

2022 Weekly Legislative Report #8

February 18, 2022

Today's report focuses on the \$63M opioids settlement; education funding; the miscellaneous changes to municipal law in S.181; this year's Transportation Bill; and, in our Elsewhere in the State House column, municipal charters, voter approval of water rates, a criminal threatening bill, and the budget adjustment bill. New Bills returns with four entries.

You can always check our two webpages to track the 2022 bills that especially affect municipalities: [bills introduced in the House](#) and [bills introduced in the Senate](#). We update these cumulative lists every Friday so you can follow bills as they travel through the appropriate State House committees. Scroll to the end to see the newest additions.

As the legislative session progresses, go to our [Legislative Reports page](#) to revisit this issue and find other weekly legislative reports.

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This Week's Articles

The Opioid Settlement

The House Human Services Committee has heard testimony from the Attorney General's Office about the opioid settlement as they discuss [H.711](#), a bill that would establish an Opioid Settlement Advisory Committee and Opioid Abatement Special Fund in compliance with any settlements to which the state or municipalities are parties.

The settlement is between state attorneys general, litigating subdivisions (which in Vermont are Brattleboro, Bennington, Sharon, and St. Albans), and the three largest pharmaceutical distributors (McKesson, Cardinal Health, and Amerisource Bergen), and manufacturer (Janssen Pharmaceuticals and its parent company Johnson & Johnson). *All* Vermont cities, towns, villages and counties (282 jurisdictions in all) are qualified subdivisions.

All qualified subdivisions received notice of the settlement from the Vermont Attorney General's office last year. If a qualified subdivision signs on, it will receive its share of a 15 percent subdivision fund. If a qualified subdivision does not sign on, its share will remain in Vermont and go to a 70 percent abatement fund. Local officials should visit the Attorney General's Opioid website (<https://ago.vermont.gov/opioid-settlement/>) for information on how to sign on to the agreement if they have not already done so.

The state anticipates receiving \$63 million over eighteen years to address the opioid crisis. (See *VLCT News* article linked below.) Uses of the fund are specified in the terms of the settlements and an advisory committee must be established to make recommendations to the designated state agency for spending the money. The advisory committee must comprise an equal number of state and subdivision representatives. The settlement agreement also requires the advisory committee to have written guidelines for the appointment, removal, and terms of service for its members; a meeting schedule; and a process for receiving information from cities and towns regarding their needs and proposals for abatement.

H.711 would establish an Opioid Settlement Advisory Committee to advise the Department of Health. The committee's membership would need to reflect the diversity of Vermont in terms of gender, race, age, ethnicity, sexual orientation, gender identity, disability status, and socioeconomic status. As the bill is currently drafted, the advisory committee would comprise eighteen members, eight of whom would be local officials appointed by VLCT and one of whom would be an assistant judge, probably appointed by the Vermont Association of County Judges. The bill would specify four-year terms on the committee, a process for removal by the appointing entity, and the topic to consider when recommending spending priorities and distribution to the governor, the Department of Health, and the legislature. The Health Commissioner would call the first meeting before May 1, 2022.

H.711 would also establish an Opioid Abatement Special Fund, which would include all monies received from the Opioid Settlement Fund Administrator and be administered by the Department of Health in compliance with the settlement terms.

Eligible Uses Include:

- medication-assisted treatment (MAT);
- naloxone to treat overdoses;
- treatment for those with opioid use disorder;
- treatment for mothers and infants with neonatal abstinence syndrome;
- recovery services;
- prevention programs;
- expanding syringe service programs;
- addressing the needs of persons with opioid use disorder or co-occurring conditions who are at risk of, involved in, or transitioning out of the criminal justice system;
- support for first responders; and
- related training; research.

Once local officials determine if their municipality is signed on to the settlement agreement, they should consider if they or one of their colleagues is interested in serving on an Opioid Settlement Advisory Committee, should H.711 be passed. The committee will take up the bill again, likely before Town Meeting Day.

