

# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

January 2012

## THE VLCT BOARD MEETS WITH THE GOVERNOR

At a meeting with the VLCT Board of Directors on December 1, Governor Peter Shumlin thanked local officials for their tremendous work in dealing with Tropical Storm Irene. He said that he understands that recovery from the storm's damage will take a long time and will require sustained efforts on the part of the state, municipalities, and individuals. The governor wants to continue the strong, collaborative relationships that state and local officials forged during recovery efforts.

Hunter Rieseberg, President of the VLCT Board, told the governor that Vermont local officials were extremely impressed with the amount of reconstruction that the state

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*The VLCT Board and Governor Shumlin discuss Tropical Storm Irene's impact on municipal infrastructure.*

## WORKERS' COMP AND TRANSITIONAL RETURN TO WORK PROGRAMS

Most employers know that once an employee is trained and has experience in his or her workplace, it is usually much less expensive to retain that employee than to interview, vet, hire, and train a new one. What many employers do not realize is that employees who experience occupational injuries have a decreasing chance of returning to their job as their number of days away from work increases. Moreover, a growing body of research shows that **employees who are brought back to work for "light duty" before they are ready for "full duty" recover more quickly than employees who stay at home to recover passively.** Providing a

transitional return to work period both helps employees maintain beneficial ties with the employer and co-workers and prevents disillusionment – and potentially even bouts of depression.

Another compelling reason for not allowing workers' compensation claims to take their normal course is that in the long run it becomes very expensive for the employer. Even though workers' comp insurance pays the claimant during his or her recovery, that claim will become part of the employer's insurance claims history and stay on the books

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## TAKING IT TO THE STREET

Last session, the Vermont Legislature enacted H.198, a bill that requires a municipality "to consider 'complete streets' principles" when planning, designing, constructing, and maintaining its highways. ("Complete streets," according to the National Complete Streets Coalition, are roads that are safe and accessible for everyone, not just motor vehicles.) This legislation outlines that the use of these principles in the design of our streets will ensure the "safety and accommodation of all transportation system users, regardless of age, ability, or modal preference." 19 V.S.A. § 309d (a). The law places some new responsibilities on those employees and/or officials who manage the paved municipal highway system. (Unpaved highways are exempt. 19 V.S.A. § 309d(a)). In most municipalities, the selectboard has "the general supervision and control" of the town highway system. 19 V.S.A. § 303.

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## STAFF NEWS AND NOTES

### VLCT NEWS

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After studying archaeology at Boston University, VLCT's new Advocacy and Information Associate **Jonathan Williams** signed up with the Peace Corps and served as an Environmental Education Volunteer in the Kingdom of Morocco for more than two years. Subsequently, he attained a Peace Corps Fellowship with the University of Vermont's Public Administration Master's Program, and he expects to graduate in 2012. He has also served as a Management Assistant at the Village of Essex Junction.



**Jonathan Williams**

Among numerous talents, Jonathan is fluent in Moroccan Arabic, a useful tool in some of the more enigmatic committee meetings of the Vermont Legislature. And if you press him hard enough, he'll regale you with a tale of hitching a ride via donkey cart across the Sahara Desert to Meknes. Jonathan currently lives not in a sun-dried brick house in a Rif Mountain valley but rather in Montpelier.

Currently, VLCT is fully staffed and no departures are soon anticipated, good news for Allyson Barrieau, who has to painstakingly realign the organizational chart after each employment adjustment. (Note to staff: now stay put!) *David Gunn, Co-Editor VLCT News*

#### VLCT NEWS ONLINE

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.

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# ASK THE LEAGUE

## UNNECESSARY TOWN MEETING ARTICLES

***Our town meeting warning always has an article that reads "to see if the Town will vote to authorize the selectboard to borrow money in anticipation of taxes." Is this article necessary?***

Town meeting warnings many times contain unnecessary articles because the town "has always done it this way." Break with tradition and don't include articles for municipal action that do not require voter approval. Including such articles gives the voters the impression of authority over an action when in fact that authority rests elsewhere. The following articles do not need to be included on a town meeting warning because Vermont law either requires action or vests with the power to make the decision with the legislative body.

***Shall the town instruct the selectboard to borrow money in anticipation of taxes?***

- The selectboard is vested with the authority to "borrow money in anticipation of taxes [.]". This authority is limited

in that the amount borrowed cannot exceed 90 percent of the amount of taxes assessed for that year and the term of repayment cannot exceed one year. 24 V.S.A. § 1786. If the voters failed to pass this article, it would not prevent a selectboard from borrowing money in anticipation of taxes, if needed, nor does the passage of this article require a selectboard to borrow money.

***Shall the town vote to instruct the selectboard to set the tax rate necessary to raise the specific amounts voted?***

- If a town, through its voters, doesn't "express in its vote ... the rate on a dollar of the grand list" to set the property tax rate, then it is voting a on a specific budgeted amount. In this case, the selectboard is required to perform the calculation to set the property tax rate. A failure to pass an article authorizing the selectboard to set the tax rate does not relieve it of the responsibility to do so. 17 V.S.A. § 2664.

***Shall the voters authorize the expenditure of revenue received from unanticipated grants and gifts?***

- The selectboard is statutorily authorized to apply for grants and expend those funds, and to accept gifts on behalf of the town, even if the revenue from the grants and/or gifts is not included in the budget year. The selectboard is required to include, "in its annual report, a description of all grants or gifts accepted during the year and associated expenditures [...]" 17 V.S.A. § 2664.

