

ANSWERS TO YOUR 2011 TOWN FAIR QUESTIONS

What is Town Fair?

Town Fair is an educational and enjoyable gathering of Vermont local officials, employees, and volunteers, joined by VLCT staff and board members, vendors with a municipal connection, and guests.

When is Town Fair?

Thursday, October 6, 2011.

What is this year's theme?

Towns at 250: Vermont's History in the Making.

Why should I attend?

To learn from a wide variety of workshops, network with your peers, attend local government organizations' annual and special meetings, and help set VLCT's legislative priorities for the upcoming year. In addition, there will be a trade show filled with the exhibits of dozens of vendors whose products and services can help municipalities run more smoothly.



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WWW.VLCT.ORG HAS A NEW LOOK!

Although the basic layout of VLCT's website remains the same, improvements under the hood abound that take advantage of new online technology. (In fact, for the first time ever, you may now register online for Town Fair at [www.vlct.org/events-news-blogs/event-calendar/!](http://www.vlct.org/events-news-blogs/event-calendar/))

The information from the old, familiar site is still there, but it may be in a different location. The menu at the top of all pages works the same as it previously did, though some of the choices have changed. The shortcuts on the right are similar to the old ones.

As we continue to transition to our new site, a few things may not work right or remain under construction longer than we'd like. If you can't find something, please call us at 800-649-7915.

2011 CHANGES TO THE VERMONT PUBLIC RECORDS ACT

What are the 2011 changes to the Vermont Public Records Act and how will they affect the way municipal officials respond to requests for public records?

Several significant changes to the Public Records Act went into effect on July 1, 2011. These changes will affect how custodians respond to requests to inspect public records and the time frames to produce public records for inspection.

The Public Records Act now specifies that a public record must be produced for inspection within three business days from receipt of a request. 1 V.S.A. § 318(a)(2). When responding to a request, a custodian now must consult with the requestor in order to clarify the request or obtain additional information that will assist in responding to the request and facilitating production of the requested record. 1 V.S.A. §

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VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

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PUTTING CARRIER CHOICE TO WORK

In last month's *VLCT News*, two articles introduced the new initiative known as Carrier Choice, which will let Health Trust members choose their health insurance plan from among Vermont's major insurance carriers. This article provides more details about the advantages of Health Trust membership with Carrier Choice and the steps required for implementing it.

Advantages

In the small group market (i.e. employers with fewer than 50 employees), rates and commissions are built into the premium, and the premium stays the same regardless of who you purchase the plan through, so no one agent or broker has a price advantage over any other. Even buying directly from the carrier doesn't cost any less! Each carrier returns these commissions and fees to the brokers, but because the Health Trust is a member-owned insurance pool, the commissions it receives belong to the members (you) and are used to provide value-added services at no additional cost. The result is a

combination of coverage and services that is simply not duplicated elsewhere in the Vermont health insurance market. For the same

**It's not too early
to start planning for
2012 health insurance!**

**Your first step is to send
us your signed Broker of
Record letter.**

price that you'd pay another broker for insurance alone, you automatically receive the Health Trust's no-additional-fee extras, such as on-site health screenings and flu shot clinics, Health Advocate assistance, EAP counseling and referrals, COBRA administration, HR Connection online tools, and

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DELTA DENTAL



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LEGAL AND REGULATORY NOTES



UNITED STATES SUPREME COURT DECISIONS; SOCIAL SERVICE AGENCY APPROPRIATIONS

United States Supreme Court Decisions Uphold Constitutionality of Ethics Law and Factors a Child's Age into Miranda Analysis

The United States Supreme Court recently decided two cases of note to municipalities. The first, *Nevada Commission on Ethics v. Carrigan*, concerns the affects of ethics regulations on the Free Speech rights of legislators. The second, *J.D.B. v. North Carolina*, concerns the Miranda rights of juveniles.

Nevada Commission on Ethics v. Carrigan, No. 10-568

On June 13, 2011, the United States Supreme Court upheld a Nevada ethics law requiring public officials to recuse themselves from voting on or advocating for matters in which they have a disqualifying conflict of interest.

The Nevada Commission on Ethics censured Michael Carrigan, a City of Sparks council member, under Nevada law for failing to abstain from voting on an application for a hotel/casino project ("Lazy 8") that his long-time friend and campaign manager, Carlos Vasquez, worked for as a paid consultant. Nevada's Ethics in Government Law provides that "a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by ... his commitment in a private capacity to the interests of others." Nev. Rev. State. §281A.420(2) (2007).

Carrigan filed suit in the First Judicial District Court of the State of Nevada asserting that the Ethics in Government Law violated the First Amendment to the U.S. Constitution. The District Court disagreed, but

the Nevada Supreme Court reversed on appeal, holding that voting was protected speech and that the law was unconstitutionally overbroad.

The U.S. Supreme Court reversed. Writing for a unanimous Court, Justice Scalia took into account the more than 200-year tradition of federal and state conflict of interest recusal rules as justifying a strong presumption of their constitutionality. He pointed out that one of the very first acts of the U.S. House of Representative was to adopt a rule that "No member shall vote on any question, in the event of which he is immediately and particularly interested." No one, Scalia pointed out, was on record as having objected to the rules on the grounds that it was an unconstitutional restriction of free speech rights. This early congressional enactment, the Court stated, provides "contemporaneous and weighty evidence of the Constitution's meaning."

Absent this historical support, Scalia writes, such rules would still not be considered restrictions upon protected speech because the act of voting in and of itself by a legislator is not "speech" and therefore not protected by the Speech Clause of the First Amendment. To emphasize this point, the Court distinguishes here between voting by a legislator and voting by a citizen. Whereas a citizen's right to vote is a personal right, that of a legislator is a function of the legislative process, "the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal." A legislator casts his vote "as trustee for his constituents, not as a prerogative of personal power." The expressive value is found

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TO FIND OUT MORE, CONTACT **ABBY FRIEDMAN** AT AFRIEDMAN@VLCT.ORG.

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LEGAL AND REG.

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not in the act of voting but in the speech accompanying it. Consequently, while deeply held personal beliefs may give rise to a vote for or against a particular proposal, the act of voting itself expresses nothing. Rather, it is a governmental act that discloses the legislator's wishes.

This decision is welcome news to Vermont's municipalities, particularly to those already with conflict of interest policies or ordinances in place, as these rules create a framework for identifying and evaluating ethical dilemmas, ensure decisions at the local level are fair and impartial, and safeguard the public trust against elevation of personal interests.

J.D.B. v. North Carolina, No. 09-11121

On June 16, 2011, the United States Supreme Court reversed a ruling by the North Carolina Supreme Court that a suspect's age is irrelevant when determining whether to provide a Miranda warning.

This case involves 13-year old "J.D.B.," a suspect in a pair of home break-ins. A uniformed police officer removed J.D.B. from his seventh grade classroom and escorted him to a school conference room where he was questioned by the officer, the assistant principal, and an administrative intern behind closed doors for 30 to 45 minutes. J.D.B. was never informed of his Miranda rights, nor was he told he was free to leave or given the opportunity to talk to his legal guardian, his grandmother. After he was threatened with being sent to juvenile detention, J.D.B. admitted that he and a friend were responsible for the break-ins. Only then did the officer tell J.D.B. that he could refuse to answer his questions and that he was free to leave. After writing a confession, J.D.B. was allowed to go home.

J.D.B.'s public defender moved to suppress J.D.B.'s confession and the evidence derived from it on the grounds that the youth was interrogated in a custodial setting without first being Mirandized. The trial court denied the motion and the North Carolina Supreme Court affirmed declining to take J.D.B.'s age into consideration when determining whether he was in custody when he confessed.