Resources for this article:

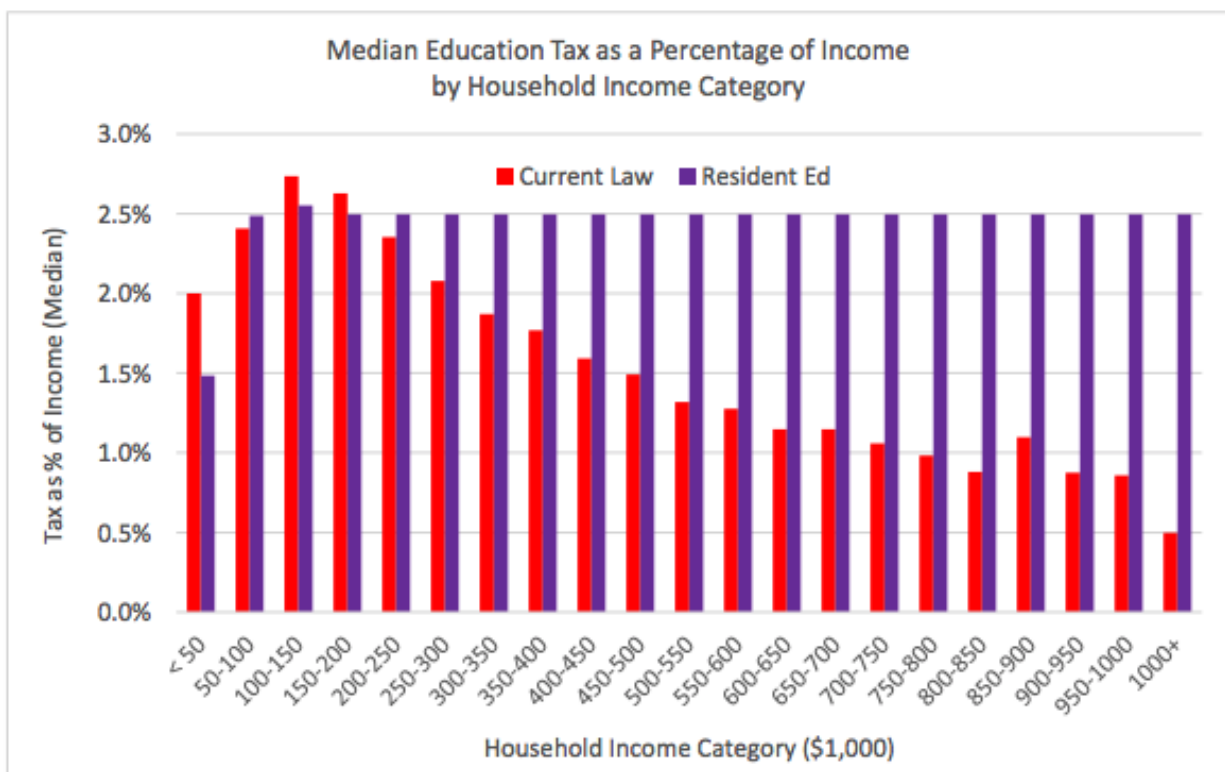
- [Vermont Attorney General's Executive Summary of Opioid Distributors and J&J Settlements](#), Sept. 14, 2021
- [The Opioid Settlement: \\$65 Million Over 18 Years](#), VLCT News, Nov.-Dec. 2021

Education Property Tax and Proposals for Change

This week, both the House Ways and Means and Senate Finance committees have been discussing education funding, and are working out how to implement the recommendations of both the [Pupil Weighting Factors Report](#) and the Task Force on the Implementation of the Pupil Weighting Factors Report. No one disagrees that the current weights assigned to students in the Vermont education funding system are wrong and unfairly disadvantage several categories of students.

