported background checks of any employee who might have unsupervised contact with children. This includes all employees of private prekindergarten providers who receive public funds under Act 166. The Agency of Human Services (Child Development Division) began fingerprint-supported background checks on September 1, 2016. The checks were not completed for most private providers in time for the statutorily mandated census count in October. Thus the October count did not accurately capture the number of children expected to be enrolled in prekindergarten (there was a discrepancy of about 800 students between the initial and the secondary count).

An artificially low count would have resulted in a low equalized pupil count for the purposes of setting a tax rate, and would have resulted in an artificially high tax rate in affected towns. This would have adversely affected schools and taxpayers – especially in small districts.

S.1 (Act 2) authorized the Agency of Education (AOE) to complete and use a secondary count to determine average daily membership for the 2016-2017 school year and to determine equalized pupils for fiscal year 2018.

H.513 The Miscellaneous Education Bill

The House miscellaneous education bill was modified throughout the legislative session before being finalized in conference committee. Forty-eight sections were agreed to by the House and Senate Education committees, with the first 23 sections related to Act 46 “findings and purpose.”

ACT 46 sections

The primary goal of the Act 46 sections of the bill is to provide additional support to towns that had yet to merge by allowing for greater flexibility in the merger structures and extending the timelines for unification to take place. The most substantive provisions related to Act 46 work were:

Phase 2 Mergers: The voter approval deadline for all “Phase 2” mergers (REDs, MUUSDs, and Side-by-Sides) is extended from June 30, 2017 to November 30, 2017. (Sec. 11)

Side-by-Sides: H.413 maintains the Act 156 requirement that both districts be organized for PK-12 but eliminates the requirement that one of the new districts must operate all grades. (Sec. 2)

Phase 3 Mergers: These mergers are already eligible for tax rate reductions and small school grants – now they will also receive the \$150,000 transition grant. (Sec. 12)

“Three-by-One” and “Two-by-Two-by-One Structures:” Creates two new processes by which potentially merging districts (or recently merged districts) plus a nearby, unmerged district jointly make a proposal to the State Board. Deadline for votes of the electorate = November 30, 2017. (Secs. 3 and 4)

Vernon: Vernon can withdraw unilaterally from the union high school district. There has to be a new vote of the electorate. (Secs. 5-6)

Alt Structure Proposals:

- Deadlines for districts to submit proposal is the earlier dates of January 31, 2018 or 6 months after SBE 3400 rules are final. (Sec. 10)
- Beginning on October 1, 2017, AOE and SBE must review any proposals that are submitted early. (Sec. 8(c))

Statewide Plan:

- SBE must develop and issue model articles of agreement for use by new unified districts created under Statewide Plan when it issues the Plan. (Sec. 8(d))
- AOE will work with the Vermont Superintendent’s Association and the Vermont School Board Association to develop proposed process for districts to create their own articles and present proposal to Legislature by January 1, 2018. (Sec. 8(d))
- An existing supervisory district (Montpelier, Springfield, etc.) with an ADM > 900 is exempt from merger under the Statewide Plan. (Sec. 8(e))
- If an already merged district agrees with the SBE’s request to include a nearby unmerged district, then the UUSD receives \$10,000 for transition expenses (same if the enlarged UUSD does so before requested by the SBE). (Sec. 8(f))

Small School Grants: Act 46 requires the SBE to issue metrics by July 1, 2018 for how it will evaluate proposals under the statute as it will exist on July 1, 2019. H.513 requires the SBE to issue a list of geographically isolated districts by September 30, 2017 (which means it has to develop metrics to determine what an “isolated district” is). (Sec. 9) The AOE does not have sufficient capacity or resources to complete this work on the new timeline described in H.513.

SU Boundary Requests: SBE must act on request by district(s) to change Supervisory Union boundaries within 75 days – but doesn’t remove discretion from SBE to deny the request. (Sec. 14)

Please note that this new language creates substantial new work for the AOE and the SBE, while not applying any additional resources. Once the bill is signed, we will formulate a strategy for a response.