Another common article on the town meeting warning is "to hear and vote to accept

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### TRIVIA

Ann Myers, Annette Lorraine, and Carol Hammond of Essex Town, Peacham, and Vernon, respectively, knew that **Bradford** – formerly known as Waitstown – was the only town in Vermont to have been settled before there was any grant, charter, or patent to cover the land. Brendan Whitaker of Brunswick gets an honorable mention for submitting three separate answers – all wrong, sure, but in this holiday season, it's the thought that counts. January's query, while still historic in nature, only goes back in time three-quarters of a century:

**In a popular referendum in 1936, Vermonters refused a federal sum of \$18 million – no chump change in those days – for what purpose?**

Email your answer to [dgunn@vlct.org](mailto:dgunn@vlct.org). Then wait four weeks for the fairly fascinating February issue to learn if you're right.

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## ASK THE LEAGUE

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the reports of the officer.” Similar to the articles above, there is no legal requirement for the voters to accept or act upon reports from town officers. However, hearing the reports from the selectboard, auditors, road commissioner, or other officials may set the stage for other articles on the agenda, such as electing officers or approving the general and highway budgets. It also provides an opportunity for the voters to hear about what was accomplished in the previous year or what to expect in the upcoming year.

For more information about preparing for your Town meeting, go to the VLCT Resources web page, [www.vlct.org/league-resources/search-vlct-resources/](http://www.vlct.org/league-resources/search-vlct-resources/).

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

## TAKING IT

(continued from page 1)

Incorporating a sidewalk into a highway project is one way to make a highway system safely accessible to more users and alternative modes of transportation; however, it may not be the most appropriate or the only option after you consider the community context (Is this a downtown or a rural area?) or anticipated users (Are they school children or commuters?). A student, even with the installation of sidewalks, still may not have a safe route to school if safe crossings are not available or if school zone speed limits are not enforced. Incorporating a variety of solutions to ensure that the student can walk to school may also reduce congestion on a highway and commuter travel time by eliminating unnecessary trips to a school to drop off children.

Although the law does not define “complete streets principles,” guiding fundamentals can be found on the National Complete Streets Coalition’s website, [www.completestreets.org/](http://www.completestreets.org/). They include designing roadways to slow down motor vehicles by using landscaping, on-street parking, or curbed bump outs at crosswalks; restriping travel lanes to increase shoulder width for alternative modes of travel; and installing accessible pedestrian signals and modifying signal timing to ensure that all users can cross a street safely. Slowing down traffic in a downtown or village has the added benefit of increasing a commercial district’s visibility and encouraging travelers to stop and spend time in your community.

If a municipality determines that the “project will not incorporate complete streets principles,” it must make a written determination that one or more of the following exists:

- Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.
- The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors such as land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The municipality shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors.
- Incorporating complete streets principles is outside the scope of a project because of its very nature. 19 V.S.A. § 309d(a).

The determination that these conditions exist must be supported by appropriate documentation and filed with the municipal clerk and the Vermont Agency of Transportation. A determination by the municipality to not include complete streets principles in a municipal project is not appealable or subject to any further review.

The law does not apply to private roads because they are not “managed by a municipality.” Also not covered are roads that are planned and constructed as part of a subdivision before it is accepted by the legislative body by ordinance or resolution. 24 V.S.A. § 4463 (c).

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

## UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

### February 22, Capitol Plaza, Montpelier

#### TOWN MEETING TUNE-UP

(Sponsored by the VLCT Municipal Assistance Center)

A parliamentarian’s paradise, this annual workshop is designed for moderators and selectboard members, both seasoned and new. It focuses on the statutory requirements for town meeting, “Robert’s Rules of Order,” and best practices for making it through Town Meeting unscathed. The issue of prayer at Town Meeting will also be discussed.

### SAVE THE DATES

**March 20, Hotel Coolidge, White River Junction**

**March 21, Middlebury Inn, Middlebury**  
Treasurers Workshop

**Saturday, March 31, Capitol Plaza, Montpelier**

Selectboard Institute I

**April 11, Capitol Plaza, Montpelier**  
Planning and Zoning Forum II

**Saturday, April 28, Lake Morey Resort, Fairlee**

Selectboard Institute II

**May 8, Middlebury Inn, Middlebury**

**May 10, Lake Morey Resort, Fairlee**  
Conducting Effective Tax Appeals

**May 31, Capitol Plaza, Montpelier**  
Human Resources Management Workshop

**June 7, Capitol Plaza, Montpelier**  
Municipal Attorneys Forum

**June 19, Capitol Plaza, Montpelier**  
Finance Symposium

**June 27, Capitol Plaza, Montpelier**  
Managing Municipal Assets Held in Trust

For registration and other information, please visit [www.vlct.org/events-news-blogs/event-calendar/](http://www.vlct.org/events-news-blogs/event-calendar/), call 800-649-7915, or email [info@vlct.org](mailto:info@vlct.org).



# LEGAL AND REGULATORY NOTES



## ABATEMENT PROCESS; "CAT" HELD ACCOUNTABLE

### VERMONT SUPREME COURT CLARIFIES ABATEMENT PROCESS

During a 2007 town-wide reappraisal, Michael Garbitelli refused to allow the Brookfield listers to inspect his entire property, allowing them entry only into his foyer and basement. The listers assessed his property at \$1.6 million. Mr. Garbitelli appealed his assessment all the way to the Vermont Supreme Court. The Court upheld Mr. Garbitelli's assessment, noting that he had refused entry to the listers and had therefore failed to provide an adequate basis to demonstrate that the assessment was erroneous. *Garbitelli v. Town of Brookfield*, 2009 VT 109 (mem.)

In 2009, Mr. Garbitelli changed his approach and allowed the Brookfield listers to enter his property. Thereafter, the listers re-

duced his 2009 assessment to \$957,000. Not satisfied with this result, Mr. Garbitelli filed for an abatement for the years 2007 and 2008 under 24 V.S.A. § 1535(a)(4), which authorizes an abatement in cases involving "a manifest error or a mistake of the listers." The Brookfield Board of Abatement denied the request, finding that there was no mistake attributable to the listers since they were denied entry and were forced to use the best information available to them. The board also stated that an abatement procedure is not the appropriate vehicle for appealing property valuations.

