

VLCT NEWS



A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

July 2011

THE STATE OF THE TRUSTS

The three Trusts managed by VLCT are healthy and getting healthier, VLCT's Ken Canning, Director of Risk Management Services, reported to a gathering of VLCT employees recently. Each trust faces challenges in its particular market, but these challenges are manageable.

All three trusts currently carry strong net asset balances. All insurance trusts by

necessity must carry a net asset balance to guard against uncertainty. Unlike other industries' products, insurance coverage providers generally collect fixed premium contributions up front for a promise to pay claims later. The promise is certain, but the amount to be paid can only be estimated

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2011 COMPENSATION AND BENEFITS QUESTIONNAIRES: NEW FORMAT!

The Municipal Assistance Center has updated the method by which we collect Compensation and Benefits information to two electronic formats: a Microsoft Excel workbook, and a Survey Monkey questionnaire. You will no longer have to fill out the paper surveys that we mailed you in the past. (You're welcome!)

We hope that you find this new system user-friendly, and we thank you for taking the time to fill out these surveys. We also look forward to the increased efficiency of data collection that these formats will afford us.

Please feel free to contact Elizabeth Harrington, Research and Information Assistant, at 802-229-9111, extension 1961, or eharrington@vlct.org for further information.

Table 1: 2010 Year-End Status of the VLCT-Managed Trusts

Metric	PACIF	UI Trust	Health Trust
Number of Members	330	210	193
Revenues	\$18,000,000	\$900,000	\$28,000,000
Claims Paid	\$9,000,000	\$750,000	\$24,000,000
Expenses	\$6,500,000	\$160,000	\$4,000,000
Net Assets (aka Surplus)	\$24,000,000	\$1,000,000	\$2,600,000
Returned to Members	\$750,000	—	—

MPGs AVAILABLE FOR 2012

Municipal Planning Grants (MPGs), which fund planning and implementation projects that revitalize communities and guide future development, are available for 2012. MPG funding for FY12 was allocated at approximately the same \$400,000 level as last year. A cash match is now required for grant requests between \$8,000-\$15,000. Matching funds are not required for grant requests of \$8,000 or less. Please review the Program Description at <http://www.dhca.state.vt.us/Planning/GMS/OnlineApplication2012.htm> for details. Priority will be given to projects that further smart growth principles and town plan projects that address the new economic development element as passed by the legislature this year.

Applications must be submitted online, and the application website will open later this summer. In the meantime, applicants should meet with appropriate boards and consultants and develop their work plan and budget using the Sample Application on the website as a reference.

Application dates:

July/August 2011: Opening of online application website will be announced.

September 30: Application due date.

Late November: Grant decisions announced.

For more information about the MPG program, please email Wendy.Tudor@state.vt.us or call 802-828-5249 or (800)622-4553.

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STATE OF THE TRUSTS

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because insurance claims cannot be known in advance and are subject to variation. Net assets are to a trust what a savings account is to a homeowner: something to fall back on in case unforeseen expenses arise. A high net asset value makes a trust more certain, more secure, and more stable.

Every year, with the assistance of a professional consulting actuary, we predict what amount of losses each trust is likely to incur. These are educated and informed predictions, but they still involve quite a bit of uncertainty. The guiding principle of each trust is to keep it on sound financial footing so it can continue to serve all members reliably. Table 1 (previous page) summarizes the financial status of each trust as of the end of 2010.

The Unemployment Insurance Trust

The Unemployment Insurance Trust is the oldest of VLCT's insurance programs. Apparently, the worst of the recent economic downturn is behind us and the Unemployment Insurance Trust is back on stable footing. Due to the prudent decision of the UI Trust Board of Directors to maintain adequate net assets (surplus), the Trust has weathered the storm without having to assess the membership or borrow funds to meet its obligations as the state program needed to do. Unemployment claims in 2010 were 9 percent lower than in 2009, and first quarter 2011 claims are 15 percent below those for the first quarter of 2010. The challenge facing the UI Trust is rising unemployment. The solution is to rebuild and maintain adequate net assets, which we can control, and a stable

economy, which we cannot. The current pricing methodology of the UI Trust will facilitate the rebuilding of our surplus position.

The Property And Casualty Intermunicipal Fund (PACIF)

Of the three VLCT trusts, PACIF holds the most net assets, but it also sustains the highest risk of fluctuations for a number of reasons. Assuring adequate net assets is critical to protect against:

- loss variability
- adverse loss development
- incurred but not reported (IBNR) claims
- investment losses
- inflation
- reinsurer insolvency or coverage disputes

On the positive side, portions of net assets are also utilized to:

- return funds to the membership as contribution credits
- fund grant and scholarship programs
- stabilize rates
- bolster the confidence of reinsurers and prospective members
- have higher self-insured retention
- comply with BISHCA regulations

PACIF was formed when the commercial insurance market all but abandoned Vermont municipalities by either not offering them liability coverage at all or offering it at very high rates. VLCT members asked the

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VERMONT STATE INFRASTRUCTURE BANK LOAN FUNDS ARE AVAILABLE THROUGH VEDA

Jointly operated by VEDA and VTrans, the Vermont State Infrastructure Bank has low-interest loan funds available for transportation-related projects that enhance economic opportunity and help create jobs. Municipalities, RDCs, and certain private sector companies may qualify for financing to construct or reconstruct roads and bridges, make safety improvements such as highway signing and pavement marking, make operational improvements such as traffic control and signal systems, and construct rail freight and intermodal facilities.



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LEGAL AND REGULATORY NOTES



HIGHWAY RECLASSIFICATION PROCESS; MUNICIPAL INDEMNITY AGREEMENT; WARRANTLESS POLIC SEARCH

Vermont Supreme Court Affirms Local Control Over Highway Reclassification Process

In October 2008, the Dorset selectboard provided notice that it intended to consider reclassifying a section of Kirby Hollow Road. The selectboard made a site visit, held a public meeting, and took testimony from interested parties. Thomas and Lisa Ketchum, owners of the only residence on the road, attended the hearing and spoke against reclassification. The road foreman supported reclassification and testified that the road was dangerous to maintain and plow because it is narrow and steep. Since the road served only one seasonal residence and since the cost to improve the road was prohibitive, the selectboard concluded that continuing summer maintenance and winter plowing did not serve the public good of the Town. In De-

ember 2008, the selectboard issued a decision reclassifying the road.

