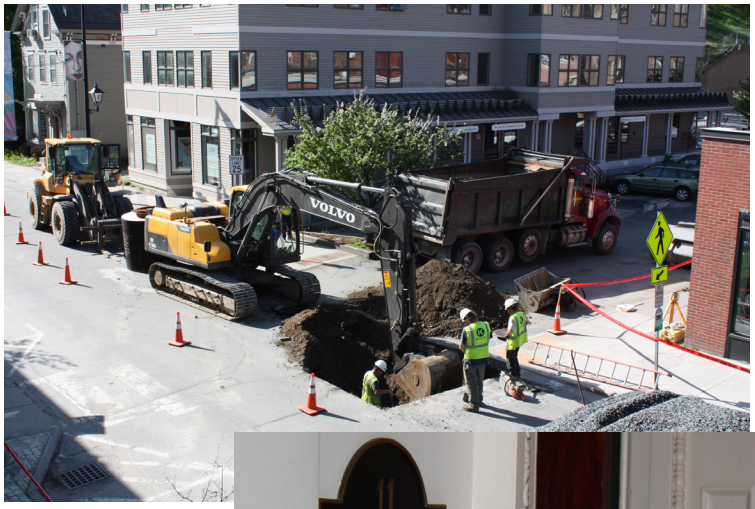
VERMONT LEAGUE OF CITIES AND TOWNS

LEGISLATIVE WRAP-UP



2014

VERMONT LEAGUE OF CITIES & TOWNS
Serving and Strengthening Vermont Local Governments

89 Main Street, Suite 4
Montpelier, Vermont 05641-2948
802-229-9111 and 800-649-7915
info@vlct.org and www.vlct.org

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Cover images – District Heat Montpelier infrastructure upgrade; Vermont State House Voluntary Quiescence Advisory; Water Quality Day at the Montpelier Wastewater Treatment Plant – by David Gunn.

INTRODUCTION

The 2014 legislature adjourned a month ago, but already both legislators and local officials are considering issues that will define the 2015-2016 biennium. Meanwhile, the 2014 Legislative Wrap-up details all the bills that already are or will soon be law that impact Vermont municipal government. They include a number of public safety and law enforcement bills, a revising of the Open Meeting Law, the Vermont Local Roads program's move to the Agency of Transportation, and a new shoreland protection/zoning law. We note the effective date of legislation if it differs from the default date, which is the beginning of the new fiscal year, July 1, 2014.

Already the campaign season is afoot as candidates seek to get on the ballot for the upcoming elections. Should you see any of them this summer at a farmers market, music festival, community dinner, coffee shop, or in a grocery store check-out line, why not ask them their position on an issue that concerns you or your community? Invite them to a summer selectboard meeting before things get busy in the fall. Use this *Legislative Wrap-up* as a guide. You'll find that there are lots of questions to ask because, for all that the legislature did in the 2013-2014 biennium, there is a lot it did *not* do.

The 2015-2016 biennium will be tremendously challenging. How will Vermont pay for health care? How will state legislators fix the education funding system? How will Vermonters pay to clean up Lake Champlain? The 2013-2014 legislature was unable to answer those questions. More than in recent years, legislators and candidates for statewide office need to come to the party ready to dance. There will be no excuse for legislative wallflowers in 2015!

Enjoy Vermont's brief summer, for there is relatively little time to relax between sessions. VLCT has already begun to build its legislative platform for 2015, and we hope you will participate in its development. VLCT's four policy development committees – Finance, Administration and Inter-governmental Relations (FAIR); Quality of Life and Environment; Transportation; and Public Safety – generally meet once in June or July to rewrite the Legislative Platform. That platform is first debated by the VLCT Board and then later the VLCT membership at Town Fair, which this year occurs on October 9 at the Champlain Valley Fairgrounds in Essex.

Because 2014 was the second year of the biennium, every bill that did not pass is now dead. A bill would have to be re-introduced in the 2015-2016 biennium if the proposal it embodies is to see any action. Even as we absorb the implications and new obligations established by legislation such as shoreland protection and open meetings, we must think ahead. If you have new priorities for 2015, let us know so we may incorporate them in the VLCT Municipal Policy. And let your candidates know!

Finally, Jonathan Williams, our Legislative Associate for the past three years, has departed VLCT to commence thrilling new adventures in distant lands. We wish him well!

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 2014 Municipal Legislative Policy and will be revised this summer for the 2015 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.

Steven Jeffrey, Executive Director
Karen Horn, Director, Public Policy and Advocacy
Ken Canning, Director, Risk Management Services
David Gunn, Editor
Vermont League of Cities and Towns
June 6, 2014

MUNICIPAL FINANCE

FY15 State Appropriations (H.885)
Adds and amends numerous statutes, including adding 16 V.S.A. § 1944d
VLCT Contact: Steve Jeffrey

For the most part, the impact on municipalities and the property tax of the state FY15 appropriations bill is pretty much as it was for FY14. Almost all line items of interest are level funded or at levels required by statute. The state General Fund support for education *did* rise by 2.39 percent (less than the 3.1 percent increase in total Education Fund costs). See table on page 36.

One substantial exception to municipal funding being at a level required by statute is the state payments in lieu of taxes (PILOT) for state Agency of Natural Resources (ANR) lands. H.885 cuts the payment required by statute by $500,000. The statute (32 V.S.A. § 3708) states that:

> *All ANR land, excluding buildings or other improvements thereon, shall be appraised at fair market value by the Director of Property Valuation and Review and listed separately in the grand list of the town in which it is located. Annually, the State shall pay to each municipality an amount which is the lesser of:*
>
> *(1) one percent of the Director's appraisal value for the current year for ANR land; or*
>
> *(2) one percent of the current year use value of ANR land enrolled by the Agency of Natural Resources in the Use Value Appraisal Program under chapter 124 of this title before January 1999; except that no municipality shall receive in any taxable year a State payment in lieu of property taxes for ANR land in an amount less than it received in the fiscal year 1980.*

The Director of Property Valuation and Review (PVR) reappraised the state lands in preparation for this year's payment and found that some ANR land values – particularly large forest tracts – rose significantly. The PVR appraisal also found that it had been under-counting developed ski area parcels (many of the state's ski areas are actually located at least partially on state lands) which increased the land value substantially. According to the statute, the total PILOT payment required would have risen from this year's $2.15 million to $2.85 million, a $700,000 increase, and that was what the Governor included in his budget recommendation.

In H.885, the legislature instead appraised all state land not in current use at two percent more than last year for determining PILOT payments. This resulted in towns receiving $500,000, or 17.9 percent, less than what they are entitled to under the law. There will be a summer study involving VLCT and numerous state agencies to recommend to the legislature what it should do about the state land PILOT.

The other substantial negative feature of H.885 for property taxpayers is a new mandate – costing $27.8 million over the next ten years – on school districts to pay for retired teachers' health insurance premiums. Without going into the gory details of how this situation developed, suffice it to say that retired teachers and some of their dependents are now costing the state's teacher retirement system (state taxpayers in reality) $28.6 million a year for health insurance premiums. No one – not the state that created the system, sets the benefits, and now provides a substantial amount of the funding for it, nor the teachers that benefit – has contributed anywhere near enough to keep this very nice extra benefit from adding to the drain on the retirement system. Thus, it is being funded at only 60.5 percent of the level it needs to meet the retirement obligations promised by the legislature.

Among other funding sources that comprise the entire plan to now fill this funding need is a new "employer assessment" on school districts that hire new teachers. For each new teacher hired after July 1, 2015, a school district will have to pay an additional $1,072 a year to pay for this benefit provided to the teachers by the state. Since no new state funds were made available to pay this assessment, the only other source is added property taxes.

Since this is phased in over time as new teachers are hired, the costs in the early years is small – only $375,000 in FY16. That grows over time to almost $6 million in FY25, the equivalent of a penny on the state education homestead property tax rate today. VLCT unsuccessfully opposed this new mandate that will have to be paid for from higher property taxes. Local officials now have to be leery of the state forcing towns and property taxpayers to shoulder an ever increasing portion of this state retirement system in upcoming legislative sessions.

Another noteworthy issue is that the Vermont Center for Geographic Information (VCGI), which had been a quasi-independent entity, is being moved to the Agency of Commerce and Community Development. This was accomplished through the support of VCGI staff, who believe that everyone will benefit from a closer association with many of the planning entities that use their services.

Capital Bill (H.864)

No statutory amendments

VLCT Contact: Karen Horn

Readers may recall that both the House Corrections and Institutions and Senate Institutions committees moved to a two-year capital bill in 2011. This year, that process really seemed to hit its stride. As a consequence, there are few surprises in the Capital Bill for local governments.

In FY14, $159,900,000 was authorized in general obligation bonds. Previously authorized but un-issued bonds equaling $7,603,320 in FY14 and $5,842,992 in FY15, have been or will be issued. H.864 would provide for $6,781,529 in transfers or reallocations of capital dollars previously allocated but not used in the categories of expense for which they were originally authorized. Total revenues available for capital projects in H.864 over the course of the two-year period total $180,127,842.

The Capital Bill always contains a few policy sections. Section 37 of the bill would direct the state judicial branch to evaluate the state's responsibility for maintaining county courthouses, including Americans with Disabilities Act compliance, and whether an emergency fund is necessary to construct or renovate a county court house project. A report is due to the legislature by January 15, 2015.

The bill increases money to the Clean Water State Revolving Loan Fund by $414,000. Funds to the Ecosystem Restoration Program increase by $500,000 from the two-year allocation in last year's Capital Bill. The specter of meeting U.S. Environmental Protection Agency requirements under the Lake Champlain – and, eventually, Lake Memphramagog and Connecticut River – Total Management Daily Loads (TMDLs) played a role in revising those two line items.

Issues of interest to local officials are noted in the table on page 4.

CAPITAL BILL TWO-YEAR (FY 2014-2015)			
Agency/Department	**Line Item**	**Passed by 2013 Legislature in 2013 for FY 14-15**	**Adjustments Passed by Legislature in 2014 for FY 14-15**
Dept. of Taxes[1]	Orthophotographic Mapping	$200,000	$200,000
Agency of Commerce and Community Development[1]	Historic Preservation Grants (1:1 match)	450,000	450,000
	Human Services and Educational Facilities Grants	450,000	450,000
	Recreational Facilities Grants	450,000	450,000
	Historic Barns, Ag. Grants (1:1 match)	450,000	450,000
	Cultural Facilities Grants (1:1 match)	450,000	450,000
	Regional Economic Development	450,000	450,000
Department of Education[2]	State Aid for School Construction	17,116,080	17,059,324
Agency of Natural Resources	Clean Water State/EPA Revolving Loan Fund Match[3]	2,681,600	2,495,600
	Pownal Wastewater Treatment Facility	530,000	530,000
	Water Supply Revolving Loan Fund[3]	4,100,000	4,100,000
Ecosystem Restoration Program	Ecosystem Restoration and Protection Grants	4,323,732	4,823,732
	Waterbury WWTF Phosphorus Removal	3,440,000	3,740,000
	Dam Safety and Hydrology	400,000	400,000
Agency of Agriculture, Food and Markets	Best Mgmt Practices on farms and Conservation Reserve Enhancement Program	1,200,000	1,200,000
Rural Fire Protection Taskforce	Dry Hydrant Program	200,000	200,000

1. Half the funds are allocated in year 1 and half in year 2.
2. Funds left over from year 1 may not be re-allocated for a different purpose.
3. Includes $600,000 in administrative support.

Property Tax Components of the Miscellaneous Tax Bill (H.884)

Amends 16 V.S.A. § 4010(b), 32 V.S.A. §§ 3436(b), 3481, 3802(17), 3832(7), 3845, 5401(7) and (12), 5402b, 5408(a), 5410(g) and (i), 6066(a), 6066a(f), 8701(c); adds 32 V.S.A. §§ 3621, 3839, 5401(10)(K); repeals 32 V.S.A. § 3802(18)

VLCT Contact: Steve Jeffrey

Though school district voters at Town Meeting had something to say about it, H.884 is the legislative vehicle that results in state education property taxes increasing $49.5 million, or 5.1 percent, for the coming school year. This latest multi-million increase will begin showing up in property tax bills local officials must distribute starting this month. The state education portion of those bills will total $1.0169 billion, up 59 percent since the $640.1 million required just ten years ago. Those figures are net of the homestead property tax adjustment provided to the majority of homeowners.

