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THE ALL STUDENTS INITIATIVE, ANTI-BULLYING AND  
ATHLETICS FOR HOME-SCHOOLED CHILDREN:  
EDUCATION REFORM IN THE 2013 GENERAL ASSEMBLY  
SESSION

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I. BACKGROUND

In 2012, Virginia Governor Robert F. McDonnell announced “The Governor’s K-12 Education Reform Summit: Investing in Students Today, Creating the Workforce of Tomorrow.”<sup>162</sup> With this announcement, the Governor praised the Commonwealth’s public school system while underscoring the need for improvement by stating, “Until every child, in every zip code is guaranteed access to a quality education, we have not done our job.”<sup>163</sup> The Governor’s summit brought legislators, education stakeholders, and policymakers into one room to discuss issues facing the K-12 education system, such as teacher pay, educational choice, technology and innovation, and workforce development.<sup>164</sup> At the summit, the Governor began forming his approach to K-12 public education reform for the Commonwealth.

With Governor McDonnell’s “All Students Initiative” and additional legislation from both parties, education reform was a significant issue during the 2013 Virginia General Assembly Session. This article surveys some of the Governor’s main legislative priorities in education reform and the challenges these priorities faced during the 2013 Virginia General Assembly Session.

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<sup>162</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces K-12 Education Reform Summit (July 10, 2012), available at <http://www.governor.virginia.gov/News/viewRelease.cfm?id=1333>.

<sup>163</sup> *Id.*

<sup>164</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Speakers for Governor’s K-12 Education Reform Summit (Aug. 8, 2012), available at <http://www.governor.virginia.gov/News/viewRelease.cfm?id=1370>.

## II. GOVERNOR McDONNELL'S "ALL STUDENTS INITIATIVE"

On December 13, 2012 Governor McDonnell released the first of three phases of his K-12 public education reform package, the "All Students Initiative."<sup>165</sup> The first phase focused on teachers of the Commonwealth, and many components of this phase were supported by education organizations in Virginia.<sup>166</sup> These teacher-centered reforms included, "a two percent pay increase for all Virginia teachers, incentives for teachers in STEM-H subjects [Science, Technology, Engineering, Math, and Health], strategic compensation grants for teachers, and other measures to recruit, retain, and reward excellent teachers."<sup>167</sup>

The second phase of the All Students Initiative included bringing Teach for America to Virginia, changing school report cards, reducing red tape for local school divisions, supporting teacher innovation, and strengthening the reading and mathematics proficiency of the students of the Commonwealth.<sup>168</sup> The third and final phase of the All Students Initiative would establish the Opportunity Educational Institution to turn around failing schools and other charter schools. This would include adopting measures to increase public school choice for parents and students in the Commonwealth.<sup>169</sup>

### A. Phase 1: Empowering Excellent Teachers

In introducing the first phase of the All Students Initiative, Governor McDonnell stated that he sought input from:

Teachers, parents, the Virginia School Boards Association, Virginia Education Association, Virginia Association of School Superintendents, Virginia Association of Elementary School Principals, Virginia Association of

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<sup>165</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Measures to Empower Our Excellent Teachers in Virginia (Dec. 13, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1553>.

<sup>166</sup> Id. ("Today, Governor Bob McDonnell joined Delegate Kirk Cox and former Secretary of Education Jim Dyke, leaders from the Virginia School Boards Association, Virginia Association of School Superintendents, Virginia Association of Elementary School Principals, Virginia Association of Secondary School Principals and key business leaders to announce part one of his 2013 K-12 education reform legislative agenda.").

<sup>167</sup> Id.

<sup>168</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Rolls Out Additional K-12 Education Reform Agenda Initiatives (Jan. 3, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1582>.

<sup>169</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Phase Three of the ALL STUDENTS Agenda (Jan. 9, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1592>.

Secondary School Principals, the Virginia Chamber of Commerce, Virginia Professional Educators, the Virginia PTA and many others.<sup>170</sup>

The organizations listed here—from education groups like the Virginia Education Association to business groups, such as the Virginia Chamber of Commerce—speak to the fact that Virginia values its teachers and the role they play in the development of its students. The most notable examples of this value are a two percent salary increase for teachers<sup>171</sup> and the Educator Fairness Act,<sup>172</sup> which both came from this first phase of the Governor’s education reform package.

### 1. Two Percent Salary Increase for Teachers

Included in Governor McDonnell’s executive budget amendments was a two percent salary increase for teachers, administrators, and other full-time staff from the state’s share of funding.<sup>173</sup> This two percent pay raise equaled an increase of \$58.7 million from the State’s General Fund to be effective July 1, 2013.<sup>174</sup> However, this proposed pay raise was conditional upon the General Assembly passing the Educator Fairness Act.<sup>175</sup> Additionally, as per Virginia law, in order to receive the state’s share of the funding increase, the local school division must provide a matching salary increase by a certain date.<sup>176</sup> As expected, this salary increase was supported by the agreement of the education community, including the Virginia Education Association<sup>177</sup> and the Virginia Association of School Superintendents.<sup>178</sup>

When the final budget was passed, it included a two percent salary increase, totaling \$70.2 million, for teachers, administrators, and other full-time staff, as well as for the support positions of the public schools.<sup>179</sup> As the nation’s economic downturn caused Virginia’s legislators to cut spending and streamline government during the past few years, this salary

<sup>170</sup> Governor Robert F. McDonnell, *supra* note 4.

<sup>171</sup> *Governor’s Proposed Amendments for the 2012-2014 Current Budget: Public Education*, LEGISLATIVE INFO. SYS. (2013), available at <http://lis.virginia.gov/131/bud/BudSum/PubEd.pdf> (last visited May 20, 2013).

<sup>172</sup> H.B. 2151, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 20, 2013).

<sup>173</sup> *Governor’s Proposed Amendments for the 2012-2014 Current Budget, Public Education*, LEGISLATIVE INFO. SYS. (2013), available at <http://lis.virginia.gov/131/bud/BudSum/PubEd.pdf> (last visited May 20, 2013).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> VEA Members Stepping Up During General Assembly, VA. EDUC. ASS’N, <http://www.vea-nea.org/home/2049.htm> (last visited Jun. 20, 2013).

<sup>178</sup> 2013 Legislation Position Statements, VA. ASS’N OF SCH. SUPERINTENDENTS, <http://www.vassonline.org/file/586/view> (last visited Jun. 20, 2013).

