



# WEEKLY LEGISLATIVE REPORT

January 16, 2015

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The *Weekly Legislative Report*, a publication of the Vermont League of Cities & Towns, is published each Friday during Vermont's legislative session.

### VLCT

89 Main Street, Suite 4  
Montpelier, VT 05602-2948

Tel. .... 802-229-9111  
Fax ..... 802-229-2211  
Email ..... [info@vlct.org](mailto:info@vlct.org)  
Website ..... [www.vlct.org](http://www.vlct.org)

### Follow VLCT Advocacy on



**Steven E. Jeffrey**  
Executive Director

**Karen B. Horn**  
Director, Public Policy & Advocacy

**Chloe V. Collins**  
Associate, Advocacy & Information

**David Gunn**, Editor

To contact your legislator, call the Sergeant-at-Arms at 800-322-5616, fax 802-828-2424, or access the legislative website at [www.leg.state.vt.us](http://www.leg.state.vt.us) for legislators' email addresses.

## Education Funding –A Reminder of What the Problem Is

(This article is based on testimony that VLCT Executive Director Steve Jeffrey delivered to the House Education Committee on Jan. 14, 2015.)

I am not naturally an optimistic person and nothing in my experience of advocating for municipal government before the legislature for 34 years now has cured me of that disposition. However, this summer and fall, I began feeling some unfamiliar pangs of what could *only* be optimism. There was hope that the 2015 legislative session would actually come up with solutions to our education funding problem. Finally, after the 35 school budget defeats this spring and the almost universal message heard from the voters on the campaign trail this fall, they have finally gotten the message – there is a problem and it needs to be solved when the legislature comes back to the State House in January.

Fast forward two short months and here we are. All I hear now is “We need to figure out what the problem is.” or “Is there really any problem at all?”

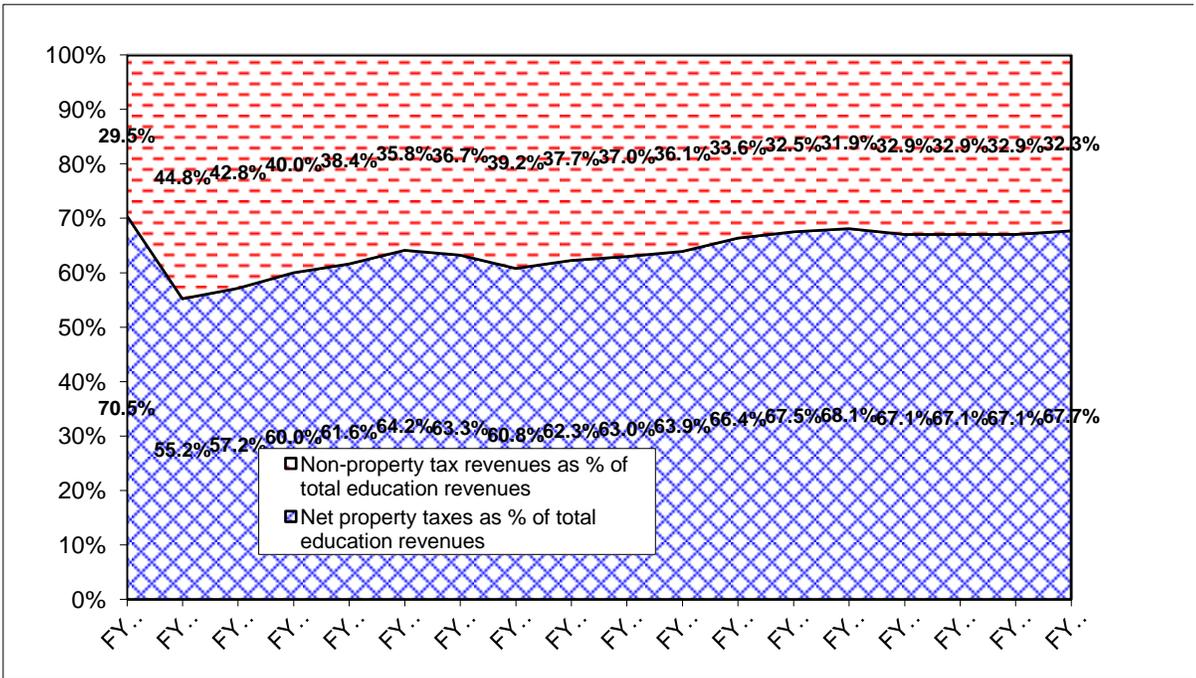
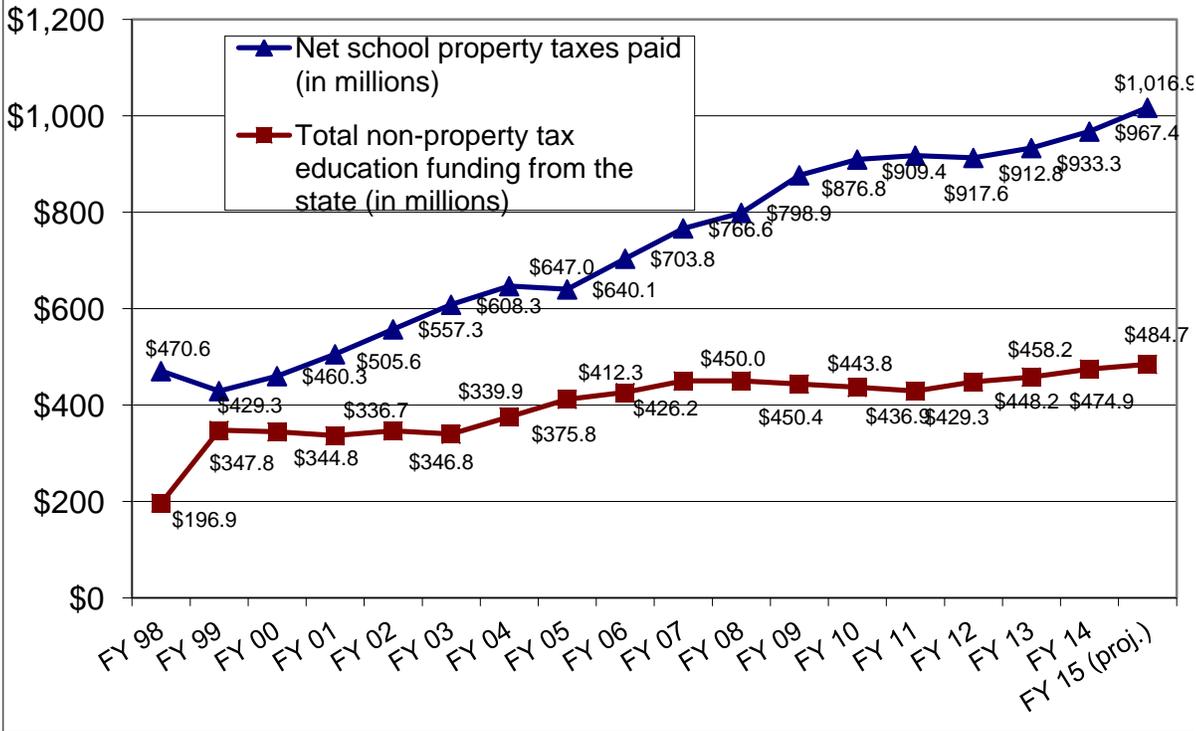
**The Revenue Problem.** If you need a refresher, let me remind you – the problem is the state education property tax. First, we will deal specifically with its size and its trajectory. That single state tax, net of property tax adjustments, totals over \$1.02 billion for FY15. That compares to the entire state General Fund with its 15 or so taxes and other sources that total \$1.33 billion.

