Education Funding Reform

On Wednesday afternoon the House Ways and Means Committee voted out its education funding bill, H.911. The bill is significantly different from proposals the committee discussed earlier in the session and even last week. H.911 incorporates changes that address the new tax burdens expected to be imposed on certain Vermonters as a result of the federal tax reform legislation and the education funding proposal.

Information provided to the House Education Committee outlining H.911 is posted on the Education Work Group web page.

When they go to town meeting next week, readers will find that the Joint Fiscal Office prepared the following talking points for the legislators:

**Income Tax Changes**
- Reduces state tax burden on Vermonters who are adversely impacted by the change in Federal Tax Law ($30 million returned to Vermonters)
- Lowers taxes for Vermonters:
  - Lowers all income tax rates by 0.2% and collapses top two income tax brackets
  - Creates a Vermont Standard Deduction, equal to $6,000 for single filers and $12,000 for married couples
  - Creates a Vermont Personal Exemption equal to $4,150 per exemption
  - Expands the Vermont Earned Income Tax Credit, from 32% of the Federal EITC to 35%
  - Creates a 5% tax credit for the total amount of charitable contributions up to $10,000. Taxpayers who contribute up to $10,000 will be eligible for a $500 tax credit
- Provides tax relief to Vermonters receiving Social Security benefits
  - Taxable Social Security benefits below $45,000 for single filers and below $60,000 for married filers will be 100% exempt from State income tax

**Education Finance System Changes**
- Adds a School Income Tax Surcharge, built upon the reformed income tax system
- Rates are 0.1% of lowest bracket, 0.5% for middle brackets, and 1% on highest income brackets
- Raises approximately $59 million for education
- Uses the $59 million to reduce average homestead property tax rates (on both property and income) from projected FY19 rates (average reduction of $0.14)
- Cost containment: future tax rates will rise faster for all spenders
- Non-residential property tax rate: stays at current law = $1.591
- Homeowner rebate: split into two components: education and municipal
- Renter Rebate: maintained and transferred to GF
- Separates municipal and education tax bills
- GF transfer to EF repealed in a revenue neutral way
  - Dedicates to the EF: 100% of sales tax and 25% of rooms and meals
  - Transfers adult education, flexible pathways, community high school of VT, renter rebate to GF ($21.5 million)
- Repeals excess spending penalty

VLCT’s 2018 Municipal Policy called on the legislature to:

- reform all Vermont taxes to ensure simplicity, equity, balance, and sustainability
- assess Act 46 effectiveness in reducing costs without adversely affecting educational quality
- use Education Fund monies only for pre-K-12 education
- simplify the education finance system.

On Wednesday, Advocacy staff testified in the Ways and Means Committee on the education funding portions of the draft bill that was voted out that afternoon. The proposal is designed to be revenue-neutral to the Education Fund.

We acknowledged the significant effort the Ways and Means Committee has made in tackling the issue of education funding and the work of school districts to keep their cost increases down this year.

We also raised a number of questions and comments regarding the proposal, as noted below.

It is clear that more work needs to be done to help school districts contain costs over time. Relying on voters to vote down increases in school budgets if their own property taxes would increase as a result and also to recognize that they are paying an income tax surcharge has only occasionally been borne out over the long history of education funding.

In 2017, according to the Agency of Education, budgeted expenditures per equalized pupil ranged from $14,937 to $20,659. Vermont consistently ranks among the states that spend the highest per-pupil amount.

The base education spending amount per equalized pupil in H.911 is $11,916.

The bill reduces property taxes for homestead properties but not for non-residential properties, lowering the average homestead property tax rate from $1.554 to $1.404. Again, what will happen in future years to property taxes without additional cost controls is an unanswered question.

As mentioned above, H.911 does remove several non-K-12 education costs from the Education Fund. Adult education, flexible pathways, the Community High School of Vermont, and renter rebate costs would be transferred to the General Fund, saving an estimated $21.5 million. The tax expenditure (unrealized tax revenues) represented by money that does not go to the Education Fund because of the Current Use Program remains a cost to that fund.
The bill assumes that school districts will realize savings from the recapture of teacher health care savings ($4.5 million). This number is likely not real – as school districts discovered this year when many were not able to find those savings.