Other:

Student Freedom of Expression: The bill contains new language related to freedom of expression for students in student journalism.

Vermont Standards Board for the Teaching Profession: This section addresses the inclusion of a superintendent on the 13-member standards board for professional educators.

Independent College Student Records: The Association of Vermont Independent Colleges (AVIC) **shall** maintain a memorandum of understanding with each of its member colleges under which each member college agrees to, upon the request of AVIC, properly administer the student records of a member college that fails to comply with the requirements of subsection (a) of this section. This represents a step towards reducing the risk and cost to the State in the event of another college failure, such as the failure of Burlington College, but does not cover independent colleges that are not members of AVIC such as Green Mountain College.

High School Completion Program: This modifies language related to the High School Completion Program to identify "adult education and learning services" providers as providers of High School Completion program, replacing "contracted provider" language in original statute. HSCP services are reimbursed through grants (not contracts) so new language was needed to comply with Bulletin 3.5.

Weighting Study: The bill requires a weighting study and report, for which AOE, in consultation with the Agency of Human Services, Vermont Superintendents Association, Vermont School Boards Association and the Vermont National Education Association would evaluate evidence supporting current weighting used to establish the equalized pupil count for the purpose of setting the tax rate, as well as the relationship between current weights and outcomes. The bill also requires this group to make recommendations on the criteria used for determining weighted long-term membership of a school district, and whether factors for students from economically deprived backgrounds, and students for whom English is not the primary language, and students in districts with low population density should be modified. As the AOE notified the leadership prior to passage, the AOE has no capacity at this point to conduct this study. This is a very complex study, which would require sophisticated analysis and a tremendous amount of subjective judgment. Doing it poorly could create adverse effects for some districts. Given the lack of staff and resources to apply to this question, we are concerned that we may not have staff to support this study in a meaningful way.

Section on Approval of Independent Schools as "approved"

The bill includes the creation of an approved independent schools study committee to consider and make recommendations on the criteria to be used by the State Board of Education for designating an independent school as "approved" to serve publicly funded students. The purpose of the study committee is to make recommendations for the Board with respect to rules.

Recommendations must address:

1. An approved school's enrollment policy and any limitation on a student's ability to enroll;
2. How an approved school should be required to deliver special education services and which categories of these services; and
3. The scope and nature of financial information and special education information that an approved school should be required to be reported by the school to the State Board or Agency of Education.

The study committee will include a member of the State Board. If and when the bill is signed, the Secretary of Education will convene a meeting of the committee.

The bill states that the SBE will suspend further development of any amendments to the rules that govern independent schools pending the receipt of the committee report by the legislature on or before December 1, 2017.

ACT 166 sections

Fingerprinting

The enactment of universal prekindergarten (Act 166 of 2014) created duplicative requirements for conducting fingerprint-supported background checks, relative to prekindergarten providers. Under preexisting law, superintendents are required to conduct fingerprint-supported background checks of all employees and contractors who will have unsupervised contact with children in their schools. The new PreK law entitles parents to 10 hours of publically funded kindergarten at any prequalified kindergarten of their choosing. Superintendents must enter into contracts with these private providers in order for public funds to flow to them, and therefore became responsible for those background checks. At the same time, as a condition of licensure as a child care facility, providers must undergo a fingerprint-supported background check by the Department of Children and Families (DCF).

AOE, the Department of Children and Families, the Vermont School Boards Association and the Vermont Superintendents Association jointly proposed language to eliminate the bulk of duplication while assuring that a background check is conducted for all individuals who may have unsupervised contact with prekindergarten students. This language was incorporated into H.513, and reduces duplicative fingerprinting until we have a better or more permanent fix. It relieves superintendents of the obligation associated with conducting background checks for any child care facility that is licensed by DCF. It does not *prohibit* superintendents from conducting a second check upon hiring by the district; it does move responsibility and associated risk for the checks of private providers to CDD. The practical effect is that DCF is responsible for all checks of PreK staff in both public and private programs. At a superintendent's discretion, the record check of an employee or contractor with a public kindergarten can be repeated.

