

VCE's Mission

VCE advocates for the wellbeing of all Vermonters, striving for the protection of the natural world: land, air, water, wildlife, people, and especially the web of life.

We unite to pursue the common goals of encouraging economic development with minimal environmental impacts and preserving Vermont's natural beauty.

We inspire and engage citizens in longterm planning for sustainable economic, environmental, telecom and energy policies that will benefit Vermont communities and Mother Earth.

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*Vermonters for a Clean
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Changes in Land Use Regulations *What are Act 181, S.226, Act 47?*



Elevation demonstration for Manchester housing development proposed in Special Flood Hazard Area that flooded four times between 2019 and 2023, exempt from Act 250. In 2021, the [PUC denied](#) a 500 kW solar array on the site, finding undue adverse aesthetics impact.

In recent years, the Vermont legislature has passed sweeping reforms to Vermont's land use regulations in [Act 181](#), [S.226](#) and [Act 47](#) - the HOME Act. The extent and level of complexity in each of these bills is significant, but when you combine their interaction, this is a perfect recipe for manifold unintended consequences that are subsidiary to the main objective of all three measures: the enrichment of developers, landlords and realtors. It is a road map drawn by neoliberal legislators who were strongly influenced by advocates of deregulation in general, zealots for unconstrained market forces, the intellectual dishonesty of planners, and solons with serious conflicts of interest. The cumulative legislation is an unintelligible mish mash.

The effects of all this complicated legislation are now occurring in municipal Zoning and Development Review Boards, Planning Commissions, Select Boards, the new Land Use Review Board, and every town in Vermont. Most Vermonters have no awareness of what is happening, or the opportunity and need to participate in the decisions being made by a handful of people – decisions that will have long-term impacts on how Vermont is developed.

A flurry of activities are taking place:

[Act 181](#) - Regional Planning Commissions have created [Future Land Use Maps](#) for every town in Vermont.

[S.226](#) - [Interim Exemptions](#) to Act 250 enable Priority Housing with 20% "affordable housing" to be built in Special Flood Hazard Areas.

[Act 47](#) - Zoning Boards are rewriting [Land Use Development Regs.](#) (cont'd p. 3)

Message from the Director *by Annette Smith*

Beautiful Vermont

The pendulum swings to extremes from time to time. Right now we are living in a “build build build” world where little is heard about protecting Vermont’s environment or scenic natural beauty.

The latest crisis is housing, and there is no question that Vermont lacks affordable housing. In my work at VCE over the last 26 years, more than once I have had to say, “I think it’s time for you to move.” The reasons are usually because of toxic situations – pesticide drift, outdoor wood boiler smoke, industrial wind turbine noise. Now, though, there is no place to go.

People have been moving to Vermont to escape hectic over-developed areas and are finding their peaceful paradises in rural Vermont threatened by numerous new plans for radio or cell towers, and large solar arrays to meet renewable portfolio standards enacted by legislatures in Vermont and throughout New England.

The pace of all this new development is overwhelming, at a time when people do not have excess capacity. Global conflicts, federal government craziness, food, housing, taxation, jobs, health, education, and more are stressing Vermonters. Then comes a [cell tower next door](#) or a [solar array in a gorgeous field](#) or a [housing development in a flood hazard area](#), and there is precious little assistance available to help understand what to do. VCE is unique in our ability to assist Vermonters.

But effective response is becoming more challenging. Yes, we can help people understand the regulatory processes and [how to participate](#), and get party status. We [teach](#) people what “discovery” is, how to submit “prefiled testimony,” explain what a Brief is, and hold people’s hands as they give up many hours of their lives to feel like they have had a say in what goes on in their communities. At the end of the process, though, it is most likely they will lose. And I will say once



Balloon float for [ITW radio tower](#) looking north to the [Tinnmouth Channel](#), Vermont’s largest Class 1 Wetland, which was reclassified from Class 2 in 2001 in reaction to [Omya’s mine](#) proposal. In the distance to the left is [Susies Peak](#), proposed for a dozen [industrial wind turbines](#) in 2009. The 24” high pressure [gas pipeline](#) that resulted in the [formation of VCE](#) in 1999 was to be routed at the base of Susies Peak, running north to Rutland and south to Bennington

again that “I am leading the lambs to slaughter.”

