



STATE OF VERMONT
SUNSET ADVISORY COMMISSION

MEMORANDUM

To: House and Senate Committees on Government Operations
House Committee on Ways and Means
Senate Committee on Finance

From: Sunset Advisory Commission

CC: Secretary of Administration Susanne Young
Michael O'Grady, Deputy Chief Counsel, Office of Legislative Counsel
Daniel Dickerson, Fiscal Analyst/Financial Manager, Joint Fiscal Office

Date: November 19, 2020

Subject: Request for review of revenue losses from MA and CT relating to the Connecticut River Flood Control Compact

The Sunset Advisory Commission (SAC) was created in [3 V.S.A. § 268](#) to review and make recommendations on whether to maintain as is, amend, or repeal the State's boards and commissions. In accordance with this duty, SAC reviewed the Connecticut River Valley Flood Control Commission (Commission) set forth in [10 V.S.A. § 1153](#). As a result of this review, SAC is requesting that you, as committees of jurisdiction, review the issue of apparent revenue losses related to the Connecticut River Flood Control Compact (Compact) that Vermont entered into with the States of Massachusetts, Connecticut, and New Hampshire, and which created the Commission.

The Compact provisions are set forth in [10 V.S.A. ch. 45, subchs. 1 and 2](#). A stated principle purpose of the Compact is to "provide a joint or common agency through which the signatory states, while promoting, protecting, and preserving to each the local interest and sovereignty of the respective signatory states, may more effectively cooperate in accomplishing the object of flood control and water resources utilization in the basin of the Connecticut River and its tributaries."¹ SAC received [written](#) and verbal testimony from the Commission and ultimately voted to maintain the Commission due to the importance of flood control and the relatively small cost to the State in maintaining the Commission.

However, one issue that came to SAC's attention is an apparent loss of revenue that Vermont could be receiving under the terms of the Compact, but that it is not

¹ [10 V.S.A. § 1153\(c\)](#).

receiving in practice. To summarize, the U.S. government owns property along the Connecticut River in certain VT and NH towns, upon which the federal government has built flood control dams and reservoirs. These methods of flood control benefit not only VT and NH, but also the Compact states downstream, MA and CT.² Because VT and NH towns lose tax revenue due to the federal government’s ownership of this flood control property—and because MA and CT are protected by that flood control—the Compact sets forth an agreement pursuant to which MA and CT are to reimburse VT and NH towns for their economic losses.³ It involves MA and CT providing to VT and NH specific percentages of the amount of taxes lost to VT and NH towns that have certain federally-owned dams and reservoirs.⁴ The Commission is to annually determine the loss of taxes “based on the tax rate then current in each [town] and on the average assessed valuation for a period of five years prior” to the U.S. acquiring the property, provided that whenever such a town has made a general revaluation of property subject to the annual municipal taxes of the town, “the Commission may use such revaluation for the purpose of determining the amount of taxes for which reimbursement shall be made.”⁵ The Commission then computes the sum due and sends a notice to MA and CT’s state treasurers, who in turn are supposed pay that sum to VT and NH.⁶ The Compact also provides for a Board of Arbitration appointed by the governors of the Compact states if the Commission cannot agree on the amount that should be reimbursed to the upstream states.⁷

What SAC learned through reviewing the Commission’s [most recent annual report](#) and Commission testimony is that MA and CT have been reimbursing VT and NH for tax losses **based on tax rates frozen from 1982**, and that the Commission previously discussed this issue in the late 2000s without resolution.⁸

Accordingly, SAC is requesting that committees of jurisdiction review this issue to determine whether further action should be taken to enable Vermont to be reimbursed based on current-day tax rates or tax rates that are otherwise increased to provide a fairer and more equitable rate of reimbursement. SAC is copying the Secretary of Administration on this memo so that the Governor is also aware of this issue, since the Compact provides a means for the Governor to formally request a resolution if Vermont does not agree to its rate of reimbursement. Thank you for your consideration of this matter. Please do not hesitate to contact us for further information.

² The importance to the downstream states of the upstream states’ flood control methods, including in Vermont, are described in the Compact’s Preamble set forth in [10 V.S.A. § 1151](#).

³ [10 V.S.A. § 1156](#).

⁴ [Id.](#)

⁵ [Id.](#)

⁶ [Id.](#)

⁷ [Id.](#)

⁸ *See esp.* the Chair’s Report on pg. 4 and the outline of 2018 tax losses and repayments beginning on pg. 8 of the [2019 Annual Report](#).