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MEMORANDUM

To: Mayor Miro Weinberger
City Council President Joan Shannon
City Council Members

FROM: Karen Lafayette & Erhard Mahnke, Legislative Liaisons

DATE: July 26, 2013

RE: 2013 Burlington Legislative Report

It was our pleasure to represent the City of Burlington's interests in Montpelier again this year. Attached please find our report on the final status of bills and issues we followed for the City during the 2013 session. We hope that it provides a helpful retrospective.

As in other years, 2013 saw the Legislature consider a large number of bills affecting Burlington. We worked with Mayor Weinberger, department heads, other City officials, Burlington representatives and Chittenden County senators on the issues identified in the report. Our work included preparing and giving testimony before various committees, as well as arranging and co-ordinating the testimony of City officials. We also performed research, produced and disseminated informational pieces, and held meetings and informal conversations with legislators and State officials. We alerted the Mayor and appropriate City staff to bills and other State House developments affecting Burlington's interests, assessed their impact on the City, and kept close tabs on them as they moved through the Legislature.

Our work was made easier by the support we enjoyed from Mayor Weinberger and his staff, as well as from department heads and other City officials, many of whom joined us on a number of occasions at the State House to testify before numerous committees on a wide array of issues and bills and for meetings convened with the legislative delegation. Our job was further made easier by the hard work and considerable skill of all our Burlington representatives and Chittenden County senators. We appreciate their efforts on behalf of the City.

Many thanks also to Steven Jeffrey, Karen Horn and the rest of the dedicated staff at the Vermont League of Cities and Towns (VLCT, the League), with whom we worked closely throughout the session. The League's excellent "[2013 Legislative Wrap-Up](#)" is available online and provides further detail on many issues covered in our report, as well as a number of issues of general interest to municipalities that we were not directly involved in.

If you have questions or concerns, as always, please feel free to contact either of us via the email addresses or phone numbers listed above. As in past years, we will monitor off-season meetings of relevant legislative committees over the summer and fall. We welcome the opportunity to represent the City in Montpelier.

Thank you.

2013
BURLINGTON
LEGISLATIVE REVIEW



July 2013

Prepared by:

Karen Lafayette &
Erhard Mahnke
Legislative Liaisons

TABLE OF CONTENTS

Executive Summary	1
Burlington/Chittenden Delegation & Committee Assignments	8
Chittenden County Senators & Committees	8
Burlington/Winooski Representatives & Committees	8
Education.....	9
Education Financing & Property Taxes (H.265/Act 52)	9
Other Education Tax Related Changes (H.265/Act 52; H.538/Act 60)	11
Other Education Policy Related Changes	12
Pre-Kindergarten Access (H.270)	12
Agency Fees (S.14/Act 37)	13
Economic Development.....	14
Tax Incremental Financing (S.37/Act 80)	14
Cloud Computing Tax	17
Downtown Bill (H.377/Act 59)	17
Appropriations & Capital Bills (H.530/Act 50; H.533/Act 51).....	18
Payments in Lieu of Taxes (PILOT)	19
Community Justice Center & Offender Re-Entry Housing	19
Chittenden Rapid Intervention Community Court Program	20
Recovery Center/Turning Point Funding	21
Alcohol and Drug Abuse Program	21
Church Street Marketplace Outreach Program	22
Municipal & Regional Planning	22
Capital Bill (H.533/Act 51)	23
Public Safety & Corrections.....	23
Criminal Investigation Records (S.148/Act 70).....	23
Opioid Addiction & Methamphetamine Abuse (H.522/Act 75).....	25
Environmental Protection & Permitting	26
Act 138 Reports	26
Shoreland Protection (H.526; H.223)	27
Flood Hazard Areas (H.401/Act 16).....	29
Local Government	30
Public Records (H.54/Act 23)	30
Open Meetings (H.497; S.110)	30
Technical Tax Bill (H.295/Act 73).....	32
Transportation (H.510/Act 12).....	33
State Funding for Highways and Bridges.....	33
Champlain Parkway	33
Transportation Alternatives / Bike & Pedestrian Facilities Programs	34
Rail Funding	34
Gas and Diesel Tax and Assessment.....	34
Affordable Housing	34
Vermont Housing & Conservation Board (H.530/Act 50)	35
Homeless Shelters and Homelessness Prevention (H.530/Act 50)	35
Other Housing Related Funding (H.530/Act 50)	36
Vermont Neighborhoods Reform (H.377/Act 59)	37

Energy	39
Siting of Electric Generation Plants (S.30/Act 38).....	39
Thermal Efficiency (H.520/Act 89; H.216).....	39
Other Energy/Utility Related Bills	40
Health Care (H.107/Act 79; S.152/Act 54)	41
Other Municipal Issues	42
Attachments	43
VLCT Tax Increment Financing Summary	43
VLCT FY 14 Appropriations Act Summary Chart.....	45
VLCT FY 14-15 Capital Bill Budget Adjustment Summary Chart.....	46
Memo from Chief Schirling on Possible Impacts of S.148.....	47
Summary of 2011 Public Records Bill (H.73/Act 59)	51
City of Burlington: Key Legislative Issues	53

Executive Summary

This was the third year of undivided government in Vermont, with the Shumlin administration fully established and substantial Democratic majorities in both the House and Senate. However, far from the smooth sailing one might have expected, some major administration initiatives were soundly rejected by the Legislature. The Governor unveiled several proposals during his State of the State and Budget Addresses that downright shocked many lawmakers: Redirecting \$17 million from the Earned Income Tax Credit, which helps many low-income working Vermonters keep their heads above water financially, to increase childcare subsidies; establishing tough new time limits on the State's welfare program; and a budget with more than \$30 million in new spending based on new revenue sources, some of which left lawmakers scratching their heads, like a fee on "break-open" tickets that was supposed to raise \$17 million for energy related measures. Other gubernatorial initiatives, for instance those related to education, were widely embraced, including expanded school lunch programs; increased funding for UVM, the State colleges and VSAC; and a Flexible Pathways Initiative that incorporated proposals for dual enrollment, early college, and personalized learning plans.

As in the past several sessions, legislators began the biennium faced with many major fiscal challenges in this, the State's sixth year of budget shortfalls since the beginning of the Great Recession:

- A \$70 million FY 14 General Fund budget gap;
- An annual shortfall of over \$240 million in transportation needs;
- The uncertainties of future federal budget cuts and their impact on the State budget, not just for the current fiscal year, but going forward for years to come;
- A 5-cent education tax increase, due to a combination of lower property values, declining school populations and increasing school budgets;
- The challenges of continuing to rebuild after Irene, including replacing the Waterbury State office complex, restructuring Vermont's mental health system, and helping rebuild municipal infrastructure, with the final amount of assistance from FEMA not yet determined;
- An \$18 million gap for people insured through Catamount and VHAP who face increased out-of-pocket health care costs under the new Health Care Exchange;
- A price tag that potentially totals almost \$1.6 billion over the next ten years to improve the water quality of Vermont's streams and lakes, including Lake Champlain; and
- \$267 million in potential new public investments in energy efficiency improvements to meet the State's goal of substantially improving the thermal efficiency of 80,000 Vermont homes by 2020.

Tax writing committees were consumed with devising modest revenue raising packages to meet budget shortfalls, knowing that they faced a potential veto from a Governor who steadfastly maintained his refusal to pass "broad-based" new taxes, even while it became necessary to increase the statewide education tax substantially and raise the gas tax to meet transportation needs. Tax writers also considered numerous measures intended to bend the upwards trajectory on school spending and increase "tax fairness." Committees with jurisdiction over health care worked to prepare Vermont for implementation of the Affordable Care Act and move us a step further on the path towards comprehensive health care reform by 2017. In the end, unexpected tax receipts filled a \$10 million budget hole and enabled the Governor and legislative leaders to agree to avoid raising broad-based new taxes (except, of course, the property and gas taxes).

In spite of the continued focus on budget, revenues and health care, 544 bills were introduced in the House and 169 in the Senate, which represented marked increases from the number introduced in the first year of the last biennium. Of these, 63 House and 35 Senate bills became law. Among them were bills that gave

terminally ill patients a legal way to take their lives with prescription drugs, decriminalized possession of small amounts of marijuana, allowed undocumented migrant workers to obtain driver's licenses, and supported long standing union priorities.

Because this was the first year of a legislative biennium, all bills that did not pass remain alive and can be considered next year. With various committees and "summer study" work groups meeting on a monthly basis, legislative activity over the summer and fall will again be high. The work of our citizen lawmakers continues throughout the year.

What follows is a summary of Burlington's legislative highlights. Additional legislation affecting municipal interests in general was summarized in the Vermont League of Cities and Towns' (VLCT's, the League's) excellent [2013 Legislative Wrap-Up](#). In order to avoid duplicating the League's report, this retrospective focuses more closely on those municipal issues that affect the City's specific interests. Where we thought they were especially well done, we have included summaries from the League, Legislative Council or other sources.

More detailed information on the issues summarized below can be found in the body of the report.

Education Tax Rate

The 2013 Education Property Tax Bill (H.265/Act 52) set the statewide homestead education tax rate at \$0.94 per \$100 of assessed value, five cents above the FY 13 rate (a 5.6% increase). The non-homestead rate was set at \$1.44, six cents above the FY 13 rate (a 4.4% increase). This was the third year of increases to the education tax rates, which had held relatively steady from 2007 on, after declining for most of the previous decade. Set annually by the Legislature, the statewide base education spending per equalized pupil was increased from \$8,723 to \$9,151. When adjusted for Burlington's Common Level of Appraisal (CLA), as well as for school district spending, the statewide homestead rate translates into a local rate of \$1.5257 for FY 14, up 9½ cents from \$1.4302. The non-homestead rate translates into a local rate of \$1.6055, up 3.7 cents from \$1.5684. The maximum percentage of income that an income-sensitized household pays for education taxes remained at 1.80%, the same as for the last several years. When adjusted for local school spending, this translates into a maximum education tax payment of 2.62% of annual income for income-sensitized Burlington taxpayers.

Other Education Financing Changes

In response to anticipated continued increases in school spending and corresponding tax increases, lawmakers considered numerous measures to curb school spending, some of which, had they passed, could have had negative effects on the Burlington School District. Measures that actually passed were relatively narrow and will have limited impact on Burlington. They include a reduction in the excess education spending threshold; a limitation on the amount of tuition over- or undercharge when a student transfers in from, or out to another district; and studies of the Renters' Rebate and student-to-staff ratios. Though the final bill that passed was quite modest compared to the array of changes originally considered by each of the tax writing committees, the amount of time and energy they spent on trying to bend the curve on education spending and provide tax relief is expected to carry over into the 2014 legislative session. Education financing, especially income sensitivity and school budgeting, is an area that will need to be closely watched next year.

Tax Incremental Financing (TIF)

The City's top legislative priority this year was passage of comprehensive Tax Increment Financing (TIF) reform legislation. There has hardly been a year when revisions to the statute governing this complex economic development tool have not consumed large amounts of legislative time and effort. Numerous incremental changes over the years have created a complicated legal structure that lends itself to different, sometimes conflicting interpretations. The City's goals this year were primarily three-fold:

1. Gain additional time for incurring debt in both the Waterfront and Downtown TIF Districts,
2. Resolve the State Auditor's outstanding findings that the City owed the State money for improper administration of its Waterfront TIF District, and
3. Resolve numerous ambiguities and uncertainties around the administration and implementation of TIF districts in Vermont.

All three goals were met in this legislative session. Achieving the first goal was absolutely essential to the future redevelopment of the Waterfront. Passage of S.37 gave authority for the City of Burlington to incur debt in the Waterfront TIF District for an additional five years, beginning January 1, 2015. Burlington's Downtown TIF District gained an additional five years in which to incur debt (for a total of ten years), beginning with the creation of the district, so long as debt is incurred within the first five years of the district's life. However, if no debt is incurred during the first five years, the district will terminate unless the municipality gets approval from VEPC for a five-year extension. These extensions give the City additional time to implement development plans for both TIF Districts.

The legislation also resolved a number of ongoing Tax Incremental Financing issues, including the important settlement of the former State Auditor's findings that suggested four TIF towns, including Burlington, owed money to the State Education Fund for improper use of the tax increment. Burlington was alleged to have underpaid the Ed Fund by \$1.2 million. Although the municipalities disputed the Auditor's findings, they agreed to settle the issue through a series of "reduced" payments; Burlington is required to pay \$200,000 in equal installments of \$40,000 a year over a five-year period beginning December 15, 2013. In addition to resolving the Auditor's findings around underpayment to the Ed Fund, S.37 clarified a number of ambiguities in the TIF Law.

State Budget

This was the sixth consecutive year of difficult budgets due to yet another year of deficits, made more difficult by the slow economic recovery, federal funding cutbacks, and challenges remaining from Tropical Storm Irene. The year started out with a \$70 million budget gap projected for FY 14. Though the Governor steadfastly refused to support raising "broad-based" taxes to make up the budget shortfall, nonetheless he proposed \$30 million in new spending. The House and Senate each rejected many of the Governor's new spending measures, setting their sights on raising \$20 million and \$10 million in new revenues, respectively, to close their projected budget gaps. In the end, \$10 million in unanticipated new revenues helped close the final gap, together with another \$10 million that was trimmed relatively painlessly. Lawmakers passed a \$1.356 billion General Fund budget, a 4% increase over FY 13. Total spending, including transportation, education, federal and special funds, amounted to \$5.232 billion, a 4.2% increase. Other than State education funding, the City does not have many budget line items from which it derives direct benefit, though there are several from which it does, summarized as follows.

Payments in Lieu of Taxes (PILOT)

The PILOT program is designed to reimburse cities and towns for a portion of the municipal property tax revenues they lose because they host State owned buildings and lands that are exempt from property taxes. PILOT payments help support the municipal police, fire, highway, and other public services from which State facilities benefit. For FY 2014, the overall PILOT budget for general State buildings is \$5.8 million, same as for the last several years. The Tax Department estimates that Burlington will receive \$674,943, a 15% cut from the FY 11 level of \$793,058. This is the third consecutive year of decreases. The City's reductions stems from a combination of changes in state owned property in the City and around the state. This year PILOT was once again funded exclusively from the 30% share of local option taxes that go to the State.

Community Justice Center & Offender Re-Entry Housing

Lawmakers have invested in a variety of measures intended to generate savings in the Department of Corrections' (DOC's) budget. These "justice reinvestments" have seen an increase of just under \$8 million since 2008. According to DOC figures, the measures have paid off: the total population under some form of DOC supervision was 10,743 in FY 12, down from a high of 13,778 in FY 07. DOC now invests approximately \$2.1 million annually in the operating budgets of the state's 17 Community Justice Centers (CJCs and Restorative Justice Programs). Burlington's CJC received \$275,000 from the State in FY 13 and anticipates receiving \$300,000 for FY 14. Transitional housing for ex-offenders re-entering the community is another important issue for the City in the Corrections budget. Several Burlington organizations together receive over \$1 million in annual funding from this budget line item, including the Burlington Housing Authority, Northern Lights, Dismas House, Phoenix House, and Pathways to Housing. Chittenden County's innovative Rapid Intervention Program was level funded at \$114,000.

Recovery Center Funding

The FY 14 Big Bill level funds the Vermont Recovery Network statewide at \$715,000, building what was originally intended to be a one-time increase of \$100,000 last year into the base budget going forward. The 11 Recovery Centers, including Burlington's Turning Point Center, split the annual appropriation for the Network evenly, so that each receives approximately \$65,000. Recovery Centers provide multi-faceted support for people seeking recovery and their families. Pending the findings and recommendations of a report mandated in the budget, The Agency for Human Services (AHS) may increase substance abuse funding by \$100,000, including for Recovery Centers, to build system capacity. The Burlington Turning Point Center currently receives a disproportionately small amount of the Network's total funding compared to the large number of visits it receives. As funding for the overall Network increases, Burlington's Turning Point should receive funding that is more proportional to its percentage of people served.

Cloud Computing

Whether or not so-called "pre-written" software accessed remotely ("cloud computing") should be taxed was again the subject of much discussion, and the final result was that it is taxable as of July 1. The Shumlin Administration asked for a permanent exemption to help spur the growth of the state's technology and software industry. The Senate agreed and incorporated a three-year extension of last year's moratorium into its version of H.295/Act 73, the Technical Tax Bill. The House opposed the extension. In the end, the conference committee on the bill decided that the State couldn't afford the \$900,000 needed annually to cover extending the tax break and declined to do so. As a result, the moratorium expired on June 30. Purchases made before July 1, are not taxable; liability for the tax is incurred starting July 1.

Criminal Investigation Records

Senate Bill 148, which passed as Act 70, allows greater public access to criminal investigation records. Previously, the Vermont Public Records Act categorically exempted from disclosure records dealing with the detection and investigation of crime. The existing law was considered confusing, and courts had issued contradictory decisions in the last several years. Act 70 establishes a balancing test derived from standards in the federal Freedom of Information Act (FOIA), which 21 other states have adopted. The act allows six general exemptions from public disclosure and incorporates FOIA case law by reference. It maintains the provision in existing Vermont law that subjects to public disclosure records that relate to the management of a law enforcement agency or that reflect the initial arrest or charge of a person. It does not change the statute that protects law enforcement employees' personnel records. Burlington Police Chief Mike Schirling expressed deep concern about the strict adoption of the FOIA standards, which he felt did not sufficiently protect witnesses and a host of private information contained in police investigative records, the public disclosure of which could bring harm to persons and property and reveal personal information that should be kept private. The final bill included language that addressed some of the Chief's concerns.

Shoreland Protection

In response to two key reports on water quality remediation and lake shoreland protection, the House Fish and Wildlife Committee introduced legislation that would establish a complex regulatory framework for the shorelands of all Vermont lakes and ponds of more than ten acres – in effect statewide shoreland zoning, designed without urban waterfronts in mind. The bill passed the House, but stalled in the Senate, and is expected to see further action next year. It would delegate permitting authority to towns with municipal shoreland protection zoning that met State minimums. Thanks to concerns raised by the City and the League, it would also exempt redevelopment of land that had been subject to historic industrial or urban development. Without this provision, the City's plans to continue redeveloping the urban waterfront could be jeopardized. In response to concerns from lakeshore property owners, the Senate decided to create a study committee to inform the public about current laws and regulations protecting the waters of the State and to take testimony regarding the regulation of lake shorelands. Though it appears unlikely that H.526 will be enacted as passed by the House, it will certainly help frame future discussions and progress needs to be watched closely over the legislative interim and next year.

