

VERMONT LEAGUE OF CITIES AND TOWNS

LEGISLATIVE WRAP-UP



[Part of Vermont's heroic recovery efforts following the devastation of Tropical Storm Irene.]

2012

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INTRODUCTION

How the 2012 Session Sugared Off

Amidst a welter of heated tempers and frenzied activity, the 2012 legislative session concluded on the evening of Saturday, May 5 – after which, Vermont headed into the campaign season. The last few days of the session were chaotic and unusual in that the budget was not the last game in town. The budget conference committee report – which reconciled the differences in the House- and Senate-passed versions of H.781 – was adopted on May 4. Yet many bills – quite a few of which affect local governments – hung in the balance until late Saturday.

On balance, legislators were kind to local government this session. To a person, they and the governor came to the State House in January committed to helping municipalities recover from the devastation of Tropical Storm Irene. That commitment took many forms: delaying education payments to the state; helping abate property taxes of property owners hard hit by the storm; providing funds for infrastructure repair; and helping local governments and individuals build homes, businesses, roads, and farms that are more resilient than those that were lost. As Governor Shumlin said in his State of the State speech last January, “Perhaps the greatest lesson that we can take from the challenge of the previous four months is that despite Irene’s devastation, despite our heartbreak and pain, we are bound by common purpose” ... At a time when many of America’s cities and communities beyond Vermont’s borders often seem more divided than united, our little state has distinguished itself. ... By continuing to set aside what divides us and finding common ground to unite us, we will rebuild our state”

With a few notable exceptions, that is pretty much what happened this year under the golden dome, as you will read in our **2012 Legislative Wrap-up**.

This is the second year of the biennium. Any bill that was introduced this year or last is dead if it did not pass by the end of this session. Legislators will need to introduce a new bill in 2013 if they want to take up a particular subject again. There are plenty of those issues! For instance, VLCT fought hard to defeat legislation that would force employees of a municipality or school with union representation to pay fees to support the union, even if they had chosen to not be members, but that issue promises to be revisited next year. Current law provides that such “agency fees” – which could be up to 100 percent of the union dues (minus the cost of any political activities of the unions) – is now a negotiable item in union contract negotiations. Similarly, the initiative to use the education property tax to pay for college courses taken by high school students failed. Other unsuccessful legislation included proposals to substantially revise the way vital records (birth, marriage, and death certificates) are handled, a bill that would have provided for the Tax Department to collect the education property tax, and a proposal to establish a statewide property tax on developed property to pay to manage stormwater discharges to the state’s waters.

Unless noted in a **Wrap-up** article, legislation that passed takes effect on July 1. A number of summer study committees were established this year that will address issues close to the hearts of local officials and they are listed at the end of the **Wrap-up**. The sheer number of these committees is unusual for the end of a biennium and beginning of a campaign season, which would seem to move Vermont closer to having a full-time legislature. Please let us know if you are interested in serving on a summer study committee as VLCT is sometimes asked for recommendations or to appoint a committee member.

Even as we leave the 2012 session behind, it is already time to begin thinking about 2013, a process that VLCT begins in June. If you are interested in serving on one of our four legislative policy committees, please complete the form appended to this **Wrap-up**. Committees generally meet in person once in June

or July to develop VLCT's legislative platform that is considered by the membership at Town Fair, which this year occurs October 4 at the Champlain Valley Fairgrounds in Essex. Committee chairs try to complete the balance of the committees' business via email. Our four policy committees are Finance and Intergovernmental Relations (FAIR), Quality of Life and Environment, Transportation, and Public Safety.

To those of you who worked tirelessly this past year on municipal issues and who patiently responded to our requests for information or help, thank you! You are the League's most effective advocates. Successes in the legislature are due to your participation both in the State House and back home when discussing issues with your legislators. Take the time to thank your legislators and the governor for their significant initiatives this session in assisting communities recover from last year's natural disasters, and for the statutory improvements that local governments need to effectively serve their constituents.

Generally speaking, about a third of the legislature turns over at the end of a biennium. Historically, many of the people who run for office to replace retiring legislators have served in local government and are familiar with municipal issues. Indeed, our current governor got *his* start on the Putney selectboard. Is there a vacancy looming in your district? If so, perhaps *you* should consider a run for office!

VLCT Advocacy staff represent cities and towns to the Vermont legislative and executive branches as well as to the federal government and interest groups. VLCT's advocacy program supports legislation that advances local self-governance and implements policies established by the membership, which may be found in the 2012 Municipal Legislative Policy and will be revised this summer for the 2013 session. We follow hundreds of bills that represent hundreds of millions of dollars of potential and realized impact on municipal governments in Vermont. With help from VLCT's membership, Advocacy staff ensure that municipal priorities are addressed in the State House, by the executive branch, in rule-making procedures, and in other policy-making forums throughout the year.

Karen Horn, Director, Public Policy and Advocacy

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Vermont League of Cities and Towns

May 30, 2012

Health Care

Health Care System Issues (H.559, Act 171)

VLCT Contact: Dave Sichel

This year, the legislature continued down the path of health care system reform, culminating in the passage of H.559, “An Act Relating to Health Reform Implementation.” The intent of the bill is to continue to prepare for Green Mountain Care, a single-payer health system that will provide “comprehensive, affordable, high-quality, and publicly financed health care coverage for all Vermont residents in a seamless manner regardless of income, assets, health status, or availability of other health coverage.” The bill establishes the parameters of the Health Benefit Exchange that is required by the federal ACA (Accountable Care Act), further defines and expands the role of the Green Mountain Care Board, and imposes some changes on the health insurance market, among a variety of other changes.

Of particular interest to municipalities is the establishment of the Health Benefit Exchange that will start providing health insurance plans effective January 1, 2014.

Health Benefit Exchange. The federally required health benefit exchange is being developed and administered by the Vermont Department of Health Access, which currently runs state health insurance programs such as Medicaid and Catamount Health. The exchange will offer health insurance plans to individuals and small employers and will be the vehicle by which the state will develop the infrastructure for Green Mountain Care.

H.559 resolved several issues that remained open by last year’s health care reform law:

- The exchange will combine the individual and small group markets, including association groups. This will likely result in some groups seeing large premium increases while others might see substantial rate reductions.
- The exchange will initially apply to small employers with up to 50 employees. In 2016, ACA requires the exchange to be open to employers up to 100 employees and in 2017, the exchange is to be open to large employers as well. Most Vermont municipalities are small employers with fewer than 50 employees.
- The exchange will offer four plan levels (Platinum, Gold, Silver, and Bronze) as laid out in the federal ACA. (The four levels of coverage are based on actuarial value, a measure of the level of financial protection a health insurance policy offers, and indicate the percentage of health costs a health care plan would pay for an average person. For example, the insurance for a Bronze plan would cover 60 percent of all health care costs, and the enrollee, on average, would have to pay the other 40 percent. For a Platinum plan, an enrollee would pay 10 percent out-of-pocket for the covered benefits and the insurer would pay 90 percent.) The original proposal did not include the Bronze level plans. About 80 percent of Vermont municipalities offer high deductible plans that are likely at the Bronze level, so inclusion of these plans will result in less disruption to municipal health plan structures. Typically the employee contribution towards health care premiums is lower in these high deductible arrangements. In addition, most municipalities contribute to the employees’ health savings accounts (HSAs) or create an employer-funded Health Reimbursement Arrangement (HRA) to help employees meet their deductible obligation. Most employers and employees have found this approach to be more cost-effective, with no adverse effect on coverage, than the traditional health plans that they previously offered.

- H.559 makes clear that health care plans will not be available outside of the exchange for individuals and employers eligible to participate in the exchange. This means that in 2014, most Vermont municipalities, or their employees, will be purchasing their health insurance through the exchange.

According to the Health Care Reform Priorities and Principles, adopted by both the VLCT and the VLCT Health Trust Boards, *Health Insurance Exchanges created as a result of federal health reform must preserve choices for employers. This is best accomplished by fostering a competitive health insurance marketplace with options, including multiple plan designs and health insurers available to health insurance purchasers both in and outside of the exchange. All such plans must be allowed to operate on a level playing field.*

Clearly, this principle supports providing as many health insurance choices as possible, both in and outside of the exchange. This is because municipalities, which continue to pay the bulk of health insurance premiums, should have as many plan and insurer options as possible. This provides more choices to find a health care plan that meets the needs of the municipality and its employees. While H.559 does allow for Bronze level plans, the choices of plan design are reserved to the state, not the employers and employees who will pay the premium. By having only exchange-offered health plans, they will all be offered on a level playing field.

One interesting aspect of the health benefit exchange is that significant federal tax credits are available to individuals who purchase their health insurance through the exchange. These tax credits limit the total premium paid, total cost sharing, and total out-of-pocket cost based on household income as a multiple of the federal poverty level.

These tax credits are generally not available if an employer-sponsored health care plan is available to the employee. This led to considerable discussion by state officials about whether the exchange design should “encourage” employers to drop their group health care plans and instead provide pre-tax funding to employees who could then individually purchase a health care plan on the exchange and take advantage of the federal tax credits.

Maximizing federal tax credits is also of prime importance to the state because it hopes to convert these tax credits to federal support to the state when it seeks federal waivers to implement its single-payer, universal care plan, Green Mountain Care.

Grandfathered Plans. The federal ACA allowed health care plans to be grandfathered and therefore not be subject to some of the coverage mandates of the law if they met certain requirements. H.559 allows grandfathered plans to continue and does not require their participation in the Health Benefit Exchange. Most small group and individual health plans were not grandfathered, either by choice or as a result of health insurance company decisions. The primary beneficiary of the grandfathering exception is the Vermont Education Health Initiative, a health insurance pool that covers Vermont’s teachers and other school district employers.

Green Mountain Care Board. The Green Mountain Care Board will oversee health care reform efforts, including development of the Green Mountain Care single-payer health system. Green Mountain Care will cover all Vermonters and will be funded by yet to be determined broad-based taxes. H.559 grants the Green Mountain Care Board authority over the health insurer rate review, hospital budget review, and certificate of need processes.

Attention will now turn to developing plans to be offered through the Health Benefit Exchange, determining which health insurers will offer plans through the exchange, and settling on the costs. H.559

creates a system of navigators, as required in the federal ACA, to help small employers and individuals find the best coverage to meet their needs in the exchange, and also allows insurance agents and brokers to sell health care plans within the exchange.

As the implementation of the exchange moves forward in Vermont, pending issues at the federal level could change everything. Currently, the U.S. Supreme Court is deliberating on the constitutionality of the ACA. A decision is expected in June. Also the upcoming presidential and congressional elections could result in changes to or the repeal of the ACA.

If the ACA is found to be unconstitutional or is repealed, it would not prevent Vermont from implementing a Health Benefit Exchange or the Green Mountain Care universal coverage system. In fact, repealing the ACA would give the state more flexibility in moving forward with its own plans. Abolishing the ACA would also eliminate the federal funding for health care system reform. Because the state's health care reform plans are premised on substantial federal funding, this could drastically impair the ability of the state to implement its health reform plans.

Other Legislative Action. What legislative session would be complete without some new health insurance coverage mandates? This session was no exception with the adoption of additional mental health parity requirements, and coverage requirements for naturopathic physician services, and for early childhood development disorders, including autism spectrum disorders. At least this year, the mandates apply to state-provided programs such as Medicaid and Catamount Health.

As the health care reform process moves along, municipalities have a variety of issues to consider:

- Change is coming. No matter what else happens; federal and state health care reform will lead to changes in our health care system and how it is funded. Even without these reforms, profound changes are likely because the current rate of increasing health care system costs is unsustainable.
- The Health Benefit Exchange will impact your health care benefit plan. The exchange goes into operation on January 1, 2014, less than two years from now. It is not too soon to begin considering your options and taking the coming changes into account in any collective bargaining. It is important to maximize your flexibility in health care plan design and funding. This will best allow you to respond as the structure, health care insurers, and plan designs of the exchange emerge over the next year.
- Municipalities should consider the generous federal tax credits available to individuals who purchase their health insurance through the exchange. Some municipalities may find it advantageous to discontinue their employer-provided health insurance plan in favor of providing funding for employees to purchase their own health insurance through the exchange. Employers that provide a defined dollar contribution towards health benefits instead of a defined benefit will be protected from medical inflation.
- Prepare for a single-payer, universal care system in Vermont. This is clearly the goal of health care reform legislation to date and the current administration has made this a priority. The details continue to be worked out, and only time will tell if the plan can ultimately be implemented. As employers, municipalities should prepare for the time when health care benefits are separated from employment. If it happens, they should be prepared to embrace the opportunity.
- Collective bargaining issues are important. Municipalities should endeavor to maintain flexibility in their collective bargaining agreements. As Vermont moves to a new health care system, there is an opportunity to fundamentally redefine the employer role in providing health care benefits. This may be an opportunity to hit the reset button. Employers should be careful about offering new health care benefits such as supplemental health care plans.

- There will be considerably more state control of the health care system. If handled well, this will lead to a more universal, better managed, more affordable health care system. But if not managed well, what then?
- The long-term costs of these reforms are not easy to fathom.

Municipal officials need to be prepared. Plan ahead. Leave flexibility. VLCT looks forward to being your partner in this endeavor.

Municipal Finance

The FY13 State Budget (H.781, Act 162)

Adds 32 V.S.A. § 6075; amends 33 V.S.A. §§ 2301 and others.

VLCT Contact: Steve Jeffrey

This year’s version of the annual budget battle turned quickly into a TKO for the governor early in the first round, at least for the line items of highest interest to local government. As the [table on page 7](#) detailing those items indicates, little changed for towns during the four-month odyssey of H.781 through the legislative process. It was good news from the start and stayed that way. The budget contains \$66.5 million of state and federal assistance in rebuilding from Tropical Storm Irene and the other natural disasters of 2011. Towns ended up with \$1.5 million in additional recurring highway aid programs – it was just distributed a little differently than what the governor recommended at the starting gate.

One concern we raised with the governor’s budget early on was at least partially addressed in the final version of H.781. On several occasions throughout the session we reported on the change made by the legislature last year that has resulted in the state General Fund support for education dropping from the \$309.8 million that was mandated by statute to be provided in FY13 to the \$280.2 million that the governor included in his FY13 budget. (See, for example, [Weekly Legislative Report No.5](#).) That \$29.6 million reduction is built into the base state support and will be repeated for eternity unless the legislature undoes it. H.781 does include language that would commit half of the growth expected in General Fund taxes for one year to be added back to the Education Fund transfer. Specifically, the bill states that *“an amount not to exceed 50 percent of the increase in the forecasted available general fund projected for fiscal year 2014 shall be transferred and appropriated to the education fund. For the purposes of this calculation, any increase in the forecasted available general fund shall be reduced by the total of any legislative action projected to increase general fund taxes that result in additional revenue in excess of \$1,000,000 over the revenue raised without legislative action in fiscal year 2014.... an amount equal to the amount transferred to the education fund [above] shall be added to the base amount used to calculate the general fund transfer... for fiscal year 2015.”*

The remaining balance in the newly-created “supplemental property tax relief fund” (the other half of the growth in one-half of the General Fund tax base) will be available for the development of proposals for property tax relief. Uses to be considered include incentives or rewards to promote or control education spending while improving quality, ways to reduce the base percentage of income used to determine income sensitivity, options to increase the base education payment, and additional deposits into the education fund to reduce tax rates. All of these provisions are prospectively repealed on June 30, 2014, so unless the 2013 or 2014 legislature extends them, this becomes a one-shot deal dependent on the state’s revenue base growing substantially before a dent can be made in the \$29.6 million more in property taxes Vermonters have been and will be paying annually.

