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House Committee on Ways and Means

MEMORANDUM

To: Representative Diane Lanpher,
Chair, House Committee on Appropriations

From: Representative Emilie Kornheiser,
Chair, House Committee on Ways and Means

Date: January 17, 2024

Subject: Fiscal Year 2024 Budget Adjustment Act

This memo serves as the House Committee on Ways and Means' response to the Fiscal Year 2024 Governor's Recommended Budget Adjustment Act as it relates to taxation and revenue matters.

Governor's Recommended Language

The chart attached to this memo summarizes the Committee's feedback on 10 language sections within its purview that were included in the Governors' Recommended FY 2024 Budget Adjustment Act.

Treasurer's Proposed Language

The House Committee on Ways and Means supports language proposed by the State Treasurer to revise the Vermont State Teacher's Retirement System (VSTRS) Cost of Living Adjustment (COLA) formula to its pre-2016 iteration and fully fund the present value of the cost of the change, consistent with the legislative intent previously expressed in Act 78 (2023). *See attached.*

House Committee on Ways and Means' Proposed Language

The House Committee on Ways and Means recommends the inclusion of language to authorize the creation of "Vermont Strong" commemorative license plates. The intent of the language is to support flood relief efforts while adhering to past precedent of requiring legislative approval for similar initiatives and respecting the General Assembly's prerogative over establishing fees and appropriating State funds.

Both the Vermont Constitution and the Vermont Statutes Annotated specify that, of the three branches, it is solely the General Assembly that may make or suspend laws ([Vt. Const. Ch. I, Art. 15 and Ch. 2, § 2](#)), appropriate funds (*see, e.g.,* [Vt. Const. Ch. II, § 27](#)) and [32 V.S.A. § 462](#)), and

impose taxes and fees (*see, e.g.,* [Vt. Const. Ch. II, § 6](#) and [32 V.S.A. chapter 7, subchapter 6](#)). The Governor, on the other hand, must “take care that the laws be faithfully executed” and “may draw upon the Treasury for such sums as may be appropriated by the General Assembly” ([Vt. Const. Ch. II, § 20](#)), but does not have discretionary authority over either. The Vermont Constitution does not allow a Governor to modify legislatively enacted fees or revise fund allocations unilaterally.

Following Tropical Storm Irene in 2012, the General Assembly authorized the sale and production of “Vermont Strong” commemorative plates, established the \$25 fee, and stipulated the recipients of the net proceeds (*see* [2012 Acts and Resolves No. 71](#), as amended by [2012 Acts and Resolves No. 143, Sec. 13](#), [2014 Acts and Resolves No. 189, Sec. 26](#) and [2017 Acts and Resolves No. 71, Sec. 24](#)).

Following the July 2023 floods, the Administration re-launched the concept via [Executive Order 04-23](#) as “Vermont Strong ’23,” offering commemorative plates with the slogan “Vermont Strong and Tough Too,” and bundled promotions, to support flood relief. The Executive Order established fees for the plates and promotions and directed the net proceeds to the Agency of Commerce and Community Development’s Business Emergency Gap Assistance Program (BEGAP) and the Vermont Community Foundation. Both the fees and dedication of revenue deviated significantly from the prior 2012 session law that authorized the original post-Irene “Vermont Strong” plates.

The language proposed by the Committee on Ways and Means would retroactively authorize the 2023 iterations of the “Vermont Strong” plates, bundled promotions, and revenue allocations consistent with the Executive Order up to the effective date of the BAA. Upon the effective date, revenues from future plate sales would be directed to the General Fund to be appropriated for natural disaster relief, and the State would no longer be authorized to enter into bundled promotion agreements.

The House Committee on Transportation reviewed this language on January 11, 2024.

Committee Vote

Members of the House Committee on Ways and Means appreciate the opportunity to provide feedback on the FY 2024 Governor’s Recommended Budget Adjustment Act and support the recommendations listed above on a vote of **12-0-0**.

