Ethan Allen Institute’s 2013 Legislative Issues Guide

Taxes
Spending
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Pension Liabilities
Property Rights
Human Services

Ethan Allen Institute
Ideas for Vermont’s Future
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The issues facing the 2013 legislature are many and complex. Selecting just eight and condensing them into one page each was a challenge. We hope this booklet will present a quick and useful overview for voters and legislators alike.

The driving issue of 2013 will be the continued implementation of Acts 48 and 171, bringing Vermont toward the ultimate goal of a single payer healthcare system. How to pay for this legislation and what taxes to increase in order to do so (as much as $3 billion) will be highly controversial and hotly debated.

The legislature's plans to force Vermonters to purchase 90% of our energy from renewable sources by 2050, how to deal with a $3 billion unfunded public employee pension obligations, and what appears to be a growing battle between towns and the state over school choice will also be topics of great interest.

The Ethan Allen Institute does have a point of view, based on our mission statement and principles set forth on the back cover. We have tried to show in this booklet not only that there are emerging issues and problems in many government programs, but also that there are opportunities that we believe can be realized by expanding individual liberty and choice, strengthening community-level institutions, and limiting the size, scope, and cost of centralized government.

The Ethan Allen Institute will continue to follow these and other issues over the course of the year, and if you are interested in more, real-time information on these subjects, we encourage you to become a member at ethanallen.org. The Institute and its mission are supported by hundreds of Vermont contributors just like you.

Robert Roper, President
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State Government Spending

Vermont state government operates through three major funds. The General Fund ($1.305 billion) covers most state programs, including the two retirement benefit fund contributions (state employees and teachers). The Transportation Fund ($0.256 billion) covers highways, bridges, rail, airports, and motor vehicles. The Education Fund ($1.395 billion) pays for K-12 public education spending.

The Education Fund is linked to the General Fund by a mandated transfer payment. In 2012 Gov. Shumlin caused the payment to be reduced by $27.5 million. This reduction, in addition to other adverse revenue factors, required the legislature to raise the education tax rates on both residential and nonresidential property.

The legislature adopts a state budget each spring for the fiscal year beginning July 1. The basis of the budget is the state revenue expected in the coming fiscal year – taxes, fees, Federal payments, etc. The budget bill (“The Big Bill”) allocates all of the expected revenues among the programs of state government.

Often the Big Bill will specify the allocation of any extra revenues that appear during the year (“the waterfall”) or the amounts of reductions to programs caused by lower than expected revenues (“the haircut”). Some states set limits on the growth of state spending and require over-budget revenues to be returned to taxpayers, but Vermont does not.

The legislature rarely if ever “zero budgets” various programs. That means setting zero dollars as the spending base, and making the affected agency or program explain why it needs money. For instance, zero budgeting the Clean Energy Development Fund would require its director to convince legislators that, in the words of the Vermont Constitution, “the purpose for which a tax is to be raised [and the proceeds spent] ought to appear evident to the legislature to be of more service to community than the money would be if not collected.” (Ch. I Art. 9th)

Forty three states authorize the Governor to veto individual line items in the budget, but Vermont does not. The Governor does have some authority to not spend appropriated money if circumstances make it impractical.
According to the Census Bureau (2007) Vermonters pay $4,122 per capita in taxes, the 2nd highest in the country. This consumes 10.6% of our income, giving us the 2nd highest tax burden in the fifty states. By contrast, New Hampshire taxpayers pay $1,657 per capita (49th in the country) and those taxes consume only $3.87% of their income (lowest in the country).

Vermont’s personal income tax has five brackets; top bracket taxpayers pay at a marginal rate of 8.95% on their taxable income in excess of $336,550.

Since the 2007 Census report, the Vermont legislature has added a health care claims assessment, a health care information technology fee, increased provider taxes on hospitals, nursing homes, home health care services and intermediate care facilities for the mentally retarded, a cigarette tax increase, a liquor tax increase, a heating fuel tax increase, two residential school property tax rate increases, two nonresidential school property tax rate increases, and an electricity use tax increase.