Public Records

The Legislature passed H.54 (Act 23), which, though it did not effect substantive changes to the State's Public Records Law, signaled the Legislature's clear intent to take up substantive changes next year. Act 23 directs Legislative Council to prepare a draft bill listing all exemptions to the Public Records Act in one statutory provision. The draft bill is also required to amend existing exemptions scattered throughout Vermont law to cross-reference back to the draft list of exemptions and to incorporate amendments to existing exemptions that were previously recommended by the legislative Public Records Study Committee. Similar legislation deleting or amending various public records exemptions was introduced in 2012 as H.611 and never acted upon. Act 59, passed the year before, made substantial changes to the Public Records Law, but did not address issues that remained unresolved for the City. The Legislative Public Records Study Committee continues to meet on these issues during the legislative interim. The City will need to follow any future legislation changing the State's Public Records Act closely, as its repercussions for municipalities are potentially great.

Open Meetings

The Legislature for the past few years has worked on a number of bills regarding government "transparency" and "accountability." In addition to addressing access to public records and exemptions, two bills were introduced to update Vermont's Open Meetings Law, S.110 and H.497, though neither passed this year. H.497, as introduced, includes the essential features of S.67, which passed the Senate but not the House in 2011. The House and the Senate have agreed that the House Government Operations Committee will work from H.497 next year, essentially picking up where the Legislature left off during the last biennium. The bill would clarify when a public body may enter executive session; allow members of a public body to participate in a meeting remotely if certain requirements are met; amend provisions related to meeting agendas; and require the award of attorney's fees and litigation costs to a complainant who substantially prevails in a case alleging a violation of the Open Meeting Law, unless the public body cured the violation or had a reasonable basis in fact and law for its position and acted in good faith. The City has a number of concerns with any Open Meeting Law revisions, so it will need to follow this legislation closely next year.

Technical Tax Bill

This year's Technical Tax Bill has several sections that will affect Burlington and other municipalities. Before April 1 of each year, owners of certain tax-exempt properties will be required to report the insurance cost to town listers/assessors or provide a written explanation of why the property is not insured. Listers must use the insurance replacement cost as the value that is entered in the Grand List. It also requires that all tax expenditures listed in the biannual Vermont Tax Expenditures Report, including property tax exemptions, be accompanied in statute by a statement of purpose explaining the policy goal behind the tax

expenditures; otherwise they will not be implemented or enforced. The bill also establishes a committee to study the public, pious and charitable property tax exemption and make recommendations related to the definitions, listing, valuation, and tax treatment of properties within this exemption. The City will need to follow this process closely as well.

Transportation

The T-Bill includes \$1.25 million in additional preliminary engineering funds for the Champlain Parkway, to complete design on the entire project. This is expected to suffice for the project to move forward during the current fiscal year. The bill also provides \$710,000 for improvements to the Church Street Marketplace and side streets, as well as for the Shelburne Road round-about. It also includes \$1.3 million in transportation enhancements and bike and pedestrian facility grants for bike path relocation, sidewalk improvements, pedestrian signals, and Intervale revitalization. Rail funding will continue to improve the Western Corridor, with the ultimate goal of establishing passenger rail service to downtown Burlington.

Affordable Housing

Vermont Housing and Conservation Board (VHCB) funding was increased by \$300,000 to \$14.3 million. VHCB has been a mainstay funding source for all the City's affordable housing initiatives over the last 25 years, as well as for major conservation and recreational amenities. Funding for homeless shelters and homelessness prevention through the State's Emergency Solutions Grant Program was level funded. Base funding for the State's General Assistance (GA) Program, which funds a variety of emergency housing and housing related support services for the homeless and at-risk, was increased to \$8.2 million. In addition to funding Emergency Housing Assistance for motel stays, which became controversial during the session and saw eligibility restricted, GA funds rental assistance, Community Housing Grants and a new Family Supportive Housing demonstration. Rental assistance for people with mental health disabilities and transitional housing for offenders coming out of the prison system were also increased. A number of other housing related programs that Burlington non-profits rely on were also either increased or saw level funding. Legislation was passed that should stimulate greater use of the Vermont Neighborhoods Program, which provides incentives and regulatory relief to developers creating mixed income, affordable housing consistent with smart growth principles.

Energy

Legislative attention focused primarily on two bills. Act 38 was introduced as a moratorium on further wind power development, but got stripped down to a study in the Senate. Act 89 focused on increasing thermal efficiency in both residential and commercial buildings, though it received no additional funding and so does not make sweeping changes. The Governor's ambitious proposal to increase investments in clean energy and thermal efficiency, including a 10% surcharge on "break-open" tickets to raise a total of \$17 million, met with widespread skepticism and did not gain legs. Advocates' hopes to generate substantial new public funding for improving thermal efficiency were also frustrated. In the end, Act 89 only made numerous tweaks to existing services provided by the state's energy efficiency utilities and weatherization service providers. It also addressed commercial and residential buildings energy standards (RBES), clarifying their applicability to mixed-use buildings and including various amendments to enforce compliance through the use of existing State and local permit processes. Several bills affecting utilities and energy policy are still pending and will need to be monitored next year.

Health Care

This year, the legislature passed legislation that continues down the path of health system reform by focusing on moving the process forward and launching the health insurance exchange, Vermont Health Connect. This was primarily accomplished through the passage of H.107. Among other things, this bill adjusts state statute to comply with the federal rules being developed around the Patient Protection and Affordable Care Act, streamlines the health insurance regulation process, and places more restrictions on health insurers. Through charge-backs to insurers, hospitals, and state benefit programs, the bill also

creates a State-funded Office of the Health Care Advocate. Federal grants will fund the start-up and operation of Vermont Health Connect through 2014. In 2015, the state will have to take over the funding for the operational costs of the exchange, which are estimated to be \$18 million annually. Many funding methods were considered, but in the end S.152 modifies and continues the assessment on employers that do not provide employees with health insurance. The Legislature approved an Administration proposal to increase Medicaid provider reimbursements by three percent. While this additional funding will not reduce the Medicaid cost shift, it should keep it more level if the providers adjust their fees to other payers to reflect the additional revenue received from Medicaid. As the health care reform process moves along, there are a variety of impacts for municipalities to consider.¹

Pre-Kindergarten Education

As passed by the House, H.270 allows parents in all school districts to enroll their three- or four-year-old children (or five-year-old children not in kindergarten) in any prequalified private or public pre-K program statewide. This would replace the current system, in which districts may choose whether or not to offer pre-K and, if they do so, enter into individual agreements with individual providers and negotiate rates. The bill did not pass this year, but made it through a number of legislative hurdles and is likely to receive further consideration next year. Should it pass next year, Burlington will not be directly affected, as we were able to include all eligible children in our pre-K program under legislation that passed in 2010. It will, however, affect property tax payers throughout the state, since the financing for early educational programs through schools is currently paid for through the Education Fund. Burlington has long supported universal pre-K access and has run a highly successful program for many years.

¹ Adapted from [2013 VLCT Legislative Wrap-Up](#).

Burlington/Chittenden Delegation & Committee Assignments

The work of the City's legislative liaisons at the State House was made easier by the hard work and considerable skill of all our Burlington representatives and Chittenden County senators. We thank them for their efforts on behalf of the City. Burlington representatives and Chittenden senators are well represented on key committees to help support City priorities, including chairing Senate Finance and House Education. Here is a complete list of the delegation members and the committees on which they sit. We include Senator Mazza who, though he represents the "Grand Isle District," is from the Chittenden County town of Colchester and helps look out for Burlington and Chittenden County interests:

Chittenden County Senators & Committees

Sen. Tim Ashe

- Judiciary
- Finance (Chair)

Sen. Philip Baruth

- Economic Development, Housing & General Affairs (Vice-Chair)
- Education

Sen. Sally Fox

- Health & Welfare (Vice-Chair)
- Appropriations

Sen. Ginny Lyons

- Health & Welfare
- Finance

Sen. Dick Mazza

- Transportation (Chair)
- Institutions (Vice-Chair)

Sen. Diane Snelling

- Natural Resources (Vice-Chair)
- Appropriations (Clerk)

Sen. David Zuckerman

- Agriculture (Vice-Chair)
- Education (Clerk)

Burlington/Winooski Representatives & Committees

Chittenden-6-1

- Rep. Joanna Cole – Government Operations
- Rep. Kurt Wright – Transportation

Chittenden-6-2

- Rep. Jean O'Sullivan – General, Housing & Military Affairs

Chittenden-6-3

- Rep. Curt McCormack– Natural Resources & Energy
- Rep. Jill Krowinski – Human Services (Clerk)

Chittenden-6-4

- Rep. Kesha Ram - Ways & Means
- Rep. Chris Pearson – Health Care

Chittenden-6-5

- Rep. Joey Donovan – Education (Chair)
- Rep. Suzi Wizowaty – Judiciary

Chittenden-6-6

- Rep. Barbara Rachelson -- Education

Chittenden-6-7

- Rep. George Cross – Commerce & Economic Development
- Rep. Clem Bissonnette – Transportation

Education

Education Financing & Property Taxes

(H.265/Act 52)

Of all the impacts that annual legislative action has on municipalities, setting statewide property tax rates for education and providing funding for schools is probably the greatest. These rates are set annually based on a variety of factors, including (1) the expected value of the State's Education Grand List, (2) anticipated statewide school spending, and (3) contributions to the Education Fund from other sources, the largest being the State's General Fund. **The 2013 Education Property Tax Bill (H.265/Act 52) set the statewide homestead education tax rate at \$0.94 per \$100 of assessed value, five cents above the FY 13 rate (a 5.6% increase). The non-homestead rate was set at \$1.44, six cents above the FY 13 rate (a 4.4% increase).** This was the third year of increases to the education tax rates, which had held relatively steady from 2007 on, after declining for most of the previous decade. It was the first year of increases that were more than a penny or two, increases that are projected to continue as education spending continues to increase while the student population declines and property values remain flat.

Escalating property values throughout much of the previous decade enabled steady tax rate reductions until the Great Recession began. As property values leveled off and began to decline, so did revenues flowing into the Ed Fund, requiring tax rates to level off, then increase. Vermont did not, however, see the substantial decline in its real estate values that afflicted many other states: The state's Education Grand List grew by 6.9% in FY 10 and by 2.2% in FY 11. Its value dropped for the first time in FY 12, by 1.6%. It is on course to drop another 2% once FY 13 is closed out, and then a further 1.5% for FY 14.² Not until FY 15 is it expected to stabilize and then enjoy an extended period of low home price appreciation. As a result, the Grand List will not reach 2009 peak levels before 2016.³ This will continue to create upward pressure on tax rates to fund education for the foreseeable future.

Until last year, school boards held overall statewide school spending down for a few years, which helped keep education tax rate increases relatively low while property values declined. The statewide education spending growth rate was -0.1% in FY 11 and -0.5% in FY 12. However, for FY 13 it increased by 3% and is expected to increase another 5% in FY 14,⁴ adding to the upward pressure on education tax rates.

The third major factor in determining the statewide education tax rate is the amount the General Fund contributes to the Ed Fund, which is its second largest revenue source and has been set below the statutorily required level for a number of years. For FY 14, the Legislature appropriated \$288.9 million, about \$6.6 million higher than the year before, but \$27.5 million below where it should have been had the law not been changed. Originally required to increase with a regional price index, the Legislature reduced the General Fund contribution for FY 10 and 11, when federal stimulus (ARRA) funds were available. In 2011 it recalibrated the amount of aid, requiring higher statewide education tax rates than might have been necessary ever since.

To restore the General Fund contribution over time and hold down property tax increases, last year the Legislature pledged 50% of surplus revenue at the end of the fiscal year to a supplemental property tax relief fund. Based on revenue estimates available when the FY 14 budget was finalized, \$8.4 million would be dedicated to property tax relief and transferred to the Ed Fund in FY 15.

² ["Education Fund Outlook,"](#) Joint Fiscal Office, June 2013.

³ ["Economic and Revenue Review for the Vermont State Legislature,"](#) Kavet, Rockler & Associates, November 2012.

⁴ ["Education Fund Outlook,"](#) Joint Fiscal Office, June 2013.

Burlington Education Tax Rates.⁵

When adjusted for Burlington's Common Level of Appraisal (CLA), as well as for school district spending, **the statewide homestead rate translates into a local rate of \$1.5257 for FY 14, up 9½ cents from \$1.4302.**⁶ Some of the drivers of the increase in Burlington school spending include an increase in students, special education costs, capital spending, additional curriculum, and English language learning. **The non-homestead rate translates into an FY 14 local rate of \$1.6055, up 3.7 cents from \$1.5684.** For FY 14, the Tax Department set our CLA at 89.69%. **Set annually by the Legislature, the statewide base education spending per equalized pupil was increased from \$8,723 to \$9,151. At \$13,322, Burlington's is 146% above that.** The maximum percentage of income that an income-sensitized household pays for education taxes remained at 1.80%, the same as for the last several years. **When adjusted for local school spending, this translates into a maximum education tax payment of 2.62% of annual income for income-sensitized Burlington taxpayers.**⁷

The maximum annual household income to qualify for full income sensitivity remained at \$90,000. For people over that income limit and who therefore qualified only for partial income sensitivity, the homestead (or "housesite") value on which they receive income sensitivity remains capped at \$200,000. Renters and homeowners under \$47,000 a year continue to receive protection through the property tax and renter rebates -- on both their education and municipal property taxes.

The following table illustrates the various factors that determine Burlington rates over four years:

Tax Rate Multi-Year Comparison of Homestead Education Tax Rates ⁸	Act 68 FY 2011	Act 68 FY 2012	Act 68 FY 2013	Act 68 FY 2014
Base equalized statewide homestead education tax	\$0.86	\$0.87	\$0.89	\$0.94
Budgeted Burlington education expenditures, total	\$51,932,746	\$53,391,029	\$59,615,950	\$62,766,794
Burlington education spending per equalized pupil	\$11,173	\$11,261	\$12,333	\$13,322
Statewide education spending per equalized pupil	\$8,544	\$8,544	\$8,723	\$9,151
Burlington tax rate adjustment for local spending above statewide base	130.77%	131.80%	141.39%	145.58%
Common Level of Appraisal (CLA)	87.72%	88.08%	87.99%	89.69%
Burlington local homestead rate (State rate x local spending adjustment ÷ CLA)	\$1.2820	\$1.3019	\$1.4302	\$1.5257
Statewide maximum percentage of household income paid for education tax	1.80%	1.80%	1.80%	1.80%
Burlington maximum percentage of income paid for education tax, adjusted for local spending	2.354%	2.372%	2.545%	2.620%
Maximum household income eligibility limit for full income sensitivity	\$90,000	\$90,000	\$90,000	\$90,000
Cap on housesite value for partial income sensitivity	\$200,000	\$200,000	\$200,000	\$200,000
Non-Homestead Education Tax Rates				
Statewide non-homestead education tax	\$1.35	\$1.36	\$1.38	\$1.44
Burlington local non-homestead rate (State rate ÷ CLA)	\$1.5334	\$1.5441	\$1.5684	\$1.6055

Additional background information on how Vermont finances education, how education tax rates are established, and on income sensitivity can be found on the [Vermont Transparency website](#).

⁵ See "[Burlington Homestead Education Tax Rate Calculation](#)," Tax Department, June 2013.

⁶ To compute the local homestead rate, multiply the statewide rate by the percentage of local spending above the statewide education spending per equalized pupil, then divide by the City's CLA. To compute the non-homestead, divide only by the CLA.

⁷ To determine the actual maximum percentage an income-sensitized household pays for education taxes, multiply the statewide percentage by the local district's spending adjustment.

⁸ Adapted from the above-cited Tax Department information and [FY 14 Burlington school budget information](#).

Other Education Tax Related Changes (H.265/Act 52; H.538/Act 60)

In response to anticipated continued increases in school spending and corresponding tax increases, lawmakers considered numerous measures to curb school spending, some of which, had they passed, could have had negative effects on the Burlington School District.

The Education Property Tax Bill (H.265/Act 52) included language affirming the Legislature's intent to examine Vermont's current education funding system. The House Ways and Means Committee will continue their efforts to address concerns regarding education property taxes, including the financing, oversight, and educational outcomes of the current system, and will report back to the General Assembly by next March, with the goal of implementing any statutory changes for the 2015/2016 school year.

The House Ways and Means Committee labored long and hard to write its version of H.538, the Education Financing Bill, which contained numerous measures intended to help curb the rate of growth in school spending and require taxpayers in school districts that spend at higher levels to pay more in education tax. The bill passed the House, but was stripped of most of its provisions in Senate Finance. That committee's attempts to craft its own spending reduction proposals caused a major stir during the waning days of the session before they were withdrawn. A much reduced version of H.538 ended up passing both chambers on the last day of the session and became Act 60. It included these features, none of which negatively affects Burlington:

- Excess Spending Threshold reduced: The current "excess spending threshold" is reduced from 125% to 123% for FY 15 and FY 16, and to 121% for FY 17 and thereafter. Taxpayers in school districts that exceed the prior year's average statewide per-pupil spending by the threshold percentage pay a tax penalty proportional to the amount of per-pupil spending above the threshold.⁹ Burlington has consistently spent below the statewide average, which is \$13,565 for the current fiscal year, so these changes should not affect us for the foreseeable future.
- Tuition overcharge or undercharge limited: When a "receiving" district *overcharges* a "sending" district for tuition,¹⁰ its refund to the sending district will now be limited to the amount that exceeded 3%. When a receiving district *undercharges* for tuition, its reimbursement will be limited to between 3% and 10%. Under current law, when the under- or overcharge is greater than 3%, the entire amount is reconciled. Either way, if the variance is less than 3%, no funds change hands. Besides protecting sending districts from paying more than anticipated, the change is also intended to encourage receiving districts to set their announced tuition rates as accurately as possible.
- Renters' Rebate study: Requires the Joint Fiscal Office to review issues with the current Renter Rebate Program and examine other ways to provide assistance to renters with high rents and low incomes. The House Ways and Means Committee had included in its bill a reduction in the Renters' Rebate, from 21% to 19% of rent allocable to property taxes, but this did not make it into the final bill. The issue will surely come up for consideration again next year.
- Student-to-staff ratio study: The Secretary of Education is required to collect data related to student-to-staff ratios.