The question before the U.S. Supreme Court was whether a suspect's age should factor into the analysis of whether he/she is in custody for purposes of a Miranda warn-

ing. In a 5-4 decision delivered by Justice Sotomayor, the Court held that J.D.B. was entitled to a Miranda warning. In the landmark case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court put in place measures ("Miranda warning") to ensure the constitutional right against self-incrimination. This warning protects against involuntary statements. Police custodial interrogations can compel a suspect to speak when he or she wouldn't otherwise do so. This pressure is so strong that it can compel individuals to confess to crimes they didn't commit. Prior to questioning, therefore, a suspect in custody "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an

attorney, either retained or appointed." The Court employs a two-part test to determine whether a suspect is "in custody" for Miranda purposes by asking "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave." This objective analysis looks not to the suspect's actual state of mind but rather to how a reasonable person in the same position would have perceived his or her freedom to leave.

This decision implicitly acknowledges that a "reasonable person" is different from a "reasonable child." Refusing to simply view

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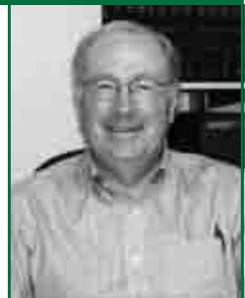
MAC WELCOMES NEW MUNICIPAL CONSULTANT BRENDAN KELEHER

We are pleased to announce that **Brendan Keleher** has joined the MAC consulting team.

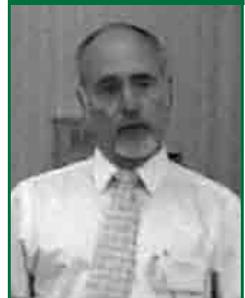
Brendan's expertise is in municipal management and finance and draws on his experience as Burlington Chief Administrative Officer/City Treasurer and Clerk (1990-2005), Winooski City Manager (1983-1990), as well as his most recent position as Vice President for Finance and Administration for the Institute for Sustainable Communities in Montpelier (2005-2011). He also served as a member of the VLCT Board of Directors from 2004-2005 and the PACIF Board of Directors from 1987-1990 and 1992-2004.

In addition to Brendan, MAC's consulting team consists of:

- **Bill Hall, Senior Financial Consultant.** Bill's expertise includes a wide range of municipal finance topics such as fraud risk assessment, internal financial controls, financial policies, governmental accounting, debt management, and more.
- **Doug Hoyt, Law Enforcement Consultant.** Doug provides assistance with municipal law enforcement issues.



BRENDAN KELEHER



BILL HALL



DOUG HOYT



ASK THE LEAGUE

LAW ENFORCEMENT CERTIFICATION FOR ELECTED CONSTABLES

Our town's elected constable performs law enforcement in town. We understand that as of July 1, 2012, all constables that perform law enforcement must receive certification. What does this consist of?

It is true that after July 1, 2012, all constables (either appointed or elected) are required to have criminal justice training before exercising law enforcement authority. 24 V.S.A. § 1936a and 20 V.S.A. § 2358

(d). Law enforcement authority of a town constable includes the powers of search, seizure, and arrest within the town. V.R.Cr.P. 3, 41. However, unlike other law enforcement officers, constables do not have statewide jurisdiction. Their jurisdiction is limited to the boundaries of the town in which they serve. *State v. Hart*, 149 Vt. 104 (1987). One exception exists: constables with law enforcement authority may transport a person whom he or she arrested for driving under the influence (DUI) to a police department outside the town for processing, and the constable may complete the processing if the Vermont Criminal Justice Training Council (police academy) has certified him or her to do so. 24 V.S.A. § 1936a (c). Generally, constables are considered part-time officers. However, the police academy makes the determination of whether an officer is full-time or part-time. 20 V.S.A. § 2358(d).

(continued on next page)

FALL MUNICIPAL ASSISTANCE CENTER WORKSHOPS

SAVE THE DATES!

WEATHERING THE STORM: LAND, WATER AND THE LOCAL ROLE *October 19, Capitol Plaza, Montpelier*

In scope and duration, this past spring's flooding placed unprecedented demands on the state and its communities. This workshop is geared towards local officials and planners involved in protecting floodplains and shorelands as well as those who provide relief services to communities affected by flooding. The workshop will spotlight flood hazard mitigation, comprehensive stormwater management and the lessons learned from this spring's record flooding.

MANAGING THE MUNICIPAL BUDGET *October 26, Capitol Plaza, Montpelier*

This annual workshop provides an introduction to governmental accounting, strategies for developing and managing the annual operating budget, and tips for managing the politics of the budgeting process.

PLANNING AND ZONING FORUM I *November 2, Capitol Plaza, Montpelier*

Planning officials from around the state will gather to discuss important topics in planning and zoning regulation. Hear from experts on a range of topics that include municipal energy and capital planning, the economic development element in the municipal plan, "Complete Streets" legislation, and other legislative changes that may affect municipal planning.

MUNICIPAL AUDITORS' WORKSHOP *November 16, Capitol Plaza, Montpelier*

This workshop is designed for newly-elected as well as seasoned municipal auditors. It will include a review of the statutory duties and responsibilities of auditors, a discussion of best practices, plus a review of various audit checklists to help you conduct the annual audit of your town's accounts.

For agendas, registration and other information, please visit www.vlct.org/events-news-blogs/event-calendar/ or call 800-649-7915 or email info@vlct.org.



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ASK THE LEAGUE

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To become a *certified* law enforcement officer, a town constable must complete training with the police academy. To enroll in the academy, the applicant must be 18 years of age, have a high school diploma or a GED, and must pass a written examination, a physical examination and test, a background and character check, and a psychological test.

An elected constable who doesn't or is unable to complete training cannot be removed from office, however he or she would be prohibited from conducting law enforcement. For more information on certification, visit the Criminal Justice Training Council's website, www.vjtc.state.vt.us/PartTimeCert.htm, or call 802-438-6228.

*Stephanie Smith AICP, Senior Associate,
VLCT Municipal Assistance Center*

TRIVIA

Shirley Twitchell, Dawn Baxter, Clyde Jenne, Delta Thurston, and Carol Hammond of Londonderry, Wilmington, Hartland, Bethel, and Vernon, respectively, knew that Bethel was the first town created by the independent Republic of Vermont. Well done!

Meanwhile, Old MacDonald had a farm, no surprise there. And on that farm he had a cow, as well as a buffalo, a badger, a bunch of bears, a crow, a horse, an otter, plus lots more.

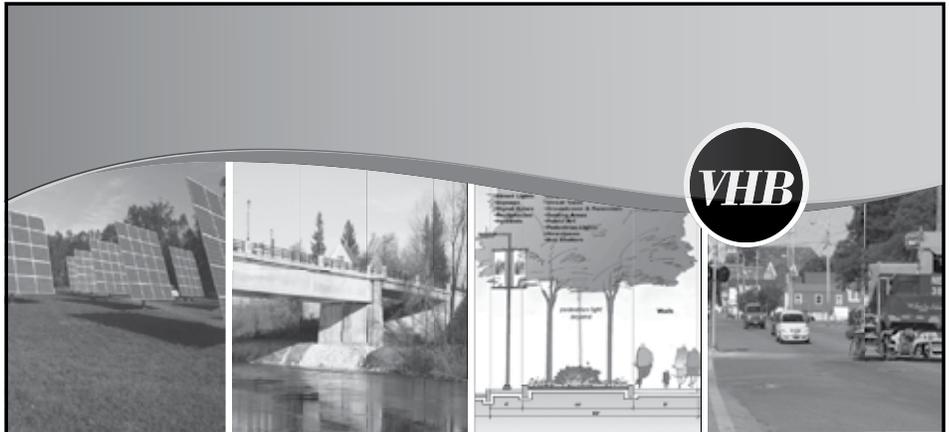
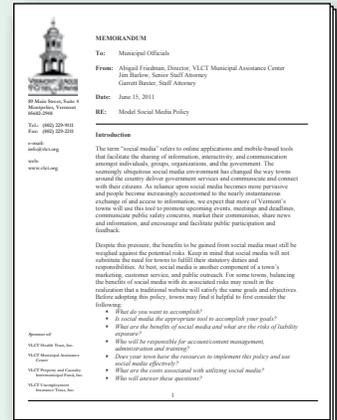
Your job is to match the animal with a location in Vermont. For example, when Old MacDonald's catamount isn't on his farm, it's a brook on Mt. Worcester. So I'm looking for the locations of the following critters: camel, cow, crow, badger, bear, buffalo, deer, dog, eagle, elephant (!), horse, mink, moose, otter, pigeon, porcupine, rabbit, rattlesnake, sheep, toad, turkey, wolf, and woodchuck. They match up with brooks, creeks, ponds, rivers, bays, hills, hollows, mountains, rocks, ridges, points, an island, and at least one hump. **How many can you find?** Extra credit if you can locate a rhinoceros.

