WLR February 10: Local Option Tax, 3-Acre Rule, Municipal Liability, Financing Infrastructure and More

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It's the week between the Superbowl and Valentine's Day, and while competition is high, VLCT is feeling the love on some of our top priorities.

In this ***Weekly Legislative Report,*** we update you on our proposed changes for Local Option Tax, the ongoing 3 Acre debate, big proposed actions related to public infrastructure, and a little-known municipal issue now making its legislative debut: monetary caps for municipal liability!

Lots of Momentum Behind LOT Update

VLCT is advocating for two actions related to Local Option Tax and the associated surplus in the state PILOT special fund: first, to adjust the state withholding formula down to keep more LOT revenue in local budgets, and second, to distribute the $10.3 million PILOT surplus back to the municipalities that raised the funds.

On Friday, a new bill, H.164(opens in a new tab), an act relating to the distribution of local option tax revenue and the PILOT special fund, was introduced that would do just that. H.164 is co-led by Representatives Teddy Waszazak and Monique Priestley with 57 tri-partisan co-sponsors. The bill has been referred to the House Committee on Ways and Means, and with over one third of the chamber supporting these changes, we are hopeful the committee will hear the bill soon.

Encouraging the debate around what to do with these surplus revenues, the governor included in his budget a proposal to dedicate $1 million of the PILOT special fund balance to local budgets to cover the municipal share of taxes for flood-abated properties over the next five fiscal years.

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The Joint Fiscal Office (JFO) also released its PILOT special fund issue brief (opens in a new tab) this week. The report provides a history of the PILOT payment program and an accounting of the increased special fund revenues. The revenue surplus is driven by a growing list of municipalities choosing to adopt or add a Local Option Tax and quickly growing consumption tax receipts, which are up about 44% since the pandemic. The JFO brief offers three policy recommendations for the legislature to consider:

1. Funding a municipal grant program to support communities dealing with natural disasters

2. Returning a larger share of LOT revenues to the municipalities with the taxes

3. Compensating towns for historical underpayments

You can help bill H.164 advance by contacting the members of the House Committee on Ways and Means(opens in a new tab) and sharing your support for VLCT's proposed actions.

3-Acre Parcel Owners Call Foul

The House Committee on the Environment has continued its agenda to hear testimony related to the Clean Water Act. Last week, Chair Amy Sheldon invited some owners of parcels currently identified as 3-acre sites to join ANR officials in discussing the state's implementation (or lack thereof) of the 3-acre

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stormwater permitting rule(opens in a new tab).

On Thursday, South Burlington Public Works Director Tom DiPietro, Richmond resident Page Kaleita, and Vergennes business owner Bill Houston all testified about the 3-acre permit(opens in a new tab) process along with Department of Environmental Conservation Deputy Commissioner Neil Kamman and the Watershed Management Division's Stormwater Program Manager Kevin Burke.

Tom, Page, and Bill outlined the considerable challenges and costs associated with obtaining 3-acre permit compliance. Page made a compelling plea for homeowners across the state who have recently been informed of their permit requirements and are facing sticker shock. She and 47 of her neighbors in Richmond are anticipating the required treatment cost to be over $700,000.

Legislators pressed DEC staff on the progress of 3-acre permit implementation, the effectiveness of the treatments, and the fairness of the cost burdens on some Vermonters. According to Kamman, about nine out of 677 3-acre parcels have completed construction for permitted stormwater treatment, while the agency has engaged about half of all parcel owners regarding the process. DEC was not able to address anticipated costs for the projects in progress.

VLCT's Director of Intergovernmental Affairs Josh Hanford talked to WCAX (opens in a new tab) about our objections to the current rule. Josh said, "Residents and municipalities want to clean up the lake like everyone does. I think we're running into a wall, frankly, of how do we do that."

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VLCT proposes reform of the 3-acre stormwater permitting rule to consider cost, feasibility, and the effectiveness of phosphorous reduction. VLCT is calling for an immediate pause to 3-acre permit implementation, until an evaluation of the effectiveness of treatments on a variety of property types and a cost benefit is completed. This evaluation and analysis must include municipalities, homeowners, businesses, environmental engineers and contractors.

You can support VLCT's work toward sensible reform by contacting members of the House Committee on Environment(opens in a new tab) and sharing your expertise and experience in running up against the 3-Acre Rule.

Infrastructure Funding is Foundational to Housing Affordability

VLCT's Advocacy team was again in front of the House Committee on General Affairs and Housing(opens in a new tab) to discuss Governor Scott's new housing proposals and the need for legislative action this session to enable construction on municipal water and wastewater infrastructure.

New municipal authority to allow cities and towns to finance water and wastewater expansions with future grand list revenues is a top priority for VLCT this session.

Both the current Act 250 exemptions and the ongoing map making and rule setting process kicked off by Act 181 have tied the fate of future housing density to municipal water and wastewater infrastructure. The state needs a plan for the funding of public infrastructure in order to realize the new homes

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that municipalities have envisioned and allowed for in local bylaw.

A new tax increment funding authority would allow communities to invest in public infrastructure **without competing for limited state funds or raising costs for current ratepayers and taxpayers**.

In the governor's housing bill, the administration outlines such a program called the Strategic Projects for Advancing Rural Communities (SPARC). Our allies in the Let's Build Homes(opens in a new tab) coalitions have offered a similar strategy called the Housing Infrastructure iniTiative (HIT). VLCT is generally supportive of both proposals and asked members to consider these municipal priorities while assessing the details of the competing visions:

- Prioritize housing and consider flood resiliency for program eligibility.
- Include opportunities for all municipalities to fund infrastructure and build housing, regardless of Tier 1 status.
- Advance a tax increment formula for state and local property tax that supports new development and redevelopment projects.
- Ensure stable and immediate contributions to the Education Fund beginning in the fiscal year in which a majority of the project is complete and the new assessed value is accounted for on the grand list.
- Pair appropriate technical support for municipalities.

