

H. 53 AS PASSED BY THE HOUSE
BACKGROUND INFORMATION
Legislative Council April 4, 2000

Under Act 60, all local property tax exemptions were made to apply to the new statewide education property taxes. Act 71 set up a summer study committee to review whether these property tax exemptions made sense for the new education property taxes. This study committee produced the legislative proposal H.53.

Current property tax exemption law is found mainly in chapter 125 of Title 32. This chapter is a confusing mix of various exemptions and exceptions to exemptions, some modern, some archaic. Some exemptions are automatic, some must be voted. The commission's proposal generally carries forward current property tax exemption law, but streamlines the chapter and gives it a logical structure.

The bill does, however, make four significant changes to property tax exemption law: (1) it increases the veterans' residential exemption; (2) it eliminates the automatic exemption for fraternity and sorority property; (3) it simplifies the exemption for college and university property; and (4) it provides that the State will determine whether "public, pious or charitable" property is exempt from education taxes.

The "public, pious or charitable" change is the most significant feature of H. 53. Under current law, local listers determine whether an entity meets this test. Once an entity is deemed exempt under this test, the property is exempt from both municipal tax and from education taxes. Unlike the specific exemptions for certain types of property, such as libraries, humane societies, cemeteries, this exemption is subject to broader interpretation. Local determination of the test results in a variety of interpretations of this exemption across the State, and a lack of uniformity in the education property tax. In addition, it is possible for an organization and a town to enter into an agreement to consider that organization exempt as "public, pious or charitable", thus taking it off the grand list, but to then enter into a tax agreement by which the organization pays an amount in lieu of the *municipal services* tax to the town. H. 53 addresses these problems by having a State-level determination that the property is "public, pious or charitable" and so, exempt from education taxes. Once the State determination is made, the organization may then ask the host town to vote an exemption from municipal taxes. In this way, the State governs the State grand list on this issue, and the towns have local control over the municipal tax exemption.

The Ways and Means strike-all amendment does not change the basic approach of H. 53. It does, however, make two significant changes to the bill: (1) It changes the way college and university property is treated: It increases the education tax exemption for college and university property, and makes the municipal tax subject to negotiated agreement between the college or university and the town. (2) It refines the process by which property is certified as public or charitable use property. The strike-all also makes some changes to the exemption for church property (adds two types of exempt church property) and to the YMCA exemption (requires a vote for a local exemption). The strike-all also clarifies that exempt property must be appraised and listed; and recasts the PILOT program as a payment by the State for municipal services provided by the towns.

H. 53
AS PASSED BY THE HOUSE
Section-by-Section Summary
April 4, 2000
Prepared by Legislative Council

Sec. 1. Repeals chapter 125 of Title 32.

Under current law, Chapter 125, "Exemptions", is the location of most property tax exemptions. The current chapter is a patchwork created over a two-hundred-year period. H. 53 carries forward most of the current exemption laws. The entire chapter is reenacted, however, in order to make changes in certain exemptions, and to restructure the chapter in a logical organization.

Sec. 2. Reenacts a new chapter 125 of Title 32.

§ 3802 Property exempt from all property taxes (municipal services tax, and statewide and local share education taxes).

The section exempts property which is described as or owned by:

- (1) Vermont (unless otherwise specified as taxable);
the United States
- (2) a town or towns, located in that town or those towns, used for municipal purposes (including utility services);
a county, located in that county, used for county purposes
- (3) certain Federally-chartered nonprofit organizations, including: veterans' organizations, boy scouts, girl scouts, Red Cross
- (4) a religious organization. Exemption is limited to certain types of property and adjacent land. *This exemption differs from the current law on religious property as follows:*
 - a. *the wording is made more inclusive of various religions*
 - b. *two types of buildings are added: center for religious education, administrative office*
 - c. *two types of buildings are deleted: orphanage (there are none in Vermont; if there were, they would be eligible for the general exemption for charitable property)
hospital (has a specific exemption under subsection (8))*
 - d. *"home" is further defined as "provided without regard to any ability to pay"*
 - e. *"glebe land" is clarified to mean lands sequestered as tax-exempt*
- (5) a nonprofit library, open to the public
- (6) a school district, used for educational purposes
- (7) a nonprofit college or university (if the property was acquired before April 1, 1941);
or owned by an academy or other public school;

(8) YMCA, YWCA, YMHA, YWHA

This is a change from current law, which exempts this property automatically from all taxes. Under the strike-all, this property is automatically exempt from education tax, but must be voted exempt from municipal tax.

