TAXING VERMONTERS FOR EDUCATION: REFORM OF THE PROPERTY TAX

INTRODUCTION

Vermonters have traditionally emphasized the importance of education. In 1777, the Vermont Legislature constitutionally mandated the first state public school system.[1] For over two hundred years this tradition of fostering public education has endured. Recently, both state and local governments in Vermont have dramatically strengthened their financial commitment to education.[2] State funding — derived primarily from income, sales, and use taxes[3] — increased by fifty percent.[4] Local funding — generated from property taxes — rose by almost sixty percent.[5] As a result of these increases, Vermont's national rank in school revenue per-pupil advanced from twenty-third in 1983[6] to eighth in 1990.[7]

Against this backdrop of a strong financial commitment to education, however, is an "ongoing tax revolt . . . among Vermont's property owners."[8] Vermonters expressed their dissatisfaction with property taxes, which provide the local share of educational funding,[9] by defeating a record number of school budgets in 1989.[10] This "unprecedented defeat . . . has given many school boards a

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1. THE VERMONT REPUBLICAN PARTY, 1988 VERMONT ALMANAC AND GOVERNMENT GUIDE 15 (1988). The Vermont Constitution provides that "a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth." VT. CONST. ch. 11, §68. *See generally* Note, *Vermont's Public School Finance System: A Constitutional Analysis*, 12 VT. L. REV. 239, 264-66 (1987) (discussing the history of the education clause of the Vermont Constitution); Fussell, *The Emergence of Public Education as a Function of the State in Vermont*, 28 VT. HIST. 179, 179-84 (1960) (tracing legal sources pertaining to the history of education in Vermont).

2. GOVERNOR'S SPECIAL COMMISSION ON PROPERTY TAXATION, REPORT OF DETAILED FINDINGS, pt. 2, 24 (Feb. 2, 1989) [hereinafter SPECIAL COMMISSION] "Vermont has greatly increased educational spending in the 1980's." *Id.*

3. *Id.* at 14 (Table 4, *State and Local Tax Revenues: Selected Taxes: Fiscal 1988*).

4. *Id.* at 25 (Table 14, *Percentage Increase in School Revenue in Vermont: 1983 to 1988*).

5. *Id.*

6. SPECIAL COMMISSION, *supra* note 2, at 24.

7. NAT'L EDUC. ASS'N RANKING OF THE STATES 38 (1990).

8. Newport Daily Express, Sept. 18, 1989 (editorial) at 4, col. 1. The editorial concludes with a "hope that something will be done by this upcoming Legislature to alleviate this state's long existing, most pressing problem of badly needed property tax reform." *Id.*

9. B. HUFFMAN, PROPERTY, EDUCATION AND TAXES IN VERMONT 11 (1977).

10. Brighton, *Tax Alternatives: Valsangiacomo Plan Mixes Best of Two Methods, Proponents Say*, Addison Independent, Sept. 11, 1989, at 1, col. 4.

clear message: they cannot ask for more money from the property tax."[11]

Thus, the problem with the present educational finance system is neither lack of funding nor lack of support for education. Rather, the problem is the inability of Vermont's educational finance system to collect and distribute educational dollars equitably.[12] Change is needed: effective property tax reform must contemplate basic social issues[13] such as equity in taxation, equal educational opportunity, and local fiscal control of education.[14]

This note addresses the inequities of the Vermont educational finance system. Part I discusses the mechanics of educational funding. Part II describes the educational finance system in Vermont, discussing both the local contribution from property taxes and the state distribution formula. Part III focuses on the resultant inequities of Vermont's educational finance system: the disparity in property tax resources among towns and the burden of a regressive tax structure on property owners. Part IV of this note proposes a statewide nonresidential property tax as a step towards a more equitable educational finance system.

I. The Mechanics of Educational Funding

A. The Local Property Tax

While the overall responsibility for education rests on state governments,[15] a major source of revenue for education is the local property tax.[16] Each town or local school district has the power to

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11. *Id.*

12. Most school finance literature measures educational quality using the input method. The input method is based upon the assumption that the quality of education is directly related to the amount of money spent on education. *See* W. Garms, J. Guthrie & L. Pierce, School Finance: The Economics and Politics of Public Education 22-23 (1978). Another method of measuring educational quality focuses on the results or outputs of a school system. Outputs include SAT scores, literacy rates, and other test scores. *Id.* at 23-24. The output method is seldom used because it is difficult to measure. This note uses the input method in measuring educational quality.

13. B. Huffman, *supra* note 9, at iii.

14. *Id.* at 120-22. Huffman concluded thirteen years ago that Vermont needed to reform the local property tax system in order to provide for a more equitable distribution of tax burdens. *Id.* at 110.

15. Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 Va. L. Rev. 1639 (1989). Except for Mississippi, all state constitutions mandate that the state provide a system of free public education. *Id.* at 1661; *e.g.*, Vt. Const. ch. 11, § 68.

16. B. Huffman, *supra*, note 9, at ii.

set taxing and spending levels for the educational needs of its students.[17]

In determining its property tax rate, a town considers two factors: its ability to generate revenue and its expenditures.[18] A town's revenue generating capacity is based upon the total property value within the town.[19] The property value of a town represents the total amount of taxable real property, called "ratables."[20] A property-poor community has few ratables, while a property-wealthy community has a greater number of ratables.[21] Different types of ratables include residential homes, second homes, mobile homes, and commercial and industrial properties.[22] Once the property value is calculated, a town then considers its expenditures. Expenditures include fire and police protection, transportation and road repair, and education.[23] Since education comprises the bulk of a town's budget, a close relationship exists between the cost of funding education and a town's expenditures.[24]

Dependence on local property taxes limits a town's educational funding to the property wealth of that town.[25] Low resource

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17. Except for Alaska and Hawaii, the local level of government is responsible for determining both the expenditure and allocation of educational funds. Bell, *The Assignment of Fiscal Responsibility in a Federal State: An Empirical Assessment*, 41 NAT'L TAX J. 191, 194 (1988).