Both committees are also hearing about the Tax Structure Commission Final Report, which recommends that the homestead property tax be moved completely to a resident income tax, as indicated in the table below created by Deb Brighton, a Joint Fiscal Office consultant and Tax Structure Commission member.

2 In our current law education tax, households with incomes greater than \$250,000 pay a lower percentage of their income in the Education Tax than households with lower incomes do, on average.

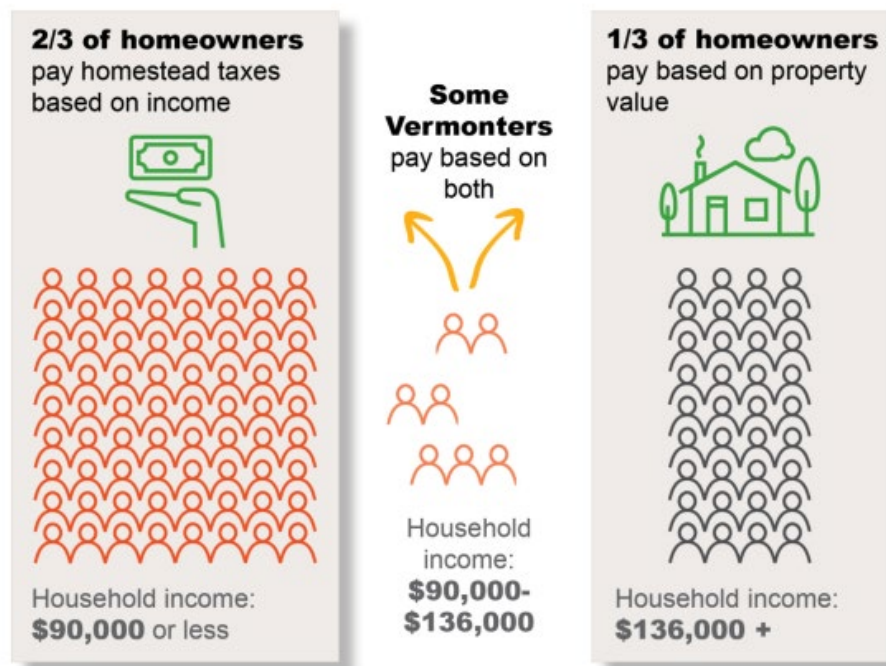


In the current education tax system, homesteads with incomes greater than \$250,000 pay, on average, a lower percentage of their income on education taxes than do households with lower incomes.

Currently, two-thirds of homeowners pay homestead education taxes based on income and one-third of homeowners pay them based on property values. The illustration below is from the Public Assets Institute.

Vermont school funding: two parallel systems

The way it is now



VLCT's Municipal Policy for 2021-2022 states that we support "a simple and transparent education finance system that reduces and reforms the property tax burden and more closely links voters' actions in approving budgets to the taxes they pay to fund their school districts" (1.01 (1)). The VLCT Board has endorsed implementation of both the Tax Structure Commission Final Report and the Pupil Weighting Factors Report. Accomplishing both goals in the 2022 legislative session would be a heavy lift at this point, although not impossible, when you consider that two-thirds of education tax payers already pay taxes based on their income.

So far this session, the committees have focused on implementing corrected pupil weights, which would correct long-standing inequities and address the expenditures side of the education funding system. As they begin to get a handle on how to implement new weights and over what period of time, the committees are now turning their attention to the system for raising education taxes, and the structural inequities on the revenue side of that system.

At the same time, House Ways and Means is hearing proposals from the administration for the Education Fund to pay for additional items for which it currently does not pay. The administration is proposing to transfer responsibility for the Community High School of Vermont from the General Fund back to the Education Fund. The Community High School obligation was added to the Education Fund in 2011, then transferred out of the Education Fund in 2018 along with renter rebates, aid for reappraisal and listing, and Adult Basic Education. The Community High School of Vermont is operated from the Department of Corrections and students are under the custody of the department commissioner. Thus, the statement that the Joint Fiscal Office and Agency of Education are fond of making – that "school boards set budgets and submit them to voters for their approval, maintaining local control over education spending" – would not apply to the Community High School of Vermont.