Not only is it large, it is rising at a hair-raising pitch. The problem is that total net education property taxes have risen 58.9 percent since the implementation of Act 68 just ten years ago. That was over a period during which the consumer price index rose only 25 percent. During that same period, all state assistance for the Education Fund from sources other than the property tax rose by just 17.6 percent, 70 percent of the consumer price index (CPI) increase. Total General Fund spending increased by 32.3 percent since FY05, according to the Joint Fiscal Office's 2014 Fiscal Facts – twice the growth rate of state support for education.

Over that time, the non-property tax support of education fell from 39.2 percent of the total bill to 32.3 percent. It has never been anything to write home about, with the average state supporting education to the tune of about 50 percent from sources other than the property tax.

This most recent trend simply mirrors past practices of the legislature. If we start from FY99, the first full year Act 60 was phased in, state education property taxes has risen 136.9 percent. During the same period, state non-property tax education fund revenues has risen by just 45 percent, barely outstripping the CPI that rose 39.4 percent. The charts on page 2 show this divergence of support for education graphically.

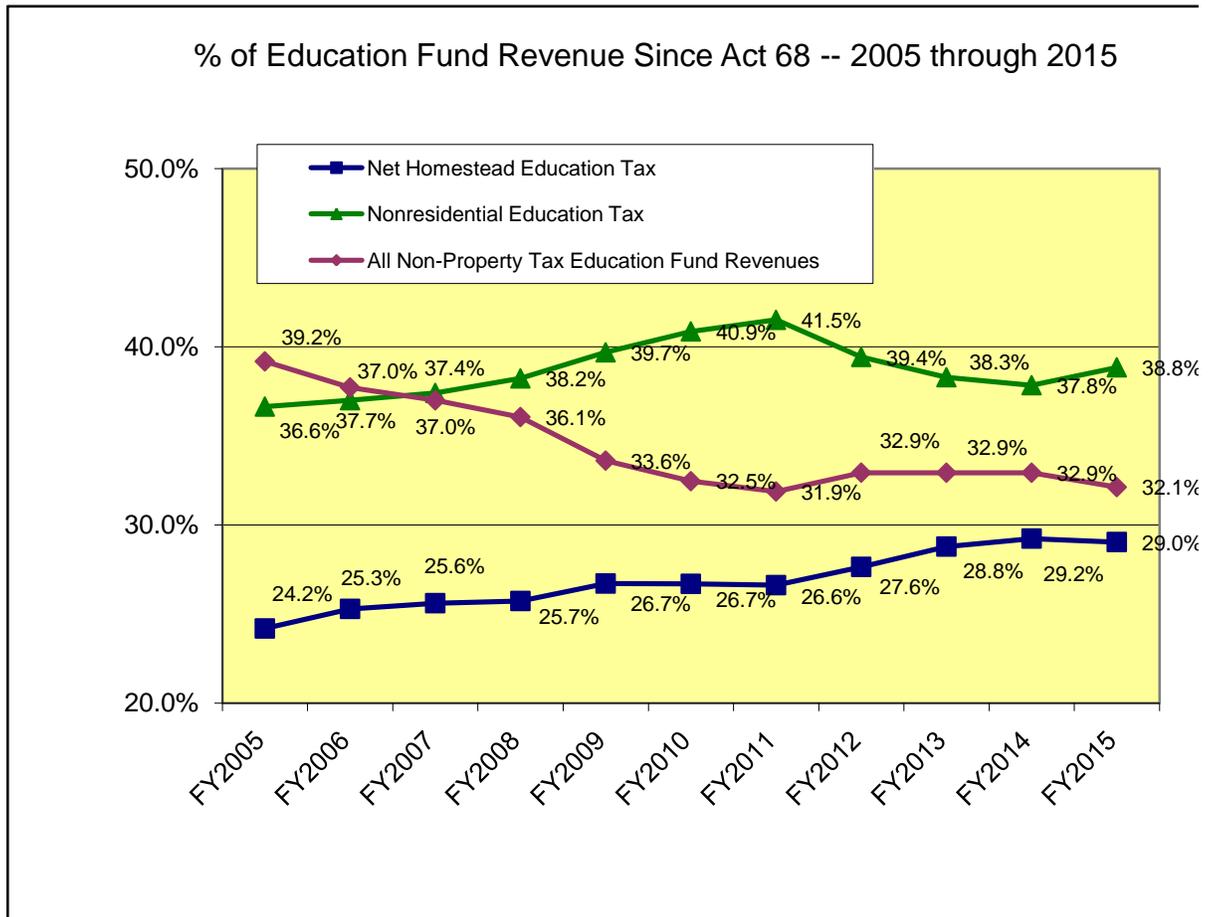
### VERMONT EDUCATION FUND COMPONENTS SINCE ENACTMENT OF ACT 60



This pattern goes back even before the *Brigham* decision and Act 60. Before Act 60, state aid to education, or what we would consider the non-property tax sources for what became the education fund, peaked in FY91 at \$196.3 million. In the next six years, while little Amanda Brigham grew up and went to school in Whiting but was denied an equal education, the state did its share to equalize opportunity by

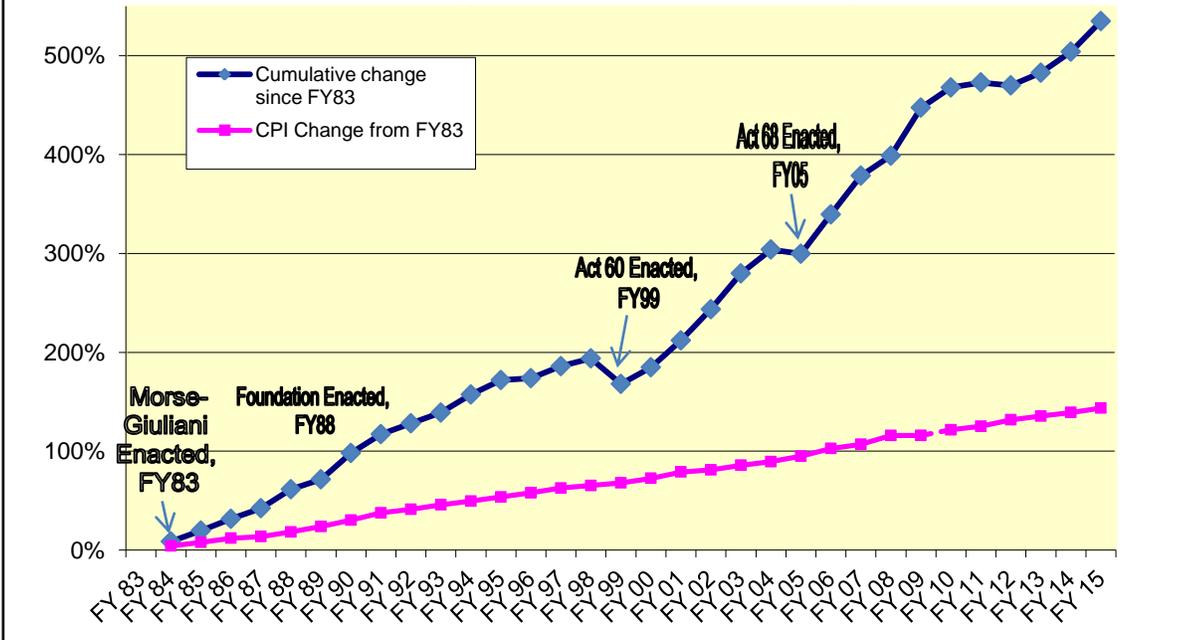
lowering state aid to \$188.3 million by FY97, the year of the *Brigham* decision. It is no wonder we developed an inequitable funding system.