Sec. #	Proposal	Amount	W&M Position
Governor's Recommendations			
<p>After School and Summer Learning Program Funding – Sections 29, 48, 52, 62, and 65 are interconnected</p> <p>The Administration recommends a modification to the mechanics of how afterschool and summer learning programs are funded. Under current law, these programs are funded from the Education Fund through the sales and use tax proceeds from cannabis retail sales. Under the proposal, funding for these programs would shift to a newly created special fund, as would the cannabis sales tax revenues.</p> <p>The Committee on Ways and Means supports these recommendations if funding is going directly to nonprofit providers of afterschool and summer learning programs. However, the Committee takes no position on whether these programs should be provided by LEA's or nonprofit community partners.</p>			
Sec. 46	<p>2023 Acts and Resolves No. 78, Sec. D.100</p> <p>Technical corrections to address double appropriations that were reflected in both the B. and D. sections; change terminology pertaining to special funds from “appropriation” to “allocation.”</p>	N/A	The Committee supports these recommended technical corrections.
Sec. 48	<p>2023 Acts and Resolves No. 78, Sec. D.101(b)(1)</p> <p>Updates the sports wagering direct application based on more recent information.</p> <p>Transfer of balance of Registration Fees Fund to General Fund</p>	<p>50250 – Sports Wagering Fund – Direct application to the General Fund increased from \$1,204,000 to \$3,200,000.</p> <p>Registration Fees Fund – Balance of \$605,273.01 transferred to General Fund</p>	The Committee supports this recommendation , which updates the estimated FY 2024 revenues from sports wagering in response to revised market analysis and the updated revenue sharing terms agreed to by the State and the three operators. The Committee also supports the recommended transfer of the residual balance of the Registration Fees Fund to the General Fund, as the Registration Fees Fund was repealed per Act 164 (2019).

Sec. 50	2023 Acts and Resolves No. 78, Sec. E.111.2 Tax Computer System Modernization Fund Transfer – Technical Amendments	N/A	The Committee supports this recommendation. This proposed language provides clarity and would ensure that the Tax Computer System Modernization Fund balances as of June 30, 2023, remain within the Fund.
Sec. 61	10 V.S.A. § 6083a Act 250 Fees	N/A	The Committee supports this recommendation. The proposed language would clarify statute to reflect that application fees are charged on an individual permit or permit application basis. The language codifies longstanding practice and conforms it to a recent decision from the Environmental Division.
Sec. 63	16 V.S.A. § 4025(b)(2) Technical correction to clarify that “revenue collection” is an allowable use of Education Funds.	N/A	The Committee supports this technical correction, which supports the codification of the Tax Computer Modernization Fund. This language does not change any allocation to the Computer Modernization Fund nor divert any additional funds away from the Education Fund. Rather, it clarifies statute to reflect that the Tax Department performs (via the systems paid for through the Fund) accounting <u>and revenue collection</u> activities that benefit the Education Fund.

VSTRS Teacher Pension COLA Language

The House Committee on Ways and Means recommends the inclusion of language to modify the cost of living adjustment (COLA) formula for retired members of the Vermont State Teachers' Retirement System (VSTRS), as proposed by the State Treasurer. The change would apply the statutory maximum to the size of the COLA, rather than to the size of the net percentage change in the Consumer Price Index used to calculate the COLA. The Committee on Ways and Means also recommends fully funding the present value of the estimated cost of this benefit modification (\$9.34 million) so as not to adversely impact the VSTRS system.

Act 78 (2023) expressed legislative intent to revert the COLA formula back to its pre-2016 method and to fully fund the present value of the estimated cost of the benefit up front so as not to increase the unfunded liability of the pension system. The cost was estimated to be \$9.1 million in early 2023. After the Act's passage, the pension systems performed experience studies that led to revised actuarial assumptions, changing the cost estimate. The General Assembly was aware of the upcoming experience studies and reserved \$9.1 million in the Education Fund in fiscal year 2024 to fund this change. Act 78 also directed the State Treasurer to perform additional actuarial analysis to estimate the cost once actuarial assumptions were revised following the 2023 experience studies. That recent actuarial analysis revised the cost estimate to \$9.5 million. When factoring in the \$160,000 surplus payment to VSTRS arising from the prior \$3.0 million appropriation to fund one-time COLA payments to retired members in calendar year 2023, a net payment of \$9.34 million is required to fully fund the present value of future benefits without increasing the unfunded liability (all else being equal).