The Ketchums appealed the selectboard's decision to Bennington County Superior Court, hoping to provide new evidence and arguments against the reclassification. Judge John Wesley ruled that he would not consider any of the Ketchum's new evidence and that he would render a decision solely on the record made before the Dorset selectboard without additional evidence. Ultimately, Judge Wesley found that the record of the Dorset selectboard's reclassification meeting was "more than adequate to uphold the [selectboard's] determination against any charge of the arbitrary exercise of authority," and he affirmed their reclassification decision.

The Ketchums then appealed Judge Wesley's decision to the Vermont Supreme Court, arguing, among other things, they were entitled to a *de novo* appeal under 19 V.S.A.

§740. The Supreme Court disagreed with the Ketchums. While 19 V.S.A §740 affords a *de novo* appeal of a town's decision concerning laying out, altering, or re-surveying a highway, there is nothing in the statute granting a *de novo* appeal to a party contesting reclassification of a town highway. Instead, an appeal of a reclassification decision must be brought under Rule 75 of the Vermont Rules of Civil Procedure, which typically does not afford the parties an opportunity to present new evidence or make new arguments. In a Rule 75 appeal, the Superior Court "simply determines whether there is enough evidence to support the town's decision and whether it followed the proper procedure." *Ketchum et al. v. Town of Dorset*, 2011 Vt 49.

The *Ketchum* decision is an important one for Vermont selectboards because it has both positive and negative aspects. On the positive

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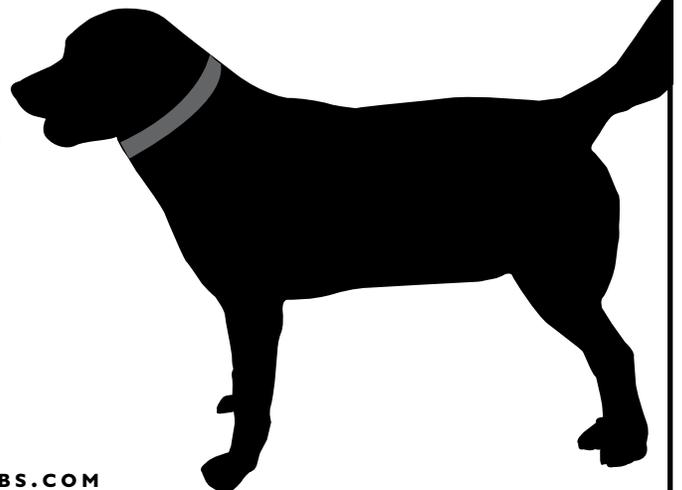
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LEGAL AND REG.

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side, the decision supports this important local decision-making process and may result in fewer appeals of local reclassification decisions and the potential savings of municipal attorneys' fees. However, the decision also raises the bar for selectboards, because if their record of the reclassification proceeding is incomplete, the Superior Court may vacate the decision, which can result in additional hearings, delay, and increased expense for the town and its residents.

In the future, selectboards will need to keep in mind that generating an adequate record to support a highway reclassification decision will be nearly as important as the decision itself. First and foremost, reclassification hearings should be recorded and se-

lectboard members and participating parties should speak clearly for the recording device. The chair should manage the testimony by requiring speakers to introduce themselves and preventing participants from talking over each other. Documents and written evidence should be marked and clearly referred to when testimony is taken. The board's decision must be in writing and include findings of facts and a conclusion as to why the public good, necessity, and convenience of the inhabitants of the municipality requires (or does not require) reclassification. 19 V.S.A. §710. Findings must be clear and be supported by the record, and the conclusions must be based on the findings.

A copy of the decision is available at <http://info.libraries.vermont.gov/supct/current/eo2010-165.html>

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

Vermont Supreme Court Upholds Municipal Indemnity Agreement

In July 2005, the City of Rutland and Vermont Swim Association (VSA) executed a written agreement that granted VSA use of Whites Pool in Rutland for VSA's annual swim meet. The agreement between the City and VSA included an indemnification clause stating that VSA "agree[d] to defend, indemnify and hold harmless Rutland ... from all claims for bodily injury or property damage arising from or out of the presence of [VSA], including its ... guests and others present because of the event or [VSA's] activities in or about Whites Park." The agreement also required VSA to procure liability insurance for the meet and to name the City as an additional insured entity. *Southwick v. City of Rutland*, 2011 VT 53.

During the swim meet, Addie Southwick fell from a piece of playground equipment in Whites Park and sustained injury. Southwick's parents brought suit against the City, alleging that the City had negligently installed and maintained the equipment. After the City asserted its claim against VSA for indemnity and the Southwicks added a claim against VSA, the City moved for summary judgment against VSA on two grounds: for enforcement of the indemnity clause in the agreement, and for breach of contract for failing to procure insurance naming the City as an additional insured, as required by the agreement. Rutland Superior Court granted the City summary judgment on its indemnity claim and on its breach of contract claim against VSA. Prior to trial, the City reached a settlement agreement with the Southwicks, and the Superior Court dismissed with prejudice the Southwicks' claims against the City and VSA. Based on the summary judgment ruling for the City's indemnity claim against VSA, the Superior Court entered judgment for the City against VSA in the amount of \$700,000.

VSA appealed to the Vermont Supreme Court, arguing that the Superior Court incorrectly interpreted and applied the indemnity provision contained in the agreement between the City and VSA. The indemnification clause provided:

Permittee [VSA] hereby agrees to defend, indemnify and hold harmless Rutland, ... its officers, trustees, agents, and employees, from all claims for bodily injury or property damage arising from or out of the presence of Permittee, including its employees, agents, representatives, guests and others present because of the event or Permittee's activities in or

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ON-SITE WORKSHOPS LET THE VLCT MAC STAFF TRAVEL TO YOU!

Since 2005, VLCT Municipal Assistance Center staff have been conducting customized on-site workshops in municipal offices across the state.

Each workshop costs \$800, except VLCT PACIF members receive a reduced rate of \$400. In addition to the program offerings listed below, MAC can, upon request, develop a custom workshop for your specific needs. Please contact Abby Friedman to discuss a possible workshop at (800) 649-7515 or afriedman@vlct.org.