<sup>179</sup> Overview of Adopted Amendments to the 2012-2014 Budget, LEGISLATIVE INFO. SYS. (2013), available at <http://lis.virginia.gov/131/bud/FinalSum/FullReport.pdf> (last visited May 20, 2013).

increase marked the first pay raise for the Commonwealth's educators in over four years.<sup>180</sup>

## 2. The Educator Fairness Act (House Bill 2151/Senate Bill 1223)

The Educator Fairness Act, better known as the "teacher's contract bill," was thought, prior to session, to be one of the more contested bills of the education reform package. Many education organizations were split on a version of the bill that had failed during the 2012 Session.<sup>181</sup> However, 2013 proved to be a new year and a fresh start for Governor McDonnell and brought about a renewed push towards making changes to the grievance process, as well as the hiring, evaluating, and terminating processes for teachers and school administrators. When Governor McDonnell announced that a second attempt would be made at a teacher's contract bill, the Virginia Association of Secondary School Principals ("VASSP") and the Virginia School Boards Association ("VSBA") were supportive of the Governor's request for legislation.<sup>182</sup> Keith Perrigan, representing VASSP, said, "The Virginia Association of Secondary School Principals stands with the Governor in expressing our support for a legislative plan that maintains respect for continuing contract status for instructional personnel, recognizes the need to retain the best teachers for our students and streamlines the procedure for dismissal of ineffective teachers." For the VSBA, John Lumpkins said, "The Governor's proposal allows time for a teacher to demonstrate appropriate student academic progress. This extended period is a huge positive for the teaching profession."<sup>183</sup> In light of the previous year's continuous debate over the teacher contract bill, such early supportive comments, before an actual bill had been entered, suggested that the 2013 legislation would not drastically change teacher tenure as was proposed in 2012.

House Bill 2151, sponsored by Delegate Richard P. Bell (R-Staunton), and Senate Bill 1223, sponsored by Senator Thomas K. Norment, Jr. (R-

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<sup>180</sup> 2013 Legislation Position Statements, VA. ASS'N OF SCH. SUPERINTENDENTS, <http://www.vassonline.org/file/586/view> (last visited Jun. 20, 2013).

<sup>181</sup> Compare Larry Lentz, VASSP Opposition to HB 576 - Contract and Evaluation Policies Legislation, EDULOG (Mar. 5, 2013), <http://news.vassp.org/?p=896>, and Robley Jones, Victory! HB 576 Re-referred to Committee, VEA DAILY REPORTS (Mar. 8, 2012, 4:33 PM), <http://www.vedailyreports.com/2012/03/victory-hb-576-re-referred-to-committee.html>, with Press Release, Governor Robert F. McDonnell, Statement of Governor Bob McDonnell on HB 576 (Mar. 8, 2012), <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1167>.

<sup>182</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Measures to Empower Our Excellent Teachers in Virginia (Dec. 13, 2012), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1553>.

<sup>183</sup> *Id.*

Williamsburg), required teachers, assistant principals, and principals to be evaluated informally every year and formally every three years and increased the probationary period for new teachers from three to five years.<sup>184</sup> Additionally, the bill modified the existing grievance procedure for teachers and gave local school boards the option to hire impartial hearing officers designated by the local school boards rather than the fact-finding panels that were currently in place.<sup>185</sup> By the second week of the 2013 General Assembly Session, the Virginia Education Association, Virginia Association of School Superintendents, Virginia Association of Elementary School Principals, Virginia Association of Secondary School Principals, Virginia School Boards Association, Virginia Association of Counties, and Virginia Chamber of Commerce all supported House Bill 2151 and Senate Bill 1223.<sup>186</sup> In contrast to 2012, when the teacher contract bill was defeated after contentious debate, the 2013 version passed the General Assembly with scant opposition, and Governor McDonnell heralded this passage.<sup>187</sup> The bill unanimously passed the Senate, and met only some opposition in the House of Delegates with a 75-25 final vote, with almost all of the opposition votes coming from Democrats.<sup>188</sup> While the Education Fairness Act does make changes to the teacher contract process, the passed legislation is not the same overhaul of the teacher tenure system that was proposed during the 2012 General Assembly Session.

#### B. Phase 2: Innovation and Accountability

Many of the measures in the second phase passed with little opposition in the legislature, including the Teach for America Act<sup>189</sup> and the Reading is Fundamental Act;<sup>190</sup> however, the changes to school report cards proved to

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<sup>184</sup> H.B. 2151, *supra* note 11; see also Press Release, Governor Robert F. McDonnell, Virginia Education Association Supports Governor McDonnell's Educator Fairness Act (Jan. 17, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1613>.

<sup>185</sup> H.B. 2151, *supra* note 11.

<sup>186</sup> Press Release, Governor Robert F. McDonnell, Virginia Education Association Supports Governor McDonnell's Educator Fairness Act (Jan. 17, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1613>.

<sup>187</sup> Press Release, Robert F. McDonnell, Governor McDonnell's "Educator Fairness Act" Passes in the Senate on a 40-0 Vote (Feb. 4, 2013), available at <http://www.governor.virginia.gov/News/viewRelease.cfm?id=1649>.

<sup>188</sup> SB1223 Public schools; evaluation policies and grievance procedures, LEGISLATIVE INFO. SYS. (Feb. 13, 2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+HV0848+SB1223>.

<sup>189</sup> H.B. 2084, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 16, 2013) (allowing Teach for America to operate in Virginia and permitting its teachers to be placed in hard-to-staff public schools across the Commonwealth without them obtaining actual teacher licensure).

<sup>190</sup> H.B. 2144, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 20, 2013) (providing additional instruction time for reading for public elementary schools which are struggling to show proficiency at the third grade reading level through Standards of Learning testing).

be one of the most debated components of the Governor's education reform package.

#### 1. A-F School Grading (HB1999/SB1207)

One of the most contested bills during the 2013 General Assembly Session was Governor McDonnell's A-F School Report Cards legislation. Assigning letter grades to schools is not a new policy initiative, as Florida became the first state, in 1999, under Governor Jeb Bush, to switch to this system.<sup>191</sup> Since 1999, ten other states and New York City have started A to F school rating systems.<sup>192</sup> This year, Governor McDonnell decided to follow the lead of Governor Jeb Bush by attempting to simplify the current school accountability system to an easy-to-understand grading system to help parents more easily measure the performance of their child's school.<sup>193</sup>

House Bill 1999, sponsored by Delegate Thomas A. Greason (R-Leesburg), and Senate Bill 1207, sponsored by Senator William M. Stanley, Jr. (R-Moneta), required the Board of Education to report individual school performance using an A to F grading system that included the standards of accreditation, state and federal accountability requirements, and student growth indicators.<sup>194</sup> Each letter grade would coincide with a level of accreditation, with an A meaning that the school is "fully accredited by the state, achieve[d] at least a 25 percent advanced proficiency pass rate on state tests, and meet[s] all federal benchmarks for testing," while an F means that the school was denied accreditation.<sup>195</sup> According to Senator Stanley, only 52 of the 2,093 public schools in the Commonwealth would currently receive a D or an F grade under this new system.<sup>196</sup>

Proponents of the legislation, such as Governor McDonnell and supportive Republican members of the General Assembly, argued that "a familiar grading system will allow parents to easily understand a school's

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<sup>191</sup> Michael Alison Chandler, *Virginia Lawmakers Seek to Simplify School Ratings with A to F Grades*, WASH. POST, Feb. 23, 2013, available at [http://www.washingtonpost.com/local/education/virginia-lawmakers-seek-to-simplify-school-ratings-with-a-to-f-grades/2013/02/23/40335d76-7b90-11e2-82e8-61a46c2cde3d\\_story.html](http://www.washingtonpost.com/local/education/virginia-lawmakers-seek-to-simplify-school-ratings-with-a-to-f-grades/2013/02/23/40335d76-7b90-11e2-82e8-61a46c2cde3d_story.html).