Resources for this article:

- [Joint Fiscal Office Resident Education Tax Rate Charts](#)
- [Public Assets Institute Education Taxes Presentation to Ways and Means](#), Feb. 3, 2022

Miscellaneous Changes to Municipal Law

The Senate Government Operations Committee is wrapping up its review of [S.181](#), a bill that makes miscellaneous changes to municipal laws. VLCT supports the bill, which makes numerous amendments to general statutory law and expands ordinance authority to provide more robust local jurisdiction in specific areas of the law. The different measures are generally grouped into three categories: ordinance authority under 24 V.S.A. § 2291, voter approved authority, and legislative body authority without voter approval.

A new draft of the bill with edits proposed by the committee is not yet available, but some of the authorities that the final version will include as it gets voted out of committee are:

- regulating sidewalks installation, traffic calming devices, storm drains, and public improvements and authorizing speed limits below 25 m.p.h.;
- regulating blighted properties and establishing property maintenance standards;
- removing abandoned, leaking boats from waters of the state;
- permitting local voters to approve a local option tax without going through the charter process;
- permitting local voters to adjust the number of seats or members on development review boards and zoning boards of adjustment;
- permitting local voters to authorize the recall of local officials;
- permitting selectboards and communities to elect or appoint non-town voters or residents to municipal positions if they are hard to fill or if suitable candidates are not available within the municipality;
- allowing a municipality to apply general law if a previously passed charter provision in its charter is no longer the preferred law the voters choose to follow;
- permitting municipalities to use cemetery funds for property improvements;
- allowing a town to hinge town zoning permit approval on receipt of other town permit approvals (condition precedent) such as sidewalks, sewer/water, building codes, and signals;
- enabling municipalities to eliminate the office of constable;
- codifying emergency provisions adopted during the COVID-19 pandemic and authorizing those provisions during all-hazard events and declared states of emergency; and
- repealing 19 V.S.A. § 312, which currently prevents town highway taxes from being comingled with other municipal funds.

VLCT advocated for these commonsense adjustments to state law to give local officials and voters greater control over local matters without having to adopt or amend their charter. VLCT feels strongly that local governments and their residents need the authority to work directly on issues that truly are local in nature.

The committee anticipates voting out the bill next Thursday. VLCT is grateful to the committee for their continued support of local government and for addressing the concerns raised by towns and cities across Vermont.

2022 Transportation Bill

For several weeks, both the Senate and House Transportation committees have been taking extensive testimony from the Agency of Transportation (VTrans) and interested parties related to this year's Transportation Bill. Every year, in addition to finalizing the upcoming fiscal year's budget, the legislature passes a bill that adopts VTrans' annual Transportation Program and makes miscellaneous changes to underlying laws. This year, much of the funding increases contemplated in investments in electric vehicles, charging stations, and bicycle and pedestrian measures would be funded by the American Rescue Plan Act (ARPA) and would have to be spent by the end of 2024. The bill also would make several technical and clarifying corrections to underlying laws, some of which affect local governments. This bill, still very much in draft form, will have several revisions before it moves from the House Transportation Committee to the Senate.

Several parts of the draft bill especially affect municipalities:

Electric Vehicles and Charging Stations. The legislation proposes significant investments in installing direct-current fast chargers (DCFC) along the state highway network. VTrans would use \$6,250,000 to either purchase and install DCFC or provide grants for outside entities to do the same. The Agency of Commerce and Community Development (ACCD) would use \$10 million to administer an Electric Vehicle Suitability Assessment (EVSA) grant program to continue the build-out of level 1 and 2 EVSAs at multi-unit dwellings, workplaces, and community attractions. The Agency of Natural Resources would also receive \$3 million to install EVSA chargers in state parks and fishing access areas.