ON-SITE WORKSHOP PROGRAM OFFERINGS:

- Improving the Relationship Between Independent Officers and the Selectboard
- Roles and Responsibilities of Town Officers
- Conducting Effective Selectboard Meetings
- Conducting Effective Tax Appeal Grievances and Hearings
- A Field Guide to the Open Meeting Law and Executive Session
- How to Write a Good Hearing Decision
- The Role of the Manager and the Role of the Selectboard
- An Orientation to Local Government for New Selectboard Members
- Leadership and Management Roles of the Selectboard
- Developing and Managing the Town Budget
- Financial Reporting and Management
- Inter-local Agreements
- Municipal Charter Adoption and Amendment

PICK FROM
THESE TOPICS
OR DEVELOP
YOUR OWN!



ASK THE LEAGUE

TOWN HIGHWAY WATER RUN-OFF DAMAGE; MUNICIPAL RESPONSIBILITY FOR FAILED DRIVEWAY CULVERTS

Is a town liable for damage to private property resulting from water that runs off a town highway?

Generally, the principle of sovereign immunity will protect a town from tort liability (e.g., negligence, trespass, and nuisance) in cases where it is performing governmental, as opposed to proprietary, functions. Such governmental functions include building and maintaining town highways and their accompanying drainage systems. While towns are immune from liability when property damage is caused by a surface water drainage system installed to protect the town's roads, an exception exists when a town fails to repair a culvert necessary to allow a natural stream to pass under

a town highway after receiving notice that the culvert is not functioning as intended. If a town does not repair a culvert constructed for a natural stream after receiving notice that the culvert is blocked, sovereign immunity will not bar recovery for property damage caused by the town's failure to remedy the situation. *Graham v. Town of Duxbury*, 173 Vt. 498 (2001).

If a driveway culvert fails, is the municipality responsible for replacing the culvert?

Typically, no. Title 19 provides municipalities with the authority to control – through issuance of permits – construction or development projects that occur in, or af-

fect, the highway right of way. Placement of a driveway culvert within the town highway right of way requires a permit from the selectboard. 19 V.S.A. § 1111(b). While this statute does not address the issue of the responsibility for repairing and replacing driveway culverts, it follows that if a property owner has placed a culvert in the town's highway right of way, then the owner would be responsible for repairing and replacing the culvert, unless the town has made provision to take ownership or responsibility for it.

A property owner's responsibility for driveway culvert maintenance and repair should be clearly articulated in the town's highway access, curb cut, or culvert policy, as well as in the highway access permits granted by the selectboard. When a municipality permits an applicant to install a culvert within the highway right of way and the municipality has no maintenance obligations, the municipality should be careful to refrain from doing any acts of maintenance and repair, as those acts could be interpreted as acts of acceptance, which in turn could deem the culvert the town's responsibility. The Municipal Assistance Center has sample municipal driveway access and culvert policies. Contact us if you would like a copy of one.

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

NEED A WRITTEN LEGAL OPINION?

LOOKING FOR EXPERTISE DRAFTING A NEW ORDINANCE?

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SAMPLE PROJECTS:

- Water & Sewer Ordinances
- Zoning Bylaws
- Municipal Charter Amendments
- Highway Ordinances

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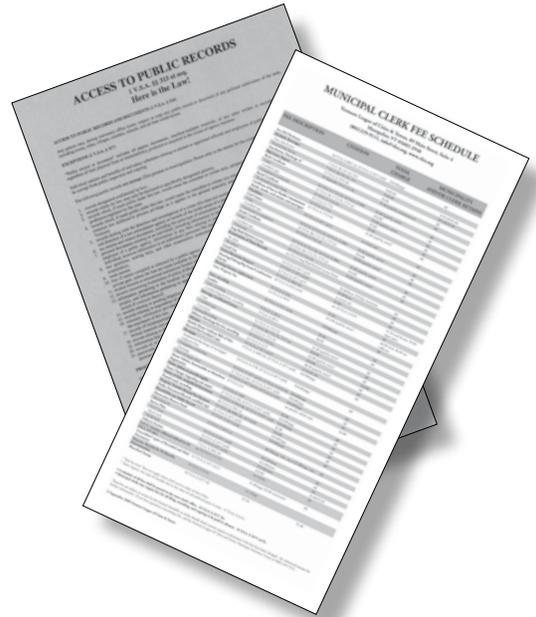
POSTERS: ARE YOURS UP TO DATE?

Review the list below to be sure you have the most recent versions. Note: The 2011 legislative session resulted in changes to only the Access to Public Records Law.

Access to Public Records	2011
Open Meeting Law.....	2009
Municipal Clerk Fee Schedule	September 2009
Municipal Dog and Wolf-Hybrid Licenses and Fees	September 2010
Workplace Poster Packet	2011

Questions? Call 800-649-7915 or email info@vlct.org.

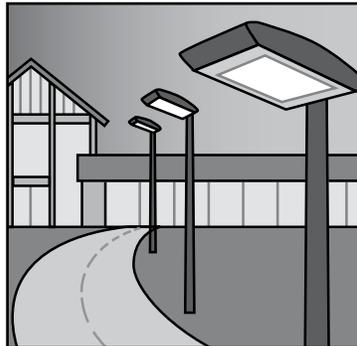
Coming soon: the 2011-2012 Municipal Calendar.



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TRIVIA

They were elected to guard the town's morals and keep an eye on its small boys as well as its loafers. They could halt suspicious travelers and arrest them without a warrant. These "officials" and the constable constituted a crude local police force. Who were they? Only Vernon's Carol Hammond, a name we've certainly noted before, knew they were called **tythingmen**. (Historical footnote: English villages were once divided into units of ten families, called tythings. Within these units, one person, the tythingman, was responsible for keeping order in his section of the village. In time, tythings were combined into hundreds – each hundred had ten tythings – which in turn were combined to form shires. The shire was policed by a shire-reeve, or sheriff.)

Okay, this will be the last historical trivia question for a while – till next month, anyway: **What was the first town created by the independent Republic of Vermont (1771-1791)?**

Email your answer to dgunn@vlct.org. Then prepare to feast your eyes on the distinctively diverse August-September issue for the answer.



WHAT'S THE BUZZ ABOUT CARRIER CHOICE?

The VLCT Health Trust recently began offering members Carrier Choice. Primarily, Health Trust members may now buy health insurance from commercial carriers in Vermont, paying marketplace rates while getting more for their money than when buying from other sources. Moreover, coverage can now be aligned with the municipality's fiscal year if the member so desires.