The state tax rate for non-residential property (all business, open land, and second homes) is increasing to $1.515, an increase of seven and one-half cents, or 5.2 percent. Based on projected school district spending plans, the average homeowner paying without the benefit of income sensitivity through the property tax adjustment will see his or her school property tax rate go up to $1.50, an increase of nine cents, or 6.4 percent. It appears that those Vermont homeowners who benefit from the homestead property tax adjustment will only see their rate increase minimally from 2.7 percent of household income

to 2.755 percent, a 1.8 percent increase. The base rate for those who are income sensitized remained at 1.8 percent of household income.

A spreadsheet detailing the state's education taxing and spending plan is posted at www.leg.state.vt.us/jfo/education/EF%20Outlook%20-%20Conference%20Committee.pdf.

Many of the small changes to the Act 60/68 financing structure that the House of Representatives proposed in its state property tax legislation[1] were stripped or modified by the time the final version of H.884 passed.

As finally approved, H.884 will require listers to do some different (if not extra) work to assist the Department of Taxes determine what is a "homestead." The bill requires that to be a homestead, the resident individual must reside in the domicile for a minimum of 183 days out of the year, and states that "a homestead does not include any portion of a dwelling that is rented and a dwelling is not a homestead for any portion of the year in which it is rented." (Effective January 1, 2015 for grand lists prepared in 2015 and after.)

Some households with incomes greater than the $90,000 cap for full income sensitivity will be eligible for more but still limited tax adjustments as the value of the homestead considered for tax reduction is increased from $200,000 to $250,000. However, this provision does not take effect until January 1, 2016, for claims filed for fiscal year 2017 and after.

Towns hosting owner-occupied housing that is subject to a housing subsidy covenant (sometimes referred to as "perpetually-affordable owner-occupied housing") will be mandated to set the valuation of such units at "not less than 60 nor more than 70 percent of what the fair market value of the property would be if it weren't subject to the housing subsidy covenant." This law overturns a Vermont Supreme Court decision won by the towns of Essex and Rockingham that clarified that listers only had to "consider" the covenant when arriving at a fair market taxation value. (Effective January 1, 2015, for grand lists prepared in 2015 and after.)

H.884 also repeals a provision of last year's legislation that exempted some property owned by two towns that are located in other towns. The bill continues the exemption from the state education property tax, but exempts it from the municipal tax upon a town meeting vote by the host towns.

The bill exempts from all property taxes "buildings and land owned and occupied by a health, recreation, and fitness organization" which is exempt from federal income taxes, uses its income entirely for its exempt purpose, and "promotes exercise and healthy lifestyles for the community and serves citizens of all income levels." (Effective January 1, 2015, for grand lists prepared in 2015 and after.)

H.884 changes the way renewable energy plants generating electricity are valued for property tax purposes. The bill totally exempts from any property taxation a plant that has a capacity of less than 50 kilowatts (kW) and which is either operated on a net-metered system or is "off the grid" supplying power only to the property on which the plant is located. This is an increase in the current exemption from 10 kW. Such plants over the new exemption threshold continue to be taxed for the state education property tax at the four dollars per kW plant capacity. This is billed and collected by the state so town listers do not have to deal with that portion of the tax. For municipal tax purposes, the bill now sets forth the

[1] The House passed this in H.889, which the Senate merged into H.884, the Miscellaneous Tax Bill, which then passed both houses in identical form. For details of H.889, see page 2 of www.vlct.org/assets/Advocacy/Legislative_Reports/wlr_12_14.pdf.

valuation methodology listers need to use to arrive at the fair market value of such plants. It basically sets in the statute the "Sandia model" that has been on the Division of Property Valuation and Review's (PVR's) website for listers to use for several years now. The model was tweaked a bit with generous input from the Vermont Assessors and Listers Association (VALA). Its current version is posted at www.state.vt.us/tax/pvrsolar.shtml. The bill also makes clear that land on which the plant is located is taxed separately from the plant itself. (Effective January 1, 2015, for grand lists prepared in 2015 and after.)

H.884 changes the way petroleum and natural gas infrastructure is appraised, turning this responsibility over to the state Department of Taxes. The Director of PVR will use the cost approach with the value depreciating over time but it would stay at 30 percent of the inflated cost once it gets to that value. The listers are required to enter the Director's valuation figure in the grand list for taxation purposes. Interestingly, if a gas company appeals the valuation, it is on the shoulders of the town to defend the valuation all the way through the appeal process. (Effective January 1, 2015, for grand lists prepared in 2015 and after.)

On that subject, VLCT was unsuccessful in getting the legislature to help defend the grand lists of the towns and the state by sharing the costs of tax appeals. Instead, H.884 includes a study to be undertaken by VLCT, VALA, and the Department of Taxes to make recommendations to the legislature on how to best ensure that the state assumes its proper role in defending property values in the appeal process since almost three-quarters of the property taxes go to fund the state's education system.

The bill changes the timeframe for towns to appeal their equalized education property value from 30 days following receipt of initial notice of the state's valuation by the town clerk to 35 days following PVR's mailing of the notice.

The bill makes additional changes to the billing and collection of property tax bills that include a state homestead property tax adjustment – after all, it wouldn't a be real legislative session without town treasurers having to make annual adjustments to how they are required to handle this. First, it extends from September 1 to October 15 the date by which a homeowner can file a new or corrected homestead declaration and still get a corrected property tax bill. This means that the dates for filing the declaration and the household income (HI-144) form are once again aligned, but will increase the number of corrected property tax bills town treasurers must send out. H.884 makes it clear that by simply receiving a corrected property tax bill, taxpayers do not have an extension to timely pay their taxes. It also clarifies that towns have to issue refunds resulting from a corrected tax bill only if no current or past year's taxes, penalties, or interest are outstanding. The bill also clarifies that it is the legislative body of the municipality that has the authority to set the penalty for having to issue a corrected tax bill at not more than three percent, if the amount due is less than originally billed, and not more than eight percent if the corrected bill is for a greater amount. These changes all affect tax bills prepared on the 2014 grand lists.

The bill also includes some tinkering on the school spending side, purportedly to try to control rising costs.

Lastly, unrelated to property taxes, the bill increases the assessment against employers that do not offer their employees health insurance. It drops the exemption from the assessment from the first eight employees to four and increases the assessment from $91.25 per calendar quarter to $133.30.

Not included in the final version of H.884 was the latest attempt of the Vermont Senate to extend to all cities and towns the authority to adopt local option sales and rooms and meals taxes. Act 60 authorized many of the cities and towns hardest hit with increased state education property taxes the ability to adopt

a one percent tax on top of each of those state taxes, retaining 70 percent of the proceeds with the balance funding the payment in lieu of taxes for state buildings program. Since then, additional cities and towns have adopted the tax through charter changes. On May 2, the senators from Bennington County moved to amend H.884 to allow all cities and towns to adopt such alternative revenue source, which was approved on a voice vote. The provision, however, did not survive House members' objections in the conference committee process.

Municipal Budget Committees (H.602, Act 106)
Amends 17 V.S.A. § 2646; adds 24 V.S.A. Chapter 33, Subchapter 14
VLCT Contact: Karen Horn

H.602 provides an option for a town to elect five members of an advisory budget committee if the town votes to have a budget committee other than the local legislative body. The town may vote to have the selectboard appoint those members and also to have a different number of members.

The responsibility of an advisory budget committee is to evaluate the municipality's budget and make recommendations to the selectboard for the budget based on its findings.

Parking Meters (H.584, Act 122)
Amends 24 V.S.A. Chapter 53, Subchapter 3 (repealed) and § 2291
VLCT Contact: Karen Horn

H.584 grants municipalities the freedom to use parking meter revenues for any municipal purpose. Previously, municipalities that collected money from the use of their parking meters could only use those revenues to purchase, maintain, police, and repair parking lots and parking meters.

PUBLIC SAFETY

Electronic Control Devices (H.225)
Adds 20 V.S.A. § 2367
VLCT Contact: Karen Horn

This bill addresses law enforcements' use of electronic control devices (ECDs) or conducted electronic weapons (CEWs), also known as Tasers, the product name for the most commonly used ECD. H.225 is written to ensure that all law enforcement officers use ECDs properly and judiciously.

The bill tasks the Law Enforcement Advisory Board (LEAB) with developing a statewide model policy on the use of ECDs by January 1, 2015. The policy must say that "electronic control devices are less lethal (but not necessarily non-lethal) alternatives to lethal force." H. 225 requires consideration of special populations and circumstances before deploying a Taser. All state, local, and county police departments and every constable must adopt the LEAB policy by January 1, 2016. The Criminal Justice Training Council must develop a compliant ECD training program by January 2015. All officers who carry ECDs will have to complete the training by June 30, 2017. The Department of Mental Health will help conduct the training. Every incident involving the use of an ECD must be reported to the Criminal Justice Training Council each year beginning March 15, 2016.

The LEAB must study whether or not officers with ECDs should be required to wear body cameras. The LEAB, the Criminal Justice Training Council, and the Department of Mental Health must report to

the legislature about compliance with this legislation by January 15, 2015. VLCT PACIF is rewriting its "Response to Resistance" policy to be compliant with the LEAB's model policy.

Tiered Law Enforcement (H.765, Act 141)

Amends 2 V.S.A. § 70; 3 V.S.A. §§ 455, 972, 5 V.S.A. Chapter 68, Subchapter 8, 7 V.S.A. § 561; 10 V.S.A. § 4198, 13 V.S.A. § 4010; 20 V.S.A. §§ 2351, 2352, 2355, 2357, 2358, 2361; 24 V.S.A. §§ 1939, 364, 1936a; 26 V.S.A. § 1351; 28 V.S.A. § 551a; 32 V.S.A. § 1182

VLCT Contact: Karen Horn

H.765 eliminates the current classification of part-time certification for Vermont law enforcement officers, creates three tiers of law enforcement, and defines how the Criminal Justice Training Council offers and approves basic and annual in-service training for each tier in accordance with a scope of practice. The bill instructs the council to adopt rules with respect to training for law enforcement officers in each level of law enforcement certification and the time within which the training is to be completed.

The scope of practice for a Level I law enforcement officer is limited to security, transport, vehicle escorts, and traffic control. A Level I officer may, however, react in certain circumstances if he or she determines it necessary. Such circumstances include the protection of an individual from the imminent infliction of serious bodily injury, providing immediate assistance to a person who has suffered or is threatened with serious bodily injury, detaining an individual who is suspected by the officer of having committed a crime in the officer's presence, or detaining an individual whom the officer believes to have committed a felony under Vermont law. If a Level I officer reacts to any of these circumstances, she or he must call upon an officer certified to respond (i.e., an officer of a higher level).

Matters that a Level II law enforcement officer may investigate include advertising on utility poles or on private property, littering, the humane and proper treatment of animals, riots, simple assault, disorderly conduct, interference with access to emergency services, escapes, false alarms and reports, flags and ensigns, fraud, gambling and lotteries, larceny, public justice and public officers, railroads, trees and plants, trespass on and malicious injury to property, vagrants, weapons, municipal ordinance violations, any matter within the jurisdiction of the Judicial Bureau or game wardens, as well as any matter that a Level I law enforcement officer can investigate.

A Level II law enforcement officer may also practice in additional areas approved in writing by the Criminal Justice Training Council based on special council-approved training. Level II officers may react to the same circumstances that Level I officers react to; upon doing so, they must call upon an officer certified to respond.

The scope of practice for a Level III law enforcement officer includes all law enforcement authority.

On July 1, 2015, all part-time law enforcement officers are to be considered Level II law enforcement officers, unless the officer requests in writing to the Criminal Justice Training Council to be considered a Level I officer. On July 1, 2015, full-time law enforcement officers shall be considered Level III law enforcement officers unless they request in writing to the council that they would like to be considered a Level I or Level II officer. All special certifications that an officer holds are transferred to his or her new level of certification.

H.765 instructs the Vermont Criminal Justice Training Council to submit recommendations to the legislature by January 15, 2015, concerning the manner in which a law enforcement officer transitions to a different level of law enforcement certification. As well, the council must recommend to the legislature whether or not there should be any changes to the scope of practice for each level after consulting with

the Vermont Police Association, the Chiefs of Police Association, the Vermont Constables Association, the Vermont Sheriffs' Association, and the Department of Public Safety.