Municipal Funding Priorities in FY 2013 Budget (in Millions), May 4, 2012 Approved

Budget Line Item	FY12 Budget As It Became Law	FY13 Governor's Recommend	FY13 Approved	FY 13 Approved \$ Change from FY12 Final	FY 13 Approved \$ Change from Governor's Recommend
PILOT – ANR Lands	\$2.13	\$2.13	2.13	0.00	0.00
PILOT – Corrections Facilities ¹	\$0.04	\$0.04	0.04	0.00	0.00
PILOT – Montpelier ¹	\$0.18	\$0.18	0.18	0.00	0.00
PILOT – State Buildings ¹	\$5.80	\$5.80	5.80	0.00	0.00
Current Use – Municipal	\$12.40	\$12.64	12.64	0.24	0.00
Homeowner Rebate – Municipal	\$15.19	\$14.55	14.55	(0.64)	0.00
Renter Rebate – Municipal	\$2.50	\$2.89	2.89	0.39	0.00
Special Investigative Units	\$1.25	\$1.25	1.25	(0.00)	0.00
General Fund Transfer to Education Fund ²	\$276.24	\$282.32	282.32	6.08	0.00
Federal Stimulus Funds Passed Directly to School Districts	\$9.50	\$0.00	0.00	(9.50)	0.00
General Fund Support of Teachers' Retirement System	\$51.67	\$63.61	63.61	11.94	0.00
Town Bridge Grants ³	\$16.78	\$19.30	19.30	2.52	0.00
Town Highway Aid Program	\$24.98	\$26.48	25.98	1.00	(0.50)
Town Highway Aid Program – Class 1 Supplemental	\$0.13	\$0.13	0.13	0.00	0.00
Town Highway Structures	\$5.83	\$5.83	6.33	0.50	0.50
Vt. Local Roads	\$0.39	\$0.38	0.40	0.01	0.03
Town Highway Public Assistance Grants ⁴	\$0.20	\$66.50	66.50	66.30	0.00
Municipal Mitigation Grant Program	\$1.14	\$1.26	1.26	0.12	0.00
Class 2 Highway Paving and Rehabilitation	\$7.25	\$7.25	7.25	0.00	0.00
Town Highway Emergency ⁵	\$0.75	\$4.75	4.75	4.00	0.00
Total Local Highway Aid	\$57.45	\$131.88	\$131.91	74.45	0.03
TOTAL	\$434.36	\$517.29	\$517.31	82.95	0.02

1. Figures for all years are all from local options tax sharing and no state monies.
2. Required by statute to increase by New England economic project cumulative price index for government purchases (16 V.S.A. § 4025(a)(2)). In 2010 and 2011, legislature reduced this with “Notwithstanding” language. The 2011 legislature recalibrated the amount of aid to be adjusted annually that will cost an additional \$27.5 million in property taxes having to be raised in FY13 and each succeeding year.
3. Includes state and federal aid only, no local match.
4. Contains \$63 million in federal funds, most likely all FEMA and Federal Highway Administration (FHWA) reimbursements for Irene and other 2011 flood damage.
5. Contained in two line items: state aid for federal disasters (\$3.6 million) and non-federal disasters (\$1.15 million). Contains \$3.2 million in federal funds, most likely more FEMA and FHWA funds for 2011 floods.

H.781 also sets the employee contribution rates for FY13 for the Vermont Municipal Employees Retirement System (VMERS). For the period of July 1, 2012, through June 30, 2013, group A members

will contribute at the rate of 2.5 percent of earnable compensation, group B members at the rate of 4.5 percent of earnable compensation, and group C members at the rate of 9.25 percent of earnable compensation. Those rates have not changed since 2000. VMERS continues to be the best-funded of Vermont's retirement systems; its actuarial values of its assets are 92.3 percent of its actuarial accrued liability. Employer rates are set by the VMERS Board and those too are unchanged from current rates.

The appropriations bill also contains a pleasant surprise for towns that have all too often been caught unawares by having to pay for a public burial. One of the last remaining vestiges of the town "overseer of the poor," when towns were responsible for welfare, was the requirement to pay for the burial of a person who dies in his or her town of domicile without sufficient known assets to pay for burial. The state paid for many people on state or federal assistance or when the person was an inmate of a state institution, but the towns paid for the rest and could request to be reimbursed up to \$250 from the Agency of Human Services. VLCT had tried for years to get this obligation repealed (it was in our Municipal Policy since at least 1988), but it took the perennial efforts of a funeral director, one senator, and, this year, the addition of a staffer from the Agency of Human Services to finally turn the tide. As of July 1, the state will be responsible for arranging and paying for the burials of all persons who can't pay for their burial.

Capital Bill (H.785, Act 104)

VLCT Contact: Karen Horn

In a significant first, there was no conference committee on the 2012 capital bill. The Senate concurred with the House version of H.785 (Act 104), and with a few further proposals of amendment and one more go-round in the House, the bill was passed on April 27. That this occurred to a major spending bill as House and Senate wrangling over legislative details on a number of bills ate up the last days of the session is a credit to the chairs of the House Corrections and Institutions and Senate Institutions committees, as well as to the administration staff whose responsibility is capital spending. Throughout the session, they conferred on the need to address the devastation left by Tropical Storm Irene, particularly as it pertained to the State Office Complex in Waterbury, and their purpose in aiding recovery from that disaster was clearly the priority. At the same time, committee members worked hard to ensure that municipal programs did not lose out to the need to focus on the recovery effort, despite some programs having been initially slated for reduction by the administration.

Act 104 is the Capital Budget Adjustment for Fiscal Years 2012 and 2013. The adjustment comes in the second fiscal year of the first ever two-year capital budget, also known as a "biennium" budget, which was passed by the legislature on May 5, 2011, as H.446, Act 40. The concept in enacting a two-year capital budget was to get more projects started in FY 2012 to spur a down economy and to enable the administration and legislature to take a longer view of its capital expenditures. Unanticipated at the end of the 2011 legislative session were the spring floods and Tropical Storm Irene. The budget adjustment reflects those disasters' impacts on state spending in ways no one could have anticipated a year ago. Bonding for the two-year capital bill remains at the same amount, \$153,160,000. However, the legislature found additional revenues from reallocations of prior year's unexpended funds and transfers that increased available funds by \$3,288,203 in FY 13 to a two-year total of \$158,027,602.

Act 104 moves capital budgeting to a two-year cycle permanently. Each two-year budget will now be placed in the context of a six-year state capital program, prepared by the governor and approved by the general assembly, that includes a list of all projects recommended for funding in the six years, ranked in order of priority. The categories of funding will be (1) state building, facilities, and land; (2) higher education; (3) aid to municipalities for education and environmental conservation, including water, sewer, solid waste, and other purposes; and (4) transportation. If additional funds are needed, their

source will be noted; any delay in projects will be explained. In an interesting addendum, the Joint Fiscal Office is to study how best to allocate engineering costs between the capital and general funds.

Some of the line item amendments on the [Capital Bill table on page 45](#) specifically affect municipalities. For the most part, programs addressing local government needs were held harmless; in one instance, a new regional economic development grant program was even added. That program will provide competitive grants for capital costs associated with major maintenance, renovation, or planning related to development of facilities that can be reasonably expected to create job opportunities throughout Vermont. The program may award grants of up to \$25,000 per project to match actual dollars raised. Projects must be consistent with statutory planning goals as well as local and regional plans. A regional economic development grant advisory committee is established to administer and coordinate the program. Its members include the commissioners of the departments of Economic, Housing and Community Development and Buildings and General Services, one legislator appointed by the Speaker of the House, and one appointed by the Senate Committee on Committees.

The Agency of Natural Resources' Clean Water State/EPA Revolving Loan Fund Match has been reduced by \$500,000 to \$2,500,400, and its Water Supply Revolving Loan Fund has been reduced by \$700,000 to \$5,094,853. This reduction was expected as federal stimulus dollars that were available to Vermont last year are not in 2012, and federal funding for EPA has been cut; thus, the state needs to match a smaller federal amount. At the same time, a Vermont Drinking Water Revolving Loan Fund was established to provide loans to a municipality for the design, land acquisition (if necessary), and construction of a potable water supply when a household in the municipality has been disconnected involuntarily from a public water supply system for reasons other than nonpayment of fees. Initially at least, this fund will assist in situations where a contaminated public water supply is closed and people who used it are moved to another individual source of water.

The Agency of Agriculture's Clean and Clear Best Management Practices on Vermont farms and water quality buffer programs line item has been reduced by \$250,000 to \$2,250,000.

The legislature allocated the Vermont Youth Conservation Corps \$200,000 to perform stabilization, restoration, and cleanup of environmental damage to waterways, forests, and public access lands caused by Tropical Storm Irene, including projects such as controlling the spread of invasive species, stabilizing flood-eroded river and stream banks, restoring vital aquatic and wildlife habitats, removing toxic materials from fragile natural areas, and remediating recognized watersheds.

Language was added to the planning statute, 24 V.S.A. Ch. 117, that allows regional planning commissions to undertake studies, make recommendations, and undertake comprehensive planning on "state capital investment plans" in addition to all the items on which they may currently act. This language ostensibly parallels the new regional economic development program.

Deferral of Education Fund Payments for Towns Affected by Federal Disasters in 2011 (H.505, Act 72)

Session law – does not amend any statutes.

VLCT Contact: Steve Jeffrey

Act 72 allowed towns required to make payments to the state Education Fund that were hard hit by floods to defer the payments from December 1, 2011 to February 28, 2012. Under 32 V.S.A. § 5402(c), towns whose collected education property taxes exceed the amount that their local school districts need to meet their budgets are required to pay education taxes to the state treasurer twice a year, on December 1 and June 1. Municipalities that miss the deadlines are assessed eight percent interest on any late

payments. This year, 77 towns and one city are required to deposit a total of \$153.7 million in state education property taxes with the state, one-half of which was due on December 1, 2011.

The act deferred the eight percent penalty until February 28, 2012 for any municipality that was significantly impacted by Federal Emergency Management Agency (FEMA)-declared natural disasters during 2011. The deferrals were for amounts up to the costs associated with municipal property damage or the entire payment due the state, whichever was less. The deferrals were reduced by any amount that towns had received for insurance payments or from FEMA or the Federal Highway Administration.

As the penalty is in the statute, the treasurer had no authority to waive the interest without legislative approval. Eleven towns requested a total of \$7.1 million of deferrals, and all made the February 28 payment.

Property Tax Confidentiality Issues (H.505, Act 72; H.782, Act 143)

Act 72 is session law – does not amend any statutes;

Act 143 adds 32 V.S.A. § 3102 (j) and (k) and amends 32 V.S.A. § 6066a(f).

VLCT Contact: Steve Jeffrey

When the *In re: HS-122* Vermont Supreme Court decision that concluded that property tax bills with income adjustment information on them are confidential was handed down on December 22, 2011, town clerks and treasurers, escrow companies, lawyers, bankers, and real estate agents were all thrown into a tizzy. Homeowners suddenly had to have gross property taxes escrowed and real estate transactions held up unless clerks were given releases to provide such information. Municipal officials were also concerned that they had been breaking the law for years unknowingly, and potentially faced a year in prison and a \$1,000 fine for having released what the court determined to be income tax return information.

As it did for Irene and last year's other natural disasters, the 2012 legislature acted swiftly, at least to assuage the fear of punishment for acts committed prior to the court's decision. Signed into law on February 6, Act 70 stated that "*a public agency or an employee or agent of a public agency shall not be held liable for a violation of the Public Records Act, for a violation of 32 V.S.A. § 3102, or for a claim based on invasion of privacy as a result of disclosure of property tax adjustment information prior to the issuance of the mandate pursuant to Rule 41 of Vermont Rules of Appellate Procedure of the Vermont supreme court in In re: H.S. 122.*" This cleared everyone for any releases of information prior to January 20, 2012, but did nothing to deal with the issue going forward.

The Speaker of the House convened a working group of affected parties to develop proposed legislation that preserved the finding of the court, but allowed a process and exemptions for those who needed ready access to the adjusted property tax information. The language that was finally adopted as part of H.782, the "Miscellaneous Tax Changes for 2012" bill, wasn't approved by both houses of the legislature until the day before adjournment. It was originally drafted as a standalone bill, then attached to the ill-fated H.763, the "Billing and Collection of the Statewide Education Property Tax by the Department of Taxes" bill, which ended its days out to pasture in the House Appropriations Committee, and then attached by the Senate to its version of H.782.

H.782 clarifies that unadjusted property tax bills are public documents, but that adjusted bills and the documents used to generate them are confidential state income tax return information. Notwithstanding that they are confidential, "*the [state tax] commissioner or a municipal official acting as his or her agent may provide the [adjusted tax bill] to the following people without incurring liability ...:*

(1) an escrow agent, the owner of the property to which the adjustment applies, a town auditor, or a person hired by the town to serve as an auditor;

(2) a lawyer, including a paralegal or assistant of the lawyer, an employee or agent of a financial institution as that term is defined in 8 V.S.A. § 11101, an employee or agent of a credit union as that term is defined in 8 V.S.A. § 30101, a realtor, or a certified public accountant as that term is defined in 26 V.S.A. § 13(12) who represents that he or she has a need for the information as it pertains to a real estate transaction or to a client or customer relationship; and

(3) any other person as long as the taxpayer has filed a written consent to such disclosure with the municipality.”

Basically, any municipal official or employee who prepares the property tax bill or accepts tax payments will be acting as an agent of the state tax commissioner for purposes of being able to access the adjustment information, but statute limits with whom they can share that information.

Another section of the bill makes clear that the income adjusted tax bill gets sent to eligible homeowners instead of the gross bill that is public information and available to anyone who wants to see what the unadjusted tax bill for anybody is.

These sections of H.782 go into effect as soon as the governor signs the bill.

The Agency of Natural Resources Fee Bill (H.769, Act 161)

Amends 3 VSA §§ 2809, 2822.

VLCT Contact: Karen Horn

Vermont statute requires that municipalities pay fees to the Agency of Natural Resources (ANR) upon application for permits and for operating under the provisions of those permits when they can recover costs from users. The host municipality passes on to users both fee-related expenses and the considerable costs of facility upgrades, new operations, controls, testing and reporting requirements, as well as research and scientific or engineering expertise that the agency doesn't have whose review costs exceed \$3,000.

Pursuant to 3 V.S.A. § 2822 (i), municipalities pay fees for (1) air pollution permits, (2) discharge permits, (7) public water supply and groundwater withdrawal, (8) public water system operator certifications, (14) sewage treatment plant operator certifications, and (15) sludge or septage facilities. According to statute, ANR is directed to propose any fee increase to the legislature on a three-year cycle, and 2012 is the year for that proposal.