<sup>192</sup> *Id.*

<sup>193</sup> Press Release, Governor Robert F. McDonnell, *Governor McDonnell Rolls Out Additional K-12 Education Reform Agenda Initiatives* (Jan. 3, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1582>.

<sup>194</sup> H.B. 1999, Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 21, 2013).

<sup>195</sup> Chandler, *supra* note 30.

<sup>196</sup> Alana Dvorak, *Updated: School Grading Bill Inches Closer to Law*, LOUDOUN TIMES, Feb. 5, 2013, [http://www.loudountimes.com/index.php/news/article/school\\_grading\\_bill\\_inches\\_closer\\_to\\_law435](http://www.loudountimes.com/index.php/news/article/school_grading_bill_inches_closer_to_law435).

performance, while giving schools definitive targets for improvement...<sup>197</sup> Delegate Greason explained that public schools in Virginia are already graded through labels such as “accredited” or “accredited with warning,” but these labels are difficult for parents to comprehend and that this new grading system translates it into terms the parents could easily understand.<sup>198</sup> Additionally, proponents of the legislation, including House Majority Leader Kirk Cox (R-Colonial Heights), argued that the grading system was the only way to hold underperforming schools accountable.<sup>199</sup>

This bill did not receive the same level of support from the education community as many of the Governor’s other proposals. Organizations opposing House Bill 1999/ Senate Bill 1207 included the Virginia Education Association,<sup>200</sup> the Virginia School Boards Association,<sup>201</sup> the Virginia Association of School Superintendents,<sup>202</sup> and the Virginia Association of Secondary School Principals.<sup>203</sup> These organizations argued that more – not less – information was better and that the letter grades would not truly reflect the school’s performance.<sup>204</sup> Representatives from the Virginia Association of School Superintendents and the Virginia Education Association expressed concern for boiling the complex performance indicator system down to one letter grade. Steven Staples, Executive Director of VASS, said:

We don’t give children one grade...They get a grade in history and in English and in math. If you go to the Virginia Department of Education Website, there are probably 200 indicators that reflect a school’s performance. We don’t know how that is going to be boiled down to one grade.<sup>205</sup>

Meg Gruber, the VEA president, agreed, “Education is a complex problem. It’s simplistic to just put a letter grade on it...It seems to be this

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<sup>197</sup> Chandler, *supra* note 30.

<sup>198</sup> Lary O’Dell, *Va. Panel Backs A’s-to-F’s for Schools*, WASH. TIMES, Jan. 30, 2013, <http://www.washingtontimes.com/news/2013/jan/30/va-panel-backs-as-to-fs-for-schools/#ixzz2TDStioj5>.

<sup>199</sup> Carissa DiMargo, McDonnell Signs A-F School Grading Bill, FIRSTREAD- DMV, (Mar. 22, 2013, 9:41 PM), <http://www.nbcwashington.com/blogs/first-read-dmv/McDonnell-Signs-A-F-School-Grading-Bill-199596341.html>.

<sup>200</sup> Dvorak, *supra* note 35.

<sup>201</sup> A-F School Report Cards (Proposed Accountability System), VA. SCH. BD. ASS’N (last viewed Jun. 10, 2013) [http://www.vaschoolboards.org/images/uploads/VSBA\\_ReportCardspositionpaper\\_draft3.pdf](http://www.vaschoolboards.org/images/uploads/VSBA_ReportCardspositionpaper_draft3.pdf).

<sup>202</sup> Samantha Morgan, Superintendents Criticize School Grading Plan, CAPITAL NEWS SERV. (Feb. 5, 2013), <http://capitalnews.vcu.edu/2013/02/05/superintendents-criticize-school-grading-plan/>.

<sup>203</sup> Bet Neale, 2013 G A Session Ends with a Historic Budget Deal, PRINCIPAL INSIGHT EDULOG, (MAR. 4, 2013), <http://news.vassp.org/?p=2143>.

<sup>204</sup> Michael Alison Chandler, Virginia lawmakers seek to simplify school ratings with A to F grades, WASH. POST, Feb. 23, 2013, available at [http://www.washingtonpost.com/local/education/virginia-lawmakers-seek-to-simplify-school-ratings-with-a-to-f-grades/2013/02/23/40335d76-7b90-11e2-82e8-61a46c2cde3d\\_story.html](http://www.washingtonpost.com/local/education/virginia-lawmakers-seek-to-simplify-school-ratings-with-a-to-f-grades/2013/02/23/40335d76-7b90-11e2-82e8-61a46c2cde3d_story.html).

<sup>205</sup> *Id.*

idea that parents need information. I'm not sure this is going to make them anymore informed."<sup>206</sup>

Several localities also expressed their concern for the legislation,<sup>207</sup> and the Virginia Municipal League stated that confusion could be created by another accountability report on schools.<sup>208</sup> Many Democratic legislators echoed these sentiments of opposition throughout the 2013 General Assembly session.<sup>209</sup>

House Bill 1999 and Senate Bill 1207 passed through the education committees with changes to the initial legislation along party lines.<sup>210</sup> When the bills came to the full House of Delegates, several Republicans voted against the measures while some Democrats voted in favor.<sup>211</sup> Ultimately, Senate Bill 1207 received a 20-20 vote in the Senate, meaning that Lt. Governor Bill Bolling would cast the decisive vote, and he voted in favor of the bill.<sup>212</sup> However, when House Bill 1999 came to the Senate, Senator Harry B. Blevins (R-Chesapeake) changed his vote to pass the legislation.<sup>213</sup> Due to changes made by each chamber, the legislation was placed into a

<sup>206</sup> Dvorak, *supra* note 35.

<sup>207</sup> See, e.g., Dan McFarland & Donnie Johnston, Orange, Culpeper Boards Oppose Letter Grades for Schools, FREDRICKSBURG, (Mar. 12, 2013), <http://news.fredericksburg.com/newsdesk/2013/03/12/orange-culpeper-boards-oppose-letter-grades-for-schools/>; Amber Lester Kennedy, Superintendents Question Need for A-F School Grading System, WYDAILY, (Feb. 12, 2013), <http://wydaily.com/2013/02/12/superintendents-question-need-for-a-f-school-grading-system/>; Julian Walker & Marjon Rostami, Bill Hinders School Fixes, Chesapeake Officials Say, PILOTONLINE, (Feb. 20, 2013), <http://hamptonroads.com/2013/02/bill-hinders-school-fixes-chesapeake-officials-say>.