Email your answer – or answers, really – to dgunn@vlct.org. Then wait patiently a few extra weeks for us to assemble the always amazing October issue for the answer. Or *answers*, really.

NEW MAC PUBLICATION

VLCT's Municipal Assistance Center (MAC) recently published a new model social media policy to assist municipalities manage the use of various forms of information-sharing technologies such as Facebook, MySpace, Twitter and others to create web content and communicate with the public. Municipalities can use this document as a starting point and adapt it to their particular needs. This policy is available from the VLCT website's Resource Library, <http://resources.vlct.org/>.

Please provide any feedback you have on this new publication to Garrett Baxter, MAC Staff Attorney, at gbaxter@vlct.org.



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2011 VPRA CHANGES

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318(d). If a record does not exist under the name given by the requestor or by any other name known to the custodian, the custodian must inform the requestor of this fact in writing within three business days. 1 V.S.A. § 318(a)(4).

The three business day response deadline can be extended by the custodian in two instances. If the record is in active use or in storage and therefore not available for use at the time the requestor asks to examine it, this fact must be certified in writing and a date and hour set within one calendar week of the request when the record will be

available for examination. 1 V.S.A. § 318(a)(1). In certain defined unusual circumstances, the deadline can be extended to no more than ten business days. "Unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

- the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

- the need for consultation, which must be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with an attorney. 1 V.S.A. § 318(a)(5).

If the three business day deadline is extended under these unusual circumstances, written notice must be given to the requestor setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. 1 V.S.A. § 318(a)(5). In these unusual circumstances, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of the request. 1 V.S.A. § 318(d).

A "business day" is now defined as a day that the public agency is open to provide services. 1 V.S.A. § 317(a)(1). As applied to municipalities, a "public agency" is any agency, board, committee, department, branch, instrumentality, commission, or authority of the municipality. 1 V.S.A. § 318(a)(2). VLCT advises that when a question arises regarding what comprises a "business day" for a municipal board, committee, or department that is not regularly "open to provide services," a business day should be considered a day that the municipal office is open to provide services to the public.

The basic right to inspect a public record is subject to the following conditions:

- **Complete exemption.** If the custodian considers the entire record to be exempt from inspection, he or she must certify this to the requestor in writing within three days of receiving the request. 1 V.S.A. § 318(a)(2). The certification must identify the record withheld, the statutory basis for the denial, and a brief statement of the reasons and supporting facts for denial. The custodian must notify the requestor of his right to appeal the denial to the head of the public agency. 1 V.S.A. § 318(a)(2). The custodian must also identify the names and titles or positions of each person responsible for the denial of the request. 1 V.S.A. § 318(b). VLCT advises that where the head of the public agency is



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2011 VPRA CHANGES

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not readily identifiable, it should be considered the selectboard under 24 V.S.A. § 872.

- Partial exemption.** If a record is otherwise subject to disclosure, it may not be withheld in its entirety on the basis that it contains some exempt content. Instead, the information considered exempt must be redacted and the record produced, accompanied by an explanation of the basis for denial of the redacted information. 1 V.S.A. § 318(e). VLCT advises that as a partial denial of the request, this explanation should include the statutory basis for the redaction and a brief statement of the reasons and supporting facts for redaction. The names and titles or positions of each person responsible for the redaction should be identified. 1 V.S.A. § 318(b). The custodian should also notify the person of his or her right to appeal the redaction to the head of the public agency. 1 V.S.A. § 318(a)(2).

If the denial of a record request is appealed to the head of a public agency, a determination must be made with respect to the appeal by the head of the agency within five business days after receipt of the appeal. If the record is denied in whole or in part, the determination must include the asserted statutory basis for the denial and a brief

statement of the reasons and supporting facts for denial. 1 V.S.A. § 318(c)(1). The agency must also notify the requestor of the right to judicial review. 1 V.S.A. § 318(a)(3). The statute clarifies that with respect to judicial review, “the burden of proof shall be on the public agency to sustain its action.” 1 V.S.A. § 315.

A requestor may inspect a public record produced for inspection during customary business hours. 1 V.S.A. § 316(a)(2). “Customary business hours” are not defined in the statute, though VLCT advises that municipalities should consider them to be the regular hours of operation of the municipal office and not the hours of the particular custodian responding to a request.

If the requestor has a disability that requires accommodation to gain equal access to the public record sought, the requestor give notice of the type of accommodation requested. 1 V.S.A. § 318 (f). Primary consideration must be given to the accommodation choice expressed by the requestor but a public agency may propose an alternative accommodation as long as equal access is achieved. The municipality is required to provide accommodation unless it can demonstrate that the accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or an undue financial or administrative burden. 1 V.S.A. § 318(f).

The most significant change in the Public Records Act is the amendment to the provision for the award of attorney’s fees. The statute previously provided, “The court *may* assess against the public agency reasonable attorney fees and other litigation

costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.” The “may” has been replaced by “shall” and a new safe harbor provision has been added. Now a court must assess reasonable attorney’s fees and other litigation costs against a public agency when the complainant substantially prevails, except if the public agency, within the 20-day period for response to a complaint, concedes the contested record is public and provides it to the complainant. When a public agency concedes a contested record within 20 days of service of a complaint, the court may still award reasonable attorney’s fees and other litigation costs when

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CARRIER CHOICE

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Member Relations representatives, who have municipalities' best interests at heart. Funds not used to cover overhead, programs, or services are available to be held as net assets (owned collectively by the membership) or to be considered for distribution to members at the discretion of the Board of Directors.

Many rules that relate to pooled risk sharing will be retired with the onset of Carrier Choice.

- Former members may return immediately. *The two-year rule is gone.*
- After January 1, 2012, members leaving the Health Trust will not be subject to an exit fee. *The one-month premium exit fee rule will disappear.*
- Members may choose either a fiscal or calendar year coverage term. *The common group policy term rule is gone.*
- Claim information is no longer withheld for large groups. *The data restriction rule is gone.*

For nearly 30 years, the VLCT Health Trust has been your trusted employee benefits program advisor. We know municipalities better than anyone in the state, and, as a member-owned and member-governed association, we are motivated to serve only your best interests.

Steps for Implementing Carrier Choice for 2012 Renewal

1. Provide us with a signed Broker of Record letter on your municipal letterhead. You can get a PDF template of the letter at www.vlct.org/rms/health-trust/health-insurance, or call your Member Relations representative to have a file emailed to you.
2. When plan information is available, your Member Relations representative will map your existing plan to the most comparable plans available. If you are interested in changing the type of plan(s) you offer, discuss your interests with us and we'll suggest the best options.
3. Determine which carrier and plan your municipality will provide for employees.

4. In October and early November, educate employees about new plan and funding options.
5. Have all employees submit their enrollment paperwork by November 15th.

PACIF MEMBERS TAKE NOTE:

August 31 is the deadline for applying for a 2011 Equipment Grant.

Don't wait until the last minute!

Make sure you submit all necessary documentation in time.

Grants are for 50% (up to \$5,000) toward durable goods that improve the safety of your employees, workplace, or citizens.

Go to www.vlct.org/rms/pacif/pacif-equipment-grants/ for instructions and an application form.

Don't dig yourself into trouble...