⁹ Districts that go over the threshold are "double-taxed" on the amount by which they go over—a district that is \$200 over the threshold has *an additional* \$200 added to their per equalized pupil spending, on which their tax rate is based.

¹⁰ Districts that do not operate one or more grades "send" their students to nearby districts that "receive" those students.

The original House-passed bill would have also instituted the following measures intended to reduce school spending, some of which would negatively affect Burlington schools and renters and could easily come back for consideration next year:

- Phase-out of small schools grants: Any school determined not to be “geographically isolated” in 2015 would see its Small Schools Grant phased out over four years; small schools deemed not to be geographically isolated in 2016 would have lost their grants entirely.
- Increase to the cap on “maximum annual equalized pupil loss”: The current limit on property tax rate spikes that result from rapid student population decline would be relaxed by increasing from 3.5% to 5% the cap on the maximum number of equalized pupils that a district can lose from one year to the next without increasing the local tax rate.
- Creation of minimum student-staff ratios: The Secretary of Education would develop a proposal for establishing minimum ratios of students to staff, administrators and teachers, with incentives for school districts to comply and tax penalties for non-compliance.
- Elimination of the “fast enrollment growth provision”: Currently, school districts like Burlington, which see their enrollment grow by 20 or more students a year, can utilize a larger equalized pupil count than would result from the two-year average that is normally used to calculate a district’s count (“Average Daily Membership,” or ADM). The original House bill would have eliminated this provision that benefits Burlington, which saw increases of 40 or more students a year in each of the last three years.
- Adjustments to income sensitivity: The cap on housesite value for partial income sensitivity for households earning over \$90,000 a year would be increased from \$200,000 to \$250,000 in housesite value, which would modestly increase income sensitivity for households earning over \$90,000; the tax “floor” for income sensitivity would be increased from 1.80 to 1.90% of household income, reducing income sensitivity for homeowners earning less than \$90,000.
- Renter’s Rebate reduction: The original House bill would have lowered the percentage of rent attributable to property taxes from 21% to 19%, decreasing the rebate amount low-income renters received.
- Maximum Property Tax Adjustment decreased: The maximum property tax adjustment an income-sensitized household could receive would be reduced from \$8,000 to \$6,000.

Though the final bill that passed was quite modest compared to the array of changes originally considered by each of the tax writing committees, the amount of time and energy they spent on trying to bend the curve on education spending and provide tax relief is expected to carry over into the 2014 legislative session. Most of what the House passed would not have affected Burlington either way, but some provisions would have had a negative impact. Some of the changes Senate Finance considered in the last days of the session, but that died in committee, were of significant concern to the City of Burlington and other municipalities, including requiring at least 25% of registered voters participating in an election to pass a school budget. Education financing, especially income sensitivity and school budgeting, is an area that will need to be closely watched next year.

Other Education Policy Related Changes

Pre-Kindergarten Access (H.270)

H.270 did not pass this year, but made it through a number of legislative hurdles and is likely to receive further consideration next year.

“The prekindergarten education bill was passed by the House by a roughly two-to-one vote, but ran out of time in the Senate. It has been approved by the Senate Education and Finance committees and is

currently in Senate Appropriations, where it will remain until next January, when that committee may begin its review.

“As passed by the House, H.270 allows parents in all school districts to enroll their three- or four-year-old children (or five-year-old children not in kindergarten) in any prequalified private or public pre-k program statewide. Funding would be provided for 10 hours per week, 35 weeks per year, and school districts, as most do now, would include participating children who reside in the district in their average daily membership, with a 0.46 weight. School districts, if they so choose, would be able to limit the geographic boundaries within which they would pay tuition. A statewide rate, with the possibility for regional adjustments, would be set for 10 hours per week of publicly-funded pre-k instruction through private providers. This would replace the current system, in which districts may choose whether or not to offer pre-k; and, if they do so, enter into individual agreements with individual providers and negotiate rates.

“With support already from the House, the Senate Education and Finance committees, and the governor, the pre-k bill will likely receive further attention next year.”¹¹

Should it pass next year, Burlington will not be directly affected by this change as we were able to include all eligible children in our pre-K program due to legislation that passed in 2010. It will, however, affect property tax payers throughout the state, since the financing for early educational programs through schools is currently paid for through the Education Fund. Burlington has long supported universal pre-K access and has run a highly successful program for many years. Early education was one of the Governor’s major initiatives this year, though it should be pointed out that the Vermont League of Cities and Towns is opposed as long as the funding comes from the property tax. A Joint Fiscal Office estimate puts the cost of universal pre-K access at \$24 to \$25 million a year.

Click here for link to the [full text of H.270 as passed by the House](#).

Agency Fees (S.14/Act 37)

S.14/Act 37, “An Act Relating to Payment of Agency Fees and Collective Bargaining Service Fees,” obligates employers to collect what unions refer to as a “fair-share” fee from non-union members, much like union dues, but with some key differences. Act 37 covers all State and municipal employees, teachers and school administrators. The fee can only cover expenses related to collective bargaining and is not to exceed 85% of union dues. Payment of agency fees is currently the subject of contract negotiations.

Burlington School Superintendent Jeanne Collins expressed several concerns over the initial bill, including that the School Department might be obligated to discipline employees who refused to pay it. The final bill that passed satisfies this concern by holding the employer harmless from claims stemming from the implementation or administration of the agency fee. It makes clear that an employer is not required to discharge an employee who does not pay it unless agreed to in a contract between the employer and union. It subjects how payment of the fee is enforced to contract negotiations.

The act requires the union to provide non-union employees with an audited financial statement identifying major expenses and whether or not they are chargeable to the fee. The union must provide non-union employees the opportunity to object to the amount of the fee and set up an arbitration process when a non-union employee objects to the amount, the costs for which are borne by the union.

¹¹ [Final Legislative Report](#), Vermont School Boards, Principals and Superintendants Associations, p.14, May 2013.

The act requires that the additional revenues to the union must be used “solely for the purpose of moderating its existing membership dues.” It further requires union members to vote annually whether to allow non-union members to vote on the ratification of any collective bargaining agreement. Finally, the Secretary of Education must file a report on whether there would be any benefit in allowing school employee contracts to contain merit pay provisions.

The bill does not affect the City itself since all non-managerial employees are members of one of the three bargaining units.

Economic Development

Tax Incremental Financing (S.37/Act 80)

The City’s top legislative priority this year was passage of comprehensive Tax Increment Financing (TIF) reform legislation. To review, TIF is a popular economic development tool used throughout the country to finance municipal infrastructure improvements needed to stimulate development or redevelopment within a TIF District -- development that would not happen “but for” investment in the supporting infrastructure. The incremental property tax revenues from new private development are captured and set aside to help retire the debt that funded the public infrastructure improvements. Once the debt is retired, all taxes revert to the respective taxing authorities: the State’s Education Fund and the municipality itself. Eight Vermont municipalities currently have one or more TIF Districts, including Burlington, Winooski, Milton, Barre, Newport, St. Albans, Hartford and Colchester. South Burlington this year sought and received statutory authority to become the ninth and final town with a TIF District.¹²

Burlington has two existing TIF Districts ([click here for map](#)). The Waterfront TIF District was created in 1996, expanded in 1997, and encompasses the downtown Waterfront and an adjacent block-wide strip of the Central Business District (CBD). The Downtown TIF District, approved by the Vermont Economic Progress Council (VEPC) in 2011, encompasses virtually all of the rest of the CBD and certain blocks in the Transitional Zone surrounding it on three sides. On Town Meeting Day in 2012, Burlington voters approved incurring up to \$10 million in debt to finance public improvements in the district, subject to future approval of each debt obligation by the voters or City Council.

In the Waterfront TIF District, the incremental new State education and local municipal property tax revenues are paying for infrastructure improvements that include extensive street and stormwater improvements, acquisition of railroad lands and the Urban Reserve, construction of three parking garages, the Waterfront Fishing Pier and other shoreland improvements. They have lead directly to tens of millions of dollars of new private investment, including an anchor department store, 40 units of affordable housing, market rate condos, office and commercial development, redevelopment of the downtown mall, and construction of two new hotels.

The Downtown TIF can fund stormwater, utility, streetscape, public parking, transportation, and pedestrian improvements. Located within our Designated Downtown District, growth within both TIFs is consistent with the smart growth principles that have long been enshrined in State law and land use policy. [Click here for more background on Burlington’s TIF Program](#).

There has hardly been a year when revisions to the statute governing this complex economic development tool have not consumed large amounts of legislative time and effort. Numerous incremental changes over the years have created a complicated legal structure that lends itself to different, sometimes conflicting interpretations. Though commonly used all over the United States, its

¹² Act 80 suspends the Vermont Economic Progress Council’s (VEPC) authority to approve any additional tax increment financing districts beyond those districts named in the act.

use in Vermont is complicated by our unique method of funding education through the statewide property tax, which opens TIF up to the criticism from some parties that it diverts revenues from the Education Fund. As a result, some key lawmakers are less than enthusiastic about TIF. In addition, it is not readily accessible to most of Vermont's small towns, which lack the development potential or expertise to harness this complex financing tool.

TIF bills have never been easy to pass, with the House and Senate consistently differing in their positions on this sometimes controversial subject. The final bills have usually been among the last, if not the last, to pass before adjournment and are almost always subject to delicate negotiations between legislative leadership, the executive branch and numerous interested municipal stakeholders. This session was no exception.

Unlike other years, the House Ways and Means and Senate Finance Committees both spent considerable time on TIF, taking testimony from the Tax Department, the State Auditor's Office, the Attorney General's Office, VEPC, the League, Burlington, and the other stakeholder communities. In addition to background information for new and returning committee members, early testimony focused on the findings in the former State Auditor Tom Salmon's reports on past TIF implementation in Burlington, Winooski, Milton and Newport, as well as the Auditor's [Capstone Report](#), which focused on recommendations going forward. The City's efforts soon concentrated on helping to develop a consensus legislative vehicle that met our goals while also garnering support from the other TIF towns, the League and the Shumlin Administration. The Senate Finance Committee initiated the legislation, combining the bill put forth by the Administration and the requests from TIF towns. Securing passage for what became S.37 required continuous, applied effort throughout the rest of the session.

The City's goals this year were primarily three-fold:

1. Gain additional time for incurring debt in both the Waterfront and Downtown TIF Districts,
2. Resolve the State Auditor's outstanding findings that the City owed the State money for improper administration of its Waterfront TIF District, and
3. Resolve numerous ambiguities and uncertainties around the administration and implementation of TIF districts in Vermont.

All three goals were met in this legislative session. Achieving the first goal was absolutely essential to the future redevelopment of the Waterfront. The Waterfront TIF District was scheduled to run out of time for incurring additional debt in 2014. After rebooting the Waterfront redevelopment process last summer, additional time was needed to implement proposals coming out of the Waterfront and Downtown Public Investment Action Plan (PIAP). Without additional time for incurring TIF debt, there would be no way to fund the related public infrastructure investments and further Waterfront redevelopment could come to a grinding halt.

Passage of S.37 gave authority for the City of Burlington to incur debt in the Waterfront TIF District for an additional five years, beginning January 1, 2015. However, the City's ability to retain an education tax increment is not extended beyond the current 2025 date.

Burlington's Downtown TIF District, along with the new TIF districts in other towns, gained an additional five years in which to incur debt (for a total of ten years), beginning with the creation of the districts,¹³ so long as debt is incurred within the first five years of the district's life. The City may retain 75% of the incremental education tax revenues in the district for twenty years, beginning with the date when the first debt was incurred. However, if no debt is incurred during the first five years, the district will

¹³ Burlington's Downtown TIF District was created in 2011.

terminate, unless the municipality submits an updated executive summary of the TIF district plan and an updated TIF financing plan to VEPC to obtain approval for a five-year extension. These extensions give the City additional time to implement development plans for both TIF Districts.

The legislation also resolved a number of ongoing Tax Incremental Financing issues, including the important settlement of the former State Auditor's findings that suggested TIF towns, including Burlington, owed the State Education Fund a combined total of \$6 million for improper use of the tax increment. Burlington was alleged to have underpaid the Ed Fund by \$1.2 million. City officials disputed those findings, consistently maintaining that they administered the TIF correctly and had worked with the State for 13 years in doing so, in an open and public fashion.¹⁴ Two of the other three audited towns, Milton and Winooski, were also found to have administered their TIF districts improperly and were each charged with owing the State money as well, which they, too, disputed strenuously.

All three municipalities agreed to settle the issue through a series of "reduced" payments to the State Education fund. The City of Burlington is required to pay \$200,000 to the Education Fund in equal installments of \$40,000 a year over a five-year period, beginning December 15, 2013. Payments can be made from incremental tax revenues not otherwise dedicated to the repayment of the district's debt obligations. These amounts must be agreed to by the legislative bodies of the municipalities or the Legislature can reconsider the settlement and consider any amount identified in the Capstone report. Burlington, Winooski and Milton's cause received significant support from Governor Shumlin, who was willing to forgive the entire \$6 million that the Auditor considered owed to the State.

While the Senate agreed with the Governor, the House Ways and Means Committee and House leadership wanted to see some payments to the Education Fund. The new Auditor, Doug Hoffer, also suggested that the towns make some form of payment and settle any other ongoing issues. The City and the other towns entered into negotiations through the Auditor's office to come up with amounts that were satisfactory in final settlement of any "outstanding" sums identified as owed to the Education Fund during the period covered by the 2012 Auditor's Reports.

In addition to resolving the Auditor's findings around underpayment to the Ed Fund, S.37 clarified a number of ambiguities in the TIF Law. This should avoid future disputes between the State and TIF towns, but it also gives the Secretary of the Agency of Commerce and Community Development, upon recommendation from VEPC, authority to resolve disputes should they occur anyway. The act also provides for VEPC to promulgate rules to settle other currently unresolved issues. The Tax Department and VEPC will have increased oversight over TIF Districts, and the State will now be able to collect any funds if violations do occur. Act 80 sharpens several important definitions, including one that clarifies the City's ability to use TIF funds to administer the districts. It also provides for enforcement in cases of municipal noncompliance, and directs the Auditor to conduct performance audits of all TIF Districts.

The Mayor and Assistant City Attorney Richard Haesler spent numerous days at the State House throughout the session, talking with leadership in both chambers, working with Burlington legislators, House Ways & Means, Senate Finance and the Administration. The City negotiated with the Auditor's office, alongside other towns, to achieve passage of this legislation. In addition to the work of Legislative Liaison Karen Lafayette, the City was aided considerably in its efforts through close collaboration with the League of Cities and Towns, the Vermont Mayors' Coalition, the other towns with an interest in TIF, and the Shumlin Administration, which understands the importance of TIFs as a key economic development tool.

¹⁴ Click here for a link to the [State Auditor's Report](#), which includes the City's response to the draft audit in Appendix IV.

See the League's summary in the attachments for further information, as well as the following additional resources: click here for [link to Legislative Council's Act 80 summary](#), [link to legislation](#), and [link to VTDigger article](#).

Cloud Computing Tax

Whether or not so-called "pre-written" software accessed remotely should be taxed was again the subject of much discussion, and the upshot was that it is taxable as of July 1. Also known as "cloud computing," or "cloud-based services," a general term given to a variety of services that are accessed via the Internet or a proprietary network, these services allow users to store data, access software, and access services and platforms from almost any device that can access the cloud via a broadband connection. Readers will recall that last year's Miscellaneous Tax Bill instituted a temporary one-year moratorium on the enforcement of the State's six percent sales tax on cloud-based services until July 1, 2013 and refunded the taxes that were collected since December of 2006.

The Shumlin Administration asked for a permanent exemption to help spur the growth of the state's technology and software industry. A summer study committee had also recommended that cloud computing be kept tax free. The Senate agreed and incorporated a three-year extension of the moratorium into its version of H.295/Act 73, the Technical Tax Bill. The House opposed the extension. In the end, the conference committee on the bill decided that the state couldn't afford the \$900,000 needed annually to cover extending the tax break and declined to extend the moratorium, which expired on June 30. Purchases made before July 1, are not taxable; liability for the tax is incurred starting July 1. The Tax Department intends to publish regulations to guide taxation on cloud based services, which will help resolve possible gray areas in the application of the tax. In the meantime, they have published a [fact sheet](#) to help businesses and consumers decide if the sales tax applies to the software they are purchasing.

Downtown Bill (H.377/Act 59)

Since the 1970s the state has promoted development policies and programs that maintain and enhance Vermont's historic development pattern of compact settlements separated by a working rural landscape. Policy makers of differing political parties and philosophies have long agreed that our landscape is linked to our economy, community spirit and unique Vermont brand and have set a goal of maintaining and enhancing it. The core implementation strategy is the State's "designation" programs: Downtown, Village Center, New Town Center, Growth Center and Vermont Neighborhoods. These programs all help maintain Vermont's historic development pattern by targeting state resources to promote the efficient use of land, infrastructure and resources. Burlington has made significant use of the array of tax credits and other incentives that its Downtown designation provides to stimulate healthy economic development.

H.377/Act 59, "An Act Relating to Neighborhood Planning and Development for Municipalities with Designated Centers," grew out of an effort by the Department of Housing and Community Development (DHCD)¹⁵ to take a comprehensive look at the various designation programs for the first time in many years. DHCD consulted with a broad range of stakeholders over last summer and fall and conducted a comprehensive survey. This process resulted in a number of recommendations, including new incentives and enhancements to existing incentives. Because of the State's continuing fiscal challenges, the incentives were dropped and H.377 focused on a number of no-cost amendments to the laws governing the Designated Downtown, Village Center and Vermont Neighborhoods Programs.