The federal government is cutting its support of programs across the board – cuts that are likely to grow more severe in the future – but it is not rolling back mandates. In fact, the actions of the Environmental Protection Agency (EPA) are quite to the contrary in the area of environmental water quality. As mentioned in the [Flood Hazard Areas article \(page 32\)](#), EPA is both reviewing the Lake Champlain Total Maximum Daily Load plan and finalizing the Municipal Separate Storm Sewer System permit. We don't know what requirements the EPA will impose relative to those programs, but it is clear that complying with the permit will be very expensive for a long time. At the same time, Vermont has enacted some programs – notably stormwater-related – that exceed federal standards, and S.202 called on the Vermont Department of Environmental Conservation (DEC) to develop a new proposal for fees to support new flood hazard area programs established in that bill.

In FY 2009, environmental permit revenues made up 11 percent (\$4.2 million) of DEC total revenues; General Fund dollars equaled 24 percent (\$9.06 million), and federal revenues made up 29 percent (\$10.72 million). Based on the administration's fee request, FY13 environmental permit revenues would be 19 percent (\$8.15 million), General Fund dollars would equal 16 percent (\$6.9 million), and federal revenues would be 27 percent (\$11.46 million) of total revenues. In only four years, the dollar amount collected from permit fees has almost doubled.

No fee increases were proposed for wastewater treatment facilities, sewage treatment plant operator certifications, or sludge and septage facilities. Discharge permit fees for stormwater permits and water supply permits will increase between 19 and 33 percent. Additionally, new fees will be charged for multi-sector general permits and residual designation permits. (Both are stormwater-related.) Those permits will be required by both municipalities and other entities for new activities with more than one acre of impervious surface, or, in the case of construction permits, more than one acre of disturbed land.

The listing that follows shows significant fee increases for municipalities. The existing fee amount (if there is one) is crossed out.

3 V.S.A. § 2822 (j)

(2) wastewater discharge permits administrative processing fee: \$ 120.00 (~~\$100.00~~)

iii Stormwater discharges

(I) individual or general permit to discharge to Class B Waters: \$430 (~~360~~) /impervious acre, \$220 (~~180~~) minimum.

(II) individual or general permit to discharge to Class A Waters: \$1400 (~~1170~~)/impervious acre, \$1400 (~~1170~~) minimum.

(V) individual or general permit for municipal separate storm sewer system (MS4) stormwater runoff, original or amendment application: \$1200 (~~4000~~).

(VI) individual or general operating permit application or amendment for residually designated stormwater discharge

(aa) discharge to Class B water \$430/acre of impervious area, minimum \$220.

(bb) discharge to Class A water \$1400/acre of impervious surface, minimum \$1400.

(iv) Stormwater

(II) individual or general permit for collected stormwater runoff discharged to Class B waters \$80 (~~66~~) per impervious acre.

(III) individual or general permit for stormwater runoff from industrial facilities with specific standard industrial classification (SIC) codes \$80 (~~66~~)

(IV) individual or general permit for stormwater runoff associated with MS4s.

(V) individual or general permit for residually designated stormwater discharges

(aa) discharges to Class A water \$255/acre impervious surface, \$255 minimum.

(bb) discharges to Class B water \$80/acre impervious surface, \$80 minimum.

(v) indirect discharge or underground injection control excluding stormwater

(II) Non-sewage

(aa) Individual permit \$0.013/gallon of design capacity, \$250 (~~400~~) minimum, \$5,500 maximum.

(4) wastewater system including sewerage connection, potable water supply including connection to a public water supply fees range from \$240 to \$9,500 per application based on design flows.

(7) public water supply and bottled water permits and interim groundwater withdrawal permits.
(A) public water supply construction permit application, \$375 (~~275~~) per application plus \$0.0055/gallon design capacity. Amendments \$150 (~~440~~) per application.

(C) source permit application,
(i) community water system, \$945 (~~645~~)/source
(ii) transient non-community, \$385 (~~250~~)/source
(iii) non-transient, non-community \$770 (~~500~~)/source
(iv) amendment \$150 (~~440~~)/application

(D) public water supplies and bottled water facilities annually,
(i) community water system, \$0.0439 (~~0.0359~~)/1,000 gallons water produced annually
(ii) transient non-community, \$50 (~~45~~)
(iii) non-transient, non-community \$0.0355 (~~0.0294~~)/1,000 gallons water produced annually, at least \$70
(iv) bottled water, \$1390 (~~900~~)/permitted facility

(E) amendment to bottled water facility \$150 (~~440~~)/application

(F) commercial or industrial facilities permitted to withdraw groundwater, \$2300 (~~1500~~)/facility

(8) public water system operators,
(A) Class 1A, 1B (not also permitted under transient non-community general permit), \$45

(B) all other classes, \$80

(16) underground storage tanks \$125 (~~400~~)/year

The fee bill also amends statutes passed as part of the Challenges for Change legislation of two years ago to establish that the ANR secretary may bill back applicants for certain costs of reviewing applications. That now includes not only scientific, research, or engineering expertise, but also programmatic expertise provided by the agency if it is “beyond the agency’s internal capacity to effectively utilize that expertise to process the application for the permit, license, certificate or order.” The governor no longer has to approve such bill-back provisions as was the case in Challenges for Change. A report is due to the legislature on the cost reimbursement capability by January 15, 2013.

Act 161 also provides that loans to private individuals who own failed systems may be made from the Wastewater and Water Supply Revolving Loan Fund. This language is also in Act 117, Public Water Systems. ANR will report on this expansion of uses of the funds by January 15, 2013, and also on the impact of bulk groundwater withdrawals on the fish, wildlife, and water resources of the state. In a section seemingly unrelated to the main bill, the Department of Public Safety will study how it assesses fees or charges for services provided by the department to municipalities, fire departments, and other entities, including how to equitably assess fees. The agencies of Natural Resources and Transportation (AOT) will report on whether or not fees should be adjusted to reflect the contribution of AOT licensees and permittees to state air pollution.

Reimbursement for State Education Taxes Abated Due to 2011 Floods (H.461, Act 67)

Session law – does not amend any statutes.

VLCT Contact: Steve Jeffrey

Act 67 is one of several rapid responses that the administration and legislature made to issues that arose as a result of the 2011 floods. It allowed the commissioner of the Tax Department to abate state education property taxes for properties substantially damaged or destroyed and that were made uninhabitable due to flooding caused by any of the three federally declared natural disasters Vermont suffered last year. It was signed into law by the governor on January 18, just two weeks after the legislature convened. All of the activity authorized by the act is already completed, with approximately \$5 million in state education taxes returned to towns as the result of local abatement decisions.

Under Act 67, a town applied to the commissioner for a reimbursement by the Department of Education for payments it owed to its own school district (under 16 V.S.A. § 462) or to the state Education Fund (under 32 V.S.A. § 5402(c)). The act required that the town also abate its own municipal taxes “in proportion to” the amount of state school taxes requested to be abated. Applications had to have been made to the commissioner before April 15, 2012.

The act also allowed the commissioner to reimburse towns for unanticipated interest expenses incurred due to disruption to tax collections caused by the weather-related disasters of 2011 and make those school tax payments to their districts and/or the state.

Local Option Tax Administrative Fee (H.761, Act 128)

Amends 24 V.S.A. § 138(c).

VLCT Contact: Steve Jeffrey

State law (24 V.S.A. § 138) and municipal charters allow towns and cities to adopt one percent sales and rooms and meals taxes. Town voters approve it and the state Department of Taxes administers it along with its sales and rooms and meals taxes. The host towns get to keep 70 percent of the proceeds; other cities and towns that host state buildings get the other 30 percent through the state “payment in lieu of taxes” (PILOT) program, where the state pays a portion of what the municipal taxes would be if state buildings were taxable. Twelve cities and towns have adopted one or both of the taxes to date. The taxes have generated \$13.5 million in revenue a year for the host communities, and the 145 cities and towns hosting state buildings received \$5.8 million in PILOT payments in the current fiscal year.

To cover the expense of administering the tax, the legislature has authorized the Tax Department to collect a fee. This was set at \$9.52 per return filed quarterly from businesses collecting the tax. This session, the House Ways and Means Committee asked the department to reexamine the actual cost of administering the tax. The department calculated that it now only costs \$5.96 per return to administer the tax. That means that the 11 towns for which the department had figures (those of Winhall were not available) could be receiving \$167,590 more per year than they have been, and that another \$72,000 should be available to the PILOT fund for distribution to towns, assuming the fee were adjusted downward to just cover the department’s costs.

The Ways and Means Committee included this adjustment in H.761, the executive fee bill, which the governor signed on May 11, 2012.

Solar and Wind Energy Plant Taxation (H.679, Act 127)

Adds 32 V.S.A. chapter 215; amends 32 V.S.A. §§ 3802(17), 5401(10)(J), 5402c(a), and 3101.

VLCT Contact: Steve Jeffrey

For municipal tax purposes, H.679 makes only two small changes. First, it exempts from the municipal property tax any solar energy plants with a capacity of 10 kilowatts or less. These are generally residential units, many affixed to roofs. (Renewable Energy Vermont cites an average residential system as having a capacity of 5 kW. At Lowe's, for example, you can buy a 20-pack of solar panels that generate 4.7 kW for \$12,774 before tax credits.) Second, the bill requires the commissioner of the Department of Taxes to "from time to time provide municipalities with recommended methods for determining for municipal tax purposes, the fair market value of solar energy plants" that are greater than 10 kW.

For state education tax purposes, solar energy plants with a capacity of greater than 10 kW will be exempt from the education property tax beginning in 2013. Instead, they will be subject to a \$4.00 per kilowatt plant capacity tax that will be administered by the Department of Taxes. The proceeds of this tax will be deposited directly into the Education Fund.

This technique is similar to that used now for wind-powered electric generators, which are affected by H.679 as well. The bill drops from five megawatts of installed capacity to one megawatt the threshold for wind generators to be subject to an alternative to the education property tax of three cents of per kilowatt actually produced in a six-month period. Wind generators of less than one megawatt installed capacity are still subject to the education property tax at fair market value. All wind generators, regardless of capacity, are subject to the municipal property tax at fair market value.

The taxation of solar plants established in H.679 will be repealed on January 1, 2023. The Department of Taxes is required to report to the legislature in 2021 as to how it is working and what changes need to be made.

County Tax Payments in Two Installments (H.378, Act 81)

Amends 24 V.S.A. § 134.

VLCT Contact: Steve Jeffrey

This bill changes the requirement for all towns to pay their county taxes in one lump sum on July 5 to requiring the payments to be made in two equal installments: the first on July 5 and the second on November 5. This act is effective for the 2012 county tax payments.

Town Auditors and School Districts (H.771, Act 129)

Amends 16 V.S.A. §§ 261a, 323, 425, 491, 492, 563, 706m, and 706q,
and 24 V.S.A. §§ 1681, 1683, and 1686.

VLCT Contact: Steve Jeffrey

Act 129 completely eliminates the role of the town-elected auditors in school district finances. Existing law (16 V.S.A. § 323) requires each supervisory union school district to be audited by a public accountant. This act will require the supervisory union to employ public accountants to audit each of the member town school districts. Elected town auditors are no longer school district auditors, and the bill clearly limits their authority and responsibilities to the town. The changes in this bill affecting auditors are effective on July 1, 2013.

Disabled Veterans' Property Tax Exemption (H.773, Act 111)

Amends 32 V.S.A. § 3802(11).

VLCT Contact: Steve Jeffrey

Act 111 will expand the number of disabled veterans eligible for a property tax exemption of up to \$40,000 of appraisal value. The old law limited the exemption to “a veteran of *any war or a veteran who has received an American Expeditionary Medal*, his or her spouse, widow, widower or child, or jointly by any combination of them, if one or more of them are receiving disability compensation for at least 50 percent disability, death compensation, dependence and indemnity compensation, or pension for disability paid through any military department or the veterans administration.” (Emphasis added.) Act 111 strikes the condition of being a war veteran or recipient of the American Expeditionary Medal, so that any veteran or survivor listed above will be entitled to receive the exemption, so long as he or she meets the disability definition.

The new law came about when Vermont's Office of Veterans Affairs assumed responsibility for processing the annual applications for eligibility for disabled veterans due to a change in the law last year. Previously, the veterans applied directly to their own local listers. The office testified to the legislature that apparently 72 disabled veterans who did not meet the criteria above (in italics) had been receiving the exemption erroneously due to listers allowing exemptions for unqualified veterans. Instead of terminating that benefit, the office lobbied the legislature to expand the statutory eligibility to allow the inappropriately-granted exemptions to become law. The legislature overwhelmingly agreed to this proposal.

The act is effective immediately and applies to exemptions from the April 1, 2012, grand list values. What we don't know is how many towns have properly denied ineligible veterans or how many veterans didn't apply because they knew they were ineligible. Listers should expect an increase in requests for these exemptions and a reduction in their town's grand list as a result.

Miscellaneous Local Tax Changes (H.782, Act 143)

Amends 10 V.S.A. § 1942(b); 32 V.S.A. §§ 6066a, 5410(b), 8557(a), 3752(5);

27A V.S.A. §§ 1-105; 16 V.S.A. § 4025(a); adds 24 V.S.A. § 138(g).

VLCT Contact: Steve Jeffrey

Each year, the House Ways and Means Committee writes a Miscellaneous Tax Bill to address a number of generally technical taxation issues. The bill is then sent to the Senate Finance Committee.

Section 1 of the bill requires towns using their own fuel tanks to receive bulk purchases of dyed diesel fuel for their motor vehicles to now pay the penny per gallon **fuel licensing fee that funds the Petroleum Cleanup Fund**. Towns may avail themselves of the fund to clean up fuel spills.

Section 25 of the bill returns us all to the **annual filing of the homestead declaration** for state education property tax purposes. In 2010, we convinced the legislature that the annual filing of these forms was confusing homeowners and making them lose out on lower tax rates and income sensitivity. Now, just two years later, we are switching back to annual declarations due to a perception that there is “erosion of the grand list” because people are not changing the status of domiciles sold as second homes. To make this re-transition as successful as possible, the commissioner of the Tax Department “*shall take steps to publicize and conduct outreach regarding the change in filing requirements... and ... provide a remedy for a taxpayer who fails to file or files an inaccurate classification of property as homestead or nonresidential ..., through no fault of the taxpayer.*”

Also in the “If you don’t like the education property tax billing and collection system in Vermont, just wait a few minutes” category, Section 27 of the bill once again moves the **date when education property tax adjustments claims must be filed for which towns need to send corrected property tax bills**. In the same 2010 bill in which the switch to the one-time homestead declaration filing was made, town clerks and treasurers convinced the legislature to move the “drop dead date” for late filing of the property tax adjustment claims to September 1, with the state having to send any corrected bills resulting from claims filed after that date. September 1 will now become October 15. Towns will be notified of the need to send corrected tax bills up until November 1 for claims filed with the Tax Department by the new October 15 date; after November 1, the department handles payments directly with the taxpayer.

Several sections of the bill also change the **determination of homestead income** for determining property tax adjustments, and there is now imposed a cap of \$3,000 for renter rebate checks though neither directly impact municipal government.

Section 33 of H.782 addresses a situation where a condominium complex straddles a town line, with all the housing units in one town and much of the common land located in another and **how that condominium common land is taxed**. The condominium law sets forth that common land is assessed as part of each owner’s unit, but that couldn’t happen if the units are in another town. The new act states *“that if a portion of the common elements is located in a town other than the town in which the unit is located, the town in which the common elements are located may designate that portion of the common elements within its boundaries as a parcel for property tax assessment purposes and may tax each unit owner.”* This means that condominium unit owners will now receive tax bills from two towns – one for their unit and any common elements from the town in which the unit is located, and one for their portion of the common elements located in the adjoining town. Section 33 is “effective upon passage,” but since passage happened after April 1, 2012, we assume this will first affect the grand list in 2013.