Local officials remain concerned that if the legislature eliminates its obligation to make a General Fund transfer to the Education Fund and instead dedicates the entire sales tax and a portion of meals and rooms tax to the Education Fund, its interest in keeping those revenue sources robust and up to date will be diminished over time as they no longer affect the General Fund.

The bill will not be debated until after Town Meeting Day. There is ample opportunity for Joint Fiscal Office staff – who have done a tremendous amount of number crunching over the last several weeks – to further analyze the impact of H.911 on different taxpayers and communities. Take time to discuss the bill with your legislators. If your representatives do not have adequate answers to your questions, make sure that their priority is to secure those answers before a final vote on the bill.

Please also email your concerns to VLCT (khorn@vlct.org). At the next VLCT Board meeting on Thursday, March 8, board members will discuss H.911. Any insights will be very helpful to us as we develop a position on H.911.

Local Highway Aid

On Thursday, the House Transportation Committee voted out this session’s transportation bill, H.917. Committee members have been mindful of testimony during last month’s Local Government Day when local officials spoke eloquently about the transportation funding obstacles they face and asked for funding to help local governments fulfill ongoing responsibilities to keep their transportation infrastructure in good repair.

The committee took up a proposal of amendment that would provide additional funds for the Town Highway Aid Program. The amendment as proposed has two parts:

- The first part would provide that if a Transportation Fund balance exists at the end of FY18 after the Transportation Fund Stabilization Reserve is fully funded, up to $779,482 in Transportation Fund dollars would be added to the Town Highway Aid Program.

- The second part would establish a floor for Town Highway Aid of $26,762,226 in FY20 and in subsequent years would be annually adjusted by the Consumer Price Index for all Urban Consumers (CPI-U, which is approximately 2 percent this year) during the previous fiscal year. Since 2013, Town Highway Aid has equaled $25,982,774.

The committee agreed that this year there would be no fund balances at the end of the fiscal year, so the first proposal would accomplish nothing for local governments and it was not included in the bill.

Agency of Transportation (VTrans) representatives objected to both proposals, stating that establishing a CPI standard for funding would “impede the budget development process” and “contribute to a loss of flexibility on the administrative side.” Nonetheless, in Section 13 of the bill, the dedicated state Central Garage Fund would be appropriated $1,318,442 in FY19, “and in subsequent fiscal years, at a minimum, the amount specified … as adjusted annually by increasing the previous fiscal year’s amount by the
percentage increase in the Bureau of Labor Statistics Consumer Price Index for all Urban Consumers of during the previous State fiscal year.” Presumably, VTrans has no problem with that loss of flexibility.

Total funding recommended for local governments in the governor’s budget in FY19 is $66,502,648, which is a reduction from FY17. Total recommended funding for the state Transportation Budget in FY19 is $538,683,750, an increase of $36,786,023 over FY17.

H.917 also provides authority to the VTrans secretary to spend additional federal money that might become available and must be obligated or spent by a specific date, as long as they are spent on eligible projects in the FY18 or FY19 state transportation program or on additional town highway projects or activities that meet federal eligibility and readiness criteria.

A railroad would be required to take reasonable measures to control vegetation on its property or adjacent to the roadbed so the vegetation does not obstruct a driver’s view of traffic control devices or of an approaching train. If the railroad failed to control the vegetation within 30 days of written notice, a local legislative body or VTrans could apply to the Transportation Board for an order to the railroad to perform the required work by a specific date. The Transportation Board could impose a fine of $100 for each day that the railroad failed to comply with the board’s order.

The bill would establish a five-year pilot program for VTrans to enter into public-private partnership (P3) agreements for transportation infrastructure projects if they are in the public interest. A P3 project would allow for a private sector entity to finance, develop, operate, manage, own, lease or maintain a project. An annual report that evaluated the program to the legislature would be required.

