WLR Feb 23: Ethics, Property Taxes, Short-term Rentals, and PFAS

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Read more about what happened this week below, and don't miss our Legislative Alert: Municipal Ethics Bill Could Preempt Local Authority and our latest post to Advocacy Updates: Municipal Capacity, Revenue, and Governance which includes good news - the Hybrid Meeting Mandate has been removed from S.55.

This week VLCT provided testimony to:

- House Ways and Means Regarding Climate Resiliency Funds

The content of the Weekly Legislative Report *below is provided by our advocacy partners. For more detail and commentary from VLCT Advocacy staff, visit the* ***Legislative Reports*** *webpage to access our topical Advocacy Updates.*

What to do about Vermont's Unsustainable Education System

This is a long section, however, there is no easy or quick way to discuss Vermont's education funding system. What we can do is break this current situation into three segments.

The immediate fix for Act 127's unintended consequences and perverse incentives

This week, the Governor signed H.850, a bill aimed at undoing the unintended consequences of Act 127 and its 5% cap on tax rates, which created a perverse incentive for all districts to overspend. The bill instead gives more targeted discounts to school districts that lost tax capacity due to the Act. Towns will now have until April 15th to pass new budgets.

Answering the Immediate $243 Million Dollar Problem

Legislators will look to make tax bills more affordable while schools are coming in at a 15% increase. It's unclear to the financial analysts the legislature leans on how much of the new budget deficit is from Act 127 and how much of it is from other factors.

Other factors:

- The universal school meals program was implemented as an unfunded mandate at a time when the education fund was running a surplus. Now, that program is adding roughly $30 million to the deficit.
- School personnel healthcare increased by 16%, costing about $20 million extra.
- Pandemic-era ESSR funding has run out, and many schools are against getting rid of the positions they added with those funds.
- Let's not forget that the continually dwindling student enrollment is driving down our teacher-to-student ratio and working against us for economies of scale.

- This week, some school districts pointed the finger at others' lack of spending accountability, citing the increased spending capacity some gained through per pupil weighting changes comes with no direction of how to spend it.
  - There was an attempt to do this via categorical aid, however, that was dropped.
- School construction is another factor, with Vermont having the second oldest building stock in the nation with $280 million in immediate needs and more potential issues.

Moving Forward in a Sustainable Manner

Vermont's education funding system is incredibly complicated, likely the most complicated in the country, and legislators are struggling to tame this beast ahead of Town Meeting week. While Act 127 is getting a lot of the blame, it is not necessarily to blame for what is an unsustainable, unapproachable, and now unworkable system over the last 27 years.

How did we get here, and why is this so complicated?

- ***We decentralized decision-making while centralizing funding…*** After the Brigham vs. Vermont decision, we moved to a statewide property tax system, yet we still approved school budgets at the local level, which is the classic makings of a tragedy of the commons, where individuals with access to a common good act in their own best interest. It's a statewide system, yet there is local control, which is just ripe with poor incentives. In addition, when local decisions are made to reduce spending, the statewide system doesn't adequately return those benefits to local school districts and property tax payers.

- The common level of appraisal (CLA), which adjusts the locally assessed property values to the estimated fair market value, further **distorts the impact of local policy levers,** especially at a time when housing prices are inflated.
  - Some communities feel that they arrived at a reasonable budget after their local process and feeding it into the Rube Goldberg machine only to learn that their CLA pushes up their taxes.
- State property taxes are income-sensitized for more than two-thirds of Vermonters, as if the statewide nature of taxes, with the CLA, didn't make it difficult enough for voters to understand what the effect of their budget is on their tax rate.
  - On its face sounds good, however, it is not truly reflective of people's ability to pay and is capped at $128,000 per household.
  - It's worth noting that this negatively affects the Lake Champlain Region, Central Vermont, and the Upper-Valley Region, as wages in these areas need to be higher to accommodate a higher cost of living, and home prices are high, too.
  - It's lagged, too, with the previous year's income being used to arrive at the credit for this year's bill, which will be problematic as legislators try to keep taxpayers' bills down.

- We have declining student enrollment, which is counter to our desire to gain economies of scale. Legislators heard this week about how one school has 13 staff and 42 students, however, due to their idealized view of a local school and our existing eduation governance model, they won't merge with neighboring schools.
- We haven't fixed issues, we've just added revenue.
- **The result of this is that we disincentivize grand list growth** as funding is centralized, and the link between one's local budget is detached from the growth in their property tax base (grand list), one sees no positive side of development in one's own backyard.

One could ask, *how are we to have an educated democratic conversation about these issues when the system is so complicated many legislators find it difficult to fully understand?*

So, what's the future look like?

- Right now, legislators are gravitating to the terminology "newer and fewer" when considering school capital construction to merge schools.
- They will likely need revise the existing school governance model.
- There is a push to centralize services such as special education using something similar to the Boards of Cooperative Educational Services (BOCES) model used in New York.

Senate Committee Slams on the Breaks, Waits for the House on Housing

As we covered last week, the Senate Committee on Economic Development, Housing, and General Affairs passed the BE Home Act, which has gained accolades across tripartisan lines.