The legislature also raises the **state education property tax rates** by two cents each in H.782. The base rate for homesteads is increased from \$.87 to \$.89 and the non-residential property base rate increases from \$1.36 to \$1.38. The base rate for income-sensitized homestead taxpayers will remain at 1.8 percent. Because voters approved school budget increases of three percent this year, the average spending adjusted homestead property rate is increasing from \$1.27 last year to \$1.32 for the FY13 tax year, and from 2.63 percent of household income to 2.71 percent. Another interesting note is that due to continued declines in property values, the actual amount of school property taxes non-residential property owners will pay will decline from \$536.6 million last year to \$532.8 million for the coming year. Even with these two-cent increases this year, it looks as though the rates may have to be increased by another five cents next year due to continued school spending pressures and declines in real estate values.

Section 48 clarifies that town voters who adopt **local option sales and rooms and meals taxes** can rescind any or all of them at an annual or special town meeting.

Cities and towns with local option sales and rooms and meals taxes won’t be receiving a windfall from either decision recently made by the Tax Department to impose the **rooms and meals tax on meals served at independent living facilities and nursing homes** and the **sales tax on “cloud computing” services**. H.782 clarifies that meals are exempt and placed a moratorium on taxing “prewritten computer software accessed remotely” through June 30, 2013. The bill also sets up a committee to “examine the **sustainability of the sales and use tax** in the context of Vermont’s changing economy.” Legislative leaders have since indicated that revamping the sales tax will be one of their highest priorities for the 2013 legislative session.

Due to big changes made by the legislature to the way that the Vermont Yankee Nuclear Power Plant is taxed, there are **changes in how the state provides the one-third of the Education Fund not paid for by property taxes** (66.74 percent of all education spending comes from the state homestead and non-residential property taxes for FY13). Until now, a special property tax levied on Yankee was deposited into the Education Fund. That tax is repealed and the proceeds of a new tax on Yankee now goes into the General Fund. But this year, there is a special additional transfer from the General Fund to the Education Fund of \$2.1 million to replace what was expected from the former Yankee tax. For future years, the allocation of the state sales and use tax that is dedicated to be deposited directly into the Education Fund is rising from one-third of the total tax proceeds to 35 percent, so any loss of the Yankee tax is negated.

Vermont **emergency medical services training** will benefit from an additional \$150,000 made available to the Vermont Fire Service Training Council. The funds are raised from insurance companies writing homeowners, auto, and other policies. Section 62 of the bill earmarks the extra funds for training programs for emergency medical technicians, advanced emergency medical technicians, and paramedics to be developed by the Department of Health.

H.782 also makes several changes to the **current use program**, though the major changes proposed in 2010 and 2011 (in H.485 and in H.237) did not gain final passage. In the bill that did pass, the definition of development that causes withdrawal of land from the program was expanded to include the following: *[e]nrolled land is also considered “developed” under this section if a wastewater system permit has been issued for the land pursuant to 10 V.S.A. § 1973 and the commissioner of forests, parks and recreation has certified to the director that the permit is contrary to a forest or conservation management plan or the minimum acceptable standards for forest management; use of the parcel would violate the conservation management standards; or after consulting with the secretary of agriculture, food and markets, the commissioner certifies that the permit is not part of a farm operation. The commissioner of forests, parks and recreation may develop standards regarding circumstances under which land with wastewater system and potable water permits will not be certified to the director.* The language is intended to fix a change made last year that basically imposed the land use change tax if a state wastewater or town development permit had been issued, and is effective retroactively to July 1, 2011. The bill also amends the application of the term development to timber cutting in certain circumstances.

MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION

The “Municipal Toolbox” Bill (S.106, Act 155)

Amends 10 V.S.A. § 2675; 20 V.S.A. § 3622; 24 V.S.A. §§ 1974a, 4451, 1236, 1408, 1762, 1972, 2291, 4303, 4408, 4412, 4442; and 27 V.S.A. § 1404(b);
repeals 20 V.S.A. §§ 3741-3747; 24 V.S.A. §§ 2404, 2405; and 27 V.S.A. §1403 (b)(8).

VLCT Contact: Karen Horn

S.106, the “municipal toolbox” bill, is a compilation of issues in the municipal statutes that need clarification, that are obsolete and confusing, or that should be updated. Over the last several years, similar legislation has been introduced to address technical changes to municipal statutes that clarify intent and update archaic laws. On the last day of the 2012 session, the legislature agreed to the provisions of S.106 and passed it, adding a section designed to make it more difficult for public employees to embezzle funds.

Fines. In Title 10, section 2645 (a) refers to open burning of brush, weeds, grass, or rubbish without a permit, and section 2648(a) refers to slash removal from the right of way and adjoining property lines

(leavings from cutting trees or shrubs). Fines for violating those sections of statute are increased from \$25 to \$75 to more effectively deter those activities.

The maximum fine for municipal ordinance violations – such as regulating the storage or dumping of solid waste, placement of signs, nuisances, and animal welfare – has been \$500 since at least 1969. At that time, each week the violation continued was considered a separate violation. A change was enacted in 1994 that made each day a separate violation. Between 1994 and 2007, the “real value” of a municipal fine – and, thus, the deterrent value – eroded about 30 percent, and these fines were amended to catch up with inflation. Maximum fines for municipal ordinance violations are increased to \$800.

The planning statutes were amended in the 2003 comprehensive permit reform bill. The fine for violating duly adopted zoning bylaws was last increased in 1999 from \$50 to \$100. No fine may be assessed unless the alleged offender – who either never obtained a required permit or violated the conditions of the permit that was issued – has had at least seven days’ warning by certified mail. Inasmuch as the clear intention of zoning bylaws is to ensure that people comply for the safety and health of the community, zoning administrators generally try to cajole permit holders into compliance before seeking a fine. Under existing law, each day that a violation occurs may be considered a new violation. Although local officials wanted the fines increased to \$800 to better deter zoning bylaw violations (which are sometimes quite profitable for the violators), the maximum fine was increased to only \$200.

Dogs. According to statutes dating from 1876, if a dog worries, maims or kills sheep, lambs or other domestic animals, the selectboard is to assess the damage, set a reimbursement rate, pay the owner of the livestock, find the guilty dog, and kill it. Each of these statutes is deleted. As well, the selectboard warrant to the animal control officer directing the impoundment of unlicensed dogs is amended to reflect changes to statute in 2011 that provided for impounded dogs to be kept for 10 days – or longer, at the municipality’s option – before destroying them in a humane way if they have not been adopted.

Abatement. The section of the bill on abatement gives local officials flexibility in abating taxes. They may now abate the taxes, interest, *or* penalties, whichever best suits the needs of the town and the petitioner. Some legal opinions held that under the statutes in effect, penalties, taxes, and interest could only be abated in proportion to each other, thus tying the hands of the town if a particular situation warrants abating just interest or penalties or just taxes.

Posting Notice of Proposed Ordinances or Rules. In an effort to make state government more efficient, the 2010 legislature significantly altered the state’s obligation to post or publish notices in newspapers. The legislation required only one notice to list the regulation, its summary, and contact information for a person authorized to answer questions. The same changes will now apply to local governments when they post or publish notice of ordinances, bylaws, or rules. The legislative body will arrange for one formal publication of the ordinance or rule, or its summary, in the community newspaper. The notice will include the name of the municipality, its website, the subject of the ordinance or rule, contact information for the official responsible for the draft, and the location where the ordinance or rule may be examined.

Poor Relief and Glebe Lands. Towns have not been responsible for “poor relief” for decades, though archaic references to it have remained in statute. They are now deleted, as are statutes dating from 1798 regulating glebe lands. Glebe lands were historically granted to towns for schools, settled ministry, colleges, and churches. These statutes required the selectboard to divide rents “among the different organized religious societies in town that maintain public worship at least a fourth of the Sabbaths of the year.” The glebe land statutes regarding rents to churches were declared unconstitutional in Vermont in

1971 when the Vermont Supreme Court issued its decision in *Mikell v. Town of Williston*, 129 Vt. 586 (1971).

Plainfield Meeting. According to language added on the last day of the session, for three years, the Town of Plainfield may hold annual and special meetings at the Twinfield School, even though that school is located in Marshfield.

Public Roads. Several definitions of “public road” in the highway statutes are neither replicated nor referenced in Chapter 117 of Title 24, the Municipal and Regional Planning and Development statutes, thus creating confusion and inconsistency in developing and applying plans, bylaws, and other municipal ordinances. S.106 establishes the highway statute definition in the planning statutes. It permits a municipality to define a class 4 town highway as a public road. It also clarifies that land development on lots that do not have frontage on a public road, a class 4 town highway, or public waters *do* have access, provided that access through a permanent easement or right-of-way has been approved per requirements of the adopted bylaws.

Rural Town. The section of the planning statute that allows a town to designate itself a rural town now conforms to the definition (a town having a population of less than 2,500 persons) other parts of the statute.

Filing of Plats. S.106 includes new standards for the recording of survey plats: the recordable plat materials will now be composed in a fixed-line photographic process on stable base polyester film or pigment ink on stable base polyester film or linen tracing cloth.

Unorganized Towns and Gores. Under provisions of S.106, the supervisor of an unorganized town or gore acts as town clerk and board of civil authority with respect to tax appeals from decisions of the board of appraisers. Statutes establishing an ad hoc board to hear appeals from the board of civil authority are repealed, and certain costs incurred in conducting grievance hearings between July 1, 2009 and February 3, 2011 under that system are reimbursable.

Village Green Renewable Pilot Program. In prior years, funds from the Clean Energy Development Fund had been appropriated for customers to connect to new district heating projects in Montpelier and Randolph. The project in Randolph has not gone ahead, and S.106 makes up to \$100,000 that had been earmarked for that town’s connections available to other district heating projects on a competitive basis.

Internal Financial Controls. S.106 adds language that helps towns improve financial internal controls. The auditor will make available to all local governments a one-page document designed to determine if internal financial controls are in place to ensure the proper use of public funds. He will work with VLCT, the Vermont Association of School Business Officers, and the Vermont School Boards Association to develop the document, which the town treasurer must complete and provide to the selectboard by June 30. The selectboard must then review and acknowledge receipt of the completed document by July 31.

Any other officer and employee authorized to receive or disburse town funds that the selectboard selects will have to answer any of the document’s pertinent questions annually and provide them to the selectboard within 30 days of the selectboard’s request. The selectboard will have to acknowledge receipt of and review those documents it requested within 30 days of their receipt. This process should improve everyone’s understanding of the financial management process and hopefully increase communication between key municipal financial players.

The auditor will also have to develop and deliver “instruction in fiduciary responsibility, the importance and components of a sound system of internal financial controls, and other topics designed to assist the officials in performing the statutory and fiduciary duties of their offices.” He’ll work with VLCT and school groups in the development of the education program. Additionally, by July 1, 2012, the auditor will post on his website a summary of all embezzlements and false claims against any state agency or department committed within the last five years, including all convictions and reports with audit findings, as well as a summary of all significant recommendations and dates on which corrective actions were taken. Recommendation follow-up will be conducted at least biennially for at least four years from the date of the audit report.

The amendment also requires all officers and employees with authority to receive or disburse town funds to be bonded for faithful performance of their duties. Bonding is a key protection to ensure that town officers perform the functions they are entrusted to perform, and that the town is adequately covered for not only acts of embezzlement but also for any costly mistakes made by officers and employees. The selectboard has to set the amount of the bond at a level that will protect the town from loss. If a town officer can’t secure such a bond (usually as part of a liability insurance policy but it can be stand-alone) within ten days of being requested by the selectboard to do so, the office becomes vacant.

S.106 also adds a few words to another underutilized statute, 24 V.S.A. § 1686, by authorizing town auditors (elected or contracted public accountants) to examine the accounts of any town officer handling money. If any town officer refuses to submit his or her books, accounts, tax bills, or any other necessary information to the auditors, that officer may not be re-elected.

Search and Rescue. Currently, the Vermont State Police Division of the Department of Public Safety (DPS) is primarily responsible for finding lost hikers in areas of the state that do not have municipal departments and has the authority to call out qualified professional and volunteer services. Vermont is currently one of only five states that requires its state police to rescue persons missing in the backcountry. This section was added on the last day of the session as it became apparent that neither a House search and rescue bill nor S.169 – a workers’ compensation lien bill that contained search and rescue language – would pass.

S.106 requires DPS to develop and implement an interim protocol establishing responsibility and authority for search and rescue operations among the state police, municipal police departments with search and rescue training, or contracted sheriff’s services with the same training. The protocol provides that all search and rescue operations will be conducted pursuant to an “incident command system” established in the legislation that ensures an immediate response to every search and rescue call for help and the earliest possible rescue or recovery of anyone who needs such help. DPS will assess all available resources in the state capable of assisting in search and rescue and organize them on a geographical basis. By July 1, 2014, the DPS search and rescue team and all Vermont game wardens will obtain advanced training in search and rescue operations and the incident command system.

The bill creates a backcountry search and rescue study committee to investigate whether DPS or a different state agency should supervise search and rescue operations for missing persons in Vermont’s backcountry and outdoor recreational areas and recommend an appropriate organizational structure to manage the state’s search and rescue resources. The study will evaluate various methodologies of search and rescue as well as their organizational and command structures. Minimum qualifications for organizations and individuals participating in search and rescue operations will be examined, including whether firefighters and law enforcement officers, including those at the local level, should be required to be trained in search and rescue operations and on incident command systems as part of certification or recertification requirements, as well as how to finance such operations.

The committee members include one member each from the House and Senate, the president of the Vermont Chiefs of Police and Vermont Sheriffs' associations, the commissioners of DPS and the Department of Fish and Wildlife, and two members of the Vermont Coalition of Fire and Rescue Services as well as additional emergency services representatives. The committee is directed to report its recommendations to the General Assembly by January 15, 2013.

The bill requires licensing as well as the currently required credentialing of emergency medical services (EMS) providers and directs the Department of Health to establish minimum rules to credential and license personnel. The department must also develop volunteer and career response time standards for urban and rural requests for emergency services. Continuing education requirements may be met by taking regional online classes. Those already certified will have that certification converted to the comparable licensure and continue their ability to practice in accordance with their certification level.

A special fund for training and delivery of emergency medical and ambulance services is created. Emergency medical services districts will be responsible for credentialing personnel, establishing medical control within a district, and developing protocols for response times.

An Emergency Medical Services Advisory Committee is established to advise the commissioner of the Department of Health on the delivery of emergency medical services in Vermont and is chaired by the commissioner. The committee includes one local government member not affiliated with emergency medical, firefighter, or hospital services who is appointed by VLCT. Committee reports, due to the legislature in 2014 and 2015, will include each EMS district's response time to 911 emergencies, whether districts should be consolidated, whether every municipality should be mandated to have in place an EMS plan providing for timely emergency responses, and whether the state should establish directives addressing when an agency can respond to a non-emergency request for transportation.

The bill takes effect on July 1, except for the amendment to the Village Green Renewable Projects, the requirement for the auditor to provide information about embezzlement and audit findings on his website, the search and rescue interim protocol, and the strategic plan development committee, which take effect upon passage.