The bill also made an adjustment to the language related to the quality approval process for PreK providers.

The Criminal Record Checks requirements of this bill section will not apply to a school district's partners in any program's or student placements created by Flexible Pathways legislation, although superintendents are not prohibited from requiring a fingerprint-supported record check for these activities.

Summer Study related to other PreK Issues

In addition, on or before November 1, 2017, the Secretaries of Human Services and of Education shall jointly present recommendations to the House and Senate Committees on Education, House Committee on Human Services, and Senate Committee on Health and Welfare that will ensure equity, quality, and affordability, and reduce duplication and complexity in the current delivery of prekindergarten services.

H.508 Adverse Childhood Events Bill

This bill aims to create “trauma-informed” systems in public health and education. The bill seeks to create a designated position in AHS dedicated to policy and programs that support building resilience for individuals experiencing adverse childhood experiences ([Questionnaire for ACES](#)) to help mitigate the effects and to reduce the profound public health and societal implications. The bill creates a new adverse childhood experience working group that will meet monthly that includes legislators and AOE and AHS staff. This working group is tasked with completing a thorough review of current efforts underway, possible new strategies - and the costs of implementing those strategies at both the State and school level. A report that references the data and background materials is to be produced prior to meetings convening and is due August 15, 2017. The committees will then meet starting in September and propose legislation by November 1, 2017. The committee will also provide an update on progress of the work group by February 2018 and develop an adverse childhood experiences response plan by January 15, 2019. No additional funding was allocated with this bill to support these mandated activities.

S.33 Farm to School Bill

This Act, which relates to the Roza McLaughlin Farm-to-School Program, directs the State Agency of Agriculture, Food & Markets to execute, administer, and award local grants for the purpose of helping Vermont schools develop farm-to-school programs that will sustain relationships with local farmers and producers, enrich the educational experience of students, improve the health of Vermont children, and enhance Vermont’s agricultural economy. The bill also funds equipment, resources, training, and materials that will help to increase use of local foods in the School Food Service Programs; and fund local farm food products, gardening supplies, field trips to farms, gleaning on farms, and stipends to visit farmers, that will help teachers and educators to use hands-on educational techniques to teach children about nutrition and farm-to-school connections.

The bill also funds professional development and technical assistance provided by VT FEED (Food Education Every Day), in partnership with the Agency of Education, Child Nutrition Programs, and farm-to-school technical service providers, to help teachers, child nutrition personnel, and members of the farm-to-school community educate students about nutrition and farm-to-school connections and assist schools and licensed or registered childcare providers in developing a farm-to-school program. Awards shall be directed to those programs interested in improving or increasing participation in child nutrition programs and making progress in the implementation of a School Wellness Policy following the Guidelines developed by the Agency of Agriculture, Food and Markets, the Agency of Education, and the Department of Health in 2015. No award shall be greater than \$15,000.00. No additional funding was allocated with this bill to support mandated activities at the AOE.

S.22 Marijuana Legalization Bill

The Vermont Legislature passed marijuana legalization on May 10. The bill as passed, delays legalization by one year, so in July 2018 it would be legal for someone over 21 to possess up to 1 ounce of marijuana, two mature plants and four immature plants. The bill now goes to the desk of Governor Phil Scott, where it could still be vetoed, signed into law, or passed without being signed. The governor has said the plan may not meet his test for keeping children and roadways safe. Also part of the bill is the formation of a commission that will review taxing and

regulating marijuana in the future. The AOE will likely be asked to support drug use prevention activities, but will not receiving support for this work.

S.135 Economic Development Bill

As of the time of writing, S.135 is still being negotiated in conference committee.

This bill relates to promoting economic development and includes sections related to both AOE staff time and Career and Technical Education (CTE). The Commissioner of Labor is identified as the workforce education and training lead in the state, and will work to coordinate public and private workforce programs to assure information is easily accessible to students, employees and employers.