¹⁵ Formerly Department of Economic, Housing and Community Development (DEHCD), renamed this year as a result of once again separating out its economic development function into the Department of Economic Development. The remaining housing, community development, downtown revitalization and planning functions remained within DHCD. Both departments are part of the Agency of Commerce and Community Development.

The Designated Downtowns and Village Center sections of Act 59 make changes to improve consistency, collaboration and program effectiveness, including:

- Changes to the goals, definitions and other sections to improve programmatic consistency,
- Improved linkage to the State's planning statutes (Chapter 117), and
- Administrative improvements to promote local training and collaboration and success such as early community consultations, assessments, and enhanced training and support.

More significant changes were made to the Vermont Neighborhoods Program, which are summarized in the Affordable Housing section below. The act requires an agency examination of the programs for designating Growth Centers and New Town Centers and a report to the General Assembly on these programs. DHCD is to consider the process for designation, how to include municipalities of all sizes and growth pressures, additional incentives, potential integration of industrial parks and rural development, and protection of natural resources. The Department intends to conduct another comprehensive outreach process with stakeholders this summer and fall to solicit ideas for revisions to these programs. DHCD also hopes to be able to move forward with some of the incentives considered last year before they were abandoned in the face of the State's fiscal realities.

Mayor Weinberger and the Mayors' Coalition met with DHCD Commissioner Noelle MacKay, pledged their support for the bill, and had the City Lobbyist testify in support. Here is a [link to the legislation](#).

Appropriations & Capital Bills (H.530/Act 50; H.533/Act 51)¹⁶

This was the sixth consecutive year of difficult budgets due to yet another year of deficits, made more difficult by the slow economic recovery, federal funding cutbacks, and challenges remaining from Tropical Storm Irene. The year started out with a \$70 million budget gap projected for FY 14, \$9 million more than the shortfall appropriators faced at the beginning of the last session for FY 13. The challenge was doubly daunting because all possible economies had already been squeezed out of the budget, because the Governor steadfastly refused to support raising "broad-based" taxes to make up budget shortfalls, and because after many years of cutting or level-funding, there was intense pent-up pressure to increase program budgets to meet true needs, not to mention the \$30 million in new spending proposed by the Administration.

The House and Senate each rejected many of the Governor's new spending measures, setting their sights on raising \$20 million and \$10 million in new revenues, respectively, to close their projected budget gaps. In the end, \$10 million in unanticipated new revenues helped close the final gap, together with another \$10 million that was trimmed relatively painlessly by the Appropriations Conference Committee. On the last day of the session, lawmakers passed a \$1.356 billion General Fund budget, a 4% increase over FY 13. Total spending, including transportation, education, federal and special funds, amounted to \$5.232 billion, a 4.2% increase. Click here for a summary of the [FY 14 budget highlights](#).

Other than State education funding, the City does not have many budget line items from which it derives direct benefit. Nevertheless, the City continued to be concerned about the potential for State budget cuts and cost shifts onto the Ed Fund to result in service reductions that have a direct impact on

¹⁶ The League's table showing FY 2013 appropriations of general interest to municipalities, including transportation funding, is included in the attachments. Also included is the League's table summarizing the FY 12–13 Capital Bill and adjustments made to it this year.

the City and place additional burden on Burlington property taxpayers. Fortunately this year's budget deficit did not result in significant additional cuts to social service spending. The following items do have direct impact on the City's budget.

Payments in Lieu of Taxes (PILOT)

The PILOT program is designed to reimburse cities and towns for a portion of the municipal property tax revenues they lose because they host State owned buildings and lands that are exempt from property taxes.¹⁷ PILOT payments help support the municipal police, fire, highway, and other public services from which State facilities benefit. For FY 2014, the overall PILOT budget for general State buildings is \$5.8 million, same as for the last several years. **The Tax Department estimates that Burlington will receive \$674,943, a 15% cut from the FY 11 level of \$793,058.¹⁸ This is the third consecutive year of decreases.** The City's reductions stem from a combination of changes in state owned property in the City and around the state.

Until a few years ago, PILOT was funded through a combination of the State's 30% share of local option tax revenues and General Fund moneys. As more towns adopted local sales and rooms and meals taxes, the State's revenue from local option taxes increased, allowing it to completely eliminate General Fund contributions to PILOT. In spite of increases to the PILOT fund over the years, the State's reimbursement to municipalities has dropped. For FY 14 it was prorated by a factor of 70% (it was 73% in FY 13). **To fully fund PILOT, the State would have had to appropriate over \$8.3 million, which would have yielded an estimated \$963,977 for the City.** The City's PILOT allocation is based on the April 2012 Grand List of State properties in the City. The State uses insurance replacement value, which is considerably less than the full market value that owners of taxable properties are required to pay.

Community Justice Center & Offender Re-Entry Housing

For a number of years now, policy makers in all branches of State government have placed great emphasis on lowering spending on Corrections (DOC). Alternatives to the traditional criminal justice system have been expanded, with the goal of decreasing the number of people entering the system at the front end, and enhancing community services designed to assist community reintegration and reduce recidivism at the back end. Through a variety of initiatives, DOC's base budget for "justice reinvestments" has increased by just under \$8 million since 2008. Lawmakers have invested in a variety of measures intended to generate savings, including transitional housing for ex-offenders re-entering the community, Community Justice Centers (CJCs), increased Corrections field services staff, substance abuse treatment, electronic monitoring equipment, sentencing reform, graduated sanctions, and more. According to DOC figures, the measures have paid off: the total population under some form of DOC supervision (incarcerated, re-entry, intermediate sanctions, parole and probation) was 10,743 in FY 12, down from a high of 13,778 in FY 07.¹⁹

Community involvement has been key. Vermont has 79 reparative boards and community panels in 32 host towns, served over the last year by 680 community volunteers. DOC now invests approximately \$2.1 million annually in the operating budgets of the state's 17 Community Justice Centers (CJCs and Restorative Justice Programs). This year saw a \$160,000 increase, which will fund new programs in Lamoille County and Bennington and provide grants to CJCs to assume control of the Reparative Boards in Colchester, Milton and Chester. Burlington's CJC received \$275,000 from the State in FY 13 and

¹⁷ The State has four separate PILOT funds to pay cities and towns for different types of properties: (1) general State buildings, (2) corrections facilities, (3) Agency of Natural Resources lands, and (4) State-owned properties in Montpelier. Burlington receives payments from the first of these funds.

¹⁸ See FY14 "[Estimated Payment-in-Lieu-of-Taxes \(PILOT\) on State Owned Property](#)," Vermont Tax Department, June 2013.

¹⁹ [FY 14 DOC Budget Presentation](#), p. 3

anticipates receiving \$300,000 for FY 14. Designed to reduce the number of people entering the criminal justice system and to help with offender re-entry, during FY 12 these programs handled 1,780 cases, including 1,000 individuals who were diverted from prosecution and DOC involvement; completed restorative accountability processes for 650 offenders under DOC supervision; and provided direct services to 1,295 victims.²⁰

Transitional housing for ex-offenders re-entering the community is another important issue for the City in the Corrections budget. It is critical to the success of these former offenders and helps reduce recidivism rates and overall corrections spending. In FY 13, there were 33 transitional housing programs across the state, with a total of 239 beds. There were also four programs that employ Housing Specialists, including two at the Burlington Housing Authority, to aid ex-offenders in securing independent housing and assisting them in retaining that housing for up to a year. Additionally, there are 8 programs (101 total beds) in various stages of development. In FY 12, 858 offenders were housed in 188 transitional housing beds for over 60,000 bed nights, saving 166 costly beds in prison, at an average in-state cost of \$58,100 (out of state beds average \$26,823). All told 942 offenders re-entering the community were assisted with housing, housing searches, and/or release money.²¹

Several Burlington organizations together receive over \$1 million in annual funding from this budget line item, including the Burlington Housing Authority, Northern Lights, Dismas House, Phoenix House, and Pathways to Housing. The transitional housing budget grew from \$1.2 million in 2008 to \$5.2 million last year. Through the FY 13 Budget Adjustment Act and the FY 14 Appropriations Act, budget writers invested another \$1.4 million, bringing the base budget to \$6.6 million. With significant numbers of inmates still in prison who could otherwise be released, but for the availability of housing on the outside, these are important investments for the State.

Chittenden Rapid Intervention Community Court Program

For FY 14, the Corrections budget level funded the Rapid Intervention Community Court Program (RICC) at \$114,000, through the State's Attorneys budget. Developed jointly by the Burlington Police Department and the Chittenden County State's Attorney's Office, the program uses rapid intervention – a pre-charge system through which non-violent offenders are directed to community-based mental health or substance abuse counseling – to keep people out of the corrections system and use rehabilitation to reform the problem behavior. Hallmarks of this innovative program include:

- Fast Track process from event until scheduled court appearance to achieve greatest benefit of intervention;
- Rapid assessment of the needs of the accused that contribute to criminal actions and the offer of optional treatment;
- Continuous monitoring of compliance with treatment and program;
- Prompt prosecutor response to lack of compliance; and
- Keeps accused out of criminal court: no criminal charge filed.

According to the State's Attorneys Department, the recidivism rate for program participants is extremely low. Only 7.4% of successful program graduates were convicted of a crime after leaving the RICC. Even participants who did not successfully complete the program had a lower recidivism rate: only 23.9% were convicted of a crime after leaving RICC. Thus, even reduced participation in RICC appears to provide benefit in curbing future criminal behavior. RICC reduces costs to the State criminal justice

²⁰ [FY 14 DOC Budget Presentation](#), pp. 27-28.

²¹ [FY 14 DOC Budget Presentation](#), pp. 29, 30 & 59.

system at all levels and ultimately reduces crime in the community by dealing with behavior and addictions.²²

Recovery Center/Turning Point Funding

The FY 14 Big Bill level funds the Vermont Recovery Network statewide at \$715,000. This represents an advance for the Network in that it builds what was originally intended to be just a one-time increase of \$100,000 last year into the base budget for FY 14 and going forward. The 11 Recovery Centers, including Burlington's Turning Point Center, split the annual appropriation for the Network evenly, so that each receives approximately \$65,000. Recovery Centers provide multi-faceted support for people seeking recovery and their families. Their services are provided almost exclusively through the dedicated time of hundreds of volunteers. By supporting Vermonters in recovery, the centers can help the State realize cost savings in medical, justice and social services, while helping addicted Vermonters enter and maintain recovery. Over the past year, the Network conducted a study showing that recovery coaching holds the potential for such cost savings while helping addicted Vermonters enter and maintain recovery.

The FY 14 Appropriations Act calls on the Agency of Human Services to conduct a review of the capacity of its continuum of substance abuse programs and services. Pending the report's findings and recommendations, AHS may increase substance abuse funding by \$100,000, including for Recovery Centers, to build system capacity. The proposed use of these funds shall be included with the FY 14 Budget Adjustment proposal made by the Agency. The Network estimates that an additional \$55,000 in State funding per Recovery Center (\$605,000 total) would be needed to fund sustainable budgets that allow the centers to realize their potential to reduce the societal costs stemming from drug and alcohol abuse and associated addictive diseases. The Burlington Turning Point Center receives a disproportionately small amount of the Network's total funding (9% of the state total) compared to the large number of visits it receives. As funding for the overall Network increases, Burlington's Turning Point should receive funding that is more proportional to its percentage of people served.

Alcohol and Drug Abuse Program

The Health Department's Alcohol and Drug Abuse Program (ADAP) budget includes a number of increases designed to help combat substance abuse, which has hit Burlington with particular force:

- \$1,188,500 in new federal spending for Partnership for Success, a program to reduce underage drinking and prescription drug abuse among young people;
- \$112,967 in funding for rate increases for residential treatment;
- \$351,500 in funding for a planned 7-bed expansion of residential treatment capacity at Maple Leaf Farm (subject to approval through the Certificate of Need process);
- \$406,905 for a 3% increase in Medicaid payments to treatment providers; and
- The above-referenced \$100,000 to build system capacity.

ADAP and various other departments in the Agency of Human Services are collaborating in an Agency-wide initiative with community providers to create a coordinated, systemic response to the complex issues of opiate and other addictions in Vermont. This initiative creates a framework for integrating treatment services for substance abuse issues and co-occurring mental health disorders -- an "Integrated Treatment Continuum for Substance Abuse Dependence," also known as the "Hub and Spoke" initiative. While this system focuses primarily on individuals requiring buprenorphine (suboxone) and methadone treatment for opiate dependency, it also creates a framework to support

²² [Department of State's Attorneys FY14 Budget](#).

and improve the capacity of patient-centered medical homes statewide to provide a more holistic approach to health care for individuals with addiction and mental health conditions.

“A **Hub** is a specialty treatment center responsible for coordinating the care of individuals with complex addictions and co-occurring substance abuse and mental health conditions across the health and substance abuse treatment systems of care. A Hub is designed to do the following:

- “Provide comprehensive assessments and treatment protocols.
- “Provide methadone treatment and supports.
- “For clinically complex clients, initiate buprenorphine treatment and provide care for initial stabilization period.
- “Coordinate referral to ongoing care.
- “Provide specialty addictions consultation and support to ongoing care.
- “Provide ongoing coordination of care for clinically complex clients.

“A **Spoke** is the ongoing care system comprised of a prescribing physician and collaborating health and addictions professionals, who monitor adherence to treatment, coordinate access to recovery supports, and provide counseling, contingency management, and case management services. Spokes can be:

- “Blueprint Advanced Practice Medical Homes
- “Outpatient substance abuse treatment providers
- “Primary care providers
- “Federally Qualified Health Centers
- “Independent psychiatrists”²³

Church Street Marketplace Outreach Program

Spearheaded by the Church Street Marketplace District and Howard Center for Human Services, this award-winning program is a partnership between a broad variety of public, non-profit and private organizations. The program provides outreach and referral to people with psychiatric disabilities, substance abuse issues and homelessness in and around downtown. The program is funded through a variety of private donations and public funds, including State funds from the Department of Mental Health budget. State funding for the program was level funded for a number years at \$110,000 and received a \$39,244 increase for FY 14.

Municipal & Regional Planning

The FY 14 budget provides a \$291,678 increase to the Municipal and Regional Planning Fund, from \$3.3 to \$3.6 million. \$2.8 million is going to the regional planning commissions to provide their core operating funding, and \$449,570 to municipal planning grants. The balance goes to the Vermont Center for Geographic Information. Funding for municipal and regional planning continues to be considerably lower than it was before the Great Recession ushered in six years of budget deficits. The original FY 09 budget was for \$4.3 million overall, with \$3 million for regional planning and \$860,000 for municipalities. FY 14 funding levels represent reductions of 16%, 7% and 48%, respectively, from the funding levels of five years ago.

²³ [Integrated Treatment Continuum for Substance Use Dependence, “Hub/Spoke” Initiative—Phase 1: Opiate Dependence](#), p.2, January 2012.

By statute, the Municipal and Regional Planning Fund is supposed to be funded by a dedicated 17% share of the State's Property Transfer Tax (PTT). For years the Legislature has diverted transfer tax revenues away from their intended use and deposited them into the State's General Fund to make up for budget shortfalls and other State priorities. Based on last January's official State revenue forecast, which forms the basis for the FY 14 budget, the statutory funding level for planning in FY 14 should have been about \$5.3 million.

Burlington has made extensive use of municipal planning grant funds over the years, including for the Comprehensive Development Ordinance, Municipal Development Plan, and Open Space Plan. In FY 12, the Planning Department received a \$15,000 grant to develop a new form-based code for Burlington's Downtown and Waterfront area. It is the only reliable external funding source the Planning Department has for regular planning projects.

Capital Bill (H.533/Act 51)

This year the Capital Bill was once again crafted as a two-year bill for the entire biennium. The total in capital funds appropriated for FY 14 and FY 15 was \$173,231,370. Of that amount, \$90,373,066 was appropriated for the first year, the remainder for the second. Next year's Capital Bill will represent a mid-course adjustment to the two-year bill. Act 51 included funding for a number of programs of general interest to municipalities -- Building Communities Grants, Clean Water State/EPA Revolving Loan Fund Match, Water Supply Revolving Loan, State Aid for School Construction, to name a few -- but included no new funding for Burlington projects. In the past, the Capital Bill has helped to fund projects like the Aviation Technical Training Center at Burlington International Airport and the Northern Lights Project for women coming out of prison. The League's table summarizing the FY 14-15 Capital Bill is included in the attachments.

Public Safety & Corrections

Criminal Investigation Records (S.148/Act 70)

Early in the session Senate Judiciary initiated S.148, "An Act Relating to Criminal Investigation Records and the Vermont Public Records Act." The bill ultimately passed as Act 70 and allows greater public access to criminal investigation records. Prior to passage of Act 70, the Vermont Public Records Act categorically exempted from disclosure records dealing with the detection and investigation of crime, including those compiled in the course of police disciplinary investigations. Records relating to the management of a law enforcement agency or reflecting the initial arrest or charge of a person, however, were not exempt. The existing law was considered confusing, and courts had issued contradictory decisions in the last several years.

Supported by the Shumlin Administration, the American Civil Liberties Union (ACLU) and media advocates for greater government transparency, the Senate bill proposed replacing the existing categorical exemption with a balancing test derived from standards in the federal Freedom of Information Act (FOIA), which 21 other states have adopted. The Attorney General opposed opening criminal investigation records to greater public disclosure, except when an investigation focuses on the on-duty conduct of a law enforcement officer and a decision has been made not to file criminal charges.

FOIA exempts records dealing with the detection and investigation of crime from public inspection and copying, but only to the extent that the production of such records:

1. Could reasonably be expected to interfere with enforcement proceedings;
2. Would deprive a person of a right to a fair trial or an impartial adjudication;

3. Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
4. Could reasonably be expected to disclose the identity of a confidential source or information furnished by a confidential source;
5. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law; or
6. Could reasonably be expected to endanger the life or physical safety of any individual.