"Carrier choice not only allows us to offer competitive rates immediately, it gives members far more options for coverage," said David Sichel, Deputy Director, Risk Management Services and VLCT's legislative liaison on health care issues. "It also positions the Health Trust well for the changes in the health insurance landscape that will take effect in the next few years as a result of federal and state reform."

While the Health Trust now helps its members purchase their health insurance from a variety of carriers, it continues to provide the additional services that have always set it apart.

- Our wellness services – workplace health screenings, flu shot clinics, and

workplace fitness and weight control challenges – will still be in the Health Trust mix, with Senior Health Promotion Consultant Heidi Joyce promoting everyone's health.

- Health Advocate will still be available for employers and subscribers to resolve health coverage and resource questions, and our Employee Assistance Program (EAP) will be on call for stress management, family problems, addiction issues, and a host of other concerns.
- Dental insurance, vision coverage, life insurance, disability insurance, long-term care insurance, and free COBRA administration will all still be available regardless of your plan choice.
- The same VLCT employees are on hand to serve members – the Member Relations team of Larry Smith, Tanya Chambers, and Pam VanDeursen will be plan advisors and educators, and Kelley Avery will administer our programs as capably as ever.

The Trust remains a member-owned not-for-profit association with members' best interests at heart, a fact that has many ramifications. The commissions that other brokers rely on for income instead are used to pay for the wellness and other services that we offer at no additional cost. As your representatives, we will do our best to advance your interests with each of the carriers. As your insurance advisors, we'll make it easy for you to compare your current plan to the new options and determine the plan that best balances employee needs with budgetary constraints.

We are so excited about this development that we are using a catchphrase to help us introduce it: **Look again. We're better than ever.** And VLCT members that left the Health Trust in recent years for purely financial reasons are indeed looking again and expressing interest in returning to get both the League's added value programs and services in combination with competitive health insurance pricing and flexibility as to plan design and coverage year. What isn't obvious is

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SAFETY EQUIPMENT GRANTS GAIN POPULARITY

In the second year of the PACIF Equipment Grant program, the idea is really catching on that members *can* obtain big-ticket items that significantly improve employee safety.

Last autumn, the PACIF Board of Directors approved setting aside \$200,000 of the fund's surplus for the 2011 PACIF Grant program (double the amount allocated when the program was new in 2010). Members

can apply for 50 percent, up to \$5,000, of the money required to buy durable equipment designed to improve worker and/or workplace safety or reduce municipal property damage or theft. Applications must include explanations of need and specific price quotes from credible vendors. Awards are determined by a committee composed of VLCT's Loss Control staff and managers. The year is divided into two application periods, and so many PACIF members submitted meritorious applications in the spring that a record \$142,686 has already been granted this year. The remaining \$57,314

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Examples of Items Approved for 2011 PACIF Equipment Grants

More types of equipment were deemed appropriate for grants in 2011 than in 2010. These examples are in addition to the types listed in the December 2010 VLCT News.

For Police Departments

- Jackets which are highly visible in traffic and impervious to body fluids and bloodborne pathogens
- High-visibility raincoats

For Fire Departments

- High-intensity truck-mounted strobe lights that control traffic signals while traveling to a fire
- A powered device that empties and rolls large-diameter water hoses (to both prevent back injuries and allow more firefighters to fight the fire)
- Back-up camera systems for on fire trucks (to improve the driver's rear view)
- Cold- and ice-water rescue suit
- Rapid Intervention Team (RIT) Pak portable air supply (to help save a downed firefighter)

For Public Works Departments

- A gas-powered wet saw to cut asbestos cement water pipe according to OSHA requirements
- A portable light tower to illuminate utility trenches during nighttime work
- Traffic safety signs, cones, and barrels
- A portable jackhammer (to avoid the use of a bucket loader for installing posts)

For Municipal Offices

- Grounding of existing electrical circuits and installation of additional grounded circuits (to bring wiring to code and remove the need to "daisy-chain" extension cords and power strips)

Look! Six new courses at PACIF Online University!

- Sexual Harassment Prevention for Supervisors
- Accident Incident Investigation
- Effective Law Enforcement Communication*
- Occupational Disease Prevention for Firefighters*
- Arc Flash Awareness**
- New Employee Orientation‡

* In the Police, Fire, EMS curriculum

** In the Public Works and Utilities curricula

‡ Coming soon to all curricula

Visit www.vlct.org → Insurance & Risk Services → Programs → PACIF → Online University.

MENT SERVICES

EQUIPMENT GRANT

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is available for the applications that are received before August 31, 2011.

“This program does a great job of helping PACIF meet its goal of decreasing claims,” said Fred Satink, Loss Control Specialist, Risk Management Services. “It is truly a win-win system, because municipalities can double their purchasing power to acquire equipment that reduces their risk of injury or property damage, and PACIF saves money in the long run by paying fewer or smaller claims.”

In the first part of 2011, 55 of 57 applications met requirements and received grants, the average grant amount per municipality was \$,2594, and the total value of equipment to be bought with help from a PACIF grant was \$318,983. In 2010, a total of \$81,509 was paid to 45 applicants for an average grant of \$1811.31 toward total proposed purchases of \$377,564. Even though some members that won grants ended up not using them, the municipalities that made their purchases are presumably much safer for doing so. Look for a future article featuring some of their stories.

Ione L. Minot, Contributing Writer



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2011 RMS CALENDAR

VLCT Trainings for Compliance with US Department of Transportation (DOT) CDL Requirements. 8:30 a.m. to noon, Wednesdays in August and September at the locations listed below. Each class is free for employees of PACIF members and \$50 for others. To register, please call Shawna O’Neill at 802-229-9111, ext. 1935.

- **Designated Employer Representative (DER) Training** reviews the federal DOT drug and alcohol testing responsibilities of employers and the role of DERs consistent with 49 CFR Part 40. Louise LaPoint of ParaMed Plus will teach new and current DERs how to keep their employer in compliance with DOT regulations.