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The House Committee on General and Housing has continued their work to understand the existing TIF program and how similar, but more targeted, concepts could support housing development statewide and contribute badly needed new tax revenues to the Education Fund. While there is broad consensus behind this strategy among municipal officials, lenders, builders, and housing providers, it has yet to gain full traction within the critical money committees.

You can help build momentum on this critical issue by contacting your local representatives and asking them to dig deep and build a new program for housing infrastructure this session.

Municipal Insurance Ensures Public Services Continue: Legislation to Create a Monetary Liability Cap

Over the autumn months, VLCT's advocacy team began talking with lawmakers about our proposal to create a monetary cap for municipal liability, as the state enacted for itself in 2011. While the majority of public services are delivered by municipal government, only state government enjoys this liability protection. The absence of a monetary liability cap for municipalities is affecting the insurability of some critical public infrastructure and imperiling the ability of local government to deliver the public services that Vermonters want and need. Issues of insurability for municipalities have halted plans for skate parks and complicated plow routes, and they could jeopardize accessibility to other public facilities such as swimming pools, sports fields, playgrounds, and pedestrian infrastructure. A liability cap for municipalities

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will not affect the ability of victims of crime or civil rights violations to pursue compensation for damages.

Last week, the house introduced bill **H.138,**(opens in a new tab) an act relating to maximum liability of municipalities for tort claims, cosponsored by House Judiciary chair Martin Lalonde and freshman Representative Ian Goodnow. Goodnow is particularly well positioned to advocate for H.138 as both a practicing attorney and former Selectboard Chair from Brattleboro.

Niche municipal issues like this can easily be lost amid bigger policy debates during the brief legislative session, however, the concept of municipal liability was thrust into the headlines last month when the Town of Fairlee stepped up to the plate to save the Lake Morey ice skating loop(opens in a new tab). While the resort's insurer was not willing take the risk(opens in a new tab) – the town's insurance provider, VLCT Property and Casualty Intermunicipal Fund (PACIF) was. Enacting H.138 would ensure that Vermont municipalities can continue to provide public access to great community assets like Fairlee's skating rink, which WPTZ reports is the longest ice-skating trail in North America(opens in a new tab)!

Skating rinks aren't the only icy surfaces that municipalities worry about. Significant local resources go into managing icy roads, sidewalks, and parking lots. Newly introduced Senate bill S.29(opens in a new tab) seeks to reduce liability for commercial salt applicators and municipal salt applicators if they maintain certification in a to-be developed Chloride (salt) Contamination Reduction Program Best Management program by ANR and AOT.

"Certified commercial salt applicator or certified municipal salt applicator shall not be liable for damages arising from hazards on real property owned,

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occupied, maintained, or operated by that person when the hazards are caused solely by snow or ice and any failure or delay in removing or mitigating the hazards is the result of the certified commercial salt applicator or certified municipal salt applicator's implementation of the best management practices established". AOT has raised some questions (opens in a new tab) about the proposal's costs and implementation as well as the state's ability to achieve the stated goals without further investigation.

VLCT has told lawmakers and our allied advocates that we are reluctant to discuss plans to cut down on chloride without commensurate action to limit liability. If slippery surfaces and other local liabilities keep you up at night, contact your legislators and ask them to support H.138.(opens in a new tab)

What We're Tracking

To date, 228 bills have been introduced this session and VLCT is tracking 48 for potential municipal effects. Use these links to find all House bills(opens in a new tab) and all Senate bills(opens in a new tab). Here are a few recently introduced bill we are tracking:

- H.134 An act relating to calculating land use change tax and creating a new land use change tax exemption for developing affordable housing (opens in a new tab)

- H.135 An act relating to administrative and policy changes to Vermont tax laws and extending reimbursement to municipalities for tax

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abatement due to flooding(opens in a new tab)

- H.140 An act relating to the provision of grants for community nurses and community care coordinators working in collaboration with municipalities(opens in a new tab)

- H.145 An act relating to the disruption of proceedings governed by Vermont's Open Meeting Law(opens in a new tab)

What We're Reading

Legislative reports provide the factual and fiscal foundation for much of the State House debate around new legislative proposals. Here are a few recently published reports we are interested in:

- PILOT Appropriations are Fully Funded: What's Next?(opens in a new tab)

- Department of Children and Families January 31 Housing Report (GA/Motel Program)(opens in a new tab)

- Green Mountain Transit Final Legislative Report(opens in a new tab)

- Vermont Housing 7 Conservation Board 2024 Annual Report(opens in a new tab)

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Stay Involved

A number of bills of high interest for VLCT have been introduced, and our advocacy team has already testified eight times. There will be many more opportunities for you to help Josh and Samantha in VLCT's advocacy work. Remember to register and attend our **bi-weekly Advocacy Chats**(opens in a new tab)**,** which are held via Zoom every other Monday at 1 PM, including today, February 10.

- You can find (and share) this legislative report and future reports and alerts on our main Advocacy webpage(opens in a new tab).
- To support VLCT's advocacy work; participate in policy development, testimony, and legislative actions; or just learn more, reach out to Josh and Samantha by email at jhanford@vlct.org(opens in a new tab) and ssheehan@vlct.org(opens in a new tab).

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