<sup>208</sup> Reminder: Cuccinelli, McAuliffe to speak at Local Government Day Event, VML LEGISLATIVE BULLETIN (Jan. 22, 2013), available at <http://www.vml.org/eNews/eNewsJan2513.html#coverst>.

<sup>209</sup> See, e.g., Kennedy, *supra* note 46 (“[Williamsburg-James City County Superintendent Steven] Constantino... said... ‘I don’t understand why the legislature would think the public is so stupid they couldn’t understand what “accredited with warning” means,’ he said. ‘I’m perplexed why legislation was passed with no rubrics, no metrics. It suggests this is more beneficial politically.’”); Chandler, *supra* note 44 (“Delegate Jennifer L. McClellan, Richmond Democrat, said she didn’t think it was appropriate to judge historically high-achieving schools against those in poorer areas that struggle. ‘There is a stigma associated with that, but there’s no asterisk saying we aren’t comparing apples to apples.’”).

<sup>210</sup> S.B. 1207, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 21, 2013); H.B. 1999, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 21, 2013).

<sup>211</sup> S.B. 1207 Individual school performance; Board of Education shall approve student growth indicators, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+HV0995+SB1207>; H.B. 1999 Individual school performance; Board of Education shall approve student growth indicators, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+HV0481+HB1999> (Republican Delegates voting against HB1999/SB1207: Anderson, J. Cox, Crockett-Stark, Edmunds, Habeeb, R. Marshall, Morefield, O’Quinn, and Villanueva. Democrats voting for HB1999/SB1207: Joannou, Morrissey, and Surovell.).

<sup>212</sup> Dvorak, *supra* note 35.

<sup>213</sup> HB 1999 Individual school performance; Board of Education shall approve student growth indicators, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?-131+vot+SV0918HB1999+HB19999>.



conference committee.<sup>214</sup> After further negotiations and deliberations by the conference committee, both bills passed the General Assembly.<sup>215</sup>

### C. Phase 3: Public School Choice

The final phase of the Governor's All Students Initiative included proposed legislation to eliminate the requirement that local school boards must receive authorization from the Virginia Board of Education for a charter school, amend the Constitution of Virginia to allow the State Board of Education to authorize charter applicants, and allow for a state takeover of failing schools.<sup>216</sup> As several of these proposals divested local school divisions of their power, most of these measures were met with opposition from the education organizations. Out of the four proposed initiatives in this phase, only two passed the General Assembly.<sup>217</sup>

#### 1. The Opportunity Educational Institution

Governor McDonnell's third phase, modeled after Tennessee's "Achievement School District"<sup>218</sup> and Louisiana's "Recovery School District,"<sup>219</sup> initiated legislative proposals to create the Opportunity Educational Institution.<sup>220</sup> These programs in Tennessee and Louisiana created a new school division within the respective state's Department of Education to capture and turnaround underperforming schools.<sup>221</sup> Governor McDonnell envisioned a similar program in Virginia where the Virginia Department of Education would "take-over" failing schools through a

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<sup>214</sup> Minute Book, 2013 SESSION SENATE OF VA. available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+min+SM0223>; SB 1207 Individual school performance; Board of Education shall approve student growth indicators, report, LEGISLATIVE INFORMATION SYSTEM (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=131&typ=bil&val=sb1207>.

<sup>215</sup> HB 1999 Individual school performance; Board of Education shall approve student growth indicators, report, LEGISLATIVE INFO. SYS. (2013), available at [http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+SV\\_0643HB1999+HB1999](http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+SV_0643HB1999+HB1999); SB 1207 Individual school performance; Board of Education shall approve student growth indicators, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+SV0348SB1207+SB1207>.

<sup>216</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Phase Three of the ALL STUDENTS Agenda (Jan. 9, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1592>.

<sup>217</sup> H.B. 2076, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Mar. 12, 2013); S.B. 1324, Va. 2013 Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted May 3, 2013); S.B. 1131, Va. 2013 Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Feb. 22, 2013).

<sup>218</sup> TENN. CODE ANN. § 49-1-614 (West 2012).

<sup>219</sup> LA. REV. STAT. ANN. § 17:10.5(A) (2007).

<sup>220</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Phase Three of the ALL STUDENTS Agenda (Jan. 9, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1592>.

<sup>221</sup> See TENN. CODE ANN. § 49-1-61 (West 2012); LA. REV. STAT. ANN. § 17:10.5(A) (2007).

newly created statewide school division.<sup>222</sup> To enact the program, Governor McDonnell announced a constitutional amendment that would create a statewide school division and an additional measure to create the Opportunity Educational Institution.<sup>223</sup> Given the nature of such a take-over of local school division power, the initiative was met with heavy opposition from education organizations, as well as Virginia's localities and groups that represent them.

House Joint Resolution 693, carried by Delegate Gregory D. Habeeb (R-Salem), and Senate Joint Resolution 327, carried by Senator Ryan T. McDougle (R-Mechanicsville), sought to authorize the General Assembly to amend the Constitution of Virginia to establish a statewide school division to supervise and administer schools that have been denied accreditation for a number of consecutive school years.<sup>224</sup> According to the legislation:

Supervision of the statewide school division is to be vested in a single statewide school board established as may be provided by law for the funding of the statewide school division. Per pupil shares of Standards of Quality, federal, and special education funds may be transferred from the local school district of residence to the statewide school district.<sup>225</sup>

Senator McDougle's version of the constitutional amendment passed the Privileges and Elections Committee, with minor changes, by a party line vote of 8 to 5, but it failed to pass in the Senate, because no action was taken on the legislation prior to the deadline for bills to pass their originating chamber.<sup>226</sup> Delegate Habeeb's bill was able to pass through the House of Delegates; however, it met a similar fate in the Senate, as it was recommitted to the Privileges and Elections Committee from the floor, effectively ceasing any further legislative action for the year.<sup>227</sup> With both amendments failing to pass the Senate, the Governor's constitutional

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<sup>222</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Phase Three of the ALL STUDENTS Agenda (Jan. 9, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1592>.

<sup>223</sup> *Id.*

<sup>224</sup> S.J. 327, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as introduced Jan. 9, 2013); H.J. 693, 2013 Va. Gen. Assemb., Reg. Sess. (Va. 2013) (as introduced Jan. 09, 2013).

<sup>225</sup> S.J. 327, *supra* note 63; H.J. 693, *supra* note 63.

<sup>226</sup> See SJ 327 Constitutional amendment ; state school division for schools denied accreditation, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?-131+sum+SJ327> (Senate Privileges and Elections Committee Report Jan. 29, 2013 and Senate Report Feb. 23, 2013).