18. Note, *Equal Educational Opportunity Revisited: Abbott v. Burke and the "Thorough and Efficient" Law in New Jersey*, 40 RUTGERS L. REV. 193, 195-97 (1978).

19. *Id.* at 194. The property wealth of towns are compared through the use of state equalized valuation tables. These tables represent the total value of property in a town as assessed by the state. *Id.* at 194-97.

20. *See* Williams, *Planning Law in the 1980's: What Do We Know About It?*, 7 VT. L. REV. 205, 213 (1982).

21. *See id.*

22. *See* SPECIAL COMMISSION, *supra* note 2, at 11 (Table 2, *Vermont Property Taxes by Property Use: 1988).*

23. Note, *supra* note 18, at 196. Some school finance theorists argue that a high demand for municipal services in larger cities reduces a city's ability to support education. This concept, known as municipal overburden, is the subject of great debate in school finance reform. *See* H. Brazer & T. McCarty, *Municipal Overburden: A Fact in School Finance Litigation?*, 18 J. LAW & EDUC. 547 (1989).

24. *E.g.*, VT. DEP'T OF TAXES, DIV. OF PROP. VALUATION & RESOURCES ANN. REP. 56 (1990). In Vermont, educational expenses comprise approximately two-thirds of a town's budget. *See id.*

25. Note, *supra* note 18, at 194. A comparison of two hypothetical towns illustrates both the mechanics of the local property tax and the problems of a system where educational expenditures are based upon the property wealth of a community. *Id.* at 196-97. Town *A* and town *B* have the same number of students. Town *B* has twice as much property wealth as town *A*. If both towns tax at the same rate, town *B* can tax at half the rate of town *A* and offer an equal educational opportunity. *Id.*

towns therefore need state aid if they are to provide educational services comparable to wealthier towns. The next section discusses state aid distribution formulas which address the disparity of resources among towns.

B. State Aid Distribution Formulas

There are three types of state aid distribution formulas.[26] These state programs all have one common goal: they attempt to equalize the spending differences among towns that result from disparities in local property wealth.[27] State aid programs vary, however, according to the extent that a state centralizes revenue collecting.[28] Thus, distribution formulas attempt to balance the tension between centralized educational funding and local control of education.[29]

One distribution program for education, the foundation aid formula, mandates a minimum per pupil spending level.[30] The local governments maintain control over both the expenditure and allocation of educational funds, while the state subsidizes those towns that cannot reach the minimum spending level.[31] Towns are free to exceed this minimum spending level.[32] As a result, property wealthy communities can afford to spend more per student.[33] The foundation program, therefore, does not completely equalize educational spending among the towns.

Another type of state aid is district power equalizing.[34] Under this distribution program, the state equalizes the tax effort among

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26. Comment, *Wyoming's Equal Protection Clause Mandates Fiscal Neutrality in School Funding*, 16 LAND & WATER L. REV., 691, 711-15 (1981).

27. Note, *supra* note 18, at 198-89.

28. *See* C. BELL, *supra* note 17, at 193.

29. *See id.* at 192-93.

30. Note, *supra* note 18, at 197-98; *see also* Comment, *supra*, note 26, 713-14 (1981). The author provides a brief explanation of foundation aid, as well as offering suggestions to improve the foundation program. *Id.* One suggestion would provide a "ceiling on local taxes" to ensure that property wealthy towns would not spend more on education than towns receiving foundation aid. *Id.* at 714.

31. *See* Note, *supra* note 18, at 197-98.

32. *Id.*

33. *Id. See infra* text accompanying notes 109-14. Vermont Tax Report statistics show that property-rich towns that have more money do spend more money on education. SPECIAL COMMISSION, *supra* note 2, at 33 (Table 21, *Local Government Taxes and Expenditures Per Capita by Size of Tax Resource: Fiscal Year 1988).*

34. W. GARMS, J. GUTHRIE & L. PIERCE, SCHOOL FINANCE: THE ECONOMICS AND POLITICS OF PUBLIC EDUCATION 197-99 (1978).

towns: towns that tax at equal rates have the same amount of money to spend per student.[35] The theory underlying this formula is that "the ability to raise money should be equalized but the decision as to how much money to raise should be left to the local district."[36] The quality of education thus is not dependent upon the resource tax base of a district, but rather on the town's willingness to tax itself.[37]

The third state aid program is full state funding.[38] Under this program, the local property tax is eliminated as a source of revenue.[39] Instead, the state raises and distributes all educational funds.[40] To raise revenue for educational spending, a state can either impose a state-wide property tax, or replace the local property tax with an increased income tax.[41] The state distributes funds to towns based upon student need and not upon a town's ability to pay.[42] Thus, towns are not free to set tax rates or overall spending levels for education. For this reason, at the local level full state funding is the least popular of the distribution formulas.[43]

Each state aid distribution program attempts to create greater equity among towns by compensating for disparities in local property wealth. Absent state aid programs, an educational finance system which relies on local property taxes denies students an equal educational opportunity. The school finance system in Vermont relies upon the local property tax as a major source of funding.[44] Consequently, one of its principal problems has been the lack of

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35. *See id.* at 197-98. A hypothetical illustrates the mechanics of power district equalizing. Note, *supra* note 18 at 198. Town *A* and town *B* illustrate the mechanics of power district spending. Town *A* and town *B* tax at the same rate, but town *A* generates only half the revenue of town *B*. *Id.* The state would provide town *A* with enough funds in order to equal the revenue town *B* generates. *Id.* State aid thereby permits both town *A* and *B* to have the same amount of funds for an equal taxing effort.

36. W. GARMS, J. GUTHRIE & L. PIERCE, *supra* note 34, at 197.

37. *Id.*

38. *Id.* at 199-201.

39. *Id.* at 200.