So, back to today: who is paying more as the state shrinks the share of what it calls education costs from sources other than the property tax? As the graph below shows, both non-residential and homestead owners are paying more property taxes – the share of the total paid by residents has increased by 20 percent since the inception of Act 68 and non-residents are paying a six percent larger portion while the state non-property tax portion dropped by 18 percent.

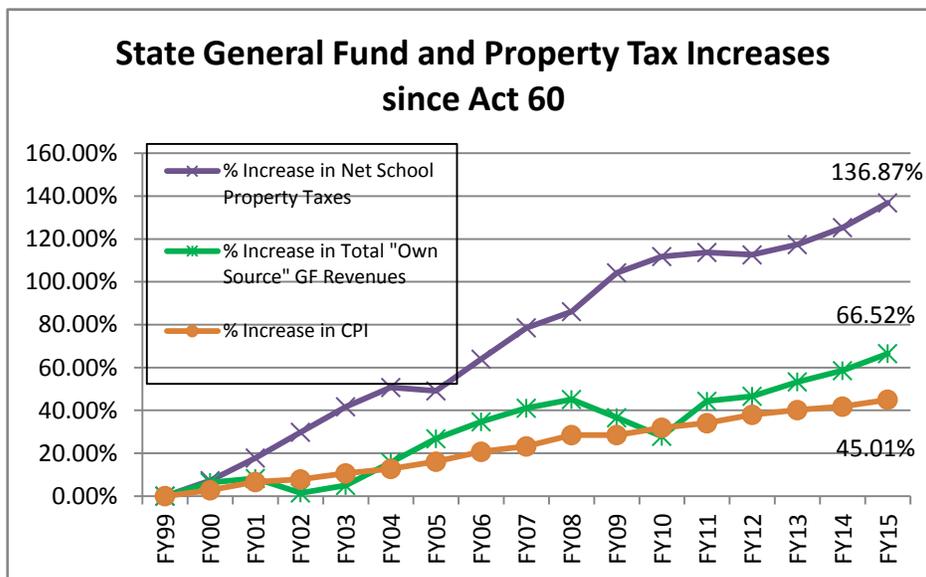


The only times in the past 35 years where the legislature has committed to paying anywhere close to what its fair share should be for adequately providing for education without crushing property taxes has been when it decided to throw out the old education funding formula and replace it with a new one that it would soon underfund. The graph on the next page shows that the only time that the legislature “bent the curve” of escalating property taxes was when it was rewriting the formula.

### INCREASE IN VERMONT NET SCHOOL PROPERTY TAXES, FY 1983 -- FY 2015 (Excludes Rebates, Prebates, Income Sensitivity and Current Use Reimb.)



We have heard much in the past several years about how the state has not raised “broad-based taxes.” In reality, according to Fiscal Facts, state General Fund taxes have barely exceeded the increase in the cost of living over the past ten years. During the same period, property taxes have grown by double the state tax burden and three times the CPI.



My point with all this is that we do indeed have a revenue problem. State education property taxes have grown at an astronomical rate, and, during some time periods, education revenue sources other than the property tax have not even kept up with the CPI, let alone the escalating cost of education. The legislature and the administration owe it to the education of its youth as well as to the property taxpayers to replace some of those property tax dollars with some other tax source. Whatever revenue solution is found must be designed not to worsen our second problem area. We do not call for any additional revenue for education spending – just that it come from some place other than the property tax.



**The Spending Problem.** Which brings me to the spending side of things. Yes, we certainly have a spending problem. Some of it might actually be the fault of local school boards, local voters, and motivated local special interest groups. Before you chastise or attempt to rein in local boards and voters in regards to the “education spending problem,” please look in the mirror and stop shifting state costs to the property tax. Since 2005, adult basic education, essential early education, Department of Corrections education, state education agency computer programs, teen pregnancy counseling programs, and several other cost centers have been redefined as local education costs and paid for mainly by property taxes. Move these back to the General Fund where they belong; then honestly and openly raise the taxes necessary to fund them.