(9) residential improvements paid by nonprofit low-income housing improvement programs

(b) Provides that the town may alternatively make its exemption by a vote to exempt all property within a specified subcategory of certified charitable or public use; and/or by a vote to authorize the town's legislative body to grant or deny exemptions.

(c) Exemptions under this section are for a maximum of five years, re-voted or re-granted for additional five-year periods (except that a few of the exemptions have their own, longer, exemption periods).

(d) For any parcel which the town chooses to exempt from municipal tax, the town may also choose to pay that property's education tax liability, by raising an additional tax on the other town property.

(e) An exemption under this section may be rescinded by a vote of the town.

§ 3804 College and university property acquired after April 1, 1941

Carries forward current municipal tax law. The property acquired after April 1, 1941, is "frozen" on the grand list at the pre-acquisition value, for purposes of the municipal tax only. The town may vote a greater exemption if it wishes.

§ 3805 Housing for low- and moderate-income occupants

Carries forward current law. Allows a town to enter into a PILOT agreement for a Federally-subsidized low- or moderate-income housing project, if Federal assistance would not otherwise be available.

The agreement governs the education taxes on the property, too.

[NB: Under a different section of law, new projects of this type are simply exempt from education taxes, if approved by the Vermont Economic Progress Council or the commissioner of housing and community affairs (under 32 V.S.A. § 5404a(a)(3)).]

§ 3806 Property exempt from education taxes

Property exempt from statewide and local share education taxes:

(1) certified as charitable or public use

(2) acquired by nonprofit college or university after April 1, 1941, used for education purposes

Sec. 8. Amends the PILOT chapter. Current law authorizes the State to pay annual grants to towns in lieu of taxes on State buildings and corrections land. This section would instead require the State to pay a municipal service fee to these towns. The fee is calculated in the same manner as the payments in lieu of taxes under current law.

Sec. 9. Renames the PILOT special fund as the municipal service fee special fund.

Secs. 10 - 14. Beginning in 2003, taxation of nonprofit college and university property changes. All such property will become exempt from property taxes.

Each college or university will negotiate with the host town on an agreement for payment of a fee for municipal services (except that existing agreements stay in place until they expire). If the parties are unable to reach an agreement, they must enter into mediation or arbitration. If the town refuses to participate in arbitration, the college or university is not obligated to make a payment to the town until an agreement is reached. If the college or university refuses to participate in arbitration, it must pay one-half the town's municipal services tax rate, applied to the cost-minus-depreciation value of the buildings.

Sec. 15. Requires Property Valuation and Review to compile a list of properties exempt from education property tax, and to submit the list to Ways and Means by January 10, 2003.

Sec. 16. Requires the Commission on Statutory revision to revise all references to sections of Chapter 125.

Sec. 17. Preserves the voted property tax exemptions which were grandfathered under Act 60.

Sec. 18. Effective dates.

The new property tax exemption laws would apply to grand lists for 2002 and after.

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H.53

AN ACT RELATING TO PROPERTY TAX EXEMPTIONS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. REPEAL

32 V.S.A. chapter 125 (property tax exemptions) is repealed.

Sec. 2. 32 V.S.A. chapter 125 is added to read:

CHAPTER 125. PROPERTY TAX EXEMPTIONS

§ 3802. PROPERTY EXEMPT FROM TAXATION

The following property shall be exempt from all property taxation:

(1) Real and personal property owned by this state unless otherwise specified as taxable; real and personal property owned by the United States; United States securities exempt from taxation by the laws of the United States; except that this subdivision shall not prohibit a federal agency from making payments for taxes on repossessed or voluntarily conveyed single family, multifamily living units or farm properties or forfeited property.

(2) Real and personal property owned by a municipality or municipalities located within that municipality or those municipalities, or those municipalities which own the property and which is used for municipal purposes, including the provision of utility services; real and personal property owned by a county which is located within that county and which is used for county purposes.

