

# VERMONT LEAGUE OF CITIES AND TOWNS

## LEGISLATIVE WRAP-UP



# 2013

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# INTRODUCTION

## Halfway into the Biennium

The first half of the 2013-2014 biennium wrapped up late in the evening on Tuesday, May 14. Once again, the Democrats maintained substantial majorities in the House and Senate as well as holding the Governor's office. Nevertheless, there was plenty of controversy among those three governing bodies as the session wound down.

Not surprisingly, several local priorities hung in the balance at the end of the session. The House and Senate argued over whether to extend local option taxing authority to municipalities statewide, a proposal that ultimately failed. Brownfield legislation, which had not been the subject of discussion all session, was taken up and appended to H.226, a bill addressing underground storage tanks. H.265, the bill establishing education tax rates for the coming year, was passed the day before the session ended. Both S.37 – Tax Increment Financing (TIF) district legislation – and S.148 – criminal investigations and public records – were not passed until the final day. And studies on siting of renewable energy facilities, shoreland zoning, and litigation regarding grand list appeals of TransCanada hydroelectric properties found homes in the appropriations bill, H.530.

This year, both advocacy staff and our members benefited greatly from local officials who involved themselves in specific pieces of legislation that would affect their municipalities. Clearly, outcomes are better when those who implement the laws on a daily basis inform the process. We especially want to thank the public works and water supply directors who addressed non-payment of bills; the members of planning and conservation commissions and selectboards who worked on industrial wind projects; and all the mayors, managers, and development officers who, while working on tax increment financing issues, gave regular doses of reality to decision-makers under the golden dome.

Your job is not finished! No matter the advent of summer is still a few weeks away, it is already time to begin thinking about 2014. Lots of important issues were left hanging this spring when the session concluded. For example, what will be the future of Act 60 education funding? What should a shoreland zoning statute include? How will municipalities convey their decisions on renewable energy projects in their or their neighbor's jurisdictions? How will that information be used? What are appropriate property tax exemptions given state education funding laws, and who should pay for them? How should future non-payment of water and sewer fees be handled?

Please consider serving on one of our four legislative policy committees: Finance and Intergovernmental Relations (FAIR), Quality of Life and Environment, Transportation, and Public Safety. An electronic nomination form is posted on our website at [www.vlct.org/advocacy/policy-committee-nomination-form](http://www.vlct.org/advocacy/policy-committee-nomination-form). 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 will take place Thursday, October 3, at the Killington Mountain Resort. Committee chairs try to complete the balance of the committees' business via email.

Advocacy and Information Associate Jonathan Williams recently visited with local officials and the House Representative in Hinesburg to discuss legislation, local needs, and pending policy issues. Advocacy staff would welcome the opportunity to visit with selectboards and other local officials over the summer to discuss legislation that passed or is likely to be taken up in 2014. Please contact Karen Horn ([khorn@vlct.org](mailto:khorn@vlct.org)) if you are interested in such a visit.

Unless noted in a *Wrap-up* article, legislation that passed in this first half of the biennium takes effect on July 1. A number of summer study committees established this year that will address issues close to the hearts of local officials are listed at the end of the *Wrap-up*. VLCT is sometimes asked for recommendations or to appoint a committee member, so please let us know if you are interested in serving on a summer study committee.

Remember that as we are only halfway through the biennium, any bill that was introduced this year but did not pass will be “alive” again in January, when it may be taken up and ultimately passed in 2014. Frequently, a new bill is introduced on the same subject so that the issue looks fresh(er) to returning legislators. Certainly, stormwater and water quality issues will be recast in new bills.

Enjoy your summer! Remember VLCT’s Facebook page, Friday Policy Highlight YouTube videos, and our frequently updated website as you swing in the hammock.

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 2013 Municipal Legislative Policy and will be revised this summer for the 2014 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.

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**Vermont League of Cities and Towns**  
June 3, 2013

## **MUNICIPAL FINANCE**

### **FY14 State Budget (H.530)**

Amends 24 V.S.A. § 1759(a)  
VLCT Contact: Steve Jeffrey

With the exception of a large amount of Irene-related aid to towns having been included in the FY13 state budget and a substantially smaller figure included in the FY14 budget, towns saw little change in the fiscal portions of the FY14 state budget from the previous year. Municipal highway assistance was level-funded from FY13 except for a drop in town bridge funding that rises and falls every year, depending on how many municipal bridges are scheduled on the state's construction plans. State payments in lieu of taxes (PILOT) line items were also level-funded thanks to the cities and towns generating the local option tax revenue that funds them. State General Fund support of education increased 2.34 percent, well below the increase in total Education Fund spending of more than five percent. The table on page 4 shows the line items of interest to municipal officials.

The appropriations bill also contains many statutory changes as well as appropriating funds for the specific fiscal year. Section E.131.2 of the bill extends from 20 to 30 years the period for which towns may issue bonds for capital projects that have useful lives of 30 years or more. Previously, that time span was limited for highway projects involving bridge construction.

### **The Capital Bill (H.533)**

No statutory amendments  
VLCT Contact: Karen Horn

As Act 104 was the two-year capital bill for Fiscal Years 2012 and 2013, H.533 is the two-year capital bill for the current biennium. And, like last time, the House and Senate Corrections and Institutions committees struggled with financial obligations left over from Tropical Storm Irene at the same time that they attempted to balance requests for assistance with limited capital dollars.

The total bonding authorization for the capital bill is \$159,900,000, plus \$7,603,320 in authorized but unissued bonds from 2011. Also included is \$5,728,049 in reallocations or transfers that had been obligated in earlier years but not spent, for a total appropriation of \$173,231,370. The committees worked hard to find unspent dollars and a sizable amount of those reallocations are from water pollution, water supply, and other Agency of Natural Resources programs. Of the \$173,231,370, H.533 provides no more than \$90,373,066 to be appropriated in the first year; the remainder is appropriated in the second year. In 2014, the legislature is expected to pass a capital construction and state bonding adjustment bill, which will be an amendment to the two-year bill passed this year. This gives the legislature the opportunity to evaluate the progress of projects as they are implemented. Future capital spending requests will be made by the administration in the context of a ten-year planning horizon.

The Administration along with the House and Senate agreed that the Building Communities grants are a valuable resource for municipalities undertaking special projects. Funding for the Regional Economic Development Program was in the Administration's proposal, removed in the House-passed legislation, added back in by the Senate, and is in the bill as it passed. Language in H.533 requires the Commissioner of the Department of Buildings and General Services, the Secretary of the Agency of Commerce and Community Development, regional development corporations, and the Regional Economic Development Grant Advisory Committee to evaluate if those grants are being awarded to projects for capital expenses and whether or not catastrophic situations should qualify for grants.

These and other issues in H.533 of interest to local officials appear in the table on page 5. As has been the case in recent years, the committee worked hard to ensure that no federal dollar that might be applied to a municipal water or wastewater project was left on the table. The Clean Water State Revolving Fund and Drinking Water State Revolving Fund provide a match of \$5 federal for every \$1 provided by the state.

<b>Municipal Funding Priorities in FY 2014 Budget (in Millions)</b>					
<b>May 15, 2013 Approved</b>					
<b>Budget Line Item</b>	<b>FY13 Approved</b>	<b>FY14 Governor's Recommend</b>	<b>FY14 Approved</b>	<b>FY14 Approved \$ Change from FY13 Final</b>	<b>FY14 Approved \$ Change from Governor's Recommend</b>
PILOT – ANR Lands	2.13	\$2.15	\$2.15	\$0.02	\$0.00
PILOT – Corrections Facilities <sup>1</sup>	0.04	\$0.04	\$0.04	\$0.00	\$0.00
PILOT – Montpelier <sup>1</sup>	0.18	\$0.18	\$0.18	\$0.00	\$0.00
PILOT – State Buildings <sup>1</sup>	5.80	\$5.80	\$5.80	\$0.00	\$0.00
Current Use – Municipal	12.64	\$13.48	\$13.48	\$0.83	\$0.00
Homeowner Rebate – Municipal	14.55	\$13.97	\$13.97	(\$0.58)	\$0.00
Renter Rebate – Municipal	2.89	\$2.65	\$2.65	(\$0.24)	\$0.00
Special Investigative Units	1.25	\$1.52	\$1.52	\$0.27	(\$0.00)
General Fund Transfer to Education Fund <sup>2</sup>	282.32	\$288.92	\$288.92	\$6.60	\$0.00
General Fund Support of Teachers' Retirement System	63.61	\$71.78	\$71.78	\$8.17	\$0.00
Town Bridge Grants <sup>3</sup>	19.30	\$13.97	\$15.55	(\$3.75)	\$1.58
Town Highway Aid Program	25.98	\$25.98	\$25.98	\$0.00	\$0.00
Town Highway Aid Program – Class 1 Supplemental	0.13	\$0.13	\$0.13	\$0.00	\$0.00
Town Highway Structures	6.33	\$6.33	\$6.33	\$0.00	\$0.00
Vermont Local Roads	0.40	\$0.40	\$0.40	\$0.00	\$0.00
Town Highway Public Assistance Grants <sup>4</sup>	66.50	\$29.24	\$29.24	(\$37.26)	\$0.00
State Aid for Federal Disasters	3.60	\$3.60	\$3.60	\$0.00	\$0.00
State Aid for Nonfederal Disasters	1.15	\$1.15	\$1.15	\$0.00	\$0.00
Municipal Mitigation Grant Program	1.26	\$1.55	\$1.55	\$0.29	\$0.00
Class 2 Highway Paving and Rehabilitation	7.25	\$7.25	\$7.25	\$0.00	\$0.00
Total Local Highway Aid	\$131.91	\$89.60	\$91.19	(\$40.72)	\$1.58
<b>TOTAL</b>	<b>\$517.31</b>	<b>\$490.10</b>	<b>\$491.68</b>	<b>(\$25.63)</b>	<b>\$1.58</b>

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 re-calibrated 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 \$27 million in federal funds most likely all FEMA and Federal Highway Administration (FHWA) reimbursements for Irene and other 2011 flood damage.