Stop mandating new local district expenses. I realize the champion of mandated pre-K is here at the table and I don’t wish to argue over the merits of this new expense or how it is supposed to pay off sometime in the future. It is a new expense that will be paid for from nothing other than property taxes when it is imposed, because there is no new sustainable state money that came with that mandate. Nor is it apparent that the property taxpayers will be the ones who realize this payback used to impose the mandate. The same goes for dual enrollment and the myriad of mandated programs and services that our schools are now forced to provide. Try as they may, summer study committee after summer study committee has tried to quantify the costs of these compounding mandates – all with honorable intentions – to no avail. We know they cost something and, without another source, we know they add to the increase in the burden on the property tax.

These are two essential parts of the spending puzzle that can and must be addressed here and now. If the aforementioned are essential services, you must find a way other than the property tax to provide them to those that need them. It is disingenuous for the legislature and administration to bury these costs in the Education Fund or local district budgets and then blame local boards and voters for having an insatiable appetite for spending.

**The Complexity Problem.** A person very knowledgeable in Vermont tax structures and policies recently said that there is a continuum of tax structures. At either ends are two qualities that tax structure developers should strive for. “Simplicity” lies at one end and “Fairness” at the other. Unfortunately, it appears that never the twain shall meet. I can assure you that of the two qualities, our current system comes very close to the Fair end, but is light years away from the Simple end. If your tax system lacks simplicity and transparency, people have a tendency to distrust both it and the government that constructed it.

Speaking with no disrespect for those wonderful public servants who work diligently governing school districts and administering the property tax, few of them could pass an Act 60 exam. Income sensitivity – the atrial side of the fairness heart of Act 60 (the ventricle side is the equal property tax rate for equal spending) – is the chief target, though the CLA, phantom students, and others certainly draw their share of puzzled looks. It is based on household income, it is figured on past years’ income reports, it requires all sorts of forms to be filed in a timely fashion. Some tax bills are public documents in town offices and others aren’t. I have no specific recommendations at this time but would be happy to work with the committee along with listers and town treasurers to see if there are some improvements in Simplicity that don’t cost too much in Fairness.

Those are three problems I had no problem identifying that can and must be addressed by the 2015 legislature. There may be others. The Vermont League of Cities and Towns and the municipal officials who administer the property tax and share in the meager leftovers (currently 27.6 percent of the total property tax take) look forward to supporting you as you work to solve these problems.

*Municipal officials have to add their voices to the call to have our legislature to remember the property tax as they deliberate on the problems facing Vermont. **Talk to your legislators – early and often!***

## The Governor's FY16 Budget

On Thursday, Governor Shumlin delivered his Fiscal Year 2016 budget proposal to the legislature. Not only did he unveil the traditional line items and amounts of taxpayers' dollars to be spent on state programs, he spent a significant amount of time focusing on three other items of interest to municipal officials: rising health care costs, rising property taxes, and the Vermont economy.

**The Numbers.** As the table on page 10 shows, the governor's FY16 budget holds most municipal priority programs harmless from significant cuts. Some actually have increases, including a good jump in the number of town bridges that will be repaired as part of this year's Transportation Capital Budget. The governor does commit additional state funds to keep the state teachers' retirement fund from going any deeper into the hole, and continues to begin to fund retired teachers' health care from a variety of sources, including property taxes.

In his speech, he claimed to "fully fund the General Fund transfer to the Education Fund" and indeed the figures in the budget document show that transfer increasing, but only by 1.54 percent. Education spending increased 5.1 percent last year and 3.1 percent for both the current and upcoming (projected) years, so it is certainly not keeping up with its share of costs. The General Fund transfer is supposed to be increased by an obscure cost inflator figure every year. Adding a bit of mystery to the figure is the fine print in the budget (Section E.513) that states "[t]he general fund appropriation to the education fund is calculated to reflect a *reduced contribution* to the current use appropriation, and a *re-focusing* of the Corrections Community High School of Vermont program." [Emphasis added.] We don't know what those two terms mean to the Education Fund and property taxes. The current use appropriation in the state budget is for the sole purpose of reimbursing municipalities for municipal property taxes lost due to the reduced valuations under the state-created program. The Education Fund has suffered reduced property tax revenues due to the lower valuation for enrolled lands, but there has never been a "state contribution" to make up for that lost revenue. Other property taxpayers have always been forced to pay higher property tax rates to reduce the cost to farm and forest land owners who have benefited. The budget shows the Corrections Department's Education line item coming from the Education Fund – to the tune of \$4 million last year and \$3.8 million this year – dropping to just over \$2 million next year. VLCT will research these proposals and the inflator figure to determine the impact on property taxes and report back to you.

To partially pay for the increase in state General Fund spending included in the governor's budget – 4.4 percent over the FY15 Governor's Recommended Budget Adjustment, or, 1.8 percent if you are measuring "the total unduplicated appropriation request" (whatever that means) of \$5.66 billion – the governor proposes to tax the amount Vermonters pay in state and local taxes. Currently, the 30 percent of individuals who itemize their Vermont income tax returns can deduct the amount they pay in state income and state and local property and income taxes from their Vermont state taxable income, as they can with their federal income tax. This proposal would require that amount to be taxed (again), raising \$15.5 million towards the \$94 million budget gap. (Note: that widely quoted budget gap is only there assuming that state General Fund spending increases by 6.5 percent over the FY15 "As Passed" budget. [Source: FY 2016 Executive Budget Summary, Governor's Office]) The more people pay in state and local taxes, the more this proposed "loophole closure" will cost them in additional state income taxes (which will then be taxed again next year).