VTrans would receive \$12 million for the Incentive Program for New PEVs (plug-in electric vehicles) and \$2 million for the partnership with [Drive Electric Vermont](#). The [MileageSmart](#) and the [Replace Your Ride](#) programs would receive \$3 million each. VTrans would also be authorized to spend up to \$2 million to motivate Vermonters to purchase electric bicycles and all-terrain vehicles.

Bicycles and Pedestrians. VTrans would be directed to establish a pilot program to support the continued development of bicycle and pedestrian infrastructure. The purpose of the program would be to either integrate bike and pedestrian elements into existing VTrans projects or ensure that municipal and state bike and pedestrian infrastructure align with each other. VTrans would have to consult with regional planning commissions to develop prioritized municipal bike and pedestrian plans or to help municipalities develop such plans.

Right-of-Way and Access Permits; Municipal Site Plan Review. The bill would clarify language in 19 V.S.A. § 1112(b) related to access permits for direct connections to state highway stormwater systems. The proposed amendment states that permits are for connections to state highway closed stormwater systems. This more accurately describes when permits are required and refers to connections to catch basins, pipes, drop-ins, and other structural stormwater systems. This is considered a technical correction because the state only charges for connections to closed systems and does not want to charge for each individual connection under a permit application. This is VTrans' current practice, and the proposed change would align it with statute.

A small, proposed amendment to 24 V.S.A. § 4416(b) would clarify involvement in certain site plan approval processes. The purpose of 24 V.S.A. § 4416 is to ensure VTrans' early involvement in the site plan approval process when a development project needs access to a state highway. The agency must review the proposal and provide a letter stating whether a permit is required, and if it is, then identify the conditions that apply to the permit. The statute's intent is to make sure that significant issues that affect the design of the site, like the location of a driveway, are captured before a project is approved at the local level. The purpose of the amendment is to clarify that VTrans' letter may not enumerate all conditions that will be included in the final access permit. Examples include standard boiler plate conditions that are attached to all permits related to liability, safety, managing traffic during construction, leaving the site in good

condition, etc. It is also possible that the design of a development project may evolve over time, prompting the need for other conditions.

Next Steps. The House Transportation Committee will continue working on the bill in the coming weeks. Both and House and Senate committees have invited VLCT to testify next week on local transportation funding and the sections of the transportation bill that affect local governments. This week, VLCT Advocacy staff submitted written testimony requesting the FY23 budget to include an increase in funding to Town Highway Aid and the Town Structures and Class 2 programs. If local officials have any general advice for VLCT to convey to the committee, please contact Gwynn Zakov at gzakov@vlct.org. We will try our best to incorporate your recommendations into next week's testimony.

Resources for this article:

- [Draft Transportation Bill](#) (bill number not yet assigned)
- [Infrastructure and Investment Jobs Act Breakdown](#)
- [Governor's Recommend FY23 Budget Proposal](#)
- [Governor's Recommend FY23 Budget vs. As-Passed FY22](#)

Elsewhere in the State House

Charters. Both the legislature and Governor Scott took action on several municipal charters this week. On Monday, the governor signed [H.454](#), a charter amendment for the City of Burlington. The bill adjusts the composition of the Board of Airport Commissioners by adding a member from the City of Winooski. A second Burlington charter amendment in [H.708](#) would authorize the city council to adopt an ordinance prohibiting the eviction of residential tenants without just cause. Today, that bill passed second reading in the House and will be on Tuesday's Calendar for the House to approve and send to the Senate.

Another charter bill, [H.491](#), is also on the House floor for consideration this week and next. That bill would create the new municipal corporation of the City of Essex Junction, provide for a variety of transitional provisions for the Village of Essex Junction to the newly formed city – including the city's contribution to consolidated services with the Town of Essex – and repeal the Village of Essex Junction's charter. Representatives of both the town and the village support the charter.