<b>CAPITAL BILL TWO-YEAR (FY 2014-2015)</b>				
<b>Agency/Department</b>	<b>Line Item</b>	<b>As Passed 2012-2013</b>	<b>Governor's Recommended FY14-15</b>	<b>Passed by Legislature FY14-15</b>
Dept. of Taxes <sup>1</sup>	Orthophotographic Mapping	200,000	200,000	200,000
Agency of Commerce and Community Development <sup>1</sup>	Historic Preservation Grants (1:1 match)		400,000	450,000
	Human Services and Educational Facilities Grants	450,000	400,000	450,000
	Recreational Facilities Grants	450,000	400,000	450,000
	Historic Barns, Ag. Grants (1:1 match)	450,000	400,000	450,000
	Cultural Facilities Grants (1:1 match)	450,000	400,000	450,000
	Regional Economic Development	225,000	400,000	450,000
Department of Education <sup>2</sup>	State Aid for School Construction	14,850,000	17,116,080	17,116,080
Agency of Natural Resources	Clean Water State/EPA Revolving Loan Fund Match <sup>3</sup>	2,500,400	2,681,600	2,681,600
	Pownal Wastewater Treatment Facility	1,000,000	825,000	530,000
	Water Supply Revolving Loan Fund <sup>3</sup>		4,100,000	4,100,000
Ecosystem Restoration Program	Ecosystem Restoration and Protection Grants	5,000,000	4,323,732	4,323,732
	Waterbury WWTF Phosphorus Removal	2,000,000	3,200,000	3,440,000
	Dam Safety and Hydrology	325,000	400,000	400,000
Agency of Agriculture, Food and Markets	Best Mgmt Practices on farms and Conservation Reserve Enhancement Program	2250,000	1,700,000	1,200,000
Rural Fire Protection Taskforce	Dry Hydrant Program	200,000	200,000	200,000
1. Funds are allocated half in year 1 and the other half in year 2. 2. Funds left over from year 1 may not be re-allocated to a different purpose. 3. Includes \$600,000 in administrative support.				

### **State Education Property Tax Rates (H.265, Act 52)**

No statutory amendments  
VLCT Contact: Steve Jeffrey

The biggest broad-based tax hike bill introduced this year had to wait until the day before adjournment to win final approval by the legislature. H.265 raises the base state homestead education property tax rate by 5.62 percent from \$.89 to \$.94 and the state uniform non-residential property tax rate by 4.35 percent from \$1.38 to \$1.44. Because the actual school property tax rate that homeowners pay is dependent on school spending per pupil, the actual average spending-adjusted homestead tax rate is going up from \$1.32 to \$1.41, a 6.82 percent increase. Homeowners eligible to pay based on their income will only see their spending-adjusted school income rate go up from an average of 2.68 percent of household income to 2.70 percent, a .75 percent increase.

These figures are just the change in the *tax rates* set by the legislature. How much more than last year individual taxpayers will pay in actual state school property taxes will vary depending on changes in the

property values (due to changes in the state-determined common level of appraisal, local reappraisals, and physical property changes) for taxpayers (non-residential and homestead paying based on property), changes in household income (for those homeowners who are income-sensitized), and changes in local school spending.

In the aggregate, Vermont property owners will be paying \$37.1 million more in state property taxes this year, for a total of \$970.4 million. Homeowners (including those income-sensitized) will be paying \$24.1 million more than last year, a 6.14 percent increase. Non-residents will be paying \$13 million more, a 2.44 percent increase. All non-property tax revenue to the Education Fund (e.g., General Fund transfer, lottery profits, some sales and use tax) increased by only 3.38 percent. Property taxes now make up 67.2 percent of the total state school spending.

Things do not look any rosier for next year. After deducting the homestead property tax adjustment payments, net state school property taxes are projected to rise above the psychologically-loaded one billion dollar mark. All other things being equal, if school spending increases by just 3.5 percent (this year it went up by 5.5 percent), state property taxes will have to go up \$57 million, a 5.88 percent increase. Though it is up to the legislature to decide how school funds will be generated (and, to a degree it is unwilling to admit to, how those funds must be spent), the most likely scenario is to raise each of the state property tax rates another nickel. This will result in a projected net property tax increase of \$39.2 million for homeowners, a 9.23 percent increase.

Given the size of the increases in both state property tax rates and total property tax dollars, there was quite a stir in the waning days of the session, particularly in the Senate. Several senators worked feverishly to craft some last-minute law changes that they hoped could “bend the education spending curve” and give taxpayers some hope of, if not relief, at least tax increases of smaller proportions. That effort ultimately failed, though not without a lot of drama. When H.265 came up for approval by the full Senate, in one of the required votes, it passed by a margin of just three votes (14-11).

This may well signal a concerted effort during the 2014 legislative session to look deeper at school spending and where the revenue should come from, and to possibly enact some true reform of how Vermont delivers and pays for education.

For details on the total state education spending of \$1.465 billion and the associated revenues, go to <http://www.leg.state.vt.us/jfo/education.aspx> and link to the Education Fund Outlook.

**Vermont Municipal Employees Retirement System Employee Contribution Rates, Defined Contribution Transfer Option, Pension Forfeiture (H.518, Act 22; H.41, Act 2)**

Session Law – does not amend any statutes

VLCT Contact: Steve Jeffrey

Act 22 increases employee contribution rates for three of four Vermont Municipal Employees Retirement System (VMERS) plans as follows:

<b>VMERS EMPLOYEE CONTRIBUTION RATES</b>				
	<b>GROUP A</b>	<b>GROUP B</b>	<b>GROUP C</b>	<b>GROUP D</b>
July 1, 2012	2.5%	4.5%	9.25%	11.00%
July 1, 2013	2.5%	4.625%	9.375%	11.125%
January 1, 2014	2.5%	4.625%	9.50%	11.125%

Group B rates have been unchanged since 1999 when they were lowered from 5 percent to 4.5 percent for employees. Group C rates were increased in 2010 from 9 percent to 9.25 percent for employees. Group D employee rates have been at 11 percent since the plan's inception in 1999. Employer contribution rates are also increased for July 1, 2013. A more complete description of these changes and background on their necessity can be found in the April edition of the VLCT News, [www.vlct.org/assets/News/Newsletter/2013/vlctnews\\_2013-04.pdf](http://www.vlct.org/assets/News/Newsletter/2013/vlctnews_2013-04.pdf).

Act 22 also allows a one-time election for VMERS employees enrolled in the defined contribution (DC) plan to switch to the defined benefit (DB) plan offered by their employer. There are about 400 active members of the DC plan presently. Employees so electing would switch into the appropriate DB plan (A, B, C, or D) effective January 1, 2014, and would have to indicate their interest in doing so to the State Treasurer's Office by September 1, 2013. Employees making the switch may elect to purchase prior service credits in the DB plan with funds from their DC account, but must do so at the time of the transfer. The Treasurer's Office will be providing DC employees with additional information shortly.

According to Act 2, any member of VMERS or any other municipal retirement plan who is convicted of a crime related to public office shall be considered to have served dishonorably, and his or her retirement benefits may be forfeited. The Act contains a long list of crimes, most of which focus on the misuse of public funds including embezzlement and grand larceny. If municipal employees are convicted of any of them in connection with their employment, part or all of their pensions could be in jeopardy. A judge would determine how much, if any, of a convicted employee's pension should be forfeited.

#### **Miscellaneous Tax Bill Provisions Affecting Local Governments (H.295)**

Amends 32 V.S.A. §§ 312, 3262, 3752, 3758, 3802, 4004, 4152, 4465-67, 5405, 8701, and 9606; adds 32 V.S.A. § 3802a; repeals 32 V.S.A. §§ 5165, 5166, and 5167  
VLCT Contact: Steve Jeffrey

Listers and town clerks in particular should pay attention to the provisions of H.295 as many sections affect their responsibilities.

**Property Taxes.** A potential sleeper section (Section 4) of the bill could have substantial impacts on all property exempted from or treated differently for property tax purposes by the legislature and municipal grand lists. Statute already requires the legislature's Joint Fiscal Committee to prepare biennially a "tax expenditure" report. Tax expenditures are exemptions, exclusions, deductions, or credits to taxes that reduce revenue from that tax. Tax expenditures are basically the same thing as state appropriations to entities benefiting from such tax treatment, but they have never been subject to the same rigorous annual review involved in adopting a state budget. The impact of a solar energy company getting a \$100,000 tax credit or exemption has the same impact on the company, the beneficiaries of state government programs, and the rest of the state taxpayers as if the state provided a \$100,000 grant in the appropriations bill. The fact that the expenditure was made reduces state revenues available for other services and shifts the costs of funding them to other taxpayers.

The tax expenditure report is an attempt to catalogue and quantify the impact of such state decisions. Its current version can be found at [www.leg.state.vt.us/jfo/reports.aspx](http://www.leg.state.vt.us/jfo/reports.aspx).

H.295 adds the following language to the tax expenditure report statute: *Every tax expenditure in the tax expenditure report required by this section shall be accompanied in statute by a statutory purpose explaining the policy goal behind the exemption, exclusion, deduction, or credit applicable to the tax. The statutory purpose shall appear as a separate subsection or subdivision in statute and shall bear the title "Statutory Purpose."* **Notwithstanding any other provision of law, a tax expenditure listed in the tax expenditure report that lacks a statutory**

***purpose in statute shall not be implemented or enforced until a statutory purpose is provided.*** [Emphasis added.] Now, this is an excellent idea, long overdue. Its apparent impact is that unless each statutory exemption is so amended within the time period set in the bill, it loses its tax exemption.

Property tax exemptions are included in the report and therefore will need to have their purpose statutorily spelled out or they will lose their special treatment. The report lists 22 statutes outright exempting property, four “session law” exemptions (see ice rinks, below), four adjustments of how property is assessed for tax purposes (e.g., current use and homestead property tax adjustments), and five alternative methods of taxing property (telephone company property and the aforementioned solar energy facilities). The report estimates that in 2012, these special treatments reduced property tax revenues by \$283 million. “However,” the report states, “municipalities do not uniformly comply with this mandate [to appraise tax-exempt properties]. In many cases the information is incomplete or difficult to ascertain due to nonstandard reporting. Some municipalities listed properties as exempt, but reported zero value. Exempt properties are often difficult to value since they are often constructed for a specific public purpose and are not frequently sold – churches, for example. Nevertheless, any study of the impact of exemptions on the statewide grand list depends upon municipalities undertaking valuation of exempt properties. Since the estimates contained in this report rely in large part on grand list information received from municipalities, they necessarily mirror inaccuracies contained in those lists and fail to account for what has been omitted from those lists.”

This requirement is effective July 1, 2014, most likely meaning that property currently exempted will no longer be so on April 1, 2015, unless the purpose is spelled out in the statute.

To address the issue identified above regarding the sufficiency of data on the costs of exempt property, H.295 requires most exempt properties (those exempted under 32 V.S.A. §§ 3802(4)-(6), and (12)-(15) and 5401(10)(D), (F), (G), and (J)) to “provide their local assessing officials with information regarding the insurance replacement cost of the exempt property or with a written explanation of why the property is not insured.” When completing the grand list, the listers shall include for exempt parcels the insurance replacement value reported or the full listed value of the property as determined by the listers and indicate which method was used for the listed value. These requirements are effective on July 1, 2014, as well, so will not come into play until April 1, 2015.

The bill extends for two years (2013 and 2014) the session law exemption from 50 percent of the education property taxes for certain non-profit skating rinks used by local school athletic teams.

It also exempts two town-owned parcels located in other towns (and therefore taxable) that provide public access to public waters. The only towns impacted are Hardwick and Thetford (parcel owners) and Greensboro, Fairlee, and West Fairlee (host towns). This becomes effective for the 2014 grand list.