(3) Real and personal property owned by a post of any veterans' organization chartered by act of Congress of the United States or owned by a corporation, the members or stockholders of which are members of said post or its auxiliary, provided said real estate is used for purposes of the post or its auxiliary or such corporation only, is used as the principal meeting place of said post or its auxiliary in the exercise of its functions and activities, and is not leased or rented for profit; and real and personal property owned by and used for the purpose of its work by a nonprofit organization chartered by act of Congress of the United States, such as a Red Cross, boy scout, girl scout or boys or girls organization.

(4) Real and personal property owned by churches or synagogues or religious societies or religious conferences and used as a house of worship, parsonage, convent, center for religious education, administrative office, home provided without regard to any ability to pay, or school; related outbuildings; land not used to produce income, adjacent to any of these buildings and kept and used as a parking lot, lawn, playground or garden, or any glebe lands sequestered as tax-exempt.

(5) Real and personal property set apart for library uses and used by public and private circulating libraries, open to the public and not used for profit.

(6) Real property owned or leased by school districts for educational purposes.

(7) Real property owned or leased by nonprofit colleges, universities, academies or other public schools,

(13) Real and personal property exclusively installed and operated for the abatement of pollution of the waters of the state of Vermont or waters within the purview of the New England Interstate Water Pollution Control Compact in accordance with engineering principles approved by the Vermont water resources board; and real and personal property exclusively installed and operated as air pollution treatment facilities approved by the air pollution control agency established in chapter 23 of Title 10. This type of property shall be exempt as long as its operation meets with the approval of the secretary of the agency of natural resources.

(14) Real and personal property owned by a charitable nonprofit organization devoted to the welfare, protection and humane treatment of animals, including any premises of a custodian or caretaker which is attached to or is located on the grounds of such an animal shelter.

(15) Property subject to taxation under chapter 211 (franchise taxation of railroads, car and transportation companies, telephone companies and insurance companies) of this title.

(16) Real and personal property owned by a federally-qualified health center or a free standing, federally-designated rural health clinic, provided such center or clinic is governed by a community board of directors; offers services at a sliding-scale cost based on ability to pay; is owned and operated on a nonprofit basis; is dedicated unconditionally to public use and used for the benefit of an indefinite class of the public and only for the purpose of such institution, and its use confers a benefit on society.

§ 3803. MUNICIPAL TAX EXEMPTIONS

(a) A town may at a regular or special meeting duly warned, by a majority of those present and voting, elect to exempt any of the following in whole or in part from municipal tax authorized under section 2664 of Title 17:

(1) Real and personal property, certified under section 3807 of this title to be dedicated to a charitable or public use.

(2) Real and personal property held in trust for a municipal corporation, but located outside the town where that municipal corporation has its principal place of business.

(3) Property used primarily for recreational purposes, and which is owned and operated on a nonprofit basis, dedicated unconditionally to public use and used for the benefit of an indefinite class of the public and only for the purpose of such institution, and the use of which confers a benefit on society.

(4) Real property owned by a nonprofit volunteer fire, ambulance or rescue company, and used exclusively for the purposes of such company.

(5) Inventory of manufacturers and merchants, and of other trades and businesses, including professional practices, except as otherwise provided by law. A repeal of the tax on inventory may be effective for 100 percent of inventory in the tax year following the vote; or the town may vote to exempt a stated percentage of inventory each year for a number of years not to exceed ten, until 100 percent of inventory is exempt. An election by a town not to tax inventory shall remain in effect until repealed or amended by a similar vote of the town. As used in this subdivision, "inventory" means tangible personal property of a nondepreciable nature held for consumption, sale, resale, leasing, or to be furnished under contracts of service, in a trade or business, and includes without limitation, raw materials, work in process, semi-finished or finished goods of manufacturers and processors, and the stock-in-trade of wholesalers and retailers.

§ 3804. COLLEGE AND UNIVERSITY PROPERTY ACQUIRED AFTER

APRIL 1, 1941

(a) Any real property acquired and owned after April 1, 1941, by any nonprofit college or university used for educational purposes including student housing, and not used for general commercial purposes, shall for municipal tax purposes only, be set to such institution in the grand list of the town or city in which such real property is located at the value fixed in the appraisal next preceding the date of acquisition of such property, and taxed on such valuation. However, the voters of any town or city may at any legal meeting thereof vote to exempt such property from taxation, either in whole or in part. Except as provided under subsection (c) of this section, the value fixed on such property at such appraisal shall not be increased so long as the property is owned and used by such institution for other than commercial and investment purposes, whether or not improvements are made thereon.