Wednesday, August 3, Bellows Falls Fire Department, 170 Rockingham Street, Bellows Falls

Wednesday, August 10, Killington Town Office, 2706 River Road, Killington

Wednesday, August 17, Lyndon Public Safety Building, 316 Main Street, Lyndonville

Wednesday, August 24, Shelburne Town Offices, 5420 Shelburne Road, Shelburne

- **Reasonable Suspicion Testing (RST) Training** fulfills the DOT 49 CFR §382.603 requirement that all persons designated to supervise CDL drivers must receive at least “60 minutes of training on alcohol misuse and 60 minutes on controlled substance use.” This class includes information on how alcohol and controlled substances affect the human body and teaches attendees several practical and positive ways to approach drivers whom they suspect to be under the influence.

Wednesday, September 7, Bellows Falls Fire Department, 170 Rockingham Street, Bellows Falls

Wednesday, September 14, Killington Town Office, 2706 River Road, Killington

Wednesday, September 21, Lyndon Public Safety Building, 316 Main Street, Lyndonville

Wednesday, September 28, Shelburne Town Offices, 5420 Shelburne Road, Shelburne

Forklift Train the Trainer Class. Tuesday, July 26, 8:30 a.m. to 3:00 p.m., Healthy Living Market, 222 Dorset Street, South Burlington. Did you know that VOSHA/OSHA requires all Fork Truck operators to be trained by a “qualified person”? This training is designed for powered lift truck operators in manufacturing, construction and retail. A complete overview of 29 CFR 1910.178 (V)OSHA standards will be followed with a discussion on load balance, characteristics and truck components, engineering design, fueling, and fundamentals of operation, with a hands-on forklift safety inspection. This course is primarily a train-the-trainer seminar and can be used to fulfill the classroom component of (V)OSHA requirements. Valuable handouts included. \$125 per person. To register, contact Bruce Gray at Landrock@verizon.net or 518-562-1462.

RCRA: EPA Training for Hazardous Waste Generators. Tuesday, August 9, 8:00 a.m. to 5:00 p.m., Bickford’s Family Restaurant, Routes 5 and 9, Bennington. Offered by Cerberus EHS. \$185 per person includes lunch, manual, and certificate of completion. For information and to register, call 802-321-9005 or email vermont8@hotmail.com.

Deadline to apply for a 2011 PACIF Safety Equipment Grant. August 31, 2011. Find information and application form at www.vlct.org/insuranceriskservices/programs/equipmentgrants/.

SAVE THE DATE: the Vermont Safety and Health Council’s 2011 Fall EXPO will be on October 12 at the Killington Grand Hotel.

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Member FDIC





PARTNERS IN OFFERING CARRIER CHOICE

The VLCT Health Trust Board of Directors recently voted to shift from aligning the Health Trust with a single carrier and a calendar-year coverage schedule to allowing members to choose coverage from commercial carriers in the Vermont health insurance marketplace and to use any coverage period they choose. To enact Carrier Choice, the Health Trust has partnered with Hickok & Boardman Group Benefits (HBGB) of South Burlington.

As Vermont's largest employee benefits firm, HBGB has the depth of resources and expertise to help municipal employers smoothly navigate the complex world of employee benefits.

- Because of its size and its knowledge of the Vermont insurance marketplace, HBGB can get the most out of local and national insurance carriers to obtain the best possible pricing, plan design, and funding mechanisms for Health Trust members.
- HBGB can provide clear, concise analysis to facilitate well informed decision making.
- HBGB conducts an annual Vermont Employee Benefits Survey. All municipalities that participate in this survey will receive a free copy of the results.
- From the Benefits Survey, HBGB can create a customized benchmark report to help requesting members understand Vermont marketplace trends and assess

the competitiveness of their employee benefits.

- Members with 50 or more covered employees can ask to have HBGB set up a benefits intranet site so employees can log on to research their particular coverage and benefits.

The VLCT Health Trust works openly, honestly, and fairly year after year and is partnering with a brokerage that supports the VLCT mission of serving and strengthening Vermont local governments. We believe this partnership will provide our members with an improved insurance purchasing experience. You will receive the highest

level of service from VLCT's dedicated staff, supported by the best possible marketplace guidance and options provided by HBGB. In addition to cost-effective plan options and municipally focused customer service, Health Trust members will receive an additional package of products and services that include wellness services, COBRA administration, coverage advocacy for subscribers, and employee benefits benchmarking — at no additional cost.

If you have questions, please call your Member Relations Representative — Larry Smith, Tanya Chambers, or Pam VanDeursen — directly or through 800-649-7915.

Ione L. Minot, Contributing Writer

WHAT'S THE BUZZ

(continued from page 8)

that carrier choice will also help Health Trust members move seamlessly toward health reform.

VLCT Member Relations Representatives are already working with League members to implement carrier choice. Larry Smith, Tanya Chambers, and Pam VanDeursen are dedicated to finding the best possible configuration for your health and benefits coverage, so please use them to your advantage. If you have questions in the meantime, feel free to call 800-649-7915. We are ready to put our expertise to work immediately for you and your employees.

Ione L. Minot, Contributing Writer

HARASSMENT

Discrimination

Wrongful Termination

Employment-related lawsuits occur even in Vermont!

PACIF members now have FREE access to the newest release of HR Made Simple®, a powerful set of online Human Resource Management tools with over 9,000 resources updated daily.

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LEGAL AND REG.

(continued from page 5)

about Whites Park, including the entrances, lobbies and exits thereof, the sidewalks, streets and approaches adjoining the property or any portion of the property used by Permittee or any of the above stated. Permittee shall be responsible for all costs of defense, including reasonable attorney's fees, and shall pay all fines or recoveries against Rutland. Permittee acknowledges that as a condition precedent to the execution of this Agreement by Rutland, Permittee agrees that it shall have no cause of action against Rutland for any damage, injury or loss to person or property, from cause [sic] whatsoever, except that which may result from the willful acts of Rutland.

The Supreme Court found that this indemnification clause allocated responsibility to VSA for any negligence claims directly arising out of VSA's event at the City's park and pool facility and barred actions by VSA against the City, unless the City committed a willful act. The Supreme Court noted that "The intent of the parties could not be more apparent – the City was willing to allow VSA to use Whites Park as long as it was completely insulated from liability due to VSA's

use. Indeed, the agreement allocated responsibility to VSA to purchase insurance to cover such losses." The language of the indemnity clause was unambiguous and "deliberately broad enough to cover all injuries and damages that might occur – as a result of either party's negligence – to those present because of VSA's swim meet in Whites Park without being so broad as to lose meaning altogether."