The public participation process is not working, but that does not mean there are not victories. People in Manchester came to their senses recently and announced an [agreement to conserve the field](#) that floods all the time and build housing elsewhere, out of harm’s way. The litigious solar developer has been served with a [Petition of Misconduct](#) by Vermont’s [Professional Responsibility Board](#) due to his activities in [Bennington](#) and at the [PUC](#). The quarry operating in Danby next to the village is still blasting but has, for

now, ceased its attempt to get the [town plan changed](#) to enable the quarry’s expansion.

Some victories are fleeting. An ITW tower proposed for Enosburgh was denied by the PUC, a decision upheld by [Federal Court](#). The day before Thanksgiving, [ITW filed](#) for a tower in the same location, 20 feet shorter.

The [new Act 250 Tier system](#) is causing a lot of angst, especially [Tier 3](#). Intended to increase protection of sensitive ecological resources, the reaction has been intense and often well-founded. It could be viewed as a red flag letting landowners know that it is best to find locations for development that do not contain those resources; but it is viewed as a “taking” that puts unfair regulatory requirements on rural landowners who do not have the financial resources

to go through Act 250. Realtors, developers, and recreational trail bikers have the loudest voices, pushing back against regulation. The reality, though, is that asserting Act 250 jurisdiction over an area with significant natural communities, [wildlife habit connecting](#) road crossings, or headwaters is not a formula to say “no” to development. Permits will be issued, especially to those who can afford to pay.

At some point, the pendulum will swing back. Here’s hoping not too much damage is done to Vermont before that happens. *Annette*



“Yeah, I get that you miss the rich northern hardwood forest, the prime agricultural grasslands, the melodious birdsong, the chipmunk chatter, the bloom of rare and irreplaceable plant species, here in Shaftsbury, but think of Connecticut’s pressing need for clean energy.”

Unleashing the Bulldozer and Limiting Public Participation *(cont'd from p. 1)*

When Act 250 was created, the state had a “land development crisis” due to rapid, unregulated development. In 1969, Vermont also recognized there was a shortage of low-cost housing. [Mobile home parks](#) were suddenly appearing. A special commission was established to address aesthetics and “[the basic ugliness of mobile homes.](#)”

[Statewide zoning](#) was under serious consideration in 1969, but [conservationists felt](#) that “local officials are often the first ones on the payroll when a developer comes to town, and that leaving development regulations to this group will not provide any solution to the problem of random development in the state.” However in 1970, Gov. Deane Davis “[sweetened the \[Act 250\] bill](#)” for conservatives by including a provision for local regulation, promising the creation of a permanent technical advisory team to assist the towns in promulgating development regulations.”

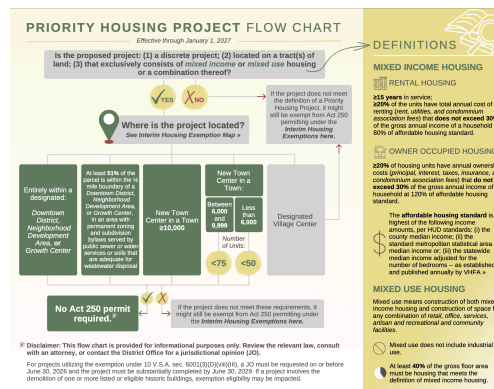
56 years later, after decades of reducing and weakening Act 250 jurisdiction, Vermont’s legislature has shifted the regulatory process to municipal boards that are often populated by developers, their experts and attorneys.

Act 250, as created, was a brilliant method of reducing decision-making by what some refer to as the “good ol’ boy” network, or as I have called municipal reviews, the “friends and family” process. Land development reviews at the regional, rather than local, level provides necessary and effective insulation from the conflicts of interest that naturally occur in such a small state.

The change to municipal approval brings new challenges: Online access to application materials is limited or non-existent in some Vermont towns. Towns do not have to participate in appeals. Capacity for enforcement of permits is limited. Compliance with town plans is not necessarily a requirement written into zoning regulations. Towns are struggling to find volunteers to fill positions.

Act 47 requires zoning regulations to allow more housing units on one parcel, and allow for infill, raising concerns about the loss of green space in densely developed urban areas.