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- In Vermont, notify Dig Safe® at least 48 business hours in advance.
- Notify non-member facility owners.
- Maintain the marks placed by underground facility owners.
- Use caution and dig by hand when working within 18" of a marked facility.
- If a line is damaged, do not backfill. Notify the affected utility company immediately if the facility, its protective coating, or a tracer wire is damaged.
- Call 911 if the damaged facility poses a risk to public safety.
- Know your state's excavation requirements. Go to digsafe.com for educational material and current laws.



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Shelley: 802-865-1644, squinn@mbvt.com
Jeanie: 802-775-3348, jkelly@mbvt.com

Member FDIC



PACIF SCHOLARSHIPS STILL AVAILABLE

PACIF members are encouraged to apply for scholarship funds for trainings and seminars on topics relating to safety and risk management. Applications are considered on a rolling basis through the year. Submit your application at least 45 days before your chosen training event, and you'll have a decision by 30 days before the event. Even for trainings that are free, awards can be granted to cover expenses such as travel, lodging, meals, and course materials (although not any form of wages).

Individual scholarship awards range from \$50 to \$500, depending on documentable costs, and are limited to one per employee per year and two employees per employer. For a larger-scale impact, an employer can apply for a group scholarship of up to \$2,500 for onsite classroom training. A municipality can use any credible source for a group training. Two excellent sources for training to reduce liability risks are near at hand:

- VLCT's own Municipal Assistance Center staff members can present relevant topics such as "Implementing Financial Policies and Internal Controls." They can also research and create trainings on other topics for members who have particular concerns. Please contact Abby Friedman at 800-649-7915, ext. 1926 or afriedman@vlct.org.
- Invest EAP presents group trainings that increase interpersonal awareness and reduce misbehavior in many subject areas including workplace and sexual harassment and hostile work environments. Please contact Mary Jarrett at 888-681-8112 or maryj@investeap.org.

Funds are still available for 2011 scholarships, so don't delay! Find more information and the application form online at www.vlct.org/assets/RMS/PACIF/2011_PACIFScholarshipInfoandApplication.pdf or call Shawna O'Neill at 800-649-7915, ext. 1935.

Welcome New Members!

PACIF
Sunderland

Health Trust
Killington
Northeastern Vermont
Development Association

ANNUAL MEETINGS FOR ALL VLCT TRUSTS

Due largely to the introduction of Carrier Choice, this year's **VLCT Health Trust Annual Meeting** will take place several weeks earlier than in recent memory. Member representatives are encouraged to converge on the **Stoweflake Resort and Spa on Thursday, September 22** from 9:00 a.m. to 2:00 p.m. to review the Trust's finances, programs, and activities and vote on any matters brought before the members. Lunch will be included. Topics of discussion will likely include Carrier Choice and Health Advocate. Please preregister online at www.vlct.org/events-news-blogs/event-calendar. For more information, contact Shawna O'Neill at 800-649-7915 ext. 1935 or sonell@vlct.org.

We strongly urge members of PACIF and the Unemployment Insurance Trust to attend the combined **PACIF/UI Trust Annual Meeting at Town Fair, Thursday, October 6**, from 10:30 a.m. to noon at the Killington Grand Hotel in Killington, Vermont. Representatives from PACIF and UI Trust member organizations are asked to attend and learn how the Trusts performed for the past year, review financial reports, and vote on matters that are brought before the members.

YOUR BROKER OF RECORD LETTER IS CRUCIAL!

In a process new to the Health Trust, all members need to submit a form letter known as a Broker of Record letter (BOR) so that their Member Relations representative can "map" their 2011 health insurance plan(s) to one or more 2012 options. The letter does not commit the municipality to a particular plan – that step will come in the next several weeks when you have considered the information presented by Member Relations.

If yours is one of the many Health Trust members that has already submitted its BOR, we thank you. Your Member Relations representative will contact you soon to continue the renewal process.

If you have not yet submitted your municipality's BOR, please do so by August 15 so we can move forward and lay the groundwork for a smooth renewal. You can download the PDF file to print on your municipal letterhead online at www.vlct.org/rms/health-trust/health-insurance/. (If the PDF doesn't fit your letterhead, email iminot@vlct.org to request a Word version.) Then you can scan and email the completed letter to kavery@vlct.org, or fax it to Attn: Kelley Avery, 1-802-229-2211, or mail it to VLCT c/o Kelley Avery, 89 Main Street, Suite 4, Montpelier, VT 05602. We thank you – and you will thank yourself – for taking this necessary first step!

2011 RMS CALENDAR

Local Officials Golf Outing. Wednesday, August 10, 8:30 a.m. through lunch (9 a.m. shotgun start), Montague Golf Club, Randolph, Vermont. Join fellow local officials, VLCT staff, and Risk Management Services business partners for a summer day of golfing in a four-person scramble. \$65 per golfer includes green fees, cart, all you can eat lunch, and chances at raffle prizes. Surplus funds will be donated to the American Red Cross's Vermont flood disaster relief efforts. Last-minute additions may call Cory Gustafson at 802-229-9111 ext. 1956 before 4:00 p.m. August 9 or show up at the course by 8:30am Wednesday.

VLCT Trainings for Compliance with U.S. 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 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

Ideal deadline for all Health Trust members to submit their Broker of Record letter. Monday, August 15, 2011. This is the necessary first step in continuing your health insurance in 2012. Please see related article on previous page.

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

Game of Logging (GOL) Chain Saw Safety Training. Level 1&2 (a two-day class) Tuesday, September 20 and Wednesday, September 21, 8:00 a.m. to 4:00 p.m., Brattleboro Town Garage, Brattleboro, Vermont. Level 3 (a one-day class) Monday, October 3, 8:00 a.m. to 4:00 p.m., Brattleboro Town Garage, Brattleboro, Vermont. PACIF members in southern Vermont, watch your mail for a flier with details. GOL training emphasizes general safety practices while teaching how to fell trees in a controlled way so they land in remarkably precise locations. The "game" includes a prize for the top-scoring trainee in each class, and every Level 1&2 attendee receives a helmet with eye and ear protection. Limit one trainee per member per class per year. To register, call Shawna O'Neill at 800-649-7915, ext. 1935.

VLCT Health Trust Annual Meeting. Thursday, September 22, registration 9:00 a.m., meeting 9:30 a.m. to 2:00 p.m., StoweFlake Resort and Spa, Stowe, Vermont. Please preregister online at www.vlct.org. For more information, contact Shawna O'Neill at 800-649-7915 ext. 1935 or sonell@vlct.org.

Combined **VLCT PACIF** and **VLCT Unemployment Insurance Trust Annual Meetings.** Thursday, October 6, 10:30 a.m. to noon, Northstar 2, Killington Grand Hotel, Killington, Vermont. Preregistration is not required.

DriveSim Demonstrations. Thursday, October 6, 9:00 a.m. to noon, Killington Grand Hotel, Killington, Vermont. Attendees of the VLCT 2011 Town Fair are encouraged to visit the white trailer and either watch or "drive" while a trainer runs simulation software that creates the look and feel of a variety of challenging driving situations.

Vermont Safety and Health Council's 2011 Fall EXPO. October 12, 8:00 a.m. to 4:00 p.m., Killington Grand Hotel, Killington, Vermont. See the Events Calendar at www.vshc.org for details.



2011 TOWN FAIR

(continued from page 1)

What time does Town Fair begin?

Join us at 8:00 a.m. for registration and a delicious continental breakfast at the Conversation Café, which is generously sponsored by People's United Bank. Be sure to give yourself time to eat and visit trade show exhibits before the workshops begin at 9:00 a.m.

When is the VLCT Annual Meeting and who can attend?

The meeting begins at 2:30 p.m. in the Northstar 1 Ballroom. Anyone may attend, but you must be the Voting Delegate (one is permitted from each member city or town) to vote.

What are some of this year's special events?