<sup>227</sup> See HJ 693 Constitutional amendment; state school division for schools denied accreditation, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?-131+sum+HJ693> (House Report Feb. 4, 2013 and Senate Privileges and Elections Committee Report Feb. 19, 2013).

amendment to create such a statewide school division failed for the 2013 General Assembly Session. Although the constitutional amendment failed, the Opportunity Educational Institution legislation was passed.<sup>228</sup>

The constitutional amendment was initiated to combat the belief that the creation of the statewide school division was unconstitutional in Virginia.<sup>229</sup> As these failing schools are physically located within local school divisions, Article VIII, Section 7 of the Constitution of Virginia<sup>230</sup> was cited by opponents to demonstrate that the school division was unconstitutional.<sup>231</sup> These opponents argued that because Governor McDonnell initiated a constitutional amendment and a bill for the statewide school division, it must be unconstitutional.<sup>232</sup> If the Opportunity Educational Institution (“OEI”) passed, opponents anticipated constitutional questioning and litigation.<sup>233</sup>

House Bill 2096, also sponsored by Delegate Habeeb, and Senate Bill 1324, sponsored by Senator McDougle, would create the OEI, to be administered and supervised by the Opportunity Educational Institution Board.<sup>234</sup> The legislation would require “any school that has been denied accreditation and permit[] any school that has been accredited with warning for three consecutive years to be transferred to the Institution and remain in the Institution for five years or until the school achieves full accreditation.”<sup>235</sup>

Additionally, House Bill 2096/ Senate Bill 1324 detailed the requirements for student attendance, staffing, and funding for the OEI.<sup>236</sup> As provisions of the legislation require funding by the General Assembly in

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<sup>228</sup> S.B. 1324, 2013 Va. Gen. Assem. Reg. Sess. (Va. 2013) (as enacted May 5, 2013).

<sup>229</sup> Fairfax County Board of Supervisors, *Fairfax County Board of Supervisors' 2013 General Assembly Legislative Report* (Feb. 26, 2013) at 18, available at <http://www.fairfaxcounty.gov/government-legislation/2013/general-assembly-final-report.pdf>.

<sup>230</sup> VA. CONST., art. VIII, § 7 (“The supervision of schools in each division shall be vested in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law.”).

<sup>231</sup> Robley Jones, *Jefferson is Rolling Over in His Grave*, VEA DAILY REPORTS (Feb.13, 2013, 5:31 PM), <http://www.veadailyreports.com/2013/02/jefferson-is-rolling-over-in-his-grave.html>.

<sup>232</sup> Olympia Meola, *McDonnell gets division that can take over failing schools; Budget appropriates \$150,000; governor says he may seek more*, RICHMOND TIMES DISPATCH (Feb. 24, 2013), available at [http://www.timesdispatch.com/news/state-regional/government-politics/mcdonnell-gets-division-that-can-take-over-failing-schools/article\\_a1acc205-257d-5b81-9814-37208787e220.html](http://www.timesdispatch.com/news/state-regional/government-politics/mcdonnell-gets-division-that-can-take-over-failing-schools/article_a1acc205-257d-5b81-9814-37208787e220.html).

<sup>233</sup> *Id.*

<sup>234</sup> H.B. 2096, 2013 Va. Gen. Assem., Reg. Sess. (Va. 2013) (as engrossed Feb. 21, 2013); S.B. 1324, 2013 Va. Gen. Assem., Reg. Sess. (Va. 2013) (as enacted May 3, 2013).

<sup>235</sup> H.B. 2096, 2013 Va. Gen. Assem., Reg. Sess. (Va. 2013) (as engrossed Feb. 21, 2013); S.B. 1324, 2013 Va. Gen. Assem., Reg. Sess. (Va. 2013) (as enacted May 3, 2013).

<sup>236</sup> H.B. 2096, 2013 Va. Gen. Assem., Reg. Sess. (Va. 2013) (as engrossed Feb. 21, 2013); S.B. 1324, 2013 Va. Gen. Assem., Reg. Sess. (Va. 2013) (as enacted May 3, 2013).

order to be implemented,<sup>237</sup> the fate of the OEI would hinge not only on this legislation, but also on the necessary appropriations in the budget. Without proper funding, the Opportunity Educational Institution Board would be unable to implement and operate the school division.

The many facets of this legislation — including removing authority from local school divisions and capturing funding from localities to send to the state-run school division — created many points of debate. Proponents of the legislation argued that while Virginia has excellent public schools, the six schools that are considered failing are perpetually failing.<sup>238</sup> Proponents, such as Majority Leader Kirk Cox, stated that the current system in Virginia for failing schools is not working due to a lack of accountability.<sup>239</sup> Currently, if a locality has a failing school, the local school board is required to submit a proposed corrective action plan to the Virginia Board of Education.<sup>240</sup> The Board of Education creates a memorandum of understanding with the local school board regarding the plan, but has no recourse against the locality should the school continue to fail.<sup>241</sup> Common themes throughout the General Assembly's session by those favoring the legislation included that a child should receive a quality education no matter where he or she may live or what his or her background may be,<sup>242</sup> and that the education community is too concerned about its “bottom-line” — that its local dollars would leave the district to follow the student — and not concerned enough about the success of the students in perpetually failing schools.<sup>243</sup>

The Virginia Education Association, Virginia Association of School Superintendents, Virginia Association of Elementary School Principals, Virginia Association of Secondary School Principals, Virginia School Boards Association, Virginia PTA, Virginia Municipal League, Virginia Association of Counties, and Virginia First Cities all joined together in

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<sup>237</sup> S.B. 1324, 2013 Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted Feb. 23, 2013).

<sup>238</sup> Greg Habeeb, 02 13 13 Habeeb HB2096 FullDebate, YOUTUBE (Feb. 6, 2013), [http://www.youtube.com/watch?v=\\_9FDbwceJ8U](http://www.youtube.com/watch?v=_9FDbwceJ8U).

<sup>239</sup> Kirk Cox & Jim Dyke, Op-ed: Ensuring educational opportunity for all students, THE PROGRESS INDEX (Feb. 4, 2013), <http://progress-index.com/news/op-ed/letters/ensuring-educational-opportunity-for-all-students-1.1438420>.

<sup>240</sup> Id.

<sup>241</sup> Id.

<sup>242</sup> Larry Odell, Assembly passes state takeover of failing schools, WASH. TIMES (Feb. 20, 2013), available at <http://www.washingtontimes.com/news/2013/feb/20/assembly-passes-state-takeover-failing-schools/>.