[H.444](#), the City of Barre's charter amendment legislation, had an initial review in the Senate Government Operations Committee this week, but further review will be forthcoming.

Voter Approval of Water Rates. This week, the Senate Government Operations Committee took up [S.176](#). The bill would regulate the sale and purchase of water and wastewater capacity from one municipality to another. Although the primary situation the bill seeks to address is a longstanding and frequently litigated sale of St. Albans City water to users in St. Albans Town, there are more than 40 municipalities that either sell or buy water or wastewater. (In many instances, their constituents make the purchase, not the actual municipality.). S.176 would prohibit a municipal corporation from establishing water supply or sewer disposal rates based upon the appraised or assessed value of property within another town, city, or incorporated village unless the voters of the jurisdiction receiving the water approve the rate basis at a meeting warned for that purpose. The legislation would supersede any conflicting charter provisions, municipal ordinances, or adopted water or wastewater rates.

Criminal Threatening. [S.265](#), a bill to amend the statutes regarding criminal threatening, is on the Senate Calendar today for third reading. The amendments would address the ever increasing number of instances of threats to public servants and groups of people. Many legislators, the Secretary of State's Office, and numerous local officials have received such threats this year. The bill would prohibit anyone from threatening a group of persons or individuals. S.265 reads, in part, that "a person who violates [the statute]... by making a threat that places any person in reasonable apprehension that death or serious bodily injury

will occur at a public or private school; postsecondary education institution; place of worship; polling place during election activities; the Vermont State House; or any federal, State, or municipal building shall be imprisoned not more than two years or fined not more than \$2,000.00, or both." Similarly, a person who threatens – with the intent to terrify, intimidate or unlawfully influence – another to prevent that person from complying with state law or rules, orders or state executive orders would be subject to imprisonment up to two years or fines of up to \$2,000 or both.

The bill specifically calls out threats designed to influence the conduct of or retaliate against a candidate for public office, public servant, election official, or public employee in any decision, opinion, recommendation, vote, or exercise of discretion. Upon passage by the Senate, the bill will go to the House Judiciary Committee.

Budget Adjustment. Contrary to our expectations last week, the House did not concur with the Senate's proposed amendments to [H.679](#), the budget adjustment bill. A conference committee was subsequently appointed and met on Thursday to discuss the differences between the House and Senate bills. The Secretary of Administration wrote to the conferees outlining her office's concerns with the choices made by the Senate for additional expenditures, particularly an amendment that would spend \$85 million more in American Rescue Plan Act State Revolving Fund monies than the governor had proposed, and instead directs those funds to areas other than the ones agreed to by the legislature and governor last year.

Resource for this article:

- [Agency of Administration Letter to Committee of Conference Regarding H.679](#), Feb. 8, 2022

New Bills

NUMBER	SUMMARY	CURRENT LOCATION
H.708	Would approve an amendment to the charter of the City of Burlington to authorize the city council to adopt an ordinance prohibiting the eviction of residential tenants without just cause.	House Government Operations
H.709	Would make miscellaneous changes to agricultural issues or programs administered by the Secretary of Agriculture, Food and Markets, including mandating that no bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm. The bill also would make changes to 6 V.S.A. chapter 34, the registration, application and administration of hemp.	House Agriculture and Forestry
H.710	Would prohibit the Secretary of Natural Resources from approving a leachate pretreatment system at a Vermont landfill. Would also prohibit a Vermont landfill from accepting landfill leachate, sludge, or contaminated soils unless the secretary has issued a certification for the facility that produced the landfill leachate, sludge, or contaminated soils or otherwise approved the site or facility where the materials originated. The bill would include a purpose section that declares that regulation of waste accepted by landfills in the state is necessary in order to protect the water quality of Vermont, including Lake Memphremagog.	House Natural Resources, Fish, and Wildlife

H.711	Would establish the Opioid Settlement Advisory Committee and Opioid Abatement Special Fund.	House Human Services
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