Mr. Garbitelli appealed the board's decision to superior court. The superior court affirmed the board's decision, holding that Mr. Garbitelli failed to demonstrate an abuse of

discretion by the board of abatement. The superior court also agreed with the board that abatement procedures are not meant to provide a second opportunity to appeal property valuations. Mr. Garbitelli appealed the superior court's decision to the Vermont Supreme Court, arguing, among other things, that the superior court had erred in conducting an on the record review, rather than affording him a *de novo* hearing and concluding that the board did not abuse its discretion by holding there was no "manifest error or a mistake of the listers." *Garbitelli v. Town of Brookfield*, 2011 VT 122.

The Supreme Court noted that appeals of decisions of the board of abatement are brought by taxpayers under Rule 75 of the Vermont Rules of Civil Procedure. Rule 75 allows judicial review of any action or failure to act by a state agency or subdivision. Rule 75 is in essence a default rule – where legislation is silent as to the manner review, an appeal is taken to superior court under Rule 75. Since Vermont's abatement statutes do not specify the manner of review of decisions of the board of abatement, Rule 75 applies.

According to the Supreme Court, a trial court reviewing governmental action under Rule 75 is typically limited to review of questions of law and review of evidentiary questions is limited to whether there is any competent evidence to justify the adjudication. In the circumstance where the record is inadequate – such as when a transcript from the administrative proceeding is unavailable or incomplete – evidence may be admitted to establish facts necessary for the trial court's review but generally, a *de novo* hearing is inappropriate following a quasi-judicial procedure in which the plaintiff has freely participated and the record is complete. Since Mr. Garbitelli had attended and participated in

(continued on next page)

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





## LEGAL AND REG.

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his abatement hearing in 2009 and conceded that there were no disputed issues of fact and no additional evidence that he wanted to present in his case, the Supreme Court concluded that the superior court did not err in conducting an on-the-record review under Rule 75.

Mr. Garbitelli also argued that the superior court had erred in applying 24 V.S.A. § 1535(a)(4), which allows abatement of “taxes in which there is manifest error or a mistake of the listers.” The superior court interpreted the statute to mean that any error or mistake must be *attributable to the listers* and concluded that error of the listers is required for abatement under the law. Mr. Garbitelli contended that a “manifest error” need not be attributable to the listers, but may exist independently – as here – as a result of disparate tax assessments. The Court agreed, noting that the prior version of the statute was stated in the disjunctive and was clear that “of the listers” did not modify “manifest error.” In amending the statute to its present form, the Vermont Legislature merely intended to streamline the language

by removing surplus words in the clause providing for abatement where there is error or mistake. Thus, the superior court was incorrect in concluding that a manifest error must be attributable to the listers.

Even though the Supreme Court agreed with Mr. Garbitelli’s interpretation of 24 V.S.A. § 1535(a)(4), it did not agree that the disparity between \$1.6 million and \$957,000 entitled Mr. Garbitelli to an abatement. The Court noted that Mr. Garbitelli had refused to let the Brookfield listers enter his property and had engaged in unfair and inequitable conduct over a period of years by refusing them reasonable access to the property. Since tax abatement is an equitable remedy, the Brookfield Board of Abatement was entitled to weigh the equities and take into account any bad conduct of a taxpayer, including Mr. Garbitelli’s refusal to let the Brookfield listers enter his property. The maxim that a party seeking an equitable remedy must come to court with “clean hands” was applicable to Mr. Garbitelli.

The *Garbitelli* decision marks the first time in nearly four decades that the Vermont Supreme Court has addressed the property tax abatement process, and, given the number of abatement requests expected around the state this year, the timing of the decision

couldn’t be better. The decision affirms some commonly held opinions about abatement, including the conventional wisdom that a “manifest error” under 24 V.S.A. § 1535(a)(4) does not have to be attributable to the listers. A manifest error in the property tax collection process can arise in any number of ways, and where the statute is interpreted to apply only to errors caused by the listers, it would leave a host of potential problems without a mechanism for resolution. The decision also confirms the notion that a taxpayer can’t play hide-the-ball by denying listers access to property and then seeking an abatement when the resulting assessment is thought to be too high.

In the future, boards of abatement will need to keep in mind that generating adequate records to support their decisions is nearly as important as the decision itself. If the taxpayer participated in the abatement hearing and an adequate record of the abatement hearing is present, a trial court acting under Rule 75 will generally only address questions of law and determine whether there is any competent evidence to justify the board’s decision. On the other hand, if the record is inadequate, the trial court will hold a *de novo* hearing. Last month’s *Ask the League* article has an extensive discussion of the process for holding abatement hearings.

A copy of the decision is available at <http://info.libraries.vermont.gov/supct/current/op2011-020.html>

*Jim Barlow, Senior Staff Attorney  
Municipal Assistance Center*

### U.S. SUPREME COURT HOLDS “CAT” ACCOUNTABLE

*No more are the princes, by flattery paid  
For furnishing help in a different trade,  
And burning their fingers to bring  
More power to some mightier king.*

*from “The Monkey and The Cat,”  
by Jean de La Fontaine*

The above quoted fable put to verse by 17<sup>th</sup> Century French poet Jean de La Fontaine tells the story of Bertrand and Ratto (“one was a monkey, the other a cat”). One day while sitting by the fire, the conniving Bertrand convinces the naïve Ratto to pull roasting chestnuts out of the fire for them both to enjoy. Bertrand, instead of sharing the bounty of chestnuts as promised, devours them all for himself leaving poor Ratto with the blame and a singed paw. The moral of the story is to not allow oneself to be unwittingly manipulated into serving another’s

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## PACIF REMINDER: FIRE DEPARTMENT ROSTERS ARE DUE NOW!