- The Trade Show will be housed in the Snowshed Base Lodge. Meetings and our famous Turkey Luncheon will be at the Killington Grand Hotel.
- An extensive list of training and educational workshops offered by VLCT staff and outside experts.
- A VLCT Health Trust-sponsored flu clinic will be offered. This is a free event for Health Trust Subscribers; all others pay \$20.00 each. Pre-register with Heidi Joyce at VLCT.

How do I register?

Watch your mail for a complete Town Fair registration kit or visit our website at www.vlct.org/ to view or download the kit. New this year, you may also register online at www.vlct.org/eventscalendar/. Be sure to register for the Wednesday evening Local Government Dinner and Thursday Town Fair separately. Register before September 9 to save \$10.00 per person!



FOR NEWCOMERS

THIS GLOSSARY WILL HELP YOU UNDERSTAND ALL OF TOWN FAIR'S EVENTS:

Annual Meetings, PACIF/Unemployment. The VLCT Property and Casualty Intermunicipal Fund (PACIF) and the VLCT Unemployment Trust hold a combined annual meeting to hear reports from the past year and elect board members and officers.

Annual Meeting, VLCT. Voting delegates (one from each member city and town) discuss and approve VLCT's legislative platform, the VLCT 2012 Municipal Policy. Delegates also elect officers and new members to the VLCT Board of Directors.

Awards Luncheon. A perennial favorite at Town Fair is the traditional turkey dinner with all the fixings during which recipients of the annual VLCT awards are recognized.

Conversation Café. An informal gathering place, located this year in the middle of the trade show exhibit hall for your convenience. Plan a little downtime with your friends and enjoy coffee, tea, juice, and a selection of morning snacks. Sponsored by People's United Bank.

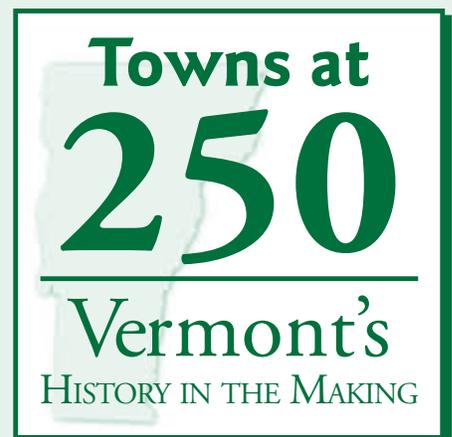
Local Government Dinner. A Town Fair eve tradition that affords VLCT the chance to recognize Town Fair award winners for their accomplishments and thank VLCT Board members for their contributions to VLCT. The dinner will be held on Wednesday, October 5, at the Killington Grand Hotel in Killington. All are welcome to attend.

Raffle. VLCT gives away \$100 gifts to five lucky raffle winners. Many exhibitors raffle off valuable gifts of their own as well. Sponsored (as of press time) by Northeast Delta Dental and Weston and Sampson.

Trade Show. More than 65 companies and organizations dedicated to serving Vermont municipalities will be exhibiting their products at Town Fair. Bring your questions and be ready to learn about the different ways our exhibitors' products can help your municipality better achieve its goals.

Wellness Events. The VLCT Health Trust and VLCT PACIF join forces to offer free health screenings for osteoporosis, blood pressure, diabetes, and cholesterol. Non-members may participate for \$45.00 per person, invoiced to your town. The VLCT Health Trust will also be offering a flu clinic at Town Fair. This is a free benefit for Health Trust subscribers and spouses. Non-members pay \$20 each, invoiced to your town. Please contact Heidi Joyce at 800-649-7915 or email hjoyce@vlct.org to sign up in advance. Chair massages are also available.

Workshops. Local government officials, volunteers, and employees can select from a wide variety of educational workshops offered by VLCT staff and outside experts. Topics this year include social media, U.S. Census updates, conflicts of interest, financial and energy sessions, and many more. There will also be a special session on community outreach efforts in Rutland, Vermont.





2011 TOWN FAIR EXHIBITORS: THE “FAIR” PART OF TOWN FAIR!

As of press time (July 15), nearly 30 vendors have signed up to exhibit their products and services at Town Fair. The trade show is one of Town Fair’s most enjoyable events. A cross between an old-fashioned county fair and an indoor market, the trade show gives municipal officials the opportunity to visit with vendors and check out their offerings. It’s not to be missed!

ALDRICH + ELLIOTT, PC
Engineering

BADGER METER, INC.
AMR meters and watering equipment

CARROLL CONCRETE
Retaining walls, insulated concrete forms

DAILEY PRECAST
Precast concrete parking structures, bridges and office buildings

DIG SAFE
Free service to promote public safety and prevent utility damage

DOME CORP. OF NORTH AMERICA
Salt storage buildings

DUBOIS & KING, INC.
Consulting engineering firm

DUFRESNE GROUP
Engineering consultants

E. J. PRESCOTT, INC.
Water, sewer, drain supplies

EFFICIENCY VERMONT
Energy efficiency utility

GREAT WEST RETIREMENT SERVICES
Deferred compensation

HORIZON SIGNAL TECHNOLOGIES, INC.
Solar assisted portable traffic signals

HOYLE TANNER & ASSOCIATES, INC.
Consulting engineering

INVEST EAP
Employee assistance program

JOHN W. KENNEDY CO, INC.
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MCINTIRE BUSINESS PRODUCTS
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Administers dental benefits to more than 740,000 people in Maine, New Hampshire, and Vermont. Plans are available for individuals and groups of all sizes and types.

PEOPLE’S UNITED BANK
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Protecting public health, safeguarding the environment

VERMONT SECRETARY OF STATE’S OFFICE
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VERMONT CORRECTIONAL INDUSTRIES
Furniture, print, signs, and education

VERMONT EMPLOYER SUPPORT OF THE GUARD & RESERVE
Resource to guard/reserve and their employers

VERMONT MUNICIPAL BOND BANK
Municipal services

VERMONT MUNICIPAL EMPLOYEES RETIREMENT SYSTEM
Retirement/unclaimed property

WESTON & SAMPSON
Civil and environmental engineering

WRIGHT EXPRESS
Fuel card management programs





Tips for making the most of your health benefits

To Your HEALTH



TOWN OF WHITINGHAM LOSES BIG



Participants in Whitingham's 2011 weight loss and fitness challenge (L-R): Doug Lazelle, Marylee Putnam, Almira Aekus, Peter Bernard, Tim Bernard, Stanley Janovsky, Jr., and David Dicantio.

Whitingham's weight loss and fitness challenge started last March with a couple of employees chatting about their desire to lose some weight, and it evolved into a 12-week contest with eight participants. Open to all full- and part-time employees and their spouses, the contest was originally going to last for eight weeks, but everyone agreed to change it to 12 weeks so the people with VLCT health insurance would qualify for the League's Healthy Lifestyle Rewards.

The participants contributed \$10 each toward a prize for the biggest loser, and just as

Visit the **Mobile DriveSim Training System** at two locations this October:



**Thursday, October 6th
at Killington Grand Resort
for VLCT Town Fair 2011
and
the week of October 17-21
in South Burlington**

This high-tech system is the low-risk way to practice maneuvering and making good decisions quickly despite challenging situations.

Watch a demonstration in Killington or schedule a training in South Burlington.



To inquire about training opportunities, contact **Shawna** at soneill@vlct.org or 800-649-7915, ext. 1935.

“ Fortunately for the highway employees, it was time to order new uniforms, because a few employees were wearing some rather baggy britches! ”

on the TV show, the biggest loser was not whoever lost the most weight, but rather whoever lost the highest percentage of his or her starting weight. Our original plan was to start our weekly weigh-ins on Monday, April 7, but we changed the day to Tuesday so we wouldn't get discouraged weighing ourselves after eating a little more on weekends.

Our Tuesday morning weigh-ins were great. Our official scale was kept in the town vault – the joke was for safe keeping, but it was really for privacy. The participants weighed in during their coffee break, which became a fruit break. Afterward, we would determine each person's percentage of weight loss and who was ahead in the contest. During these breaks, we also planned group

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TO YOUR HEALTH

(continued from previous page)

hikes to local historical sites after work with family and friends.