The bill incorporates FOIA case law by reference so that Vermont courts are guided by decisions in other jurisdictions as this major statutory change is tested. It also maintains the existing provision, described above, which subjects to public disclosure records that relate to the management of a law enforcement agency or that reflect the initial arrest or charge of a person. It does not change the statute that protects law enforcement employees' personnel records.

From the outset, Burlington Police Chief Mike Schirling expressed deep concern about the strict adoption of the FOIA standards. His concerns were echoed by the Vermont Association of Chiefs of Police and other police representatives. Chief Schirling felt that the FOIA standards did not sufficiently protect witnesses and a host of private information contained in police investigative records, the public disclosure of which could bring harm to persons and property and reveal personal information that should be kept private. Here are a few examples from the Chief's letter to the Senate and House Judiciary Committees:

- Names, addresses, and phone number of concerned citizens calling in reports or witnesses to a wide range of things... Many of these investigations do not result in prosecution.
- Information about where prescription drugs, money, and other valuables are located within Vermonter's homes, cars, or businesses.
- Vulnerabilities in security in homes, businesses, and other buildings.
- Details of personal schedules such as when they are home and away, when they go to appointments, doctor's visits, etc.
- Personal biographical information or other personal information such as sexual orientation or religious affiliation.
- Personal information about finances, health and well-being, and personal relationships.
- Information about suicides and suicide attempts.
- Contents of personal diaries or journals.
- Photographs and diagrams of homes and businesses.
- Details of unfounded accusations made by one person against another.

In response to the concerns of Chief Schirling and other law enforcement representatives, the League proposed language clarifying legislative intent that *"a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing."* There was much debate around the League's language (and several refinements), with a number of stakeholders insisting the intended protections were already covered under FOIA and would cause confusion. Legislators, however, saw the value in including a "plain English" clarification in the bill, especially for public officials charged with disclosing records who might not have a law degree or be otherwise conversant with all the requirements of FOIA and the case law surrounding it. Some stakeholders were concerned that the League's language could exempt entire files from public disclosure and were successful in getting lawmakers to add language clarifying that *"A record shall not*

be withheld in its entirety because it contains identities or information that have been redacted pursuant to this subdivision..."

Chief Schirling testified in both the Senate and House Judiciary Committees. His memo outlining concerns with the original bill, as introduced, is included in the attachments. His major concerns were addressed by the intent language lawmakers included. Act 70 represents a substantial change to the requirements around public disclosure of criminal investigation records. Its full impact will only be realized over time as law enforcement officials receive and comply with, or reject, information requests and the new law is tested in court. Click here for the [full text of Act 70](#).

Opioid Addiction & Methamphetamine Abuse (H.522/Act 75)

H.522/Act 75 provides a comprehensive approach to combating opioid addiction and methamphetamine abuse in Vermont. To prevent abuse of prescription drugs, it sets minimum standards for when doctors must consult the Vermont Prescription Monitoring System (VPMS) in order to ensure patients are not doctor-shopping for opiates. It requires prescriptions for regulated drugs to include the patient's date of birth and to show the quantity of the drug in both numeric and word forms. It prohibits anyone other than a patient or the patient's representative from picking up a prescription for a controlled substance and requires the pharmacist to ask for a signature and photo identification. The act gives certain individuals direct access to the VPMS and allows others to receive reports of data available to the Health Department through the VPMS. It tasks the Department of Public Safety (DPS) with adopting standard operating guidelines for accessing pharmacy records, which those who have authorized access, such as health care providers, regulators, patients, and the DPS Commissioner, but not other law enforcement officers, are required to follow.

Act 75 sets up a monitoring system for meth precursor drugs that can be purchased at pharmacies. It also establishes a pilot program for wider distribution of naloxone, a drug that reverses opioid overdoses, and grants immunity from prosecution to those who seek help for someone who has overdosed. The act tasks the Health Commissioner with developing a statewide program to dispose of unused prescription medicine. In an attempt to allow patients to bypass lengthy waits for the state's treatment clinics, Act 75 also directs the Health Department to first study, and then write rules to establish a program that would increase access to treatment by allowing doctors who are affiliated with a licensed opioid maintenance treatment program to prescribe methadone or suboxone to opioid-dependent people.

Of particular interest to Burlington and other municipalities, the act makes it easier to crack down on drug activity that takes place on abandoned property. It defines abandoned property as:

“(A) Real property on which there is a vacant structure that for the previous 60 days has been continuously unoccupied by a person with the legal right to occupy it and with respect to which the municipality has by first class mail to the owner's last known address provided the owner with notice and an opportunity to be heard; and

“(i) property taxes have been delinquent for six months or more; or

“(ii) one or more utility services have been disconnected.

“(B) A railroad car that for the previous 60 days has been unmoved and unoccupied by a person with the legal right to occupy it.”

Finally, in an effort to curb the easy sale of stolen jewelry, Act 75 increases the regulation of precious metal dealers, requiring them to register with the State, keep records of precious metals purchased, hold onto goods for ten days, and pay for goods by check or money order, not cash.

Click here for a [comprehensive summary of Act 75](#). Click here to read the [full text of Act 75](#).

Environmental Protection & Permitting

Act 138 Reports

Early on in the session various committees of jurisdiction heard from the Agency of Natural Resources (ANR), Department of Environmental Conservation (DEC) on two key reports required under Act 138 of the 2012 session: "[Water Quality Remediation, Implementation, and Funding](#)," and "[Lake Shoreland Protection and Restoration Management Options](#)." These reports generated several important bills later in the session and will continue to shape environmental and land use policy discussions during the legislative interim and throughout next year.

The first report identifies the four major categories of pollution in Vermont's lakes, streams and rivers:

- Nonpoint source pollution in municipal areas,
- Nonpoint sources from agricultural and forestry operations,
- Erosion and flooding of Vermont's rivers and streams, and
- Municipal infrastructure and stormwater programs.

The report provides an estimate for cleaning up Vermont's lakes and waterways and a review of possible revenue sources. It describes municipal and statewide clean water challenges in 19 categories of need and recommended actions. The total annual need in Vermont is estimated to be \$156 million, or almost \$1.6 billion over ten years. Some examples:

- \$70.8 million annually to manage currently unregulated stormwater
- \$10.5 million to treat runoff from the roads around the state
- \$18 million for maintenance and repair of the state's aging wastewater infrastructure
- \$11.3 million for nutrient pollution controls at municipal wastewater facilities
- \$21.5 million for municipal water systems
- \$10 million to remediate stormwater impaired waterways
- \$8.7 million to address non-point source pollution from agriculture and timber operations

The report also identifies 17 possible sources of funding, ranging from excise taxes on such products as motor fuels, pesticides and fertilizers, and flushable products, to statewide stormwater fees, to a surtax on the personal income tax or a 1-cent increase in the property tax.

Act 138 also directed attention to how the State should establish a shoreland protection program to restore and protect lake health. The second report focuses on options for restoring and protecting lake shores and whether the state should enact statewide shoreland regulations. The report explores options for the State to:

1. Adopt standards via rule making and administer a statewide permit program;
2. Set minimum standards that municipalities can choose to administer themselves; and
3. Set minimum standards that municipalities would be required to incorporate into their zoning ordinances. The report also explores a variety of non-regulatory options, including education, outreach, technical assistance and incentives.

As anticipated, the City had to monitor discussions and legislation spurred by these reports closely, as they had the potential for major impact on the City's wastewater treatment facilities, Stormwater Management Program, and future development on the Lake Champlain Waterfront, Winooski riverfront, the Intervale, and the Englesby and Centennial Brook corridors

Shoreland Protection (H.526; H.223)

As a result of Act 138 and the reports it generated, the House Fish and Wildlife Committee labored long and hard this year to produce legislation that would protect Vermont's lakeshores. The Committee Chair first introduced H.223, which later evolved into H.526, "An Act Relating to the Establishment of Lake Shoreland Protection Standards." The bill would establish a complex regulatory framework for the shorelands of all Vermont lakes and ponds of more than ten acres – in effect statewide shoreland zoning. The bill's stated purpose is to:

1. Provide clear and adaptable standards for the creation of impervious surface or cleared area in lands adjacent to lakes;
2. Prevent degradation of water quality in lakes and preserve natural stability of shoreline;
3. Protect aquatic biota and protect habitat for wildlife and aquatic life;
4. Mitigate, minimize, and manage any impact of new impervious surface and new cleared area on the lakes of the State;
5. Mitigate the damage that floods and erosion cause to development, structures, and other resources in the lands adjacent to lakes;
6. Protect shoreland owners' access to, views of, and use of the State's lakes; and
7. Preserve and further the economic benefits and values of lakes and their adjacent shorelands.

As passed by the House, H.526 establishes "protected shoreland areas," buffer zones 250 feet from the mean water level of lakes with over 10 acres of surface area. For these areas, the bill would require property owners to get a permit from the Secretary of the Agency of Natural Resources (ANR) for construction with over 500 square feet and less than one acre of new impervious surface; creation of over 500 square feet of new cleared area; or expansion of existing impervious surface or cleared area to more than 500 square feet. No permit would be needed for expansions up to 500 square feet, as long as the aggregate expansion was not over 20% of the protected shoreland area of the lot. The ANR Secretary could only issue a permit if the proposed impervious surface or cleared area did not negatively impact water quality and complied with the lake shoreland protection standards. The bill directs the Secretary to adopt a general permit for activities that present low risk of harm to water quality, under which property owners who need a permit may seek coverage.

The ANR Secretary would also be directed to adopt requirements for individual permits for the construction of impervious surface or creation of cleared area by January 1, 2015. These would get into a high level of detail and include ANR establishing best management practices for the construction of impervious surfaces or the creation of cleared area within the 250 buffer zones, including standards for everything from managing vegetative cover to minimizing the creation of impervious surface or cleared area – even standards for designing and maintaining driveways, patios, and similar surfaces so that stormwater runoff is minimized. The standards would allow a limited set of activities within the buffer zone, including paths and recreational space; gardens; and accessory structures, subject to size requirements established by the Secretary. The bill also created limited exemptions for certain types of practices and activities related to transportation infrastructure, wastewater systems and potable water supplies, stormwater treatment systems, and certain agricultural and silvicultural practices. Under the current wording – and important to Burlington Electric -- those activities not requiring a permit include

the routine repair and replacement of electric utility lines that are subject to 30 VSA Section 248 (any major utility project).

Clearly these standards were designed for rural areas and not with urban lakefronts like Burlington's or Newport's in mind, or lakefronts in village/town centers like North Hero or Malletts Bay. Not all shorelines are created equal and a one size fits all approach doesn't work for anyone. In fact, as originally drafted, the legislation could have brought development on our urban waterfront to a grinding halt at a time when we have rebooted the entire waterfront redevelopment process and are looking forward to exciting new possibilities. At best it could have caused the type of regulatory uncertainty that chills potential financial investment.

While the City strongly supported the goals the proposed bills were trying to achieve – after all Lake Champlain is our most precious asset – we had deep concerns as well, which were shared by the League and a number of other municipalities. In response to those concerns, provisions were incorporated into the bill that authorized municipal delegation of permitting, allowing cities and towns with existing shoreland protection ordinances to issue their own permits, so long as those ordinances:

- Require vegetative cover or other best management practices designed to prevent degradation of water quality in lakes, to minimize or mitigate impervious surface and cleared areas in protected shoreland areas, and to minimize or mitigate damage from floods and erosion;
- Set forth conditions on the construction and expansion of existing impervious surface or cleared area; and
- Provide for administration and enforcement of the bylaw or ordinance.

While Burlington has well developed shoreland protection zoning that would meet the proposed State standards, additional provisions were needed in the bill to allow for future development on the urban waterfront. Thanks to the City's engagement and that of the League, Fish and Wildlife also included an exemption for areas with historic and urban development. This would eliminate the need for the special State permit for construction, creation, or expansion of impervious surface or cleared area within protected shoreland buffer zones so long as:

“(1) the area in which the impervious surface or cleared area will be constructed, created, or expanded has been designated by municipal bylaw for:

“(A) development according to historic development patterns; or

“(B) redevelopment of land that has been subject to construction of impervious surface or to disturbance prior to the July 1, 2013 by industrial or urban development; and

“(2) the municipality has adopted a shoreland bylaw or ordinance or has implemented best management practices intended to prevent degradation of water quality in lakes; to minimize or mitigate disturbances in lands adjacent to lakes; or to minimize or mitigate damage from floods and erosion.”

With this exemption, the City's concerns were satisfied. However, the concerns of other constituencies were not so easily addressed. In spite of the bill's assertion that *“The shorelands of the state owned by private persons remain private property, and this act does not extend the common-law public trust doctrine to private shoreland that is not currently public trust land,”* it generated a firestorm among lakeshore property owners from one end of the state to the other. Even though it achieved passage in the House, the bill stalled in Senate Natural Resources, which decided to put the bill on hold until next year.

Senators proposed creating a Lake Shoreland Protection Commission to provide information regarding current laws and regulations protecting the waters of the state, and take testimony regarding the regulation of disturbance, clearing, and creation of impervious surfaces on lake shorelands. Created by language in the FY 14 Appropriations Act,²⁴ the Commission consists of the five members of Senate Natural Resources and five of the eight members of House Fish and Wildlife. The Commission is authorized to hold up to five public hearings around the state to provide information and gather public input.

Burlington officials came to the State House a number of times to testify, as well as meet privately with key lawmakers, including Mayor Weinberger, Planning Director David White, Stormwater Program Manager Megan Moir, and Senior Planner Scott Gustin. The City's efforts definitely bore fruit through the inclusion of the municipal delegation and historic and urban development provisions in the House bill. In his testimony at Senate Natural Resources, Mayor Weinberger extended an invitation for committee members to visit Burlington to learn more about our urban waterfront, the City's Stormwater Management Program, and how we plan to protect Lake Champlain from the effects of stormwater runoff as additional areas are developed and more impervious surface is created. The Lake Shoreland Protection Commission plans to take the Mayor up on his offer.

While it is uncertain what path H.526 may take next year, after the Commission completes its series of public hearings, its visit to Burlington will help ensure that lawmakers remain mindful of the City's concerns and needs as discussion around improving the water quality of Vermont's lakes and ponds continues into the next session. Though it appears unlikely that H.526 will be enacted as passed by the House, it will certainly help frame future discussions and progress needs to be watched closely over the legislative interim and next year. Click here for the [full text of H.526](#).

Flood Hazard Areas (H.401/Act 16)²⁵

At least 21 other bills were introduced that address various water related issues. Among them was H.401, a bill that addresses flood hazard areas and fluvial erosion protection in local and regional plans. H.401 amends Title 24 Chapter 117, the regional and municipal planning statutes by adding a 14th goal "to encourage flood resilient communities." New development in identified flood hazard, fluvial erosion, and river corridor protection areas should be avoided and any new development should not exacerbate flooding and fluvial erosion.

Both regional and municipal plans must include the new flood resilience element to identify flood hazard and fluvial erosion hazard areas based on river corridor maps provided by the Secretary of ANR. The element must designate areas to be protected, including floodplains, river corridors, land adjacent to streams, wetlands, and upland forests to reduce flood damage to infrastructure and improved property. As well, the flood resilience element will need to recommend policies and strategies to protect identified areas and mitigate risk to public safety, critical infrastructure, historic structures, and public investments, such as roads, bridges, culverts, and wastewater treatment or water supply facilities. Burlington is already doing more resilience/adaptation planning so will not be negatively impacted by the bill.

H.401 also enables a municipality to prohibit the construction of accessory units (mother-in-law apartments) in flood hazard and fluvial erosion areas. Burlington typically doesn't allow single family homes in our Special Flood Hazard Area so restricting accessory units does not negatively impact us either.

²⁴ See [H.530/Act 50, FY 14 Appropriations Act](#), pp. 117–120 for legislative language creating Commission.

²⁵ Summary of Act 16 adapted from VLCT [2013 Legislative Wrap-Up](#).

Local Government

Public Records (H.54/Act 23)

H.54 started out as a 22-page bill that would have deleted or amended multiple exemptions to the inspection or copying of various public records, mostly in the area of Human Services. The bill that passed and became Act 23 was just over a page and did not effect substantive changes to the State's Public Records Law, but it did signal the Legislature's clear intent to take up substantive changes next year.

Act 23 directs Legislative Council to prepare a draft bill listing all exemptions to the Public Records Act in one statutory provision. The draft bill will also amend existing exemptions scattered throughout the Vermont law in order to cross-reference back to the draft list of exemptions, and incorporate amendments to existing exemptions that were previously recommended by the legislative Public Records Study Committee. Legislative Council is to submit the draft bill to the Committee on or before November 1, 2013.

Similar legislation deleting or amending various public records exemptions was introduced in 2012 as H.611 and never acted upon. Act 59, passed the year before, made substantial changes to the Public Records Law, but did not address certain issues that remained unresolved for municipalities, including ambiguities in current statute and case law as to whether personal/personnel records are private or public, and whether or not towns can require reimbursement for staff time necessary to allow individuals to inspect public records. Act 59 did mandate that public agencies shall pay legal fees if a court orders disclosure. Municipal officials acting in good faith and using their best judgment may decide to protect documents that a court might later decide should have been made public. The Legislative Public Records Study Committee continues to meet on these issues.²⁶ The City will need to follow any future legislation changing the State's Public Records Act closely, as its repercussions for municipalities are potentially great.

See the attachments for a detailed review of Act 59 from our "2011 Burlington Legislative Review." Click here for the [full text of Act 59 \(2011 session\)](#). Click here for [the League's summary of Act 59 \(2011 session\)](#).

Open Meetings (H.497; S.110)

The Legislature for the past few years has worked on a number of bills regarding government transparency and accountability. In addition to addressing access to public records and exemptions, a number of bills have been introduced to update Vermont's Open Meetings Law. Two pieces of legislation introduced during this session would update the law, bringing it into the 21st century: [Senate Bill 110](#) and [House Bill 497](#).

S.110 proposes to:

- (1) Clarify the application of the Open Meeting Law to communications, regardless of format, during which a quorum of members of a public body discusses the business of the body or takes action;
- (2) Amend the Open Meeting Law's declaration of public policy;
- (3) Enlarge from 24 hours to 72 hours the period prior to a special meeting when notice of the meeting must be publicly announced;
- (4) Amend the requirements for publicly announcing a meeting; and

²⁶ Click here for a link to [Reports of the Public Records Legislative Study Committee](#).