Public Employment and Workers' Compensation (S.106 § 44, Act 155)

Amends 21 V.S.A. § 601 (12) (K), (L), and (M).

VLCT Contact: Ken Canning

Section 44 of S.106 amends the definition of public employment for workers' compensation purposes to include coverage for volunteer firefighters and rescue and ambulance squads while they are acting in "any capacity under the direction and control of the fire department or rescue or ambulance squad." This expands the current coverage available from a limited number of activities listed as being in the "line of duty," and puts volunteer firefighters and rescue and ambulance squads on par with other municipal employees regarding eligibility for workers' compensation coverage.

The bill also removes existing statutory language that will eliminate local control in deciding to provide workers' compensation coverage for firefighting, rescue, and ambulance volunteers. The now old law stated that these volunteers may be considered public employees and covered for workers' compensation only if the governing officials of the municipal body so vote – or, in the case of private volunteer fire department, rescue or ambulance squads, after election by the organization to have its members covered for workers' compensation insurance. This bill strikes that restricting language, making it mandatory to cover all these volunteers. Although we don't know of any volunteer departments or squads that have

elected *not* to cover their members for workers' compensation, we are concerned that there may be some who aren't aware of this new mandate that will leave them exposed to workers' compensation claims without having obtained any required insurance. Therefore, VLCT will ask the commissioner of the Vermont Department of Labor to notify any department or squad that currently does not provide workers' compensation insurance for their members and advise them of this new mandate.

S.106 is also amended to establish that public employment includes volunteer firefighters and rescue and ambulance squads while acting in any capacity under the direction and control of the fire department or rescue and ambulance squads, whether municipal or private.

Additional State Match for Town FEMA Aid (H.558, Act 75)

Session law – does not amend any statutes.

VLCT Contact: Steve Jeffrey

Another of the very generous actions of the State of Vermont in helping towns cope with the financial impacts of Tropical Storm Irene and the spring floods was to cap any town's FEMA (Federal Emergency Management Agency) match at not more than the amount a three-cent property tax rate would raise. The authority to implement this assistance was included in the FY12 Budget Adjustment Act.

FEMA normally reimburses 75 percent of the cost of repairing or replacing property that was damaged or destroyed in a federally-declared disaster event. When damages in a state are extraordinarily large, FEMA will cover 90 percent of the cost, and Vermont has been approved for 90 percent of damages from Tropical Storm Irene.

Under the usual program for assisting towns, the state pays for one-half of the non-federal share of the FEMA-eligible costs for infrastructure repair. Since the state has achieved the 90 percent federal reimbursement for Irene, the town will pay for 5 percent of the total eligible costs and the State of Vermont will pay the rest.

With the language approved in Act 75 utilizing the FEMA project worksheet totals submitted by all municipalities, the state is determining the dollar value of the 5 percent local match that would normally be required. This value will be calculated against the equalized municipal grand list (one percent of the value of the total taxable property in town). The amount by which the town's required match for FEMA-approved expenses exceeds what a three cent property tax rate would raise will be the additional match the state will pay for the town.

This program will assure that no Vermont municipality has FEMA-approved 2011 storm damage costs that exceed the amount the town can raise with a three-cent tax rate increase.

Employment Credit Checks (S.95, Act 154)

Adds 21 V.S.A. §§ 495i and 496a.

VLCT Contact: Steve Jeffrey

S.95 was yet another bill that inherited most of its content from a different bill that stalled during the legislative process. In this case, it was H.42 that was passed by the House but failed to be acted on by the Senate. The House really wanted H.42, so it took a Senate-passed bill that was on another topic, substituted the language of H.42 (and more), and added it to S.95. S. 95 morphed into a bill that will prohibit most employers from requiring from employees or job applicants credit reports or credit histories. The bill does allow employers to require such information for certain positions.

S.95 prohibits employers from failing or refusing “to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of [or even inquire about] the individual’s credit report or credit history.” Employers are exempted from these prohibitions if:

- the information is required by state or federal law or regulation;
- the position of employment involves access to confidential financial information;
- the employer is a bank or credit union;
- the position of employment is that of a law enforcement officer, emergency medical personnel, or firefighter;
- the position of employment requires a financial fiduciary responsibility to the employer including the authority to issue payments, collect debts, transfer money or enter into contract; or
- the position of employment involves access to an employer’s payroll information.

Even with these exemptions, employers are prohibited from using the credit information as the sole determinant of employment. Employers that are allowed to use the credit information must:

- obtain the person’s written consent for each request;
- disclose in writing the reasons for accessing the information;
- disclose in writing the reasons for the action, and allow the person the right to contest the accuracy of the information if an adverse employment action is taken based on the credit report;
- ensure that none of the costs associated with obtaining the report is passed on to the person;
- ensure that the information obtained remains confidential if kept; and
- provide the person with the information or destroy it in a manner that ensures its confidentiality if the person is not hired or is terminated.

Last year, VLCT surveyed Vermont municipal managers and administrators about the current use of credit information in the hiring process. Of the 54 responses we received, one-third (18 municipalities) indicated that they used credit checks as part of their hiring process. Almost all used it only for public safety officers and those in financial management positions. Even those that used it only did so at the end of the hiring process, usually after a conditional offer of employment had been made. No one reported having not hired any applicants due only to their credit report, but considered it in light of other factors.

S.95 also includes a section that requires all employers receiving \$1,001 or more in state grants to certify to the state that none of the funds will be used to “interfere with or restrain the exercise of an employee’s rights with respect to unionization.” Upon request, the secretary of the Agency of Administration can require those employers to produce records that attest to such certification.

Unpaid Municipal Tickets (H.634, Act 83)

Amends 24 V.S.A. § 1981.

VLCT Contact: Karen Horn

Under existing law (24 V.S.A. § 1981), if one fails to pay a fine ordered by the Judicial Bureau for a violation of state statute, the Judicial Bureau may contract with a collection agency to collect it. While this measure has been successful, it has not been available for collecting unpaid fines resulting from municipal ordinance violations. Act 83 extends the collection agency option to the multitude of unpaid fines that the Judicial Bureau orders for violation of municipal ordinances.

According to current law, a municipality may seek enforcement of unpaid fines assessed by the Judicial Bureau by:

- recording a lien on any property the defendant may have in that town;
- seeking enforcement in small claims court; or
- seeking enforcement through a contempt proceeding of the criminal division of the superior court.

These options have proven ineffective, hence the adoption of the collection agency route in Act 83. The act also stipulates that any enforcement orders that have been referred to the criminal division of the superior court are to be transferred to the Judicial Bureau upon passage of the bill, which was April 18. The collection agency remedy takes effect July 1 in order to give the Court Administrator's office, which develops the tickets, time to change the information on the tickets to reflect that unpaid tickets will be referred to a collection agency and that the violator will be liable for any charge from the collection agency.

Municipal Charters (Acts M009, M010, M012, M014, M015, M016, M017, and M018)

This session, the legislature passed eight municipal charter amendments: Brattleboro (M010), Burlington (M012), Hartford (M016), Montpelier (M015), Richmond (M017), South Burlington (M009), Williamstown (M014), and Windsor (M018). Williamstown was a new charter, enacted for the purpose of appointing rather than electing a town treasurer.

Both Government Operations committees were very solicitous of the charter efforts this year, as they have been for some time now. The charters were passed with very few amendments, most of which were technical in nature.

However, once again, the relevant bill that did not pass and wasn't even taken up throughout the entire biennium was H.31, "an act relating to legislative approval of municipal charter amendments." That bill, strongly supported by local officials, would allow municipalities to amend, adopt, and repeal charters without the approval of the General Assembly, unless the attorney general, six senators, or 30 representatives of the House petitioned for legislative approval. In that case, the charter proposal would proceed through the process that is now in place. Still, hope springs eternal, so maybe such legislation will be enacted in 2013?

TRANSPORTATION

The Transportation Bill's Impact on Municipalities (H.770, Act 153)

Amends 19 V.S.A. §§ 306(e) and (f), 309a, 11, 43; 24 V.S.A. § 1173; 32 V.S.A. § 9741; 23 V.S.A. § 3101; repeals 10 V.S.A. §§ 280g(a)(10) and (d), 445(b); 19 V.S.A. §§ 10g(d)(2), 317(f), 32 V.S.A. § 706(4), Sec. 50 of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 61 of No. 164 of the Acts of the 2007 Adj. Sess.

VLCT Staff Contact: Jonathan Williams

Many sections of the much discussed Transportation Bill (T-Bill) are very beneficial to the towns and villages of Vermont, especially those that were impacted by Tropical Storm Irene in the past year.

The T-Bill increases Town Highway Aid by \$1 million, the first such increase since 2005, bringing the total allotment to almost \$26 million. The bill also allocated an additional \$500,000 to the Town Highway Structures grant program, a much needed increase that VLCT fought hard for. It is notable that the

governor's recommended budget (and the version of the T-Bill passed by the House) allocated this entire sum of \$1.5 million to the Town Highway Aid program, but this was divided by the Senate Transportation Committee, a change that was maintained throughout the rest of deliberations. Under a provision requested by the Senate Transportation Committee and placed into the final bill, the secretary of the Agency of Transportation is directed to review the "permissible uses of general state aid for town highways" and is to report to the House and Senate Transportation committees with recommendations for "further specifying the permissible uses, and overseeing its use" by January 15, 2013. (See the T-Bill amounts in the [budget table on page 7](#).)

As mentioned in [Weekly Legislative Report No. 8](#) and [No. 9](#), the T-bill allows for preferential weighting of projects if a municipality is implementing eligible environmental mitigation projects under an adopted river corridor, municipal (town), *or* a mitigation plan, the last approved by the Federal Emergency Management Agency (FEMA). This threefold increased availability of options allows for a greater number of municipalities to gain preferential weighting when applying for enhancement grants in FY13, FY14, and FY15. This availability of options is augmented by the more than \$1 million increase in the Enhancement Program.

In addition, the T-Bill increases State Aid for Town Highways in the event of certain natural or manmade disasters. The bill creates a new program for state aid allocated to federal disasters (separate from the existing state aid program for non-federal disasters). The funding between the two programs is nominally split, but the secretary of Transportation is authorized to transfer appropriations between the two programs. Federal aid town highways that receive assistance under the Federal Highway Administration's emergency relief program will be more able to meet federal match requirements because new language sets a cap for the town's share of the match at 10 percent.

H.770 also amends the statutory language regulating state aid for town highway structures. It authorizes the grant program to fund alternative projects that eliminate the need for replacing a bridge, culvert, or other structure by providing access through other means (e.g., laying out a road that connects to another bridge further up- or down-stream). A municipality could design and fund projects to close bridges damaged by Tropical Storm Irene (or future disasters), if it finds it to be in the public interest. H.770 also provides support for the Accelerated Bridge Construction (ABC) Program (see [Weekly Legislative Report No. 5](#)). The ABC Program allows a town to close a bridge completely during construction instead of building a temporary bridge. If that option is taken, the town will pay 5 percent, not the usual 10 percent, as a local share of the total project cost. This substantially reduces overall costs and speeds construction because temporary bridges do not need to be built. Other local share costs for existing bridge rehabilitation projects are also reduced from 5 percent to 2.5 percent if the municipality closes the bridge (and does not construct a temporary bridge) for the duration of the project.

Notable for municipalities, the T-Bill eliminates the requirement that towns deliver their annual report to the highway board.

The T-Bill also allows for the creation of several study committees and commissions/reports, including one to study the taxing of alternative fuels (user fees and fee collection mechanisms) for the Transportation Fund, and one to analyze the costs incurred by the state in enforcing the state's traffic safety laws, and study how state police costs could be apportioned between the General Fund and the Transportation Fund. A larger study committee is directed to determine current transportation revenue funds, impacts, and potential future revenue gaps, and to evaluate potential new state revenue streams for transportation and transportation infrastructure funds. VLCT is to appoint one representative to this committee.

H.770 also taxes natural gas motor vehicle fuels, with the revenues to be assigned to the Transportation Fund.

Most of the sections pertaining to municipalities either take effect upon passage of the bill or by July 1. The parts of the bill pertaining to state aid for federal disasters will be retroactive to March 1, 2011. The aspects of the bill dealing with the natural gas tax will take effect July 1, 2012.

State Highway Condemnation Law (H.523, Act 126)

Amends 19 V.S.A. Chapter 5, and 24 V.S.A. §§ 4012, 5104.

VLCT Staff Contact: Jonathan Williams

Act 126 revises the state highway condemnation laws. It does not directly impact municipalities, as municipalities have their own separate condemnation process, but this new legislation may come into play when municipalities must condemn properties for projects and programs that use state dollars (such as grants).

The act requires the Agency of Transportation to negotiate with property owners prior to instituting formal condemnation proceedings. While this was already the case in some state condemnation proceedings, the requirement to negotiate is now codified into statute. The act also attempts to consolidate condemnation proceedings in both determining the legality of the taking of property and also the compensation for taking the property into one superior court case. This consolidation is an attempt to speed up the condemnation process while at the same time protecting the rights of property owners.

Act 126 modifies the preparation of any official notice for a public hearing concerning condemnation, and stipulates how and how quickly the notice must be issued. The act defines in greater detail how “necessity” for a state condemnation project can be determined, and how swiftly it must be determined. Act 126 also stipulates how a property owner can contest the amount of compensation received within 90 days of the notice of taking. The appeals process for property condemnation matters is also amended.

The act also provides for the training of transportation board members on the methodology of condemnation appraisals, determination of damages, and other condemnation law.

Certain sections of the act (Transition provision and the training of Transportation Board members) take effect upon passage. The rest of the bill takes effect on July 1, 2012.

Private Roads (H.272, Act 123)

Adds 19 V.S.A. Chapter 27.

VLCT Contact: Karen Horn

How private road maintenance should be handled in the eyes of the law has been a controversial issue in both the 2011 and 2012 legislative sessions because some municipalities own property – such as municipal forests, pump houses, reservoirs, and electric transmission facilities – along private roads. Still, this is not the focus of Act 123.

The Federal National Mortgage Association, commonly known as Fannie Mae, will purchase residential mortgages on the secondary market when a property is on a private road *only* if there is some agreement about how the road will be maintained or state statute establishes how the road will be maintained.

If a property is located on a community owned or privately owned and maintained street, Fannie Mae requires a legally enforceable agreement or covenant for street maintenance. In 2008, Fannie Mae announced that it would permit the delivery of mortgage loans for properties for which there is no maintenance agreement or covenant, provided that the property was located in a state that had statutory provisions defining the responsibilities or property owners for the maintenance and repair of private streets. Thanks to the passage of H.272, Vermont is now one of those states.

In response to that announcement, the legislature, after two years of discussion, passed H.272 to determine who is responsible for maintaining a private road in the absence of an express agreement and in conformance with a Vermont Supreme Court decision, *Hubbard v. Bollean*, 144 VT 373 (1984). The new law establishes that in the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road, each person will contribute ratably to the cost of maintaining the private road and have the right to bring a civil action to enforce the ratable contribution. “Rateable” is not defined in the statute. In committee meetings, legislators discussed the proportional amount of property that each person owns along a road, or the amount of use that a road sustains from owners (for instance, summer camp versus full-time residence). However, that discussion is not reflected in Act 123.

Public Safety

Racial Disparities in the Vermont Criminal Justice System (H.535, Act 134)

Adds 20 V.S.A. § 2366; amends 20 V.S.A. § 2358 and 24 V.S.A. § 1939.