40. W. GARMS, J. GUTHRIE & L. PIERCE, *supra* note 34, at 200.

41. Note, *supra* note 18, at 198.

42. W. GARMS, J. GUTHRIE & L. PIERCE, *supra* note 34, at 200.

43. *E.g.*, W. Mathis, *Myths and Choices*, 3 VT. AFF. 9, 10 (1987). Critics of full state funding argue that loss of local fiscal control will lead to fiscal irresponsibility and would eliminate local control over educational matters. *Id.* Supporters, however, maintain "there is no reason why the level of government which raises and appropriates the revenue must decide how it will be used . . . ." Comment, *supra* note 26, at 715. Thus, proponents argue that full state funding would allow for decisions concerning education. *Id.*

44. *See* SPECIAL COMMISSION, *supra* note 2, at 13.

equality in educational opportunity throughout the state. The next section of this note discusses the school finance system in Vermont. Both the local property tax and the state distribution formula are reviewed.

II. The Vermont Educational Finance System

A. Vermont Local Property Tax

Education in Vermont is administered at the local level and is funded primarily through local property taxes.[45] There are over three hundred separate school districts in the state, each setting its own taxing and spending levels.[46] The local share of public educational expense is funded primarily by revenue raised from the property tax.[47]

One of the most important steps of property tax administration is listing.[48] Listing is the process whereby a town determines its taxing capacity through assessment of its property values.[49] Town listers determine the fair market value of property in each town.[50] The town lister then records one percent of the total appraised property value in the town's grand list.[51] Property is reappraised at fair market value approximately every five years to update the grand list and ensure accuracy.[52]

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45. B. Huffman, *supra* note 9, at 11.

46. *See* Special Commission, *supra* note 2, at 33 (Table 21, *Local Government Taxes and Expenditure Per Capita by Size of Resource: Fiscal Year: 1988).* A school district is defined as "a town, city or incorporated school district, interstate school district, [or] joint contract school district. . . ." Vt. Stat. Ann. tit. 16, § 3441 (6) (1989). When referring to local educational units, this note uses the term "town" synonomously with the term "school district."

47. Special Commission, *supra* note 2, at 13. Historically, the property tax has been a source of revenue for both local government and the state. *Id.* at 3. In fact, in 1890, the state levied a statewide property tax to fund education. *Id.* at 4. *See generally* Fussell, *Emergence of Public Education as a Function of the State in Vermont,* 29 Vt. Hist. 13 (1961) (providing a historical discussion of education in Vermont examining both the state and local contribution to public education).

48. *See* Special Commission, *supra* note 2, at 4.

49. *Id.*

50. *Id.* The Vermont Supreme Court defines fair market value as "the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value. There is no one or controlling factor." Bookstaver v. Town of Westminster, 131 Vt. 133, 136-37, 300 A.2d 891, 893 (1973).

51. Special Commission, *supra* note 2, at 4.

52. Vt. Dep't of Taxes, *supra* note 24, at 2-3.

This concept of fair market value is important at both the local and state levels. At the local level, a property owner's tax bill is based upon a percentage of the assessed fair market value.[53] At the state level, the fair market value of property in a town is the basis for calculating each community's taxing capacity, and ultimately the amount of state aid a town receives.[54]

The state's assessment of property value is generally more accurate than a town's assessment.[55] Since the amount of state aid a town receives is based upon its total property value, a town has an incentive to undervalue its property and tax at a higher rate.[56] Aware of this undervaluing, the state reviews each town's grand list in order to determine a town's ability to raise taxes accurately.[57] This process is known as equalization.[58] Thus, equalized grand lists provide a "common standard" by which to compare the relative property wealth among Vermont towns.[59]

B. Dependence on the Local Property Tax

Vermont is heavily dependent upon the local property tax for several reasons. First, Vermont towns are responsible for a greater portion of school financing compared to the rest of the nation. In Vermont, towns provide almost 60% of all educational funding.[60] The federal contribution to education is relatively small, representing only about 5% of the total funding.[61] The remaining 35% of

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53. *See* Note, *Vermont's Public School Finance System: A Constitutional Analysis*, 12 VT. L. REV. 239, 242-43 (1987).

54. *Id.*

55. *See* SPECIAL COMMISSION, *supra* note 2, at 5-6.

56. SPECIAL COMMISSION, *supra* note 2, at 5-6. In an effort to reduce a town's incentive to undervalue property, the Vermont Legislature has imposed listing penalties. "The commission shall decrease 25 percent of the general aid otherwise due to a school district by a percentage equal to its excess listing deviation." VT. STAT. ANN. tit. 16, § 3475(a) (1989). The statute further provides that "penalties otherwise applicable under this section shall be waived by the commissioner if . . . the municipality has voted to reappraise its property . . . and has made reasonable progress . . . toward completing the reappraisal." *Id.* § 3475(c)(2) (1989).

57. SPECIAL COMMISSION, *supra* note 2, at 6.

58. *Id.* "Equalized grand list of a school district in any school year means one percent of the aggregate fair market value of all taxable property in that school district, as certified during that school year by the director of property valuation and review. . . ." VT. STAT. ANN. tit. 16, § 3441(20) (1989).

59. SPECIAL COMMISSION, *supra* note 2, at 6.

60. NAT'L EDUC. ASS'N, *supra* note 7, at 39 (Table F-6).

61. *Id.* at 41. (Table F-10).

the funding comes from the state.[62] Nationally, on average, about 50% of the funding comes from the state.[63] Since the local property tax is the only source of revenue available to Vermont towns, property taxes must generate more revenue in Vermont than property taxes in other states.[64]

Second, the significant number of nonresident property owners increases Vermont's dependence on the local property tax.[65] Nonresidents do not contribute to a state income tax. Aside from the property tax, the only other methods of taxing nonresidents are the room and meals tax and the sales tax. If nonresidents were not taxed on property, substantial revenues would be eliminated without generating new sources.[66] The next section discusses state aid to education which attempts to equalize educational opportunity among the towns.