January 6 is the deadline for PACIF member fire departments that have any regularly paid staff (i.e., those receiving salary-type income rather than or in addition to stipends or per-event compensation) to submit their completed 2011 roster information.

- In early December, every Assigned Risk fire/rescue department received by email an Excel file pre-filled with the department's reported 2010 roster.
- Departments with a combination of regularly paid and per-event volunteers should report all staff members together in one roster file. (Any fire/rescue departments that have only unpaid workers should have completed and returned their rosters by December 28th.)
- The roster needs to list everyone who worked in the department in 2011, and, for each person, the amount of money paid by the department and the role(s) performed for the department.
- Be sure to read every entry carefully, correct all information that has changed since 2010, fill in the blank fields for every person on the roster so it is accurate for 2011, and save the Excel file.
- Collect the required supporting documents to complete the roster information.
- Thorough instructions are written in the first sheet of the Excel file. Please refer to these to minimize your chance of overlooking a detail and receiving a call from us requesting missing information.
- If you have any further questions, please call Susan Benoit at 800-649-7915, ext. 1957.
- Please email completed roster information to Susan Benoit, [sbenoit@vlct.org](mailto:sbenoit@vlct.org), by January 6, 2012.
- Failing to submit complete 2011 information by the January 6, 2012 deadline will cause your municipality's 2012 Assigned Risk contribution to be calculated on a default ten percent increase over your 2011 payroll.

## 2012 WELLNESS INITIATIVES WORKSHOPS

The start of the year means it's time for the VLCT Health Trust to roll out its new wellness programs via half-day workshops held in five locations around the state. These morning workshops aren't just for wellness coordinators anymore: we encourage municipalities to send two or more participants, including safety and wellness committee members, Health Trust contacts, selectboard members, and municipal managers. All attendees will learn how to help their municipality foster healthy behaviors among employees and covered family members. If you are interested but haven't registered yet, there might still be time, so read on.

At each workshop, Heidi Joyce will discuss her new "2012 New American Pedometer Challenge" and explain how the Healthy Lifestyle Rewards and Wellness Leader programs are adjusting to the Health Trust's new Carrier Choice business model. Participants will also hear about wellness and safety resources from VLCT's Member Relations and Loss Control staff as well as a representative from our employee assistance program, Invest EAP. And because the Trust now works with three medical insurance carriers, each one will have a representative there for breakout sessions with the groups they cover. We will conclude the workshop with a healthy lunch.

*(continued on page 11)*

## IN 2012, RESOLVE TO BE

- Safer
- Healthier
- A better employee
- A better manager
- A safer driver
- In compliance
- Less risky
- More productive
- More knowledgeable

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# MENT SERVICES

## 2012 RMS CALENDAR

**Effective Immediately: all Vermont employers with 25-250 employees *must* file and pay their Unemployment Insurance Wage and Contribution Report (C101) for the fourth quarter of 2011 using the Vermont Internet Tax Wage System (VITWS) *on-line* at [www.labor.vermont.gov](http://www.labor.vermont.gov).** According to a state mandate, filing on paper is no longer an option. In fact, the Department of Labor will impose \$100 fees for not filing on-line and on time.

The official deadline for registering to file C101s online was December 10, 2011. Employers who missed that deadline must register immediately to have a hope of receiving the PIN they'll need to access the secure system and file their C101s for the fourth quarter of 2011 before January 31, 2012. Once registered to use VITWS, employers will receive a new PIN each quarter to file that quarter's C101.

**PACIF Members' PAID Fire/Rescue Rosters Due to Susan Benoit at VLCT.** Friday, January 6, 2012. The contact person from each PACIF member that has a fire department should have received an email from Susan Benoit or Denise Ricker in the first week of December with an attached Excel file listing last year's department personnel. Departments with only unpaid staff members were directed to update the Excel file with 2011 information and return it by December 28<sup>th</sup>, but those with any salaried or otherwise regularly paid employees have until January 6<sup>th</sup> to submit their updated file and supporting documents to Susan ([sbenoit@vlct.org](mailto:sbenoit@vlct.org)). If you are in this second group, please take the time before signing and submitting your Excel file to **check the pre-filled fields for accuracy and double-check that you have filled in all of the other fields accurately**, then mark the box confirming that you reviewed all of your information. Failing to submit complete 2011 information by the January 6, 2012 deadline will cause your municipality's 2012 Assigned Risk contribution to be calculated on a default ten percent increase over your 2011 payroll.

**DriveSim Training in Bennington.** Monday to Friday, January 9 to 13, Bennington Fire Dept., 130 River Street, 05201. An instructor will train preregistered PACIF member employees. To inquire about openings, contact Shawna O'Neill at 800-649-7915, ext. 1935, or [soneill@vlct.org](mailto:soneill@vlct.org).

**VLCT Health Trust's 2012 Wellness Initiatives Workshops.** Five mornings in January at the locations listed below. See page [?] of this newsletter for more information. Attendance is free for people from Health Trust members and \$50 each for people from other VLCT members. All workshops have sign-in and materials pick-up starting at 8:30 a.m. and conclude after a healthy lunch.