<sup>243</sup> Examiner Editorial, Examiner Local Editorial: One decade of failure is enough, THE EXAMINER (Feb. 21, 2013, 3:25 PM), <http://washingtonexaminer.com/examiner-local-editorial-one-decade-of-failure-is-enough/article/2522205?c=ustomclick=rss>.

opposition to House Bill 2096/Senate Bill 1324.<sup>244</sup> To say that these organizations simply opposed the bill may be an understatement, as demonstrated by the Virginia Education Association, “The Governor’s takeover approach was like a fresh fish in January’s cold. But, the more it was studied the more it lost support. A Louisiana approach is not what is best for Virginia. That fish began to stink as Spring’s warmth arrived....”<sup>245</sup>

Opponents were passionate in their position that this legislation would “usurp the role of the local school board for schools with unaccredited status,”<sup>246</sup> strip local authority, and deny parental involvement in these schools, as their management would move to the Commonwealth.<sup>247</sup> These organizations were also concerned with the new funding mechanism that would go into effect should the OEI become law.<sup>248</sup> Under the legislation, local, state, and federal dollars associated with the students in the failing schools would be sent from the localities to this new school district.<sup>249</sup> Opposition to House Bill 2096 and Senate Bill 1324 went as far as saying, “This takeover bill is perhaps the most intrusive piece of legislation K-12 education has ever faced.”<sup>250</sup>

In addition to the many organizations opposing the legislation, many Democrat and Republican legislators opposed the measure as well. Democratic legislators argued many of the same points: stating that this was a rush to judgment, an interference with local governance, and that the bill would perpetuate a take-over that would turn the school system upside down.<sup>251</sup> Republican opponents of the measure believed that another level

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<sup>244</sup> Robley Jones, *Two Wins in Today’s Reconvened Session*, VEA DAILY REPORTS (Apr. 23, 2013, 5:55 PM), <http://www.veadailyreports.com/2013/04/two-wins-in-todays-reconvened-session.html>.

<sup>245</sup> Id.

<sup>246</sup> Bet Neale, *Governor McDonnell’s “Opportunity Educational Institution,”* EDULOG (Mar. 4, 2013), <http://news.vassp.org/?p=2147>.

<sup>247</sup> Bill Sizemore, *State set to take over failing schools*, VIRGINIAN-PILOT (Feb. 21, 2013), available at <http://hamptonroads.com/2013/02/state-set-take-over-failing-schools>.

<sup>248</sup> Stacy Haney, *ALERT-Urge Your Senator to Vote NO on SJ327*, VIRGINIA SCHOOL BD. ASSN. (Jan. 30, 2012, 2:13 PM), <http://vsbalegislativeupdate.blogspot.com/2013/01/alert-urge-your-senator-to-vote-no-on.html>; Stacy Haney, *Governor’s School Takeover Legislation Advancing*, VIRGINIA SCHOOL BD. ASSN. (Feb. 1, 2013, 1:31 PM), <http://vsbalegislativeupdate.blogspot.com/2013/02/governors-school-takeover-legislation.html>.

<sup>249</sup> See H.B. 2096, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as engrossed Feb. 21, 2013); S.B. 1324, Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as enacted May 3, 2013).

<sup>250</sup> Stacy Haney, *Governor’s School Takeover Legislation Advancing*, VIRGINIA SCHOOL BD. ASSN. (Feb. 1, 2013, 1:31 PM), <http://vsbalegislativeupdate.blogspot.com/2013/02/governors-school-takeover-legislation.html>.

<sup>251</sup> See Odell, *supra* note 81; Larry Odell, *Va. panel backs A’s-to-F’s for schools*, WASH. TIMES (Jan. 30, 2013), available at <http://www.washingtontimes.com/news/2013/jan/30/va-panel-backs-as-to-fs-for-schools/#ixzz2TDSWcaKj> (Showing strong opposition to the legislation by Delegates Jennifer L. McClellan (D-Richmond) and Kaye Corey (D-Falls Church), and Senate Minority Leader Richard L. Saslaw (D-Springfield)).

of bureaucracy would not solve the problem and that adding this additional layer would not do anything that could not be done already.<sup>252</sup> While their Republican colleagues called for additional government interference, these limited government Republicans believed another level of red tape was not the solution for failing schools.

Due to the tension over the issue, the OEI faced an uphill battle in the General Assembly, even with the Republicans' overwhelming majority in the House of Delegates. After several rounds of substitutions in the education and money committees, House Bill 2096 and Senate Bill 1324 were able to pass out of their original chambers. House Bill 2096 passed the House of Delegates with a 66-34 margin, with Democrats and Republicans voting for and against the legislation.<sup>253</sup> Many of the Delegates representing localities with a failing school voted in favor of the legislation.<sup>254</sup> Although the House version initially passed with a large margin, the Senate version required a tie-breaking vote to pass the Senate by Lt. Governor Bolling after Senators voted for Senate Bill 1324 along party lines.<sup>255</sup> After crossing over to the Senate and being amended in committee, House Bill 2096 was defeated on the Senate floor as a result of a 21-19 vote with Senator Harry B. Blevins (R-Chesapeake) breaking party lines and voting with the 20 Democrats to defeat the bill.<sup>256</sup> While House Bill 2096 was defeated, Senate Bill 1234 passed the General Assembly as the House of Delegates voted in favor, with a similar margin as House Bill 2096.<sup>257</sup> After passage, Governor McDonnell sought to amend the bill one final time at a veto session, by removing the language that created a statewide school division;<sup>258</sup> however,

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<sup>252</sup> Greg Habeeb, 02 13 13 Habeeb HB2096 FullDebate, YOUTUBE (Feb. 6, 2013), [http://www.youtube.com/watch?v=\\_9FDbwceJ8U](http://www.youtube.com/watch?v=_9FDbwceJ8U); Odell, *supra* note 81.

<sup>253</sup> H.B. 2096, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as passed the house, Feb. 05, 2013).

<sup>254</sup> See HB 2096 Opportunity Educational Institution; established, report, *supra* note 88. Two of the six failing schools are located in Norfolk, which is represented by Delegate Johnny S. Joannou, Delegate Christopher P. Stolle, Delegate Matthew James, Delegate Daun S. Hester, and Delegate Algie T. Howell, Jr. Four of these five Norfolk Delegates voted in favor of HB2096 on the House floor. Another two of the six failing schools are located in Petersburg, which is represented by Delegate Rosalyn R. Dance, who also voted in favor of the bill.

<sup>255</sup> SB 1324 Opportunity Educational Institution; established, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+SV0371SB1324+SB1324>.

<sup>256</sup> HB 2096 Opportunity Educational Institution; established, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+SV0814HB2096+HB2096>.

<sup>257</sup> SB 1324 Opportunity Educational Institution; established, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+HV1167+SB1324> (as proposed by the governor on Mar. 25, 2013).