- This week, the bill touched down in Senate Natural Resources, where nothing happened. The Committee will wait for the House to send its land use bill, H.687, to them and then combine that bill, their committee bill S.308, and the Be Home Act, S.311, into a final bill by the end of the session.
- In the House, the Committee on Environment and Energy went through changes in H. 687 and focused on changes made to the section pertaining to Tier 1B designations deciding to have water OR sewer to allow a town to qualify for Tier 1B.
- The Chair discussed potentially eliminating the automatic Act 250 trigger for Tier 3 designations.
- The Committee is having a hard time drafting legislation that correctly has a jurisdictional trigger for critical resource areas. Instead, they should introduce a framework for Tier 3 designations to inform future land use mapping. With this information, the Agency of Natural Resources could then declare what Tier 3 resources are and how they can be integrated into Act 250.

Ways and Means Committee Seeks to Tax More Resourced Vermonters

The Committee keeps hearing that tax rates do not move people, however, it's not as clear cut as it is being laid out to be, as it's getting harder for states to find the income tax sweet spot.

As we've covered in the context of the tax bingo card legislators have created, the Ways and Means Committee has discussed bills aimed at more resourced Vermonters;

- H.828 would seek to add a **3% surcharge** to the incomes of Vermonters making more than $500,000. This proposal would affect roughly 3,500 taxpayers to bring in a combined revenue of about $75 million.
- H.827 would seek to target individuals with a net worth of $10 million or more at a rate of 50% annual tax on **unrealized gains or losses** on their assets with a cap of 10% of the individual's net assets exceeding $10 million.

Such legislation should be concerning for a myriad of reasons that apply to each of these proposals;

- First, **implementing and administering a mark-to-market tax system could be costly and complex.**
  - Complexities in valuing assets could create loopholes for wealthy individuals to avoid the tax, rendering this whole effort less fruitful with the state spending on the **high cost of compliance without the corresponding revenues.**
- Setting aside that complexity, taxing unrealized gains would likely **discourage investment,** potentially harming economic growth and job

creation,

- If not, it will also increase Vermont's market volatility as investors sell assets to offset gains, potentially leading to market instability.
- **People are highly mobile now,** especially after a pandemic that forced everyone to adapt, meaning some might **flee the state for a lower tax regime**.
    - Furthermore, the application of the law will be inequitable, given that some individuals are mobile while others are rooted. For example, a household of two advanced medical providers could have an income of $500,000 and not be able to legally live 6 months and a day out of state the way a household that owns an online business might.
- Those leaving might be replaced, however, the person potentially replacing them does not have the same **social ties to Vermont communities.** This could have a **considerable impact on charitable giving** in the state as we lose philanthropic activity due to outmigration or due to the diminished capacity of high-net-worth individuals.
- **Finally, the constitutionality of taxing unrealized gains has not been definitively decided** by the Supreme Court, which is currently considering a case, *Moore v. United States*, that could have implications for what is considered income and the legality of taxing unrealized gains under the 16th Amendment.
    - Furthermore, this decision will not address the **constitutionality question surrounding the lack of a due process** of law surrounding this deprivation of property by taxing unrealized gains before they're even realized through sale or other means.

This legislation is like Schrodinger's cat in that it is alive and dead on arrival.

- Generally, rank-and-file legislators understand the detrimental impact of such a proposal, and an overwhelming majority have rejected such a proposal in recent sessions.
- ***However,*** it is also a year in which the legislature is facing massive structural deficits on top of a loss of federal funds, an increase in costs, and an unforced error in property taxes due to Act 127, the per pupil weighting bill.
    - This gap of $243+ million, with no easy solution to fix it and a legislative ethos and dogma that does not allow any cuts, means that even the most reasonable legislators might be swayed by their progressive peers to pass such a tax.

Short-term Rentals a Ubiquitous Topic of Conversation

In almost every housing, workforce, or tax conversation in the State House, short-term rentals come up, and the legislature has been attempting to create, at the very least, a registry of STRs in the state for years.

- There are about 15,000 short-term rental properties in Vermont, and according to the Vermont Short-term Rental Alliance, about 90% are used by the owner, making them different from typical rentals.
- The bill would establish a short-term rental registry based in the Department of Housing and Community Development (DHCD), with owners

required to register and pay a $135 fee annually.

- the bill hopes to;
  - Track STR activity and understand their impacts on housing capacity,
  - Provide state government a means to communicate with STR owners about regulations and resources, and
  - Gather data to inform future policy decisions.
- While the Short-term Rental Alliance expressed general support, there are numerous concerns with such legislation moving forward related to the data that is collected and what is done with it.
- Another concern is duplication of effort with existing municipal registries. Just this past week, South Burlington and Winooski dedicated considerable City Council time to the issue, and Burlington already has a regulatory regime in place.
- The Senate BE Home Bill seeks to regulate long and register short-term rentals as well.

After Years of Debate, Vermonters Now Have Access to Family Medical Leave

Enrollment in the Vermont Family and Medical Leave Insurance (FMLI) program started on February 15 and is now open.