Thursday, January 12, VLCT Office, Montpelier

Wednesday, January 18, Holiday Inn Express, Brattleboro

Thursday, January 19, Holiday Inn, Rutland

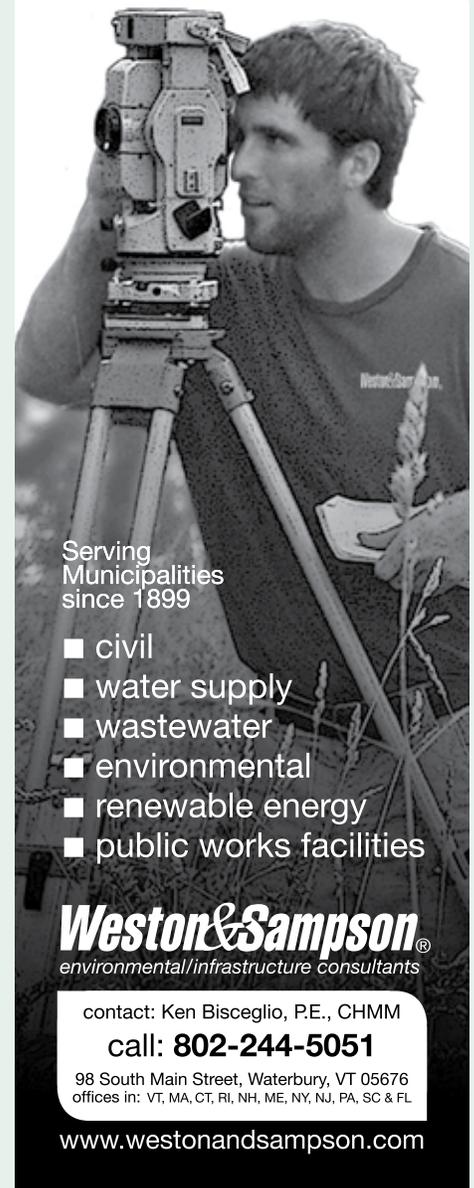
Wednesday, January 25, Hampton Inn, Colchester

Friday, January 27, St. Johnsbury-Lyndon Industrial Park, Lyndon

Register online at [www.vlct.org/events-news-blogs/event-calendar/](http://www.vlct.org/events-news-blogs/event-calendar/). Be sure to use the Other Comments box (just above the Submit button) to specify how many sets of pedometer materials you'd like to pick up, whether you need a scale for weekly weigh-ins, and which health insurance carrier you will have for 2012. If you have questions, please email Heidi Joyce at [hjoyce@vlct.org](mailto:hjoyce@vlct.org) or call her at 1-800-649-7915.

## Welcome New or Returning HT Members

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## WELLNESS INITIATIVES

(continued from page 8)

Information about the workshops has been sent to all VLCT members (not just Health Trust members) because everyone can attend a workshop and receive the Pedometer Challenge materials: Health Trust members do so for free, while those not in the Health Trust will be billed for the costs. Dates, locations, and registration details are also printed in the RMS Calendar in this newsletter. **All registration will be online this year through the VLCT website's Events Calendar.** Before registering, wellness coordinators must determine how many sets of pedometer materials their group will require, because they'll need to order them as part of the online registration process.

If you have questions, please email Heidi Joyce at [hjoyce@vlct.org](mailto:hjoyce@vlct.org) or call her at 1-800-649-7915.

## PACIF CONTINUING ITS EQUIPMENT GRANTS AND SCHOLARSHIPS IN 2012

The PACIF Board of Directors has decided to continue funding the Equipment Grant and Scholarship programs in 2012. With the goal of managing members' risk in general and reducing property, casualty, liability, and workers' compensation claims in particular, the programs are open to all 2012 PACIF members and will be awarded to those that submit applications for well-planned and appropriate requests. Both programs have some changes but are substantially similar to 2011, and members can start submitting applications for each as early as January 1.

As in 2011, PACIF Equipment Grants will match member funds 1:1 for up to \$5,000 to reimburse them for equipment that will directly reduce the potential for future insurance claims. This program has three noteworthy changes from last year. The biggest is that overall funding has been increased by \$50,000 to \$250,000, which means that at least ten additional members can make use of the program – or more, if any of them use less than the \$5,000 maximum. Automated External Defibrillators (AEDs) have been removed from the eligibility list, but several new examples of eligible equipment have been specified, including powered pallet jacks, automatic flagger devices, and ballistic vests. The application form now requires itemized descriptions and costs of requested equipment and includes a worksheet to help organize this information.

### Welcome New UI Trust Member Town of Warren

The guidelines for PACIF Scholarships for 2012 still allow each member to apply for reimbursement for up to \$2,500 per year for onsite group trainings or up to \$500 for each of two individual scholarships per year. Each application requires a course description, an explanation of how the course will reduce the risk of insurance claims, and a summary of all anticipated costs, including travel, lodging, and training materials.

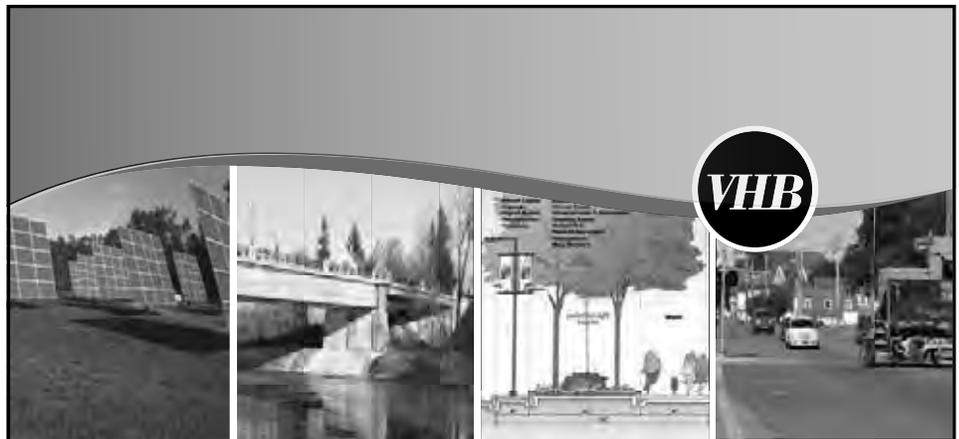
Links to complete information and application forms for both of these programs are available at [www.vlct.org/rms/pacif/](http://www.vlct.org/rms/pacif/). If you

have any questions regarding either, please call Shawna O'Neill at 800-649-7915.