The first week of the contest resulted in the most significant amount of weight loss for the group: 29.2 pounds. The Week 2 weigh-in showed an additional loss of 15.8 pounds. The group lost 5 pounds during Week 3 (Well, it was the Tuesday after Easter.) and 14 pounds during Week 4. At this point, the weight loss was starting to show on a couple of the highway crew workers. Road Commissioner Stanley Janovsky said he was on his last hole in his belt! The group lost another 14 pounds in Week 5. One employee who had lost a lot of weight said he

was feeling light-headed. A visit to the doctor showed that the combination of the person's weight loss and exercise meant that a daily medication to control high blood pressure was no longer necessary! The group weight loss continued and the weekly tally was usually in the double digits. As the weeks passed, individuals started to reach their target weight. Fortunately for the highway employees, it was almost time to order new uniforms, because a few of them were wearing some rather baggy britches.

At our final weigh-in on June 27, we enjoyed a very healthy lunch together. The group's total weight loss was 127.6 pounds. Stanley Janovsky lost a total of 54.5 pounds and was crowned "Whitingham's Biggest Loser." Way to go, Stanley! Peter Bernard

(-32.2 pounds) came in second, and Douglas Lazelle (-28.3 pounds) came in third. The weight loss challenge helped us all get established in our new healthier lifestyles.

Almira Aekus, Whitingham Town Clerk and Wellness Coordinator

VLCT ADVOCACY IS ON FACEBOOK!

Just type "VLCT Advocacy" in the Facebook search box, then click on the like button to begin receiving our status updates.

facebook

CONGRATULATIONS TO HEALTH TRUST MEMBERS NEWLY ENROLLED IN ...

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Bennington County Regional Commission

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Strafford Town

Whitingham Town

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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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Take a few minutes to see how useful we are.

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To request your username and password, please call Shawna O'Neill at 800-649-7915.



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LEGAL AND REG.

(continued from page 5)

children as “miniature adults,” Sotomayor notes that since children are more susceptible to outside pressures than adults, “a reasonable child subjected to police questioning will sometimes feel pressured to submit, when a reasonable adult would feel free to go.” A child’s age is “a reality that courts cannot simply ignore” and therefore must be taken into consideration.

Justice Samuel Alito, in his dissent, decries the affect that factoring a child’s age into the custody analysis will have on the ease and clarity of Miranda application, predicting that it “will be hard for the police to follow, and it will be hard for judges to apply.” Favoring a one-size-fits-all reasonable-person test over one that accounts for an individualized characteristic (age), Justice Alito sees the difficulty of “a 60-year-old judge attempting to make a custody determination through the eyes of a hypothetical, average 15-year-old. Forty-five years of personal experience and societal change separate this judge from the days when he or she was 15 years old.”

Justice Sotomayor disagrees that age is such an obscure factor to assess that law enforcement officers and judges will need knowledge of developmental psychology or expertise in cultural anthropology to put themselves in the shoes of another. “They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.”

*Garrett Baxter, Staff Attorney
VLCT Municipal Assistance Center*

Social Service Agency Appropriations: How Much Information is Required for Town Meeting Warning Articles?

In April of this year, Judge Mary Miles Teachout of the Rutland Unit of the Vermont Superior Court issued a decision holding that the language of social service appropriation articles for the Middletown Springs 2010 town meeting were statutorily insufficient because the articles failed to provide enough information for Middletown Springs voters. *Pepperman v. Town of Middletown Springs, et al.*, 140-2-10 Rdcv (Apr. 11, 2011). Under Vermont law, voters may appropriate money at town meeting for the support of social service programs and agencies that provide services to town residents. 24 V.S.A. § 2691. The statute provides, in part, “At a meeting duly warned for that purpose, a town or incorporated village may appropriate such sums of money as it deems necessary for the support of social service programs and facilities within that town for its residents.”

In 2008, Walter Pepperman, a resident of Middletown Springs, objected to the manner in which the Town was handling and warning social service agency appropriations. Specifically, Pepperman wanted the selectboard to adopt a resolution whereby it would make a determination that the proposed appropriations were “necessary” under the statute and that they were for the benefit of town residents. In 2009, the Town adopted a policy requiring all social service organizations that wanted to have funding requests appear on the warning provide documentation of the services being provided and how those services would be made available to Town res-

idents. This information would be made available for inspection at the town offices.

Despite the new policy, Pepperman continued to believe that the Town was not in compliance with 24 V.S.A. § 2691. The Town’s practice to warn social service agency appropriations was as follows: “Shall the voters of Middletown Springs vote to appropriate [amount requested] to [name of requesting organization]?” Pepperman believed that the statute required the Town to include language stating that the voters were to decide if each social service agency appropriation was “necessary” and “would benefit Town residents.” When the selectboard in 2010 warned social service agency appropriations in the same basic form it had used in 2008 and 2009, Pepperman brought suit.

Pepperman’s primary allegation in the lawsuit was that the form of the Town’s social service agency appropriation articles failed to comply with 24 V.S.A. § 2691 in that the articles failed to provide sufficient information to the voters to instruct them about the standard they must apply in voting on a proposed social service appropriation. Judge Teachout agreed, holding that the article language was insufficient because it failed to “include terms that specify that the voters must deem the proposed appropriation necessary for the program and the program must serve town residents.” According to Judge Teachout, without such information the voters “cannot make the determination whether required by statute ... because they have no way of measuring what the organizations will use the money for and the necessity of that use, nor whether the organization’s program serves Town residents. ... Therefore simply naming the organization is insufficient to show ‘character and purpose’ and runs afoul of 24 V.S.A. § 2691.” In some instances, according to the judge, the name of the social service agency is sufficient to indicate the charter and purpose of the proposed appropriation. However, when this is not the case, the selectboard is obligated to provide some brief description of the use to which the money will be put in order to allow the voters to make their determination.

Although Judge Teachout’s decision in this case does not bind other Vermont municipalities, it is instructive on how other courts in the state may address the issue. In light of Judge Teachout’s decision, VLCT advises that when crafting warning articles for social service agency appropriations, in addition to providing the name of the social ser-

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VERMONT'S RESIDENTIAL ENERGY CODE IS CHANGING – IS YOUR TOWN READY?

REQUIREMENTS FOR RESIDENTIAL NEW CONSTRUCTION, ALTERATION, RENOVATION, AND REPAIR

The Vermont Residential Building Energy Standards (VT-RBES) have been updated and will impact nearly all residential new construction and some existing home renovation projects. VT-RBES, often referred to as the “Energy Code,” was first passed by the Vermont Legislature in May 1997, establishing a minimum standard of energy efficiency required of all new residential construction in Vermont. In May 2009, the legislature passed the Vermont Energy Act of 2009 directing that VT-RBES be based on the 2009 International Energy Conservation Code. On July 1, 2011, after public and legislative review and comment, the Vermont Department of Public Service (DPS) filed the final VT-RBES rules with the Secretary of State's office. The new VT-RBES requirements will apply to residential new construction, as well as to alteration, renovation, and repair of existing homes commenced on or after October 1, 2011.

The expansion of VT-RBES to include alteration, renovation, or repair pertains to work that impacts the energy use of existing homes. Unaltered portions of an existing home do not need to comply with the new energy code standard.

Homes meeting the 2011 VT-RBES requirements will be significantly more energy-efficient than those built to achieve previous RBES requirements. This increase in effi-

ciency should result in a reduction in energy use and lower operating costs for the homeowner. New air sealing and indoor air quality requirements will also lead to homes that are more comfortable and healthier to live in.

Proof of Compliance. VT-RBES requires that the builder or general contractor certify to their client that the home they constructed or renovated complies with code. Buyers have recourse via civil action for a false or defective certification; however, failure to build to VT-RBES does not constitute a defect in marketable title.