- Eligible employers with two or more employees can enroll starting February 15th and create customized plans tailored to the unique needs of their workforce and business. Look forward to enjoying FMLI benefits starting on July 1.

What You Need to Know:

- FMLI benefits provide partial income replacement for various situations, including;
  - caring for a family member with a serious health condition,
  - bonding with a new child, addressing one's own serious health condition,
  - caring for a military service member, or
  - meeting needs related to a family member's covered active military duty or call to active duty.

Key Features of FMLI Plans:

- Option to provide combined family and medical leave or standalone family leave insurance.
- Flexible contribution arrangements: fully paid by the employer, split between the employer and employees, or fully paid for by employees as a voluntary benefit.
- Benefit duration options are six to 26 weeks per 12-month period.
- 60 to 70% wage replacement, with additional options available through underwriting review.

Phases of Implementation:

- The initial phase of the program was successfully launched for Vermont State employees in July 2023.
- This announcement is part of the second phase
- In the final phase, FMLI benefits will be extended to individual workers, self-employed individuals, and employers with fewer than two employees in Vermont. This phase is set to commence in 2025, with benefits starting on July 1, 2025.

Learn More:

Employers in Vermont who are interested in exploring the Vermont FMLI program further can collaborate with their employee benefits brokers or visit **fmli.thehartford.com** for detailed information.

Senate Committee Debates Ban PFAS-Containing Products

The Senate Health and Welfare Committee discussed S.197, a bill proposing to ban PFAS-containing products, which is nearly everything, as PFAS is a vast and broad family of compounds, and the bill does not differentiate adequately among them.

- Concerns were raised by the automotive industry and the Associated Industries of Vermont about the proposed ban's timeline and global manufacturing complexities.

- The Department of Environmental Conservation (DEC) suggested a stakeholder process to develop a proposal, with additional resources needed for implementation
- The Committee Chair favored a "date certain" for the ban, and there were differing views on industry involvement, with some advocating for a transition strategy led by experts and others emphasizing the importance of decisive action and consistent regulation.
- Testimony highlighted concerns over economic impact, technical challenges, and the need for a risk-based approach to regulation, with suggestions for alternatives to a blanket ban, such as an "alternatives review" and regional approaches.
- Various stakeholders emphasized the need for clarity on definitions, exemptions, and implementation feasibility.
- The Department of Health supported the bill's intent but flagged funding requirements for public service announcements and implementation challenges.

Elsewhere In The State House

Hundreds of hours of committee discussion each week culminate into our advocacy update, so not everything makes it into the overall update; however, we often cover what is left on the cutting-room floor here for our most dedicated readers.

- Read updates from Week 1, Week 2, Week 3, Week 4, Week 5, Week 6, Week 7, and the last session's recap.
- Don't forget town meeting day on March 5th! Check out the coverage on Burlington using ranked-choice voting.
- The Senate Committee on Government Operations is moving towards completion of S.159, **a bill studying the creation of county government.** The bill has garnered a great deal of support as more challenges across the state, including this summer's flood and the global pandemic, have highlighted the need to authorize for more collaborative governance structures. See VLCT's testimony on S.159.
- The House Ways and Means Committee looked at H.10, a bill making changes to the **Vermont Employment Growth Incentive** program, sent to them by the House Committee on Commerce and Economic Development last year, which went no further. The Committee discussed requiring the VEPC Board to take the time to discuss what ideas they had for bringing business into the state, business retention, and other business incentive ideas.
- The House Committee on General and Housing discussed H. 704, which would **require disclosure of compensation in job advertisements.** The legislation has proven problematic for states such as Colorado, which has implemented such a policy only to find national employers that do not advertise their jobs in that state anymore. VLCT raised similar concerns in testimony on S.237.

- The Senate Committee on Economic Development, Housing, and General Affairs was packed as the Committee took testimony from close to a dozen representatives for organized labor and none from business organizations around a **constitutional amendment to protect the right to unionize**.
- **Be ready!** Act 76 of 2023, relating to childcare and early childhood education, tasks the Department of Taxes with the implementation and administration of a new Child Care Contribution (CCC), composed of a **0.44% payroll tax on wages** and a 0.11% tax on self-employment income. Collection of the CCC shall begin on July 1, 2024. To help you understand how this applies to your business, the Department has created a Child Care Contribution Guide, video, and FAQs. This information can be found on the Department's Child Care Contribution webpage. The webpage will be updated leading up to July 1 when the forms are finalized.
- Did you see the good news?! The US government awarded **GlobalFoundries $1.5 billion** to help upgrade and expand its chip manufacturing facilities in Vermont and New York as part of the CHIPS Act, an effort to boost domestic chip production and reduce reliance on China. This will make the Vermont plant the first in the country to mass-produce the newest cutting-edge chip types.
- The Senate Committee on Judiciary could possibly pass legislation next week that would **require the largest fossil fuel companies to pay for damages in Vermont caused by climate change**. The ability of such legislation to accomplish its goal or survive legal challenges is an open question.

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