**Health Care.** For almost a decade, VLCT has called for the state to "fix Medicaid first" to deal with high health insurance costs. The governor's FY16 budget finally begins to address this. The state Medicaid program reimburses doctors and hospitals between 40 and 60 percent of what health care services provided to those recipients actually costs. To make up for this underfunding, doctors and hospitals do what is referred to as the "Medicaid cost shift." The rates they charge people who have insurance actually

works out to be an estimated 140 percent of what the services provided insured people really costs. As more and more people have become eligible for this state program, the shift has become a larger and larger part of the health insurance premium bills that towns have to pay for their employees.

In his speech, the governor stated: “[c]urrent Medicaid reimbursements drive up private insurance costs for businesses and individuals, acting as a hidden tax or cost shift. This amounts to an astonishing \$150 million in private premium inflation every single year. Our failure to fix this by increasing state Medicaid reimbursements also means we are failing to draw down tens of millions of dollars in available matching federal funds.

“Therefore, my budget invests \$25 million starting January 1, 2016, providing a 50% increase to our primary care providers and reducing the current Medicaid cost shift by half. My budget also will commit nearly \$30 million in FY16 to cover the nearly 20,000 people who now have insurance coverage thanks to Vermont Health Connect and our Medicaid expansions.”

We won’t go into the math required to figure how \$25 million cuts a \$150 million gap in half, but it can actually be done. We are very pleased that the governor is finally proposing to address this. What we are concerned about is that towns and cities – already paying a large bill for their employees’ health care, will also now be subject to the governor’s proposed 0.7 percent payroll tax, which is projected to raise \$90 million a year.

The hope is that the portion of this tax (roughly 55 percent as we figure it) that will be used to bring the Medicaid reimbursement rate up will result in at least that much in savings in future insurance premiums. Again, in the words of the governor, “[e]very dollar of this increased payment in Medicaid reimbursements will be used to reduce the cost shift and bring down private insurance rates. My budget proposal includes language that requires the Green Mountain Care Board through its hospital budget and rate review processes to return the savings created by these increased payments, reducing premiums for businesses and individuals by up to 5% from what they would have otherwise charged.”

The VLCT Board of Directors will be considering its position on this tax to pay for reducing the Medicaid cost shift at a meeting scheduled for next week.

**Education Property Taxes.** “There may be nothing more important to our future prosperity than providing a quality education for all our children. Yet today, Vermonters feel tapped out trying to meet that goal. There is no mystery why: While the number of students in our schools plummets, our property taxes skyrocket, and our property values and incomes stagnate. You heard it and I heard it from Vermonters all over the state these past months – they are frustrated at rising costs they struggle to control and they want action.” – Governor Shumlin, January 15, 2015.

The governor spent a considerable amount of time talking about the state education property tax burden. He stated his opposition to solving the problem of high state property taxed “by changing the way we collect revenue.” He believes we have a spending problem only. He opposes mandated “solutions” from Montpelier (not the city, but a reference to State government), but then lays out some “Montpelier” solutions:

**First**, we need to provide even more data to help people answer the questions they have about rising spending. My Agency of Education has today launched online tools right on our website to help communities understand their education spending, phantom students, tax rates, enrollment, and staffing. Encourage your communities to check it out as they review local budgets.

**Second**, let’s commit to a moratorium on new mandates from Montpelier that adds costs to districts.

**Third**, we must phase out or eliminate contradictory incentives built into the funding formula like the small schools grant and the phantom student provision.

**Fourth**, we will target construction aid for districts that are actively trying to right-size through a merger. My capital budget proposes \$3 million for this purpose.

***Fifth**, we should pass legislation prohibiting both teacher strikes and board-imposed contracts, while requiring both sides to resolve differences through third party decision-making when negotiation fails.*

***Sixth**, we should consider giving enhanced redistricting authority to the State Board of Education or another entity when schools are orphaned and need to be part of a bigger union.*

***Seventh**, we should make sure decisions such as principal hiring, health care contracting, and other significant spending take place at the supervisory union level, and we should empower principals to hire all staff at their schools.*

The VLCT Board will consider what its position on these proposals will be (if any) at its meeting next Thursday. However, one issue that raises immediate red flags is number five, which would take the decisions of between 70 and 80 percent of the typical school budget (salaries and benefits) out of the hands of the school board and taxpayers and give it to some third party person, whose only interest in school funding is to have conflict resolved. Mandatory binding arbitration is an anathema to democracy and there is no statistical proof that any savings can be realized from shunting this responsibility to some unaffected party.