Act 181 places extensive requirements on municipalities seeking exemption



Flow Chart: how to determine S.226's Act 250 interim exemption for Priority Housing

from Act 250 for housing developments. The law creates a Tiered system: [1A](#), [1B](#), [2](#), & [3](#). Towns that meet specific requirements can seek exemption from Act 250 by applying to the new Land Use Review Board for Tier 1A. Towns that meet other specific requirements can seek exemption from Act 250 by applying to their Regional Planning Commission. [Tier 3](#) is a new jurisdictional trigger that applies to specific ecological resources of importance that are not regulated by the Agency of Natural Resources’ permitting. Tier 2 is everything else.

The five-member [Land Use Review Board](#) has been working diligently to develop the requirements for Tiers 1A, 1B, 2 & 3. The goal of the authors of the law is to concentrate development in already-developed areas, while protecting more sensitive environments.

The proposed Manchester housing project on a field that floods frequently is a good case study for the rest of Vermont to understand the limitations of this new system. We all know from recent experience that many of Vermont’s most populated areas are built next to rivers that flood. Approval for Act 250 exemptions, either through interim exemption or one of the new Tiers, may require that towns have flood hazard regulations. In reality, those regulations lack clear and specific language to enable town boards to just say “no”. ANR does not have a permitting program for developments in special flood hazard areas. An ANR staff person offered comments to the Manchester DRB, but noted that he has no official role to play in municipal permitting and can only participate in a meaningful way through Act 250.

On the town planning level, planners have struggled for a decade to develop [Enhanced Energy Plans](#), and now are faced with new categories for land use – Industrial areas are now called “Enterprise” by Regional Planners – that add to the challenges for volunteer planning commissioners.

The ability to [appeal](#) municipal permits has already been limited by Act 47. We can expect more efforts to restrain the ability of Vermonters to challenge inappropriate developments in our communities.

Municipal and Regional Future Land Use Maps

Act 181 (2024) established new categories for the regional planning commissions to use in their Future Land Use Maps. These regional maps must use specific land use categories defined in statute. While municipal Future Land Use Maps and regional Future Land Use Maps should align, they do not need to perfectly match. Bennington’s Future Land Use Map includes some locally relevant land use categories and slightly different labels than those used in the Bennington County Regional Commission’s Future Land Use Map, but they identify the same areas for growth, transition, and preservation.

Act 181’s Regional Plan Future Land Use Maps do not have to match Municipal Plan Future Land Use Maps

Shooting ourselves in the Foot – The Fiscal and Environmental Travesty of Renewable Energy Policy in Vermont *by John Brabant*

Vermont seems to be going the way of the rest of the United States. While our politicians like to tout approaching important subject matter “The Vermont Way”, its leaders are either naïve to what is going on or are fully aware while feigning ignorance. Whether it be our Legislature’s recent changes to laws governing development (housing), funding public schools, renewable energy (RE) development, regulation of environmental toxins (PFAS), Vermont has increasingly limited communities and the general public’s access to and effect upon regulatory process and decisions, while biasing the laws toward predetermined outcomes that more favor the interests of investors, developers and speculators. These investors and developers through their lobbying and funding clout have captured the Vermont Legislature which has limited public access to its committee processes. They have also structured Vermont property and income tax policy to favor the plundering of Vermont’s natural resources and tax base by out of state and multinational corporations and investors.

How many times have you heard what a noticeable change to the landscape occurs as soon as one crosses from Massachusetts or New York into Vermont. This is no accident but the direct result of forward thinking environmental and land use policies enacted in the late 1960s and early 1970s. The billboard ban enacted in 1968, Act 250 enacted in 1970, and the Use Value Appraisal Program a/k/a Current Use Program enacted in 1978 are powerful policies that have prioritized environmental protection, protection of farms, forests and agricultural resources, development planning and aesthetics above poorly planned fast buck development

schemes seen elsewhere. But Vermont as we have known it is being rapidly destroyed, much of it the result of recent law changes designed to dismantle the very protections that have kept Vermont a place known around the world as a beautiful unsullied place rare in today’s world.

Incentives in Conflict

Vermont’s landscape of forests, fields and farms is what makes Vermont special. Vermont has been able to maintain much of this landscape while promoting concentrated well-planned development. The goal of the Current Use Program is the protection of farm and forest lands from development. This goal has been achieved over the last 5 decades not through regulation, but by incentivizing land conservation through reduced property taxation on enrolled land. This longstanding policy now finds itself in direct conflict with new policies incentivizing the commercial development of these same lands for RE projects. The decades of public investment in land conservation are now being squandered due to recent law changes, providing massive incentives to develop this heretofore protected land. While a reduction in property tax burden allows well-intentioned Vermonters to keep their land open, profit incentives to develop these same lands have been placed into law benefiting [large scale renewable energy projects](#) to the tune of millions of dollars. Protections against development sprawl under Vermont’s [Act 250 law are waived for RE projects](#), the argument being that a greater public good is provided by these developments than the good provided by maintaining the natural environment and landscape.