The bill also allows the council to set forth in rules the tuition fees for any of the basic or annual in-service training. Tuition fees are to reflect the actual costs for operation of any particular program. Fees for basic training are not to be charged for persons employed by police agencies at the time of training.

Finally, H.765 places a member of the Vermont Constables Association on the Law Enforcement Advisory Board.

Protecting Emergency Responders Across State Lines (JRH19)
No statutory amendments
VLCT Contact: Ken Canning

Both the House and Senate adopted Joint Resolution 19 in support of emergency fire service mutual aid agreements between Vermont and New Hampshire fire departments and rescue squads in response to work done by the Springfield Selectboard and VLCT. VLCT worked with the Legislative Council to draft the resolution, which was adopted as introduced. The resolution encourages the New Hampshire Legislature to amend its statutes so that Vermont agencies responding to emergencies in New Hampshire have the same protections from unlimited liability exposure as do New Hampshire entities. This resolution is a result of a 2006 incident on the Connecticut River where the town of Springfield, denied statutory protection in New Hampshire, had to pay a $700,000 settlement.

Licensing of Property Inspectors (H. 227, Act 136)
Amends 3 V.S.A. § 122
VLCT Contact: Karen Horn

The Secretary of State's Office of Professional Regulation will begin licensing new property inspectors on July 1, 2016. The "practice of property inspecting" is defined as performing or offering to perform services for compensation that involves the physical inspection of real property structures and other improvements in order to evaluate the condition of the property, including any safety issues or material defects. To obtain a license, a person must complete 80 hours of training that covers heating, cooling, plumbing, and electrical systems; structural components; foundations; roofs; exterior and interior components; and site aspects as they affect a building. The candidate must also pass an exam for licensure, complete a number of inspections, and provide proof of certification by a nationally recognized property inspector certification organization.

A license will need to be reviewed every two years. A person who has been inspecting property for five years as his or her primary livelihood may be grandfathered upon a demonstration of knowledge and experience equivalent to the license requirements.

Precious Metal Dealers (S.308)
Amends 9 V.S.A. § 3865; adds Chapter 97A; Repeals 9 V.S.A. § 3872
VLCT Staff Contact: Karen Horn

S.308 creates a certification process and regulatory framework for precious metal dealers operating in Vermont. A precious metal dealer is defined as a person who has a physical presence in the state, is engaged in the business of purchasing or selling precious metal (used gold, silver, platinum, palladium, coins sold for more than face value, jewelry, or similar items, but not antiques), and purchases or sells $2,500 or more of precious metal in a consecutive 12-month period.

S.308 requires a precious metal dealer to obtain certification from the Department of Public Safety (DPS) every two years, and describes how a precious metal dealer must apply for that certification. DPS must obtain and review any available criminal history record, both in state and out and from the Federal Bureau of Investigation, for each applicant. After January 1, 2015, DPS cannot issue a certificate to an applicant if he or she or one of the principals has been convicted of a disqualifying offense. Disqualifying offenses include fraud, larceny, embezzlement, possession and control of regulated drugs, violent felony, or – if convicted in the previous ten years of petit larceny – receipt of stolen property, false pretenses, burglary, or false tokens in violation of specific provisions of Title 13.

As well, S.308 imposes a $200 nonrefundable fee for any applicant who pursues a precious metal dealer's certification. The fee would help administer the precious metal dealer certification process. Once a precious metal dealer is certified, he or she must prominently display the certification number at his or her place of business and in any advertisement. S.308 requires precious metal dealers to maintain a record of each item purchased and describes how the records are to be maintained, what information (entry numbers, digital photograph/video, legible descriptions) will make up each record, and how long the dealer must retain the records. If more than $25 is paid for an item, the payment must be via check, draft, or money order for precious metal purchased for resale.

Language in S.308 also describes holding period requirements, methods of payment, a DPS stolen property notification system, and penalties (possible fines and/or imprisonment) for violators of the bill's requirements. The bill also criminalizes the purchase of precious metals by dealers from a person under the age of 18 and provides for a private right of action for damages arising out of a violation of the new statute. Violations of the new Chapter 97A will be heard in the Judicial Bureau. These provisions take effect January 1, 2015, except for a statewide electronic stolen property notification system, which takes effect on July 1, 2014.

Bias-Free Policing (S.184)

Adds 13 V.S.A. Chapter 182, Subchapter 3; amends 20 V.S.A. § 2366

VLCT Contact: Karen Horn

Bias-free policing became a hot topic during the legislative session because some legislators felt too few police departments had implemented a bias-free policing policy. After reviewing VLCT PACIF's model Bias Based Policing policy, the House Judiciary Committee said that it lacked key components of the Attorney General's model policy. VLCT revised its policy to conform to the Vermont State Police policy, which the committee subsequently approved.

The requirement for every state, local, and county department and every constable who exercises law enforcement authority to adopt a fair and impartial policing policy by September 1, 2014, is included in S.184. Departments that do not will be deemed to have adopted the Attorney General's model policy that is in place today. The Criminal Justice Training Council – in consultation with stakeholders that include VLCT, the Human Rights Commission, and Migrant Justice – is to adopt a fair and impartial policing policy by January 1, 2016. After July 1, 2016, all policies will need to include at least the elements of the Criminal Justice Training Council policy. On October 15, 2014, and on every April 1 thereafter, the council will report to the legislature regarding who has adopted the required policies.

S. 184 also requires law enforcement agencies to collect roadside stop data that includes the age, gender, and race of the driver, the reason for the stop, the type of any search conducted, any evidence, as well as the outcome of the stop. S.184 requires that custodial interrogations in places of detention be electronically recorded and that every law enforcement agency and constable that exercises law

enforcement authority adopt an eyewitness identification policy that contains essential elements identified by the Law Enforcement Advisory Board.

The Central Vermont Public Safety Authority (H.892, M017)
No statutory amendments
VLCT Contact: Karen Horn

The purpose of the Central Vermont Public Safety Authority (CVPSA) is to provide its member towns with an affordable, integrated, and efficient system of public safety service (fire, police, ambulance, dispatch) that protects public welfare and provides rapid responses with qualified personnel when emergency situations arise. This is effectively an effort to regionalize public safety services in central Vermont in order to provide said services more efficiently and effectively. Proposals of CVPSA charter adoption were approved by the voters in the cities of Barre and Montpelier on March 4, 2014.

CVPSA would be able to operate all facilities for police, dispatch, fire, and ambulance services in its member municipalities as determined by its board. According to the bill, CVPSA could appoint a public safety director to oversee the operations of the authority and hire and supervise its personnel.

H.892, which approves the adoption of the CVPSA charter, also allows other municipalities to contract with CVPSA at its discretion. As well, provisions in the bill admit additional municipalities to CVPSA as members. Member municipalities would have representatives on the authority's board, and each year an annual report of all activities of the CVPSA, including a financial statement and a budget would be presented to its member municipalities. At Town Meeting Day elections, the voters of each member municipality would vote on appropriating funds for the authority. Ballot totals from each member municipality would be totaled and the cumulative total would determine passage of the authority's budget. A cost-sharing formula between member municipalities would be established following the CVPSA's initial meeting.

Language in the bill outlines the direction of the CVPSA's initial organizational meeting. The authority's board at this initial meeting would be instructed to consider admitting the towns of Barre and Berlin by vote of their residents.

H.892 represents an innovative approach to addressing the perennial problem of how to best provide public safety services at the municipal level of government. This joint effort could well serve as an organizational model for other areas of the state considering how to best provide those services to their residents.

ENVIRONMENT AND QUALITY OF LIFE

Act 250 Amendments in H.809 (Act 146) and H.823 (Act 147)
Amends Title 24 Chapter 117
VLCT Contact: Karen Horn

Two new acts amend statutes regulating Act 250, designated growth centers, downtowns, village centers, new town centers, and new neighborhoods.

Act 146 (H.809) amends the process for "growth center" and "new town center" designation. It requires applicant municipalities to meet with Department of Housing and Community Development (DHCD)

staff prior to applying for designation and to specify the intent to apply for designation in the adopted municipal comprehensive plan.

A growth center must be designed to accommodate a majority of projected development in the municipality over a 20-year planning period. It may be no larger than an area necessary to accommodate 150 percent of projected dwelling units and no more than 100 percent of projected commercial and industrial development over that period. It should not include "an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development or automobile dependent strip development" but may include undevelopable land and land planned for green space or infill and redevelopment. The growth center needs to adjoin or be within a designated downtown (whose boundaries were restricted in legislation passed last year), village center, or new town center. The municipality needs to adopt plan policies and implementing bylaws and ordinances that conform to DHCD's design guidelines. Applicants will need to justify inclusion of any natural resources areas in a growth center and ensure that their plan, bylaws, and ordinances minimize conflicts of development with agricultural and forest industries, discourage fragmentation of farm, forest or habitat, and minimize impacts on natural resources outside of the growth center.

The regional commission within which an applicant municipality is located must write a description of the role of the proposed growth center in the region and the relationship between the proposed growth center and neighboring communities. The description is part of the application for designation. The regional plan must indicate those areas within the region that are likely candidates for designation as downtown development districts, village centers, new town centers, and growth centers.

A number of additional design requirements are prerequisite to receiving growth center and new town center development district designation. Within 90 days of receipt of a "completed application," after providing notice to interested parties and adjacent regional planning commissions, the Downtown Development Board must issue a decision. The designation, if granted, would be for 20 years, with reviews occurring every five years.

Act 146 amends the general planning goals established in Title 24 Chapter 117. Every state agency and regional commission that adopts a plan must adhere to the planning goals. Municipal plans must likewise be consistent with the goals if they are to be approved by their regional commission. The amended goals state that economic growth should be encouraged in growth centers in addition to currently mentioned locally designated growth areas and existing village and urban centers. Public investments should reinforce the general character and planned growth patterns of the area and be undertaken in accordance with smart growth principles. Act 146 took effect on passage.

Act 147 (H. 823) increases the number of housing units that may be built without Act 250 review in a "priority housing project" – that is, a discrete project that consists of (1) mixed income housing or mixed use in a designated downtown, growth center, new town center, or village center that is also a designated neighborhood development area, or (2) mixed income housing that is located entirely within a designated neighborhood. This benefit accrues to newly re-defined growth centers and new town development districts established in Act 146.

Housing projects, if they are in a designated area, are exempt from Act 250 according to the following schedule:

- 275 or more units in a municipality with a population of 15,000 or more;
- 150 or more units in a municipality whose population is 10,000-15,000;
- 75 or more units in a municipality whose population is 6,000-10,000;
- 50 or more units in a municipality whose population is 3,000-6,000; and

- 25 or more units in a municipality whose population is less than 3,000.

These housing units do not count toward determining Act 250 jurisdiction of any other proposed housing projects by the same developer.

Currently there are six growth centers, 24 designated downtowns, two new town centers, three designated neighborhoods, and 109 village centers.

More significantly, Act 147 amends Act 250 generally for all projects regardless of whether or not they are in a designated center.

The definition of "rural growth area" is deleted from Act 250 and a different definition of "existing settlement" is established. An existing settlement is defined as a designated center or an existing compact center with a mix of uses that includes residential components within walking distance of each other, significantly higher densities than those outside the compact community that are typically served by water, wastewater, sidewalks, transit, public parks, and the like. Strip development does not qualify as an existing settlement, and new areas of strip development may not be created.

Strip development for the purpose of Act 250 is defined as linear commercial development along a public highway that has broad road frontage, predominance of single story buildings, limited reliance on shared highway access, a lack of connection to and coordination with surrounding land uses except by highway, and limited access for pedestrians, taking into account topographic constraints. If an area exhibits three of those characteristics, the district commission will identify it as strip development.

An Act 250 permit would be granted outside an existing settlement if, in addition to meeting all other criteria, the project:

1. makes efficient use of land, energy, roads, utilities, and other supporting infrastructure; and
2. won't contribute to a pattern of strip development along public highways or if locating in an existing strip development, incorporates infill development.

In an expansion of Act 250 criterion 5, a district commission must find that a project incorporates transportation demand management strategies and provides safe access to adjacent land, facilities, and existing and planned pedestrian, bicycle, and transit networks and services, unless the commission finds that such a requirement did not constitute a measure that a reasonable person would impose, given the type, scale, and transportation impacts of the proposed project.