(b) The provisions of subsection (a) of this section shall not exempt from county or town taxes, lands owned by a college, and leased "as long as wood grows and water runs," securing to the lessees the right of preemption, unless such lands were chartered as sequestered for the benefit of the college, or became the property of the college prior to the organization of the town in which they lie.

(c) In the event of a general reappraisal of all property in the municipality completed after 1982, the appraisal value of property subject to subsection (a) of this section shall first be changed to an amount which yields a municipal tax liability (computed with reference to the tax rate applicable to the first tax year based on the reappraisal) equal to the municipal tax liability for such property for the tax year immediately preceding the reappraisal; provided, that in the event the tax liability imposed on the majority of all taxable properties in the municipality increases in the first tax year based on the reappraisal, then any appraisal value of property subject to subsection (a) shall be further changed to an amount that yields the tax liability computed in this subsection adjusted by the average percentage increase or decrease in the tax liability of all taxable properties in the municipality.

§ 3805. HOUSING PROJECTS FOR LOW AND MODERATE INCOME

OCCUPANTS

(a) The board of selectmen of a town, the board of aldermen or city council of a city, or the supervisor of an unorganized town or gore, may enter into an agreement on behalf of the municipality with a person who owns or intends to acquire or seeks to construct a federally-subsidized low or moderate income housing project, for payments by such person to the municipality in lieu of all taxes which would otherwise be assessed against the property, where federal assistance would not be available in the absence of such an agreement. An agreement entered into under this section shall be in writing, and shall be executed by the person owning or intending to acquire or to construct the project, and by the board of selectmen or aldermen, or in the case of an unorganized town or gore by the supervisor, on behalf of the municipality. Property which is subject to an agreement entered into under this section shall be included in the equalized education property tax grand list of the municipality in an amount which at the tax rate in effect in the municipality would, if the property were subject to taxation, yield a tax equal to the amount of the payments in lieu of taxes provided for under the agreement. The amount of the payments and the date or dates when the payments are to be made shall be as specified in the agreement, and the term of the agreement shall not exceed 40 years, but otherwise may contain any provisions not inconsistent with this section.

(b) An agreement entered into under this section shall be filed in the office of the clerk of the town or

(a) A property owner seeking a voted exemption under subdivision 3803(a)(1) of this title or seeking an education property tax exemption under subsection 3806(a) of this title, shall first obtain certification from a certification officer to be appointed by the commissioner of taxes.

(1) An application for certification under this section shall be in writing, in a form and with accompanying information as required by the certification officer. An application under this section shall constitute a waiver of any right to confidentiality with regard to any records in the possession of the certification officer related to the application for certification, and these records shall be public records.

(2) The applicant shall bear the burden of proving, by a preponderance of the evidence, that the applicant meets the requirements for certification under this section.

(3) The certification officer shall certify the property as charitable or public use property if the officer finds that the property is owned and operated on a nonprofit basis, dedicated unconditionally to public use and used for the benefit of an indefinite class of the public primarily for charitable or public purposes and to confer a benefit on society and is not:

(A) property held in trust for a municipal corporation by virtue of a trust when the property is located outside the town where the said municipal corporation has its principal place of business;

(B) a municipal electric light plant when located outside the town wherein the municipality owning it is situated;

(C) property leased for income or profit or used for general commercial purposes;

(D) property used primarily for recreational purposes.

(b) A party aggrieved by a determination of the certification officer under this section shall have a right to appeal that determination by filing a notice of appeal with the director of property valuation and review within 30 days after the date the determination is issued. The appeal to the director shall be de novo. Within five days after the director receives a notice of appeal, the director shall give notice of the appeal to the town in which the property is located, and to the commissioner of taxes. The town and the commissioner shall each have 10 days to file with the director a notice of election to join as a party. A party to the appeal shall have the right to appeal the director's determination to the superior court of the county in which the property is located, pursuant to Rule 74 of the Vermont Rules of Civil Procedure, within 30 days of the date of the director's determination, but the appeal shall be on the record and without jury. A party to the superior court appeal shall have the right to appeal the superior court decision to the supreme court, on the record.