The Governor's budget also begins the saga of yet another State House camel sticking its nose under the local government tent, soon to be found fully inside the tent:

*Sec. E.504 Education – adult education and literacy*

*(a) Of this appropriation, \$3,250,000 from the Education Fund shall be distributed to school districts for reimbursement of high school completion services pursuant to 16 V.S.A. § 1049a(c). Notwithstanding 16 V.S.A. Sec. 4025(b), of this Education Fund appropriation, the amount of \$650,000 is available to pay college providers of the dual enrollment program on behalf of school districts, and \$100,000 is available to support the Vermont Virtual Learning Collaborative at the River Valley Regional Technical Center School District.*

This is the beginning of the property tax paying for college education, in addition to now pre-kindergarten (another mandate added last year) through grade 12. The “dual enrollment” program allows high school students to take college courses “for free,” leaving teachers in their high schools teaching fewer students, but still getting paid. The Education Fund is now paying one-half of the cost, despite state law (16 V.S.A. § 4025(b)) that states “[u]pon withdrawal of funds from the Education Fund for any purpose other than those authorized by this section, 32 V.S.A. chapter 135 (education property tax) is repealed.” This language was cleverly added in 1997 when the state legislature first imposed the state property tax to try to convince taxpayers that the state would never, ever use their property taxes for anything other than providing equity for our then K-12 local schools. Unfortunately, the legislature is adept at trotting out the word “notwithstanding” when they wish to break a promise.

The governor's budget has certainly given us much to consider in the coming months. It is a compilation of good news and bad news for towns and taxpayers. Please help VLCT get the ratio of good news higher through the session: read our weekly *Reports* and *Action Alerts*, and keep in touch with your legislators as often as you can.

Contact Steve Jeffrey at 1-800-649-7915 or [sjeffrey@vlct.org](mailto:sjeffrey@vlct.org)

## **Lake Champlain Cleanup – Help from the Feds**

The Agency of Natural Resources and the Department of Environmental Conservation were everywhere in the House this week – in the Ways and Means, Natural Resources and Energy, and Fish, Wildlife and Water Resources committees. They participated in a press conference with the U.S. Department of Agriculture (USDA) and the Vermont Agency of Agriculture, Food and Markets that announced \$16 million in federal funds to improve Lake Champlain water quality in New York and Vermont. The funds are part of \$370 million going to more than 100 projects across the country as part of a new USDA

Regional Conservation Partnership Program. “These partnerships give communities more ownership in efforts to conserve their local natural resources,” said USDA Conservation Service Chief Jason Weller. “They also encourage private sector investment so we can have an impact that’s well beyond what the Federal government could accomplish on its own. These efforts keep our land resilient and water clean, and promote tremendous economic growth in agriculture, construction, tourism, outdoor recreation and other industries.” The Vermont project – led by the agencies of Agriculture, Food and Markets and Natural Resources – uses modeling to target conservation practices for optimal environmental benefits, an extensive monitoring network to assess conservation effectiveness, a sliding scale cost-share to gain support of producers, and an incentive-based environmental stewardship program to ensure that producers will get credit for the conservation practices they apply. The federal dollars will be matched by \$20 million from other sources as well as Vermont Housing and Conservation Board purchases of development rights on land and farm viability programs.

The USDA awarded an additional grant of \$710,980 to the Vermont Association of Conservation Districts and will be matched with \$658,976 in other funds. It will be used to expand cropland conservation implementation for small farms in the Lake Champlain watershed. Project partners will help small livestock farmers develop Land Treatment Plans, Nutrient Management Plans, and Comprehensive Nutrient Management Plans to address the application of excessive amounts of soil amendments to farm field soils and reduce sediment contamination of streams.

The announcement of these two grants comes one week after Governor Shumlin highlighted the plight of the lake in his inaugural address and called for immediate action to clean it up. Including his budget address on Thursday and the unveiling of his approximately 1,000-page budget (see page 6), there will be much more to discuss in the coming weeks about how much the cleanup will cost overall and who will have to do what to make that cleanup happen.

Contact Karen Horn at 1-800-649-7915 or [khorn@vlct.org](mailto:khorn@vlct.org).