Lastly on the subject of property tax exemptions, the bill includes a study committee of two House members, two senators, the Director of the Division of Property Valuation and Review, and a representative from both VLCT and the Vermont Assessors and Listers Association. The committee is charged with studying the definition, listing practices, valuation, and tax treatment of properties within the public, pious, and charitable exemption, including the following:

- ways to clarify the definitions of properties that fall within this exemption, including recreational facilities, educational facilities, and publically owned land and facilities;
- guidelines to ensure a uniform listing practice of public, pious, and charitable properties in different municipalities;
- methods of providing a valuation for properties within this exemption; and

- whether the policy justification for these exemptions continues to be warranted and whether a different system of taxation or exemption of these properties may be more appropriate.

The committee must report its findings to the legislature by January 15, 2014.

The bill makes several changes in the current use program. First, the bill makes clear that lessees with perpetual leases (in excess of 999 years) of enrollable land can enroll it. It also clarifies that appeals of the decision of the commissioners of Taxes and Forests, Parks and Recreation are appealable to the superior court. Lastly, it repeals two provisions of the acts of 2011 and 2012 (session law) concerning enrolled land with wastewater and potable water supply permits.

The bill changes the title for state “appraisers” who hear property tax appeals cases to “hearing officers.” It also repeals three sections that nobody has paid attention to since enacted in the late 1970s. These require towns to report to the state delinquent taxes, taxes paid, and how the town collects taxes. And it adds language clarifying that the existence of a renewable energy plant subject to the alternative form of taxation for state education taxes does not alter the exempt status of any underlying property.

**Land Records and Property Transfer Tax Paperwork (or lack thereof).** H.295 authorizes the Commissioner of Taxes to file electronically notice of any lien in favor of the state due to nonpayment of taxes which shall have the same force and effect as a lien filed in paper form. The requirements for information required on the property transfer tax returns are made more flexible. The return no longer is required to be “signed, under oath or affirmation, by each of the parties or their legal representatives.” Now, the commissioner is given authority to prescribe what, if any, signatures are required. The current certificates for potable water supply and wastewater compliance, flood regulations, and local and state building, zoning, and subdivision requirements that need extra signatures are replaced with notices that the property may be subject to such limitations.

## **MUNICIPAL GOVERNANCE AND ADMINISTRATION**

### **Public Records (H.54, Act 23)**

No statutory changes  
VLCT Contact: Steve Jeffrey

What started out as 22 pages of proposed amendments to the state public records laws ended up as an act of just over a single page instructing the legislature’s Office of Legislative Council to draft a bill over the summer that accomplishes the following:

- lists in one statutory provision all exemptions to the public inspection and copying requirements of the Public Records Act that are set forth throughout the Vermont statutes;
- amends existing exemptions to the Public Records Act set forth throughout the Vermont statutes in order to cross-reference the list above; and
- amends exemptions to the Public Records Act as recommended by the Public Records Legislative Study Committee in its 2012 and 2013 annual reports, as those recommendations were proposed to be updated in version 3.2 of the House Government Operation Committee’s draft strike-all amendment to H.54.

In preparing the draft bill, the staff is instructed to consolidate exemptions that relate to the same subject matter into a single exemption, if consolidation does not alter the exemption’s substance. Staff must also

prepare for the committee's review a list of exemptions for which consolidation may be appropriate, but which could also alter the exemption's substance.

H.54 signals that public records reform will be at the top of the House and Senate government operations committees' agendas for the 2014 session.

### **Annual Municipal Survey Repeal (H.63, Act 3)**

Repeals 2011 Acts and Resolves No. 59, Sec. 14

VLCT Contact: Jonathan Williams

This one-sentence act repeals the Vermont Secretary of State's annual survey of municipalities relating to public record requests. The survey was implemented in 2011 to determine if municipalities were receiving an increased number of public records requests, if the requests were being used to circumvent the copying of a record by a municipality, and if the requests were overly burdensome. According to the Office of the Secretary of State, only a small percentage of municipalities responded to the most recent survey: out of 309 surveys issued (245 municipalities and 64 school superintendents), the state received only 107 responses (a 35 percent response rate). Of those responses, only 22 – or about 20 percent – said the requests posed an administrative burden. Hence, the survey was repealed.

The act took effect upon passage, March 27, 2013.

### **Liquor and Tobacco Licenses (H. 240)**

Amends 7 V.S.A. §§ 231 (b)(2), 1002

VLCT Contact: Steve Jeffrey

State agencies are required to present proposals for increased fees to the legislature for approval and passage. Generally speaking, agencies may request increases once every three years. This year, while addressing changes in the fee structure for liquor license permits, the fee bill also changed the way in which tobacco fees are handled when a person applies for a tobacco license apart from a liquor license.

**Tobacco Sales License.** Current law states that a person applying simultaneously for a tobacco license and a liquor license shall apply to the municipality. The licensee pays to the Department of Liquor Control (DLC) only the fee required to obtain the liquor license. A person applying only for a tobacco license pays a fee of \$10.00 to the municipality for each tobacco license or renewal. The municipal clerk forwards the application to the department, and the department issues the tobacco license. The municipal clerk retains \$5.00 of this fee, and the remainder is deposited in the treasury of the municipality.

The House Ways and Means Committee asked VLCT if towns would mind giving up the \$10 split between the clerk and the town. We said we wouldn't mind giving up the fee if we could get out of handling the application. That is what the House proposed to do with the applicants going directly to the department for the license, thereby relieving towns of the paperwork shuffle.

Lo and behold, the final version of H.240 has the tobacco-only license fee raised from \$10 to \$100, and the clerk accepting the application and forwarding it and the entire fee to DLC. So we – i.e., Vermont's cities and towns – continue to shuffle the papers and end up with nothing to pay for it. Fortunately, only a handful of tobacco-only licenses are issued.

**Liquor Licensing.** H.240 establishes an “outside consumption permit” which may be issued by the Liquor Control Board to a first class *or* first and third class license holder *and* fourth class license holder

to allow for consumption of alcohol in a delineated outside area. The fee for an outside consumption permit is \$20.

According to current law (7 V.S.A. § 231 (b) (2)), at least half of first and second class license fees go to the respective municipalities in which the licenses premises are located. The other half goes to the Liquor Control Enterprise Fund. A town may retain a larger percentage of those fees if it has assumed responsibility for enforcement pursuant to a contract with DLC. Current law also provides that all permits and licenses expire annually at midnight on April 30. The clerk retains a \$5 fee for issuing and recording the license. H.240 does not change this fee.

The fee for a first class license – issued by the local liquor commissioners to sell malt or vinous beverages for consumption on premise – is increased from \$200 to \$230. The fee for a second class license – to export vinous beverages or sell malt or vinous beverages for consumption off premise – is increased from \$100 to \$140.

### **Replacement of Elected Listers with Appointed Assessor (H.406, Act 21)**

Amends 17 V.S.A. §§ 2646, 2647, 2649, 2651b, 2651c

VLCT Contact: Steve Jeffrey

This act allows voters in most municipalities at an annual meeting the authority to replace their local elected listers with a “professionally qualified assessor” employed or contracted with by the selectboard. The assessor would have the same powers and duties of the listers in the property tax appraisal process. Appeals of the decision of the assessor would continue to go next to the board of civil authority. Towns and cities with municipal charters specifically providing for the election or appointment of the office of lister still have to go through the charter amendment process to make the change allowed under Act 21 for towns without a charter provision that addresses the issue.

Act 21 also requires cities and towns that have charters that specifically provide for the election or appointment of town auditors to use the charter amendment process if they wish to avail themselves of the authority granted all other municipalities under the existing language of 17 V.S.A. § 2651b, which allows voters to replace elected auditors with the selectboard contracting with a public accountant, licensed in this state, to perform an annual financial audit of all funds of the town.

### **Powers of Regional Planning Commissions (H.450, Act 36)**

Amends 24 V.S.A. §§ 2541, 2645, 2646

VLCT Contact: Steve Jeffrey

H.450 provides regional planning commissions (RPCs) with the authority to own or lease real property for the purposes of fulfilling their responsibilities under state statute, and to incur indebtedness for such purpose, establish and administer a revolving loan fund, or establish a line of credit, if approved by a two-thirds vote of those representatives to the regional planning commission. Any indebtedness incurred shall not encumber the grand list of any member municipality, and in the case of a property purchase, shall pledge the property to be purchased as collateral and shall not exceed the fair market value of such property.

The bill also allows RPCs to act as escrow agents for their member municipalities and clarifies their authority to enter into contracts and receive grants, loans, and funds to perform their statutory functions. It also adds the following language: *[f]or the purpose of a regional planning commission’s carrying out its duties and functions under state law, such a designated region shall be considered a political subdivision of the State.*

## Municipal Charters

VLCT Staff Contact: Jonathan Williams

This session, the legislature passed eight municipal charter amendments: Barre City (M005), St. Albans Town (M003), Stowe (M004), Northfield (M002), Winooski, Woodford, Brattleboro, and Essex Junction.

Both Government Operations committees were attentive to and considerate of the charter amendments, and some charters were passed with few amendments, save for conforming or grammatical changes. Two of them – St. Albans Town and Winooski – allow the municipality to implement a local options tax if the elected governing body and the community approves. VLCT’s 2013 Municipal Policy urges the legislature to enable all cities, towns, and villages to adopt consumption taxes as each sees fit. The addition of these two brings to five the number of municipalities that have adopted the capability to implement local option taxes through the charter process. Burlington, Middlebury, and South Burlington are the others.

The Town of Northfield’s charter amendments structure the formal merger of the village and town of Northfield into one political entity and the consolidation of town and village services, a move that had been discussed for decades in Northfield. There were also two charter amendment proposals that did not leave the House Government Operations Committee pertaining to amending the charter of South Burlington.

Below is a list of the charter amendments that passed both the House and the Senate, as well as the major topics amended in each charter revision.

### Essex Junction (H.541, Act M006)

- Conforming/grammatical changes
- Interference with administration/manager supervision

### Barre City (H.512, Act M005)

- Change to fiscal year
- Bonding of city officials
- Excess funds
- Clerk/treasurer one position
- Election of school board members/vacancies
- Conforming/grammatical changes

### Stowe (H.525, Act M004)

- Conforming/grammatical changes
- Ordinance adoption/summarization
- No need to vote on property purchases
- Town manager authority

### St. Albans Town (H.517, Act M003)

- Charter adoption
- Local option tax capability
- General governance

### Northfield (H.527, Act M002)

- Merger of town and village
- Conforming/grammatical changes
- Electric, water, wastewater administration
- Consolidation of services
- Form of government

### Winooski (H.534)

- Continued incorporation/form of govt.
- Water resources
- Local option tax capability
- General governance

- Tax increment financing
- Conforming/grammatical changes

**Woodford (H.535)**

- Charter adoption
- General governance

**Brattleboro (H.537)**

- Office of Assessment

**ENVIRONMENT AND QUALITY OF LIFE**

**Designated Downtowns and Blighted Properties (H.377)**

Amends 24 V.S.A. Chapter 76A

VLCT Contact: Karen Horn

The Designated Downtown, Designated Village Center, New Town Center, Growth Center, and Vermont Neighborhood programs were initially created to (1) encourage redevelopment of downtown areas, (2) encourage public and private investment in infrastructure, housing, historic preservation, transportation, and human services in downtown areas, (3) reflect traditional settlement patterns, and (4) minimize or avoid strip development or other unplanned development. Last summer, the Department of Economic, Housing and Community Development convened a group of stakeholders to re-assess these programs. The department set aside revisions to the Growth Centers program, promising to undertake that job this summer. In Vermont there are 24 Designated Downtowns, approximately 100 Designated Villages, and three Vermont Neighborhoods. (The number of Designated Villages varies from month to month.)