The *Southwick* decision should have far-reaching benefits for municipalities in the area of contractual risk transfer. Contractual risk transfer is the concept of shifting the risk of legal liability to the party to a contract that is better able to control and manage that risk. In this case, as sponsor and overseer of the swim meet, VSA was in a better position than the City to manage the liability risks associated with the swim meet. With this indemnification and hold harmless clause in the parties' contract, the City transferred responsibility to VSA for negligent acts, errors, and omissions and required VSA to reimburse the City for damages and costs arising out of VSA's presence at Whites Park, regardless of which party was at fault. Municipalities that make their grounds, buildings, and facilities available to outside groups should make appropriate provision for risk transfer through written contracts and lease arrangements.

A copy of the decision is available at <http://info.libraries.vermont.gov/supct/current/op2010-128.html>.

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

U.S. Supreme Court Upholds Warrantless Police Search

In a decision on the case *Kentucky v. King*, No. 09-1272 issued just last month, the U.S. Supreme Court addressed the question of under what circumstances police officers may make a warrantless probable cause entry into a home to prevent the destruction of evidence.

The Fourth Amendment to the U.S. Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, support by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." From this text comes the basic principle of Fourth Amendment law that warrantless searches and seizures of homes are presumptively unreasonable. This presumption, however, may be overcome when "the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." The U.S. Supreme Court has recognized several of these "exigent circumstances" justifying a warrantless search of a home. They include the "emergency aid" exception (rendering emergency assistance to an injured person or preventing an imminent injury); pursuing a fleeing suspect; and preventing the imminent destruction of evidence. In applying this rule over the years, many lower courts have devised their own exception to the exception called the "police-created exigency" doctrine. Under this rule – of which there are five different iterations – police officers are prohibited from justifying warrantless searches on the basis of these exigencies when the circumstances supporting them are impermissibly created by the police.

The facts of this case originate in Lexington, Kentucky, where police officers set up a drug deal. An undercover police officer who observed the deal take place radioed uniformed officers that the suspect was heading towards the breezeway of a nearby apartment complex. The officers arrived on the scene in time to hear one of the two doors at the end of the breezeway close. The question

(continued on next page)



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LEGAL AND REG.

(continued from previous page)

was which one? The officers smelled marijuana smoke coming from the apartment on the left, knocked “as loud as they could,” and announced their presence. Sounds emanating from inside led them to suspect that evidence was being destroyed. The officers announced that they were entering, which they did by kicking in the door. Inside, the officers found Hollis King, his girlfriend, and a guest who was smoking marijuana. They also found powder and crack cocaine, cash, and drug paraphernalia. But the officers did *not* find the suspected drug dealer who was the target of their investigation. (He was in the apartment on the right.)

The Kentucky Supreme Court held that the police in this case created the exigency because it was reasonably foreseeable that the occupants of the apartment would destroy evidence when the police knocked and announced their presence.

Justice Alito, writing for the 8-1 Court majority, disagreed with the Kentucky Supreme Court, reasoning instead that a warrantless entry to prevent the destruction of evidence is allowed so long as the police do not gain entry by means of violating or threatening to violate the Fourth Amendment by, for example, threatening to break down the door if it wasn't opened. In this respect, Justice Alito noted, police officers without warrants stand on the same footing as any private citizen. It doesn't matter if the person knocking on the door is a police officer or private citizen – the occupant has no obligation to open the door or to speak to either. On the other hand, “Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent-circumstances search that may ensue.”

The decision is a favorable one for the law enforcement community as courts will continue to look to whether police officers have an objectively reasonable basis for believing that evidence is going to be destroyed rather than their subjective intent to determine whether a warrantless entry is reasonable. It is worth noting that in conducting this analysis, the Court recognizes the “fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving,” resulting in sometimes the wrong door being chosen.

*Garrett Baxter, Staff Attorney
VLCT Municipal Assistance Center*

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Lake Champlain Basin Wetland Restoration Plan



City Center, South Burlington



Classifieds

Please visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads. You may also submit your ad via an email link on this page of the site.

VLCT NEWS ADVERTISING POLICY

The *VLCT News* welcomes classified advertisements from municipal entities, public agencies, businesses and individuals. This service is free for VLCT members (regular, contributing and associate); the non-member rate is \$41 per ad.

Classified ads are generally limited to 150 words and run for one issue. These ads are also placed on the VLCT website for up to one month.

The *VLCT News* is published eleven times per year (the August and September issues are combined) and reaches readers during the first week of the month.

The deadline for submitting advertisements is the first Friday of the month prior to the issue date. Space is sometimes available for late additions; please feel free to check with the editor for availability.

For more information on placing classified ads in the *VLCT News*, contact classifieds@vlct.org. For details on display advertising, email vlctnews@vlct.org. Information on ad requirements may also be downloaded at www.vlct.org/aboutvlct/vlctnewsletter/advertisinginformation/.

HELP WANTED

Water Plant Operator. The Vergennes Pantton Water District is seeking a Water Plant Operator to maintain records, an-

alyze water quality through testing, adjust chemical dosages, handle chemicals and follow safety procedures associated with their use. Daily duties include general maintenance of water plant equipment such as pumps, generator, monitoring and chemical feed equipment. Some basic electrical knowledge is required. Other job duties include reading meters and maintaining the water distribution system including hydrants and valves. The operator must be able to perform strenuous activities. On-call duty is required on a rotating schedule. The operator must live close enough to respond to alarm calls within 20 minutes. Operator must have or be able to pass the State certification for Class IV water operator and have a valid driver's license. Competitive pay and benefits package. To apply, please submit cover letter, resume, 3 references and sal-

ary requirements to Vergennes-Pantton Water District, PO Box 152, Vergennes, VT 05491. (6-10)

Firefighter. The Bellows Falls Village Corp. Fire Department is accepting applications for a full-time Firefighter. The schedule is a-24 hour rotating fire service shift. Firefighters are required to work weekends and holidays. This is a regular position and includes all current benefits. Compensation is based on a 56-hour average work week starting at \$11.18 an hour, paid at 53 hours straight time and three hours overtime. This position is only open to non-smokers. A complete job description is available at the fire department or on the municipal website, www.rockbf.org. For more information about

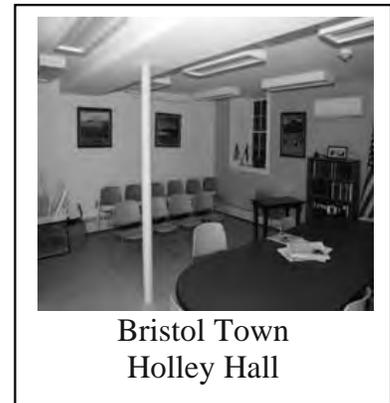
(continued on page 19)



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STATE OF THE TRUSTS

(continued from page 2)

League for help. After the League successfully advocated for the legislation that enables intermunicipal insurance associations, PACIF began writing coverage in January 1987. PACIF has since grown from serving a desperate market to being the market leader by covering more than 90 percent of Vermont municipalities. As shown in Table 2, (page 18) PACIF's business ratios compare favorably to the industry benchmark as well as to our intermunicipal peers and the private insurance industry.