The Chittenden County Transit Authority would be renamed the Green Mountain Transit Authority.

A person could own or operate an electric vehicle (EV) charging station. The Public Utility Commission (PUC) would be prohibited from setting retail sale prices for EV charging stations but could regulate the quality of service, consumer protection, metering notice of rates and charges and pricing practices. The PUC would complete an investigation regarding charging of plug-in stations by July 1, 2019. An interim report with initial findings would be due the legislature by December 15, 2018.

Please take time at town meeting to emphasize to your representatives the need for a reasonable increase in transportation funds to help towns undertake their transportation infrastructure responsibilities as well as the mandated improvements to roads to address water quality. And be sure to thank them for supporting the House Transportation Committee’s increase in Town Highway Aid.

Lease Lands

This week, the House Government Operations Committee voted out H.859, a bill that would establish a deadline for municipalities to affirmatively vote to retain ownership of lease lands. Lease lands and glebe lands have a long and complicated history pre-dating the birth of the country. In brief, lease and glebe lands were areas set aside for the benefit of special uses, primarily schools, and that supported ministers and churches. Many of them were granted by the then governor of New Hampshire. (New Hampshire and New York had each claimed Vermont as their own during Colonial times.) Beginning in 1794 after the American Revolution, legislation in Vermont established that the glebe and lease lands were vested in the state, and the state granted those rights to the towns in which the lands lay. In 1805, legislation established a duty of the selectboard to lease out the land on a perpetual basis and use the resulting rents.
for schools or to support churches. Legislation in 1947 allowed selectboards to convey lease lands to a leaseholder or to anyone, subject to the perpetual lease. Funds received for a conveyance – and rents – must be kept intact in trust for the original purpose of the lease. The issue is not unlike the ancient roads discussion of a few years ago. (Although the ancient roads legislation sunset in 2015, the Agency of Transportation maintains a web page, vtrans.vermont.gov/planning/maps/ancient-roads, that traces its history.)

Rents on lease lands are almost never collected anymore and, in most instances, have not been for decades. Local governments in Vermont do not support ministers or churches – that practice is unconstitutional. The majority of lease lands are not mapped and in many, maybe a majority of instances, towns do not even know they own them. They hold little value in terms of revenue – the rental amounts, set in Colonial times, were trivial. They are, however, a property right owned by the municipality and may have value for subsurface materials (mining) or rights-of-way for infrastructure, which in Vermont’s cities may already be in the ground.

When private property owners sell their land, they may learn that their land is encumbered by leased land. This has only recently become an issue because title insurance attorneys have begun to require that the leases be released, something easier said than done.

H.859 as it was introduced would have required municipalities to “list every perpetual lease land owned by the municipal corporation,” provide every lessee notice of the intent to retain ownership of the lease land, and hold a public hearing prior to conveying a lease land. Everyone involved in the discussion agreed that such a mandate represented a colossal job of tracing deeds all the way back to the New Hampshire land grants. Many maps that have been created – and there are some from the 1800s – are incomplete and likely inaccurate. H.859 would also have included the University of Vermont, which holds significant lease lands in different parts of the state. However, the university asked to be released from the proposed obligation.

H.859 as it was voted out of committee on Wednesday, defines perpetual lease as “any leasehold interest in Vermont land, and every estate in Vermont land other than fee simple absolute [that is, owning clear title to the land] the title to which is held by a municipal corporation … arising out of or created by an instrument of lease that conveys to a person designated as lessee the right to possess, enjoy, and use the land in perpetuity or substantially in perpetuity. Perpetual lease shall include lease hold interests that are subject to restrictions on the lessee’s use of the land and shall include lands that the municipal corporation may repossess for nonpayment of rent or other default under the terms of the lease.”