VLCT Staff Contact: Jonathan Williams

Act 134 provisions \$20,000 for a Vermont Center for Justice Research study to determine if extrajudicial factors contribute to existing racial disparities that have been observed in Vermont’s criminal justice system and whether or not there is unequal treatment of persons on the basis of race, color, or national origin. The study will utilize data from the FBI Interstate Identification index, the departments of Motor Vehicles and Corrections, the Vermont Criminal Information Center, and the Vermont court system. It will focus on how the length of court sentences and imprisonment time of minority persons compare to those of white defendants with respect to sentence type, length, and level of restriction, and what variables influence these discrepancies. The results will be reported to the House and Senate Judiciary committees, the court administrator, and others by December 15, 2012.

Act 134 further proposes that every law enforcement agency in Vermont (including municipal law enforcement) adopt a bias-free policing policy, if it doesn’t have one already, by January 1, 2013. Bias-free policing policies must contain certain elements as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and model policy issued by the attorney general. An adopted bias-free policing policy must encourage ongoing bias-free law enforcement training for all law enforcement agencies.

The act encourages all law enforcement agencies to work with the Vermont Association of Chiefs of Police to expand the collection and analysis of roadside-stop race data. It also requires that the Law Enforcement Advisory Board examine how individual Vermonters make complaints to law enforcement, and requires the board to suggest to the Senate and House Judiciary committees by December 15, 2012, what procedures should exist in order for Vermonters to file a complaint.

The act takes effect on January 1, 2013.

Opioid Addiction Treatment System (H.627, Act 135)

Adds 18 V.S.A. Chapter 93; repeals Sec. 132 of No. 66 of the Acts of 2003.

VLCT Staff Contact: Jonathan Williams

Act 135 requires the Department of Health to authorize opiate addiction treatment programs throughout Vermont, and further expands certain physician's authority to provide opiate addiction treatment. The act "establishes by rule a regional system of opioid addiction treatment." Patients being treated by this system will receive appropriate, comprehensive medical assessment and therapy. The assessment will be used to determine whether pharmacological treatment (methadone, buprenorphine, and/or other federally approved medications) is medically appropriate. The act further stipulates how and by whom these federally approved controlled substances are dispensed, and any necessary training.

The act also requires a report to be made each year from 2013 to 2016 to the House Human Services and Health Care committees and the Senate Health and Welfare Committee that assesses the effectiveness of the regional system of opioid addiction treatment.

The act does not define opioid addiction. It also does not stipulate how the location of the opioid treatment centers will be determined, or if the treatment centers will be attached to hospitals.

The act takes effect on passage.

Mental Health Needs of the Corrections Population (H.765, Act 87)

VLCT Staff Contact: Jonathan Williams

This act tasks the secretary of the Agency of Human Services with establishing a work group to determine if individuals with serious functional impairments are receiving appropriate programs and services while incarcerated in a correctional facility. Serious functional impairment is defined in 28 V.S.A. § 906 as a mental or bodily disorder that substantially impairs judgment, behavior, etc., or a developmental disability as diagnosed by a qualified mental health professional. In addition, the work group is directed to work with members of the criminal justice community to find ways to prevent initial incarceration and to limit the length of incarceration for an individual with a serious functional impairment, when appropriate. Further, the work group will work toward the successful reintegration into the community of incarcerated individuals with serious functional impairments, and at the same time try to reduce their rates of recidivism.

Finally, the work group will strive to make long-term, systemic policy recommendations to the secretary of Human Services that will create or improve mechanisms, programs, and services that benefit incarcerated individuals with serious functional impairments.

The findings of the work group will be issued in a report to the Vermont General Assembly by January 15, 2013, that will incorporate public input vis-à-vis a draft report issued to the public by December 15, 2012.

The commissioner of the Department of Mental Health is also tasked with ensuring that the information concerning incarcerated individuals with a mental illness or disorder is collected and recorded separately from the aforementioned report and recommendations. This information must include recidivism rates among these incarcerated individuals with a mental illness or disorder and must be reported to the House Corrections and Institutions Committee.

The departments of Mental Health, of Disabilities, Aging, and Independent Living, and of Corrections – with input and participation from other peer and advocacy organizations – will review the Department of Corrections’ training program for correctional officers as it relates to the Americans with Disabilities Act, and to working with individuals with serious functional impairments or mental illnesses. The review will determine if the training is gender responsive and trauma-informed. The commissioners of the departments of Mental Health and Corrections must submit a report to the Vermont General Assembly on opportunities for improvement in this type of training by January 15, 2013.

This act takes effect on passage.

Expungement of a Nonviolent Misdemeanor Criminal History Record (S.37, Act 131)

Amends 13 V.S.A. Chapter 230.

VLCT Staff Contact: Jonathan Williams

Act 131 provides a process for persons in Vermont to petition the criminal division of the superior court for expungement of a criminal history record related to their arrest or conviction for a nonviolent misdemeanor. The act allows the court to grant such a request if it finds that expunging the record would “serve the interest of justice.” Certain conditions must be met before the criminal record may be expunged, including: (1) the passing of at least 10 years since the date the person successfully completed the conditions of the sentence for the conviction; (2) the person has not been convicted of a new crime; (3) any court-ordered restitution owed by the person is paid in full; and (4) the court finds the expungement serves the interest of justice.

Act 131 also establishes a protocol to seal criminal history records as an alternative to expungement. As well, if a person is charged with another criminal offense after he or she has petitioned to have his or her record expunged, the court cannot act on the petition until the new charge has been settled. If a court denies the petition, no other petition may be brought for at least five years. Any victims of the petitioned offense have the right to make a statement to the respondent or the court prior to any action being taken. Lastly, the act establishes the protocol and effects of the expungement and sealing of criminal history records for legal purposes.

Combating Illegal Diversion of Prescription Opiates and Gang Activity (S.226, Act 121)

Amends 13 V.S.A. § 1404, and 18 V.S.A. § 4253.

VLCT Staff Contact: Jonathan Williams

Act 121 prohibits the possession or sale of “bath salts” (a pseudonym for a synthetic stimulant drug) and other similarly harmful drugs. It amends the penalties for a person who uses a firearm during or in relation to the selling, trafficking, or dispensing of a regulated drug. The act also increases state efforts in dealing with criminal gangs and gang-related activity.

The act establishes a mobile enforcement team modeled after the Vermont Drug Task Force to combat gang activity. the team will work closely with state, local, county, and federal law enforcement agencies in investigating and apprehending those gangs and gang members who engage in criminal activity that “creates an atmosphere of fear and intimidation.” Made up of state and local investigators, the team will focus on gang and organized criminal activity, including drug and gun trafficking along with other associated crimes.

Act 121 establishes a gang activity task force to raise public awareness about gang activity and organized crime in Vermont. The task force will help identify resources for local, county, and state law enforcement officials, and will recommend to the public ways to identify and report acts of gang activity

and organized crime. It will report on these efforts to the General Assembly. The task force will comprise representatives from multiple public safety, corrections, law enforcement, education, business, health care communities, and from a municipal police department.

Act 121 also directs the attorney general to examine the issue of gang activity in Vermont and to issue a report to the General Assembly by January 15, 2013.

The act takes effect upon passage.

Court Diversion Referral for Driving with a Suspended License (S.244, [Act 147](#))

Amends 23 V.S.A. §§ 676, 2502.

VLCT Staff Contact: Jonathan Williams

Act 147 refers all cases of driving with a suspended license to the court diversion program rather than the Vermont Judicial Bureau, so long as the reason for the suspension was for a failure to pay fees or fines, or for accrual points for motor vehicle violations (excluding driving under the influence or other serious offenses). A voluntary court diversion participant for driving with a suspended license would be eligible to reinstate his or her motor vehicle operator's license upon compliance with a fine repayment plan and a driver relicensing program, if appropriate.

Under this act, the court administrator will notify persons who have had their license suspended that they are eligible to participate in the diversion program; the bill explains how such a notice will be phrased. Based upon an initial assessment, the court diversion program will develop a contract with these people that may include acquiring or showing proof of auto insurance, community service, the completion of a driving education program, and any other conditions related to the reasons for the violation(s) that led to the license suspension. The act establishes the standards for a driving with a suspended license court diversion program, as well as the handling of fines and fees in relation to the diversion project.

Ignition Interlock, Restricted Driver's Licenses and Civil Suspensions (H.768, [Act 90](#))

Amends 23 V.S.A. §§ 1200(10), 1213, 1206, 1208, 1209a, 1216, and 1205.

VLCT Staff Contact: Jonathan Williams

This act modifies certain Vermont statutes pertaining to Vermont's Restricted Driver's Licenses (RDLs), which are issued to noncommercial motor vehicle operators whose vehicles are equipped with an ignition interlock device. These ignition interlock devices (IIDs) are installed in an operator's vehicle when his or her regular license is suspended or revoked for a driving under the influence offense.

The IID is an after-market device, slightly larger than a cell phone, which is installed in a vehicle and connected to its starter, ignition, or on-board computer system. Before starting the vehicle, a driver must blow into the device; if the driver's blood alcohol content is at or over a pre-set limit (0.02 in Vermont), the IID will not allow the vehicle to start. Some IIDs may now also be installed with a Global Positioning System (GPS) feature.

This act modifies the expiration dates of restricted driver's licenses pursuant to their date of issue, and specifies how such licenses may be extended or renewed. As well, the act instructs how the RDL holder is given notice and opportunity for a hearing concerning renewing or extending the RDL period.

The holder of an ignition interlock RDL may operate only motor vehicles equipped with an ignition interlock device, and cannot tamper with it. If the holder fails a random retest, he or she must pull over

and shut off the vehicle's engine. Any violations of these requirements extend the eligibility of the holder for reinstatement of a regular license by six months. Reinstatement fees may also be imposed. The act specifies further how a license can be reinstated.

Act 90 also updates the law governing civil suspensions for driving while intoxicated to incorporate RDLs.

The provisions relating to ignition interlock restricted driver's licenses apply to ignition interlock RDLs issued on or after the act's effective date of July 1, 2012.

Certification of Capitol Police and Constables (H.503, Act 103)

Amends 20 V.S.A. § 2358.

VLCT Staff Contact: Jonathan Williams

Although Act 103's focus is the organization and training of capitol police at the State House, it includes legislation that addresses training for constables. The act extends the deadline for constables who are seeking certification from the Vermont Criminal Justice Training Council to complete a basic training course by one year (until July 1, 2013).

As well, the act directs the Vermont Criminal Justice Training Council to provide constables either the requisite field training to become certified, or an alternative source of field training. (The constable may also be a qualified field training officer). The act also requires the council to report to the House and Senate Judiciary and Government Operations committees as to where the constables received field training.

This act takes effect July 1, 2012.

Environment and Quality of Life

Flood Hazard Areas (S.202, Act 138)

Amends 10 V.S.A. Ch. 32 (Flood Hazard Areas), Ch. 41 (Regulation of Stream Flow), Ch. 47 (Water Pollution Control), Ch. 49 (Protection of Navigable Waters and Shorelands), and Ch. 151 (State Land Use and Natural Resources Panel);

amends 24 V.S.A. Ch. 117 (Municipal and Regional Planning and Development).

VLCT Contact: Karen Horn

As happened to so many bills this year, S.202, the flood hazard area and river corridor bill, was adopted in the last days of the session. The act is written to (1) facilitate the coordination of federal, state, and local management activities for flood hazard areas; (2) encourage local government units to manage flood hazard areas and other flood-prone lands and provide state assistance to those local efforts; and (3) comply with National Flood Insurance Program (NFIP) requirements for regulating development, including development exempt from municipal zoning, to ensure eligibility for flood insurance under the NFIP. As well, S.202 targets river management and permits for work in the river, especially in emergency situations. Local governments have done much work on these issues, but the 2011 floods cast a bright light (and torrents of water) on some of the holes in state and local regulation.

Definitions mean a lot in the context of compliance with federal NFIP requirements. S.202 deletes from Title 10 and from Chapter 117 of Title 24 the definition of *flood hazard area* – “an area that would be inundated in a flood likely to occur once every 100 years and that takes into account flood control

devices” – and replaces it with the federal definition of *area of special flood hazard* – “the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM [Flood Hazard Boundary Map].” Likewise, the definitions of *floodway* and *flood proofing* are replaced by federal definitions for *regulatory floodway* and *flood proofing*, respectively.

A *river corridor* is defined expansively as “the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and necessary to maintain or restore fluvial equilibrium conditions and minimize fluvial erosion hazards, as delineated by the Agency of Natural Resources [ANR] in accordance with river corridor protection procedures.” A *river* is already defined as the full length and width, including the bed and banks, of any watercourse, including rivers, streams, brooks, and branches, that experiences perennial flow, but not constructed drainage ways, water bars, swales, and roadside ditches. A *river corridor protection area* is newly defined as the “area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern and profile associated with its dynamic equilibrium condition and would represent a hazard to life, property and infrastructure placed within the area.” *Equilibrium condition* will likely end up being a significant new term in the statute because it expands the general understanding of what comprises the river. It’s defined as the “width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.” *Infrastructure* and a number of other terms are also defined that will expand the areas of land that will be addressed in flood hazard area bylaws or ordinances and will redefine how activities in the rivers will be regulated in accordance with federal standards.

With the guidance of the Federal Emergency Management Agency (FEMA) and the consent of the Agency of Agriculture, Food and Markets, ANR will adopt rules to regulate exempt uses (agricultural, silvicultural activities, transmission lines) in flood hazard areas in towns that have flood hazard area bylaws. Those rules would be in place by March 15, 2014. The regulations applying to uses that are exempt from municipal regulation could, at the agency’s discretion, be more stringent than those of the NFIP. Likewise, a municipality could adopt regulations more stringent than ANR’s rules, but they would only apply to uses that the municipality has statutory authority to regulate under zoning. The agency could adopt a general permit to implement the program – that is, a permit would be deemed granted if an exempt structure met specific criteria. ANR could also delegate authority to implement the rules to another state agency, such as Agriculture, Foods and Markets.

ANR will also provide a model flood hazard area bylaw, education, and technical assistance to towns that lack a flood hazard area bylaw. Towns may adopt a flood hazard area ordinance instead of a bylaw, which would be helpful to municipalities that do not have zoning bylaws in place or which are prohibited from amending zoning bylaws until their municipal plans are re-adopted.

The stream alteration statute is amended to include a definition of *instream material* – meaning “all gradations of sediment from silt to boulders, ledge rock, and large woody debris in the bed or banks of a watercourse.” It defines *berm* as “a linear fill of earthen material on or adjacent to the bank of a watercourse constructed for the purpose of constraining waters from entering a flood hazard area or river corridor ...” *Large woody debris* is “any piece of wood with a diameter of 10 or more inches and a length of 10 or more feet detached from the soil where it grew.” Removal of instream material and large woody debris or construction of berms in flood hazard areas or river corridors will be prohibited without an ANR permit unless the work is done at the direction of the local legislative body as an emergency protective measure. ANR will conduct training on the proper conduct of stream alteration, water quality

review, and stormwater and wastewater discharge during an emergency and will adopt rules for the permitting of stream alteration activities in emergencies.