The Board of Directors that governs PACIF is composed of your peers – elected and appointed local governmental officials. The bylaws assure that coverages and programs are designed to protect municipal assets – property, people and reputation – and not to increase the profits of out-of-state insurance companies. The challenge for PACIF is to stay competitive. Now that municipalities have proved able to control their exposure to loss, commercial insurance agents are trying to chip away at PACIF membership. Nobody can match PACIF's quality of coverage, service and training programs, yet commercial agents continue to try. The true solution to high costs is reducing claims, and that is best accomplished by members participating in the free training, scholarship, and grant programs that PACIF provides.

Health Trust

The VLCT Health Trust offers employee benefit products including medical, dental, vision, disability, life insurance, and

long-term care coverages. The Trust also provides a nationally renowned wellness program as well as EAP, COBRA administration, and Health Advocate services. Due to the funding arrangement in place with CIGNA, the \$2,600,000 in net assets held by the Trust is not at risk and is not encumbered in any way. The Trust has historically marketed the membership as a group to the various carriers and successfully negotiated favorable rates and plan designs based on the size of our association. This model has served the members well for nearly 30 years. The challenge facing the Health Trust is annually increasing rates, due to the claims experience of our pooled group. The solution is the "carrier choice" program, which the Health Trust Board of Directors approved last month. In this program, every member will have full access to all carriers that provide health insurance coverage in Vermont. (The three major carriers are CIGNA, Blue Cross/Blue Shield, and MVP.) The Health Trust will still maintain many of the value-added products and services that members are accustomed to receiving from your trusted advisors at the League. (See the accompanying articles in this issue for additional information about carrier choice.)

Summary

The insurance programs offered by VLCT exist because the membership asked the League to create them. These insurance pools are owned and governed by Vermont local governments, and their continued operation depends on your support. They are certain, secure and stable. There is strength in our numbers: by banding together, Vermont municipalities gain access to resources

VLCT's Three Trusts

Unemployment Insurance Trust (UI Trust)

Cost Stability and Hassle-free Administration

- Administration, education, claims management, advocacy, appeals
- In operation since 1978

Health Trust (HT)

Your Partner for Health and Employee Benefit Programs

- Medical, dental, vision, wellness, life, disability, COBRA, long-term care, cafeteria plans
- In operation since 1982

Property And Casualty Intermunicipal Fund (PACIF)

Proactive, Responsive, Local Risk Management Solutions

- Workers' compensation, property, auto, liability, POL/EPL, loss control, safety
- In operation since 1987

not typically available to small entities. This is the power of pooling.

Table 2: PACIF Compared to Other Property and Liability Insurers

Based on a 2010 survey conducted by PennPRIME and reported through both PennPRIME and the National League of Cities (NLC)

Category	Warning Threshold	Healthy Benchmark	VLCT PACIF	NLC Peer Group	Private Insurance Carriers
Combined Ratio (profitability)	1.0	1.03	0.87	0.88	0.89
Premium to Surplus Ratio (operations variability)	3:1	0.8:1	0.63:1	0.5:1	.08:1
Reserves to Surplus Ratio (claims variability)	3:1	1.2:1	0.68:1	1.0:1	1.5:1



CLASSIFIEDS

(continued from page 17)

the job description, application and hiring process, contact Chief William Weston at 802-463-4343, or at the Bel-lows Falls Fire Station at 170 Rocking-ham Street. **Deadline for applications is Thursday, June 30, 2011.** EOE. (6-6)

Road Foreman. The Town of Middlesex is accepting applications for the position of Road Foreman. Requirements: at least 5 years experience in a Public Works or road construction related field; must be experienced in construction procedures and heavy equipment operation; excel-lent organizational and communica-tion skills; and a Vermont CDL, mini-mum Class B. Prior supervisory experi-ence preferred but not mandatory. Com-petitive salary and benefits package. For a complete job description, please vis-it www.middlesex-vt.org/ or call Cindy Carlson at 802-223-5915. To apply, sub-mit resume **by June 30, 2011** to Town of Middlesex, 5 Church Street, Middle-sex, VT 05602. (6-1)

Deputy Commissioner, Field Operations.