On January 1, 2020, title to perpetual lease lands would vest in the current lessee of record, free and clear but subject to other encumbrances of record, unless the local legislative body votes to retain ownership of the perpetual lease lands. The bill specifies that nothing shall prevent a municipal corporation that voted to retain ownership of perpetual lease land from later conveying the land. Lease lands that do not have current lessees of record or are abandoned, unused, or unoccupied would be vested in the municipality as public lands.

Local officials asked that the 2020 deadline be delayed so as to give time to assess what lease lands they held and whether or not it was in the best interest of the municipality to convey lease land holdings. However, because some wanted to have the lease lands property rights simply extinguished in one fell swoop, the committee settled on January 1, 2020.

Municipal officials should discuss the issue of lease lands with their representatives at town meeting and whether additional time to resolve the issue of what the municipality owns would be helpful.
Open Meeting Law, Public Records Act

The House Government Operations Committee passed out two bills this week that deal with the Open Meeting Law (OML). One of the bills also addresses the Public Record Act (PRA).

H.700 makes one small change to the OML as it relates to meeting minutes. It would allow public bodies to exclude state recognized holidays counting towards the five-calendar-day timeframe in which bodies have to make meeting minutes available for copying and inspection and are posted to town websites. The original proposal would have also excluded weekends from counting towards that five-day limit, but the proposal encountered opposition from the secretary of state and the Vermont Press Association and ultimately it was abandoned by the committee.

The second bill, H.910, goes further and makes changes to both the OML and the PRA. These are the relevant changes made to the OML:

**Business of the public body.** A new definition is added to 1 V.S.A. § 310 that defines business of a public body as “the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.”

**Social gatherings.** New language explicitly states that meetings shall not mean “occasions when a quorum of a public body attend social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers as long as the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.”

**Other public body meetings.** New language also states that meetings shall not mean “a gathering of a quorum of a public body at a duly warned meeting of another public body as long as the attending public body does not take action on its business.”

**Serial meetings.** The bill also addresses serial communications for the first time in the OML, New language proposes that “A quorum of the members of a public body shall not use a series of less-than-a-quorum communications of any kind, directly or through intermediaries, intended by any of the members to reach agreement or take action on the business of the public body.”

The latter half of the bill amends the PRA. In 1 V.S.A. § 318, it better defines the term “promptly” as it is used to describe how soon a custodian of a public record must respond to a record request. Promptly would mean “immediately, with little or no delay, and, unless otherwise provided in this section, not more than three business days from receipt of a request.” Further, it extends this “promptly” respond language to responding when records are in active use or in storage, and when a custodian considers the records to be exempt from inspection and copying. Most of this is clarifying language and is not a significant change from current law.

H.700 is now headed to the Senate, and H.910 will be taken up by the House when legislators return from the town meeting week break. VLCT supports both bills, and thanks the House Government Operations Committee for paying attention to and responding to the needs and concerns of Vermont’s municipalities.
Law Enforcement Professional Regulation

Also on Wednesday, the Senate Government Operations Committee gave final approval to S.192, a bill that would transfer the professional regulation of law enforcement officers from the Vermont Criminal Justice Training Council (VCJTC) to the Office of Professional Regulation (OPR). This bill is the culmination of several years of discussion on how to appropriately and uniformly regulate the professional conduct of police officers throughout the state. All agencies and all law enforcement offices – from sheriffs and municipal officers to state troopers and constables that have law enforcement authority – would be subject to these new regulations.

The bill mandates that in addition to the certification officers receive from the VCJTC to become law enforcement officers, they must also be licensed by OPR. Fees must be paid to OPR for each license, and each license must be renewed every two years. OPR would be responsible for licensing officers and administering the renewal, revocation, and reinstatement processes, as well as the investigations of any complaints of alleged unprofessional conduct of officers.

S.192 creates three levels of professional conduct and lists the specific misconduct that dictates the severity of sanctions that an officer will face. Law enforcement agencies must conduct internal investigations of alleged professional misconduct of an officer and must implement effective internal affairs programs to manage complaints. All law enforcement agencies must also have some form of a civilian review in an internal affairs program – for municipal agencies, that will generally mean the selectboard.