H.377 augments the definition of downtown to mean the traditional central business district of a community that is the focus of socio-economic interaction and includes commercial and mixed use buildings – such as civic, religious, residential, or industrial buildings – and public spaces within walking distance for residents who are served by infrastructure such as sidewalks and public transit. A village center is the core of a traditional settlement that includes a cohesive mix of residential, civic, religious, commercial, and mixed-use buildings within walking distance for residents living in and around the core. Downtowns are larger than villages, and both are characterized by a development pattern that embraces smart growth principles.

H.377 clarifies the parameters of each program and ensures that when a municipality applies, it understands the program, has included its designated area in its adopted municipal plans, maps, and capital programs, and has completed its applications only after consulting with department staff. Those changes will benefit all program applicants.

The Vermont Neighborhood program is eliminated. A new definition of “neighborhood planning area” establishes an automatically delineated area, including and encircling a downtown, village center, new town center, or within a growth center. The neighborhood planning area will be used to identify locations suitable for new and infill housing “to support a development pattern that is compact, oriented to pedestrians and consistent with smart growth principals.” The boundary of a neighborhood planning area will be measured one-half mile from each point around the perimeter of the designated downtown; the boundary of a village or new town center will be measured one-quarter mile from each point around the perimeter. The program will provide for tailoring boundaries to each applicant municipality, since circumstances and physical layout differ in the diverse places that are Vermont’s community cores.

The bill allows a municipal to apply for a designated neighborhood area. The Downtown Board will make the designation if, in its determination, it meets the criteria. If all planning and assessment work has been done, the owner of land within the area may apply directly for designation status on his or her own. H.377 requires the Downtown Development Board to provide the host municipality with at least 14 days prior written notice of the Board's meeting to consider a developer's application; that municipality must respond to the application within those 14 days. A housing developer would want to apply because there are relaxed standards in Act 250 for housing development if one is in a neighborhood planning area as well as reduced state application fees for wastewater applications and Act 250 fees. As well, exclusion from the land gains tax would accrue to the developer's project. Despite objections from local governments, a developer may apply for designation on his or her own today under the Vermont Neighborhood Program, which has happened on several occasions recently.

By June 15, 2013, the Commissioner of the Department of Economic, Housing and Community Development is directed to convene stakeholders to begin examining ways to improve the Growth Center and Town Center designation processes. The department is to consider the process, how to include municipalities of all sizes and growth pressures, additional incentives for the designation programs, potential integration of industrial parks and rural development, and protection of natural resources. A report is due to the legislature by December 15, 2013.

Added to H.377 is language that would allow a municipality to vote at an annual or special meeting to authorize the local legislative body to exempt from property taxes the value of improvements made to dwelling units certified as blighted for up to five years. If so voted, a municipality would appoint an independent review committee to certify dwelling units as blighted and exempt the value of their improvements. A dwelling unit may be certified as blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

### **Tax Increment Financing (S.37)**

Amends 24 V.S.A. §§ 1891-1901; 32 V.S.A. §§ 5401-5404(a)

VLCT Contact: Karen Horn

S.37, the Tax Increment Financing (TIF) district legislation, was one of the last bills to pass, having been held as hostage by the House in case it was needed as a vehicle for other legislative initiatives that looked like they might fail. Such is the end of session game.

TIFs are widely used across the country to attract economic development projects to areas where they otherwise would not occur. TIFs have been critical to the re-development of downtown Winooski and the Burlington waterfront, and the cities of St. Albans, Barre, and South Burlington are poised to implement TIF programs. A TIF district is ideal for driving development into the compact settlements that are the focus of state goals – our cities, historic downtowns, and new smart growth developments seeking to emulate traditional downtowns such as Colchester's Severance Corners.

Complex tax increment financing district statutes have resulted in much confusion for a long time. S.37 resolves uncertainly around the administration and implementation of TIF districts in Vermont. In 2012, the office of the former state auditor performed audits of TIFs in Burlington, Milton, Winooski, and Newport that called into question the way in which TIFs were being implemented. The legislation establishes amounts that all parties agree should be repaid to the Education Fund, provides new oversight and reporting, and establishes a process and remedies in the future for all TIF districts once rules are adopted.

S.37, in its various sections, will:

[Section 1] establish specific dollar amounts to be repaid to the Education Fund from the audited towns. If rules that are written to enact the statutory changes in S.37 identify practices that result in future underpayment, and if those practices continue into the future, those amounts of underpayments will start to accumulate upon the date that rules are enacted and will be payable to the state.

[Section 2] clarify the definitions of “improvements,” “related costs,” and “financing” so that TIF municipalities, the legislature, and administering agencies will have the same understanding of those terms. “Original taxable value” is defined as the value of property in the district on the date the TIF was created. That original taxable value will not be changed throughout the life of the district.

[Section 3] provide for creation and administration of TIFs to include no more than those listed and (at Section 17) South Burlington. The Burlington Waterfront TIF is extended for five years, although its ability to retain an education tax increment is not extended. A municipality may designate a coordinating agency from outside its departments to administer the district.

[Sections 4 and 9] establish how and for how long education tax increments may be used in the TIF district. A municipality has five years in which to incur its first debt and may incur debt for ten years thereafter. If no debt is incurred in the first five years, the district will terminate unless the Vermont Economic Progress Council (VEPC) grants an extension. Thereafter, the TIF district may use up to 75 percent of the new education property taxes generated and at least an equivalent amount of municipal property taxes to repay debt incurred to finance improvements such as streetscapes, transportation improvements or wastewater treatment upgrades. The new education property taxes generated in the district may be used to repay debt for up to 20 years.

VEPC will approve a TIF financing plan; then the municipality’s voters need to authorize each instance of debt incurred in the TIF district. The legislation stipulates the information that needs to be provided to voters in advance of a vote.

[Sections 5 and 6]. clarify the listers’ obligation to establish the original taxable value of property in the TIF district and how new taxes generated will be accounted for and expended at the local level.

[Section 8] amend the statute that authorizes a municipality to issue bonds.

[Section 10] establish information, data, and reporting requirements for TIF districts to the Department of Taxes and VEPC.

[Section 11] establish that “nonresidential property” will exclude that portion of a property’s new incremental value that is dedicated to repayment of debt incurred in the TIF district for up to 20 years.

[Section 12] provide that new education property tax increment generated within the district is available to repay TIF debt for up to 20 years.

[Section 13] establish the Department of Taxes and VEPC reporting requirements to the legislature.

[Section 14] authorize VEPC to adopt rules to clarify the TIF statutes. A single rule will be adopted for all TIF districts that will include a process for distributing excess increments to the Education Fund. The rule will specify which of its provisions are written to address which pre-existing TIF. The Secretary of the Agency of Commerce and Community Development is authorized to issue decisions regarding

administration of TIFs upon VEPC's recommendation. Appeals of decisions will go first before a hearing officer at the agency as a contested case, and then to the superior court. If non-compliance is found and repayments need to be made to the Education Fund, the State Treasurer is to bill for those amounts.

[Section 15] directs the State Auditor to undertake performance audits of TIF districts according to a schedule determined by him and VEPC, but generally not more than once in a five-year period. The cost of conducting the audit (which last year cost an eye-popping \$500,000 for four TIF districts) will be billed back to the audited cities and towns.

With the passage of S.37 and the subsequent adoption of rules to implement the new law, municipalities, VEPC, and the Tax Department should find it far easier to implement TIF districts and establish what expenditures may be paid for with new education property taxes generated within the district. This has been at the heart of disagreements over the years. Finally, Vermont may have a workable TIF program on which all can agree.

### **Water Management Issues (H.401, Act 16; H.526)**

Amends 24 V.S.A. Chapter 117

VLCT Contact: Karen Horn

Early in the legislative session, the Agency of Natural Resources (ANR) provided its Act 138 Report, titled "Water Quality Remediation, Implementation and Funding Report" to the House Fish, Wildlife and Water Resources Committee. The report was the result of extensive meetings with stakeholders and assessments of potential work items to manage, restore, and protect the surface waters of the state in the years ahead. The report, available at [www.watershedmanagement.vt.gov/erp/docs/erp\\_act138report.pdf](http://www.watershedmanagement.vt.gov/erp/docs/erp_act138report.pdf), remains a worthwhile read. When the session ended, that committee again pondered how to tackle the workload and costs identified in the report.

Meanwhile, at least 22 bills were introduced that address various water related issues. (Expect to hear much more about water protection, stormwater, and water quality in the 2014 session.) Among them was H.401, a bill that addresses flood hazard areas and fluvial erosion protection in local and regional plans. H.401 amends Title 24 Chapter 117, the regional and municipal planning statutes by adding a 14<sup>th</sup> goal "to encourage flood resilient communities." New development in identified flood hazard, fluvial erosion, and river corridor protection areas should be avoided and any new development should not exacerbate flooding and fluvial erosion. Protection and restoration of floodplains and upland forested areas that attenuate and moderate flooding and fluvial erosion should be encouraged, as should flood emergency preparedness and response planning.

Both regional and municipal plans must include the new flood resilience element to identify flood hazard and fluvial erosion hazard areas based on river corridor maps provided by the Secretary of ANR. The element must designate areas to be protected, including floodplains, river corridors, land adjacent to streams, wetlands, and upland forests to reduce flood damage to infrastructure and improved property. As well, the flood resilience element will need to recommend policies and strategies to protect identified areas and mitigate risk to public safety, critical infrastructure, historic structures, and public investments, such as roads, bridges, culverts, and wastewater treatment or water supply facilities.

H.401 also enables a municipality to prohibit the construction of accessory units (mother-in-law apartments) in flood hazard and fluvial erosion areas.

After much controversy as well as pushback from private landowners and municipal officials, the legislature failed to pass statewide shoreland zoning (H.526), opting instead for a summer study committee. The debate raged for a good part of the session. The concept as it was voted out of the House was to provide for delegation of authority to municipalities that had adopted a shoreland regulation bylaw that included certain specific components. In the end, the legislature decided to take time to evaluate existing laws in Vermont and elsewhere to determine the best way to regulate shorelands that addresses water quality and property interests.

H.530 the Appropriations Bill, creates a Lake Shoreland Protection Commission comprising five members of the House Fish, Wildlife and Water Resources Committee – including its chair and vice chair –and the members of the Senate Natural Resources and Energy Committee. The commission will hold five meetings around the state, generate a report by January 15, 2014, and then cease to exist on July 1, 2014. A working group will determine what information will be provided to the public in those hearings.