Certification is accomplished as follows:

- Complete the VT-RBES compliance certificate using the available compliance paths. (Three easy methods for builder certification exist, including Efficiency Vermont's Residential New Construction Service (800-893-1997), which serves about 30 percent of the new homes in the state. Efficiency Vermont provides compliance verification through Home Energy Ratings at no charge when program standards are met).
- (1) Post the original, signed VT-RBES compliance certificate on the breaker box door or on the heating equipment,

(2) file a copy with the town clerk where the home is located, and (3) mail a copy to Vermont Department of Public Service, Planning and Energy Resources Division, 112 State Street, Montpelier, VT 05620.

Owners doing their own work and who live in the subject property are exempted from complying with the new standards, but at the time the property is sold, they must disclose in writing what construction or rehab work performed did or did not meet VT-RBES requirements.

Training and More Information. Training on both Vermont's residential and commercial energy codes (the Commercial Building Energy Standard is also being updated in 2011) will be held throughout the state this fall. For more information on training dates and locations, visit Efficiency Vermont's website, www.energycertification.com or call Efficiency Vermont's Residential New Construction Service (800-893-1997).

The updated Residential Building Energy Standards Handbook with complete details on new VT-RBES requirements will be available for free at all VT-RBES trainings. The handbook will also be available through

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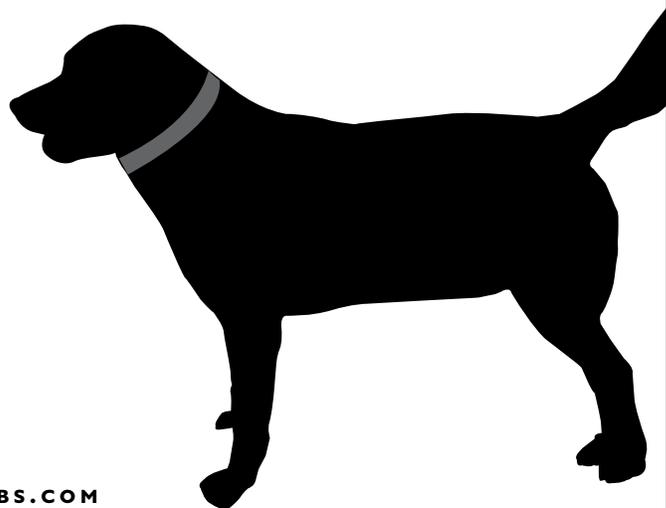
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RESIDENTIAL ENERGY CODE LEGAL AND REG.

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the Energy Code Assistance Center (855-887-0673) and online on the DPS website, http://publicservice.vermont.gov/energy/ee_resbuildingstandards.html

Towns can help ensure that homes in their community comply with the new energy code by providing information to parties seeking building permits or other information about residential construction. By raising awareness of the new energy code, towns can help create a housing stock with lower utility bills and a higher level of comfort and durability. More information and assistance is available through the Energy Code Assistance Center.

Chris Gordon, Residential New Construction Manager, Vermont Energy Investment Corp.

Jeff Gephart, Trade Ally Outreach Contractor, Efficiency Vermont/VEIC

vice agency and the amount requested for appropriation, the selectboard should include a brief description of the purpose for the proposed appropriation. For example, an article might provide, "Shall the voters of _____ appropriate [amount requested] to [name of organization] for nutrition services for children?" or "Shall the voters of _____ appropriate [amount requested] to [name of organization] for transportation services provided to senior citizens and disabled persons?" In providing this brief description, the selectboard must be careful not to imply an opinion on the worthiness or necessity of the appropriation or to otherwise comment on the appropriation, as 17 V.S.A. § 2666 provides, "Neither the warning, the notice, the official voter information cards, nor the ballot itself shall include any opinion or comment by any town body or officer or other person on any matter to be voted on."

A social service agency's request for an appropriation can be placed on the warning by the selectboard's own motion or by a petition signed by five percent of the voters and submitted to the town clerk not less than 40 days before the date of the meeting. 17 V.S.A. § 2642. When a social service agency appropriation request is supported by a petition, the selectboard should work with the petitioners to insure that the petitioned article is presented in the appropriate form. Along these lines, VLCT recommends adoption of a policy on handling social service agency appropriations. By employing such a policy, a selectboard can require agencies requesting appropriations to submit a more complete description of their programs for inclusion in the town report and encourage their representatives to attend the town meeting or public informational hearing to explain the appropriation request to the voters and answer voters' questions. VLCT's Model Social Service Agency Appropriation Policy is available through the VLCT Resource Library, <http://resources.vlct.org/>.

On another note, Judge Teachout dismissed Pepperman's claims against the individual selectboard members and his claims for monetary damages against the town. On the claims against the individual defendants, Judge Teachout found that 24 V.S.A. § 901(a) "clearly states that where an action lies against a municipal officer, the action shall be brought in the name of the Town in which the officer serves. Mr. Pepperman's claims against the individual defendants, all of whom are selectpersons, arise from their role in approving the Town warning and ballot language. The claims against the individual defendants must be dismissed because they are being sued in their capacity as municipal officers." The selectboard members were also entitled to immunity because "voting to approve ballot language is a legislative act and entitles the individual defendants to absolute immunity." As for Pepperman's claims for damages against the Town of Middletown Springs, Judge Teachout noted, "The legislative approval of language for a Town warning and ballot is a quintessential governmental function. Therefore, the Town of Middletown Springs is entitled to sovereign immunity and all claims for damages must be dismissed." The decision is available at www.vermontjudiciary.org/20112015%20Tcddecisioncvl/2011-4-15-1.pdf.

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



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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/events-news-blogs/newsletter-archive/advertising-information/.

HELP WANTED

Property and Casualty Claims Representative. VLCT seeks a Property and Casualty Claims Rep to serve the municipal members of its Property and Casualty Intermunicipal Fund (VLCT PACIF) handling

property, liability, and automobile claims. The successful candidate will conduct investigations and site visitations, determine liability, attend mediations, negotiate settlements, interpret policies, set reserves, and prepare required forms and reports. Requirements: Vermont Property and Casualty Adjuster license; bachelor's degree or equivalent plus two years insurance claims experience and in-depth knowledge of property, liability, and automobile insurance principles; superior communication and problem solving skills and ability to analyze information; and a Vermont driver's license for in-state travel. Basic knowledge of general insurance principles preferred; AIC or CPCU designation is a plus. VLCT is a great place to work. We offer a convenient Montpelier location and an excellent total compensation package, including two health insurance options, retirement choices with up to 12.1% total employer contribution and more. Salary range, \$40,000-\$45,000. To apply, please mail a cover letter, resume, and three references to Human Resources, VLCT, 89 Main Street, Montpelier, VT 05602. You may also email your application materials to jobsearch@vlct.org with Claims Rep in the Subject field. (7-13)

Town Administrator. The Town of Underhill, Vermont (pop. 3,000), located in northwest Vermont at the foot of Mt. Mansfield, seeks a highly responsible and collaborative town administrator. The town administrator is the principal liaison and support person for the three-member selectboard and assists the board's general administration of the Town. His or her day-to-day responsibilities include oversight and management of meetings, presentation of decisions to external audiences, and coordination with the Town's elected and appointed officials. The position is part-time (20 hours per week) and the salary range is \$20,000 to \$25,000, with excellent benefits. A detailed job description is available at www.underhillvt.gov under Open Positions. The successful candidate will have five to ten years of administrative experience in a municipal or comparably multifaceted organization, ex-

cellent oral and written communication skills, planning and organizing expertise, and will work well independently. Bachelor's degree preferred. To apply, please send a cover letter, resume, and three references to Underhill Town Administrator Search, c/o VLCT, 89 Main Street, Montpelier, VT 05602. You may also email your application to charrington@vlct.org with Underhill Town Administrator in the subject line. Application review will begin on August 15, 2011. The Town of Underhill is an equal opportunity employer. (7-13)

RFPs

Acts 60/68 Consultant. The Deerfield Valley towns of Dover and Wilmington and other Windham County towns seek to hire a consultant to evaluate the impact of Vermont Education Funding Structure known as Act 60 and Act 68 on the economy of the area since the inception of Act 60 and Act 68, and whether the funding structure results in equal educational opportunity for the area students. You can download the Request for Proposal at www.doververmont.com, where you will also find further information. **The deadline to receive the proposals is August 9, 2011.** Work is to be completed by December 1, 2011. (7-08)

VLCT NEWS ONLINE

We still encourage all subscribers, especially single-use readers, to consider switching from paper copies to online viewing of the *VLCT News*. The benefits are many: a smaller carbon footprint, lower printing and postage costs, less paper used, full-color rendering of color photographs, and immediate access to web links.