This assumption in Vermont utility law and Public Utility Commission (PUC) caselaw is flawed and in conflict with reality. The new save the planet

“environmental movement” in Vermont, written by RE developers’ and investors’ lobbyists, is one of advocating what comes down to, ‘we need to pave it to save it’. From a financial standpoint, Vermont policy makers have created a situation where we are funding two programs at odds with one another; the Current Use Program to protect our farm and forest lands from development sprawl and multiple RE subsidy programs which in effect operate to undermine Current Use, prioritizing RE development over land conservation. The result has been disastrous, with out of state RE investors and developers receiving approval for the development of hundreds of acres of farm and forest land. Vermont’s rural agricultural communities are the ones bearing the brunt of this development, many times over the objections of the communities it is to be located in. So contrary are Vermont’s RE regulatory policies to its historic environmental priorities that a Vermont PUC commissioner, feeling constrained by law to approve an industrial scale solar project that will destroy 104 of acres of prime agricultural and forest land, raised concerns in a recent decision to [approve the Shaftsbury Solar project](#). In her decision, PUC Commissioner Margaret Cheney wrote:

“We should consider how to create incentives to site very large facilities away from unspoiled land and close to existing infrastructure. Although this goal may be best achieved through future legislative amendments, renewable energy developers should be more deliberate in identifying sites that minimize localized aesthetic and environmental impacts.”

Travesty of Renewable Energy Policy in Vermont *(continued from p. 4)*



A portion of the Shafisbury Solar project site to be cleared of 45 acres of forest with 40 acres of active agricultural lands covered in solar panels

“Vermont is the most rural state in the United States. It is also the fourth most forested. This characteristic represents an important asset in the form of carbon storage and sequestration — an asset that must be preserved in tandem with renewable energy development. However, as demand for energy and renewable attributes grows across New England, Vermont stands to attract more out-of-state developers. Our large tracts of undeveloped land may be cheaper to buy than properties in other states. They also provide the kind of large, unbroken canvas of 100 acres or more that is necessary for projects on this scale.”

Imbalanced Incentives

Housing development, while receiving regulatory breaks through recent changes to Act 250 and laws governing local zoning and planning, is still regulated in a manner to limit or prevent sprawl. Incentives in the form of regulatory relief in designated

growth centers and downtowns are designed to guide development and maintain our rural farm and forest landscape. Housing, an essential human need, is still highly regulated, again with the goal of meeting the need while protecting Vermont’s landscape and natural environment. Taxation of housing provides the majority source of funding support for Vermont’s schools and municipal services, all essential needs. Most importantly, for the most part, residential housing is where Vermonters live and raise families and consumes a major portion of Vermonters’ incomes, incomes that also pay state income and property taxes to support Vermont local and state governmental services. Our homes are not profit centers, but a costly and necessary expense. RE development gets a pass on paying its fair share, providing little financial benefit to Vermont, particularly when considering the environmental destruction it causes. RE project owners, predominantly out of state Wall Street investors and speculative developers whose proclivities Act 250 in its original form had successfully reigned in, buy or lease Vermont land for RE development. These projects

generate a revenue stream from power sales and the sale of renewable energy credits (RECs). These revenues, predominantly funded by ratepayers, flow out of state providing very little to no financial benefit to Vermont. Vermont communities are left with the blight. Vermont governmental services are starved of the tax revenue that would typically flow from commercial industrial development of this scale. Wind and solar [development valuations](#) are based upon an industry promoted formulation established in [Vermont tax law](#) which results in the infrastructure tax assessment being fixed at a price in the range of 20% of what would be its assessed value. Both the infrastructure AND tax on the property beneath the development is locked in time for the life of the project. Can you imagine having the property taxes on your home or farm fixed to what they were 20-30 years ago or at today’s tax rate forever into the future? These developments continually replace and upgrade panels, transformers, parts and pieces so that they can be run on the same site for decades upon decades to come, maintaining their grandfathered property tax assessment. How is this equitable? How do struggling Vermont taxpayers benefit from such policies? How can we expect to keep the funding for our schools viable when we walk away from literally millions of annual revenue dollars? Our legislature and Administration’s response is to keep subsidizing these out of state investors’ RE projects while at the same time advocating for the closing of our rural schools due to a lack of funding and high property taxes.