The ANR secretary will adopt rules regulating the permitting of stormwater discharges and infrastructure repair or maintenance during a state of emergency that comply with NFIP requirements. She will also conduct river sensitivity assessments and identify where the river poses a risk to life, property, or infrastructure. That work must be done in consultation with the host municipality and relevant regional commission; maps delineating sensitive areas will be provided to the municipality. The ANR secretary needs to also make available several model river corridor protection area bylaws or ordinances for municipal adoption, and must establish a Flood Resilient Communities Program that lists financial incentives available for municipalities that adopt bylaws to protect river corridors and flood plains. Finally, by January 15, 2014, the secretary will report on the effectiveness of use of voluntary stormwater management credits to permit discharges of stormwater from renewable energy projects located at an elevation above 1,500 feet.

Act 138 makes clear that a municipality may regulate development in a flood hazard area, river corridor protection area, or other hazard area, except for uses such as agricultural and silvicultural practices that are exempt from zoning. It incorporates the definitions noted above that make municipal planning statutes consistent with definitions in the NFIP.

The act will provide for the secretary of ANR to establish a procedure for authorizing certified flood plain managers (a certification earned from FEMA) to conduct the review that ANR staff now must conduct on every municipally-issued flood hazard area permit. Comments that are the result of such reviews would not be binding on the municipality.

Because H.779 – the bill the House sent to the Senate on water quality and stormwater – did not make it out of the Senate Natural Resources and Energy Committee, it was added to S.202. Those additions require the ANR secretary to report to the legislature by December 15, 2012, with recommendations on how to remediate or improve the water quality of the state’s surface waters, and how to implement and fund that remediation. Act 138 directs her to recommend whether or not to establish a statewide stormwater management utility and how it might be funded. Central to this discussion is the fact that the state is still waiting for the Environmental Protection Agency to deliver a new Total Maximum Daily Load (TMDL) for phosphorus discharges in Lake Champlain and a new municipal separate storm sewer system permit (MS4) for those municipalities in watersheds impaired by discharges of stormwater and phosphorus. Whenever Vermont receives the TMDL (it is a year overdue), the secretary would then need to develop an implementation plan to provide for the execution of the new TMDL goals. That plan needs to be revised every four years. The secretary is to identify existing state financing programs or incentives that could be amended so as to be available to municipalities for the flood hazard and river corridor protection planning. And as part of the fee bill discussion next January, one year after the ANR fee increases just adopted, the agency is to include proposed fees to support the flood hazard area rule initiatives of the bill. “The proposed fee shall be sufficient to pay for at least 20 percent of the cost to the Agency of Natural Resources of implementing, administering and enforcing the rules adopted under 10 V.S.A. § 754.”

This act also amends current law to establish that the ANR secretary, not the Water Resources Panel of the Natural Resources Board, will be responsible for adopting rules implementing laws regulating the water of the state and wetlands.

Finally, the propane tank legislation developed in the Senate Natural Resources and Energy Committee in the last few weeks of the session is appended to Act 138. That legislation calls on the Department of

Public Service, the Division of Fire Safety, and ANR to cooperate with relevant municipal, professional, and industry organizations to develop educational materials for distribution to the public on special treatment of propane tanks in natural disasters. (The Vermont Fuel Dealers Association developed a relevant flyer that is posted on the VLCT website at www.vlct.org/assets/News/Current/propane_tanks_advisory.pdf).

The act takes effect on passage except for a section that expands the purposes of the Housing Conservation Board to include the protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources, which takes effect July 1; the sections on stream alteration permits and requirements, which take effect March 1, 2013; and authority of ANR to enforce against violators of new statutes relating to flood hazard areas, which takes effect July 1, 2013.

Universal Recycling and Solid Waste (H.485, Act 148)

Amends 10 V.S.A. Ch. 159, 10 V.S.A. §§ 8003(a), 8503, Waste Management;
and 24 V.S.A. § 2202a.

VLCT Contact: Karen Horn

Five towns in Vermont, including the unorganized towns of Somerset and Glastonbury, do not have an approved solid waste management plan. Sixteen multi-town districts or alliances and 21 individual towns do have approved solid waste management plans, which are plans that are consistent with the state solid waste management plan and applicable regional plans. Thus, virtually every municipality in the state has addressed solid waste and adopted the “reduce, reuse, recycle” methodology for managing solid waste since the solid waste law (Act 78) was passed in 1987.

Act 148 substantially revises the solid waste laws in Vermont. Its objectives are to reduce the volume of waste sent to landfills and divert the maximum amount of materials to recycling, reuse, or composting.

H.258 requires the secretary of the Agency of Natural Resources (ANR) to adopt a solid waste management plan by November 1, 2013, that promotes the following priorities as they are found appropriate for specific waste streams:

1. the greatest feasible reduction in the amount of waste generated;
2. materials management that furthers the development of products that generate less waste;
3. the reuse and “closed loop recycling¹” of waste to reduce to the greatest extent feasible the volume remaining for processing and disposal;
4. reduction of the state’s reliance on waste disposal to the greatest extent feasible;
5. creation of an integrated waste management system that promotes energy conservation, reduces greenhouse gases and limits adverse environmental impacts; and
6. waste processing to reduce the volume or toxicity of the waste stream necessary for disposal.

The state solid waste management plan will be revised every five years. It will include an analysis of the volume and nature of wastes generated, their final disposition, and an assessment of the feasibility of diverting marketable recyclables, leaf and yard residuals, organic material, construction and demolition residuals, household hazardous waste, and other identified waste categories from final disposal as well as the cost to stakeholders (municipalities) of doing so. Also included will be measurable goals and targets for waste diversion for each waste category and performance and accountability measures to ensure that implementation plans meet state requirements. The plan includes a public education element and

¹ a system in which a product made from one type of material is reclaimed and reused in the production process or manufacturing of a new or separate product.

performance and accountability measures to ensure that district-, alliance-, and town-approved solid waste plans meet state requirements. Implementation plans (i.e., plans for facilities seeking certification from ANR) must be consistent with the adopted state solid waste management as well as municipal and regional management plans.

The ANR secretary is directed to manage hazardous wastes generated, transported, treated, stored or disposed in the state through a program that meets the requirements of federal standards for hazardous waste management. She will also require a certified solid waste management facility or transporter to explain its rate structure for different categories of waste to ensure that the rate structure is transparent to residential customers.

Approved district and alliance solid waste management plans meet statutory requirements for their member towns, villages, and cities to adopt solid waste management plans. If solid waste is being delivered to a solid waste facility from a town with an approved solid waste management plan, the specified materials will be removed from the waste according to the terms of that plan. If waste is being delivered from a town *without* an approved implementation plan, then leaf and yard residuals would be removed from the waste stream as well as all of the mandated recyclables², household, and small quantity generator hazardous wastes.

Certified solid waste collection facilities are to begin collecting mandated recyclables by July 1, 2014, leaf and yard residuals separately by July 1, 2015, and food residuals separately by July 1, 2017. Transporters must offer to collect separated mandated recyclables and leaf and yard waste a year later than the solid waste facilities collect them, unless the municipality has a solid waste ordinance addressing the collection of the specified items with the same requirements as the state statute or an approved municipal plan exempts a certain area and that area is otherwise regulated. Facilities may not charge a separate fee to collect mandated recyclables, however they could increase their overall rates. A collection facility may charge a separate fee to collect leaf and yard residuals or organic materials.

Act 148 also establishes a hierarchy for management of food residuals and management standards based upon the amount of food residuals a facility produces. The hierarchy is:

1. Reduce the amount generated at the source.
2. Divert for food consumption for humans.
3. Divert for agricultural use, including consumption by animals.
4. Compost, land apply and digest.
5. Energy recovery.

The act requires public buildings and public land to include containers for mandatory recycling everywhere that solid waste (trash) containers are placed (except bathrooms) and in equal numbers. This legislation restricts the definition of public building to “a state, county, or municipal building, airport terminal, bus or railroad station, school building, or school.” It defines public land as all land owned or controlled by a municipality or state governmental body – a pretty expansive definition.

By July 15, 2015, a municipality will implement a variable rate pricing system that charges for the collection of municipal solid waste from a residential customer for disposal based on the volume or

² aluminum and steel cans, aluminum foil and aluminum pie plates, glass bottles and jars from food and beverages, polyethylene terephthalate (PET) plastic bottles or jugs, high density polyethylene (HDPE) plastic bottles and jugs, corrugated cardboard, white and colored paper, newspaper, magazines, catalogues, paper mail and envelopes, and boxboard and paper bags.

weight of waste collected. Presumably this mandate can be met through the solid waste district or alliance pricing system.

The secretary may now bring enforcement action against a municipality relating to its adoption and implementation of a solid waste implementation plan consistent with the state solid waste plan.

ANR will also prepare an extensive solid waste report to the legislature by November 1, 2013. The report will include a waste analysis, cost, infrastructure, natural resources and environmental analyses as well as further recommendations for amending solid waste management practice. Another report will describe management of waste tires and a third will analyze the costs and benefits of expanding the bottle bill.

All in all, the legislation should move Vermont to the next level of solid waste management by further reducing the amount of waste we generate and increasing the amount we reuse and recycle. Vermont has not really made progress on these fronts in several years. The state has only two landfills – in Moretown and Coventry. Thus, our waste disposal capacity is finite, and the sense was that we really need to change our habits if we hope to manage our waste streams.

Vermont's Working Landscapes (H.496, Act 142)

Amends 6 V.S.A. Chapter 207.

VLCT Contact: Karen Horn

At a VLCT Board of Directors meeting late last year, the director of the Center for Rural Development described his vision for supporting Vermont's working landscape – farms and forestry and the businesses that use their products. He feared that we could lose this most precious resource to pressures on small, land-based businesses, such as financial strain, a lack of technical support, and development pressures at critical junctures in their business cycle.

H.496 is a bill that the House and Senate Agriculture committees worked on separately for much of the session. According to the bill's findings section, "Vermont's agriculture and forest product sections have not been perceived or treated as businesses by the traditional business and lending communities. They often lack available capital and financial package options that match their stage of development. Financial service and workforce development programs need to be customized to meet the unique needs of Vermont's agriculture and forest product sectors."

Act 142 creates a Vermont Working Lands Enterprise Fund administered by the Vermont Working Lands Enterprise Board. The board is attached to the Agency of Agriculture, Food and Markets to support expansion of existing businesses, innovation, and growth in the food, farm, forest product, and biomass energy industry, as well as a host of other responsibilities to strengthen the agriculture and forestry sectors of the economy. The board's 15 members from both the private and public sectors will include three *ex officio* members, a number that was whittled down from 27 in the original legislation. The board will make grants and loans to agriculture- and forestry-based businesses, provide technical and marketing assistance and product research services, identify workforce needs, strategic infrastructure, and investment priorities, and promote products and services to people and land-based enterprises.

The current Vermont Agricultural Board is reborn as the Vermont Agricultural and Forest Products Development Board and "empowered as the state's primary agricultural and forest products development entity." New members include forest products industry representatives, foresters, loggers, and sawmill operators. The board is directed to work with the Agency of Agriculture, Food and Markets to prepare a report on the activities of the working lands enterprise board for delivery to the legislature

by January 15, 2013. The Housing and Conservation Board's responsibilities are expanded to include forestry and forestlands conservation.

The budget bill, H.781, provides \$1.175 million from the General Fund to the Enterprise Fund. The bill's ambitious agenda is designed to spur further development in value-added forestry and local foods products to put Vermont at the forefront of those industries. The initial investment is significant, given this year's demands on the General Fund.

Pollution Abatement and Potable Water Supply Permits (H.577, Act 117)

Amends 10 V.S.A. Chapters 47 and 55.

VLCT Contact: Karen Horn

H.577 made amendments to the revolving loan fund for water pollution abatement that is administered by the Department of Environmental Conservation. Pursuant to these amendments, a loan from the Vermont environmental protection agency pollution control revolving loan fund for a combined sewer overflow abatement project may be for up to 100 percent of the eligible cost if the project is on a priority list and is capitalized at least in part with a federal clean water state revolving fund grant that includes loan forgiveness. The current law provides for a grant of 25 percent of eligible project costs and a loan of 50 percent of the project cost.

Over the years, the system for designing, permitting, and constructing potable water supplies and on-site sewage systems has generated a lot of controversy. As a result of legislation several years ago, the permitting of those systems moved from the municipal to the state level – except in the towns of Charlotte and Colchester, which met the requirements for receiving delegation of the potable water supply and on-site sewage program from the Department of Environmental Conservation. Nevertheless, potable water supply and on-site sewage permitting issues continue to figure prominently in municipal zoning matters, because without a potable water supply and wastewater system, building or modifying a structure or subdividing land cannot take place.

One issue that continues to muddle the water supply permitting process is that frequently the required isolation distance for a potable water supply may extend onto an adjacent property. Wells must be located at least 10 horizontal feet from a building or non-agriculture property line, 25 feet from a roadway shoulder or surface water, and 100 feet from a sewage system disposal facility. Existing law also requires that permits be recorded in the land records and that potable water facilities be designed and installed by licensed practitioners.

Language from H.469 – a bill that didn't pass out of the Senate Natural Resources Committee – was added to H.577 that clarifies that an applicant for a potable water supply permit must send a notice of intent to file a permit application to any landowner affected by a proposed isolation distance at least seven days prior to the date the application is submitted. The notice includes a site plan that accurately depicts all proposed isolation distances. Any amendments to the site plan or variations in the system as constructed must sent to the affected landowner as well. No permit will be issued to applicants until seven days after they certify to the secretary of the Agency of Natural Resources that they have complied with the notice requirements.

Environmental Enforcement (H.258, Act 73)

Amends 10 V.S.A. §§ 8002, 8012-8014a, 8019-8021; 4 V.S.A. §§ 1102, 1106, 1107.

VLCT Contact: Karen Horn

On February 16, the governor signed into law H.258, the environmental enforcement bill, which responds to the reiteration of the Environmental Protection Agency (EPA)'s insistence that states include public participation in their enforcement processes for federally delegated programs. H.258 passed the House last year but then faltered in the Senate in the last days of the session, due in part to concerns from local governments.

In November 2009, Ira Leighton, Acting Regional Administrator of EPA Region I, wrote to then Department of Environmental Conservation Commissioner Justin Johnson, "The Clean Water Act (CWA) and EPA's implementing regulations require that states administering the NPDES [National Pollutant Discharge Elimination System] program provide for public participation in their enforcement process. Under the EPA regulations, states have two options to satisfy this requirement. They may either:

1. Provide authority which allows intervention as of right in any civil or administrative enforcement action; or
2. Provide assurances that the state agency will
 - a. investigate and provide written responses to all citizen complaints;
 - b. not oppose permissive intervention by any citizen when permissive intervention may be authorized by statute, rule or regulation; and
 - c. publish notice of and provide at least 30 days for public comment on any proposed settlement of a state enforcement action." 40 C.F.R. § 123.27(d).

Act 73 addresses public participation in actions initiated by the Agency of Natural Resources (ANR). It defines a federally authorized or delegated program as "an area of environmental regulation where the U.S. Environmental Protection Agency has authorized or delegated to Vermont primary regulatory responsibility, including the Clean Water Act, the Clean Air Act, and the Resources Conservation and Recovery Act." The secretary of ANR could seek enforcement of a final administrative order (AO), final orders pursuant to an assurance of discontinuance (AOD), or civil complaints (environmental tickets) in the environmental court – which is, following last year's judicial restructuring legislation, now the environmental division of the superior court. As part of the Challenges For Change legislation of 2010, the agency was given environmental ticketing authority. Those environmental tickets would be enforceable in the Judicial Bureau. That action is reversed in Act 73 and enforcement actions would be taken in the environmental division of the superior court.

