

2005 Legislative Wrap-Up



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Table of Contents

Introduction	1
Municipal Finance	
Appropriations Bill: Generally (H. 516, Act 71)	3
Executive Fee Bill (H. 130)	3
Property Tax Redemption Period (H. 86)	4
Capital Bill (H. 518).....	5
Miscellaneous Tax Bill: Appraisal of Subsidized Housing (H. 512).....	7
Education Finance	
Appropriations Bill: Education Policy (H. 516, Act 71).....	7
Reduction in State Education Tax Rates (H. 61, Act 1).....	8
Property Appraisals and Education Finance (H. 504, Act 38).....	8
Municipal and Intergovernmental Administration	
Appropriations Bill: Public Documents and Privacy (H. 516, Act 71).....	11
Municipal Governance	12
School Board Vacancies (H. 201, Act 32)	12
Study Committees (various bills).....	12
Health, Insurance and Benefits	
Appropriations Bill: Health Reform Measures (H. 516, Act 71).....	15
Health System Reform Bill (H. 524).....	15
Workers' Compensation Heart Attack Presumption for Firefighters (H. 325, Act 69)	17
Unemployment Compensation for Survivors of Domestic Violence (S. 41, Act 49).....	18
Vermont Municipal Employee Retirement System Employee Contribution Rates (H .528) .	18
Transportation	
Transportation (H. 523).....	19

Table of Contents (continued)

Public Safety

Appropriations: Establishes Public Safety Policies (H. 516, Act 71)	21
Corrections (S. 156)	21
Carbon Monoxide Detectors (H. 243, Act 19).....	24
Safe Communities (S. 15)	24

Quality of Life and Environment

Appropriations: Environmental and Growth Management Issues (H. 516, Act 71).....	25
Solid Waste (H. 187, Act 23).....	26
Smoking in Public Places Prohibited (H. 241, Act 32).....	26

INTRODUCTION

It was a long, drawn out first year of the biennium, mimicking the long cold spring that Vermonters endured. And the Legislature wasn't quite finished when the gavel fell on Saturday, June 4, 2005. Its members returned for a quick special session on June 16 to address the Governor's threatened appropriations bill veto. Fortunately, municipal issues were not part of the brouhaha *that day!*

In addition to working with a newly elected Democratic majority in both chambers in 2005, the session commenced with the elimination of the Local Government Committee in favor of a House Government Operations Committee that encompassed both state and local government. On the Senate side, the chairmanship of the Government Operations Committee shifted, bringing a philosophy that presumes that municipalities are competent to govern themselves in local matters. Both were good changes for cities and towns. To date, the Governor has signed 85 bills and vetoed two: H. 524, the health care bill, and S. 74, a retirement bill.

Several issues were discussed this session that weren't acted upon. Those that most concern municipalities are H. 140 and S. 122, which provide all municipalities the authority to enact local option taxes, and H. 47 and S. 8, which enable a new legislative process to ratify charter amendments. The Speaker of the House has committed to investigate the issue of local option taxes next session, and the chair of the Senate Government Operations Committee is as eager to pass local options as he is to take action revising the charter amendment process. Watch for both of these issues to be taken up again in January. Also, local officials should keep an eye on S. 165. That bill, as passed by the Senate, would enable local governments to apply to the Vermont Economic Progress Council for an allocation of the education grand list value of a redeveloped property for up to twenty years and 75% of the increase in the grand list value. The objective is to encourage downtown development by locally adopting tax increment financing districts (TIFs) that allow those new revenues to be reinvested in the district.

Another bill of great concern to local officials and the rights of the public is H. 334, "ancient highways." The House Commerce Committee may meet this summer to continue to discuss how to address ancient highways and how to resolve differences of opinion about restructuring the Vermont Economic Progress Council (S. 165). Another issue important to town clerks is same-day voter registration. Watch for this issue to be raised again in 2006.

Because it will be the second year of the biennium, all bills that were introduced in 2005 will be "alive" again in 2006 and may be taken up then. Local officials can contact VLCT for a list of bills introduced in 2005 that affect local governments.

The 2005 Legislative Wrap-Up describes those bills – and now laws signed by the Governor – that affect municipalities. We have organized legislation under the headings of our policy committees and have also noted relevant sections of the Omnibus Appropriations Act, H. 516, in those policy sections. The staff member responsible for each bill is noted under the bill's heading. If an act number has been assigned, that is noted. However, not all bills have act numbers yet. To check on act numbers or to obtain full copies of bills, go to the legislative web site, www.leg.state.vt.us, or call the Legislative Council at 828-2231. The standard effective date for legislation is July 1,

2005. If an effective date for a bill or bill section is not noted, please assume July 1. Since we are not mailing this publication until after July 1, some of these laws are already in effect.

And finally! Do you have issues with legislation that was passed or topics that were ignored? We want to hear about it! Please let us know during the summer and fall about priorities that VLCT should address in the 2006 session, just six months away! Watch your mail for VLCT Municipal Policy proposals for 2006.

Karen B. Horn
Director, Legislative and Membership Services

MUNICIPAL FINANCE

Appropriations Bill, Generally (H. 516, Act 71)

VLCT Staff Contact: Karen Horn

The appropriations bill, H. 516, is 144 pages long. Much of the final product is a result of negotiations in conference committee, as is the case every year. The appropriations bill is generally the last bill to pass the legislative session. Every year, it includes more policy regarding how the dollars appropriated in it will be spent. Readers will find references to sections of the appropriations bill that affect local governments throughout this Wrap Up report. The table below lists those budget items that affect local governments generally.