The act establishes a sort of Act 250 master permit process for projects in designated areas that may replace a full application process. Letters from agencies such as Natural Resources and Agriculture, Food and Markets as well as the Division of Historic Preservation will suffice for review of criteria that fall under their jurisdiction. Any person may submit comments or ask for a hearing and request party status within 30 days of a complete request being provided the district commission. However, a hearing will be held only if the district commission determines there is a substantial issue that requires a hearing. Those with party status at the district commission may appeal decisions to the Environmental Division of Superior Court, except that one may not appeal a letter from the Agency of Natural Resources (ANR) regarding impacts on important natural resources.

Act 147 also addresses a situation that arose in Newport City when an apartment building owner who rehabilitated it and had to obtain an ANR permit for a modified connection to municipal water and sewer. The permit turned out to be an unexpectedly expensive proposition. For years, VLCT has urged

the legislature to eliminate the requirement to obtain a state permit to hook up to a municipally owned and operated water or wastewater system. Under the new legislation, the ANR secretary must issue a permit for a new or modified connection to a water or sewer main or septic system in a designated downtown upon submission of a certification of a licensed designer and a letter from the owner of the system unless the system has no remaining capacity. ANR rules are to reflect this amendment by December 1, 2014. S.211, in slightly different language, requires a report on the issue by January 15, 2015.

The changes to the designation programs will make the process for application and designation easier and more transparent. The changes to Act 250 criteria are the most substantial in years. The objective is to drive development to compact settlement areas and away from greenfields and new areas of strip development. Only time can tell if that will be the case.

Siting Telecommunications Facilities, Industrial Parks, Downtown Tax Credits (H.297, S.220)

Amends 30 V.S.A. § 248a, 10 V.S.A. § 6001, and various additional sections of Act 250

VLCT Contact: Karen Horn

At the end of the session, the legislature returned to the issue of the Public Service Board (PSB) siting telecommunications facilities and pre-empting municipal jurisdiction over those facilities. The House Commerce Committee completed work on H.297, a general telecommunications bill that establishes a Division for Connectivity to take over from the Vermont Telecommunications Authority. Meanwhile, the Senate Economic Development, Housing and General Affairs Committee finished its work on S.220, an economic development bill. These two bills crossed paths on their legislative journeys between chambers several times and both were in play until the very end of the session, May 9 and 10. Both bills passed.

In 2011, over the objection of local governments, the Vermont Legislature eliminated local statutory authority to regulate the siting of telecommunications facilities. Many municipalities had telecommunications ordinances in place at that time and the local boards that implemented those ordinances addressed issues important to their communities. As part of the pre-emption, the law required the PSB to give "substantial deference" to land conservation measures in municipal plans and recommendations of municipal and regional planning commissions "unless there [was] good cause to find otherwise." The pre-emptive legislation passed in 2011 contained an expiration date of July 1, 2014, meaning that unless an extension passed this year, towns siting regulatory powers would be automatically restored.

In the three years since permitting was moved to the PSB, there have been 216 petitions for Certificates of Public Good (CPG) to build or upgrade telecommunications facilities, which the board divided into three categories:

1. 116 de minimus petitions (essentially to switch out equipment on existing infrastructure or to rebuild an existing structure without changing its size);
2. 40 petitions for projects of limited size and scope (defined by a PSB rule as new projects that are 140 feet or less in height or a modification of an existing facility that would result in a total height of less than 200 feet and that does not increase the width of the structure by more than 20 feet or result in disturbance of more than 10,000 square feet of earth); and
3. 16 applications for full scale new telecommunications facilities.

Every complete application for a Section 248a telecommunications facility CPG has been approved under the PSB permitting authority. The narrative in those permits relating to municipal concerns has been curt, to put it mildly.

H.297 and S.220 were written to address local officials' frustration with the 248a process and concerns with the sunsetting of municipal preemption on the part of the industry. In almost every regard, the telecommunications sections of H.297 (Sections 17-19) and S.220 (Sections 27-32) are nearly identical.

Both bills extend the time that the PSB has jurisdiction over telecommunication facility siting (and municipalities don't) to July 1, 2017.

The bills require that, during the statutorily required 45-day notice period, prior to an applicant filing an application with the PSB, if requested by the municipality, the applicant must attend one meeting with a municipality's legislative body, its planning commission, or both. The Public Service Department (PSD) must attend the public meeting if the municipality requests it to. The PSD then will consider the comments at the meeting in making its recommendations to the PSB on the application. The PSD may hire experts to evaluate the project and make recommendations to the PSD. The applicant could make adjustments to the project before applying for a CPG.

The PSD would also be required to develop a guide by September 1, 2014, for local officials and regional commissions describing how to navigate the PSB process for certifying telecommunications facilities. The PSD will report to the legislature by October 1, 2015, on the permitting process for facilities.

The bills provide automatic party status to a host municipality in the CPG proceedings if the municipality so requests. With respect to the application, the PSB's decision in issuing a CPG must include a detailed written response to each recommendation of the municipal planning commission and legislative body. The PSB must also define "good cause" and "substantial deference" – existing terms in the statute – in a board order. In doing so, the board must notify each municipal legislative body and planning commission, VLCT, the Department of Public Service, and whoever else it deems appropriate when a workshop will be held on the matter and how to comment or make recommendations on the proposal.

Those are the provisions of S.220 and H.297 that respond to the concerns raised by local officials about the PSB permitting process. They take effect upon passage in H.297. The directive for the PSB to define good cause and substantial consideration takes effect upon passage in S.200; the sections relating to the 248a process take effect July 1, 2014.

H.297 also sets the stage for upgrading the state's telecommunications network by making strategic investments in improved technology. It increases the universal service fund charge to two percent, extends that charge to pre-paid wireless telecommunications service providers, and anticipates operational savings of $300,000 as a result of consolidating state telecommunications functions and creating a Division of Connectivity within the Agency of Administration as a successor to the Vermont Telecommunications Authority. H.297 anticipates that by the end of 2024, "every E-911 business and residential location in Vermont will have infrastructure capable of delivering internet access with service that has a minimum download speed of 100 megabits per second (Mbps) and is symmetrical."

Section 16 of H.297 requires the Secretary of Administration – in consultation with the Commissioner of Public Service, Secretary of Transportation and VLCT – to report on the feasibility of a "Dig Once" Program to include recommendations requiring the installation of conduit and other infrastructure during highway construction projects. The conduit would accommodate connection of

telecommunications lines within the right of way whenever a provider decided to undertake a project, without the highway needing to be dug up again.

VLCT staff provided the House Commerce Committee with a Maine study, completed last February, that references Vermont's rural road network and establishes that requiring conduit to be installed as part of a construction project would be ineffective except possibly in urban areas, and unused because most wires are strung along overhead poles.

S.220 is a comprehensive economic development bill that qualifies as a "Christmas tree" because it also:

- contains changes to the workers' compensation statutes (see page 31) and study of injuries at the Police Academy as well as a Vermont Entrepreneurial Lending Program;
- expands eligible activities for the downtown tax credits to include data or networking wiring, or heating, ventilating, or cooling systems reasonably related to data or network improvements;
- requires a study of ways to reduce energy costs for Vermont businesses;
- contains an economic impact analysis of the development projects in the Northeast Kingdom due to the legislature by December 1, 2014; and
- makes industrial park planning, development or improvement eligible for the Vermont Economic Development Authority funding, which is especially important for municipalities.

The bill also defines "industrial park" as an area of land permitted under Act 250 that is "planned and zoned for one or more industrial buildings and includes adequate access roads, utilities, water, sewer, and other services necessary for the uses of the industrial buildings and includes no retail or office use except that which is incidental to an industrial use". The Natural Resources Board is directed to review its master plan policy, including for industrial parks, and commence its adoption as a rule.

After legislators heard local officials' concerns about how the PSB handles applications for telecommunications facilities, they made adjustments to the process that should help significantly in ensuring that the board responds to issues raised by local governments. The changes recognize the importance of decisions made at the local level about community priorities and provide an avenue to address them. Please take time to thank your legislators for their support of the telecommunications sections of H.297 and S.220. Several telecommunication tower applications have already been submitted, so the effectiveness of the amendments will be tested soon. These are modifications to the PSB process that could be applied to renewable energy facilities as well. That legislation died mid-session this year. However, there may be a track record to point to by next session that supports passage of similar language in Section 248.

Water and Sewer Disconnect (S.41, Act 94)
Amends 24 V.S.A. § 5143
VLCT Contact: Karen Horn

S.41, the water and sewer disconnect legislation that passed in January, provides that the tenant of a rental dwelling who receives a notice of disconnection because the landlord was delinquent in his or her payments has the right to request and pay for continued water or sewer service or reconnection of service. The utility will comply with the request upon payment and may not charge the tenant for more than one billing cycle. The tenant, in turn, may deduct the cost of water or sewer rents or fees paid to the municipality from the rent due to the landlord. The governor signed the bill on February 20.

The entirety of the new legislation language is as follows:

Disconnection of Service. 24 V.S.A. § 5143 (c) "The tenant of a rental dwelling noticed for disconnection due to the delinquency of the ratepayer shall have the right to request and pay for continued service from the utility or reconnection of water and sewer service for the rental dwelling, which the utility shall provide. If any water and sewer charges or fees are included in the tenant's rent, the tenant may deduct the cost of any water and sewer service charges or fees paid to the municipality from his or her rent pursuant to 9 V.S.A. § 4459. Under such circumstances, the utility shall not require the tenant to pay any arrearage greater than one billing cycle."

The act took effect on passage.

Holding Tanks and Municipal Connection Permits (S.211, Act 151)
Amends 10 V.S.A. § 1979
VLCT Contact: Karen Horn

S.211 allows the Secretary of the Agency of Natural Resources (ANR) to approve sewage holding and pumpout tanks for existing buildings or structures owned by a charitable, religious, or nonprofit organization if (1) doing so does not present a health hazard, (2) the design flow does not exceed 600 gallons per day and (3) traditional wastewater treatment is significantly more expensive.

S.211 also directs the agency to write a report on how to improve the process for municipal delegation of water supply and wastewater permitting and make recommendations to the legislature by January 15, 2015. The recommendations are to include the possibility of partial delegation to a municipality of the program (for instance, connections to municipal wastewater systems) and a plan for outreach and education.

Managing Solid Waste (S.208)
Amends 10 V.S.A. §§ 6605, 6605m, 6607a
VLCT Contact: Karen Horn

S.208 addresses universal recycling and the recycling of architectural waste. More than 40 cubic yards of architectural waste (such as drywall, metal, asphalt, shingles, clean wood, plywood, and oriented strand board) will need to be recycled if a solid waste facility that recycles architectural waste is within 20 miles of the commercial construction site.

The legislation expands the definition of a commercial hauler to any person who is paid to transport solid waste in a vehicle. Current law stipulates that a hauler that collects municipal solid waste must offer to collect mandated recyclables by July 1, 2015, leaf and yard residuals by July 1, 2016, and food residuals by July 1, 2017. The Secretary of Natural Resources may waive these mandates if a municipality is achieving the required progress toward the disposal rate of the state solid waste plan. This language was put into S.208 after the House Natural Resources and Energy Committee hosted a solid waste summit at the State House where its members learned how municipal officials from around the state as well as directors of solid waste districts, alliances, and groups were achieving the state's solid waste recycling goals, or even exceeded then.

S.208 also requires the Agency of Natural Resources to convene a Solid Waste Infrastructure Advisory Committee to review Vermont's current solid waste management infrastructure, evaluate the adequacy of existing infrastructure, and recommend development of new infrastructure. The committee will comprise three representatives of solid waste entities, one collector of solid waste, two haulers, one of whom serves a rural area, one recycler of food or leaf and yard residuals, and one business representative

subject to the law. The committee is to submit a report to the legislature by January 15, 2015, that recommends infrastructure, costs, and options for raising revenue to pay for new needed infrastructure.

The agency is in the process of adopting a new solid waste management plan, titled the Materials Management Plan, which is posted at http://www.anr.state.vt.us/dec/wastediv/solid/MMP.htm. Public comment on the plan formally ended in February and it was submitted to the Legislative Committee on Rules in May.

Municipal officials who have concerns about the plan, particularly in light of S.208, should follow the committee's progress.