- (5) Require that notice of a meeting include information about the time, place, and agenda of a meeting.

The City has a number of concerns with this bill, including:

- The potential cost to the City of sending out individual notices of public meeting in hard copy,
- Having to describe every agenda item sufficiently to inform the public,
- Requiring dissemination to “every media outlet,” given the number of media outlets these days, and
- Increasing the time to notice the meetings to 72 hours.

The VLCT had concerns as well and urged the Legislature to revive S.67 as passed by the Senate in 2011. S.67 was discussed in both the Senate and House Government Operations Committees numerous times in 2011. It passed in the Senate, was passed out of the House Government Operations Committee, and was up for action in the House on the second to last day of the 2011 session, but ended up being recommitted back to the House Government Operations Committee. The bill was not reconsidered in 2012, probably because reapportionment took up so much of those committees’ time.

The essential features of S.67 have been incorporated into this year’s H.497, introduced by the Chair of the House Government Operations Committee. The House and the Senate have agreed that the House Government Operations Committee will work from H.497 next year, essentially picking up where the Legislature left off during the last biennium. H.497 (the former S.67) proposes to:

- (1) Amend the Open Meeting Law to clarify when a public body may enter executive session;
- (2) Allow members of a public body to participate in a meeting remotely if certain requirements are met;
- (3) Amend provisions related to meeting agendas; and
- (4) Require the award of attorney’s fees and litigation costs to a complainant who substantially prevails in a case alleging a violation of the Open Meeting Law, unless the public body cured the violation or had a reasonable basis in fact and law for its position and acted in good faith.

More specifically, the bill:

- Clarifies that discussions by written or electronic means to schedule a meeting, organize an agenda, or distribute materials to discuss at a meeting are not meetings subject to the law;
- Requires persons with disabilities to be provided with reasonable accommodations so he or she can attend and participate in meetings;
- Permits meetings to be conducted with one or more members of the public body participating by electronic or other means, provided that:
 - At least 24 hours prior to the meeting, the public body must publicly announce and notice the meeting;
 - Each member participating by electronic means is audible to the public at the physical location or to those participating by electronic means;
 - All other requirements of the Open Meeting Law are complied with; and
 - Any votes be taken by roll call.
- Permits electronic communications to be distributed among members of the public body;
- Requires that the agenda for a meeting be posted to the public body’s website if one exists;

- Prohibits the use of executive sessions to consider the appointment of a person to a public board, council, or commission;
- Makes discussions of municipal or school security or emergency response measures eligible for executive session; and
- Allows a public body to remedy a violation of the Open Meeting Law when the body is provided written notice alleging a violation occurred by acknowledging the violation and stating an intent to cure it within 21 days.

Click here to link to a [VLCT Legislative Report summarizing S.110 and S.67](#).

Technical Tax Bill (H.295/Act 73)

This year's Technical Tax Bill, H.295, which passed as Act 73, became the legislative vehicle for certain non-revenue tax proposals when the larger and more ambitious tax and revenue bill (H.528) failed in the final days of the session. The bill has several sections that will affect Burlington and other municipalities:

Property tax exempt properties: Before April 1 of each year, owners of certain exempt properties²⁷ are required to report the insurance cost to town listers/assessors or provide a written explanation of why the property is not insured. Listers must use the insurance replacement cost as the value that is entered in the Grand List. Properties include those used for public, pious or charitable uses; church property; libraries; lands leased by towns or school districts for educational purposes; colleges, academies or other public schools; property owned and used by towns for the support of the poor; college fraternities and sororities; YMCA and YWCA properties; water pollution abatement facilities; agricultural societies; Humane Society property; ski lifts and equipment; utility cables, lines, poles and fixtures, including those owned by municipal utilities; gas distribution lines; and wind-powered electric generating facilities.

Given the large number of exempt properties in Burlington, as well as the inclusion of municipally owned utility property, this change has the potential to have a significant administrative impact on affected property owners, Burlington Electric Department, and the City Assessor's Office.

Tax expenditures: Act 73 requires that every tax expenditure listed in the biannual [Vermont Tax Expenditures Report](#) be accompanied in statute by a statement of purpose explaining the policy goal behind the exemption, exclusion, deduction, or credit applicable to the tax. It charges the Joint Fiscal Committee with providing these statements of purpose to the tax writing committees by January 15 of next year in preparation for introduction of a bill incorporating the statutory purposes during the 2014 session. *"...a tax expenditure listed in the tax expenditure report that lacks a statutory purpose in statute shall not be implemented or enforced until a statutory purpose is provided."* (Emphasis added.) Property tax exemptions are included in the report and will therefore need to have their purpose statutorily spelled out or they will lose their special treatment.

Study committee on property tax exemptions: Act 73 establishes a committee to study the public, pious and charitable property tax exemption and make recommendations related to the definitions, listing, valuation, and tax treatment of properties within this exemption, including:

“(A) ways to clarify the definitions of properties that fall within this exemption, including recreational facilities, educational facilities, and publically owned land and facilities;

“(B) guidelines to ensure a uniform listing practice of public, pious, and charitable properties in different municipalities;

²⁷ Properties exempt under 32 V.S.A. §3802(4)-(6), and (12)-(15) and §5401(10)(D), (F), (G), and (J).

“(C) methods of providing a valuation for properties within this exemption; and
“(D) whether the policy justification for these exemptions continues to be warranted and whether a different system of taxation or exemption of these properties may be more appropriate.”

Members of the committee are to include two senators, two representatives, the Director of the Division of Property Valuation and Review, and a representative from both the VLCT and the Vermont Assessors and Listers Association. The Committee shall report to the Senate Finance and House Ways and Means Committees by January 15, 2014. This work group will need to be followed during the legislative interim.

Tax liens: Act 73 allows the Tax Commissioner to file tax liens electronically with the towns.

Clearly, lawmakers will not only have changes to education tax policy on their agenda next year, but possibly also changes to the tax treatment of currently exempt property and other preferential tax treatment.

Transportation (H.510/Act 12)

State Funding for Highways and Bridges

The FY 14 Transportation Bill (T-Bill) includes \$632 million in total spending, about \$7 million less than the previous year, which saw a large increase for reconstruction after Tropical Storm Irene. A total of \$91 million went to assist local highway, road and bridge construction, a \$41 million decrease from FY 13, mostly because of lower costs associated with Irene recovery. Town Highway Aid was funded at just under \$26 million, about the same as last year. On average, Burlington receives about \$260,000 from this fund annually for its street repaving program. Funds are allocated based on the total mileage of a city or town’s local streets and roads. Class 2 Paving was again level funded at \$7.25 million. Burlington receives assistance from this source on a per-project basis when we repave streets that serve as State highways, like Willard, Shelburne and Main Streets, Riverside Avenue and the Beltline.

In addition to funding for the Champlain Parkway, this year’s T-Bill includes funding for these other Burlington projects:

- \$497,902 for electrical and lighting improvements on Church Street,
- \$152,000 for improvements to the Church Street Marketplace and side streets, and
- \$60,000 for Preliminary Engineering (PE) and Right of Way (ROW) funding for the Shelburne Road round-about.

See VLCT’s FY 14 Appropriations Act summary chart in the attachments for a detailed break-down of the various line items in the Transportation Budget.

Champlain Parkway

Perhaps most importantly, the T-Bill includes \$1.25 million in additional preliminary engineering funds for the Champlain Parkway, to complete design on the entire project. This is expected to suffice for the project to move forward during the current fiscal year. Because the project’s Act 250 approval was appealed, it is uncertain when construction will begin. The related Railyard Enterprise Project has been added to the list of Roadway Projects Candidates for potential future funding.

Transportation Alternatives / Bike & Pedestrian Facilities Programs

The FY 14 budget allocated just over \$10.1 million for the Bike and Pedestrian Facilities Program, a \$1.3 million increase. The T-Bill provides \$5.8 million for the Transportation Alternatives Program (formerly Enhancement Program), a \$1.8 million increase. The following Burlington projects are funded:

- \$64,810 for construction of new sidewalks, and replacement of existing sidewalks, along Flynn Avenue;
- \$22,000 for installation of 540 feet of new concrete sidewalk along the south side of Colchester Avenue;
- \$66,862 for construction of a sidewalk along Cliff Street;
- \$50,000 for construction of improved pedestrian signals across North Ave., adding countdown indications at Shore Rd., Woodbury Rd. and the Ethan Allen Shopping Center; construction of signalized pedestrian crossing at the North Ave./Plattsburgh Ave. intersection;
- \$24,800 for mid-block pedestrian crossings;
- \$100,000 for bike path relocation; and
- \$952 for Intervale revitalization.

Rail Funding

The T-Bill includes just under \$10 million for improvements to the Vermont Railway tracks between Rutland and Burlington. The intent of these annual improvements to the Western Corridor is to eventually establish passenger rail service to downtown Burlington by extending the Ethan Allen Express beyond Rutland. As in the last several years, it also provides \$75,000 for maintenance of the quiet zones at railroad crossings between Burlington and Shelburne.

Gas and Diesel Tax and Assessment

From the outset Transportation Committees grappled with the need to raise revenues to fund the State's transportation infrastructure needs. A [VTrans report](#) estimated the cost of the State's annual transportation capital needs for the five-year period from 2014 to 2018 at \$700 million. It estimated the shortfall in available revenues needed to meet those needs as more than \$240 million per year, almost 40% of this year's entire budget. In addition, additional State matching dollars would have to be raised in order not to leave \$60 million in federal funding on the table this year. The VTrans report identified potential increases to numerous existing taxes and fees, as well as some entirely new ones.

After much discussion and eventual compromise, the House and Senate Transportation Committees settled on a complicated set of revenue increases and offsets, including a transition to a percentage based assessment on gas (vs. the current cost per gallon approach) to make up for reduced fuel use. The upshot is a 6.5 cent per gallon (cpg) increase in taxes and assessments on gasoline over two years, and a 3 cpg increase in the tax on diesel, also over two years.

Affordable Housing

Housing did well in the budget for the third year in a row, thanks in large part to both the Governor's and Legislature's strong support for affordable housing and alleviating homelessness. As a result, several key programs saw increases while all other programs were at least level funded. However, strict new requirements for State Emergency Housing Assistance could leave some vulnerable families and individual without homes out in the cold next winter. In terms of legislation, the only major housing

related bills that passed dealt with the Vermont Neighborhoods Program and thermal efficiency (see “Energy” section). Here is a brief summary of housing appropriations and legislation:

Vermont Housing & Conservation Board (H.530/Act 50)

This year Governor Shumlin recommended, and the Legislature approved, \$14.3 million, a modest \$300,000 increase over last year. By law, VHCB is supposed to receive just under 50% of the state’s property transfer tax (PTT) revenues. During the last decade, successive administrations and Legislatures diverted funding from VHCB for other purposes. After two straight years of supporting full statutory funding, the Governor and Legislature unfortunately missed the mark this year because new PTT revenue projections, delivered just before the Governor unveiled his budget, increased significantly over the ones that the budget had been based on. Under the statutory formula, VHCB would have received an additional \$1.5 million; instead, that once again went to help fill the State’s budget shortfall.

VHCB is Vermont’s premier funding source for assisting affordable housing with state taxpayer dollars and has helped fund virtually every single affordable home developed over the last twenty-five years. Burlington has benefited generously from VHCB investments, including the recently preserved Wharf Lane and Bobbin Mill Apartments, Thayer Commons on North Avenue, Northgate Apartments and hundreds of other homes all over town. It also helps preserve the health of the state’s rural and tourism economies by funding farmland preservation and the conservation of sensitive natural areas and recreational lands. Conservation funding, too, has been very important for Burlington over the years, helping to pay for Waterfront Park, Delta Park and other significant conserved lands.

Homeless Shelters and Homelessness Prevention (H.530/Act 50)

Vermont has two primary funding sources for homeless shelters and homelessness prevention.

Emergency Solutions Grant Program: Administered by the Vermont Office of Economic Opportunity, the ESG Program provides a blend of State (General Fund) and federal (HUD) funding. ESG pays for basic shelter operating costs like rent, utilities and staff salaries. It also funds supportive and prevention services, emergency assistance, and transitional housing. Several Burlington programs serving the homeless and victims of domestic violence receive funding from this source, including the Committee on Temporary Shelter (COTS), Champlain Valley Office of Economic Opportunity/Chittenden Community Action (CVOEO/CCA), Spectrum, and Women Helping Battered Women. ESG was level funded at the base funding amount of \$792,000.

General Assistance: GA is the State’s essential safety net program for the most vulnerable, lowest income Vermonters. It helps individuals and families with their emergency basic needs such as housing, utilities, food, personal needs items, and burial costs. GA housing programs are essential tools in providing emergency housing assistance and alleviating and preventing homelessness. GA funds a variety of housing and housing related support services, much of it through community based providers, including rental arrearages, rental assistance, motel vouchers, transitional housing, emergency shelters, security deposits, utility deposits and payments, moving expenses, and case management services. Because of the economic downturn of the last several years and the resulting rise in housing instability and homelessness, especially in Burlington and the metro area, GA has seen a huge increase in demand and experienced almost yearly cost overruns. The FY 13 GA budget was no exception, mostly as a result of increased motel usage for Emergency Housing Assistance, and was increased by \$2.2 million through the Budget Adjustment Act, for total FY 13 funding of \$8.8 million. For FY 14, the Governor proposed, and the Legislature approved, \$8.3 million, which breaks down as follows:

- \$500,000 for the Vermont Rental Subsidy Program, which provides rental assistance for very low-income people who are homeless and would otherwise not be able to afford housing. The

program's intent is to transition people from shelters to permanent housing, reduce reliance on motels and shelters, and reduce the impact of transiency on children.

- \$400,000 for Family Supported Housing Grants, a new three-county demonstration program designed to couple housing with support services and reduce reliance on motels in the areas with the highest incidence of child homelessness and motel expenditures (Burlington, Rutland and Brattleboro).
- \$2.9 million for Community Housing Grants, which fund one lead agency in each AHS district to work collaboratively with other community partners on developing and implementing coordinated community responses to prevent homelessness and rapidly re-house homeless families and individuals (this is a \$1.2 million increase).
- Up to \$1.5 million for Emergency Housing Assistance, for motel vouchers when no appropriate shelter beds are available (this is a \$2.5 million cut, the Administration had proposed \$2 million).

In addition, GA provides a variety of non-housing related financial assistance and services to extremely low-income Vermonters, such as personal needs allowances, groceries, medical, dental and burials. These forms of assistance amount to approximately another \$2.3 million in the FY 14 GA budget.

Since the greater Burlington area has far and away the highest numbers of homeless families and individuals in the state, as well as the highest motel use, Burlington based agencies will receive a large share of funding to prevent and alleviate homelessness in our area.

As a result of the substantial cost overruns on motel vouchers (\$1.3 million budgeted, \$4 million spent), the Legislature severely tightened restrictions on their use and spending. Going forward, Emergency Housing Assistance in motels will only be granted in catastrophic situations, under the cold weather exemption, and to vulnerable populations, based on risk to health and safety. Individuals and families who have caused their own loss of housing can no longer receive assistance. Pursuant to its legislative mandate, the Department for Children and Families (DCF) initially promulgated very restrictive new rules that advocates feared would leave many vulnerable people without emergency housing when shelters are full. These rules have since been revised to include families with children six or under, seniors 65 or older, people on SSI or SSDI, and women in their third trimester of pregnancy. A point system has been created for other vulnerable populations. Even with these revisions, some vulnerable people will be left out in the cold this winter, which will have an impact on Burlington and its social service agencies.

Other Housing Related Funding (H.530/Act 50)

The Shumlin administration requested, and the Legislature approved, level-funding or increases (in some cases substantial) for numerous other housing and housing related programs that Burlington-based agencies rely on to help meet the housing and supportive service needs of our many low-income residents, including:

- Support and Services at Home / Housing and Supportive Services: Developed into a pioneering statewide program by Burlington-based Cathedral Square Corporation, SASH/HASS provides essential services to elders and individuals with disabilities living in subsidized housing, improving residents' ability to age in place and enhance their quality of life. The program saw a modest \$25,000 increase this year, with the likelihood of another \$50,000 through Budget Adjustment this winter.
- Home Access Program: Administered by the Vermont Center for Independent Living, HAP helps people with disabilities make accessibility modifications to their homes, allowing them to live

independently and avoid expensive nursing home care. HAP expects to receive level funding this year.

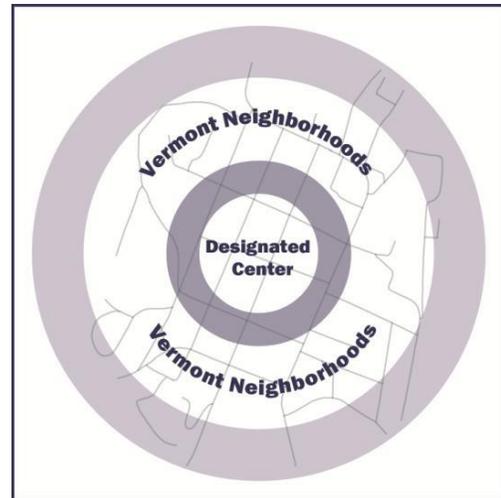
- Assisted Community Care Services: ACCS helps elders and people with psychiatric and physical disabilities live in more independent settings in assisted living and residential care homes. ACCS saw its reimbursement rate increase by \$1 per person per day, though it still falls far short of covering the cost to providers like Cathedral Square.
- HomeShare Vermont: Based in South Burlington and serving Chittenden and the three other northwest counties, this program arranges and assists home sharing matches for vulnerable populations. It saw a major increase this year, from \$80,000 to \$180,000.
- CVOEO's Mobile Home Project: Based in Burlington, this program provides technical assistance and support for mobile home park residents statewide. The program was level funded at \$70,000.
- Recovery Housing and Housing Contingency Funds: These two related funds cover apartment set-up costs and provide rental subsidies for people with severe and persistent mental illnesses. Together, they were level funded at \$850,000.
- Mental Health Housing Voucher Program: Created last year as part of the restructuring of the state's mental health system, this program provides Section 8 style rental assistance so low-income Vermonters with mental illness can afford stable housing. Program funding was increased from \$600,000 to \$1.4 million.