VLCT has collected numerous bylaws from municipalities that address protection of lakeshores and we're looking for more. Please send any relevant adopted bylaws to [khorn@vlct.org](mailto:khorn@vlct.org). VLCT will also work with the Agency of Natural Resources to establish what elements a bylaw would need to be deemed the regulatory authority in that municipality.

### **Paint Recycling (H.262)**

Amends 10 V.S.A. Chapter 159, Subchapter 4  
VLCT Contact: Karen Horn

H.262 was passed to establish an environmentally sound, cost-effective paint stewardship program that would mimic the state waste management hierarchy by collecting, reusing, recycling, and disposing of post-consumer paint while providing for its energy recovery.

Paint producers or stewardship organizations – that is, nonprofits created by paint producers to implement a paint stewardship program – must submit a plan for a paint stewardship program to the Secretary of the Agency of Natural Resources by December 1, 2013. The plan must delineate how to use the existing household hazardous waste collection infrastructure for collecting post-consumer paint. Permanent collection sites will be located within a 15-mile radius of 90 percent of Vermont residents; an additional permanent site will be established for every 10,000 residents of a municipality. There will be no cost to the person whose paint is collected. The program will include education and outreach efforts, which should be paid for by a paint stewardship assessment on all architectural paint sold in Vermont. A third party auditor will make a recommendation on the budget and a paint stewardship assessment to establish what would be an equitable fee on the paint sold.

After the plan is approved, the assessment will be added to the price of the paint. Plans are to be revised every five years. A report from the ANR secretary regarding the paint stewardship assessment program is due to the legislature by January 15, 2014.

### **Pet Breeders and Local Government (H.50, Act 30)**

Amends 20 V.S.A. §§ 3541, 3541a, 3550, 3681, 3682; 20 V.S.A. Chapter 194  
VLCT Contact: Jonathan Williams

Act 30 amends the statutes regulating the welfare of animals as well as the sale of dogs, wolf-hybrids, and cats. It defines a pet dealer as a person who sells or exchanges – or offers to sell or exchange – cats, dogs, or wolf hybrids from three or more litters in any 12-month period. The definition does not apply

to pet shops which are licensed by the Agency of Agriculture, animal shelters, or rescue organizations. A kennel permit, issued by town clerks, would be renamed a pet dealer permit and would cost \$25 (up from \$10). The municipality would retain the \$25 fee.

Act 30 obliges a pet dealer to allow inspection of his or her premises as a condition of receiving and retaining the permit. The town clerk must now provide the pet dealer with the Agency of Agriculture's Animal Welfare Standards documents, contact information for the agency's Animal Health Section, and information on a pet dealer's obligation to charge state (and, where applicable, local option) sales tax on pet sales. Inspection of the pet dealer's premises may be conducted by a municipal animal control officer, any law enforcement officer, or a representative of the Agency of Agriculture. Such inspectors may, with the approval of the municipality and at the inspector's discretion, be accompanied by a veterinarian or an officer or agent of a humane society that is incorporated in Vermont. The act specifically states that municipal legislative bodies are under no obligation to conduct inspections.

Such an inspection would be scheduled in advance with the pet dealer or his or her agent, with the dealer or agent present during the inspection, and would be limited to areas used for animal housing, care, birthing, and storage of food and bedding. The premises may not be photographed or videotaped without written consent. Repeated failure to consent to an inspection may result in a revocation of the permit. If an inspector, during the course of an inspection, believes that a criminal animal welfare violation exists on the pet dealer's premises, nothing shall preclude a criminal investigation into the suspected violation. Results of inspections would be submitted to and maintained by the municipality.

## **TRANSPORTATION**

### **The Transportation Bill (H.510, Act 12)**

Amends 19 V.S.A. §§ 38, 42, 15, 20, 26a, 518, 7(f), 43, and § 11a; 23 V.S.A. §§ 3003, 3106, and 1220a (b);  
2012 Acts and Resolves No. 153, Sec. 24  
VLCT Staff Contact: Jonathan Williams

A number of provisions in this year's \$632 million Transportation Bill (T-Bill) impact the municipalities of Vermont, including the much discussed gas tax increase. This revenue raising option, unpopular with some but supported by VLCT, was included in order to avoid losing about \$60 million in federal transportation funding.

Act 12 increases the total of state taxes and assessments on gasoline by six and a half cents per gallon by 2016. The act also raises the diesel tax by three cents per gallon over two years, and cuts approximately \$4 million in planned FY14 state expenditures, including from the Agency of Transportation's (VTrans) paving, rail, aviation, and maintenance budget items. There are no cuts to Town Highway programs.

Act 12 also uses toll credits to increase the spending authority of VTrans by \$1.74 million. Under federal law, states are permitted to substitute certain investments previously financed from tolls for state matching funds on current federal aid transportation projects. Ferry purchases by private entities such as the Lake Champlain Transportation Company are counted as toll credits for the State of Vermont. The act also authorizes \$10.38 million in transportation infrastructure bonds in FY14 to further fund the state's transportation system.

Another portion of Act 12 directs various state departments and agencies to study how Vermont can best charge users of plug-in hybrid, all-electric, propane, and natural gas propelled vehicles on the state's

highways. As these vehicles do not require the purchase of gasoline or diesel, their owners currently do not pay any gas tax and, thus, do not contribute to the maintenance of the state's transportation infrastructure.

Of potential direct impact to municipalities is a provision in the act that addresses state facilities served by town highways. Currently, no state funding source other than general town highway aid exists to assist municipalities with maintaining and rehabilitating town highways that provide access to state parks and other state facilities. Act 12 establishes a study committee to examine the condition of these highways and what mechanisms the state could develop to help municipalities take care of these roads. The committee will generate a report for the House and Senate Transportation committees by December 15, 2013. VLCT and several state agencies will have representation on the study committee.

The T-Bill also recommends a number of changes to state statute to reflect the requirements of the federal "Moving Ahead for Progress in the 21st Century" (MAP-21) transportation bill. Notably, the Transportation Alternative Grant Program (formerly known as the Transportation Enhancement Grant Program) can no longer award funds to nonprofit organizations. Local governments, regional transportation authorities, transit agencies, natural resource/public land agencies, and school districts are still eligible to receive funds. And while the original version of the bill proposed to strike the program's \$200,000 set-aside for municipalities that apply for assistance in building eligible salt and sand shed projects (generally projects that are required by the Agency of Natural Resources to reduce stormwater runoff from salt and sand piles), Act 12 allows the set-aside to remain – after the House Transportation Committee heard from numerous municipal officials on the usefulness of that set-aside.

A section of Act 12 allows VTrans – without legislative approval – to relinquish to municipalities sections of the state highway rights-of-way that have been replaced by new construction and are no longer necessary. Currently, Vermont statute requires legislative approval to relinquish these segments to municipalities. Language in the act requires VTrans to enter into an agreement with the affected municipality before it relinquishes control of these segments.

Another section of Act 12 clarifies the circumstances under which VTrans must convene a regional public meeting to hear concerns about a planned closure of a state highway, stating that VTrans must conduct a regional public meeting only if it is requested by the legislative body of municipality which is affected by the closure.

A number of the act's provisions having to do with the gasoline tax took effect either on May 1, 2013, or will take effect July 1, 2014. All other sections will take effect on July 1, 2013, or did so upon the act's passage (April 29, 2013).

## **ENERGY**

### **Energy Efficiency (H.520)**

Amends 30 V.S.A. §§ 209 (thermal efficiency), 255 (regional coordination to reduce greenhouse gases; 20 V.S.A. § 2731 (building energy standards); 21 V.S.A. § 269, 24 V.S.A. § 4449; recodifies sections of Title 21 and Title 30.

VLCT Contact: Karen Horn

H.520 amends statutes that address existing energy efficiency programs, including thermal efficiency of existing housing and commercial building stock. It also ties enforcement of the Building Efficiency

Standards that were adopted in 2011 to municipal certificates of occupancy in towns whose zoning requires those certificates of occupancy.

Section 5 of the bill adds a requirement that a certificate required by the Residential and Commercial Building Energy Standards be a condition before the Commissioner of Public Safety can issue a certificate of use or occupancy for a “public building” after July 1. The primary purpose of the certificate is to guarantee fire and carbon monoxide safety. In Title 20, Chapter 173, “Prevention and Investigation of Fires,” a public building is defined – for these purposes – as a building owned or occupied by a public utility, hospital; school; house of worship; convalescent center or home for the aged, inform or disabled; nursery; kindergarten; or child care; a building in which two or more persons are employed or occasionally enter as part of their employment or are entertained, including private clubs and societies; a cooperative or condominium; a building in which people rent accommodations, whether overnight or for a longer term; a restaurant, retail outlet, office or office building, hotel, tent, or other structure for public assembly including outdoor assembly, such as a grandstand; a building owned or occupied by the state of Vermont, a county, a municipality, a village or any public entity, including a school or fire district. (Mind you, the statute contains other definitions of public building but this is the relevant one!)

Under current statute, the Commissioner of Public Safety may delegate to a municipality responsibility for enforcing the Vermont Fire and Building Safety Code if he or she determines that the municipality meets training, qualification and procedure standards. Ten municipalities around the state have taken on that responsibility.

H.530 also requires municipalities that issue certificates of occupancy for residential or commercial construction under 24 V.S.A. Chapter 117 – which regulates municipal planning and zoning – to obtain a certificate of compliance with the Residential Building Energy Standards from the applicant prior to issuing certificates of occupancy, as of July 1. Residential buildings are defined in the standards as one family dwellings, two family dwellings, and multi-family housing three stories or less in height, but not hunting camps. The residential building energy standards are at [www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=003&Section=00266](http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=003&Section=00266).

When an applicant seeks a permit for a structure, the administrative officer now must provide the applicant with a copy of the applicable building energy standards. The administrative officer may provide a copy of the Department of Public Service’s (DPS’s) Vermont Residential Building Energy Code Book instead of the entire Residential Building Energy Standards. You can download the Residential Energy Code Handbook at [http://publicservice.vermont.gov/sites/psd/files/Topics/Energy\\_Efficiency/2011%20VT%20Energy%20Code%20Handbook%20V.2.1%20FINAL.pdf](http://publicservice.vermont.gov/sites/psd/files/Topics/Energy_Efficiency/2011%20VT%20Energy%20Code%20Handbook%20V.2.1%20FINAL.pdf). You can also get a free paper copy of both the Residential and Commercial Energy Code Handbooks from DPS.

The Residential Building Energy Standards themselves are amended to establish that living and common areas in mixed use (residential and commercial) buildings of three or fewer stories are subject to those standards. Likewise, the Commercial Building Energy Standards include all the commercial uses within such structures. Under current law, a certification that a residence meets the Residential Building Energy Standards may be issued by builders, professional engineers, architects, or accredited home energy rating organizations. Such certificates must be provided to DPS and recorded in the town land records. The Commissioner of Public Service (who is responsible for the building energy codes) is authorized to adopt a “stretch code” by rule that will be available for adoption by municipalities under Chapter 117. Upon its adoption by the commissioner, it will apply in Act 250. A stretch code is a building energy code for residential buildings that achieves greater energy savings than the residential building energy standards.