The House Committee on Government Operations and Military Affairs has also reviewed this language.

Proposed VSTRS COLA Language (preliminary pending final revisions)

§ 1949. POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

(a) Postretirement adjustments to retirement allowance. On January 1 of each year, the retirement allowance of each beneficiary of the System who is in receipt of a retirement allowance for at least a one-year period as of December 31 in the previous year, and who meets the eligibility criteria set forth in this section, shall be adjusted by the amount described in subsection (d) of this section. In no event shall a beneficiary receive a negative adjustment to the beneficiary's retirement allowance.

(b) Calculation of net percentage increase. Each year, a determination shall be made of any increase or decrease, to the nearest one-tenth of a percent, in the Consumer Price Index for the month ending on June 30 of that year to the average of the Consumer Price Index for the month ending on June 30 of the previous year.

~~(1) Consumer Price Index; maximum and minimum amounts. Any increase or decrease in the Consumer Price Index shall be subject to adjustment so as to remain within the following maximum and minimum amounts:~~

~~(A) For Group A members and Group C members who are eligible for normal retirement or unreduced early retirement, or who are vested deferred, on or before June 30, 2022, the maximum amount of any increase or decrease utilized to determine the net percentage increase shall be five percent.~~

~~(B) For Group C members who are eligible for retirement and leave active service on or after July 1, 2022, the maximum amount of any increase or decrease utilized to determine the net percentage increase shall be four percent.~~

~~(2)~~(1) Consumer Price Index; decreases. In the event of a decrease of the Consumer Price Index as of June 30 for the preceding year, there shall be no adjustment to the retirement allowance of a beneficiary for the subsequent year beginning on January 1; provided, however, that:

(A) such decrease shall be applied as an offset against the first subsequent year's increase of the Consumer Price Index up to the full amount of such increase; and

(B) to the extent that such decrease is greater than such subsequent year's increase, such decrease shall be offset in the same manner against two or more years of such increases, for up to but not exceeding five subsequent years of such increases, until fully offset.

~~(3)(2)~~ Consumer Price Index; increases. ~~Subject to the maximum and minimum amounts set forth in subdivision (1) of this subsection, in~~ In the event of an increase in the Consumer Price Index, and provided there remains an increase following the application of any offset as in subdivision ~~(2)~~(1) of this subsection, that amount shall be identified as the net percentage increase and used to determine the members' postretirement adjustment as set forth in subsection (d) of this section.

(c) Eligibility for postretirement adjustment. In order for a beneficiary to receive a postretirement adjustment allowance, the beneficiary must meet the following eligibility requirements:

(1) ~~for~~For any Group A or Group C member eligible for normal retirement, or who is vested deferred, on or before June 30, 2022, the member must be in receipt of a retirement allowance for at least 12 months prior to the January 1 effective date of any postretirement adjustment; ~~and~~

(2) ~~for~~For any Group C member who is first eligible for normal retirement and leaves active service on or after July 1, 2022, the member must be in receipt of a retirement allowance for at least 24 months prior to the January 1 effective date of any postretirement adjustment.

(3) Special rule for Group C early retirement. A Group C member in receipt of an early retirement allowance shall not receive a postretirement adjustment to the member's retirement allowance until such time as the member has reached normal retirement age, provided the member meets all eligibility criteria set forth in this subsection.

(d) Amount of postretirement adjustment. The postretirement adjustment for each member who meets the eligibility criteria set forth in subsection (c) shall be as follows:

(1) the full amount of the net percentage increase calculated pursuant to subsection (b) of this section for all Group A members; ~~and~~, provided that:

(A) the net percentage increase following the application of any offset as provided in this section equals or exceeds one percent; and

(B) the maximum amount of any adjustment under this section shall be five percent;
and

(2) one-half of the net percentage increase for all Group C members; ~~and~~, provided that:

(A) For Group C members eligible for normal retirement or who are vested deferred on or before June 30, 2022, the maximum amount of any adjustment under this section shall be five percent. An adjustment of less than one percent shall be assigned a value of one percent; and

(B) For Group C members first eligible for normal retirement and leave active service on or after July 1, 2022, the maximum amount of any adjustment under this section shall be four percent, and the minimum amount shall be zero percent.

