WLR April 19: Public Safety, Municipal Zoning and Act 250, Property Taxes, and More

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There's a lot going on this week with multiple bills making substantial progress. **Read more about what happened this week below,** and don't miss our latest advocacy updates to **Municipal Capacity, Revenue, and Governance** and to **Public Safety and Transportation** which include:

- **Commonsense Public Safety Bills**
- **Amendment to Authorize Municipalities to Prohibit Firearms in Municipal Buildings**
- **Tax Abatement and Tax Sale Bill** *Reinstates 1% interest rate and removes the personal service requirement*
- **Statewide Authorization for Local Option Tax** *Included in Miscellaneous Tax Bill*

Opportunities for input:

- **Contact Your Legislators** *Municipal Zoning Preemptions Added to Act 250 Bill (updated 4/19)*
- **IMPORTANT Survey** *Statewide Reappraisal and Property Data from PVR*
- **Apply Now** *Opioid Settlement Advisory Committee*

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

Introduction

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For many, this legislative session is about three things, which we have been covering consistently: housing, public safety, and the education cost crisis. As we approach the final legislative phase, the common thread peaks through each topic; it's been several years since Montpelier has had to operate in a fiscally constrained environment.

As such, many debates become about change in policy vs. finding more funding, and it is not always along party lines as you might think.

- Recent major headlines outline these differences in public safety, housing, and education.
- While there is nuance to all of these issues, the truth is a lot of money has been thrown at these problems for the last several years, which has often hidden the problems and delayed difficult systemic solutions.
- Now, there is limited money, and from many legislators' perspectives, there is not enough time left to do the structural work this session.

Yield Bill Raises Property Taxes by Double Digits; Creates New Taxes and Studies

As the unprecedented havoc in school budgets continues outside the State House this week, with six budgets voted down on the second try, the House Ways and Means Committee advanced this year's yield bill, which sets property taxes for a **15% increase for homeowners who pay homestead rates and 18% for non-homestead payers such as businesses and renters.**

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The bill also;

- Applies the state's **6% sales tax to all internet services that are not already taxed,** such as QuickBooks, Squarespace, Square, or anything else, to raise $20.5 million.
- Levies a surcharge on short-term rentals of 1.5% in addition to existing rooms and meals tax.

The disparity between homestead and non-homestead rates is because the Committee moved $25 million of the education funding burden from the homestead rate to non-homestead rate in order to increase the property tax credit, which allows for some owners to have their property taxes subsidized. As reported in the past, some have suggested this has had an adverse impact on the housing market.

Structural Reform is Small or Evasive and Will Need to be Studied

The House Ways and Means Committee looked to long-term structural reform to address the ballooning of costs; however, they faced strong opposition from the associations that lobbied for school employees and dropped their attempts.

What Was Done

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- The bill brings back the excess spending threshold penalty that was suspended to implement the per pupil weighting in Act 127. However, the committee ***changed the formula,*** so schools will likely not trigger it. The threshold penalty kicks in and doubles the district's taxes if the average per-pupil spending (with inflation) increases by more than 120%.
- The Committee created **new mandates on ballot language** that would assist in voters' understanding by clearly laying out the district's pupil spending, their percentage increase, and the amount above the excess spending threshold.

What Was Beaten Back

- What was pitched and is soon to be studied was a model in which the state would pay to each district an "educational opportunity payment" that would be roughly a statewide average of per pupil spending.
    - Districts would then need to make up the difference between that payment and their spending in order to make voters feel their decision.
    - The districts would still have access to the statewide funding for spending above that education opportunity payment; however, they would need to match that funding more closely with local dollars.

What's Next?

- The yield bill creates a Commission on the Future of Public Education in Vermont to study and make recommendations for a statewide vision for

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Vermont's public education system.

Land-Use Legislation Passes Out of Natural Resources Committee with More Work to Do

The House's biodiversity protection legislation, H.687, was finally merged with S.311 and S.308 to create a nearly 200-page amalgamated bill that seeks to move Vermont's land-use policy to be "place-based" in its jurisdiction and thereby more predictable.

Place-Based Jurisdiction

The bill creates three tiers of jurisdiction, with Act 250 jurisdiction most intense in tier 3 and non-existent in Tier 1a. This looks like the following;

- **Tier 1a** – 20 to 50 municipalities could fit into this tier and leave Act 250 altogether, though they would apply, qualify, and incorporate the Act 250 criteria into their municipal zoning.
- **Tier 1b** – most municipalities could fit into this for their core, so long as they do not opt-out (**this option may be removed - see VLCT's Legislative Alert**). This tier would exempt housing development under 50 units on less than 10 acres
- *For a second, we'll skip from Tier 1 to Tier 3 for the sake of making an explanation easier;*
- **Tier 3** consists of "critical resource areas" where **any activity** within the area would automatically trigger Act 250 jurisdiction.

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    - These areas would be mapped under the Future Land Use mapping carried out by the Regional Planning Commissions, which will map areas to protect river corridors, headwaters, connective habitat blocks, and areas of elevation.
- **Tier 2** – anything we have not described yet would fall under Tier 2, which will closely resemble the existing Act 250 program, with the exception of a newly added "road rule" that triggers Act 250 if a road is more than 800 feet.

You can see some of this spelled out in a section-by-section summary.