The DPS commissioner is to convene a working group to develop a consistent format and presentation for an energy rating that a building owner may use to disclose the energy performance of the building to interested people, such as a potential purchaser. The working group is to produce a report to the legislature by December 15, 2013, regarding disclosure tools, the effort to disseminate the tools for public use, and the frequency and effectiveness of the tools' use. The commissioner is also directed to work with affected persons and entities to improve the efficiency of single and multi-family affordable housing units. The commissioner and director of the Office of Economic Opportunity are to report on the progress of their efforts with respect to affordable housing, to the House and Senate Natural Resources and Energy committees by January 31, 2015 and January 31, 2017. Included in the list of items to assess are efforts to simplify access to funding for energy efficiency and renewable energy available for affordable housing; ensure delivery of timely, cost-effective and comprehensive services; and measure the performance of energy improvements.

Additionally, the DPS commissioner will convene an interagency working group to figure out how to achieve the goal of 90 percent of energy consumed in the state being renewable by 2050 as well as the state's goals of reducing greenhouse gas emissions. That study must include information on the economic impacts to the state economy of implementing those policies and funding mechanisms.

H.520 also amends the Home Weatherization Assistance Program by raising the maximum amount of assistance from \$6,000 to \$8,000. It also directs the Secretary of the Agency of Human Services to develop a system of fuel purchasing under the Home Heating Fuel Assistance Program that assures consumers can get the lowest possible fuel prices.

The State Energy Plan requirements are amended to incorporate conventional hybrid, plug-in hybrid, and battery electric vehicles into the state fleet if they are determined to be cost-effective over the course of their lifetimes.

The provisions relating to municipalities take effect on July 1. Local officials who are concerned about the way in which this mandate was passed (that is, without consultation with local officials) should be sure to speak to their legislators about it.

### **More Energy Issues (S.30, Act 38; H.39; and H.530)**

No statutory amendments  
VLCT Contact: Karen Horn

Throughout the session, debate raged about the siting of renewable energy generation facilities. Wind energy in particular spawned multiple proposals, which resulted in the introduction of nine bills.

S.30 is the main energy bill that passed, though in the end it was watered down to almost nothing. For much of the session, the Senate Natural Resources and Energy Committee took testimony on the Public Service Board (PSB) process for siting renewable energy facilities and how that process plays out when an applicant applies for a Certificate of Public Good to build an electric generation project. The picture was not pretty. (See [Weekly Legislative Report No. 12](#) for details of the Senate-passed legislation.) H.39 – which started life in the House Commerce Committee as technical changes to the PSB, then briefly featured amendments that addressed the siting of facilities – did not pass. It is still officially in conference committee, although dead for all intents and purposes.

In recognition of the uproar around the siting of wind towers, the governor appointed an Energy Generation Siting Commission to review the PSB process and make recommendations for its improvement. That report and other information from the Siting Commission, including VLCT's

comments on the report, is at <http://sitingcommission.vermont.gov/publications>. The Siting Commission proposed a protocol for giving municipal planning determinations standing in the PSB Certificate of Public Good Process.

As passed, S.30 provides for the House and Senate Natural Resources and Energy committees to jointly review the Energy Generation Siting Commission Report that was unveiled on April 30. According to the report, the committees may consider any issue related to electric generation plants and may recommend legislation to the General Assembly concerning those plants, and that the legislature can do either, any time it wants – no matter what a bill says. The bill does provide for the committees to meet at the call of the chairs for up to six times during the legislative recess.

The appropriations bill, H.530 (at Section E.233), contains numerous directives to the Department of Public Service (DPS) to submit to the House and Senate Natural Resources and Energy committees a summary review of the report of the Siting Commission that: (1) addresses a comprehensive and integrated planning process for siting of electric generation plants; (2) increases accessibility of the siting review process for electric generation plants to local and regional governments and concerned citizens; (3) creates a publicly accessible inventory of peer-reviewed research on impacts of electric generation plants on public health, the environment, and land use; (4) establishes specific standards applicable to electric generation plants to address any such impacts; and (5) contains a recommendation on issues related to curtailment of in-state electric generation plants. The impacts of proposed projects on municipalities and their residents and the handling of those proposals would be affected by each of the subject areas DPS is required to cover.

In this bill, a new Electric Generation Advisory Committee comprising the chairs and vice chairs of the House and Senate Natural Resources and Energy committees will review the Siting Commission Report. This committee will cease to exist on February 1, 2014. If nothing else, the Siting Commission Report will get lots of review.

## **PUBLIC SAFETY**

### **Criminal Investigations (S.148)**

Amends 1 V.S.A. § 317

VLCT Contact: Karen Horn

Early in the session, the Senate Judiciary Committee took up the matter of records relating to criminal investigations and whether they should be exempt from the Public Records law. The current law is very confusing, and courts have issued contradictory decisions in the last several years. The governor, together with members of the media and the American Civil Liberties Union, had endorsed moving away from existing Vermont law to the federal Freedom of Information Act (FOIA) standard for disclosing criminal investigation information. The Attorney General endorsed loosening the restrictions on the law in effect.

S.148, which passed May 13, replicates the federal FOIA standard. It does not change the statute that protects law enforcement employees' personnel records. S.148 provides that records dealing with investigation and detection of a crime are exempt from public inspection *only* if production of the records:

- (1) could reasonably be expected to interfere with enforcement proceedings;
- (2) would deprive a person of a right to a fair trial or impartial adjudication;

- (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (4) could reasonably be expected to disclose the identity of a confidential source in the course of a criminal investigation, or would disclose information furnished by a confidential source;
- (5) would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions; and
- (6) could reasonably be expected to endanger the life or physical safety of any individual.

As is the case now, records that relate to management and direction of a law enforcement agency, that reflect initial arrest of a person, and that reflect the charge of a person, remain public.

A large body of case law has been developed to interpret the federal FOIA standards. However, clearly not every officer or local official who responds to requests for information relating to investigations of crimes is an attorney or has unfettered access to one. In the judgment of an officer or a private individual, what constitutes “an unwarranted invasion of privacy?” What information would “deprive a person of a fair trial” if disclosed? If a witness to a crime gives a lead to police, or if a crime victim discusses his or her patterns of living, must that information be disclosed or kept confidential? The federal standard establishes the need to balance rights to personal privacy with requirements for disclosure. And any decision comes with costs. Under Vermont law, the town is liable for attorneys’ fees if the official withholds the requested information, that action is challenged in court, and the complainant substantially prevails.

Recognizing the issues created by implementing the federal FOIA standard for exemptions, the legislature included intent language to guide both officials responsible for providing information and the public requesting that information. This intent language should be included in any reading of the new FOIA language. It is the General Assembly’s intent that a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is witness to or victim of a crime, unless withholding that information would conceal governmental wrongdoing.

It will take some time to realize the impact of the changes in S.148 as people request information, officials make determinations about whether or not it is appropriate to comply with such requests, and their decisions are tested in the courts.

### **Search and Rescue (H.182, Act 26)**

Amends 20 V.S.A. Chapter 112: §§ 1820-1848; 20 V.S.A. § 2365;

Repeals 20 V.S.A. § 1847

VLCT Staff Contact: Jonathan Williams

Last year, the legislature passed Act 155, which included a provision that dealt with Vermont’s search and rescue procedures in response to the death of a lost and injured hiker. Act 155 required the Department of Public Safety (DPS) to develop and implement an interim protocol that establishes responsibility and details 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. It also required all search and rescue operations to be conducted pursuant to an “incident command system” that ensured an immediate response to every search and rescue request and the earliest possible response time to those requests. The act also created a Backcountry Search and Rescue Summer Study Committee to investigate whether DPS or a different state authority should supervise search and rescue operations for missing persons in Vermont’s backcountry and outdoor recreational areas.

Act 26 is the final product of that study committee. The legislature took its recommendations and crafted a bill which grants the Commissioner of Public Safety jurisdiction over all search and rescue operations. In addition, the act (1) asks the commissioner to ensure that all search and rescue operations are conducted using the incident command system;(2) tasks DPS to populate, maintain, update, and utilize a search and rescue database that contains contact information of all agencies and organizations having specific search and rescue response capability in the state; and (3) creates the position of a civilian Search and Rescue Coordinator within DPS to be responsible for the general support and coordination of search and rescue operations conducted in Vermont – though there is no appropriation to pay for the position.

Important to municipalities, Act 26 requires any law enforcement agency (including municipal police) that takes a report of any person missing in the backcountry, remote areas, or “waters of the State” to immediately attempt to locate the missing person and to notify DPS about that person.

If other public safety organizations, such as volunteer firefighters, receive a report of a missing person in the backcountry, they *may* respond, but they also must notify DPS. The department must then respond and ensure that notification of the missing person is made to any municipal police and fire departments of the town in which the person is missing, any volunteer fire departments of that town, and any emergency medical service providers of the town that are in the search and rescue database.

### **Marijuana Decriminalization (H.200)**

Amends 18 V.S.A. §§ 4230, 4230a-d; 4 V.S.A. § 1102; 23 V.S.A. § 1134; 32 V.S.A. §§ 3202, 5894; 13 V.S.A. § 7601(3); 7 V.S.A. § 657a  
VLCT Contact: Jonathan Williams

A widely publicized and discussed bill this legislative session was H.200, which addresses the decriminalization of marijuana. To possess up to an ounce of marijuana or five grams of hashish will now be a civil penalty that incurs a citation, much like a speeding ticket. Possessing a marijuana plant or any amount greater than the aforementioned is still a crime, as is supplying or selling marijuana. The bill does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle.

Of interest to municipalities is Section 4230a (c)(3), which states that marijuana possession as a civil penalty “shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.”

A majority of the bill’s sections take effect July 1, 2013.

### **Opiate Abuse; Abandoned Property (H.522)**

Amends 13 V.S.A. § 3705  
VLCT Contact: Jonathan Williams

This lengthy bill primarily focuses on developing a comprehensive approach to combating opioid (opiate) abuse in Vermont through strategies that “address prevention, treatment, and recovery, and increase community safety by reducing drug-related crime.” Much of H.522 details how Department of Public Safety (DPS) personnel, health care providers, and other state agencies are to interact with pharmacy records and the Vermont Prescription Monitoring System (VPMS). The bill tasks DPS, in consultation with representatives of licensed Vermont pharmacies, to adopt standard operating guidelines for accessing pharmacy records. Any persons authorized by statute to access pharmacy records (such as health care providers, their regulators and patients, and the DPS commissioner – but

not other law enforcement officers – are to follow DPS guidelines. Other parts of the bill deal with the prescribing of controlled substances by health care providers, as well as a variety of other prescription drug abuse-related topics. H.522 also amends laws concerning pawnbrokers and precious metal dealers and generates a number of study committees.