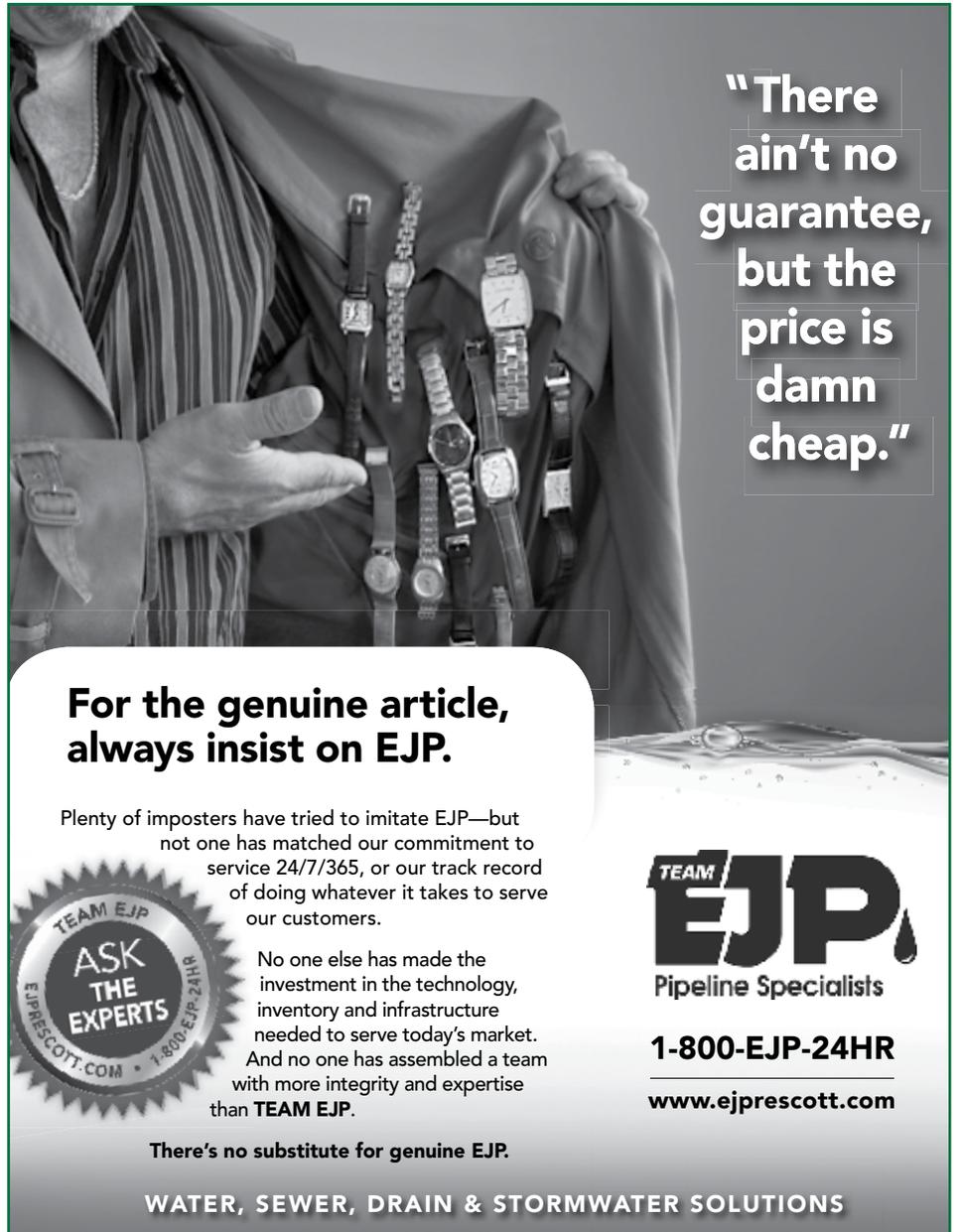
The City of Boston is seeking a skilled field operations manager to supervise more than 200 employees and \$50 mil-lion in service contracts providing es-sential services throughout the city of Boston, including snow removal, street maintenance and waste removal. Under the supervision of the Commissioner of Public Works, the Deputy Commis-sioner of Field Operations acts as a senior member of the department. He or she performs complex supervisory, admin-istrative and professional work in man-aging divisions and functions within the Public Works Department, including highway field operations, snow remov-al, waste reduction, and building mainte-nance. In this role, the Deputy Commis-sioner is responsible for overseeing the maintenance of 803 miles of roadway throughout the City; supervising the op-eration of 10 Public Works district yards; managing the City of Boston's response to snow and ice storms; addressing com-plaints from citizens, officials, mem-bers of the public and other organiza-tions; and assisting in financial planning/management, human resources and labor management efforts of the Public Works Department. Persons interested in the

challenge of modernizing the provision of basic city services for Boston residents are encouraged to apply. For more infor-mation, please visit www.cityofboston.gov/ohr/careercenter, or contact PWD-Recruiting@cityofboston.gov. (5-26)

FOR SALE

Dump/Plow Truck. The Town of Pittsford is accepting sealed bids on the sale of a 2002 Ford F-550 Dump/Plow Truck, with a 7.3L turbo diesel engine, 6-speed manual transmission with O/D, hy-draulic 9 ft wing, 9.5 ft one-way all-an-gle front plow and a double-auger Sw-enson tail gate spreader, 89,500 miles. Truck will be sold as is, with no war-ranties. The Town makes no guaran-

tees, either express or implied, as to the suitability of the truck for any purpose. Contact Highway Foreman Shawn Er-ickson at 483-6886 to make an appoint-ment to inspect the vehicle. Submit bid in a sealed envelope marked "Truck Bid" **by Friday, July 1, 2011** to Office of the Town Manager, PO Box 10, Pitts-ford, VT 05763. The successful bidder will provide cash (or its equivalent) in full within 10 days of notification that the bid has been accepted by the select-board and before taking possession of the truck. Registration, title, and any tax due are the responsibility of the suc-cessful bidder. The Town of Pittsford re-serves the right to accept or reject any or all bids. (6-3)



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Calendar

For more information about the following workshops or events, please contact Jessica Hill, Manager, VLCT Administrative Services, tel. (800) 649-7915, or email jhill@vlct.org. Or visit www.vlct.org's Events Calendar and select a workshop for more information or to register online. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)

August 10, Montague Golf Club, Randolph 2011 Local Officials Golf Outing (Sponsored by VLCT). 8:30 a.m. through lunch. Plan a summer morning of golf in honor of Vermont's local officials. This four-person scramble has a shotgun start at 9:00 a.m. \$65 per person includes green fees, cart, all-you-can-eat lunch, and chances at several raffle prizes. Proceeds will bene-

fit Vermont flood disaster relief programs of the American Red Cross. Golfer registrations are due July 22. For more information or to be a sponsor, please contact Cory Gustafson at 802-229-9111, ext. 1956 or cgustafson@vlct.org. Watch your email inbox or U.S. mailbox

in August for the 2011-2012 Calendar of Workshops and Events. Once completed, everything will be listed on our website Events Calendar as well. Have a great summer!

Visit our website www.vlct.org/eventscalendar/upcomingevents/ for the most up to date list of events.

TOWN FAIR October 6, 2011 Killington Grand Hotel, Killington

VLCT Town Fair (Sponsored by VLCT, VLCT PACIE, Health and Unemployment Trusts and the VLCT Municipal Assistance Center). Returning to south-central Vermont, the annual Town Fair is Vermont's premier conference for municipal officials, employees, and volunteers. Complete details and registration materials will be available by the end of July.

**Towns at
250
Vermont's
HISTORY IN THE MAKING**