By January 15, 2013 the Secretary of Administration is required to present the administration’s plan for financing the Governor’s single payer health program, Green Mountain Care. Early projections of needed revenues for this ambitious program (see page X) suggested a new payroll tax of between 12.5 and 14 percent, divided between employee and employer. On July 14, 2012 Secretary of Administration Spaulding suggested that a tax at that level “would inflict undue harm on Vermont businesses.” Efforts in the legislature to require the Green Mountain Care financing plan to be made public before the November election failed.

In a news conference after adjournment of the House, Speaker Shap Smith promised to push in 2013 to expand the sales and use tax to include services. That, he said, would allow an initial rate below the present 6% on the broadened tax base.

The sales tax on services would, without exemptions, affect accountants, architects, lawyers, doctors, dentists, taxi drivers, barbers, cosmetologists, plumbers, electricians, auto mechanics, landscapers, and many other service providers. Exempting classes of service providers would make it necessary to increase the tax rate on the others to produce the same amount of revenue.
Public K-12 education in Vermont is financed through a complicated system called Act 60/68. In broad outline, the voters of school districts adopt school budgets. The state Education Fund pays the districts what they budgeted. If the district’s spending works out to $8,723 per adjusted pupil (the Base Education Spending amount), the district’s residential taxpayers will pay a school property tax of 87 cents per $100 of property value.

However only five small districts in the state spend as little as $8,723 per adjusted pupil. If a district spends, say, 20% more than that - $10,467 – then its residential school property tax rate will increase by 20%, to $1.04. This gives residential taxpayers an incentive to hold spending down. When their excess spending exceeds 25%, an additional penalty is imposed.

About 70% of residential property taxpayers choose to pay 1.8% of their household income in lieu of their assessed property tax. This is called “income sensitivity.” Taxpayers making this choice are immune from the increasing tax rate caused by increased spending.

The Education Fund is composed of proceeds from the residential property tax described above, a uniform nonresidential property tax ($1.37 rate), lottery profits, 35% of the sales and use tax revenues, and a statutory cash transfer from the General Fund. In 2012 Gov. Shumlin proposed, and the legislature agreed, to reduce this required transfer by $27.5 million, thus making necessary another one-cent increase in both school property tax rates to keep the Education Fund solvent.

Since 2006 the Education Commissioners have pressed hard to promote consolidation of local public schools into Regional Education Districts. To date the incentives offered in 2010 have not been sufficient, and the legislature has resisted giving the Commissioner the power to impose consolidation. The legislature has also declined to impose state controls on school district spending, or require increased pupil-teacher ratios (Vermont 2008: 10.7, lowest in the 50 states, 30% below the national average of 15.3).

Expanding parental choice in education has been on the agenda for twenty years, but little has been done, largely due to the opposition of interests that benefit from the monopoly status of public schools. However, in 2013 a handful of towns are taking matters into their own hands with votes to close their local public schools, which would have the effect of giving those communities school choice. Some in the legislature have threatened new laws to block this sort of action in the future.
Health Care

The major new program before the legislature is the creation of a government-run taxpayer-financed single-payer health care system labeled Green Mountain Care (GMC).

GMC, authorized by Act 170 of 2011 and Act 48 of 2012, is based on the principle that health care is a “human right”, and that everyone is entitled to “appropriate health care at the appropriate time in an appropriate setting.” The state government will contain rising health care costs by enforcing a global budget on health care providers, determining how much providers (doctors, hospitals, nursing homes, etc.) will be paid, achieving operating and purchasing, and all services will be “free” at the point of service (perhaps with a modest copay).

From 2014 to 2017 Vermont will have a Health Benefits Exchange, authorized by the federal Affordable Care Act. Individuals and small groups will purchase government approved health insurance through the Exchange. Individuals with household incomes up to 400% of the Federal poverty level ($44,680) will qualify for sliding scale tax credits to assist them in paying premiums. Those who choose not to purchase insurance, even with the credits, will be taxed by the Federal government at a rate of (by 2016) $695 per year.

In 2017, if all goes according to plan, the state of Vermont will prohibit private major medical insurance, the Exchange will disappear, and GMC will provide appropriate health care to all Vermonters. There are some undecided questions about coverage: whether Medicare recipients, veterans, and employees of self-insured companies can legally be included.