Of interest to municipalities is the section regarding community safety. Portions of state law are amended that define unlawful trespass. According to new language, a person shall be imprisoned and/or fined if he or she enters abandoned property if notice against trespassing is provided by signs or placards placed there by the owner, the owner's agent, or a law enforcement officer, or through communication by a law enforcement officer, including municipal police.

H.522 defines abandoned property as real property on which a vacant structure, for the previous 60 days, has been continuously unoccupied by a person with the legal right to occupy it, and with respect to which the municipality has, by first class mail to the owner's last known address, provided the owner with notice and an opportunity to be heard. Property taxes must also have been delinquent for six months or more, or one or more utility services have been disconnected for it to be considered abandoned property. A railroad car that for the previous 60 days has been unmoved and unoccupied by a person with the legal right to occupy it is also considered abandoned property.

#### **Automated License Plate Readers (S.18)**

Amends 23 V.S.A. §§ 1607 and 1608

VLCT Contact: Jonathan Williams

S.18 codifies the use and operation of automated license plate recognition (ALPR) systems. An ALPR system automatically scans license plates using a fixed or mobile high-speed camera and utilizes computer algorithms to convert the plates' images into computer-readable data. The system is already in use by municipal and state police and other Vermont law enforcement officials.

According to S.18, active ALPR data may be accessed by a law officer only if he or she has a legitimate law enforcement purpose for the data. All ALPR information gathered by a Vermont law enforcement agency is to be sent to the Department of Public Safety (DPS) to be retained for up to 18 months, after which DPS and any local law enforcement agency with custody of the license plate information shall destroy it and all copies or backups of the original data. Such data may be retained beyond the 18-month period pursuant to a preservation request or an issued warrant.

The act takes effect July 1, 2013, but has a sunset date of July 1, 2015.

#### **Constables and Sheriffs Service of Process (S.132)**

Amends 12 V.S.A. § 691 and 13 V.S.A. § 3705

VLCT Contact: Jonathan Williams

S.132 primarily deals with sheriffs and deputy sheriffs. However, the bill also pertains to town constables. The bill removes sheriffs and constables from civil or criminal liability for unlawful trespass while serving either civil or criminal process – such as citations, summons, subpoenas, warrants, and other court orders – provided that the reason for their entrance onto another person's property is necessary for the service of process.

## EMPLOYMENT AND EMPLOYEE BENEFITS

### Health System Issues (H.107; S.152)

Amends Titles 8 and 21

VLCT Contact: Dave Sichel

This year, the legislature passed legislation that continues down the path of health system reform by focusing on moving the process forward and launching the health insurance exchange, Vermont Health Connect. This was primarily accomplished through the passage of H.107, “An Act Relating to Health Insurance, Medicaid, the Vermont Health Benefit Exchange and the Green Mountain Care Board Reform Implementation.” Among other things, this bill adjusts state statute to comply with the federal rules being developed around the Patient Protection and Affordable Care Act, streamlines the health insurance regulation process, and places more restrictions on health insurers. Through charge-backs to insurers, hospitals, and state benefit programs, the bill also creates a state-funded Office of the Health Care Advocate. This office, which represents a major expansion of the current state Health Ombudsman program, will be charged with:

- assisting health insurance consumers with health insurance plan selection by providing information, referrals, and assistance about how to obtain health insurance coverage and services;
- assisting health insurance consumers to understand their rights and responsibilities under health insurance plans;
- informing the public, agencies, members of the General Assembly, and others as to problems and concerns of health insurance consumers as well as recommendations for resolving those problems and concerns;
- identifying, investigating, and resolving complaints on behalf of individual health insurance consumers, and assisting those consumers file and pursue complaints and appeals.
- informing individuals regarding their obligations and responsibilities under the Patient Protection and Affordable Care Act;
- analyzing and monitoring the development and implementation of federal, state, and local laws, rules, and policies relating to patients and health insurance consumers;
- facilitating public comment on laws, rules, and policies, including policies and actions of health insurers;
- suggesting policies, procedures, or rules to the Green Mountain Care Board in order to protect patients’ and consumers’ interests;
- promoting the development of citizen and consumer organizations; and
- ensuring that patients and health insurance consumers have timely access to the services provided by the Health Care Advocate Office.

Many of the functions of this new office seem to duplicate activities that are already carried out by various state departments, offices, and boards. Of course the costs of this office will ultimately fall on the payers of health insurance premiums, health care services, and local and state taxes.

**Funding for Vermont Health Connect.** Federal grants will fund the start-up and operation of Vermont Health Connect through 2014. In 2015, the state will have to take over the funding for the operational costs of the exchange, which are estimated to be \$18 million annually. Many funding methods were considered, but in the end, S.152 repurposed a current funding source to meet the new funding need. S.152 modifies and continues the assessment on employers that do not provide employees with health insurance. Previously this assessment funded Catamount Health, which will be eliminated and replaced with the health insurance provided through Vermont Health Connect. The assessment will

now apply to employers with employees who purchase individual health insurance, as opposed to an employer-provided benefit through Vermont Health Connect.

**Cost Shift.** In addition to requiring more studies and reports, the legislature actually approved an administration proposal, H.530, to increase Medicaid provider reimbursements by three percent, beginning in November 2013. While this additional funding will not reduce the Medicaid cost shift, it should keep it more level if the providers adjust their fees to other payers to reflect the additional revenue received from Medicaid.

**What does this mean for municipalities?** As the health reform process moves along, there are a variety of impacts for municipalities to consider, including:

- The health exchange will impact your health benefit plan if you are an employer with 50 or fewer employees. The exchange goes into operation on January 1, 2014, less than eight months from now. It is critical to consider your options and take the coming changes into account in any collective bargaining. It is important to maximize your flexibility in health plan design and funding. This will provide the best ability to respond to the changes in plan designs of the exchange.
- Municipalities should consider the generous federal tax credits available to individuals who purchase their health insurance through the exchange. After careful analysis, some municipalities may find it advantageous to discontinue their employer provided health insurance plan in favor of having employees purchase their own health insurance through the exchange.
- Municipal employees and employers should prepare for a single-payer, universal care system in Vermont. This is clearly the goal of health reform legislation and the Shumlin administration has made this a priority. The details, including financing for the system, continue to be worked out. Whether the plan can ultimately be implemented will only be determined with time. As employers, municipalities should prepare for the time when health benefits are separated from employment and embrace the opportunity.
- Collective bargaining issues are important. Endeavor to maintain flexibility in your collective bargaining agreements. As we move to a new system, there is an opportunity to fundamentally redefine the employer role in providing health benefits. This may be an opportunity to hit the “reset button.”
- There will be considerably more state control of the health care system. If handled well, it will lead to a more universal, better managed, more affordable health care system. If not well managed ... ? In any event, we will know soon.
- The long-term costs of these reforms and their impact on municipalities are not easy to fathom.

Municipal officials need to be prepared. Plan ahead; leave flexibility. VLCT will continue to focus on being your partner in the transition to a new health system.

### **Equal Pay, Flexible Working Conditions (H.99, Act 31)**

(Amends 9 V.S.A. §§ 4502 and 4506; 21 V.S.A. §§ 305, 309, 472b, 473, 474, 495, 710)

VLCT Contact: Steve Jeffrey

Act 31 further limits the payment of different wages to employees of different sexes performing equal work that requires equal skill, effort, and responsibility that is performed under similar working conditions. Current law allows different wage rates if they were made pursuant to a seniority, merit, or other system in which earnings are based on quantity and quality and “any factor other than sex.” This last exception is changed in Act 31 to read as follows: *A bona fide factor other than sex. An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-*

*based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration.*

The act also prohibits an employer from prohibiting an employee from inquiring about or discussing the wages of other employees. An employer may prohibit a human resources manager from disclosing the wages of other employees. Neither of these sections really affects municipal employees as public employee salaries are public records.

The biggest change affecting municipal employers is requiring consideration for flexible working arrangements. Any employee can make up to two requests a year for a flexible working arrangement, which is defined as *intermediate or long-term changes in the employee's regular working arrangements, including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing.* "Flexible working arrangement" does not include vacation, routine scheduling of shifts, or another form of employee leave. The employer is required to discuss the request in good faith with the requesting employee and alternative arrangements can be proposed. The employer must consider the request and whether the request can be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations. For this act, "inconsistent with business operations" includes:

- (A) the burden on an employer of additional costs;*
- (B) a detrimental effect on aggregate employee morale unrelated to discrimination or other unlawful employment practices;*
- (C) a detrimental effect on the ability of an employer to meet consumer demand;*
- (D) an inability to reorganize work among existing staff;*
- (E) an inability to recruit additional staff;*
- (F) a detrimental impact on business quality or business performance;*
- (G) an insufficiency of work during the periods the employee proposes to work; and*
- (H) planned structural changes to the business.*

The employer is required to provide the employee with notification of a decision on the request in writing if the request was submitted in writing. The Attorney General or state's attorney can enforce the flexible working condition requirements by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance. Courts may award injunctive relief and court costs against employers.

The flexible working arrangements section of the bill becomes effective January 1, 2014.

This act also establishes a committee to recommend to the 2014 legislative session whether the legislature should mandate that Vermont employers grant paid family leave.

### **Municipal Employee Union Agency Fee Mandate (S.14, Act 37)**

Amends 21 V.S.A. §§ 1722, 1726, 1734, 1736

VLCT Contact: Steve Jeffrey

S.14 will mandate that all municipal employees in a collective bargaining unit with a union pay an "agency fee" to that union if they chose not to be members of that union.

The bill as passed will require the following:

*In the absence of an agreement requiring an employee to be a member of the employee organization, an employee choosing not to be a member of the employee organization shall pay the agency service fee in the same manner as employees who choose to join the employee organization pay dues. The bill defines an 'agency service fee' as a fee*

*deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.*

The mandate would be imposed only on municipal employees in collective bargaining units that have unions recognized as the exclusive bargaining agent for employees in that unit. “Bargaining unit” means a group of employees recognized by the municipal employer or certified by the board as appropriate for exclusive representation by an employee organization for purposes of collective bargaining. Generally, the unit would include only employees with similar interests, needs, and general conditions of employment, such as the employees in the police or public works department, but it could include all eligible employees of a town. Elected officials, executive officers, supervisors, and confidential employees are not included in a collective bargaining unit.

The bill states that the employer is not required to discharge any employee who does not pay the union fee unless agreed to in a contract between the employer and union. The bill also requires the union to hold the employer harmless from any and all claims stemming from administering the agency fee through payroll deductions. It also requires that the additional revenue the union realizes as a result of new mandated payments must be used “solely for the purpose of moderating its existing membership dues.” Lastly, the bill requires that annually, all employees of the bargaining unit need to meet and discuss whether those now required to pay the agency fee will be allowed to vote on the ratification of any collective bargaining agreement, but restricts the voting on whether they can vote on the contract to union members only.

The effective date of S.14 is upon the expiration date of any collective bargaining agreement in effect on June 30, 2013, or on July 1, 2013, if no contract is in effect at that time.