## WORKERS' COMP AUDITS COMING SOON

PACIF member contacts: please watch your email in January for information about upcoming visits from Member Relations and Underwriting staff members who will need to review your 2011 payroll records. This audit is necessary to find any differences between anticipated and actual data for the recently completed calendar year so we can adjust your contribution accordingly. The email will contain a specific list of reports and information we will ask you to compile before one of our team members visits your office.

(continued on next page)



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## EQUIPMENT GRANTS

(continued from previous page)

### MEMBER RELATIONS REPS MADE THE GRADE!

Last spring and summer, VLCT's three Member Relations staff members earned the professional designation of Licensed Insurance Producer by passing what is informally referred to as "the Broker exam." Larry Smith, Tanya Chambers, and Pam VanDeursen each studied for approximately 80 hours in preparation for the online test, which is so difficult that many people fail it at least once before passing it. However, each of your MR Reps passed this detailed test the *first* time.

A Producer is a person licensed to sell, solicit, or negotiate insurance, and although Licensed Insurance Producer is a nationally used designation, each state has its own tests based on state laws and regulations. The Department of Banking, Insurance, Securities, and Health Care Administration (BISHCA) oversees and issues Producer licenses in Vermont. Now that Larry, Tanya, and Pam have earned this professional distinction, they can't rest on their laurels – they'll have to pass continuing education courses every two years to maintain it.

## VLCT BOARD

(continued from page 1)

has accomplished in very short order because conducting "business as usual" was impossible. Officials from diverse state agencies worked side by side with local officials in innovative ways to help reconstructive projects succeed. He urged the governor to incorporate lessons learned from Tropical Storm Irene to address the permitting system in Vermont, to continue communication and new collaborative decision making systems between agencies and local government.

"If you have brilliant ideas," responded the governor, "let's hear them. Give me some specifics. We can work on them."

VLCT will take up that challenge in the 2012 legislative session. If you as a municipal official saw things that worked particularly well during the Irene cleanup process, let us know. Advocacy staff can incorporate those ideas into suggestions for long-term improvements in both project permitting and delivery.

*Karen Horn, Director  
Public Policy and Advocacy*

## LEGAL AND REG.

(continued from page 7)

purpose. In the idiom which follows, "cat's paw" means a dupe or pawn of another.

In the employment law context, the cat's paw theory comes into play when a biased staffer of an employer with no decision-making authority uses the formal decision maker as a cat's paw or dupe to take some discriminatory employment action. Under this theory, the employer is legally to blame for adverse employment actions taken by an unbiased decision maker (the cat) that are influenced by a biased supervisor (the monkey).

The setting for our modern retelling of this fable is Proctor Hospital in Peoria, Illinois. The cast of characters includes Vincent Staub, an angiography technician for the hospital; Janice Mulally (Staub's immediate supervisor) and Michael Korenchuk (Mulally's supervisor), both in the role of Bertrand; and Linda Buck (Proctor's vice president of human resources) as Ratto. Staub was a U.S. Army Reservist while employed by the hospital and Mulally and Korenchuk were hostile to his military obligations. Mulally scheduled additional shifts for Staub without advance notice as a means of having him "pa[y] back the department for everyone else having to bend over backwards to cover [his] schedule for the Reserves." She also told a co-worker that his military service was a "strain on the department" and asked her to help "get rid of him." Korenchuk exhibited similar animus towards Staub's service, characterizing it as "a bunch of smoking and joking and [a] waste of taxpayers['] money." Mulally issued Staub a disciplinary warning ("Corrective Action") for purportedly violating a company

rule requiring him to remain at his work station when not working with a patient. Korenchuk informed Buck that Staub had violated the Corrective Action by failing to inform a supervisor that he left his station. Buck subsequently reviewed Staub's personnel file and fired him. Staub denied he left his station without prior notice, countering that such a rule didn't even exist but rather was concocted as part of a scheme by his supervisors to get rid of him in retaliation for his military obligations.

Staub brought suit against Proctor Hospital in federal district court under the Uniformed Services Employment Rights Act (USERRA), alleging not that Buck had any hostility towards his military service but that Mulally and Korenchuk did and it was their actions that influenced Buck's decision. In essence, Staub argued, Buck was the cat's paw to Mulally's and Korenchuk's monkey. The jury found for Staub, finding that Staub's military status was a "motivating factor" in his termination. The Seventh Circuit Court of Appeals reversed the decision on the grounds that Staub could not prevail under a cat's paw theory unless Buck had blindly relied upon the advice of Mulally and Korenchuk. Staub appealed to the United States Supreme Court. *Staub v. Proctor Hospital*, 562 U.S. \_\_\_ (2011).

The specific question put before the Court was whether an employer could be liable under a cat's paw theory for violating USERRA. This federal law forbids discriminatory employment practices (hiring, reemployment, retention, promotion, or any benefit of employment) against employees performing military service if that service is a "motivating factor in the employer's action

(continued on page 14)

### 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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# Classifieds

Please visit the VLCT website [www.vlct.org/marketplace/classifiedads/](http://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](mailto:classifieds@vlct.org). For details on display advertising, email [vlctnews@vlct.org](mailto:vlctnews@vlct.org). Information on ad requirements may also be downloaded at [www.vlct.org/events-news-blogs/newsletter-archive/advertising-information/](http://www.vlct.org/events-news-blogs/newsletter-archive/advertising-information/).