By 2017 Vermont’s total health care expenditures will reach $6 billion. Even with exemptions, GMC will require on the order of $3 billion in revenues. The Governor’s plan is to achieve immediate savings from efficient government control, then add in Medicaid Federal cost sharing, persuade the Federal government to convert the total of the tax credits in the Exchange to grant support for GMC, and raise Vermont taxes to fill the remaining gap. The administration has contracted with the University of Massachusetts to recommend which taxes to raise, and by how much.

In 2013, the legislature will hear options for how to fund GMC, the Green Mountain Care Board will announce premiums for plans in the health benefits exchange, and, on October 1, plans will be available for sale in the exchange. According to Vermont law, all individuals employed by businesses of 50 or fewer employees must purchase health insurance through the exchange or pay a fine.
Energy and Climate

In 2006 the legislature enacted Act 168. The act established as a goal of the state the reduction of greenhouse gas emissions caused by the use of energy to 50% below 1990 levels by 2028. In the ensuing sessions the legislature and governor enacted a host of mandates and subsidies to promote electricity conservation and spur the production of electricity from wind, solar, hydro and landfill methane. Among the most notable are:

▶ Continual increases in Efficiency Vermont spending for electrical energy conservation, financed by an increasing tax on electric bills ($44 million in 2013).
▶ A mandate on electrical utilities to meet their load growth by increased use of renewables of any size (SPEED).
▶ A “Standard Offer” or “feed in tariff” law requiring utilities to purchase renewable energy generated in Vermont by installations of up to 2.2 Megawatts, at fixed prices as much as four times the price of New England grid power.
▶ A Clean Energy Development Fund to offer generous tax credits – convertible into front end grants – to limited partnerships that finance residential and small business solar electric systems. The Fund was funded until March 2012 by $28 million extracted from Vermont Yankee, but now has no dedicated funding stream.
▶ A Renewable Portfolio Standard, requiring utilities to get a specified fraction of their power from renewables, was almost included in the Vermont Entergy Act of 2012 (Act 170), but was withdrawn at the last moment.
▶ A ban on hydrofracturing (“fracking”) for production of low-cost natural gas from shale deposits that would produce electricity at a much lower price than subsidized renewables.

Over the same years the legislature and Sen. and now Gov. Peter Shumlin have waged a many-front war against the relicensing of the Vermont Yankee nuclear plant, the state’s lowest cost baseload electricity producer. In 2011 the plant won a 20 year license extension from the Nuclear Regulatory Commission, but the state’s battle to shut it down is now before the Federal courts.

Gov. Shumlin’s comprehensive energy plan, released in late 2011, calls for setting “Vermont on a path to attain 90% of its energy from renewable sources by 2050”. An alternative path, advocated by the Ethan Allen Institute, called for setting “Vermont on a path to assure safe, reliable and competitively priced energy that will make possible a strong, competitive and growing economic base, both for creation of new wealth and income for the people of the state, and for expanded tax revenues to enable the state to meet its fiscal obligations.”

In 2013 a bipartisan group of legislators has put forward a bill that would place a three year moratorium on industrial wind projects in Vermont.
Retiree Benefit Obligations

Many years ago legislatures and governors established state-managed pension plans for state employees (1944) and public school teachers (1947). The two plans require contributions from future beneficiaries, and from taxpayers. The plans promise defined benefits on the future day when the beneficiaries reach certain ages and accumulate sufficient years of service, and then retire.

Over the years governors and legislators have frequently shortchanged the actuarially required contributions to the two state-managed plans. As of mid-2011 the biennial report for the funds revealed that the state now owes a total of $3 billion – six times the state’s bonded debt – in unfunded liability to the retired state employees and teachers covered by the two state retirement funds.

The unfunded pension liabilities for state employees and teachers now total $1.2 billion. The unfunded retiree health benefits promised to state employees and teachers total $1.8 billion. That adds to $3.0 billion - $4,830 for every man, woman and child in Vermont.