Regulation of Land Uses in Flood Hazard Areas (H.676, Act 107)
Amends 10 V.S.A. § 754, 24 V.S.A. § 4413 (a)
VLCT Contact: Karen Horn

Early in the 2014 session, it became apparent that the Agency of Natural Resources (ANR) would not be able to meet a March 15 statutory deadline for addressing structures in vulnerable areas that are exempt from municipal zoning. Act 107 revises the deadline by which ANR must adopt rules to establish permit requirements for exempt uses that are in flood hazard areas or river corridors. The new deadline is November 1, 2014. Beginning March 1, 2015, exempt uses and state-owned and -operated institutions will need a permit from ANR before constructing in a flood hazard area or river corridor.

Uses that are exempt from municipal zoning review include the aforesaid state- (and community-) owned facilities, state certified schools, places of worship, hospitals, regional solid waste facilities, and hazardous waste facilities. New language makes clear that, except for state owned and operated facilities, municipalities may regulate those uses for compliance with the National Flood Insurance Program and ordinances or bylaws regulating construction in a flood hazard area, as long as the regulations do not result in interfering with the intended functional use.

Act 107 took effect upon the Governor's signature on April 18.

Shoreland Zoning (H.526)
Adds 10 V.S.A. Chapter 49A
VLCT Contact: Karen Horn

H.526, the Shoreland Zoning Bill, establishes statewide standards for development (meaning the creation of cleared area or impervious surface) in protected shorelands. A protected shoreland area is now defined as all land within 250 feet of the mean water level of a lake that is greater than ten acres in surface area.

The shoreland protection/zoning act was many years in the making. The legislation has many ardent supporters who believe that shoreland regulation is the best protection we can provide to our lakes and many detractors who expect that they won't have any flexibility to improve their shoreland properties.

A person must secure a permit from the Agency of Natural Resources (ANR) before clearing an area or creating an impervious surface in a protected shoreland area. When that person files the application for a permit, he or she must also notify the municipal clerk. After receiving the application, the ANR Secretary must provide 30 days to receive comments from anyone who might be interested in the application.

The secretary will then issue a permit if:

1. the cleared area is at least 100 feet from the mean water level of the lake, except for measures the applicant will take to stabilize the shoreland area;
2. the cleared area is on a slope of less than 20 percent or a stable slope; and
3. no more than 20 percent of the parcel's protected shoreland ends up impervious surface, or the applicant uses best management practices (identified by ANR) to control erosion, stabilize banks, and protect wildlife habitat – all of which must be determined to be equivalent to clearing less than 40 percent of the protected shoreland area.

A condition of the permit may be to clear vegetative cover within three feet of a footpath twice a year. There is no term on an individual permit as long as its conditions are observed. Creating a footpath less than six feet wide is also exempt in the section below. The permit must be recorded in the land records and run with the land. The bill also includes provisions for undertaking projects on non-conforming parcels.

Permits will be issued for recreational area projects if (1) they provide public access to the water and promote public trust uses of it; (2) they are within the protected shoreland area in order to achieve recreational functions; and (3) they conform to best management practices that protect the habitat and water quality of the lake.

A person may register with the agency and will not need a permit for developing 100 square feet or less of cleared area in a protected shoreland area if the cleared area is at least 25 feet from the mean water level. Mean water level is established by the Department of Environmental Conservation for individual lakes. (The rule for establishing those mean water levels is at www.watershedmanagement.vt.gov/rulemaking/docs/wrprules/wsmd_meanwater2011.pdf#zoom=100.) An applicant may clear 500 square feet if the area is at least 100 feet from the mean water level and on a slope of less than 20 percent, and if the project totals no more than 20 percent of the protected area. The secretary is likely to further define the registration section in rules, hopefully to clarify what and what is not allowed. A registration, if the secretary accepts one, will be for an indefinite term and run with the land.

A number of activities neither require a permit nor need to comply with vegetative cover requirements, including:

- management of vegetative cover;
- cutting of no more than 250 square feet of existing vegetation under three feet in height within 100 feet of the mean water level to allow for recreational use in the protected shoreland area;
- maintenance – but not expansion – of lawns;
- creation of footpaths six feet in width or less;
- construction within the existing footprint of a building;
- silvicultural activities in accordance with an approved plan;
- agricultural activities on lands in production on July 1 under certain circumstances;
- maintenance, emergency repair, and repair and replacement of Agency of Transportation or municipal transportation infrastructure and of private roads that comply with Town Road and Bridge Standards;
- railroad activities under federal jurisdiction;
- creation of cleared area when a parcel is intersected by a highway and the clearing is on the side away from the lake;
- ANR-permitted wastewater, stormwater, and water supply systems;
- utility construction or repair projects and utility lines permitted under Section 248 by the Public Service Board;
- projects permitted under Act 250;

- projects in designated downtowns and village centers;
- an urban and industrial redevelopment project with existing impervious area that have been designated by municipal bylaw for redevelopment and is in a municipality with an adopted shoreland ordinance or bylaw that is at least as stringent as the state's or requires best management practices that are functionally equivalent to the state's; and
- mosquito control.

The ANR secretary must delegate authority to a municipality to permit construction, creation, or expansion of impervious surface or cleared area if the municipality adopted an ordinance or bylaw that is functionally equivalent to state requirements and it has adequate administration and enforcement resources in place. Construction outside of protected shoreland areas is still regulated by municipal zoning and other regulation. H.526 specifically states that those projects are not subject to ANR regulation under the shoreland protection statute.

The secretary may adopt rules to implement the Shoreland Protection Act. By January 1, 2015, the agency must publish a "Citizen's Guide to Shoreland Protection" and begin conducting ongoing education and outreach.

Beginning on January 1, 2016, ANR and The Associated General Contractors of Vermont (a trade group for contractors in the state) must offer a voluntary shoreland erosion control certification program. On January 1, 2018, the Secretary of ANR must submit a report to the legislature that summarizes the program's success, including the number of people who have been certified and whether the program should be continued or made mandatory.

By January 15, 2016, the ANR Secretary must submit a report to the legislature that notes:
- the number of approved lake shoreland registrations and permits;
- the number of lots denied a registration or permit and the reasons for denial;
- an evaluation of the program including whether or not it has prevented degradation of water quality, helped to preserve shoreline stability, protected aquatic biota and habitat for wildlife, and mitigated sediment runoff;
- the amount of fees collected by the agency versus the cost of running the program;
- any recommendations for improvements in the program; and
- a list of the towns to which the program has been delegated.

A person who has a municipal shoreland zoning or general zoning permit to clear an area or to build an impervious surface before the effective date of H.526 may proceed under that permit. An addition to the bill stipulates that any law enforcement officer may charge anyone transporting aquatic plants and nuisance species to Vermont waters on a boat or vehicle with a violation.

Discussions concerning private property rights in the context of H.526 during the legislative session were vigorous. VLCT, however, was most concerned that municipalities be authorized to regulate shorelands at the local level if they so choose. It seems that adequate provision exists for municipalities to adopt bylaws that are functionally equivalent to the state regulation. According to testimony early in the session, approximately 40 municipalities have bylaws that may meet the requirements of H.526. However, whether or not the delegation provision will work depends on how the agency defines "functionally equivalent." Again, time will tell.

You can read a description of the act, learn how and where to clear, and see a diagram of a shoreland that shows what can and cannot be done at www.watershedmanagement.vt.gov/lakes/docs/shoreland/lp_ShorelandProtectionActSummary.pdf.

The Lakes and Ponds Division at ANR is undertaking a significant education and outreach effort, including holding a series of workshops at state parks during the summer. Materials and schedules are at www.watershedmanagement.vt.gov/permits/htm/pm_shoreland.htm.

Additionally, the division has scheduled six informational meetings at regional commissions:

June 10, 6:30-8:30 pm ..... Chittenden County Regional Planning Commission, Winooski
June 17, 2:00-4:00 pm ..... Northeastern Vermont Development Association, St. Johnsbury
June 17, 6:00-8:00 pm ..... Northeastern Vermont Development Association, Newport
June 19, 6:30-8:30 pm ..... Northwest Regional Planning Commission, Swanton
June 24, 6:30-8:30 pm ..... Two Rivers-Ottauquechee Regional Commission, Lake Morey
TBD ..... Rutland Regional Planning Commission, Rutland

Ecosystem Restoration and Water Quality Improvement Special Fund (H.650, Act 171)
Adds 10 V.S.A. § 1264d
VLCT Contact: Karen Horn

Twelve Vermont municipalities plus the Agency of Transportation, the University of Vermont, and Burlington International Airport are subject to municipal separate storm sewer systems (MS4) permits, which regulate the discharge and runoff of stormwater to Lake Champlain. One requirement of the permit is that municipalities must perform the collection of flow and precipitation data at monitoring stations in waters impaired due to stormwater.

That particular requirement is in the MS4 permit because the Agency of Natural Resources (ANR) decided it could no longer afford to do the monitoring. Yet local officials from the affected municipalities testified that the agency is the best entity to complete that task because it has a statewide reach and because it would apply a single set of standards to the collection of flow monitoring and precipitation data.

H.650 establishes the Ecosystem Restoration and Water Quality Improvement Special Fund, a mechanism to pay for water flow, precipitation data collection, monitoring of stormwater-impaired waters of the state, and education and outreach requirements of the MS4 permit. The fund – which was the brainchild of the 12 municipalities – is intended to ensure not only municipal compliance with the MS4 monitoring requirements, while reducing fiscal pressures on the municipalities, but also to provide for consistent data collection and evaluation at sites around the watershed.

A municipality may enter into a memorandum of understanding with the ANR Secretary to contribute municipal dollars to the fund to perform the monitoring and data collection that the MS4 permit requires. A separate account would be established for each memorandum of understanding. An account may also be established for education and outreach efforts. No allocation may be made to a municipality that did not contribute its share to the fund. The agency anticipates using the funds to hire one or more contractors to implement the monitoring across the impaired watersheds. A request for proposals for the monitoring will be developed in conjunction with participating MS4 municipalities.

H.650 was passed at the request of the MS4 municipalities in essentially the same form that it was requested and with the support of ANR.

MUNICIPAL GOVERNANCE AND ADMINISTRATION

Miscellaneous Election Laws (S.86, Act 161)
Amends language in Titles 2 and 17 that regulates elections
VLCT Contact: Karen Horn

This article highlights those sections of the 112-page-long bill that pertain to a municipality's conducting elections as well as other municipal business.

S.86 is a massive bill that addresses many election law issues faced by municipalities and voters across the state. The bill has taken two years to get through the legislature and portions of it underwent a number of rewrites before it passed.

S.86 redefines the term "political subdivision" for the purpose of election law to include representative and senatorial districts in addition to counties, municipalities, school and fire districts, and water and sewer districts. It adds the term "vote tabulator" to mean a machine that registers and counts paper ballots and includes optical scan tabulators.

Each even-numbered year by December 31, town clerks need to file a letter certifying their attendance at an election workshop organized by the Secretary of State's office.

Approved additions to the voter checklist in a town need to be added to the statewide voter checklist within three days of receipt by the town clerk's office. Voter checklist application forms will now include a place to put one's email address if the applicant so chooses.

Voter registration applications received by the Department of Motor Vehicles (DMV) will now need to be transmitted to the Secretary of State within five days of receipt or before the close of a checklist for a primary or general election, whichever is sooner. Any organization other than a voter registration agency or DMV receiving a completed application must submit it to the town clerk within seven days of acceptance or before the close of the checklist for a primary or general election, whichever is sooner.

Beginning in 2016, primary elections will be held on the second Tuesday in August in each even-numbered year for all offices except candidates for President and Vice President of the United States (first Tuesday in March), and justices of the peace (which may be nominated by the party caucus as described below). Current law provides for a primary election on the fourth Tuesday in August. Likewise, petitions for major party candidates and statements of nomination for minor party candidates will now be due on the fourth Thursday after the first Monday in May preceding the primary.

Regarding the election of justices of the peace, party members in each town on or before each primary election must provide notice of their caucus by posting at the office of the town clerk and two other public places in town at least five days prior to the caucus meeting. In addition, for towns with more than 3,000 voters, notice is to be posted in a newspaper of general circulation within the town or on a nonpartisan electronic news media website that specializes in news of the state or the community and also on the municipality's website if the municipality "actively updates its website on a regular basis." For a town committee that does not hold a caucus, the committee may meet and nominate candidates for justices of the peace, though the committee must provide notice of the meeting by emailing or mailing committee members and by posting notice of the meeting in the office of the town clerk and in two other public places in town at least three days prior to the meeting.