## HELP WANTED

**Public Works Superintendent.** The Town of Barre is accepting applications for the position of Superintendent of Public Works. The Barre Town Department of Public Works is responsible for roads, the sewage collection system, the water distribution system, and the town's entire fleet of vehi-

cles and equipment. The Superintendent currently has 14 subordinates. Duties include planning and supervising daily work, participating in all personnel matters, budget preparation, purchasing, sharing on-call duties for winter road maintenance, and responding to citizen requests and complaints. Minimum qualifications are a current Vermont CDL (or the ability to obtain one), high school diploma, 8 years experience in public or road and utility construction, some supervisory experience, and the ability to walk off-road, including on steep banks. Residency in Barre Town or an adjoining town is required within 12 months of hiring. Candidates with a college degree in a related field and experience working for a municipal public works department are preferred. Salary range, \$53,000-\$60,000 DOQ. Excellent benefits, including use of town truck. To apply, send a cover letter and resume, including 3 work references, **by January 16, 2012**, to Barre Town Manager's Office, PO Box 116, Websterville, VT 05678. Equal Opportunity Employer. (12-01)

**Police Chief.** The Town of Moultonborough, New Hampshire – a scenic community on the shores of Lake Winnepesaukee and just a short drive from the White Mountains region and urban centers of Portland, Maine and Boston, Mass. – seeks a new Police Chief. The Chief oversees a \$1.7M

budget with 11 full-time and 4 part-time sworn officers and 8 civilian support and dispatch staff serving a community of 4,000 year round and 25,000+/- peak seasonal residents and visitors. The successful candidate will be knowledgeable in NH criminal law and procedure, proficient in general business administration including preparing and managing budgets, experienced in involving the community in a pro-active manner and best management practices, and skilled in written and oral communications. Requirements: Bachelor's degree in Criminal Justice, Business Administration or a related field and 10 years of law enforcement experience with some of that in supervisory positions or an equivalent combination of education and experience. Must have, or be able to obtain, certification as a full-time NH Police Officer. Candidates without a current NH certification are encouraged to fully explore the rigorous requirements, including a physical agility test, imposed by the NH Police Standards and Training Council before they apply. See the full Profile and Challenge statement and standard town application form at [www.moultonborough.org](http://www.moultonborough.org). (Click on Paid, Volunteer and Contract Openings.) Competitive salary and benefits DOQ/DOE. To apply, submit 7 copies of the application letter, resume, and standard town application form

*(continued on page 15)*



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## WORKERS' COMP

(continued from page 1)

for at least three years. The claims history helps determine the employer's "experience mod," a mathematical factor that is used in calculating the employer's workers' comp insurance cost each year. **Workers' comp claims with lost time benefits are the driving force of future insurance costs.**

What's an employer to do? **Look in to starting a transitional Return To Work (RTW) program to have employees minimize lost work time** by performing medically appropriate temporary duty assignments while they recover from on-the-job injuries. When the program is in place, the employer will work with a medical provider who defines each employee's work abilities and restrictions. The treating medical provider determines when and to what extent the employee is ready for some level of work, and the employer identifies worthwhile tasks that meet the identified work restrictions.

To establish a particular RTW plan, the employer provides the employee with a written Return To Work offer outlining the expected duties and responsibilities of both the employer and employee. If the offer is accepted, the employer ensures that the employee works within the medical restrictions. As the employee's functional abilities improve, the medical provider updates the restrictions and the RTW agreement is modified. The rationale for a written offer is that it may be used to deny indemnity benefits if an employee refuses the offer.

An effective RTW program is a valuable human resource tool on many levels: it saves the employer money, it helps eligible

employees who have a sincere desire to recover and get back to their job, it can reduce work schedule disruptions for the injured employee's co-workers, and it fosters a spirit of shared value and responsibility throughout the workplace. Many employers with an RTW program have found it a great opportunity to accomplish longstanding tasks that were important but not mission-critical (so to speak), such as organizing supplies or updating records.

VLCT's Loss Control and Claims departments are eager to help PACIF members lay the groundwork for and start implementing transitional RTW programs. **From model policies to best practices and special considerations, VLCT staff will provide resources and explain your options** so you can determine how to make the most of an RTW program. Furthermore, because RTW programs are most effective when the employer can partner with a Designated Medical Provider (DMP) with experience in work-related injuries who will assist in the RTW process, VLCT has staff actively working to locate and develop appropriate medical resources for as many PACIF members as possible. And when a particular employee has a transitional RTW plan in place, VLCT's Workers' Comp Claims team will help coordinate the efforts of the employer, the employee, and the medical provider to facilitate good progress in the case.

*Fred Satink, Loss Control Specialist  
VLCT Risk Management Services*

*Please look in future issues of the VLCT News for more detailed information about transitional work and examples of how Vermont municipalities have implemented their own Return To Work programs.*

## LEGAL AND REG.

(continued from page 12)

..." 38 U.S.C. § 4311(c). USERRA applies to employers, both public and private.

The Court was unanimous in its decision, albeit not in how it got there. Writing for a 5-2 split court, Justice Scalia found that the cat indeed was to blame. It matters not, reasoned Scalia, that the ultimate decision maker is unbiased. So long as an employee's supervisor take an act motivated by bias, and that supervisor intends an adverse employment action to result, the supervisor's act will be considered a cause of the ultimate action taken and the employer will be at fault. "[I]f a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA." Mulally and Korenchuk, acting as agents for the hospital and motivated by hostility towards Staub's military status, took actions that were casual factors in Buck's decision to fire Staub. Stated another way, the biased actions of Mulally and Korenchuk were a proximate cause of his termination. Because the jury instructions at the district court level were not consistent with the Supreme Court's rule adopted here, the case was reversed and remanded for further proceedings.

Though the Court's holding was limited to USERRA, its language is very similar to other federal anti-discrimination laws and therefore will likely have broader application beyond just USERRA (e.g., race, color, religion, sex, and national origin under Title VII of the Civil Rights Act of 1964).

The moral of this story for Vermont's municipalities is to ensure that adverse employment actions are justified and taken independent of any potentially underlying biased action. The Court opined that "if the employer's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action ... the employer will not be liable." Towards that end, municipalities would be well served to educate employees about unlawful discrimination in order to address issues as they arise and document performance appraisals and violations of established rules and procedures to rebut any inference of termination for unlawful purposes.