<sup>258</sup> SB 1324 Opportunity Educational Institution; established, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+ful+SB1324S2> (as proposed to be amended by the governor on Mar. 25, 2013).

the Senate defeated the Governor's amendment, and the previously passed legislation remained unchanged.<sup>259</sup>

Even though Senate Bill 1324 passed the General Assembly, in order for the OEI to move forward, the budget bill needed to include the necessary funding for the new school division. Included in the Governor's executive budget amendments was \$600,926 for the "Virginia Opportunity School District;"<sup>260</sup> however, after budget negotiations, only \$150,000 was included in the final budget bill that passed the General Assembly.<sup>261</sup> As this amount was significantly less than requested by the Governor, he recommended an amendment to the budget to raise the amount appropriated to the OEI back to \$600,000.<sup>262</sup> As the budget language also made changes to the structure of the school, many were led to believe that the recommendations were inconsistent with the passed legislation; accordingly, the Governor's recommendation was handily rejected in the House of Delegates, 59-39.<sup>263</sup>

With the passing of the OEI legislation and limited funds for its implementation, Virginia will follow Louisiana and Tennessee in their approach to failing schools.<sup>264</sup> While opponents of the measure were disappointed with the passing of the legislation, they were pleased with the limited funding provided by the General Assembly as implementation could be difficult with such limited funds.<sup>265</sup>

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<sup>259</sup> SB 1324, Opportunity Educational Institution; established, report, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?131+vot+SV0977SB1324+SB1324>.

<sup>260</sup> *Governor's Proposed Amendments for the 2012-2014 Current Budget, Public Education*, LEGISLATIVE INFO. SYS. (2013), available at <http://lis.virginia.gov/131/bud/BudSum/PubEd.pdf>.

<sup>261</sup> Budget Bill Item 134, LEGISLATIVE INFO. SYS. (2013), available at <http://lis.virginia.gov/cgi-bin/legp604.exe?131+bud+21-134>.

<sup>262</sup> Olympia Meola, Lawmakers Reject McDonnell Bid to alter School Takeover Division, RICHMOND TIMES DISPATCH, (Apr. 4, 2013), available at [http://www.timesdispatch.com/news/state-regional/government-politics/lawmakers-reject-mcdonnell-bid-to-alter-school-takeover-division/article\\_697e7ae6-9e7b-5836-bc95-31e0bce17c5e.html](http://www.timesdispatch.com/news/state-regional/government-politics/lawmakers-reject-mcdonnell-bid-to-alter-school-takeover-division/article_697e7ae6-9e7b-5836-bc95-31e0bce17c5e.html); *Governor's Proposed Amendments 2012-2014 Appropriate Act (HB 1500, as Adopted)*, HOUSE APPROPRIATION COMM. (last visited June 22, 2013), available at <http://hac.virginia.gov/committee/files/2013/HAC%20Staff%20Analysis%20of%20Governors%20Recommendations%20to%20HB%201500%20-%20with%20VETO%20Session%20Results.pdf>.

<sup>263</sup> Meola, *supra* note 101; Julian Walker, *McDonnell's School Takeover Amendments Rejected*, PILOT ONLINE, (Apr. 3, 2013), <http://hamptonroads.com/2013/04/mcdonnells-school-takeover-amendments-rejected>; HB 1500 Budget Bill, LEGISLATIVE INFO. SYS. (2013), available at <http://lis.virginia.gov/cgi-bin/legp604.exe?131+vot+HV1316+HB1500>.

<sup>264</sup> Press Release, Governor Robert F. McDonnell, Governor McDonnell Announces Phase Three of the ALL STUDENTS Agenda (Jan. 9, 2013), available at <http://www.governor.virginia.gov/news-view/Release.cfm?id=1592>.

<sup>265</sup> Robley Jones, *Two Wins in Today's Reconvened Session*, VEA DAILY REPORTS (Apr. 3, 2013, 8:26 AM), <http://www.veadailyreports.com/2013/02/sine-die.htm>; Robley Jones, *Sine Die*, VEA DAILY REPORTS. (Feb. 23, 2013 7:05 PM), [http://www.veadailyreports.com/2013\\_04\\_01\\_archive.html](http://www.veadailyreports.com/2013_04_01_archive.html).

### III. OTHER EDUCATION REFORM LEGISLATION

While Governor McDonnell's All Students Initiative dominated the education legislation, two other measures made waves in the General Assembly during 2013. House Bill 1871, sponsored by Delegate Jennifer L. McClellan (D-Richmond), defined the term "bullying" and required local school boards to adopt procedures that include a prohibition against bullying in their codes of student conduct policies and adopt policies through the Virginia Board of Education to educate employees about bullying.<sup>266</sup> This legislation was highly praised by the Virginia Education Association<sup>267</sup> and Equality Virginia.<sup>268</sup> House Bill 1871 met very little opposition during session and passed the House of Delegates by 91-4 and the Senate by 37-3 with just a handful of Republicans voting against the measure.<sup>269</sup>

Another bill that drew significant attention was House Bill 1442, sponsored by Delegate Robert B. Bell (R-Charlottesville), and Senate Bill 792, sponsored by Senator Thomas A. Garrett, Jr. (R-Bumpass). This legislation, often referred to as the "Tim Tebow Bill," would prohibit public schools from joining an organization governing interscholastic programs that do not allow participation by a homeschooler.<sup>270</sup> Effectively, this legislation would force the Virginia High School League, the private, non-profit organization whose members are the public high schools in the Commonwealth of Virginia,<sup>271</sup> to allow homeschoolers to participate in

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<sup>266</sup> H.B. 1871, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (as passed Feb. 23, 2013).

<sup>267</sup> Robley Jones, Act Now to Protect Virginia Students from Bullying, VEA DAILY REPORTS (Jan. 18, 2013, 4:25 PM), <http://www.veadailyreports.com/2013/01/act-now-to-protect-virginia-students.html>.

<sup>268</sup> John Riley, Virginia House Passes Anti-Bullying Bill, 93-6, METROWEEKLY (Feb. 5, 2013), <http://www.metroweekly.com/poliglot/2013/02/virginia-house-passes-anti-bullying-bill.html>.

<sup>269</sup> HB 1871 Bullying; defines term, school boards shall include policies & procedure in code of student conduct, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/leg-p504.exe?131+sum+HB1871>.

<sup>270</sup> H.B. 1442, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (defeated Feb. 14, 2013). Specifically, organizations are required to allow participation by students who (i) are receiving home instruction; (ii) have demonstrably progressed in two consecutive academic years; (iii) are in compliance with immunization requirements; (iv) are entitled to free tuition in a public school; (v) are not 19 years old by August 1 of the current academic year; (vi) are amateurs who receive no compensation, but participate solely for educational, physical, mental, and social benefit; (vii) comply with all disciplinary rules and codes of conduct applicable to public high school athletes; and (viii) comply with all other rules for awards, all-star games, maximum consecutive semesters of high school enrollment, parental consents, physical examinations, and transfers that are applicable to high school athletes. The bill allows charging those students reasonable fees.