A Conflict with Vermont Values.

In sum, RE development, and the rich incentives they are awarded, undermine the very principals that

(continued on p. 7)

Time to Talk About Towers and Radiation *by Alison Despathy*

A couple in [Tinmouth](#) are fighting for their health and safety trying to oppose a proposed radio tower ~500 feet from their home of 50+ years.

Westmore residents are [collaborating](#) to protect the natural beauty of their homes and Vermont's beloved [Lake Willoughby](#) from a [recently approved](#) radio tower.

A family in [Pownal](#) have spent a year dealing with the tortuous telecom siting process called Section 248a, trying to relocate a proposed cell tower away from their children and home in the woods of Vermont.

[Rochester](#) residents have [organized](#) to share research and concerns regarding environmental and [health impacts of a proposed tower](#) in their community.

[Marshfield](#), [Manchester](#), Washington, the list goes on with many communities in VT pushing back on this unprecedented telecom infrastructure roll out.

Vermonters are actively opposing proposed towers due to [inadequate setbacks from homes, schools and sensitive areas](#), [scientifically documented harms](#) and negative health impacts of radiation on humans, [wildlife](#), [ecosystems](#), and environment, decreases in property values and their desire to steward local areas and protect Vermont's scenic beauty.

Currently here in the US, any and all considerations of the negative health impacts are prohibited in the siting of cell towers and telecommunication infrastructure. This was preempted by the [1996 Telecom Act](#) which mandates ignoring the reality of negative health effects when considering telecom siting.

People have had enough of this betrayal. The 1996 Telecom Act is a three decades old law which has miserably failed to address rapidly escalating radiation and its documented and well understood harms.

A lawsuit emerged and on August 16, 2021 [Environmental Health Trust](#) (EHT) won a landmark case resulting in a federal court ordering the Federal Communications Commission (FCC) to explain why it ignored scientific evidence showing harm from wireless radiation.

The National Institute of Environmental Health Sciences also published the [National Toxicology Program \(2\)](#) study which assessed tumors and heart damage in rats due to radiofrequency radiation. They concluded that the FCC limits should be strengthened up to 200-400 times the current level in order to protect children.

To date, this court order and the massive compilation of peer reviewed research demonstrating harms from wireless radiation exposures have been blatantly ignored by the FCC and the FDA. Zero action has been taken to address this [overwhelming body of research](#).

Even more egregious, the United States allows 10-100 times [higher levels of radiofrequency radiation](#) (RF) radiation from cell towers and wireless infrastructure than most countries including Greece, Canada, Israel, Chile, Belgium, Croatia, Bulgaria, India, Switzerland, Russia, China, and Italy.

Other countries have developed transparent accountability frameworks through monitoring and compliance enforcement to provide protections for communities, the environment and vulnerable populations.

For example, in 2015, [France](#) passed [legislation](#) to ban Wi-Fi and wireless devices in nursery schools, reduce WiFi in schools, require cell tower radiation compliance, offer tools for citizens to verify radiation measurements near homes and establish an agency to evaluate research on health effects from radiation exposure and handle compliance and enforcement of this law.

[Many countries](#) such as Turkey, Greece, Chile, Bangladesh, Australia, Israel, New Zealand, and Russia prohibit cell towers on school grounds. Australia capped radiation emission limits at 1% of federal levels near schools. Turkey mandates ongoing monitoring and compliance of radiation levels at schools and hospitals. Bangladesh banned cell towers on residential buildings, schools, colleges, playgrounds, and in high density areas. Chile prohibits cell antennas in sensitive places such as kindergartens, hospitals and nursing homes. Toronto, Canada advises radiation limits set 100 times lower than federally accepted levels.



Industrial Tower & Wireless's lattice tower in Ira is ugly and degrades the beauty of the area for radio service nobody wants or needs

Why is the US not taking action to protect the health of the people, the environment and wildlife, from known and documented health effects of RF radiation?

