April 28: MTAP, PILOT, and CHIP Take Two Steps Forward and One Step Back

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Just in time for marathon season, the legislature has entered a sprint. Many of VLCT's priority bills are in their final committees of jurisdiction this week. In this ***Weekly Legislative Report***, we update you on the progress of CHIP, the state of the "salt bill", and another hit to the PILOT surplus fund.

Regardless of how much time is left on this session's legislative clock, now is the moment to take action and help the VLCT advocacy team.

PILOT Surplus is Not a Piggy Bank

The annual budget bill (a.k.a. The Big Bill) has been passed by the Senate Appropriations Committee and Senate Finance Committee and will see one more brief hearing for technical amendments tomorrow. As we reported last week, it now includes $1 million in funding for MTAP using the Payment In Lieu Of Taxes (PILOT) fund surplus.

The Senate Transportation Committee is also putting forward a proposal to fund the Town Highway Non-Federal Disaster Program using $1.15 million from PILOT surplus, rather than from the Transportation Fund.

With the $1 million for municipal grand list reimbursement for FEMA buy-outs (as proposed by Governor Scott), **this would total $3.15 million in FY26 appropriations from the PILOT Fund surplus**.

VLCT has testified numerous times in favor of a reformed 80/20 split for Local Option Tax withholdings and to return a substantial portion of the FY24 $10.3 million surplus to the towns that raised those revenues. By the end of this fiscal year, the surplus is projected to approach $14 million.

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The bottom line is that Local Option Taxes are local revenues, created through a process of local control.

While flood relief and technical assistance are worthy efforts and municipal needs, not all of the towns that raised the current, substantial PILOT fund surplus will be able to receive grants from these programs.

The Senate could restore fairness to this appropriation scheme by:

- adding language to the Big Bill to extend MTAP eligibility to all Local Option Tax (LOT) contributing municipalities,
- moving MTAP out of the PILOT obligations and back into the structural budget,
- moving Town Highway Non-Federal Disaster Program funds back into the Transportation budget,
- increasing the withholding formula to 80/20, which would adequately fund PILOT while slowing down the accrual of future years' surplus, and
- returning the remaining $7.15 million from FY24 end of year surplus to the towns that raised it.

CHIP is in the Home Stretch

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The House Committee on Commerce and Economic Development has continued to hear testimony on the Community Housing and Infrastructure Program (CHIP) in bill S.127(opens in a new tab) – and is marking up a strike-all amendment that would create new guardrails for the program focused on density, affordability, and encouraging the construction of year-round housing. The Committee plans to vote their amendment forward tomorrow, and the House Committee on Ways and Means will begin testimony the following day. VLCT is on deck to testify before Ways and Means.

The Commerce Committee has discussed new provisions that would:

- **Promote Affordability:** The current draft amendment would change the state education tax increment available to market rate housing projects to 70/30 and leaves a higher increment of 80/20 for housing projects affordable to households at or below 120% of Area Median Income.

- **Promote Housing**: The committee discussed adding a provision that would require CHIP eligible projects to include a minimum of 40% of floor area ratio to be for housing.

- **Promote Density:** The committee has discussed whether Tier 2 areas should be eligible for CHIP. In Tier 2, normal Act 250 jurisdiction applies for projects with 10 or more units – and is enhanced by the new "road rule" which triggers Act 250 for smaller projects with certain footage of new driveway and road construction. The committee is likely to add Tier 2 eligibility only for projects with 10 or more units and/or only after the Tier 2 mapping process is completed in 2027. In the interim, projects

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within current Act 250 exempted areas and within historic settlement areas would be eligible.

- **Require Primary Residency:** VLCT has raised concerns about the committee's proposal to require new housing be for primary residents only for the life of the housing site. As drafted, this requirement would live within the Infrastructure Agreement between the municipality and the developer – essentially creating a shared home equity covenant on the property with a duty to enforce for the municipality. VLCT supports new regulatory tools to control the proliferation of short-term rentals and second homes – but not within the CHIP program.

As VLCT's Samantha Sheehan recently told Vermont Public(opens in a new tab), the current financing options available for the construction of new infrastructure increase the cost of homeownership and raise rents for Vermonters. Municipalities either must raise property taxes or water rates, compete for state grants (which drain the general fund), or pass those public costs on to developers – which is in turn passed through to the occupants of new housing projects. **CHIP would create a totally new financing tool for the public elements of new housing projects *without* raising local taxes and rates and *without* requiring the appropriation of state funds**.

"The reality is that in order to achieve 36,000 homes in five years, we need policy that is housing-type agnostic," Sheehan said, "We need housing types of all kinds that are built in every community at the density that's appropriate for that community."

CHIP isn't the best plan for financing the public infrastructure we need to support new housing – it's the ONLY plan.

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VLCT will keep pushing to make sure that CHIP is a home run and that every community can realize the new homes that they envision, plan for, and allow in local bylaw.

Salt Bill Advances Without Adequate Liability Protection

The House of Representatives will soon vote on bill H.86(opens in a new tab), an act relating to establishing the Chloride Contamination Reduction Program at the Agency of Natural Resources, also known as “the salt bill”.

Vermont cities and towns are generally aligned with the intent of the bill, which is to improve water quality by reducing the over-salting of roads, sidewalks, and parking lots. Sounds good, right?

There is a catch – because municipalities have an obligation to defend and indemnify all employees and do not have the same monetary liability cap that the state government enjoys, we feel the salt bill will do little to nothing to protect liability for municipal applicators in the envisioned program.

In order to enjoy the limited civil liability protection proposed in H.86, a municipality would have to:

- prove the event (injury) was caused "solely by snow and ice"
- prove that the salt application was according to best practice

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- prove that the employee or contractor did not commit gross negligence or reckless disregard

- meet other requirements such as record keeping, attending training, etc.

Several times and in various committees, the VLCT advocacy team has testified for H.86(opens in a new tab), and each time we asked for this narrow civil liability provision to be removed and replaced with the monetary cap for tort liability introduced in bill H.138(opens in a new tab).

Town officials have to balance water quality goals with public safety and their fiduciary responsibility to taxpayers to limit the municipality's risk. The legislature had a chance to make progress toward all three of these shared goals – but they slipped up. Without adequate liability protections, VLCT cannot endorse the salt bill.

Take Action

The legislature could adjourn in four weeks, or five weeks, or six weeks. Regardless of how much time is left on the clock, this is the moment to take action and help the VLCT advocacy team.

Stay up to date on the status of VLCT's priorities by reading our weekly legislative reports and testimonies and attending our advocacy chats. Take action by contacting your local representatives(opens in a new tab) and

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sharing how critical bills will help your community.

Stay up to date on VLCT's ongoing advocacy work:

- Remember to register for and attend our **bi-weekly Advocacy Chats** (opens in a new tab), which are held via Zoom every other Monday at 1 PM.

- 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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