Although the costs of biennial licensing for officers is of concern, VLCT support the bill, as statewide professional regulation of all law enforcement officers is necessary and long overdue.

The Senate will vote on the bill, which is now in the Senate Finance Committee, when legislators return to the Capitol from Town Meeting Week.

Elsewhere in the State House

On Thursday, the House passed H.614, a bill that would amend 20 V.S.A. § 3132, the statute regulating the sale and use of fireworks. The bill came up in part because of recent incidents of people selling fireworks out of tents and other temporary locations around July 4th and other holidays that feature fireworks.

Any retail seller of fireworks would need to inform a purchaser that a permit must be obtained to use fireworks (this is current law), and the purchaser’s obligation to comply with any municipal ordinance regarding their use. No person would be allowed to set off fireworks after 10 p.m. except on July 3, July 4, December 31, and January 1 unless a municipal ordinance permits it. Fireworks may be used for signal or ceremonial purposes, by law enforcement, railroads or transportation agencies, military, to control birds in crops, or for blasting. All of these uses are regulated by the state fire marshal. Violators could be fined up to $200 and jurisdiction would be before the Judicial Bureau.

This week, the Senate took up S.241, a bill that would amend the membership of the Emergency Medical Services (EMS) Advisory Committee. Membership would include one representative from each EMS district in the state – appointed by the EMS Board in that district – and one representative each from the Vermont Ambulance Association, the Initiative for Rural EMS Services at UVM, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters’
Association, a hospital emergency department nurse manager or emergency department director, the Commissioner of the Department of Health, and a local government representative not affiliated with emergency medical, fire or hospital services. The committee would meet at least quarterly and submit a report to the legislature annually as well as twice between July 1 and December 31, 2018.

S.285, a waste management bill, also made it onto the Senate Calendar this week. As voted out of the Senate Natural Resources and Energy Committee, S.285 would require that certified waste management facilities collect leaf and yard residuals separate from other solid waste between April 1 and December 15 and deliver them to a residuals management facility.

Commercial haulers would be allowed – but not required – to collect leaf and yard residuals separate from other solid waste and deliver them to a residuals management facility. The 2018 mandate for commercial haulers to collect food residuals separately from other solid waste would be repealed.

Universal Background Checks. On Thursday, the Senate passed S.221, a bill that establishes extreme risk protection orders. (The order would, under certain conditions, prohibit a person from possessing a firearm for up to one year.) That same day, the Senate also voted 17 to 13 to amend S.55, a bill relating to the Disposition of Unlawful and Abandoned Firearms.” The Senate added language that provided for unlawful or abandoned firearms that have been confiscated and are in the possession of the Department of Public Safety to be sold to a federally licensed firearms dealer, transferred for the Department of Fish and Wildlife or retained for forensic science – if they aren’t destroyed. At least three more amendments to S.55 are being offered today.

Recreational Nature Trail Permitting. Also this week, the Senate Natural Resources and Energy Committee heard testimony on S.276, a bill that would create new permitting standards for recreational nature trails and would significantly reduce the number of trails subject to Act 250 review.

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<th>BILL NUMBER</th>
<th>SUMMARY OF NEW BILLS</th>
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<tr>
<td>H.907</td>
<td>Would create a residential rental housing board, specify duties and rights relating to a local health officer and rental housing inspections, and direct the Tax Department to make available a database of Vermont rental housing units.</td>
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<td>H.908</td>
<td>Would make various revisions to the Administrative Procedure Act, including authorizing the secretary of state to create a centralized system to improve access to adopted rules and to the rulemaking process.</td>
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<td>H.910</td>
<td>Would clarify what activities do not constitute a meeting under the Open Meeting Law, establish when a series of less-than-a-quorum communications among members of a public body is prohibited under the Open Meeting Law, and clarify provisions related to time periods for responding to a Public Records Act request.</td>
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<td>H.911</td>
<td>Would make numerous changes to Vermont’s personal income tax and its system of education financing.</td>
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<th>CURRENT LOCATION</th>
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