A copy of this decision is at [www.supremecourt.gov/opinions/10pdf/09-400.pdf](http://www.supremecourt.gov/opinions/10pdf/09-400.pdf).

*Garrett Baxter, Staff Attorney  
Municipal Assistance Center*

### Best Wishes for the New Year from the Phelps Team

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## CLASSIFIEDS

(continued from page 13)

to Carter Terenzini, Town Administrator, PO Box 139, Moultonborough, NH 03254. Position open until filled. Application reviews begin January 5, 2012. EEO Employer. (12-01)

**Operator.** The Troy/Jay Wastewater Department is seeking an Operator for our newly upgraded wastewater treatment facility (WWTF). This position will start as part-time in early 2012 with the potential of becoming full-time. The Operator would assist the Chief Operator in the operation and maintenance of the WWTF, collection system, and pump stations. Minimum Qualifications: valid Vermont driver's license; ability to work independently and as part of a team; and must be available to work weekends and holidays. Email [buttontjww@comcast.net](mailto:buttontjww@comcast.net) or call 802-988-2636 for more information. To apply, send a resume and three references to Troy/Jay Wastewater Dept., 1036 Vt. Route 242, Jay, VT 05859. (11-30)

**Wastewater Plant Operator.** The City of Montpelier is currently seeking applicants to fill the position of Wastewater Plant Operator. Applicants should have experience in the operation and maintenance of mechanical equipment and laboratory analysis and must possess or be actively pursuing a valid Vermont Class 3 DM Wastewater Operator's license. Starting hourly salary is \$17.90 with a potential for increase depending on qualifications, which includes a generous benefits package and required overtime after sufficient training for weekend duties. The position is at a tertiary Grade 4 facility, averaging 2.0 MGD, in the beautiful capital of Vermont. Please contact Bob Fischer at 802 223-9511 or [bfischer@montpelier-vt.org](mailto:bfischer@montpelier-vt.org) for additional information. To apply, please submit a resume and letter of interest (stating your qualifications and reason for applying) to Todd C. Law, Director of Public Works, Wastewater Plant Operator Application, 39 Main Street, Montpelier, VT 05602. Position open until filled. (11-29)

**Tanker Truck.** The Town of Bethel seeks bids on a 1976 International tanker truck, 8-cylinder, gas-powered, low mileage. The vehicle was part of an airport yard fueling fleet and subsequently the Town fire truck.

Sold in as-is condition. May be viewed by appointment. For more information, call the Town Manager's Office at 802-234-9340. Submit sealed bid clearly labeled "truck bid" by **February 1, 2012**, to Town of Bethel, 134 South Main Street, Bethel, VT 05032. (11-29)

**Program Manager.** The Central Vermont Solid Waste Management District (CVSWMD) seeks a creative Program Manager to work with the CVSWMD staff and Board of Supervisors to expand our existing zero waste programming and develop and grow new program opportunities that will support a regional zero waste infrastructure. This full-time position, based in our Montpelier office, requires frequent travel throughout north-central Vermont. Preferred qualifications

include project management and program development; knowledge of and/or training in the management and diversion of solid, hazardous, and organic wastes; experience in fleet and operations management; data management and reporting; demonstrated ability to manage and grow programs that meet the needs of the public; and an ability to work productively with CVSWMD staff and volunteer Board of Supervisors. Compensation, \$34,000-\$46,000 per year, plus benefits. For more information and to review the job description visit [www.cvswmd.org](http://www.cvswmd.org). To apply, send a cover letter and resume by **January 2, 2012**, to Leesa Stewart, General Manager, CVSWMD, 137 Barre Street, Montpelier, VT 05602, or email [generalmanager@cvswmd.org](mailto:generalmanager@cvswmd.org). (11-28)



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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 [jbill@vlct.org](mailto:jbill@vlct.org). You may also visit [www.vlct.org/events-news-blogs/event-calendar/](http://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 are 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.)*

**February 15, Capitol Plaza, Montpelier Local Government Day in the Legislature** (Sponsored by VLCT and the Vermont Municipal Clerks' and Treasurers' Association)

A special, event-packed day at the Vermont State House for local officials to learn about the status of pending legislation from

VLCT and VMCTA representatives, attend legislative hearings, and speak one-on-one with their representatives and senators.

**February 22, Capitol Plaza, Montpelier Town Meeting Tune-Up** (Sponsored by the VLCT Municipal Assistance Center)

A parliamentarian's paradise, this annual workshop is designed for moderators and selectboard members, both seasoned and new. It focuses on the statutory requirements for town meeting, "Robert's Rules of Order," and best practices for making it through Town Meeting unscathed. The issue of prayer at Town Meeting will also be discussed.

**March 20, Hotel Coolidge, White River Jct. March 21, Middlebury Inn, Middlebury Treasurers Workshop** (Sponsored by the VLCT Municipal Assistance Center)

This workshop, designed for newly-elected treasurers and those who want to improve their fiscal skills, will include a review of the statutory duties and responsibilities of treasurers as well as an introduction to govern-

mental accounting and financial reporting, banking services, payroll, and benefits.

**Saturday, March 31, Capitol Plaza, Montpelier Selectboard Institute I** (Sponsored by the VLCT Municipal Assistance Center)

The Selectboard Institute provides Vermont selectboard members with the skills they need to manage the affairs of their town. Delivered over the course of two Saturdays, the program focuses on the fundamentals of municipal governance and current issues facing selectboards. Topics may include understanding the municipal organization, essentials of municipal law, running effective meetings, managing the town budget, information technology best practices, and how to reduce liability risks. Detailed agendas for both workshops will be available later in January.

Visit our website [www.vlct.org/events-news-blogs/event-calendar/](http://www.vlct.org/events-news-blogs/event-calendar/) for the most up to date list of events.