The bill establishes how ballots are to be printed and used for primary and general elections: they must be prepared on index stock, configured to be readable by vote tabulators, and furnished to the towns by the Secretary of State. The Secretary of State is to adopt rules governing the use and selection of vote tabulators in Vermont. Towns with 1,000 or more registered voters as of December 31 in even-numbered years shall use vote tabulators to register and count votes in subsequent elections. The Secretary of State's office is required to pay the purchase and warranty cost of vote tabulators, ballot boxes, and two memory cards for each tabulator, as well as the annual maintenance costs of vote tabulators for each town and the first $500 of the first pair of a vote tabulator's memory card's configuration costs for each primary and general elections. Towns are responsible for any additional costs.

Language in S.86 specifies that when a legislative body determines that an article to be voted on is too unwieldy to appear in full on the ballot, the ballot need only identify the article by number and title as it was listed in the warning for the election, as long as the complete article is conspicuously posted within each voting booth. As well, S.86 requires that – except in the case of voice votes from the floor, divisions, or voting at a floor meeting by paper ballot at a local election – no voting is to occur in any local, primary, or general election that does not use printed ballots.

S.86 requires the Secretary of State to conduct random post-election audits for primary and general elections and to establish a process for using vote tabulators in recounts. The same vote tabulator used in any local, primary, or general election is not to be used in a recount of that election. Vote tabulators are also to be stand-alone devices not connected to any other device or connection. Municipalities may only use a vote tabulator that registers and counts votes cast on a paper ballot; municipalities may not use any type of voting machine on which a voter casts his or her vote directly via a touch screen.

By January 15, 2015, the Secretary of State is to report to the House and Senate Government Operations committees on the proposed process for using vote tabulators in recounts and for the certification of vote tabulators. The Secretary of State is to consider whether and under what circumstances a town may conduct a recount by counting ballots by hand in lieu of using vote tabulators. The Secretary of State's report must also include his proposed process for conducting audits of elections and consideration of using risk-limiting audits. In addition, the report must propose a process to obtain electronic signatures for municipal meeting articles, nominating municipal officers, and primary petitions, as well as the statistics regarding increased voter participation in other jurisdictions that use voting by mail and the feasibility and cost of implementing voting by mail in Vermont.

S.86 specifies that, 30 days prior to a local, primary, or general election, the town clerk must submit a list of polling places within the municipality to be used in the election to the Secretary of State. The list is to include the name of the polling location, its physical address, and the time the polling place opens. According to S.86, a municipality may change the location of a polling place fewer than 30 days prior to an election only in case of emergency. If a municipality changes the location of a polling place fewer than 30 days prior to an election, the town clerk is to notify the Secretary of State within 24 hours of the change. The secretary must provide any necessary help to the municipality. The secretary will provide on his or her official website a list of polling places that will be used in any local, primary, or general election within the state including any change in the location of the polling place.

The bill requires that town clerks' offices handle overseas and military absentee voter ballots by sending them via air mail, first class, and postpaid when such service is available, or by email if requested by the voter. The town clerk's office is to be open the 46th day before an election including a contest for federal office. All absentee ballots to military and overseas voters are to be sent before that day. On that day, the clerk will complete any reporting requirements or other associated responsibilities.

Town clerks are to report to the Secretary of State "as soon as practicable on the day of the election" the unofficial vote counts of all candidates whose names appeared on ballots. Reports are to be made by electronically submitting the vote counts on the secretary's online elections reporting system or, if unable to do so, by submitting the vote counts to the Secretary of State by "telephone, facsimile, or email." Unofficial vote counts are to be posted on the Secretary of State's official website as soon as they are submitted.

When the same number of persons is nominated for any town office as there are positions to be filled, the presiding officer may declare them elected without making individual tallies, provided each person on the slate has more votes than the largest number of write-in votes for any one write-in candidate. In order to be elected, a write-in candidate must receive at least 30 votes or the votes of one percent of the registered voters in a municipality, whichever is less.

If there is a tie vote for any local officer, the municipality's legislative body or the municipal clerk must, within seven days, warn a runoff election to be held not less than 15 days nor more than 22 days after the warning. Only candidates who tied in the original election may be in a runoff election. However, if one of the candidates withdraws his or her candidacy within five days after the election, the town clerk is to certify the other candidate as the winner without conducting a runoff election.

S.86 details more defined procedures for recounts and the storage and sorting of ballots. It determines that a town chair in a town of 3,000 or more population is to publish the notice for a caucus in a "non partisan electronic news media website that specializes in news of the State or the community." Any meeting warnings are also to be posted on a municipality's website, if the municipality regularly updates its website.

Provisions are made for petitioned articles in local elections. If a petition does not meet statutory requirements, it must be returned within 24 hours of receipt. Supplementary petitions may then be files no later than 48 hours after the petition was returned to the petitioners. Supplementary petitions will not be accepted if the signatures of individuals totaling at least the number required for a petition were not filed on time.

New language stipulates that a municipality may not reconsider a vote to elect a local official.

Finally, S.86 directs the Office of Legislative Council to search Title 17 of the Vermont Statutes Annotated for use of the word "town." In consultation with the Secretary of State's Office, it must, by November 15, 2014, prepare a draft bill that would replace the word "town" with the word "municipality" or with the term "political subdivision."

The bill's language pertaining to political subdivisions, vote tabulators, and town requirements to use vote tabulators is to take effect on July 1, 2016. The portion pertaining to the list of early or absentee voters and the participation to be entered on a statewide checklist by town clerks takes effect on July 1, 2015. The sections dealing with the primary election and the time for filing petitions and statements of nomination take effect January 1, 2016. Other portions of the bill take effect upon passage.

Open Meeting Law Changes (H.497, Act 143)
Amends 1 V.S.A. Chapter 5, Subchapter 2
VLCT Contact: Steve Jeffrey

It was four years in the making, but the House and Senate finally agreed on a major updating of the Open Meeting Law. As passed, H.497 does the following:

- Exempts from the definition of a public meeting written or electronic (including telephonic) communications scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that the communication used is available for inspection and copying as a public record;
- Exempts community and restorative justice boards and centers from the provisions of the Open Meeting Law;
- Requires a public body to designate the "two additional public places in the municipality" at which notices of meetings will be posted;
- Allows for one or more members of a public body to fully participate in the discussion and voting of a meeting through electronic or other means when not physically present at the designated meeting location if they identify themselves when the meeting begins, are able to hear and be heard, and any votes that are conducted are taken by roll call;
- Allows for an entire meeting of a quorum of a public body to be conducted through electronic or other means under two additional conditions. First, at least 24 hours before the meeting or as soon as practicable prior to an emergency meeting, the public body publicly announces this format. The notice must identify a physical location or another electronic means for members of the public to access the meeting from a remote location. Second, at least one member of the public body, or at least one staff person or designee of the public body, must be physically present at each designated meeting location.
- Expands the requirement that a special or emergency meeting be "publicly announced" by providing notice to any person requesting to be notified instead of just news media personnel. The law still requires that any such person renew the request to be notified each calendar year. A public announcement still requires notice be provided to "an editor, publisher, or news director of a newspaper or radio station serving the area" and continues to be limited to providing through some unspecified means the time, place, and purpose of the meeting.
- Clarifies that a public meeting is subject to the public accommodations requirements of 9 V.S.A. 139.
- Changes the requirement for making available an agenda for all regular or special public meetings. The current law only requires that an agenda be made available "prior to a meeting upon specific request." The new law requires that, at least 48 hours prior to a regular meeting and at least 24 hours prior to a special meeting, an agenda be posted in or near the municipal office and at no fewer than two other public places in town as well as to any website that the public body maintains or designates as its official website and that it be made available to any person who requests it.
- Limits additions and deletions to the agenda to the first act of business while allowing other adjustments to be done any time during the meeting;
- Allows executive sessions for consideration of municipal security or emergency response measures;
- Limits entering executive session to considering contracts, labor relations agreements, arbitration, mediation, grievances other than tax grievances, or legal advice (see new definition below) by requiring the public body to make "a specific finding that premature general public knowledge would place the public body or a person involved at a substantial disadvantage." The prior law allowed executive sessions for legal matters only for "civil actions or prosecutions." The new law sets out two reasons to discuss legal issues in executive session once that finding above is made. First, boards can discuss "pending or probable civil litigation or a prosecution, to which the public body is or may be a party" and "confidential attorney-client communications made for the purpose of providing

professional legal services to the body." These provide much clearer guidance for public bodies considering using executive session than the previous language. The executive session language for considering the appointment or employment or evaluation of a public officer or employee was clarified by the addition of the following: "provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting."

- Requires that meeting minutes be posted no later than five days after the meeting on a website, if one exists, that the public body maintains or designates as the official website of the body;
- Establishes a process for persons aggrieved by a violation of the Open Meeting Law to provide written notice alleging the violation and requesting that it be cured within one year of the meeting at which it occurred. The bill requires the public body to respond to the notice within seven business days by either acknowledging the violation and stating an intent to cure it within 14 calendar days, or by stating its determination that no violation occurred. The public body can remedy the violation by meeting in duly warned open session and either ratifying or declaring void its action taken in violation of the law and "adopting specific measures that actually prevent future violations." A public body that does not acknowledge that a violation took place will be subject to attorneys' fees and other litigation costs of a complainant that substantially prevails in a case, unless the public body had a reasonable basis in fact and law for its position, acted in good faith, or cured the violation. Persons wishing to challenge a public body's compliance with the Open Meeting Law must do so within one year of the date of the meeting at which a violation is alleged to have occurred. Interestingly, the law delays this new enforcement mechanism for violations of the new requirement to post minutes to a designated website within five days for a period of a year to allow time for town officials to be trained on the new requirements.

The changes are effective on July 1, 2014.

Miscellaneous Amendments to Municipal Statutes (S.168, Act 162)
Amends 13 V.S.A. § 351, 20 V.S.A. § 3549
VLCT Contact: Karen Horn

S.168 was introduced largely at the request of the VLCT for two reasons: first, to remedy confusion in a number of statutes to which municipal officials regularly refer and about which questions arise; and, second, to delete archaic statutes that lend to the general confusion in the municipal statutes. The bill ended up with a few additions to the initial draft from VLCT as well as a few deletions when it became apparent that specific items were more controversial than anticipated.

S.168 eliminates the office of elected animal control officer. It grants specific authority for a town or city to regulate the "licensing" of domestic pets or wolf hybrids, which had not been specific in statute before.

It eliminates the requirement for a town or city to elect a collector of current taxes and a collector of delinquent taxes. A municipality may vote to authorize the local legislative body to appoint a collector of delinquent taxes, who may be the municipal treasurer and who may be removed by the legislative body for just cause after notice and hearing. The authority to appoint a collector of delinquent taxes will remain in effect until rescinded by the voters.

The incompatible local offices statute is expanded to provide that neither an auditor nor a town treasurer may be a cemetery commissioner, nor may an auditor's spouse or assistants.

S.168 allows for a municipality with a governance charter to appoint advisory commissions pursuant to general statute in the same manner as municipalities without governance charters, regardless of whether or not the charter specifies that authority. Historic preservation commissions have those responsibilities set forth in a written document approved by a majority vote of the local legislative body. The local legislative body may appoint alternates to a planning commission in addition to current authority to appoint alternates to a board of adjustment or development review board.

In consideration of the concerns of emergency service providers, municipalities may now require the owner of a house or other building to affix the E-911 number to the structure, sign, or number post so that it is clearly visible from the road.

Vermont had real difficulties with securing the maximum amount of reimbursements from the Federal Emergency Management Agency (FEMA) for homes damaged by Tropical Storm Irene because we used incorrect terminology to describe homes that were completely destroyed. As a result, new language in the bill provides that when the governor declares a disaster or emergency, a municipal building inspector, health officer, fire marshal, or zoning administrator may declare a property that has been damaged in the disaster and is dangerous to life, health, or safety to be "condemned to be destroyed" due only to the disaster-related damage. *Condemned to be destroyed* is a FEMA term. The local legislative body may require an official to receive training on disaster-related condemnation before he or she may condemn property under this section. The owner of the property, if he or she objects to the condemnation, may appeal the condemnation to the Civil Division of the Superior Court. By July 1, 2015, the Department of Health and departments of Housing and Community Development and Public Safety must develop condemnation guidance to include in disaster training and education for local officials.

Municipal Charters

Amends Title 24 Appendix: Municipal Charters
VLCT Contact: Karen Horn

This year, the legislature passed nine charter amendments: Westford, Panton, East Montpelier, Montpelier, Village of Derby Line, Central Vermont Public Safety Authority, North Branch Fire District No. 1, Burlington, and Milton.