The past two decades have seen an explosion of radio frequency radiation via wireless personal devices, wearables, environmental and weather research and experimentation, sensor technology, mega frequency expansions, surveillance enhancements and proliferation of communications infrastructure including thousands of launched satellites, cell towers and small cell antennas in our environment and communities. *(continued on p. 6)*

Time to Talk About Towers and Radiation *(continued from p. 6)* by Alison Despathy

The FCC and other agencies' reluctance to actually regulate and ensure thorough reviews of the ongoing research on harms related to wireless frequencies should not be surprising.

In 2015, Harvard University's Edmund J Safra's Center for Ethics published Norm Alster's book, ["Captured Agency: How the Federal Communications Commission is dominated by the industries it presumably regulates."](#) This book details rampant conflict of interest, revolving door issues and funding concerns. The primary message is summarized in this statement,

"The FCC sits at the core of a network that has allowed powerful moneyed interests with limitless access a variety of ways to shape its policies, often at the expense of the fundamental public interests."

Currently, the FCC is drafting rules that if passed would prohibit states and towns from holding any jurisdiction over the siting of towers, antennas, and other wireless infrastructure. The National Call for Safe Technology also recently alerted the public to Congressional Bill, HR 3557 described by telecom Attorney Andrew Campanelli, as deceptive, insidious and evil, and "designed



This PUC requirement has obviously not been met: "The Petitioner has agreed to further mitigate the visual impact of the Project by painting the Project a neutral shade of dull grey as recommended by the Department."

to strip all powers from state and local governments... over the placement of [wireless] facilities."

If these become law, the telecom industry will effectively govern itself and place unregulated and unmonitored radiating wireless infrastructure wherever they please. Property values and scenic beauty will take a dive while the health of humans and ecosystems will literally be placed in harm's way.

Solving this problems will require the creation of state level regulations which guarantee the use of peer reviewed scientific research on safe setbacks and allow the scientific evidence of radio frequency harms to be considered while determining placement of wireless infrastructure.

Vermont must claim statewide jurisdiction over telecom infrastructure, establish safe and acceptable radiation emission and power output levels, and create a framework for monitoring, compliance and enforcement of these levels in our communities. It is urgent that this issue be addressed before more harm and damage are done.

Alison Despathy is VCE's Community & Environmental Health Director

(continued from p. 5)

Vermonters have long held highest, that is the protection of its beautiful mountains, valleys, fields, forests, natural environment and rural communities. At a time when Vermonters are having difficulty finding the money to fund our schools, its legislative leaders are subsidizing out of state developers who escape payment of upwards of 80% of the education taxes that would have been paid were their developments assessed in the same manner as other commercial properties. Vermont electric ratepayers who are struggling to pay their extraordinary property taxes are being required to pay utility rates to these out of state investors that exceed market rates. Vermont's Current Use Program initiative is fast becoming a land banking system that

sets aside from conventional development large blocks of farm and forest land to then be exploited by RE developers. Aside from the property tax, utility rate and regulatory incentives provided to RE developers, it is actually the success of Vermont's Current Use Program keeping large land holdings open and undeveloped that provided the land area these sprawling and destructive solar and wind developments seek. Our naïve and overly exuberant legislators and Administration officials are so busy promoting these erroneously named "green" energy development complexes, that they have failed to see the damage they are causing to our communities and Vermont environment and the undermining of its investments in Current Use.

It is long past time that this insanity is seen for what it is, policies endorsing an exploitative enterprise not too different than strip mining in terms of the long term ecological and financial damage being wrought upon Vermonters and their communities. As I have heard locals say many more times than once, "tourists who come to Vermont don't come here to look at fields filled with solar panels and mountains covered with wind turbines." Vermont as we know it is on a death spiral that our legislature and Administration must act now to stop before it is too late and becomes like every other place made ugly by unrestrained and unplanned development.

John Brabant is VCE's Regulatory Affairs Director

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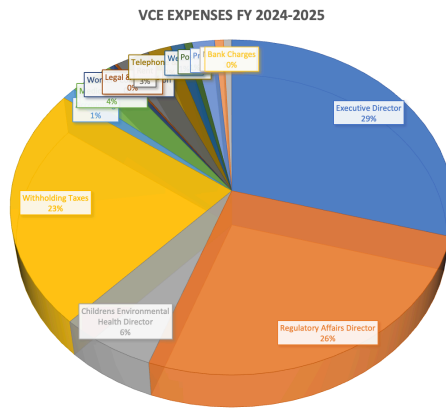
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Thank You for Your Support!

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