(e) As used in this section, “Consumer Price Index” shall mean the Northeast Region Consumer Price Index for all urban consumers, designated as “CPI-U,” in the northeast region, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

VT Strong License Plates

Sec. ~~A~~. 2012 Acts and Resolves No. 71, Sec. 1, as amended by 2012 Acts and Resolves No. 143, Sec. 13, 2014 Acts and Resolves No. 189, Sec. 26, and 2017 Acts and Resolves No. 71, Sec. 24, is further amended to read:

Sec. 1. VERMONT STRONG MOTOR VEHICLE PLATES

(a) ~~Intent. It is the intent of this act to recognize all of those who have suffered losses because of the destruction brought by Tropical Storm Irene and the flooding of 2011, and to commemorate the contributions of the many who are helping to rebuild Vermont and to make it stronger. [Repealed.]~~

(b) Authority; accounting and reporting; bundles.

(1) ~~The department of motor vehicles (“department”)~~ Department of Motor Vehicles is authorized to design, manufacture or procure, and distribute one or more commemorative plates that include the text “Vermont Strong” in accordance with this section. ~~The department and Vermont Life magazine are~~ Department is authorized to sell commemorative plates individually or in conjunction with a bundled promotional item. ~~The department~~ Department may also authorize other persons to sell commemorative plates, provided that such persons are required to pay the ~~department~~ Department ~~\$25.00~~ \$35.00 per plate within 30 days ~~of~~ after receiving the plates from the ~~department~~ Department.

(2) ~~A~~ The Vermont Strong ~~commemorative plate fund (the “fund”)~~ Commemorative Plate Fund is established. ~~The fund~~ Fund shall be under the control of the ~~commissioner of motor vehicles~~ Commissioner of Motor Vehicles, or designee, and shall consist of all receipts from the sales of Vermont Strong commemorative plates and bundled promotional items. ~~The commissioner~~ Commissioner shall account for all proceeds of sales of commemorative plates

and bundled promotional items and all receipts into and disbursements from the ~~fund~~ Fund; shall track the number of plates and bundled promotional items distributed and sold; and shall track and collect payments owed for plates distributed. The ~~commissioner~~ Commissioner shall transfer funds from the ~~fund~~ Fund in accordance with subsection (d) of this section ~~no~~ not less often than once per month. The ~~department~~ Department shall report its accounting of ~~fund~~ Fund receipts and disbursements, plate inventory, and uncollected payments for plates distributed to the ~~joint fiscal committee at its November 2012 meeting~~ House and Senate Committees on Transportation and the Joint Fiscal Committee not later than May 1, 2024.

(c) Use. An approved Vermont Strong commemorative plate may be displayed on a motor vehicle registered in Vermont as a pleasure car or on a motor truck registered in Vermont for less than 26,001 pounds, ~~(but excluding vehicles registered under the International Registration Plan),~~ by covering the front registration plate with the commemorative plate any time from the effective date of this act. The regular front registration plate shall not be removed. The regular rear registration plate shall be in place and clearly visible at all times.

(d) Price and allocation of revenue.

(1) The retail price of the plate shall be ~~\$25.00~~ \$35.00, except that on or after July 1, ~~2016~~ 2026, plates may be sold by the Commissioner for \$5.00.

(2) Funds received from the sale of plates for \$5.00 shall be allocated to the Department; funds received from the sale of the plates for ~~\$25.00~~ \$35.00 shall be allocated as follows:

~~(1)(A)~~ (A) \$5.00 to the Department;

~~(2)(B)~~ (B) ~~\$18.00 to the Vermont Disaster Relief Fund~~ \$15.00 to the Vermont Community Foundation; and

~~(3)(C) \$2.00 to the Vermont Foodbank~~ \$15.00 to the Agency of Commerce and Community Development's Business Emergency Gap Assistance Program.