Two years prior to the 2011 report, the total was $2.7 billion. In just two years, despite appropriations, the total liabilities increased by $300 million.

A further disappointing fact is that the great bulk of the Vermont retiree post-employment health benefits are “pay as you go”. The legislature appropriates around 40% of the annual required contribution for state employee health benefits.

The teachers’ health benefits are not funded at all. Whatever is needed to pay retired teachers’ benefits is simply subtracted from their retirement fund assets, driving that fund $24 million further out of fiscal soundness.

The Government Accounting Standards Board (GASB) is on the verge of requiring state and municipal governments to tell the whole truth about their unfunded retirement benefit obligations. This will, nationally, suddenly drag $3 trillion of buried liabilities into the daylight.

There are several ways to work toward zero unfunded liability, but no combination will work unless the legislature makes the required annual contributions to keep from losing more ground, plus additional contributions to reduce the $3 billion liabilities.

If the state of Vermont launches a government-run single payer health care plan – Green Mountain Care – in 2017, it will probably have to raise up to $3 billion in new taxes to finance its benefits. It is difficult to imagine that the legislature will ever be able to do that, and also come to grips with $3 billion in retirement liability shortfalls.
Regulation and Land Use

A full scale effort to create and enforce a State Land Use Plan, required by the passage of Act 250 in 1970, ultimately failed in 1976, and in 1984 the requirement was quietly removed from the act. Nonetheless there has been continuing pressure to expand land use planning and controls at the state level.

Act 250 requires persons engaged in “development” – generally commercial, industrial, and ten or more housing units – to apply for an Act 250 permit from one of nine three-member District Environmental Commissions. There are ten permit criteria, with numerous subdivisions. Opponents of development who meet the standing requirements can challenge an application as failing to meet one or more criteria. The District Commission's approval or rejection of an application, or approval with conditions, can be litigated in the Environmental Court, and thence to the Supreme Court.

Over the years some of the criteria have been ever more stringently applied. A good example is stormwater discharge, where environmental groups opposed to large scale development have demanded retail parking lot stormwater to be discharged as clean as mountain streams.

Criterion Ten requires a development to conform not only to zoning, but to a town or regional plan. The Supreme Court has restrained the use of high-sounding “goals” and “values” in a non-regulatory town plan to thwart development, but efforts to change Criterion Ten to “local zoning”, which is regulatory law, have failed.

Other controversial criteria are those relating to “endangered species”, “historic preservation”, and “esthetics”. From its inception Act 250 has not allowed any balancing of potential economic benefits with environmental considerations. District Commissions have frequently used the concept of “mitigation” to require applicants to underwrite the costs of environmental projects far removed from their developments, as a sort of fine for developing.

The WalMart store in St. Albans Town was finally approved only after twenty years of Act 250 combat, resolved only by the applicant paying off the objecting local governments and merchants. More recent land use regulation has made it more difficult to build housing removed from traditional downtown centers.

Act 170 of 2012 created new regulatory power over land and forest management practices on lands enrolled in the Use Value Appraisal (UVA) program.

One recurring regulatory issue is primary seat belt enforcement. Vermont has long had secondary enforcement, done in connection with some other driving offense, but efforts to allow officers to ticket motorists solely for not wearing a seat belt have invariably failed.
Human Services

The Agency of Human Services is the largest in the state's General Fund. It spends 41% of all state spending - $2.085 billion in FY 2013. That spending includes Medicaid, Catamount Health, public health, mental health, aging and disabilities, children and families (income support), corrections, and many other programs.

The Federal TANF act of 1996 (called ReachUp in Vermont) requires able-bodied recipients of welfare checks to work. This simple concept is however difficult to implement especially for low-skilled individuals and single parents in a weak economy. As a result “work” has been very broadly defined to include education, job training, getting ready for work, transition to work, etc. Theoretically individuals who are able to work, but persistently not willing to accept a job, are subject to sanctions (loss of benefits), but Vermont’s AHS has historically been very reluctant to impose them.