C. Vermont State Aid: The Foundation Approach

One Vermont educational commentator has observed that "[t]he State has not exerted a great deal of control over the management of schools but has retained and exercised its responsibility to see that each district manages its schools efficiently."[67] One method to ensure local efficiency without usurping local control over school management is a state-imposed minimum spending level per pupil.[68] According to the Department of Education, the minimum spending level per pupil "is based on the idea that children, regardless of where they live in Vermont, should have equal access to a good basic education."[69]

Vermont, using the foundation formula, distributes aid to

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62. *Id.* at 40. (Table F-8).

63. *Id.*

64. Vermont ranks ninth among the states in local revenue raised for education. NAT'L EDUC. ASS'N, *supra* note 7, at 39 (Table F-6).

65. Vermont has one of the highest concentrations of nonresident property owners in the nation. SPECIAL COMMISSION, *supra* note 2, at 18.

66. One tax reform proposal addresses this problem. *See* Brighton, *Income Tax Finds Favor: Legislators Propose Tax Alternatives*, Addison County Independent, Sept. 7, 1989 at 1. The proposal suggests replacing the local property tax with a local income tax for Vermont residents only. *Id.* Nonresident property owners would continue to pay a local property tax. *Id.*

67. C. Fussell, *The Emergence of Public Education as a Function of the State in Vermont*, 28 VT. HISTORY 179, 194 (1960).

68. *See supra* text accompanying notes 30-33.

69. VT. DEP'T OF EDUC., STATE AID TO EDUC. FOR FISCAL YEAR 1989, THE FOUNDATION AID PROGRAM: HOW AID IS CALCULATED 1 (1989) [hereinafter STATE AID].

schools in an effort to ensure that no student's education falls below a certain level.[70] State foundation aid is the difference between the educational needs of a town, and the ability of a town to support those needs financially.[71] Both need and ability are determined by the state.[72] The educational need of a town, called the total foundation cost,[73] is computed by multiplying student need by the legislatively mandated foundation cost per pupil. The state considers two factors in determining student need — the number of students and the characteristics of those students.[74] These characteristics include grade level,[75] busing status[76] and poverty status.[77] By considering certain characteristics, the state recognizes that the cost to educate students varies.[78] These considerations can only increase student need, which ultimately increases the amount of aid a town receives.

After the state determines the foundation cost of education, it then measures a town's ability to pay by calculating its tax capac-

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70. *See* VT. STAT. ANN. tit. 16, § 3493(b) (1989). "It is the intention of the general assembly to maintain the foundation cost per pupil at the level which will allow a typical school district to provide each of its elementary pupils with an education meeting the requirements of the state board for approval of public schools." *Id.* For fiscal year 1991, the foundation cost was $3,575 per pupil. 1990 Vt. Laws 210 § 168(a)(1).

71. *See* VT. STAT. ANN. tit. 16, § 3441(18) (1989). *See also* STATE AID, *supra* note 69, at 3.

72. *Id.*

73. VT. STAT. ANN. tit. 16, § 3441(10) (1989). The Department of Education defines foundation cost as "the education need of a district." VT. DEPT. OF EDUC., HOW THE FOUNDATION STATE AID SYSTEM WORKS 1 (1989).

74. VT. STAT. ANN. tit. 16, § 3491 (1989). *See also* STATE AID, *supra* note 69, at 1.

75. Students in each district are divided into two groups - elementary students and secondary students. Secondary students require a greater amount of educational funding. VT. STAT. ANN. tit. 16, § 3491(c) (1989).

76. VT. STAT. ANN. tit. 16, § 3441(15) (1989). Transportation expenditures include busing students "to and from school, other educational activities, and extracurricular activities." *Id.* The transportation adjustment compares the number of students bussed with the size of a school district. Districts fit into one of three categories: sparsely settled, moderately settled, and densely settled. *Id.* § 3491(e). Sparsely settled school districts receive the most aid. *Id.* According to the Vermont State Department of Education, "districts that have to transport relatively few students over an area will incur greater transportation costs than districts with greater student density." VT. DEPT. OF EDUC., CHANGES IN THE FOUNDATION STATE AID PROGRAM FOR FY 1989 1 (May 3, 1988).

77. VT. STAT. ANN. tit. 16, § 3341(17) (1989). The poverty figure is a measure of the number of school-aged children (six through seventeen) in a school district "with a family unit receiving food stamps . . . ." *Id.* Section 3491(d) provides that aid "shall be increased for each school district to compensate for additional costs imposed by students from economically deprived backgrounds." *Id.* § 3491(d).

78. *See generally* Meyer & Young, *School Finance Reform in Wyoming*, 19 LAND & WATER L. REV. 135, 145 (1984) (criticizing a school finance system that does not consider differences among students).

ity. This is determined from the base tax rate and the equalized grand list[79] of a town. Each year the legislature sets a base tax rate,[80] which represents a reasonable level of school tax effort.[81] This figure is then adjusted for each district based upon an income factor.[82] This factor, known as the income index, compares a town's average income with the average income level of the state "to determine the relative income wealth of a district."[83] Unlike student characteristics, which can only increase need and ultimately the amount of state aid, the income index adjusts the base tax rate up or down in order to compute the foundation tax rate.[84] The foundation tax rate, thus, represents a reasonable tax effort for each individual town. A town's tax capacity is calculated by multiplying the foundation tax rate by the town's equalized grand list.[85]

Once a town's foundation cost and taxing capacity have been determined, the amount of foundation aid is easy to calculate. Basic foundation aid is the difference between a town's educational needs, the foundation cost, and its taxing capacity, the foundation levy.

III. Inequities Associated with the Local Property Tax

The local property tax causes problems such as unequal educational opportunity and regressive tax burdens. This section discusses these problems and the corresponding state programs designed to solve them.