### **Workers’ Compensation Liens (S.129)**

Amends 21 V.S.A. §§ 643a, 678, 1253-1255, 1341a  
VLCT Contact: Ken Canning

Over the duration of the session, S.129 bill grew from three sections to 19. The most objectionable parts of earlier versions of this bill have been relegated to summer studies that are discussed elsewhere in this *Wrap-up*.

One of the original three sections (Section 3) amends 21 V.S.A. § 643a and addresses an employer’s right to discontinue workers’ compensation benefits when there is sufficient evidence to justify such action and the employee has not returned to work. S.129 will now allow the employee to request a seven-day extension of benefits in addition to the original seven-day notification period. This provision could have a detrimental impact on workers’ compensation claims paid by VLCT PACIF and other workers’ compensation carriers.

Another of the original three sections (Section 5 of the final version of the bill) amends 21 V.S.A. § 678 and addresses attorney fees related to workers’ compensation claims. S.129 now specifically defines and lists deposition expenses, subpoena fees, and expert witness fees as reasonable attorneys’ fees entitled to be recovered if the claimant employee prevails.

A new provision of the bill (Section 8) will likely increase the cost of unemployment insurance for municipal employers. Sections 8-10 amend 21 VSA §§ 1253-1255 by stating that an individual may be

eligible for up to 26 weeks of unemployment insurance if he or she is physically or emotionally unable to work as a result of experiencing domestic or sexual violence as certified by a medical professional, regardless of whether such violence is related to the workplace.

Section 11 amends 21 V.S.A. §1314a by requiring all employers to file unemployment insurance quarterly wage reports electronically.

And Section 17 requires the Commissioner of Labor to conduct a comprehensive information and education campaign regarding independent contractor status for both workers' compensation and unemployment insurance. The campaign is to address the tests for determining independent contractor status under Vermont law, the rights and responsibilities of employers and employees, including wage and hour laws, workers' compensation and unemployment insurance requirements, misclassification and miscoding laws, and the requirements for employers to comply with those laws and the penalties for failing to do so.

### **Workers' Compensation for Firefighters and Rescue or Ambulance Workers (S.85)**

Amends 21 V.S.A. § 601(11) [Definitions]

VLCT Contact: Ken Canning

S.85 provides presumptive workers' compensation coverage to firefighters and rescue and ambulance workers resulting from lung disease or an infectious disease, either of which is caused by aerosolized airborne infectious agents or bloodborne pathogens. To be eligible for the presumption, the disease must have been acquired after a documented occupational exposure in the line of duty to a person with an illness. Further, the presumption is not available if the employer offers a vaccine that is refused by the firefighter or rescue or ambulance worker and he or she is subsequently diagnosed with the disease for which the vaccine was offered. The disease must be diagnosed within ten years of the last active date of employment as a firefighter or rescue or ambulance worker.

In the case of lung disease, the presumption of compensability will not apply to any firefighter or rescue or ambulance worker who has used tobacco products at any time within ten years of the diagnosis. According to Section two of the bill, annual education and training on the requirements of the Occupational Safety and Health Administration standards 1910.134 (respiratory protection) and 1910.1030 (bloodborne pathogens) will be provided by the Department of Health for emergency medical personnel and by the Vermont Fire Academy for firefighters.

## **Legislative Study Committees**

### **Summer Study Committees that Impact Municipalities**

VLCT Contact: Jonathan Williams

1. **Transportation (H.510).** According to Section 30, "State Facilities Served by Town Highways," the study committee shall examine the condition of class 3 and 4 town highways that serve as primary access roads to state parks and other state facilities used by the public, alternative mechanisms for the state to help municipalities maintain or rehabilitate these town highways, the appropriate municipal share for projects to maintain or rehabilitate them and whether a cap on any state assistance is appropriate, and the potential fiscal impact to the state of the alternative mechanisms reviewed by the committee. The committee shall formulate recommendations for consideration by the General Assembly as to whether and how the state should help municipalities maintain and

rehabilitate the town highways described in this subsection. The committee will consist of the Secretary of Transportation or designee (chair) the Commissioner of Forests, Parks and Recreation or designee, the Commissioner of Buildings and General Services or designee, and a member designated by the Vermont League of Cities and Towns.

2. **Dispatch Services (H.240).** H.240, the fee bill, directs the Department of Public Safety (DPS) commissioner to adopt rules establishing uniform statewide fees for dispatch services provided by or under DPS direction. The commissioner must consult with sheriffs and other entities that provide dispatch services and report to the House Ways and Means and Senate Finance committees by January 15, 2014, regarding the adoption and implementation of the uniform dispatch fee rules.
3. **Opioid Abuse (H.522).** This bill creates an Interim Study Committee on the Regulation of Precious Metal Dealers to examine the current practices in the trade of precious metals in Vermont, the relationship of that trade to drug-related and other illegal activity, and to provide recommendations to the state legislature on the most effective means of regulating the trade to decrease the amount of related illegal activity and promote the recovery of stolen property. Committee members shall include a representative of local law enforcement from the Vermont Police Association.
4. **Appropriations (H.530).** The Appropriations bill creates a Lake Shoreland Protection Commission to provide information regarding current laws or regulations in place to protect the waters of the State that are held in trust for the public. The commission will also take testimony regarding the regulation of disturbance, clearing, and creation of impervious surfaces in the shorelands of lakes. The commission shall comprise the current Senate Natural Resources and Energy Committee and five members from the House Fish, Wildlife and Water Resources Committee.

H.530 also creates the Electric Generation Advisory Committee comprising the chairs and vice chairs of the House and Senate Natural Resources and Energy committees). By September 15, 2013, the committee shall propose to the legislature a process for reviewing the report of the Governor's Energy Generation Siting Policy Commission titled "Siting Generation in Vermont: Analysis and Recommendations," and for completing the tasks assigned to the committee under S.30 of 2013, including hearing from the DPS commissioner on a number of work-related issues.. The committee may recommend draft legislation on the siting of electric generation plants for consideration by the legislature.

5. **Equal Pay, Flexible Working Conditions (H.99, Act 31).** Act 31 establishes a committee to recommend to the 2014 General Assembly whether the legislature should mandate that Vermont employers grant paid family leave.
6. **Designated Downtowns and Blighted Properties (H.377)** By June 15, 2013, the Commissioner of the Department of Economic, Housing and Community Development is directed to convene stakeholders to examine ways to improve the Growth Center and Town Center designation processes. The department will consider the process, how to include municipalities of all sizes and growth pressures, additional incentives for the designation programs, potential integration of industrial parks and rural development, and protection of natural resources. A report is due to the legislature by December 15, 2013.
7. **Miscellaneous Tax Bill Provisions Affecting Local Governments (H.295)** The bill directs a study committee – comprising two House members, two senators, the Director of the Division of Property Valuation and Review, and a representative from both VLCT and the Vermont Assessors and Listers Association – to study the definition, listing practices, valuation, and tax treatment of

properties within the public, pious, and charitable exemption, including (1) ways to clarify the definitions of properties that fall within this exemption, including recreational facilities, educational facilities, and publically owned land and facilities; (2) guidelines to ensure a uniform listing practice of public, pious, and charitable properties in different municipalities; (3) methods of providing a valuation for properties within this exemption; and (4) whether the policy justification for these exemptions continues to be warranted or if a different system of taxation or exemption would be more appropriate. The committee must report its findings to the legislature by January 15, 2014.

8. **Workers' Compensation Liens (S.129).** The Department of Financial Regulation (DFR) in consultation with the Department of Labor (DOL) shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. DFR shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employers who provide approved safety and health training to employees. The department will report its findings to the House Agriculture and Forest Products, Commerce, and Economic Development committees and the Senate Agriculture and Finance committees by January 15, 2014.

S.129 also tasks DOL to study the potential impacts to employers, employees, and the unemployment insurance trust fund with respect to the principles of fairness, equity, proportionality, affordability, and fiscal responsibility if changes are made to the unemployment compensation system, including the earnings disregard, the one-week waiting period, the weekly benefit amount, and the taxable wage base. DOL will determine:

- a. if any structural, administrative, or procedural changes should be made to the workers' compensation system, including changes that would increase the affordability and regional competitiveness of workers' compensation insurance for employers while ensuring fairness for beneficiaries, and whether the agencies and departments of state government are in compliance with required workers' compensation and unemployment compensation coverage related to their contracts with designated agencies and other subcontractors;
- b. if the current workers' compensation system can better incentivize and promote healthy and safe work environments through information, education, and collaboration with employers, insurers, and employees; and whether private and public training programs and enforcement divisions could be better utilized to achieve improved safety in workplaces;
- c. How workers' compensation cases are resolved under 21 V.S.A. § 624(e), including whether the operation of workers' compensation liens may result in an equitable distribution of third party payments to the employer and employee, and the equities and appropriateness of using third party payments as an advance on any future workers' compensation benefits.;
- d. if there should be any limitations placed on how independent medical examinations are conducted, including their timing and location; and
- e. if school district employees who are not federally exempted from unemployment compensation should be included in Vermont's unemployment compensation system and be eligible for benefits during periods of layoff.

DOL, in consultation with the Agency of Commerce and Community Development and interested parties, shall also evaluate whether the current workers' compensation system and other relevant employment laws are suited to the needs of an evolving workforce. The department will consider Vermont's growing knowledge-based economic sector, the future of the Vermont economy, and

changing workforce habits. DOL will recommend how to modernize the employment laws to meet employer and employee needs while maintaining employee protections.

DOL will report its findings to the House Commerce and Economic Development Committee and the Senate Finance Committee by December 15, 2013.

9. **Energy Efficiency Studies (H.520).** The Commissioner of the Department of Public Service (DPS) is to convene a working group to develop a consistent format and presentation for an energy rating that a building owner may use to disclose the energy performance of the building to interested people, such as potential purchasers. The working group is to report to the legislature by December 15, 2013 with its findings regarding disclosure tools, the effort to disseminate the tools for public use, and the frequency and effectiveness of the tools' use. The Commissioner of Public Service is to work with affected persons and entities to improve the efficiency of single and multi-family affordable housing units and report to the House and Senate Natural Resources and Energy committees by January 31, 2015 and January 31, 2017. The DPS commissioner will also convene an interagency working group to figure out how to achieve the goal of 90 percent of energy consumed in the state being renewable by 2050 as well as the state's goal of reducing greenhouse gas emissions. That study must include information on the economic impacts to the state economy of implementing those policies and funding mechanisms.
10. **Community Support for Persons with Serious Functional Impairments (H.403, Act33.)** A legislative study committee is to identify the needs of Vermonters with mental and functional impairments or developmental disorders who have also committed, been charged with, or have been identified as being at risk of committing a criminal offense or are a threat to public safety and who are housed in community setting. By collaborating with various state and public organizations, including VLCT, the committee will (1) determine how to effectively allocate funds for these persons, (2) recommend how to improve the quality and cost-effectiveness of treatment to these persons while maintaining public safety, and (3) report to the legislature by December 15, 2013.