Medicaid pays providers – doctors, dentists, hospitals, nursing homes – for medical services provided to Vermonters who qualify on the basis of low income. A family of four can qualify if their annual income does not exceed $15,600 ($16,500 in Chittenden Co.) Like the federal Medicare program for the elderly and disabled, but far worse, Medicaid pays providers only a fraction – as much as half – of the actual costs of providing care. Providers have to make up this shortfall by cost-shifting - overcharging patients who are privately insured. This, and not uncompensated care for the uninsured, is by far the largest factor in the high cost of private health insurance in Vermont.

If and when Green Mountain Care comes into being as intended, all providers of health care for patients will be paid by the single payer, the state. This will end the cost shifting problem since there will no longer be private health insurance to be overcharged for the underpayment by government health care programs. Many physicians now limit or decline Medicaid patients because of the below-cost reimbursements by state government.

The state contracts with “designated agencies” to provide a wide range of services, including home health care, mental health, substance abuse, and development disabilities. These agencies determine who gets care, how much care, by which providers, and for how long. There is obviously a temptation for the designated agencies to continually offer more services to more patients, and send the bill to the state.

Corrections has become a huge management and cost problem for the state. There are invariably far more persons sentenced to Corrections than its facilities can accommodate. This leads to lighter sentences, early release, overworked probation and parole officers, and chronic recidivism.

The institutional care of persons suffering from acute mental illness, including the incarceration of a dozen criminally insane, has been another enormous problem. The Vermont State Hospital, built in 1891, was twice decertified by the Federal government and finally closed after Tropical Storm Irene in 2011. Attempting to create facilities in association with community hospitals has produced physical, medical, security, and political problems yet unsolved.
Learn more about these issues and others

To learn more about these and other issues facing Vermont, along with free market oriented solutions, the Ethan Allen Institute offers the following resources:

**Ethan Allen Institute: www.ethanallen.org**
This site contains all of the Institute's major reports on state issues for twenty years, Vermont Voters’ Report Cards for each biennium since 2000, and over a hundred commentaries, each listed with a brief synopsis, dealing with current issues over the same period.

**EAI on Facebook: www.facebook.com/EthanAllenInstitute**
Join our growing community on Facebook where you can enjoy regular posts on EAI activities, commentary, and member discussion of the latest news and policy.

**Common Sense Radio:**
Bill Sayre hosts this EAI sponsored radio show on WDEV (AM550, FM 96.1 or streaming online at www.wdevradio.com/index-progs.asp.) Guests include prominent Vermont policy makers and experts.

**Vermont Transparency: www.vttransparency.org**
This web site, a joint project of the Ethan Allen Institute and the Public Assets Institute, contains a wealth of information about state finances, education spending, and “how to find…” features.

**Energy EAI: www.energyeai.org**
Sponsored by EAI Energy Education Project, hosted by project director Meredith Angwin.

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PO Box 543
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The Ethan Allen Institute, founded in 1993, is Vermont's independent, nonpartisan, free-market public policy research and education organization - a “think tank” for issues facing Vermonters.

The Mission of the Institute is to influence public policy in Vermont by helping its people to better understand and put into practice the fundamentals of a free society: individual liberty, private property, competitive free enterprise, limited and frugal government, strong local communities, personal responsibility, and expanded opportunity for human endeavor.

The Institute’s areas of interest include -

- Vermont’s economic future, particularly the vitality and diversity of its competitive free enterprise sector.
- The fiscal practices and condition of state government - taxation, spending, and borrowing.
- State and local regulatory practices, and their effect on the economy and the rights of the people.
- Better education for all Vermont children, and an efficient, accessible health care system, each based on the principles of personal responsibility, competition, and empowered consumer choice.
- The preservation of free, accountable, democratic government, where public decisions are made at the level as close as possible to the people themselves.
- Adherence to Vermont’s basic charter of government, the Constitution.
- The strengthening of Vermont community and family life, and the protection of local government from burdensome and costly mandates.

The Institute advances these ideas through print and radio commentaries, publications, newsletters, conferences, debates, public dinners and meetings. And an informative website.

The Institute is governed by a 9-member Board of Directors and has a 17 member Advisory Council. The Institute is a 501(c)(3) educational organization, contributions to which are tax deductible for individuals and corporations. The basic annual membership is $50.