The bill requires the Commissioner of Labor to convene a multi-agency working group on State Workforce Development, in partnership with the State Workforce Development Board, that will (a) assess Vermont's current workforce education, development, and training program and resource allocations; (b) identify efficiencies and delivery models that more effectively allocate, reallocate, redirect and deploy these resources; and (c) design two or more options for a State workforce development system.

One of the areas focused on is expanding access and accelerating Career Technical Education for students in grades 9-12 and adults. The working group shall have authority to request data and information as it determines is necessary, from agencies, departments, programs within the Executive branch, and nongovernmental entities that receive State-controlled funding.

New workforce education and training (WET) fund categories will be created where the Department of Labor, in collaboration with the Agency of Education, may grant awards to partners that include high schools and K-12 school districts, supervisory unions, technical centers and workforce education and training programs. WET funds may also be used as grants for Career Focus and Planning programs developed in collaboration with the Agency of Education, with funding for one or more programs that institute career training and planning for young Vermonters, beginning in middle school.

A new position was also created, Career Pathways Coordinator, within the Agency of Education, which will work for the State Director for CTE. The coordinator will serve as the inter-agency point person for the development of a State-approved Career Pathways System; and convene stakeholders across the Department of Labor, the Agency of Commerce and Community Development, Agency of Education, Agency of Human Services, the Statewide Workforce Development Board, Career Technical Education, employers, postsecondary partners and related entities in order to engage statewide education, employer, and workforce organizations to co-develop statewide career pathways models. This new position will be game-changing for Agency efforts to strengthen the connection between K-12 education and college and careers.

The bill also lifts the cap on TIF districts, allowing the state to establish new TIF districts. Tax Increment Financing Districts (TIF) are a positive community economic development tool, but also reduce revenue to the Education Fund, which leads to upward pressure on tax rates. In 2016, the TIF cities retained a combined total of \$4,352,858 education property tax dollars that would have been paid to the state had there been no TIFs, according to the Vermont Tax

Department. Currently nine of the original 11 TIF Districts created in Vermont are active: Burlington Waterfront, Winooski, Milton North/South, Milton Town Core, Burlington Downtown, Hartford Downtown, Barre City Downtown, St. Albans City Downtown and South Burlington Downtown. Note that these are all in our towns, not our rural areas. Currently, a reality of TIFs is that less populated areas cannot take advantage of them. The new bill makes an effort to target underserved areas that fit the grant criteria. In its [TIF annual report](#), the Tax Department estimates that by the end of all existing TIFs, the increase in the grand list value will generate incremental revenues totaling \$394 million (\$283 million education and \$89 million municipal). Of this, \$224 million in revenues that would otherwise have gone to the Education Fund instead are directed to the TIF district. Through 2016, the active Districts have generated about \$49.6 million in incremental property tax revenue, of which about \$31 million has gone to finance TIF district infrastructure instead of supporting the Education Fund. This contributes to upward pressure on tax rates. After the retention period ends, the Tax Department estimates revenues to the Education Fund will increase by \$17 million annually. Increasing the number of TIF districts will likely increase education property tax rates over time by reducing revenue to the Education Fund.

The bill was being discussed in conference committee on May 11, with the Senate not willing to finalize the bill until the budget had passed.

H.518 The Budget Bill

As of the time of writing, the Budget is still being negotiated. This section highlights topics that have been focal points of discussion. All details are speculative at this point.

All but one request for the Agency of Education FY 2018 budget was approved by both the House and Senate versions of the Budget Bill. AOE had requested the grant amount for the Adult Diploma Program be increased based on the statutory allocation. This method had not been followed for the past several years and AOE proposed to catch up with the FY 2018 budget request. The increase would have been \$434,862 added to the current year's \$850,000 amount. The House bill accepted this increase but the Senate only added \$50,000. The final number is still pending the conference committee decision.

The Education Fund has several parts in play as the session wraps up. The Governor's proposal to level fund school district funding at the FY 17 level was not accepted and both the House and Senate agreed to fund districts at the level proposed by local boards and approved by the voters in March. This amount is expected to be about 3.3% (\$43 million) above the current year amount.