Vermont is a Dillon's Rule state, which means that a municipality may only do what the legislature has specifically enabled it to do in statute. Thus, if a municipality elects to undertake a program or process that is not enabled in statute, it generally needs to adopt a governance charter or charter amendment whose language must be approved by both the voters at the local level and then by the legislature. It is worth noting that the legislature is not restricted to addressing only the language approved by the voters. In recent years, however, it has extended municipalities that respect.

Both the House and Senate Government Operations committees were attentive to proposed charter amendments this session. Most charter proposals were passed with few amendments, save for conforming or grammatical changes. They include:

Burlington (H.890, Act M015): Redistricts city election areas.

Central Vermont Public Safety Authority (H.892, Act M017): See separate article on page 11.

Derby Line Village (H.718, Act M011): Village clerk, treasurer, and tax collector do not need to be residents of the village.

East Montpelier (H.887, Act M013): Charter adoption. Eliminates the offices of town grand juror, town agent and trustees of public funds. Provides for the selectboard to appoint the town treasurer and zoning administrator.

Milton (H.888): Eliminates requirements to elect a grand juror, listers, and town agent. Amends statute regulating the board of library trustees. Provides for the appointment of the town agent.

Montpelier (H.894, Act M019): General governance; merges Montpelier Fire District #1 into the City of Montpelier.

North Branch Fire District No. 1 (H.893, M018): Charter adoption provides for the appointment of a treasurer and one or more collectors of taxes.

Panton (H.886, Act M012): Charter adoption. Includes provision for appointment of town treasurer, town clerk, and collector of delinquent taxes.

Westford (H.881): Charter adoption. Includes a provision that if a member of the selectboard fails to attend at least 70 percent of the meetings in a 12-month period without permission, the selectboard may declare the position vacant. Provides for appointment of the town treasurer, listers or assessor, delinquent tax collector, cemetery commissioners, town agent and town grand juror and process for their selection. Provides a process for recall of elected officers and a conflict of interest requirement.

TRANSPORTATION

Transportation Issues (H.872, Act 167);
Ban on Use of Portable Electronic Devices and Overweight Permits (S.314)

Amends 9 V.S.A. §§ 3021(8), 3022; 19 V.S.A. §§ 318, 7(k), 10, 10c, 10e(c), 26, 42, 1402; 23 V.S.A. § 1006a; 24 V.S.A. §§ 5092, 4416; 27 V.S.A. § 1404(a); 30 V.S.A. § 248a; V.S.A. § 5; and 23 V.S.A. §§ 1095a, 1095b, 2502

VLCT Contact: Karen Horn

H.872, this year's $686 million transportation bill (T-bill) contains a number of provisions that will impact municipal transportation in Vermont. It allows the Secretary of Transportation, with the approval of the Secretary of Administration, to transfer Transportation Fund appropriations to repair selected State and Class 1 town highways that were damaged by the harsh winter weather. Town Highway State Aid, Structures, and Class 2 Roadway programs funds are protected from this provision. The Agency of Transportation (VTrans) may also transfer up to $3 million to pay for excess winter maintenance costs.

The budget includes level funding for local highway aid programs from FY14. Since FY12, local highway aid has increased from $57.45 million to $61.95 million. (In FY13, Town Highway Public Assistance Grants totaled $66.5 million, which included Federal Emergency Management Agency (FEMA) and federal highway reimbursements for damage caused by Tropical Storm Irene). The Lake Champlain Cleanup Phase I Plan will require a tremendous amount of work on local roads to increase their resistance to storm events and reduce stormwater runoff. The administration now expects to attach a price tag to those efforts sometime in November. One has to ask where the dollars to implement those mandated programs will come from.

The Transportation committees of both chambers, with input from VLCT, Vermont Local Roads, and VTrans staff, developed language on the contentious proposal to move Vermont Local Roads to VTrans. The T-bill requires that the not-for-profit Vermont Local Roads Program become a Local Technical Assistance Program (LTAP) operated by the agency's Vermont Transportation Training Center by June 30, 2015, though VTrans will continue to offer existing Vermont Local Roads Program grant agreements until at least April 15, 2015. This effectively makes Vermont Local Roads a part of VTrans.

The purpose of the agency's in-house LTAP is to provide "transportation-related technical assistance and training for municipalities, including workshops, technology demonstrations, computer training, distance learning, seminars, and field and classroom instruction," much as Vermont Local Roads has done in the past. The bill instructs VTrans to offer the same or similar courses that Vermont Local Roads offers, as long as there is a demand for them.

H.872 requires VTrans to provide the House and Senate Transportation committees an LTAP work plan for fiscal year 2016. Before submitting this plan and after consulting with VLCT and others, the agency is to consider all recommendations on how LTAP can provide municipal transportation-related technical assistance, support, and training. VTrans will do the same for each fiscal year's work plan submitted to the Federal Highway Administration, which funds the program.

Language in the T-bill allows VTrans to maintain detours on state or town highways during closures of state highways that last longer than 72 hours. This will make explicit in statute current VTrans practice. These sections also strike language in statute requiring VTrans to mark – in all instances – sections of highway that are closed to traffic. (The agency has neither the time nor the capacity to properly mark and sign roadways that are closed only briefly.) If VTrans maintains a detour onto a town highway, it will have to repair any damage to the highway caused by the detoured traffic.

For projects involving access to a state highway, applicants for municipal site plan approval must include a letter of intent from VTrans that confirms that the agency has reviewed the proposed site plan and is prepared to issue an 11-11 (access) permit. The letter of intent will itemize any conditions that the agency attaches to the permit.

H.872 also authorizes the conversion of 16 limited service positions to permanent positions on July 1, 2015. Nine of them are district tech positions that have been assisting Vermont municipalities on multiple fronts, including conforming to Road and Bridge Standards, Tropical Storm Irene recovery, and the anticipated Lake Champlain Total Maximum Daily Load (TMDL) standards.

S.314, the Miscellaneous Motor Vehicle Amendment Bill, also contains provisions that concern local governments, such as eliminating the permit for shipment of manufactured homes. Transporting manufactured homes will be subject to the general overweight, width, height, and length permits issued by the Commissioner of Motor Vehicles pursuant to 19 V.S.A. §1402. A single trip permit is valid for seven days.

S.314 contains the much heralded prohibition, in 23 V.S.A. § 1095b, on the use of portable electronic devices: "A person shall not use a portable electronic device while operating a moving motor vehicle on a highway in Vermont." The prohibition does not apply to (1) hands-free devices, (2) the activation or de-activation of hands-free use as long as the device is mounted in the vehicle, (4) use of the phone to contact emergency personnel, or (5) use of an ignition interlock device. Fines may be assessed for violation of this section. Two points will be assessed for a first offense in a designated work zone and five points for a second offense, but points will not be assessed for non-work zone violations. VTrans

must undertake an education campaign before the effective date of October 1, 2014. Commercial vehicle drivers are regulated by the Commercial Driver License Act instead of this statute.

Transportation Impact Fees (H.740, Act 145)
Amends 10 V.S.A. Chapter 151, Subchapter 5
VLCT Contact: Karen Horn

If a proposed transportation project is subject to Act 250, as part of the application review the local district commission must find that it "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed." To ensure that a development does not overburden the transportation system and that it meets traffic congestion standards, district commissions may require physical infrastructure improvements (such as turn lanes) or other measures (financial support of public transportation) to mitigate these impacts. Oftentimes, the obligation to mitigate a transportation impact falls on the project whose impact causes existing traffic to tip the balance toward unsafe conditions or congestion. This approach, called "last one in," may require a single developer to bear the entire burden – financial and otherwise – of installing mitigation measures that benefit not only the applicant's project but also existing and future developments as well as regional and statewide traffic.

H.740 attempts to address this issue. It establishes a system for equalizing the cost to mitigate the impacts of land use projects to the transportation system among all developers in an area. It allows a district commission or the Agency of Transportation (VTrans) to require the payment of a transportation impact fee to fund capital improvements that are necessary to mitigate the transportation impacts of a proposed development or subdivision. VTrans is tasked with reviewing any applications and make recommendations to the district commission about whether to require mitigation of the transportation impacts of the development.

The bill also enables the Secretary of Transportation to establish Transportation Improvement Districts (TIDs), defined as discrete geographic areas that include and would benefit from one or more capital transportation projects included in the agency's Capital Transportation Program and for which VTrans has established a transportation impact fee. In establishing a TID, VTrans must consult with each regional planning commission, affected municipality, as well as the general public in which the TID would be located, and prepare a transportation infrastructure plan for the capital transportation project that identifies the infrastructure needs of the proposed TID. There are provisions in the bill for public hearings being held upon the issuance of a proposal for a new TID, and H.740 describes a specific series of issues for consideration when establishing the boundaries of a TID, including existing or planned patterns of development set forth in municipal and regional plans, and the future land use projects that might be served by the capital transportation projects the TID will fund. Affected people may appeal the establishment of a TID or the transportation impact fee for a TID to the Civil Division of the Superior Court.

VTrans may assess a transportation impact fee to each land use project within a TID for which a state highway access permit is required under 19 V.S.A. § 1111 (known as an "11-1 permit"). H.740 establishes the method for developing formulas for assessing transportation impact fees, as well as how the fees collected are to be expended, maintained, and/or refunded by the state or a municipality.

A district commission may direct developers or applicants to pay an assessed transportation impact fee to a municipality if the impacts of the applicant's development or subdivision are limited to municipal highways and rights-of-way or other municipal transportation facilities. H.740 does not affect municipal authority to assess impact fees.

EMPLOYMENT AND EMPLOYEE BENEFITS

Workers' Compensation (S.220)
Amends 21 V.S.A §§ 632, 639, 640c, 641, 643a, 691a, 696, 697
VLCT Contact: Ken Canning

After a pitched battle and the dust had settled, 16 sections were either amended or added to the workers' compensation statutes (21 V.S.A. Chapter 9). Topics that affect local governments include:

- **Discontinuance of Workers' Compensation Benefits**. According to current statute, a carrier must continue indemnification benefits for seven days after notice of discontinuance is received by the employee and filing is received by the Commissioner of the Department of Labor (DOL). No extensions are allowed. The new statute allows the claimant to request a 14-day extension. This change has a sunset provision and will revert to the current statute in 2018. A study will determine if the change expedites the discontinuance process or affects workers' compensation rates, and will include statistics on the number of discontinuance filings and their outcomes.

- **Lien Recovery from Third Parties**. Sometimes a third party is responsible for injuries sustained by an employee. Workers' compensation statutes give the employee the first right of recovery against the responsible third party (as opposed to the Vermont League of Cities and Towns' Property and Casualty Intermunicipal Fund picking up the subrogation rights[2]) and allows carriers to place a lien against *any* recovery from the third party to recoup benefits already provided to the claimant. The new statute limits the lien recovery in cases where the recovery, after deducting attorneys' fees, is less than the full value of the claim. The new statute would restrict recovery to only that portion of the third party recovery that the court allocated for damages covered by the workers' compensation statues.

- **Police and Fire Academy Injury Study**. The new law requires a study of workers' compensation injuries that occur at the Robert H. Wood Criminal Justice and Fire Service Training Center. The study – to be conducted by the DOL and the Office of Risk Management, in consultation with VLCT and any other interested parties – will analyze frequency of injuries and preventive measures to avoid them, and recommend who should bear the financial burden of the resulting workers' compensation premiums.

- **Burial and Funeral Expenses** were increased from $5,000 to $10,000 and will be evaluated every two years.

- **Opioid Deterrence**. A committee will be formed to develop rules for best practices governing the prescription of opioids. A Unified Pain Management System Advisory Council will also be formed.

- **Return to Work**. Following a workplace accident, an employee should return to work as soon as possible but remain cognizant of the limitation imposed by his or her medical condition. The DOL Commissioner is to adopt rules to develop and implement cost-effective, early return to work programs.

[2] Subrogation is the right for an insurer to pursue a third party that caused an insurance loss to the insured. This is done as a means of recovering the amount of the claim paid to the insured for the loss.

- **Notification of Rights**. Any communication from an insurer or employer to a claimant must include a statement advising that he or she should contact the Workers' Compensation Division of the Vermont Department of Labor to determine if the claimant has any right to object or appeal as provided by law.