(c) Upon determination under this section that a property is charitable or public use property, the person or court making the determination shall within 10 days of the date of that determination notify the town in which the property is located. If the certification officer determines that an application has been completed by September 1 of 2001, or October 1 of any later year, then the officer shall issue the determination to that applicant by December 31 of that year.

Sec. 3. 32 V.S.A. § 5404a(a)(4) and (c)(1) are amended to read:

(a) Tax agreements affecting the education property tax grand list. A tax agreement shall affect the education property tax grand list of the municipality in which the property subject to the agreement is located if the agreement is:

~~full listed value absent such appraisal, the statutory authority for granting such appraisal, the year in which such appraisal became effective and the year in which it ends;]*~~

(8) The full listed value and the stabilization value agreed to by an owner and a town pursuant to 24 V.S.A. § 2741 or section ~~*[3843 or 3846]*~~ 3804 (federally-subsidized low- or moderate-income housing) of this title, the year in which the stabilization agreement became effective and the year in which it ends;

(9) Separate columns which will show the listed valuations of homesteads as defined in section 5401(7) of this title.

Sec. 6. 32 V.S.A. § 3431(a) is amended to read:

(a) Each lister shall take and subscribe and file in the town clerk's office, before entering upon the duties of his office, the following oath; and the oath as subscribed shall be recorded in the town clerk's office: "I, _____, do solemnly swear (or affirm) that I will appraise all the personal property subject to taxation and all the real property ~~*[subject to taxation]*~~ in the town (or city) of _____, so far as required by law, at its fair market value, will list the same without discrimination on a proportionate basis of such value for the grand list of such town (or city), will set the same in the grand list of such town (or city) at one per cent of the listed value and will faithfully discharge all the duties imposed upon me by law. So help me God." (or, "under the pains and penalties of perjury.")

Sec. 7. 32 V.S.A. § 3651 is amended to read:

§ 3651. GENERAL RULE

~~*[Taxable real]*~~ Real estate shall be set in the list to the last owner or possessor thereof on April 1 in each year in the town, village, school and fire district where it is situated.

Sec. 8. 32 V.S.A. chapter 123, subchapter 4 is amended to read:

Subchapter 4. ~~*[State Payment in Lieu of Property Taxes]*~~

Municipal Service Fees for State Property

§ 3701. DEFINITIONS

For the purposes of this subchapter:

(1) "State-owned property" means

(A) state-owned buildings, including buildings of the Vermont state colleges and buildings of the University of Vermont and State Agricultural College used for educational and not commercial purposes; buildings of the agency of transportation and the department of the military; but excluding the value of land on which the buildings are located, and excluding all highways and bridges and any land pertaining thereto; and

(B) state-owned lands which pertain to state correctional facilities.

(2) ~~"*[Assessed value]*~~ Value of state buildings" means the estimation of the current cost of replacing a building, maintained for insurance purposes by the state agency or other entity responsible for insuring the building, depreciated by the age and condition of the building.

receipt of the ~~*[assessed]*~~ values, appeal to the superior court of the district in which the municipality is located.

§ 3705. ADJUSTED MUNICIPAL GRAND LIST AND ~~*[ADJUSTED]*~~

~~*[MUNICIPAL TAX RATE]*~~ MUNICIPAL SERVICE FEE RATE

(a) Prior to October 1 in each taxable year, the division of property valuation and review shall provide the secretary of administration with the following:

(1) the adjusted municipal grand list for the prior assessment year, with the ~~*[assessed]*~~ values of all state-owned property shown separately, together with a statement of the common level of appraisal used to weight the ~~*[assessed]*~~ values of state-owned property;

(2) the ~~*[adjusted municipal tax rate]*~~ municipal service fee rate to be used in ~~*[assessing taxes]*~~ determining the municipal service fee on the prior adjusted municipal grand list; and

(3) the total sum of money voted by the municipality for all noneducational expenses, pursuant to section 2664 of Title 17.