<sup>271</sup> Organization, VA. HIGH SCHOOL LEAGUE, <http://www.vhsl.org/about.organization> (last visited June 22, 2013).



extracurricular activities.<sup>272</sup> If the Virginia High School League chose not to allow participation, public schools would be out of compliance with the law if they maintained their membership with the organization. Important in this debate was that any interscholastic activity that falls under the Virginia High School League, which are currently closed to homeschoolers, would become open to them should the legislation pass.<sup>273</sup> As a result, this legislation was not limited to sports, but also covered clubs, such as debate clubs.<sup>274</sup>

Proponents of the legislation, including the Family Foundation,<sup>275</sup> the Home Educators Association of Virginia,<sup>276</sup> and the Organization of Virginia Homeschoolers,<sup>277</sup> argued that homeschoolers should have the same access to interscholastic activities as students attending public schools in the publicly funded school system.<sup>278</sup> These groups touted that a majority of Virginians support homeschool sports access and that this concept works smoothly in twenty-nine states across the country.<sup>279</sup>

With an estimated 25,255 home-schooled students across the Commonwealth,<sup>280</sup> opponents were concerned about the number of students that may want to participate. Opponents, including the Virginia High School League,<sup>281</sup> Virginia Education Association,<sup>282</sup> Virginia School Boards Association,<sup>283</sup> and the Virginia PTA,<sup>284</sup> argued, "public school

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<sup>272</sup> Steve Contorno, *'Tebow bill' gaining support in virginia*, THE WASH. EXAMINER (Dec. 22, 2012, 8:00 PM), <http://washingtonexaminer.com/tebow-bill-gaining-support-in-virginia/article/2516664#.UNhDshzxY3g>.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> Administrator, *"Tebow Bill" Fails in Senate Committee*, THE FAMILY FOUNDATION (Feb. 15, 2013, 9:49 PM), <http://familyfoundation.org/2013/02/tebow-bill-fails-in-senate-committee/>.

<sup>276</sup> Contorno, *supra* note 111.

<sup>277</sup> *VaHomeschoolers' Position on SB 812 and HB 1442*, THE ORGANIZATION OF VIRGINIA HOMESCHOOLERS (Jan. 23, 2013), <http://vahomeschoolers.org/pdf/Position-Statement-SB-812-HB-1442-Sports-Access.pdf>.

<sup>278</sup> Eric Kolenich, *'Tebow bill' stirs an emotional debate*, RICHMOND TIMES-DISPATCH (Feb. 13, 2013, 9:15 PM), [http://www.timesdispatch.com/sports/high-school/basketball/boys/tebow-bill-stirs-an-emotional-debate/article\\_5b8c8e24-764c-11e2-be39-0019bb30f31a.html](http://www.timesdispatch.com/sports/high-school/basketball/boys/tebow-bill-stirs-an-emotional-debate/article_5b8c8e24-764c-11e2-be39-0019bb30f31a.html).

<sup>279</sup> THE ORGANIZATION OF VIRGINIA HOMESCHOOLERS, *supra* note 116; William C. Boshier, Jr., Commonwealth Education Poll, COMMONWEALTH EDUCATION POLICY INSTITUTE (Jan. 22, 2013), <http://www.cepi.vcu.edu/polls/2012-2013/CEPI%202012-13%20poll%20Rel%201.pdf>.

<sup>280</sup> Home-Schooled Students and Religious Exemptions 2011–2012, VIRGINIA DEP'T OF EDUC. (Jun. 29, 2012), [www.doe.virginia.gov/statistics\\_reports/enrollment/home\\_school\\_religious\\_exempt/2011\\_2012.xls](http://www.doe.virginia.gov/statistics_reports/enrollment/home_school_religious_exempt/2011_2012.xls).

<sup>281</sup> Kolenich, *supra* note 117.

<sup>282</sup> Julian Walker, *'Tim Tebow' home school sports bill sacked in Va. Senate*, THE ROANOKE TIMES (Feb. 14, 2013, 1:09 PM), <http://blogs.roanoke.com/politics/2013/02/14/tim-tebow-home-school-sports-bill-sacked-in-va-senate/>.

<sup>283</sup> Susan Svrluga, *'Tebow bill' would let home-schoolers try out for public school teams*, WASH. POST (Feb. 3, 2013), available at [http://articles.washingtonpost.com/2013-02-03/local/36728679\\_1\\_tebow-](http://articles.washingtonpost.com/2013-02-03/local/36728679_1_tebow-)

sports are for public school kids."<sup>285</sup> Opposition to the legislation cited reasons such as differing academic standards, attendance requirements, and that these homeschoolers would be taking the spots of public school students as rationale for defeating the legislation.<sup>286</sup> These groups and opposing legislators were also quick to respond to the tax rhetoric.<sup>287</sup>

While Senator Garrett struck down Senate Bill 792 in committee,<sup>288</sup> House Bill 1442 passed the House of Delegates by 56-43<sup>289</sup> but was defeated in the Senate Education and Health Committee when Senator Blevins (R-Chesapeake) voted with the Senate Democrats to defeat the legislation.<sup>290</sup> Even though the legislation did not pass in 2013 and has previously failed in numerous years, proponents plan to try again.<sup>291</sup>

#### IV. CONCLUSION

Through Governor McDonnell's All Students Initiative, K-12 education was a priority in a legislative session that was otherwise dominated by transportation plans and Medicaid expansion. Thanks to the efforts of the Governor and the Virginia General Assembly, the Commonwealth's teachers will see their first salary increase in over four years and unaccredited schools will be held accountable for their performance. The legislature's willingness to take sometimes-unpopular votes to improve the public school system shows promise for the future of K-12 education in the Commonwealth.

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bill-public-school-local-team.

<sup>284</sup> Julian Walker & Kathy Adams, Virginia lawmakers debate eligibility for school sports, PILOTONLINE (Jan. 25, 2013), available at <http://hamptonroads.com/2013/01/virginia-lawmakers-zero-school-sports-bills>.

<sup>285</sup> Id.

<sup>286</sup> Kolenich, *supra* note 117.

<sup>287</sup> Walker, *supra* note 121 ("You pay taxes that also go to purchase an F-22 fighter, that doesn't mean you get to fly it,' [Senate Minority Leader Richard Saslaw]... 'I wasn't blessed by the Lord to have children. Should I have a percentage rebate? Come on, that's not a good argument. We pay our taxes for the betterment of all of our citizens.' [VEA president Meg Gruber].").

<sup>288</sup> S.B. 792, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (left in committee Jan. 31, 2013).

<sup>289</sup> H.B. 1442, 2013 Va. Gen. Assemb. Reg. Sess. (Va. 2013) (defeated Feb. 14, 2013).

<sup>290</sup> HB 1442 Public school interscholastic programs: participation of students receiving home instruction, LEGISLATIVE INFO. SYS. (2013), available at <http://leg1.state.va.us/cgi-bin/legp504.-exe?131+vot+S04V0178+HB1442> (last visited May 28, 2013); See also THE FAMILY FOUNDATION, *supra* note 114.

<sup>291</sup> THE FAMILY FOUNDATION, *supra* note 114.