Prior to sending an AO, AOD, Act 250 violation, or civil complaint pertaining to any agency program (not just those that are federally delegated) to the environmental court, the order or complaint will be posted for a 30-day comment period. Any person may comment and any written comments will be evaluated. The ANR secretary or Natural Resources Board chair may withdraw the order or complaint in light of comments. Should she go ahead with the enforcement action, the order or complaint goes to the environmental court with any written comments. This final notice of action is to be posted for 14 days, during which time an "aggrieved person" who filed initial comments during the comment period could file a motion for "permissive intervention." ANR may not oppose the motion to intervene. (The definition of an aggrieved person was one of the more contentious issues in this legislation, particularly because it includes an organization or association.) An aggrieved person is defined as "*a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this section, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance, administrative order, emergency order, or*

civil complaint issued under this chapter. An organization or association is an aggrieved person under this chapter when one or more of its members would be an aggrieved person in his or her own right, the interests at stake are germane to the purposes of the organization or association, and neither the claim asserted nor the relief requested by the organization or association requires participation of the individual member.”

The motion to permissively intervene must clearly state the basis for the claim that the order or complaint is insufficient to carry out the purposes of the environmental enforcement chapter. The court may hold a hearing on the motion, allow the intervention or deny the motion. If the court finds that the motion to intervene fails to meet the requirements for permissive intervention, it will deny the motion. The agency may not oppose the motion for intervention. However, it may oppose the aggrieved person’s claim that the proposed enforcement action is insufficient. If the court makes a finding of insufficiency, it will inform the parties in writing, include the basis of its decision, and vacate the proposed order or complaint, sending the agency or board back to start the process over again.

Act 73 also requires the ANR secretary to investigate all citizen complaints of a violation of a federally authorized or delegated program and respond to complainants in writing.

The act provides that when the ANR secretary spends special funds to remediate an environmental violation, she may recover such funds through an administrative order, emergency administrative order, or assurance of discontinuance to replenish the fund from which the original expenditure was made, providing the amount does not exceed \$20,000. Penalties assessed for violations of environmental regulations and statutes will be deposited in the General Fund.

Last year, local officials opposed the provisions providing for intervention – but not posting of actions or public comment – by aggrieved persons as defined in H.258 in the House and Senate. Of the many environmental regulations on the books, a number of them are unclear in terms of what is or is not required. A significant part of this problem is that the Lake Champlain Total Maximum Daily Load and the Municipal Separate Storm Sewer System permit for the impaired watersheds of the state have not been issued by EPA yet, so no one knows exactly what the law or standards are, what will be required in terms of compliance, and if project developers move ahead to address problems such as stormwater, their actions may be deemed incomplete or simply wrong once those programs have been finalized. Those are just two of several environmental programs that are highly contentious in their detail.

The legislation takes effect on July 1, 2012. The ANR secretary will establish procedures before that date for implementing the public participation elements of the environmental enforcement process, which local officials may want to weigh in on.

Stormwater Regulation (H.752, Act 91)

Amends 10 V.S.A. § 1264.

VLCT Contact: Karen Horn

While Vermont continues to wait for the Environmental Protection Agency to issue a Total Maximum Daily Load (TMDL) for Lake Champlain and the Connecticut River, Act 91 amends the stormwater statutes so as to clearly establish a “net zero” standard for stormwater impaired watersheds – that is, no more sediment is caused by a stormwater discharge than would occur if the discharge site were in its pre-existing or natural condition. There are 12 urban stormwater-impaired watersheds and four stormwater-impaired mountain watersheds in Vermont.

In a stormwater-impaired waterway for which no TMDL, water quality remediation plan, or watershed improvement permit has been established or issued, the secretary of the Agency of Natural Resources

may issue an individual permit if the discharge meets the net-zero standard. She may also issue an individual or general permit to implement a TMDL or water quality remediation plan in a stormwater-impaired waterway if the new or expanded stormwater discharge meets the standards of the 2002 stormwater management manual plus any other requirements she feels are necessary to implement the TMDL or plan under the certain conditions. A redeveloped impervious surface or shall be reduced by 20 percent or a treatment practice must be designed to capture and treat 20 percent of the water quality treatment volume standard of the 2002 manual.

Act 91 also amends the state permit program for discharges of regulated stormwater runoff to clear up encumbrances on land titles in those impaired watersheds.

Land Use, Mobile Homes, Affordable Housing (S.99, Act 137)

Amends 9 V.S.A. § 4503 and 24 V.S.A. § 4412;
adds 9 V.S.A. § 2608, portions affecting local government.
VLCT Contact: Karen Horn

Act 137 was a bill that went through numerous iterations during the session. However, the bill that eventually passed contained only a few provisions that affect local governments.

Section 5 requires the commissioner of the Department of Public Safety to develop and maintain a graphic depiction of building codes and construction standards, to involve the construction industries in its development, and to update it on a three-year cycle. A database of decisions decided on appeal to the commissioner will also be maintained in a publically accessible manner.

Section 6 of the act incorporated the provisions of H.59 that were passed by the House early in the year. Language is added to the Fair Housing statutes (Title 9, Chapter 139) that prohibits discrimination “in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or receipt of public assistance.” This language is cross-referenced in 24 V.S.A. § 4412, the existing law that addresses equal treatment of housing in the planning statutes.

Act 137 also incorporates a new procedure allowing a municipality to commence action to sell an abandoned mobile home at public auction. The House General, Housing and Military Affairs Committee took up H.564 early in the session and heard from the Vermont Municipal Clerks’ and Treasurers’ Association and VLCT. Both groups testified that towns would be unlikely to undertake the effort to sell an abandoned mobile home at public auction and that the process would not be used if enacted. The House committee left the legislation aside. Nonetheless, the procedure was added on the Senate side and is in the act.

Legislative Study Committees

Acts and Bills that Affect Municipalities and Create Study Committees/Working Groups

VLCT Staff Contact: Jonathan Williams

- **Act 103** relates to certifying the Capitol Police and constables and directs the Criminal Justice Training Council to report to the House and Senate Judiciary committees about where constables are to receive their field training.

- **Act 121**, an act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction, and for combating criminal gangs/gang activity, establishes a task force to raise public awareness about gang activity and organized crime in Vermont and across state and international borders. The task force committee is to identify resources for local, county, and state law enforcement officials, and will recommend to the public ways to identify and report acts of gang activity and organized crime. Its findings are due to the General Assembly by November 15, 2012. One member of the task force committee will be a representative from a municipal police department, appointed by the governor.
- **Act 134**, an act relating to racial disparities in the Vermont criminal justice system, directs the Vermont Center for Justice Research to determine if extrajudicial factors contribute to existing racial disparities that have been observed in Vermont's criminal justice system and whether or not there is unequal treatment of persons by the justice system on the basis of race, color, or national origin. The study will utilize data from the FBI Interstate Identification Index, the departments of Motor Vehicles and Corrections, the Vermont Criminal Information Center, and the Vermont court system. The study's findings will be presented to the House and Senate Judiciary committees, the court administrator, and each organization and entity represented on the Governor's Criminal Justice Cabinet by December 15, 2012.
- **Act 138**, the "Flood Hazard Areas" bill, calls on the Department of Public Service, the Division of Fire Safety, and ANR to cooperate with relevant municipal, professional, and industry organizations to develop educational materials for distribution to the public on special treatment of propane tanks in natural disasters.
- **Act 143**, the "Miscellaneous Tax Changes for 2012" bill, sets up a committee to "examine the sustainability of the sales and use tax in the context of Vermont's changing economy." The committee will also consider the taxation of software, platform, and infrastructure as services "accessed remotely," the taxation and sources of sales and property made via the internet, and the feasibility of taxing services more broadly than under current law. The committee will report its findings to the Senate Finance and the House Ways and Means committees by January 15, 2013. Legislative leaders have already noted that revamping the sales tax will be one of their highest priorities for the 2013 legislative session.
- **Act 148**. The Agency of Natural Resources will prepare an extensive solid waste report to the legislature by November 1, 2013. The report will include analyses of waste, cost, infrastructure, natural resources, and environmental, as well as recommendations for amending solid waste management practice. A second report, due January 15, 2013, will describe waste tire management, and a third, due November 1, 2012, will analyze the costs and benefits of expanding the bottle bill.
- **Act 153**, the Transportation Bill, commissions several reports and a summer study committee. The seven-member summer study committee, which includes a member appointed by the VLCT, is tasked with the following:
 - estimating transportation and Transportation Infrastructure Bond (TIB) fund revenues over the next five years, taking into account motor vehicle fuel efficiency mandates and trends, and identifying and analyzing factors likely to impact transportation and TIB fund revenues and transportation infrastructure spending in the future;
 - estimating the gap between costs and projected revenues over the next five years based on the cost of maintaining the state's existing infrastructure, and under any other cost scenario the committee deems appropriate; and

- evaluating potential new state revenue sources, including a vehicle miles traveled tax, and how existing state revenue sources could optimally be modified to address the five-year (and longer term) expected transportation funding gaps. The committee will estimate the amount of funds that would be generated from each new and modified revenue source, and identify implementation structures, requirements, and challenges.

A report is due to the House and Senate Transportation committees by January 15, 2013.

- **Act 155**, the “Municipal Toolbox” bill, adds language that helps towns improve financial internal controls. The auditor is to work with VLCT, the Vermont Association of School Business Officers, and the Vermont School Boards Association to develop a one-page document designed to determine if internal financial controls are in place, thus ensuring the proper use of public funds. Town treasurers must complete the document and provide it to the selectboard by June 31. The selectboard must also review and acknowledge receipt of the completed document by July 31.

The auditor will also work with VLCT and school groups to develop an education program.

The act establishes an Emergency Medical Services Advisory Committee to advise the commissioner of the Department of Health on the delivery of emergency medical services in Vermont. VLCT will appoint one local government member not affiliated with emergency medical, firefighter, or hospital services to the committee.

Finally, it creates a backcountry search and rescue study committee to investigate whether the Department of Public Safety or a different state agency should supervise search and rescue operations for missing persons in Vermont’s backcountry and outdoor recreational areas, and who should recommend an appropriate organizational structure to manage the state’s search and rescue resources. Committee members will include one member each from the House and Senate, the president of the Vermont Chiefs of Police and Vermont Sheriff’s associations, the commissioners of DPS and the Department of Fish and Wildlife, two members of the Vermont Coalition of Fire and Rescue Services, as well as additional emergency services representatives. The committee is directed to report its recommendations to the General Assembly by January 15, 2013.

- **Act 161** provides that loans to private individuals who own failed systems may be made from the wastewater and water supply revolving loan fund. The Agency of Natural Resources (ANR) will report on this expansion of uses of the funds by January 15, 2013. It is also to report on the impact of bulk groundwater withdrawals on Vermont’s fish, wildlife, and water resources. The Department of Public Safety will study how it assesses fees or charges for services rendered to municipalities, fire departments, and other entities, including how to equitably assess fees. The agencies of Natural Resources and Transportation (AOT) will report on whether or not fees should be adjusted to reflect the contribution of AOT licensees and permittees to state air pollution.

ANR is to report to the legislature on the use of billing back permit applicants for costs of reviewing and researching those permits by January 15, 2013.

The Senate Government Operations Committee requested that VLCT and other organizations review the following bills, which did not pass, and present any recommendations for the next legislative session.

- **S.87** proposed to make records of internal investigations of certain law enforcement officers confidential except under specific conditions. After taking testimony, the Senate Government Operations Committee decided that the issues regarding internal investigations of law enforcement

officers were more extensive than the bill provided, so it requested that VLCT and others address these issues and report back in January 2013.

- **S.132** is a bill that did not get very far in the Senate this year, having been referred only to the Senate Government Operations Committee. The bill deals with amending the membership of the Vermont Criminal Justice Training Council. The Criminal Justice Training Council has already undergone some changes, and the committee wanted to give the council time to complete these previously recommended changes before the membership is amended.
- **S.248**, another bill that was only referred to the Senate Government Operations Committee, restructures law enforcement office regulation. It suggested repealing the Criminal Justice Training Council and required that all law enforcement officers be licensed under the Office of Professional Regulation.

Capital Bill Two-Year (FY 2012-2013) Recommended Budget Adjustment: Line Items Important to Municipalities

Agency/Department	Line Item	As Enacted 2011 Session			As Enacted 2012 Session		
		As passed FY12	As passed FY13	Total Final Passage	Adjusted FY12	Adjusted FY13	Adjusted Total
Dept. of Information and Innovation	Vt. Telecomm. Authority, Broadband Development	10,000,000	0	10,000,000	10,100,000	0	10,000,000
Dept. of Taxes	Orthophotographic Mapping	100,000	100,000	200,000	100,000	100,000	200,000
Agency of Commerce and Community Development	Historic Preservation Grants (1:1 match)	225,000	225,000	450,000	225,000	225,000	450,000
	Human Services and Educational Facilities Grants	225,000	225,000	450,000	225,000	225,000	450,000
	Recreational Facilities Grants	225,000	225,000	450,000	225,000	225,000	450,000
	Historic Barns, Ag. Grants (1:1 match)	225,000	225,000	450,000	225,000	225,000	450,000
	Cultural Facilities Grants (1:1 match)	225,000	225,000	450,000	225,000	225,000	450,000
	Agricultural Fair Capital Projects	225,000	225,000	450,000	225,000	225,000	450,000
	Regional Economic Development Grant Program ¹	0	0	0	0	225,000	225,000
Agency of Natural Resources	Clean Water State/EPA Revolving Loan Fund Match	1,000,000	2,000,400	3,000,400	1,000,000	1,500,400	2,500,400
	Pownal wastewater treatment facility	500,000	500,000	1,000,000	500,000	500,000	1,000,000
	Combined Sewer Overflow (ARRA FY11)	210,000	375,000	585,000	210,000	375,000	585,000
	Water Supply Revolving Loan Fund	3,061,713	2,733,140	5,794,393	2,033,140	3,061,713	5,094,853
	Vt. Drinking Water Revolving Fund ¹	0	0	0	0	200,000	200,000
Agencies of Agriculture, Natural Resources	Ecosystem Restoration and Protection Grants	2,500,000	2,500,000	5,000,000	2,500,000	2,500,000	5,000,000
	Waterbury WWTF Phosphorus Removal	2,700,000	0	2,700,000	2,000,000	0	2,000,000
	Dam Safety and Hydrology	325,000	0	325,000	325,000	0	325,000
Dept. of Forests, Parks and Recreation	Vermont Youth Conservation Corps	0	0	0	0	200,000	200,000
Agency of Agriculture	Best Mgmt Practices on Vt. farms and water quality buffer program	1,300,000	1,200,000	2,500,000	1,050,000	1,200,000	2,250,000
Rural Fire Protection	Dry Hydrant Program	100,000	100,000	200,000	100,000	100,000	200,000
Housing and Conservation Board	Building and Conservation Projects	4,000,000	0	4,000,000	4,000,000	0	4,000,000
Dept of Education	State Aid for school construction	7,425,000	7,425,000	14,850,000	7,425,000	7,425,000	14,850,000

1. New program.