A. Unequal Educational Opportunity

The disparity in the resource tax base among different towns ultimately results in unequal educational opportunity for Vermont children. While the state foundation aid program does lessen the educational spending disparities, it does not address the cause of the disparity of resources among towns. Thus the program serves

79. For the definition of "equalized grand list" see *supra* note 58.

80. Vt. Stat. Ann. tit. 16, § 3493(a)(2) (1989).

81. State Aid, *supra* note 69, at 2.

82. Vt. Stat. Ann. tit. 16, § 3495(b) (1989).

83. State Aid, *supra* note 69, at 2.

84. In approximately three-quarters of the towns, the income index lowers the base tax rate, resulting in a decrease in the state determination of resources. Vt. Dept. of Educ., *Statistics & Income in the Foundation Formula* 1 (Sept. 1989).

85. State Aid, *supra* note 69, at 2.

as a stopgap, but does not attack the underlying problem. The following section discusses this resource tax base disparity and the resultant effects on both tax rates and spending levels.[86]

1. Taxing Disparity

The value of property in a town translates into a town's ability to generate revenue: the greater the total property value, the more revenue the local property tax can generate.[87] Of the 251 towns in Vermont, 70 are high resource tax towns.[88] These towns receive no basic foundation aid for education.[89] There are also 75 low resource tax towns.[90] These towns receive more than 50% of their educational funding from basic foundation aid.[91]

There is a dramatic difference in the resource tax base between high and low resource towns in Vermont. Barton, for example, has the smallest tax base per capita of just over $15,000 in taxable property.[92] Stratton, at the other end of the spectrum, has a tax base per capita of almost $1,500,000.[93] If both towns wanted to generate the same amount of revenue per resident from property taxes, Barton would have to tax at a rate 97 times greater than Stratton.[94] The tax bases of the poorest and richest towns in Vermont, therefore, differ by a factor of 97 to 1.[95]

There is a strong correlation between a high tax resource base and the concentration of resort property in a community. According to the Vermont Department of Taxes, 71% of high resource towns have at least 20% vacation property.[96] Towns with a high

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86. This section compares the relative property wealth among towns by comparing the equalized tax base per capita. The term "high tax resource" describes towns which have a relatively high equalized tax base per capita. These towns are property wealthy towns. On the other hand, the term "low tax resource" describes towns which have a relatively small equalized tax base per capita. These towns are generally property poor. SPECIAL COMMISSION, *supra* note 2, at 29-30.

87. *See supra* note 25 for a helpful illustration.

88. SPECIAL COMMISSION, *supra* note 2, at 33 (Table 21, *Local Government Taxes and Expenditures Per Capita by Size of Tax Resource: Fiscal Year 1988*).

89. *Id.*

90. *Id.*

91. *Id.*

92. SPECIAL COMMISSION, *supra* note 2, at 30.

93. *Id.*

94. *Id.*

95. *Id.*

96. SPECIAL COMMISSION, *supra* note 2, at 31 (Table 20, *Frequency of Concentrations of Vacation and Industrial Property in High Resource and Low Resource Towns*).

concentration of vacation property typically have a large number of nonresident owners, who do not send their children to Vermont schools.[97] Furthermore, many Vermonters work in resort towns with high property values while residing in more affordable neighboring communities.[98] This also lightens the resort town's educational burden.

Resort towns, therefore, receive the benefit of an increased tax base, while neighboring communities have the burden of educating more students. This splitting of economic burdens and benefits is a primary reason for the disparity of wealth among Vermont towns. For example, in 1987, the average home in Stratton was twice as expensive as the average home in nearby Wardsboro.[99] This difference led one tax reform commentator to conclude that "it is likely someone moving in to work in a new restaurant or hotel in Stratton would choose to live in Wardsboro . . . . Stratton would get the property taxes from the hotel; Wardsboro would have to educate the children."[100]

In addition to vacation properties, industrial properties also contribute to the disparity in resources among towns.[101] While towns supported by industrial development experience an increase in the resource tax base, they also experience an increased demand for non-educational services.[102] The increased demand for non-educational services tends to neutralize the benefits of the increase in the tax base resulting from industrial development. Unlike resort towns, communities with industrial development receive the economic benefits as well as the economic burdens.

Residential property values in industrial towns are lower than

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97. *See generally* GOVERNOR'S COMMISSION ON VERMONT'S FUTURE: GUIDELINES FOR GROWTH, 1988 REPORT 22 (1988)[hereinafter GUIDELINES FOR GROWTH].

98. Brighton, *Bearing the Burden*, Vanguard Press, Sept. 7-14, 1989, at 12, col. 2.

99. *Id.*

100. *Id.*

101. *See* SPECIAL COMMISSION, *supra* note 2, at 31. Vermont Tax Department figures indicate that a town with twenty percent or more industrial property may have either a high or a low resource tax base. *Id.* at 32. The concentration of industrial property is not a predictor of whether a town has a high resource tax base or a low resource tax base. *Id.* Four percent of the 70 Vermont high resource towns have a concentration of industrial property. *Id.* at 31 (Table 20, *Frequency of Concentrations of Vacation and Industrial Property in High Resource and Low Resource Towns*). Three percent of all other towns in Vermont have a high concentration of industrial property. *Id.*

102. *See* SPECIAL COMMISSION, *supra* note 2, at 32. These services include police and fire protection, road repair and transportation.

property values in resort towns.[103] This increases the incentive for workers to reside in the industrial town rather than in a neighboring community.[104] Consequently, these towns have more residents and more students to educate than towns with a high concentration of vacation property.

Statistics indicate that the disparity in property wealth among towns will continue increasing over time.[105] In 1907, when Vermont was primarily a farming state, the disparity in property wealth between towns was reflected in a ratio of 5 to 1.[106] By 1988, the ratio had expanded to 97 to 1.[107] Towns with high resource tax bases have twice the rate of growth in their tax base as compared to low resource towns.[108] The disparity of resources is important because it is directly related to both taxing and spending difference among the towns.

2. *Spending Disparity*

In fiscal year 1988, high resource towns spent about 250% as much per capita as low resource towns.[109] Vermonters residing in high resource towns receive different kinds and qualities of services than Vermonters residing in low resource towns.[110] Such disparities in spending have a significant effect on the quality of education available to Vermont students.