If you are ready to switch to accessing the *VLCT News* completely online, please email us so we can remove you from our postal mailing list and make sure that your correct email address is on our *News* email list.

To view the current *VLCT News* or the archives, please go to www.vlct.org/events-news-blogs/current-news/.



How to Make the Most of Your Doctor Visits



Knowing what to ask your doctor — and where to get clear information on your own — is critical to getting the most out of your healthcare.

6 Ways to be a Savvy Patient

- **Shop for doctors who meet your needs.** Seek a physician who knows about your condition and views patients as team members in care.
- **Put together a Personal Health Record (PHR).** You may avoid unnecessary tests, misdiagnoses and medication mix-ups.
- **Bring a list.** Pose important questions up front.
- **Don't hold back about your symptoms.** The more you share, the better your doctor can care for you.
- **Get the low-down about tests.** Ask your doctor about: expected results, how to prepare, any side effects and when you will get the results.
- **Ask about nondrug treatments.** A healthy diet, for example, can be an effective way to lower high blood pressure, the leading cause of doctor visits.

How Health Advocate Can Help

Your Health Advocate Healthcare Help benefit, paid by your employer or plan sponsor, gives you access to a Personal Health Advocate (PHA), typically a registered nurse, supported by medical directors and benefits and claims specialists, who can help you create a list of questions for your doctor. Your PHA can help you navigate the healthcare maze in the following ways:

- Find the right doctors, specialists and other providers
- Clarify health coverage and doctor's instructions
- Prepare questions for doctor visits
- Provide cost estimates for common medical procedures
- Locate leading doctors for second opinions
- Help untangle medical bills...and more

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Web: www.HealthAdvocate.com/members

Our normal business hours are 8 am to 9 pm Eastern Time, Monday through Friday. After hours and during weekends, staff is available for assistance with issues that need to be addressed during non-business hours.



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2011 VPRA CHANGES

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the complainant substantially prevails. 1 V.S.A. § 319(d)(1), (2).

How this *may-to-shall* change will actually play out remains to be seen. The attorney's fees provision of Vermont's Public Records Act was modeled on the Federal Freedom of Information Act (FOIA). FOIA attorney's fee provision, like the former version of the Vermont statute, is discretionary. It provides that a court "may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case ... in which the complainant has substantially prevailed." 5 U.S.C. § 552(a)(4)(E). Federal courts use a two-part test to determine attorney's fees under FOIA. First, the party seeking attorney's fees must show that it has substantially prevailed and is therefore *eligible* for them by proving that legal action could reasonably be regarded as necessary to obtain the requested documents, and that in fact the litigation had a substantial causative effect on the release of the documents.

Once eligibility is proved, the party has still the burden of demonstrating that it is *entitled* to the fees. Factors considered under FOIA in determining whether a party is entitled to attorney's fees are: (1) the public benefit derived by the lawsuit; (2) the commercial benefit the requesting party will receive from release of the requested documents; (3) the nature of the requesting party's interest in the documents; and (4) whether the public agency had a reasonable basis for withholding the documents. Though it has never expressly adopted these factors, the Vermont Supreme Court has looked to interpretation of FOIA for guidance in applying the Public Records Act. These factors have become the framework by which Vermont courts have evaluated attorney's fees requests under the Public Records Act. See *Burlington Free Press v. University of Vermont*, 172 Vt. 303, 305-307 (2001).

Notwithstanding the statutory change from *may to shall*, it seems very unlikely at this point that Vermont courts will completely abandon all consideration of these factors, especially given the lack of clarity that surrounds many of Vermont's 260-plus statutory exemptions. Nevertheless, the bar for municipal records custodians has been raised and municipal officials should be

more careful than ever to comply with the Act and to document their compliance with its requirements.

In order to help avoid the imposition of attorney's fees, VLCT advises that whenever a public records request is received, municipal officials should keep a detailed record of how the request is processed. Whenever feasible, the municipality should encourage public records requests to be made in writing. The date of receipt of the request should be recorded and all efforts to consult with the requestor to clarify the request or to obtain additional information to assist in responding to the request should be documented. If a record is produced for inspection, the date and time of the inspection should be recorded. If a record is withheld in whole or in part, the municipality must ensure that it has complied with the requirements for written certification and the obligation to inform the requestor of his appeal rights. All partial and complete denials of public records should identify the statutory basis for the denial and provide a clear statement of the reasons and supporting facts for denial. If the statutory deadline needs to be extended, the municipality must be sure to inform the requestor in writing the reasons for the extension and the date on which a determination is expected to be provided.

As the Secretary of State is now obligated to provide municipal public agencies with advice regarding the requirements of the Public Records Act under 1 V.S.A. § 318(g), VLCT strongly encourages municipal officials to consult with the Secretary of State's office whenever a question arises regarding the process for responding to a public re-

ords request or whether an exemption applies to a requested public record. VLCT also recommends that the municipality consult with its attorney before withholding a public record from inspection.

VLCT has developed a Model Public Records Inspection, Copying, and Transmission Policy to assist municipal records custodians in managing and responding to public records requests. The model policy is geared towards municipal clerks but it can be modified for adoption for other municipal records custodians. The policy is available in VLCT's online Resource Library at www.vlct.org/resource-library/search-the-resource-library.

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

NEW IRS MILEAGE RATE

The Internal Revenue Service announced that its optional standard mileage rate for the final six months of 2011 will be 55.5 cents per mile. This rate applies to the use of a personal car, van, pickup, or panel truck for business purposes. This is an increase of 4.5 cents per mile from the rate that applied to the first half of 2011. For more information about the reimbursement rate, visit www.irs.gov/pub/irs-drop/a-11-40.pdf.

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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Calendar

For more information about the following workshops or events, please call Jessica Hill, Manager, VLCT Administrative Services, at 800-649-7915, or email jhill@vlct.org. You may also visit www.vlct.org/events-news-blogs/event-calendar/ and select a workshop for more information or to register online. Please check back frequently for program updates. Final agendas and online registration is available six weeks prior to the event date. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)

Watch your email inbox or U.S. mailbox in the coming weeks for the 2011-2012 Calendar of Workshops and Events. Once completed, everything will be listed on our website Events Calendar as well. Here is what we've finalized for you so far:

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 benefit 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.

October 6, Killington Grand Hotel, Killington VLCT Town Fair (Sponsored by VLCT, VLCT PACIF, 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.

October 19, Capitol Plaza Hotel, Montpelier Weathering the Storm: Land, Water and

the Local Role (Sponsored by the VLCT Municipal Assistance Center). In scope and duration, this past spring's flooding placed unprecedented demands on the state and its communities. This workshop is geared towards local officials and planners involved in protecting floodplains and shorelands as well as those who provide relief services to communities affected by flooding. The workshop will spotlight flood hazard mitigation, comprehensive stormwater management and the lessons learned from this spring's record flooding.

October 26, Capitol Plaza Hotel, Montpelier Managing the Municipal Budget (Sponsored by the VLCT Municipal Assistance Center). This annual workshop provides an introduction to governmental accounting, strategies for developing and managing the annual operating budget, and tips for managing the politics of the budgeting process.

Visit our website www.vlct.org/events-news-blogs/event-calendar/ for the most up to date list of events.