Interim Guidance:

H.687 does include interim guidance until July 2027, however, it is scaled back from what was offered in S.311. The interim targets push Act 250 thresholds to,

- 75 units within a half-mile radius of state-designated growth areas
- 50 units within a quarter-mile radius of village centers or along transit corridors
- These are contingent on not being in floodplains or river corridors.

Appeals are Still a Sticking Point

While there are sticking points a-plenty in the legislation as it stands, a change in appeals threatens the entire bill.

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- The bill transitions the Natural Resource Board to a "Land Use Review Board," which would hear appeals instead of the court system.
- In the current system, appeals heard in the Environmental Court of municipal and state permits can be consolidated or at least coordinated with Act 250 appeals to expedite the process.
    - H.687, as written, would bifurcate appeals into two separate venues with local permits and state permit appeals still going to the Environmental Court.
    - Remember, a NIMBY's modus operandi is to make the war they wage on a project a war of attrition, gumming up the works wherever possible. Bifurcating the appeals process means they have multiple cases to do this.
- The Senate Committee on Economic Development, Housing, and General Affairs had opted to expedite appeals by putting more resources in the court system after looking at a myriad of options. On Thursday, they did not seem to agree with H.687s current language.
- The Governor has signaled that the new appeals process is a non-starter and could precipitate a veto.
- While much of H.687 is lifted from agreements by stakeholders as part of the Natural Resources Board's process this summer and fall, the question of creating a bifurcated appeals process did not arrive at a consensus.
- See VLCT's latest **Legislative Alert** for concerns regarding municipal zoning preemptions.

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You should contact your Senators today if you have concerns about this bill's current form.

Public Safety Legislation Check-in

This week saw action on Safe Injection Facilities, retail theft, conditions of release, and more debate about funding for the criminal justice system. See VLCT's **Public Safety Update** for more information.

Safe Injections Facilities Passed out of Senate Health and Welfare

The bill uses $1.1 million from the settlement with drug companies in the Opioid Abatement Special Fund to fund what is being called an "Overdose Prevention Center" in Burlington. Initially, the bill envisioned two centers.

- The bill also directs $1.45 million in settlement money for syringe service programs, which provide clean syringes and paraphernalia, drug testing, and naloxone.

Join the Opioid Settlement Advisory Committee

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VLCT is collecting application for members to serve on the Opioid Settlement Advisory Committee. Members will serve four-year terms, and seven of the 16 members will be local officials appointed by VLCT.

Apply Now

Retail Theft Bill Passes Senate Judiciary

The Senate Committee on Judiciary scrapped the legislation sent to them from the House that would aggregate offenses in favor of what they considered simpler, subsequently creating more severe penalties for multiple offenses.

- First offense: misdemeanor charge, up to $500 fine, and six months imprisonment.
- Second offense: misdemeanor charge, up to $1,000 fine, and one-year imprisonment.
- Third offense: three-year felony sentence and a fine up to $1,500.
- Fourth offense: 10-year felony and a fine up to $2,500.

Notably, the amendment to the bill had a unanimous vote, yet the bill was voted out 4-1.

House Judiciary Amends Senate Repeat Offender Bill

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As passed by the Senate, S.195 lifts the $200 cap on bail to allow more bail to be required for repeat offenders already awaiting trial for other offenses. The House took action to scale back that language in their bill to more narrowly focus on risk of flight.

- The Senate language did not force judges to lift the cap on bail; it just allows judges to impose higher bail if deemed necessary after an exhaustive statutory bail analysis.
- The cap would have still been preserved for first-time offenders or one-time offenders who are not the problematic few we continually hear about racking up numerous charges.
- 60% of all pending dockets are related to a person with two or more pending cases.

Judiciary Funding Debate Needs Nuance

Vermont's State Attorneys face significant challenges due to their high caseloads. Many handle over 300 cases each, and some prosecutors manage over 500 cases each. The national standard is about 200 cases, and this raises concern about burnout and sheds light on issues of our court backlog.

- H.880 would have created about 80 new positions statewide, and 30 would have been in State's Attorneys' Offices. The Governor has signaled opposition to the legislation, mostly due to the funding method but also because he feels that the current resources aren't being used properly.

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- The mid-way between the Governor's critique and the House's legislation is with funding the State's Attorneys, as H.880 would have funneled more resources to the Defenders General, who are only handling about 175 cases each, and the courts, who have not extended their hours or scheduled the necessary trial days to clear backlogs.

You can read more via VTDigger.

Elsewhere In The State House

Hundreds of hours of committee discussion each week culminate in 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, Week 8, Week 9, Week 10, Week 11, Week 12, Week 13, Week 14, and the last session's recap.
- We have not covered it, however, there is a debate raging in the state legislature around the subject of "prior authorization" and the effects it will have on our healthcare system. You can read more about this via VTDigger.
- The Senate Committee on Economic Development, Housing, and General Affairs made some helpful changes this week by making definitions around data minimization congruent with those of Connecticut and removing the private right of action from the bill.

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- Quoting is underway for Vermont Family and Medical Leave Insurance (FMLI). State employees are already enrolled in the program and, starting July 1st, municipalities with two or more employees can offer Vermont FMLI. FMLI is highly customizable and it is voluntary with employees having to opt-in to participate. Vermont FMLI is fully insured and self-funded, meaning it relies on no public money. If you want to learn more, check out this webinar or reach out to The Hartford or your broker today.

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