(3) Funds received from the sale of bundled promotional items, less any costs to the Department for the purchase of the bundled promotional items, shall be allocated as follows:

(A) 50 percent to the Vermont Community Foundation; and

(B) 50 percent to the Agency of Commerce and Community Development's Business Emergency Gap Assistance Program.

(e) Funding. ~~The department of motor vehicles~~ Department of Motor Vehicles is authorized to obtain an advance from the Vermont Strong ~~commemorative plate fund~~ Commemorative Plate Fund in an amount to be determined by the ~~commissioner of motor vehicles~~ Commissioner of Motor Vehicles in anticipation of receipts from the administration of this section.

(f) Tax exemption. Sales of commemorative plates pursuant to this section shall be exempt from the sales and use tax established by 32 V.S.A. chapter 233.

Sec. **B**. 2012 Acts and Resolves No. 71, Sec. 1, as amended by 2012 Acts and Resolves No. 143, Sec. 13, 2014 Acts and Resolves No. 189, Sec. 26, 2017 Acts and Resolves No. 71, Sec. 24, and Sec. **A** of this act is further amended to read:

Sec. 1. VERMONT STRONG MOTOR VEHICLE PLATES

(a) [Repealed.]

(b) Authority; accounting and reporting; ~~bundles~~.

(1) The Department of Motor Vehicles is authorized to design, manufacture or procure, and distribute one or more commemorative plates that include the text "Vermont Strong" in accordance with this section. The Department is authorized to sell commemorative plates

~~individually or in conjunction with a bundled promotional item.~~ The Department may also authorize other persons to sell commemorative plates, provided that such persons are required to pay the Department \$35.00 per plate within 30 days after receiving the plates from the Department.

(2) The Vermont Strong Commemorative Plate Fund is established. The Fund shall be under the control of the Commissioner of Motor Vehicles, or designee, and shall consist of all receipts from the sales of Vermont Strong commemorative plates and bundled promotional items. The Commissioner shall account for all proceeds of sales of commemorative plates and bundled promotional items and all receipts into and disbursements from the Fund; shall track the number of plates and bundled promotional items distributed and sold; and shall track and collect payments owed for plates distributed. The Commissioner shall transfer funds from the Fund in accordance with subsection (d) of this section not less often than once per month. The Department shall report its accounting of Fund receipts and disbursements, plate inventory, and uncollected payments for plates distributed to the House and Senate Committees on Transportation and the Joint Fiscal Committee not later than May 1, 2024.

* * *

(d) Price and allocation of revenue.

(1) The retail price of the plate shall be \$35.00, except that on or after July 1, 2026, plates may be sold by the Commissioner for \$5.00.

(2) Funds received from the sale of plates for \$5.00 shall be allocated to the Department; funds received from the sale of the plates for \$35.00 shall be allocated as follows:

(A) \$5.00 to the Department; and

(B) ~~\$15.00~~ \$30.00 to the ~~Vermont Community Foundation~~; and

~~(C) \$15.00 to the Agency of Commerce and Community Development's Business Emergency Gap Assistance Program~~ General Fund for natural disaster relief.

(3) Funds received from the sale of bundled promotional items prior to the effective date of this section, less any costs to the Department for the purchase of the bundled promotional items, shall be allocated as follows:

(A) 50 percent to the Vermont Community Foundation; and

(B) 50 percent to the Agency of Commerce and Community Development's Business Emergency Gap Assistance Program.

* * *

(g) Bundled promotional items. The State shall not be involved with the sale of any bundled promotional items.

[SUBSECTIONS TO USE FOR THE EFFECTIVE DATE:]

Notwithstanding 1 V.S.A. § 214, Sec. **A** (Vermont Strong license plates through passage) shall take effect retroactively on August 23, 2023.

Sec. **B** (Vermont Strong license plates upon passage) shall take effect on passage.