(b) ~~*[Prior to issuing a grant under this subchapter the]*~~ The secretary of administration may substitute his or her calculations of the adjusted municipal grand list or the ~~*[adjusted municipal tax rate]*~~ municipal service fee rate for a municipality if the secretary finds that those calculations provided by the municipality under this section are in error or are inconsistent with ~~*[assessed]*~~ values as determined pursuant to section 3704 of this title.

§ 3706. PAYMENT TO MUNICIPALITIES

~~*[Grants]*~~ Fees due to municipalities under this subchapter shall be made annually by the secretary of administration to each ~~*[eligible]*~~ municipality on or before ~~*[December 1, 1997, and on or before]*~~ October 31 ~~*[in years thereafter]*~~. Nothing in this subchapter shall be construed or permitted to affect the tax exempt status of ~~*[the University of Vermont and State Agricultural College, as provided by statute and guaranteed by that institution's charter]*~~ any entity, and the assessment and collection provisions of chapter 133 of this title shall not apply to any fee imposed under this subchapter.

§ 3707. RULES

The secretary of administration may adopt rules under chapter 25 of Title 3 to carry out the provisions of this subchapter.

Sec. 9. Sec. 89 of No. 60 of the Acts of 1997, as amended by Sec. 106d of No. 1 of the Acts of 1999, is amended to read:

Sec. 89. ~~*[PILOT]*~~ MUNICIPAL SERVICE FEE SPECIAL FUND

(a) There is established a ~~*[PILOT]*~~ municipal service fee special fund, to be managed by the commissioner of taxes, pursuant to subchapter 5 of chapter 7 of Title 32. The fund shall be used exclusively for payments required under subchapter 4 of chapter 123 of Title 32, ~~*[State Payment in Lieu of Property Taxes]*~~ Municipal Service Fees for State Property. The commissioner of finance and management may draw warrants for disbursements from this fund in anticipation of receipts.

provisions and powers of 24 V.S.A. § 3504(a), (b) and (d) shall apply in like manner to the payment agreement or fee.

Sec. 12. 32 V.S.A. § 3481(3) is added to read:

(3) "Fair market value" of nonprofit college and university buildings, for purposes of this section, shall mean the estimated current cost of replacing the buildings, depreciated by the age and condition of the buildings.

Sec. 13. REPEAL

32 V.S.A. § 3806(2) (education property tax exemption for college and university property acquired after April 1, 1941) is repealed, effective January 1, 2003.

Sec. 14. 32 V.S.A. § 3802(7) is amended to read:

(7) Real property owned or leased by nonprofit colleges, universities, academies or other public schools, and used for educational purposes including student housing, and not used for general commercial purposes. *~~[The exemption of property owned by nonprofit colleges and universities under this section shall apply only to property acquired on or before April 1, 1941.]~~*

Sec. 15. PROPERTY TAX EXEMPTION RESEARCH

During the fiscal year 2002 the Division of Property Valuation and Review shall compile a list of all properties exempt from the statewide property tax. The listing shall include for each parcel the town in which it is located; a description of the parcel; the grand list value and equalized value of the parcel, or if unavailable, then the fair market value of the parcel; the value of the exemption; and the basis for the exemption. The list shall be submitted to the House Committee on Ways and Means by January 10, 2003.

Sec. 16. CONFORMING REFERENCES

The Commission on Statutory Revision is directed to revise all cross-references to sections of chapter 125 of Title 32, to conform to the reenactment of chapter 125 in this act.

Sec. 17. EFFECT UPON CERTAIN EXEMPTIONS VOTED BEFORE

JULY 1, 1997

Nothing in this act shall be construed to affect an education property tax exemption under a "prior agreement" as defined in 32 V.S.A. § 5404a.

Sec. 18. EFFECTIVE DATES

(a) This section and Secs. 8 and 9 (municipal service fee) of this act shall take effect upon passage.

(b) Sec. 10 and Secs. 12 through 14 (taxation of university and college property acquired before or after April 1, 1941) of this act shall take effect January 1, 2003, for grand lists for 2003 and after.

(c) Sec. 11 (fee agreements for nonprofit college and university property) of this act shall take effect January 1, 2003, for property tax years 2003 and after; except that for any nonprofit college or