As mentioned earlier, the Corrections Department continued to increase investments designed to move non-violent offenders out of prison by increasing Transitional Housing and support services for ex-offenders by \$1.4 million, bringing total funding up to \$6.6 million for FY 14. The state has sought steady annual increases over the last several years to help reduce costly recidivism.

Vermont Neighborhoods Reform (H.377/Act 59)

As noted in the Downtown Bill section earlier, Act 59's more significant changes were to the Vermont Neighborhoods Program. Originally created in 2008, this State Designation Program was meant to stimulate "workforce" housing, i.e., mixed income housing affordable for low- and moderate income people. However, with only three Vermont Neighborhoods ever having been created, the program never truly achieved its goal to stimulate new housing production. Stakeholders identified the lack of support to help municipalities with the designation process and the limited amount of land eligible for benefits as the primary reasons for the program's lack of success. H.377 broadened the potential benefit area and created a framework to help communities identify opportunities to build new housing in a way that respects Vermont's compact land settlement patterns.

Primarily, the act replaces the Vermont Neighborhood designation with a “Neighborhood Development Area” designation. A municipality with a Designated Downtown (like Burlington), Village Center, or New Town Center would have an automatically delineated study area that includes and encircles the center, to be known as a “Neighborhood Planning Area.” For a Designated Growth Center, the study area would have the same boundary as the Designated Growth Center. The municipality would then identify those locations within the study area that are suitable for new and infill residential development and apply to the Vermont Downtown Development Board for designation as a “Neighborhood Development Area” and associated benefits. The act sets out the criteria, requirements, and process for this designation. Specifically, Act 59:



- Creates an automatic process to delineate Neighborhood Planning Areas as $\frac{1}{4}$ and $\frac{1}{2}$ mile “[walksheds](#)” or rings around Designated Downtowns ($\frac{1}{2}$ mile ring), Village Centers ($\frac{1}{4}$ mile ring), New Town Centers ($\frac{1}{4}$ mile ring), and Designated Growth Centers (identical size);
- Allows a Neighborhood Development Area to include one or more areas of land extending beyond the delineated Neighborhood Planning Area, with approval of at least 80% but no fewer than seven of the members of the State Board present;
- Helps interested municipalities articulate local housing goals and objectives and identifying local constraints and opportunities to create more housing ;
- Provides the framework for community involvement to work through competing goals of different stakeholders and achieve consensus on appropriate areas for new or infill housing before developers submit permit applications;
- Helps state agencies align environmental, housing, and transportation policies, programs and regulations that address locally identified barriers to creating more options for housing in and around downtowns and village centers;
- Allows existing and future grants and incentives to plug into the Neighborhood framework to build housing in areas identified as development-ready by communities; and
- Allows an owner of land within a Neighborhood Planning Area to apply to the State Board for Neighborhood Development Area designation status.

The benefits of designation include:

- Qualified “mixed income” housing projects are exempt from Act 250 regulations and subject only to local development review, thus avoiding duplicative review;
- Act 250 projects not qualifying for the exemption receive a 50% discount on application fees;
- Agency of Natural Resources fees for wastewater review are capped at \$50;
- Exemption from the land gains tax; and
- A conditional use permit by the local government which determines that a project meets the “character of the area” criteria may not be appealed to the Environmental Court.

Receipt of Neighborhood Development Area designation could aid the City significantly in meeting some of the housing goals of PlanBTV. Here is a [link to the legislation](#).

Act 59 also creates a blighted property improvement program, which allows voters to authorize the legislative body of a municipality to exempt from municipal taxes for a period not to exceed five years the value of improvements made to dwelling units certified as blighted. The legislative body of the municipality shall appoint an independent review committee that is authorized to certify dwelling units in the municipality as blighted and exempt the value of improvements made to these dwelling units. A dwelling unit may be certified as blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

As mentioned earlier, Mayor Weinberger and the Mayors' Coalition met with DHCD Commissioner Noelle MacKay, pledged their support for the bill, and had the City Lobbyist testify in support.

Energy

A number of legislative issues related to energy absorbed BED's attention in this new biennium.

Siting of Electric Generation Plants (S.30/Act 38)

This bill was introduced as a moratorium on further wind power development. It got stripped to a study in the Senate, which gave the two committees of jurisdiction, House and Senate Natural Resources and Energy, the option to meet up to six times over the summer to review the Energy Generation Siting Commission recommendations. The Siting Commission proposed a protocol for giving municipal planning determinations limited standing in the Public Service Board (PSB) Certificate of Public Good Process. There is also language in the budget for the Department of Public Service (DPS) to summarize and analyze the Governor's Siting Commission's recommendations in advance of these meetings.

Thermal Efficiency (H.520/Act 89; H.216)²⁸

Thermal efficiency legislation passed, though it received no additional funding and so does not make sweeping changes. The Governor had started the session with an ambitious proposal to increase investments in clean energy and thermal efficiency, including a 10% surcharge on "break-open" tickets to raise a total of \$17 million -- \$6 million in base State funding for Home Heating Fuel Assistance (LIHEAP), \$6 million for thermal efficiency improvements, and \$5 million for the Clean Energy Development Fund (CEDF). The Governor's revenue source met with widespread skepticism among lawmakers so that in the end only the LIHEAP increase made it into the budget, as well as a modest increase to CEDF. Advocates had hoped that the Legislature would in some way embrace recommendations from the Thermal Efficiency Task Force to generate substantial new public funding to meet the goals of 2008's [Act 92](#), which called for improving the energy efficiency of 80,000 Vermont homes by 2020. The Task Force had looked at a number of revenue generating measures to help bolster weatherization funding, but with stiff opposition from fuel dealers and without the Governor's support, none of these succeeded.

In the end Act 89 only makes numerous tweaks to existing services provided by the state's energy efficiency utilities and weatherization service providers. For instance, it directs the Weatherization Assistance Program (WAP) to give priority to LIHEAP recipients who use the most BTUs per square foot to heat their homes. The act also directs WAP to give the next greatest weight in prioritizing funds to buildings that require the most BTUs per square foot to heat. It further increases eligible average project cost per unit from \$6,000 to \$8,000, indexing the average to CPI, and raises eligibility from 60 to 80% of median income.

²⁸ Energy update prepared in collaboration with Tom Buckley of BED.

H.520 also addresses commercial and residential buildings energy standards (RBES). It clarifies their applicability to mixed-use buildings and includes various amendments to enforce compliance through the use of existing State and local permit processes, for example by tying compliance to State and municipal certificates of occupancy. The act also amends the RBES statute to authorize DPS to adopt a “stretch” code for residential buildings to achieve greater energy savings than the RBES. Once a stretch code is adopted, residential buildings that comply will gain presumptive compliance with the energy conservation criterion of Act 250. Municipalities would have the option to adopt the stretch code as part of their land use bylaws.

Finally, the bill requests the PSB to conduct a public process and submit a report on potential thermal efficiency funding sources, including non-regulated fuel delivery processes. It creates a work group to study improving the energy efficiency of both single- and multi-family affordable housing units. It also directs the DPS to convene yet another working group to develop a voluntary energy rating tool that residential and commercial building owners can use to disclose energy performance to prospective purchasers.

Other Energy/Utility Related Bills

Pertinent energy-related bills that did not pass or received little to no action in committee nevertheless carry over to next year include:

Water and Sewer Disconnections (S.41) – Pending in a committee of conference. The bill addresses disconnection of service for water and sewer services. As passed by the Senate, S.41 would give renters whose service has been noticed for disconnection due to the landlord’s non-payment the right to continued service if they pay the utility directly. The utility can’t require repayment of arrears if water and sewer service is included in rent. The bill almost died in House Government Operations, but a compromise proposal was devised, which states simply that a municipality must accept payment from any person for any bill or delinquent charge. The bill never made it out of conference – therefore remains pending in conference for next year. The House bill also makes it the intent of the General Assembly that the Vermont League of Cities and Towns, Vermont Legal Aid and Vermont Apartment Owners Association work together on a proposal for next year to address the issue of disconnection for non-payment. Many municipalities, including Burlington, allow renters to make arrangements to avoid disconnection, while others do not, which has led to health and safety issues for renters remaining in place without service.

Electronic Filings and Case Management (H.39) – Pending in a committee of conference. This bill would enable e-filing of utility regulatory documents. While hardly a high-profile issue, it’s one that would generate labor and material savings for BED. This bill got caught up in session end-game political machinations and so did not move forward.

Shoreland Protection (H.526) – Pending in Senate Natural Resources. This bill proposes to protect the lake shorelands of the State of Vermont and is described in detail in the section on “Environmental Protection & Permitting.” The important consideration for BED is that, under the current wording, activities not requiring the type of permit proposed in the bill include the routine repair and replacement of electric utility lines that are subject to 30 VSA Section 248 (any major utility project).

Protection of Personal Information/Security Breach (H.429) – Pending in House Commerce. This bill, supported by the Attorney General’s Office, proposes to enhance and clarify reporting requirements and protocols in the event of a breach of electronic data.

Health Care (H.107/Act 79; S.152/Act 54)²⁹

“This year, the legislature passed legislation that continues down the path of health system reform by focusing on moving the process forward and launching the health insurance exchange, Vermont Health Connect. This was primarily accomplished through the passage of H.107, ‘An Act Relating to Health Insurance, Medicaid, the Vermont Health Benefit Exchange and the Green Mountain Care Board Reform Implementation.’ Among other things, this bill adjusts state statute to comply with the federal rules being developed around the Patient Protection and Affordable Care Act, streamlines the health insurance regulation process, and places more restrictions on health insurers. Through charge-backs to insurers, hospitals, and state benefit programs, the bill also creates a state-funded Office of the Health Care Advocate. This office . . . represents a major expansion of the current state Health Ombudsman program . . .

“Many of the functions of this new office seem to duplicate activities that are already carried out by various state departments, offices, and boards. Of course the costs of this office will ultimately fall on the payers of health insurance premiums, health care services, and local and state taxes.

“**Funding for Vermont Health Connect.** Federal grants will fund the start-up and operation of Vermont Health Connect through 2014. In 2015, the state will have to take over the funding for the operational costs of the exchange, which are estimated to be \$18 million annually. Many funding methods were considered, but in the end, S.152 repurposed a current funding source to meet the new funding need. S.152 modifies and continues the assessment on employers that do not provide employees with health insurance. Previously this assessment funded Catamount Health, which will be eliminated and replaced with the health insurance provided through Vermont Health Connect. The assessment will now apply to employers with employees who purchase individual health insurance, as opposed to an employer-provided benefit through Vermont Health Connect.

“**Cost Shift.** In addition to requiring more studies and reports, the legislature actually approved an administration proposal, H.530, to increase Medicaid provider reimbursements by three percent, beginning in November 2013. While this additional funding will not reduce the Medicaid cost shift, it should keep it more level if the providers adjust their fees to other payers to reflect the additional revenue received from Medicaid.

“**What does this mean for municipalities?** As the health reform process moves along, there are a variety of impacts for municipalities to consider, including:

- “The health exchange will impact your health benefit plan if you are an employer with 50 or fewer employees. The exchange goes into operation on January 1, 2014, less than eight months from now. It is critical to consider your options and take the coming changes into account in any collective bargaining. It is important to maximize your flexibility in health plan design and funding. This will provide the best ability to respond to the changes in plan designs of the exchange.
- “Municipalities should consider the generous federal tax credits available to individuals who purchase their health insurance through the exchange. After careful analysis, some municipalities may find it advantageous to discontinue their employer provided health insurance plan in favor of having employees purchase their own health insurance through the exchange.
- “Municipal employees and employers should prepare for a single-payer, universal care system in Vermont. This is clearly the goal of health reform legislation and the Shumlin administration has

²⁹ Summary of Health Care Bills adapted from “[2013 VLCT Legislative Wrap-Up](#).”

made this a priority. The details, including financing for the system, continue to be worked out. Whether the plan can ultimately be implemented will only be determined with time. As employers, municipalities should prepare for the time when health benefits are separated from employment and embrace the opportunity.

- “Collective bargaining issues are important. Endeavor to maintain flexibility in your collective bargaining agreements. As we move to a new system, there is an opportunity to fundamentally redefine the employer role in providing health benefits. This may be an opportunity to hit the ‘reset button.’
- “There will be considerably more state control of the health care system. If handled well, it will lead to a more universal, better managed, more affordable health care system. If not well managed ... ? In any event, we will know soon.
- “The long-term costs of these reforms and their impact on municipalities are not easy to fathom. Municipal officials need to be prepared. Plan ahead; leave flexibility. VLCT will continue to focus on being your partner in the transition to a new health system.”

Other Municipal Issues

The Vermont League of Cities and Town’s [2013 Legislative Wrap-Up](#) covered numerous additional issues that were the subject of legislative action this past session. Readers should consult VLCT’s report for write-ups of the following bills of general municipal interest:

- Summer Study Committees that Impact Municipalities
- Liquor and Tobacco Licenses (H. 240/Act 72)
- Paint Recycling (H.262/Act 58)
- Pet Breeders & Local Government (H.50/Act 30)
- Marijuana Decriminalization (H.200/Act 76)
- Automated License Plate Readers (S.18/Act 69)
- Equal Pay, Flexible Working Conditions (H.99/Act 31)
- Workers’ Compensation for Firefighters & Rescue or Ambulance Workers (S.85/Act 86)
- Annual Municipal Survey Repeal (H.63/Act 3)
- Search and Rescue (H.182/Act 26)

Attachments

VLCT Tax Increment Financing Summary

Amends 24 V.S.A. §§ 1891-1901; 32 V.S.A. §§ 5401-5404(a)

(From “2013 VLCT Legislative Wrap-Up”)

S.37, the Tax Increment Financing (TIF) district legislation, was one of the last bills to pass, having been held as hostage by the House in case it was needed as a vehicle for other legislative initiatives that looked like they might fail. Such is the end of session game.

TIFs are widely used across the country to attract economic development projects to areas where they otherwise would not occur. TIFs have been critical to the re-development of downtown Winooski and the Burlington waterfront, and the cities of St. Albans, Barre, and South Burlington are poised to implement TIF programs. A TIF district is ideal for driving development into the compact settlements that are the focus of state goals – our cities, historic downtowns, and new smart growth developments seeking to emulate traditional downtowns such as Colchester’s Severance Corners.

Complex tax increment financing district statutes have resulted in much confusion for a long time. S.37 resolves uncertainly around the administration and implementation of TIF districts in Vermont. In 2012, the office of the former state auditor performed audits of TIFs in Burlington, Milton, Winooski, and Newport that called into question the way in which TIFs were being implemented. The legislation establishes amounts that all parties agree should be repaid to the Education Fund, provides new oversight and reporting, and establishes a process and remedies in the future for all TIF districts once rules are adopted.

S.37, in its various sections, will:

[Section 1] establish specific dollar amounts to be repaid to the Education Fund from the audited towns. If rules that are written to enact the statutory changes in S.37 identify practices that result in future underpayment, and if those practices continue into the future, those amounts of underpayments will start to accumulate upon the date that rules are enacted and will be payable to the state.

[Section 2] clarify the definitions of “improvements,” “related costs,” and “financing” so that TIF municipalities, the legislature, and administering agencies will have the same understanding of those terms. “Original taxable value” is defined as the value of property in the district on the date the TIF was created. That original taxable value will not be changed throughout the life of the district.

[Section 3] provide for creation and administration of TIFs to include no more than those listed and (at Section 17) South Burlington. The Burlington Waterfront TIF is extended for five years, although its ability to retain an education tax increment is not extended. A municipality may designate a coordinating agency from outside its departments to administer the district.

[Sections 4 and 9] establish how and for how long education tax increments may be used in the TIF district. A municipality has five years in which to incur its first debt and may incur debt for ten years thereafter. If no debt is incurred in the first five years, the district will terminate unless the Vermont Economic Progress Council (VEPC) grants an extension. Thereafter, the TIF district may use up to 75 percent of the new education property taxes generated and at least an equivalent amount of municipal property taxes to repay debt incurred to finance improvements such as streetscapes, transportation improvements or wastewater treatment upgrades. The new education property taxes generated in the district may be used to repay debt for up to 20 years.

VEPC will approve a TIF financing plan; then the municipality's voters need to authorize each instance of debt incurred in the TIF district. The legislation stipulates the information that needs to be provided to voters in advance of a vote.

[Sections 5 and 6] clarify the listers' obligation to establish the original taxable value of property in the TIF district and how new taxes generated will be accounted for and expended at the local level.

[Section 8] amend the statute that authorizes a municipality to issue bonds.

[Section 10] establish information, data, and reporting requirements for TIF districts to the Department of Taxes and VEPC.

[Section 11] establish that "nonresidential property" will exclude that portion of a property's new incremental value that is dedicated to repayment of debt incurred in the TIF district for up to 20 years.

[Section 12] provide that new education property tax increment generated within the district is available to repay TIF debt for up to 20 years.

[Section 13] establish the Department of Taxes and VEPC reporting requirements to the legislature.

[Section 14] authorize VEPC to adopt rules to clarify the TIF statutes. A single rule will be adopted for all TIF districts that will include a process for distributing excess increments to the Education Fund. The rule will specify which of its provisions are written to address which pre-existing TIF. The Secretary of the Agency of Commerce and Community Development is authorized to issue decisions regarding administration of TIFs upon VEPC's recommendation. Appeals of decisions will go first before a hearing officer at the agency as a contested case, and then to the superior court. If non-compliance is found and repayments need to be made to the Education Fund, the State Treasurer is to bill for those amounts.

[Section 15] directs the State Auditor to undertake performance audits of TIF districts according to a schedule determined by him and VEPC, but generally not more than once in a five-year period. The cost of conducting the audit (which last year cost an eye-popping \$500,000 for four TIF districts) will be billed back to the audited cities and towns.