Statistics show that per pupil spending for schools is greater in towns with high tax resource bases.[111] Stratton, for example, spends $3300 per pupil on education, while Barton spends only $2500 per pupil.[112] This $800 differential shows that students in

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103. *See, e.g. supra* note 98.

104. *Id.*

105. SPECIAL COMMISSION, *supra* note 2, at 30.

106. *Id.* (Figure 2, *1907 Grand List Per Capita).*

107. *Id.* (Figure 3, *1988 Grand List Per Capita).*

108. SPECIAL COMMISSION, *supra* note 2, at 31 (Table 19, *Percentage Growth in Equalized Tax Base: 1979-1987).* A study conducted by the Vermont Tax Commission noted several factors accounting for the differences in the growth rate. These factors included "access to jobs, increased values as naturally occurring recreational resources become more desirable, good schools, and low taxes." *Id.* at 30.

109. *Id.* at 33. Spending includes both educational and non-educational services. Low resource towns tend to tax at greater rates and spend less. *See id.* (Table 21, *Local Government Taxes and Expenditures Per Capita by Size of Tax Resource: Fiscal Year 1988).*

110. *See id. at 33* (Table 21, *Local Government Taxes and Expenditures Per Capita by Size of Tax Resource: Fiscal Year 1988).*

111. *See id.*

112. SPECIAL COMMISSION, *supra* note 2, at 33.

high resource towns have 25-30% more funds available to them.[113] The amount of money spent is one measure of the quality of education:[114] these figures demonstrate that the disparity of resources among towns results in unequal educational opportunity for Vermont children. Consequently, property poor towns need state aid to provide educational services comparable to those of property wealthy communities.

3. The Foundation Aid Program

Vermont has attempted to equalize the disparities in per pupil educational spending through the foundation aid program.[115] This approach, however, is inadequate: the foundation aid program treats the symptoms instead of the problems which result from the local property tax system. Disparity in educational spending among Vermont towns continues to exist despite the foundation aid program.[116]

Educational spending remains a function of local wealth.[117] Under the present foundation program, towns are free to set taxing and spending levels.[118] Local control of taxing and spending permits wealthy towns to spend more money on education.[119] State aid only lessens the gap in educational spending to the extent that it sets a minimum spending level that towns must reach.[120] State aid does not solve the underlying problem of the local property tax: the differences in wealth among towns.[121]

Another major shortcoming of the state foundation aid program is that the program does not consider the non-school portion of a town's budget.[122] In the larger towns, a high demand for mu-

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113. *See id.*

114. *Supra* note 12.

115. *See supra* note 70 and accompanying text.

116. SPECIAL COMMISSION, *supra* note 2, at 33 (Table 21: *Local Government Taxes and Expenditures Per Capita By Size of Tax Resource: Fiscal Year 1988).*

117. Comment, *supra* note 26, at 713.

118. SPECIAL COMMISSION, *supra* note 2, at 4.

119. *Id.* at 33 (Table 21: *Local Government Taxes and Expenditures Per Capita By Size of Tax Resource: Fiscal Year 1988).*

120. *See* Note, *supra* note 18, at 197-98.

121. Comment, *supra* note 26, at 713.

122. Brighton, *supra* note 98, at 12. A high demand for services results in a high tax rate if a town is property-poor. Conversely, a property-wealthy town can support a high demand for services and maintain a lower tax rate. Williams, *supra* note 20, at 213. Towns seeking to increase their resource tax base, in an effort to reduce the tax rate, must consider the revenue-producing capabilities of different ratables. *Id.* "Good" ratables "bring in signif-

nicipal services reduces a town's ability to support education.[123] These towns need more state aid to offset the financial burden of services such as fire and police protection, transportation and highway maintenance.[124] This problem is known as "municipal overburden."[125] In larger towns, a higher percentage of a taxpayer's income must go towards property taxes.[126] Thus, municipal overburden causes disparity in both educational spending and tax burdens.

The Vermont school finance system, relying as it does on local property taxes, is antiquated. The local property tax was an equitable system of taxation when Vermont was a homogeneous farming state.[127] Each town reaped the benefits of taxing farm land and shouldered the burdens of providing education and services for its residents.[128] Without resort towns or industrial towns, it made sense for each town to set its own taxing and spending levels.

This is not the situation in Vermont today. Vermont towns are heterogeneous and will become less like each other over time.[129] The economic burdens and benefits do not always fall within the same town, as illustrated by the case of Stratton and Wardsboro. As discussed above, the disparities that exist today cannot be adequately equalized by the foundation aid program.[130]

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icant real property taxes" and demand few public services. On the other hand, "bad ratables" do not significantly increase revenue from local property taxes and require many public services. *Id.* Thus, the local property tax creates incentives to attract industrial and commercial development which adds to the real property tax base without significantly increasing the demand for public services. The tax system also creates disincentives to provide residential and low income housing. These ratables do not generate much revenue and significantly burden the town with increased educational costs. *Id.*

123. Note, *supra* note 18, at 196-97. *But see* 40 NAT'L TAX J. 555, 564 (1989) (concluding that "municipal overburden" does not effect educational opportunity).

124. Note, *supra* note 18, at 196-97.

125. *Id.*

126. Brighton, *supra* note 98, at 11, col. 2. For example, taxpayers in heavily developed towns pay the following percentages of their median income to the property tax: Brattleboro (11%), Burlington (10%), Winooski (10%), Bennington (10%), Montpelier (10%), Middlebury (10%). *Id.* In contrast, taxpayers from less developed towns pay the following percentage of their median income to the property tax: Stratton (1%), Warren (3%), Belvidere (3%), Maidstone (1%). *Id.*

127. SPECIAL COMMISSION, *supra* note 2, at 30.

128. Fussell, *Emergence of Public Education as a Function of the State in Vermont*, 29 VT. HIST. 13, 20 (1961).

129. *See supra* text accompanying notes 105-08. One report noted that the economic diversity will lead "toward two Vermonts: one for the rich and one for the poor." GUIDELINES FOR GROWTH, *supra* note 97, at 15.