<b>BILL NUMBER</b>	<b>NEW BILLS SUMMARY</b>	<b>CURRENT LOCATION</b>
<a href="#">PR1</a>	Would amend the Vermont Constitution to provide that each person has a right to privacy, including the right to keep personal information private, to communicate with others privately, and to make decisions concerning his or her body.	Senate Government Operations
<a href="#">H.4</a>	Would prohibit the manufacture and sale of personal care products and over-the-counter drugs that contain synthetic plastic microbeads (organic compounds that attract other pollutants commonly present in the environment).	House Fish, Wildlife and Water Resources
<a href="#">H.6</a>	Would amend the transition section of the Shorelands Protection Act to clarify that the requirements of the act do not apply when a property owner obtained or applied for all municipal zoning and development permits prior to the act’s effective date.	House Fish, Wildlife and Water Resources
<a href="#">H.7</a>	Would make miscellaneous amendments to laws regarding law enforcement officer certification.	House Government Operations
<a href="#">H.8</a>	Would authorize the Attorney General to oversee the transfer of military equipment to State and local law enforcement agencies pursuant to the federal program established in 10 U.S.C. § 2576a.	House Government Operations
<a href="#">H.10</a>	Would approve amendments to the charter of the Town of Barre.	House Government Operations
<a href="#">H.13</a>	Would limit the amount of flood insurance coverage a mortgage or loan creditor can require.	House Commerce & Econ. Development
<a href="#">H.14</a>	Would prohibit the harassment of law enforcement and corrections officers.	House Government Operations
<a href="#">H.15</a>	Would approve amendments to the charter of the Town of Colchester.	House Government Operations
<a href="#">H.16</a>	Would require a sex offender who serves his or her maximum sentence to register with the Department of Public Safety as a sex offender prior to the offender’s release from a correctional facility.	House Judiciary

<a href="#">H.17</a>	Would amend the Administrative Procedure Act to, among other things, require an agency filing a proposed rule to identify in the cover sheet included in the filing whether the rule contains a Public Records Act exemption.	House Government Operations
<a href="#">H.18</a>	Would give the Public Records Act a short title, require the Office of Legislative Council to compile and update periodically a list of statutory Public Records Act exemptions and require that the list be posted to various state websites, and amend miscellaneous exemptions to the Public Records Act.	House Government Operations
<a href="#">S.16</a>	Would require owners of energy transmission facilities to pay a siting charge to towns where those facilities are located.	Senate Finance
<a href="#">S.18</a>	Would (1) require that a court issue a search warrant before a company providing electronic communication services, remote computing services, or location information services may release certain customer records to a government office or public official; (2) establish a private right of action for a person whose health care information is improperly disclosed by another person; (3) establish regulations for the use of drones and permit a law enforcement agency to use a drone only if the agency obtains a warrant or if emergency circumstances exist; and (4) restrict the use of automated license plate recognition systems, to require data captured by them to be kept confidential, and to limit the data from being retained for more than 24 hours, unless certain exceptions apply.	Senate Judiciary

<b>Municipal Funding Priorities in FY 2016 Budget (in Millions) Governor's Recommend</b>			
<b>Budget Line Item</b>	<b>FY15 Approved</b>	<b>FY16 Governor's Recommend</b>	<b>FY16 Governor's Recommend \$ Change from FY15 Final</b>
PILOT – ANR Lands	\$2.35	\$2.29	(\$0.06)
PILOT – Corrections Facilities <sup>1</sup>	\$0.04	\$0.04	\$0.00
PILOT – Montpelier <sup>1</sup>	\$0.18	\$0.18	\$0.00
PILOT – State Buildings <sup>1</sup>	\$5.80	\$5.80	\$0.00
Current Use – Municipal	\$14.00	\$14.58	\$0.58
Homeowner Rebate – Municipal	\$15.72	\$18.20	\$2.48
Renter Rebate – Municipal	\$2.67	\$2.91	\$0.24
Special Investigative Units	\$1.67	\$1.68	\$0.01
General Fund Transfer to Education Fund <sup>2</sup>	\$295.82	\$300.38	\$4.56
General Fund Support of Teachers' Retirement System	\$72.85	\$76.10	\$3.25
General Fund Support of Retired Teachers' Health Benefits	\$8.25	\$12.58	\$4.33
Town Bridge Grants <sup>3</sup>	\$15.56	\$21.63	\$6.07
Town Highway Aid Program	\$25.98	\$25.98	\$0.00
Town Highway Aid Program – Class 1 Supplemental	\$0.13	\$0.13	(\$0.00)
Town Highway Structures	\$6.33	\$6.33	\$0.00
Vermont Local Roads	\$0.40	\$0.39	(\$0.01)
State Aid for Federal Disasters	\$1.44	\$1.44	\$0.00
State Aid for Nonfederal Disasters	\$1.15	\$1.15	\$0.00
Municipal Mitigation Grant Program	\$0.87	\$0.65	(\$0.22)
Class 2 Highway Paving and Rehabilitation	\$7.25	\$7.25	(\$0.00)
Total Local Highway Aid	\$59.11	\$64.95	\$5.84
<b>TOTAL</b>	<b>\$478.46</b>	<b>\$499.69</b>	<b>\$21.23</b>
<p>1. Figures for all years are all from local options tax sharing and no state monies.</p> <p>2. Required by statute to increase by New England economic project cumulative price index for government purchases (16 V.S.A. § 4025(a)(2)). In 2010 and 2011, legislature reduced this with "Notwithstanding" language. The 2011 legislature re-calibrated the amount of aid to be adjusted annually that will cost an additional \$27.5 million in property taxes having to be raised in FY13 and each succeeding year.</p> <p>3. Includes state and federal aid only; no local match.</p>			