With the passage of S.37 and the subsequent adoption of rules to implement the new law, municipalities, VEPC, and the Tax Department should find it far easier to implement TIF districts and establish what expenditures may be paid for with new education property taxes generated within the district. This has been at the heart of disagreements over the years. Finally, Vermont may have a workable TIF program on which all can agree.

VLCT FY 14 Appropriations Act Summary Chart

(From "2013 VLCT Legislative Wrap-Up")

Municipal Funding Priorities in FY 2014 Budget (in Millions) May 15, 2013 Approved					
Budget Line Item	FY13 Approved	FY14 Governor's Recommend	FY14 Approved	FY14 Approved \$ Change from FY13 Final	FY14 Approved \$ Change from Governor's Recommend
PILOT – ANR Lands	2.13	\$2.15	\$2.15	\$0.02	\$0.00
PILOT – Corrections Facilities ¹	0.04	\$0.04	\$0.04	\$0.00	\$0.00
PILOT – Montpelier ¹	0.18	\$0.18	\$0.18	\$0.00	\$0.00
PILOT – State Buildings ¹	5.80	\$5.80	\$5.80	\$0.00	\$0.00
Current Use – Municipal	12.64	\$13.48	\$13.48	\$0.83	\$0.00
Homeowner Rebate – Municipal	14.55	\$13.97	\$13.97	(\$0.58)	\$0.00
Renter Rebate – Municipal	2.89	\$2.65	\$2.65	(\$0.24)	\$0.00
Special Investigative Units	1.25	\$1.52	\$1.52	\$0.27	(\$0.00)
General Fund Transfer to Education Fund ²	282.32	\$288.92	\$288.92	\$6.60	\$0.00
General Fund Support of Teachers' Retirement System	63.61	\$71.78	\$71.78	\$8.17	\$0.00
Town Bridge Grants ³	19.30	\$13.97	\$15.55	(\$3.75)	\$1.58
Town Highway Aid Program	25.98	\$25.98	\$25.98	\$0.00	\$0.00
Town Highway Aid Program – Class 1 Supplemental	0.13	\$0.13	\$0.13	\$0.00	\$0.00
Town Highway Structures	6.33	\$6.33	\$6.33	\$0.00	\$0.00
Vermont Local Roads	0.40	\$0.40	\$0.40	\$0.00	\$0.00
Town Highway Public Assistance Grants ⁴	66.50	\$29.24	\$29.24	(\$37.26)	\$0.00
State Aid for Federal Disasters	3.60	\$3.60	\$3.60	\$0.00	\$0.00
State Aid for Nonfederal Disasters	1.15	\$1.15	\$1.15	\$0.00	\$0.00
Municipal Mitigation Grant Program	1.26	\$1.55	\$1.55	\$0.29	\$0.00
Class 2 Highway Paving and Rehabilitation	7.25	\$7.25	\$7.25	\$0.00	\$0.00
Total Local Highway Aid	\$131.91	\$89.60	\$91.19	(\$40.72)	\$1.58
TOTAL	\$517.31	\$490.10	\$491.68	(\$25.63)	\$1.58

1. Figures for all years are all from local options tax sharing and no state monies.
2. Required by statute to increase by New England economic project cumulative price index for government purchases (16 V.S.A. § 4025(a)(2)). In 2010 and 2011, legislature reduced this with "Notwithstanding" language. The 2011 legislature re-calibrated the amount of aid to be adjusted annually that will cost an additional \$27.5 million in property taxes having to be raised in FY13 and each succeeding year.
3. Includes state and federal aid only, no local match.
4. Contains \$27 million in federal funds most likely all FEMA and Federal Highway Administration (FHWA) reimbursements for Irene and other 2011 flood damage.

VLCT FY 14-15 Capital Bill Budget Adjustment Summary Chart

(From "2013 VLCT Legislative Wrap-Up")

CAPITAL BILL TWO-YEAR (FY 2014-2015)				
Agency/Department	Line Item	As Passed 2012-2013	Governor's Recommended FY14-15	Passed by Legislature FY14-15
Dept. of Taxes ¹	Orthophotographic Mapping	200,000	200,000	200,000
Agency of Commerce and Community Development ¹	Historic Preservation Grants (1:1 match)		400,000	450,000
	Human Services and Educational Facilities Grants	450,000	400,000	450,000
	Recreational Facilities Grants	450,000	400,000	450,000
	Historic Barns, Ag. Grants (1:1 match)	450,000	400,000	450,000
	Cultural Facilities Grants (1:1 match)	450,000	400,000	450,000
	Regional Economic Development	225,000	400,000	450,000
Department of Education ²	State Aid for School Construction	14,850,000	17,116,080	17,116,080
Agency of Natural Resources	Clean Water State/EPA Revolving Loan Fund Match ³	2,500,400	2,681,600	2,681,600
	Pownal Wastewater Treatment Facility	1,000,000	825,000	530,000
	Water Supply Revolving Loan Fund ³		4,100,000	4,100,000
Ecosystem Restoration Program	Ecosystem Restoration and Protection Grants	5,000,000	4,323,732	4,323,732
	Waterbury WWTF Phosphorus Removal	2,000,000	3,200,000	3,440,000
	Dam Safety and Hydrology	325,000	400,000	400,000
Agency of Agriculture, Food and Markets	Best Mgmt Practices on farms and Conservation Reserve Enhancement Program	2,250,000	1,700,000	1,200,000
Rural Fire Protection Taskforce	Dry Hydrant Program	200,000	200,000	200,000
<ol style="list-style-type: none"> 1. Funds are allocated half in year 1 and the other half in year 2. 2. Funds left over from year 1 may not be re-allocated to a different purpose. 3. Includes \$600,000 in administrative support. 				

Memo from Chief Schirling on Possible Impacts of S.148



BURLINGTON POLICE DEPARTMENT
1 North Avenue
Burlington, Vermont 05401

Michael E. Schirling
Chief of Police

Phone (802) 658-2704
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To: Vermont Senate Judiciary Committee
From: Michael E. Schirling, Chief of Police
Re: Open Records – Police Investigations – Possible Impacts
Date: January 30, 2013

Let me begin by stating very clearly that I write today *not* to urge you to veil law enforcement operations in secrecy *but* to very carefully consider the privacy implications that will impact all Vermonters by enacting significant changes in our records laws.

Each day in Vermont police officers are called into the private lives of Vermonters to assist them in solving problems. They place their trust in a system that keeps their information confidential, except in instances that result in formal criminal charges or direct action against a person by the State or a government entity. Over the past 24 years, in innumerable public meetings, among the most common questions posed to our staff is whether information provided to police is confidential. As a result of the discussions that follow it is clear to me that Vermonters generally expect that the details of their contact with police, absent criminal proceedings, are kept private and that they would have concerns if the nature of their call to police or the details of their contact were available to all to see.

In our current system, each person involved in an investigation or making a report to police has access to the records created by their reports (except, of course, in circumstances where it would compromise an ongoing investigation). Anyone has access to the contents of police records under subpoena (if they are involved in civil litigation or other civil proceedings in which the government is not a party). In the event that someone believes they have been aggrieved by the actions of their respective police department, local or State governments each devise their own methods of accountability for their appointed law enforcement officials. Additionally, Federal and State law provides civil litigation options for those who believe the actions of government were inappropriate or unlawful.

Vermonters should have reasonable access to records of government operations, how their tax dollars are spent, and how government employees conduct government business. Balancing these interests is important and very complicated as government – especially police officers – has contact with Vermonters during a host of personal crises. Access to records that do not result in prosecution will compromise the privacy interests and may compromise the safety of Vermonters

in a host of ways. Records of government (including police) operations are not the same as records of police investigations.

The primary proposal to change access to police records is to simply mirror the Federal law that relates to criminal investigative records. It should be of concern to lawmakers, however, that the Federal criminal justice system bears only slight resemblance to the system in Vermont. In the Federal system, law enforcement agencies generally pick the cases that are investigated and 100% of the records relate to very complex criminal or counter-terrorism investigations. Federal law enforcement does not investigate sexual or domestic violence, burglary, or general larceny from vehicles, businesses, or residences. Nor do they respond to mental health, substance abuse, suicide, landlord/tenant disputes, child welfare calls, and a host of other things that local and State police agencies are responsible for. The rules in the Federal system work well in the context of the cases they are responsible for.

In Vermont, our police agencies are, increasingly, the safety net of last resort for all crises. Any crisis, big or small, is handled by police officers in Vermont as 911 is where “the buck stops.” As a result, everything from criminal investigation to mental health, substance abuse, and unmet social service needs are all within the records of Vermont police departments. More than 80% of the records held by police departments relate to the service calls and events that do not result in criminal investigation. The Federal construct is not designed to contemplate these records.

Below is a brief, *non-exhaustive/abbreviated list* of questions and, dependent on the answers to those questions, the types of information that opening these records could make public if not addressed carefully.

Questions:

- Will the new law apply to all police records or just criminal investigations? Federal FOIA case law discusses, at length, “law enforcement files?”
- Once public and published by anyone on the Internet, how will the information released be managed?
- How will requests by companies conducting data mining operations for public posting of information be managed or regulated?

Information located in police reports that has privacy implications (non-exhaustive list):

- **Names, addresses, and phone number of concerned citizens calling in reports or witnesses to a wide range of things ranging from assaults to suspicious activity or persons, persons in mental health crisis, drug activity, noise, and other public nuisance complaints. Many of these investigations do not result in prosecution.**
- Information about where prescription drugs, money, and other valuables are located within Vermonter’s homes, cars, or businesses.
- Vulnerabilities in security in homes, businesses, and other buildings.
- Details of what property is inside homes and businesses, what property has been taken, what was left behind, and what was recovered and returned to them.
- Details of personal schedules such as when they are home and away, when they go to appointments, doctor’s visits, etc.
- Personal biographical information or other personal information such as sexual orientation or religious affiliation.
- Personal information about finances (beyond direct personal financial records).

- General information about personal health and well-being (beyond direct medical records).
- Information about suicides and suicide attempts.
- Contents of personal diaries or journals.
- Educational and school related information.
- Photographs (including interior photographs) and diagrams of homes, businesses, etc.
- Details of personal relationships, intimate relationships, and parent-child relationships.
- Details about where and when people travel to see others ranging from friends to family, clergy, doctors, lawyers, and others.
- Details of unfounded accusations made by one person against another including but not limited to:
 - Sexual assault and misconduct
 - Physical assaults
 - Extortion
 - Embezzlement
 - Domestic violence
 - Child abuse
- Critical nuances of criminal or even ancillary investigations, techniques, or response methodologies that will compromise public safety.

The impacts of this information could include, but not be limited to:

- Any and all of these details could be posted online on the Internet anywhere in the world by anyone, irrevocably.
- Any and all of these details could be used by the media to generate stories and controversy about accusations that have been made that, while unfounded, cannot be undone.
- Disclosing the names of witnesses (not confidential informants) who call in reports to police of crime, suspicious circumstances, etc. could be subject to retaliation, or even the fear of retaliation.
- Any and all of these records could result in persons being the subject of extortion.
- Any and all of these records by people or companies seeking to profit from mining this information.

Having active and engaged citizens creates the fabric of safety in our communities. It is arguably the best defense we have against crime and disorder on our streets and in our neighborhoods. Opening records to public inspection will have a spate of consequences that could chill the public's engagement in crime fighting, crime prevention, and problem solving. It could reduce the number of times that crimes are reported and persons in need of assistance call for help. Each time someone picks up the phone to call 911 they will have to weigh how much of their privacy they are willing to risk in doing so.

Opening these records to public and media inspection will do little to create transparency in government operations as the overwhelming majority of the reports in these systems are about Vermonter's personal crises. Moreover, Vermonter's should be fully informed of all of the impacts of these changes before they are enacted as they will be more significantly impacted than government agencies.

I end as I began. The public does have a right to know how their police departments are operating. I write today not to urge you to veil police operations in secrecy but to carefully

consider innumerable dynamics in play in contemplating opening records held by police departments. Balancing the personal privacy interests of the public whose lives intersect police operations is incredibly complicated. There are a myriad of issues and complex dynamics that must be analyzed to ensure that the unintended consequences of making changes in this arena do not dwarf any benefits. Simple adoption of the Federal standard likely will have consequences that have not yet been fully contemplated. Federal FOIA standard *may* be the right answer for Vermont. Careful, exhaustive, vetting is critical to achieving the right balance of these delicate issues.

Summary of 2011 Public Records Bill (H.73/Act 59)

(From "2011 Burlington Legislative Review")

Act 59/H.73 made substantial changes to the Public Records Law regarding the inspection and copying of records produced or acquired by a public agency in the course of agency business. Burlington values transparency and the basic intent of the bill and did not oppose it. Nevertheless, together with the League, the City followed this legislation closely all session as its repercussions for municipalities were potentially great. The City's primary concerns centered on:

- The need to clarify the public/private status of personal/personnel records,
- Mandatory payment of attorney's fees when a court rules that a municipality has improperly denied access to records, and
- Permissible charges and prescribed timing for copying records and allowing their inspection.

In the City's view, current statute and case law are ambiguous as to whether personal documents are private or public. The City must make challenging decisions to balance potentially competing interests: the individual's right to privacy and the public's right to know. Municipal officials acting in good faith and using their best judgment may decide to protect documents that a court might later decide should have been made public.

Prior to passage of H.73, a judge could, at his or her discretion, award attorney's fees when a complainant prevailed in court and forced the release of documents. In a letter to the Senate Government Operations Committee (see attachments), Mayor Kiss and City Attorney Schatz urged legislators to study the matter further and clarify the privacy issue before making the award of attorney's fees mandatory. Though the bill did create a legislative study committee (the Public Records Committee), the act went ahead and mandated that public agencies shall pay legal fees if a court orders disclosure. However, if the public agency concedes that the contested records are public and complies with the request before having to appear in court, the judge may award attorney's fees to the prevailing party if s/he so chooses. Unfortunately, this puts municipalities in a position where taxpayers could pay a financial penalty because an answer is not clear and a judge reaches a different conclusion than a public official acting in good faith.

Act 59 provided no further guidance to help public officials determine when personal records should be held private or made public, though this is one of the issues studied by the legislative committee. The bill did require the Secretary of State to "provide municipal public agencies and members of the public information and advice regarding the requirements of the Public Records Act ... [through] websites, toll-free telephone numbers, or other methods..."

In terms of charges and timing for copying and inspecting records, Act 59 established that public records can be requested anytime during a municipality's customary business hours. It also extended the time a public agency has to respond to a public records request from two to three days. Legislators considered, but did not pass, provisions that would have:

- Increased the amount of time before a municipality could charge the person requesting a public record for staff time from 30 minutes to two hours, and
- Allowed state and local government agencies to charge for the staff time necessary to allow individuals to inspect public records.

The Public Records Committee is to meet over three years to review the requirements of the Public Records Act and its numerous exemptions. Prior to each legislative session, the study committee must submit recommended amendments to the Public Records Act to the General Assembly.

This committee has been meeting all fall and issued its first report in early January. One of the issues it considered is the privacy of property tax adjustment (income sensitivity) payments. Until a lower court ruled otherwise, the City long maintained that these records were private because they could be used to determine a taxpayer's household income. A more recent Vermont Supreme Court ruling reversed that decision, making them private. A narrow majority of the committee has voted to recommend that they be made public and that the Legislature pass a bill to overturn the Supreme Court's ruling. House Speaker Smith has said he considers them private.

City of Burlington: Key Legislative Issues

Education Financing & Property Taxes

- Maintain equity in education funding
- Protect Ed Fund
- Monitor education and municipal income sensitivity and property tax reform proposals affecting homeowners and renters in the City
- Monitor property valuation & CLA adjustment proposals
- Follow proposals for state collection of property tax
- Burlington Act 60/68 compliance

Education Policy

- Monitor pre-K education legislation
- Adjusted ADM for ELL and free and reduced lunch students
- Avoid cost shift to schools through adequate mental health & DCF funding
- Properly fund special education mandates
- Monitor impact of cost containment proposals on schools

Other Tax Policy Changes

- Tax restructuring, incl. tax exemptions, tax expenditures & recommendations of Blue Ribbon Tax Commission
- Cloud Computing

Appropriations

- Maintain adequate funding for Corrections & Mental Health
- PILOT funding
- Maintain funding for downtown street outreach workers
- Increase funding for drug & alcohol programs, incl. Recovery Centers & residential treatment
- Municipal planning grant funding
- State financial support for public safety, incl. state & regional emergency response

Transportation

- Funding for Champlain Parkway
- Public transit & downtown transit center funding
- Rail issues: western corridor & rail yard relocation

Capital Bill

- Address school capital needs
- Monitor State office building moves
- Monitor mental health system restructuring

Health and Welfare

- Health care reform (effect on municipalities & schools)

Economic Development and Job Creation

- Tax Increment Financing (TIF) issues, incl. desired policy changes, rules, legislative audit response, & other issues
- Support reform of Downtown Program & increased incentives
- Livable Wage

Local Government

- Charter changes
- Monitor Public Records proposals
- Monitor Open Meetings Law proposals
- Home rule
- Election Issues, including same day registration
- Regulation of taxis, local license fees, fining & revocation power for local control commissions

Public Safety and Corrections

- Monitor proposals for public access to police records
- Funding for Justice Reinvestment, incl. Community Justice Center & Offender Re-entry programs
- Monitor Corrections policy changes
- Enhance Department of Corrections supervision
- Expand authority/enforcement options for civil ticketing

Environmental Protection and Permitting

- Monitor permit reform proposals
- Monitor stormwater issue tax exemptions
- Monitor Lake Champlain issues, implementation of Act 138, shoreland protection, TMDL/phosphorous discharge levels

Energy & Telecommunications

- Energy efficiency legislation
- Biomass energy legislation
- Follow resolutions to support in-state renewable generation
- Reduction of fuel tax on wood
- Monitor telecom issues, esp. related to BT

Affordable Housing

- Support reform of VT Neighborhoods Program & increased incentives
- Full funding for VT Housing & Conservation Board
- Adequate funding for safety net programs, incl. for homeless shelters & services, General Assistance & other housing related programs and tax credits
- Statewide rental housing code enforcement system