130. *See supra* text accompanying notes 117-21.

Disparity also exists between taxpayers of different communities and incomes. The next section addresses another flaw in the local property tax system: the property tax is based on the value of a taxpayer's property and not upon his ability to pay.

B. Regressive Tax Burdens

1. Proportional, Regressive and Progressive Taxes

Regardless of the basis for a tax—property, income, or sales—ultimately taxes are paid out of the taxpayer's income.[131] There are three types of taxing schemes which relate tax burden to income. First, a proportional tax requires all taxpayers to pay the same percentage of their income.[132] Second, a regressive tax decreases in rate as the taxpayer's income increases.[133] Third, a progressive tax increases in rate as the taxpayer's income increases.[134]

Neither regressive nor proportional taxes are based on a taxpayer's ability to pay.[135] Both systems assume that every taxpayer can survive on the income left after taxes.[136] However, an individual earning only $10,000 needs most of that income to cover essential costs of living, such as housing and food.[137] On the other hand, a progressive tax considers income necessary for living, because the tax increases as a taxpayer's ability to pay increases.[138] Individuals in lower income brackets pay a lower percentage of their income in taxes.[139] This makes a progressive tax the most equitable.[140]

2. Regressivity of the Vermont Property Tax

The local property tax system in Vermont is inequitable because it is based upon the value of a taxpayer's property and not upon a taxpayer's ability to pay.[141] This section supports the proposition that low income households must give up a larger portion of their income to pay property taxes than high income house-

131. W. Garms, J. Guthrie & L. Pierce, *supra* note 34, at 121.
132. *Id.*
133. *Id.*
134. *Id.*
135. W. Garms, J. Guthrie & L. Pierce, *supra* note 34, at 122.
136. *Id.*
137. *Id.*
138. *Id.*
139. W. Garms, J. Guthrie & L. Pierce, *supra* note 34, at 122.
140. *Id.*
141. H. Aaron, Who Pays the Property Tax? 1-2 (1975).

holds. Thus, the Vermont local property tax is regressive. One tax reformist asserts that not only is the tax regressive, but that it is not an appropriate means of taxing individuals.[142] "Because the value of a taxpayer's property bears no logical relationship to either the ability to pay or the benefit derived from education, it is not a valid basis for taxing."[143]

Vermont Tax Department statistics illustrate the regressive nature of the property tax for residential property. In 1985, married residents filing jointly and earning between $25,000 - $39,999 paid 3.6% of their income in property taxes.[144] Married residents filing jointly and earning between $50,000 - $75,000 paid 3% of their income in property taxes.[145] Married residents filing jointly and earning $150,000 or more paid only 1.5% of their income in property taxes.[146] These figures show that the local property tax is regressive: the lower the household income, the greater the percent of that income which goes to pay property taxes.

The average effective tax rates for different uses of property further demonstrate the regressive character of the property tax. In fiscal year 1989, the average effective tax rate for mobile homes in Vermont was $1.66.[147] This figure is comparable to the tax rate of $1.62 on residential property.[148] These figures, however, are significantly greater than the $1.07 tax rate for second homes in the state.[149] Even commercial and industrial properties are taxed at the lower rates of $1.56 and $1.73 respectively.[150] While a primary residence is considered a basic necessity, a second home is not.[151] Higher tax rates for primary residences and lower tax rates for second homes indicate the regressive nature of the tax.[152]

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142. Addison County Independent, Sept. 7, 1989, at 1, col. 2.

143. *Id.*

144. *Id.* For the lowest income earners in Vermont, no reliable empirical data exist. *Id.* at 26. Thus, a comparison between the percentage of income used to pay property taxes of those earning under $25,000 and higher earners is impossible. *Id.*

145. *Id.*

146. SPECIAL COMMISSION, *supra* note 2, at 26 (Table 15, *Percentage of Income Used to Pay Property Taxes in Vermont — Tax Year 1985*).

147. VERMONT DEP'T OF TAXES, DIV. OF PROP. VALUATION & RESOURCES, *supra* note 24, at 30.

148. *Id.*

149. *Id.*

150. *Id.*

151. Brighton, *supra* note 98, at 10, col. 2.

152. The underlying reason for the difference in the tax rates is the concentration of different types of property in towns. For example, towns with a high concentration of vacation property tend to have lower tax rates. Much of the vacation property is owned by

To further exacerbate the regressive character of the tax, residential property owners pay a disproportionate share of the property tax. Forty percent of all property in Vermont that is subject to the local property tax is residential property.[153] However, 50% of all revenue generated from such taxes comes from residential properties.[154] In comparison, vacation properties represent 14% of all property value in the state, but contribute only 10% of all property taxes paid.[155] Thus, vacation property is not taxed as heavily as residential property. The following section discusses Vermont's attempts to mitigate the regressivity of the local property tax.

3. Property Tax Rebate Program

The Governor's Special Commission on Property Taxation admitted that the property tax "clearly creates hardships on occasion, particularly among people who have retired into fixed incomes."[156] To address these hardships, the state instituted the Property Tax Rebate Program.[157] This program assists property owners whose residential property tax bill represents more than 5% of their income,[158] in an attempt to ensure that taxpayers do not spend a disproportionate amount of their income on property tax bills.[159]

Although praised as one of the most generous programs in the nation,[160] low income households continue to pay a higher percentage of their income in property taxes than high income households. For example, low income households could pay between 3.5% and 5% of their income in property taxes.[161] Households earning between $50,000-$75,000 pay 3% of their income in property taxes.[162]

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nonresidents. SPECIAL COMMISSION, *supra* note 2, at 29.