- **Fraud**. Any claims of fraud submitted to DOL requires action by the Commissioner of Labor. The commissioner will order the insurer to investigate and submit a report to the commissioner. The claimant will have 30 days to respond to the alleged fraud. The department is required to issue a determination on the fraud allegation and produce a companion study.

- **Independent Medical Examination**. The new statute requires that an independent medical examination take place within a two-hour driving radius of the residence of the injured employee. The Commissioner of Labor may permit an examination outside this limit in certain circumstances. The current statute had no such restriction.

- Additional sections regarding the posting of safety records, workplace safety ranking study, cancellation and non-renewal of insurance contracts, and attorneys' fees were also enacted.

Vermont's Minimum Wage (H.552)
Amends 21 V.S.A. § 384
VLCT Contact: Karen Horn

H.552 raises Vermont's minimum wage over the next several years:

- Beginning January 1, 2015, the minimum wage will be $9.15, up from the current minimum wage of $7.25;
- on January 1, 2016, the minimum wage increases to $9.60;
  on January 1, 2017, it increases to $10.00; and
- on January 1, 2018, it goes to $10.50.

Thereafter, on each January 1, the minimum wage will be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, whichever is smaller. (This is current language.)

The bill also provides that employees of hotels, motels, tourist places, and restaurants will be paid not less than half the minimum wage.

Notice of Potential Layoffs (H.758, Act 125)
Adds 21 V.S.A. Chapter 5, Subchapter 3A
VLCT Contact: Karen Horn

H.758, commonly referred to as the WARN (for Worker Adjustment and Retraining Notification) Act, establishes requirements for employers permanently shutting down a facility or closing a business or worksite that results in job losses for more than 50 employees at a single site over 90 days (defined as a mass layoff) or cessation of work not scheduled to resume within 90 days (defined as a building closing). An employer will have to provide 45 days notice of a pending mass layoff or closing or an employment loss to the Commissioner of Labor and to the Secretary of Commerce and Community Development. Thirty days' notice must be given to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agents.

Notice isn't required if the mass layoff, relocation, or employment loss is due to a disaster beyond the control of the employer, a strike or lockout, the planned completion of a project or seasonal nature of the job, or business circumstances not foreseen at the time the 45-day notice was required. It also isn't necessary in case of certain nursing home situations. In any one of those circumstances, the employer will have to provide as much notice as is practicable.

The employer will be penalized if it fails to notify the specified parties, and will be liable for severance pay for ten days and health care premiums that would have been covered under an employee benefit plan for one month. There are provisions in the bill to reduce those obligations if the employer takes certain actions.

The Commissioner of Labor will have to adopt rules to implement the provisions of the legislation. Information that the commissioner obtained as a result of the legislation will be deemed confidential, except for the number of layoffs, the job titles, and the workstation locations affected.

LEGISLATIVE SUMMERY STUDY COMMITTEES

Summer Study Committees and Reports to the Legislature that Impact Municipalities
VLCT Contact: Karen Horn

Electronic Control Devices (H.225). The Law Enforcement Advisory Board (LEAB) is to develop a statewide model policy on the use of electronic control devices (ECDs or Tasers) by January 1, 2015. The LEAB will also study whether officers with ECDs should be required to wear body cameras. The LEAB, the Criminal Justice Training Council, and the Department of Mental Health are to report to the legislature about law enforcement's adoption of the policy by January 15, 2015.

Permitting Telecommunications Facilities (H.297, S.220). The Public Service Department (PSD) must develop a guide for local officials and regional commissions describing how to navigate the Public Service Board process for certifying telecommunications facilities by September 1, 2014. The PSD will report to the legislature by October 1, 2015, on how the revised permitting process for facilities is working. The PSB must also define "good cause" and "substantial deference" – existing terms in the statute – in a board order. In doing so, the board must notify each municipal legislative body and planning commission, VLCT, the PSD, and whoever else it deems appropriate when a workshop will be held on the matter and how to comment or make recommendations on the proposal.

Section 16 of H.297 requires the Secretary of Administration, in consultation with the Commissioner of Public Service, Secretary of Transportation and VLCT, to report on the feasibility of a "Dig Once" Program. The report will include recommendations related to the installation of conduit and other infrastructure that would accommodate installation and connection of telecommunications lines in the highway during highway construction projects.

Shoreland Zoning (H.526). By January 15, 2016, the Secretary of Natural Resources must submit a report to the legislature that lists:

- the number of approved lake shoreland registrations and permits;
- the numbers of lots denied a registration or permit and the reasons for denial;
- an evaluation of the program including whether or not it has prevented degradation of water quality, helped to preserve shoreline stability, protected aquatic biota and habitat for wildlife, and mitigated sediment runoff;

- the amount of fees collected by the agency versus the cost of running the program;
- any recommendations for improvements in the program; and
- a list of the towns to which the program has been delegated.

Tiered Law Enforcement Certification (H.765). The Vermont Criminal Justice Training Council is to submit recommendations to the legislature describing how a law enforcement officer would transition to a different level of certification by January 15, 2015. As well, the council must submit to the legislature any recommended changes to the scope of practice for each level after consulting with the Vermont Police Association, the Chiefs of Police Association, the Vermont Constables Association, the Vermont Sheriffs' Association, and the Department of Public Safety.

The Capital Bill (H.863). Section 37 of the Capital Bill directs the judicial branch to evaluate the state's responsibility for maintaining county courthouses, including Americans with Disabilities Act compliance, and whether an emergency fund is necessary to construct or renovate a county court house project. A report is due to the legislature by January 15, 2015.

The Transportation Bill (H.872). Next year, the Vermont Local Roads program, which is a Local Technical Assistance program (LTAP), similar to others around the nation, will move to the Agency of Transportation (VTrans). VTrans is to provide the House and Senate Transportation committees a LTAP work plan for FY16. Before submitting this plan and after consulting with VLCT and others, the agency is to consider all recommendations on how LTAP can provide municipal transportation-related technical assistance, support, and training. VTrans will do the same for each fiscal year's work plan submitted to the Federal Highway Administration, which funds the program.

Miscellaneous Tax Bill (H.884). VLCT, the Vermont Assessors and Listers Association, and the Department of Taxes are to undertake a study of funding property tax appeals and make recommendations to the legislature on how to best ensure that the state assumes its proper role in defending property values in the appeals process since almost three-quarters of property taxes go to fund the state's education system.

State Budget (H.885). By November 15, 2014, the Division of Property Valuation and Review (PVR), the Agency of Natural Resources (ANR), and the Joint Fiscal Office, in consultation with VLCT, must issue a report regarding the formula used by PVR to calculate ANR's annual payment in lieu of taxes. The report is to include (1) recommended formulas to be used for valuation of ANR lands and ANR payment in lieu of taxes payments in the future, including whether ANR lands should be assessed at full appraised value; and (2) if a change is recommended, a proposal for implementing the new formula, including a schedule for transition.

At the September 2014 and 2015 meetings of the Joint Fiscal Committee, the Secretary of Administration is to report on cumulative expenditures in the prior fiscal year in the Public Assistance Program of Federal Emergency Management Agency (FEMA) funds and expended funds by state agencies or municipalities. The report must also include, if applicable, information on any audit findings that may financially impact the state.

The bill establishes a Special Investigations Unit Funding Study Committee to identify and recommend equitable and sustainable funding options for specialized investigative units. The committee will consult with interested parties, including VLCT, when considering possible funding sources for special investigative units.

H.885 creates a Vermont Enterprise Fund and allocates $5 million to it. The Governor, with the approval of the Emergency Board, can make the funds available to businesses in certain circumstances.

Elections (S.86). By January 15, 2015, the Secretary of State is to report to the legislature on the proposed process for certifying vote tabulators and for using them in recounts. The Secretary of State is to consider whether a town may recount ballots by hand in lieu of using vote tabulators. The report must include processes for conducting audits of elections and for obtaining electronic signatures for municipal meeting articles, nominating municipal officers, and primary petitions. It must also note the number of voters vote by mail and recommend if implementing statewide voting by mail is feasible.

Bias-Free Policing (S.184). The Criminal Justice Training Council – in consultation with stakeholders that include VLCT, the Human Rights Commission, and Migrant Justice – is to adopt a fair and impartial policing policy by January 1, 2016. After July 1, 2016, all policies will need to include at least the elements of the Criminal Justice Training Council policy. On October 15, 2014, and on every April 1 thereafter, the council will report to the legislature regarding who has adopted the required policies.

Solid Waste Management (S.208). The Agency of Natural Resources must convene a Solid Waste Infrastructure Advisory Committee to review current infrastructure in the state, evaluate the ability of existing solid waste management infrastructure to meet the universal recycling law's requirements and recommend development of new infrastructure. The committee will comprise three representatives of solid waste entities, one collector of solid waste, two haulers, one of whom serves a rural area, one recycler of food or leaf and yard residuals and one business representative subject to the law. The committee is to report to the legislature by January 15, 2015, with recommendations for infrastructure and options to raise revenue to pay for any needed infrastructure.

Holding Tanks (S.211). By January 15, 2015, the Agency of Natural Resources is directed to submit a report to the legislature on how to improve the process for municipal delegation of water supply and wastewater permitting. The recommendations are to include the possibility of partial delegation to a municipality of the program (for instance, connections to municipal wastewater systems) and a plan for outreach and education.

Economic Development (S.220). The Commissioner of Public Service and the Secretary of Commerce and Community Development are to conduct a study of how to reduce energy costs for Vermont businesses. The Agency of Commerce and Community Development and the Joint Fiscal Office are to conduct an economic impact analysis of the development projects in the Northeast Kingdom that includes an analysis of demographic and infrastructure impacts. The study is due to the legislature by December 1, 2014. The Natural Resources Board is to review its master plan policy and commence the process to adopt it as a rule in consultation with affected parties. The proposed rule is to provide for efficient master plan permitting and amendments for industrial parks.

S.220 also requires a study of workers' compensation injuries that occur at the Robert H. Wood Criminal Justice and Fire Service Training Center. The study – to be conducted by the Department of Labor and the Office of Risk Management, in consultation with VLCT and any other interested parties – will analyze frequency of injuries and preventive measures to avoid them, and recommend who should bear the financial burden of the resulting workers' compensation premiums. The report is due to the legislature by January 15, 2015.

Municipal Funding Priorities in FY 2015 Budget (in Millions) Approved May 10, 2015				
Budget Line Item	**FY14 Approved**	**FY15 Governor's Recommend**	**FY15 Approved**	**FY15 Approved $ Change from FY 14 Final**
PILOT – ANR Lands	$2.15	$2.85	$2.35	$0.20
PILOT – Corrections Facilities[1]	$0.04	$0.04	$0.04	$0.00
PILOT – Montpelier[1]	$0.18	$0.18	$0.18	$0.00
PILOT – State Buildings[1]	$5.80	$5.80	$5.80	$0.00
Current Use – Municipal	$13.48	$14.00	$14.00	$0.53
Homeowner Rebate – Municipal	$13.97	$15.32	$15.72	$1.75
Renter Rebate – Municipal	$2.65	$2.67	$2.67	$0.02
Special Investigative Units	$1.52	$1.67	$1.67	$0.16
General Fund Transfer to Education Fund	$288.92	$295.82	$295.82	$6.90
General Fund Support of Teachers' Retirement System	$71.78	$81.11	$72.85	$1.07
General Fund Support of Retired Teachers' Health Benefits			$8.25	$8.25
Town Bridge Grants[2]	$15.55	$15.56	$15.56	$0.00
Town Highway Aid Program	$25.98	$25.98	$25.98	$0.00
Town Highway Aid Program – Class 1 Supplemental	$0.13	$0.13	$0.13	$0.00
Town Highway Structures	$6.33	$6.33	$6.33	$0.00
Vt. Local Roads	$0.40	$0.40	$0.40	$0.00
State Aid for Federal Disasters	$3.60	$1.44	$1.44	($2.16)
State Aid for Nonfederal Disasters	$1.15	$1.15	$1.15	$0.00
Municipal Mitigation Grant Program	$1.55	$0.87	$0.87	($0.68)
Class 2 Highway Paving and Rehabilitation	$7.25	$7.25	$7.25	$0.00
Total Local Highway Aid	$61.95	$59.11	$59.11	($2.84)
TOTAL	$462.44	$478.58	$478.47	$16.03

1. Figures for all years are all from local options tax sharing and no state monies.
2. Includes state and federal aid only, no local match.