The Senate moved responsibility for the annual Teacher's Retirement Contribution (value of about \$7.8 million) from the General Fund to the Education Fund. This frees up resources in the General Fund, and makes current teacher retirement contributions the direct responsibility of the Education Fund.

The School-Based Health Services fund (school-based Medicaid special fund) usually transfers \$9.6 million to the Education Fund revenues, but the Senate proposed transferring \$3 million to cover child care programs leaving the Education Fund with \$3 million less in revenue. The latest news from the budget conference committee is that this amount has been reduced to \$1 million.

For context, the Medicaid is raised by schools (and AOE staff) by making the reimbursement claims that bring in that money. Most of the Medicaid dollars are sent back to schools as a grant or a transfer: 1) primarily to the Education Fund to support lower tax rates and 2) secondarily to fund grants that they currently spend on extended days and summer programs, full day PreK, technology plans, mental health services and other priorities. There is a provision that up to 30% can be used for administration at the state level. It is currently at 15% by longstanding practice and has paid for about \$2.6M in staff at AOE (including staff to generate this revenue in the first place), as well as \$1.7M at DCF discretion. The proposal in the current budget bill brings us closer to the 30% limit and does increase upward pressure on local property tax rates.

Currently, almost every teacher contract statewide is being negotiated because teachers are transitioning to new health plans statewide. As educators shift to new plans, teachers and districts across the state are negotiating how to manage potential savings and ensure teachers are kept “whole.” Potential savings in FY18 for health insurance associated with the shift have been estimated by VSBIT to be up to as \$13 million in the current year, and up to \$26 million in subsequent years. The legislature and the Governor are currently working on strategies to “rebase” the health care benefits and ensure savings are used to reduce tax pressures statewide. How this would be accomplished is the last major item before the legislature and is currently pending. At this time, given the numerous lines of the fund in flux, how any of these proposals will affect property taxes is still unknown.

H.509 The Yield Bill

The Yield Bill sets the property and income yields for education tax rates along with the non-residential rate. If property and income yields and a non-residential rate are not passed, default rates will be as prescribed in Title 32, \$1.00, 2.0%, and \$1.59. These rates will not bring in enough tax revenue to the Education Fund.

The bill was under discussion by the House and Senate on May 11 and currently is on the Senate Floor. The Senate version has the language regarding how much member town tax rates can change after a merger and during the tax rate reduction period (the +/- 5.0% language). The House does not propose to change that.

As currently written, the House proposes to increase the sales and use tax to the Education Fund 37 percent from its current 35 percent.

The General Fund transfer shall include an amount required to cover any unfunded mandates as determined by the Emergency Board.

The House proposes to revert back to the House passed higher property and income yields (\$10,077 and \$11,820, respectively) and a non-residential rate of \$1.555.

The bill currently includes a section related to an unfunded education mandate amount transfer. Not more than 30 days after the end of each annual legislative session, the Joint Fiscal Office and the Secretary of Administration, in consultation with the AOE Secretary and with the AHS Secretary as appropriate, will estimate the “unfunded education mandate amount.” The estimate will equal the total dollar amount necessary for supervisory unions and school districts

to perform any action that is required that has a related cost but not an identified appropriation for fulfilling the obligation. The JFO and Secretary of Administration will present to the Emergency Board at its July meeting an estimate of the unfunded education mandate amount. It is unclear whether this language will make it into the final bill.

The Senate proposal to the House included a Health Care Cost Working Group to consider and make recommendations on how to achieve maximum savings for negotiated teacher health care benefits. The House proposal of amendment also addresses potential savings from a health care transition, but not as suggested by Governor Phil Scott and the Administration, nor the Senate. The Governor proposes to have the State negotiate the teacher health benefit for all educators, while leaving other contractual issues to local negotiations. His logic is that the State is better positioned to negotiate in this transition. The House proposes a plan to withhold identified health plan savings in FY18 payments to districts from any savings resulting from health care negotiations in FY18. The State would return those savings to districts in FY19. This discussion has been developing so quickly that any summary at the time of this writing will be out of date by the SBE meeting.