153. SPECIAL COMMISSION, *supra* note 2, at 11 (Table 2, *Vermont Property Taxes by Property Use: 1988).*

154. *Id.*

155. *Id.*

156. SPECIAL COMMISSION, *supra* note 2, at 37.

157. VT. STAT. ANN. tit. 32, §§ 5961-5978 (1990).

158. *Id.* §5967(a). Households earning less than $12,000 are entitled to a larger rebate. *Id.*

159. *See id.* § 5967.

160. SPECIAL COMMISSION, *supra* note 2, at 38. The Homeowners Rebate Program is now one of the largest programs per capita in the nation. *Id.* In 1990, the program provided an estimated fifteen million dollars in aid to lower income Vermonters. *Id.*

161. VT. STAT. ANN. tit. 32, § 5967(a) (1990).

162. SPECIAL COMMISSION, *supra* note 2, at 26 (Table 15, *Percentage of Income Used to Pay Property Taxes in Vermont*). For those households earning less than four thousand

Households earning over $150,000 pay only 1.5% of their income in property taxes.[163] As shown, the program does not restructure the present tax system to provide for more equitable tax burdens. The program merely provides aid to those who cannot shoulder their property tax burden.

Increasing the amount of funding for the Rebate Program, therefore, will not correct the tax burden inequities. Only when the burden on high-income earners is increased will regressivity be eliminated. The final section of this Note proposes a method of increasing the high-income earner's property tax burden, while reducing or maintaining the low-income earner's property tax burden to achieve progressivity.

IV. Proposal

Attempts to reform Vermont's educational finance system must address the disparities of wealth between Vermont towns. This disparity ultimately results in unequal educational opportunities for Vermont children, because different towns spend different amounts of money on each student. Reform, furthermore, must redistribute the inequitable tax burdens which accompany the property tax. Finally, to be successful, reform of Vermont's educational finance system must preserve local fiscal control of education. Creating a statewide nonresidential property tax would provide an equitable means of reforming Vermont's educational finance system.

A. Statewide Nonresidential Property Tax Rate

Under this proposal, all commercial, industrial, and second homes in the state would be subject to a statewide imposed property tax rate.[164] This rate would be equal to the average effective tax rate of residential property in the state. Thus, the statewide tax rate would be no greater on nonresidential than on residential property.

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dollars, the maximum property tax payment as a percent of income is 3.5%. *Id.* at 27 (Table 16, *Current Maximum Payments Per Property Taxes Under the Property Tax Relief Program*). Why should a person earning less than four thousand dollars potentially pay a greater percentage of their income in taxes than a person earning $75,000? Such a system of taxation is more than "mildly" regressive. It is overly regressive.

163. Special Commission, *supra* note 2, at 26 (Table 15, *Percentage of Income Used to Pay Property Taxes in Vermont*).

164. This proposal was suggested by Honorable John A. Dooley, Associate Justice of the Supreme Court of Vermont, in a conversation with the author during the fall of 1990.

The statewide nonresidential property tax rate would be administered at the local level. The town taxes nonresidential property at the state imposed rate. Towns would still be free to set their own tax rates for residential property. Consequently, this nonresidential property tax would not effect the amount of revenue towns receive from the local property tax. Town officials collect the revenue generated from both residential and nonresidential taxes. After collecting the money, the state receives the revenue generated from the difference between the state nonresidential property tax rate and the town's property tax rate. The closer the local property tax rate is to the statewide nonresidential tax rate, the less revenue that the state receives. Through the nonresidential property tax, the state targets towns with low tax rates — towns which are typically property wealthy. This proposal would restructure the present educational finance system while maintaining the present distribution formulas.

1. Advantages

The major advantage of this proposal is that it addresses the unequal property wealth among towns. The proposed statewide nonresidential property tax equalizes disparities in wealth to the extent that all nonresidential property is subject to a statewide tax. Further, the proposal reduces the tax burden inequities among the different types of ratables by taxing nonresidential property at a rate equal to the average residential tax rate. In addition, the proposal taxes previously "untapped" resources — nonresidential property in high resource towns that have low tax rates.

The administrative costs of implementing the statewide nonresidential property tax are very low. The additional step of computing the amount of revenue that the state receives involves little time and expense. Finally, the proposed nonresidential property tax does not increase state involvement in local government. Towns retain their control over spending and taxing decisions.

Revenues generated from the nonresidential property tax will enable the state to increase its financial support for education. These revenues will provide full funding for the foundation aid program. This system is more progressive because it increases the tax burden on nonresidential property and redistributes the revenue generated from the tax to lower income Vermonters. This, in turn, provides Vermont towns with two benefits. First, increased

state funding for education will reduce the financial burden on local government, thus lowering local residential property tax rates in those towns that receive greater foundation aid. Second, the state can expand the Property Tax Rebate Program with the revenue generated from the nonresidential statewide tax. As the previous section indicated, the Rebate Program still leaves low income Vermont property owners and renters using a larger portion of their income to pay their property tax bill than high income Vermonters. With increased funding of the program, this inequity can be reduced. Since both the foundation aid program and the Homeowner's Rebate Program are already in existence, redistributing the revenue generated from the state tax will create no additional administrative costs.

2. *Disadvantages*

There are two disadvantages to this proposal. First, residential property in low resource towns will continue to have higher tax rates than residential property in high resource towns. Thus, disparities in residential property wealth among Vermont towns are not reduced because all residential property will be subject to local property tax rates. Increased foundation aid funding will, however, reduce local support of education and lead to reduced tax rates in the low resource towns.

A second disadvantage of the proposal is that taxes will continue to be based upon the value of a taxpayer's property and not upon a taxpayer's ability to pay. Increased funding of the Homeowner's Rebate Program will reduce property tax burdens for low income residents.

Conclusion

The present educational finance system does not meet the needs of Vermont children because it denies equal educational opportunities. Moreover, legislative inaction will not maintain the status quo. Inaction will only result in further inequities both in tax burden and educational quality as towns continue to grow less like one another. If Vermonters want to continue their longstanding commitment to education, reform of the present school finance system is needed.

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