MUNICIPAL FUNDING PRIORITIES IN FY 2006 BUDGET (in millions of dollars)				
Budget Line Item	FY 05 Final	FY 06 Governor's Recommend	FY 06 Final	FY 06 Final Change from FY 05 Final
PILOT – ANR Lands	\$1.23	\$1.45	\$1.45	17.89%
PILOT – Corrections Facilities	0.04	0.04	0.04	0.00%
PILOT – Montpelier	0.18	0.18	0.18	0.00%
PILOT – State Buildings ¹	2.50	2.50	2.70	8.00%
Current Use – Municipal	6.20	6.90	6.90	11.29%
General Fund Transfer to Education Fund ²	249.30	259.30	259.30	4.01%
<i>Town Bridge Grants³</i>	19.55	19.29	18.99	-2.86%
<i>Town Highway Aid Program</i>	24.98	24.98	24.98	0.00%
<i>Town Highway Aid Program – Class 1 Supplemental</i>	0.13	0.13	0.13	0.00%
<i>Town Highway Structures</i>	3.49	3.49	3.49	0.00%
<i>Vermont Local Roads</i>	0.68	0.78	0.78	14.71%
<i>Town Highway Emergency</i>	0.00	0.75	0.06	N/A
<i>Town Highway Public Assistance Grants</i>	0.20	0.20	0.20	0.00%
<i>Class 2 Highway Paving and Rehabilitation</i>	4.25	4.25	4.75	11.77%
Total Local Highway Aid	53.87	53.38	53.38	0.19%
Municipal planning	0.75	0.75	0.79	5.33%
TOTAL	\$313.48	\$324.99	\$324.74	3.59%
<p>1 FY 05 contained \$800,000 state general fund support and \$1.7 million local option tax contribution. FY 06 contains \$600,000 general fund, \$1.9 million from local taxes and \$200,000 in one-time state general fund revenues. (Sec.255(a)(4)).</p> <p>2 Required by Act 68 to increase by the same proportion that total state general fund spending is increased.</p> <p>3 Includes state and federal aid only, no local match.</p>				

Executive Fee Bill (H. 130)

VLCT Staff Contact: Karen Horn

Every year the House Ways and Means Committee produces the “Fee Bill.” Upon passage, it is sent to the Senate Finance Committee. This year’s fee bill is interesting as much for what is not in it affecting local governments as for what is in it.

Fees are increased for persons, including municipalities (defined as persons under 1 V.S.A. § 128), who are required to report the use or storage of hazardous chemicals or substances. The fees are graduated based upon the quantities of hazardous chemicals or substances, beginning with an increase from \$25 to \$33 for quantities between 100 and 999 pounds. (20 V.S.A. § 39 (a) and (e))

The surcharge fees paid to the court for criminal offenses or certain civil penalties (including traffic violations or violations of local ordinances) is increased from \$21 to \$22; of that, \$14.75 is deposited into the victims' compensation special fund and \$2.25 into the criminal justice training council special fund. This is an increase of \$1.00 to victims' compensation. The \$2.25 to the criminal justice training council special fund is current law. The criminal justice training council special fund began to receive funds from these fees in 2001 in the amount of \$2.00.

H. 130 requires the Department of Finance and Management, in consultation with the legislative council and joint fiscal office, to study the process by which executive branch agencies submit proposals for fee increases and investigate whether agencies sufficiently justify the proposed fee and reasonably relate it to the cost of providing the service. The study report and any recommendations must be reported to the House Committee on Ways and Means and Senate Committee on Finance by January 15, 2006.

This year, the *Senate* passed proposals to increase the town clerk's fee for obtaining certified copies of death, civil union or marriage certificates from \$7.00 to \$9.50. This replicated the fee the state receives for those same copies. Also included in the Senate-passed proposal was an increase from \$7.00 to \$15.00 for certified copies of birth certificates, \$5.00 of which would be remitted to the "child abuse prevention special fund." Likewise, the fee for a clerk to record and issue a marriage or civil union license would increase from \$23 to \$34 and, after June 30, 2006, to \$45. The clerk would retain \$8.00 of that amount; the rest would be remitted to the state treasurer who would deposit \$22 into the "domestic and sexual violence victim services special fund" after June 30, 2006. Late in the session, clerks argued that they were being used as tax collectors for the state. The fees were deleted from the bill that passed the Legislature. However, proponents of increasing revenues in both the child abuse prevention special fund and the domestic and sexual violence victim services special fund are committed to increasing revenues for those funds. They see these fee increases as an appropriate means to assure those revenues. So the issue will be back. Local officials should meet with children's and victims of domestic abuse advocates this summer to work out a proposal that does not cast town clerks in the role of collection agency agents for the state. *Amends various statutes.*

Property Tax Redemption Period (H. 86)

VLCT Staff Contact: Karen Horn

The Legislature passed H. 86 in response to a situation in which the City of Rutland took a brownfield property at tax sale expecting to return it eventually to productive use. The city wants to enter the property to perform assessments and monitoring before the one-year redemption period is up. H. 86 provides that if hazardous substances are released upon land that a municipality purchases at tax sale, the municipality can enter the land to conduct assessments and remediation activities. Once such activities commence, costs of the property redemption shall include all costs expended for assessment and remediation, including those authorized by local, state or federal governments. *Amends 32 V.S.A. §§ 5259, 5260.*

Capital Bill (H. 518, Act 43)
VLCT Staff Contact: Karen Horn

The Capital Bill, H. 518, passed in orderly fashion weeks before the session ended. Both the orderly nature of the discussion and the early passage were new for the Capital bill this year. H. 518 authorizes bonding for \$45 million. Below are the Senate amendments to the House-passed bill that are of interest to local officials.

FY 06 CAPITAL BILL: MUNICIPAL ITEMS

Agency/Department	Line Item	Passed by Legislature FY 05	Governor Recommended FY 06	Legislature Passed and Governor Signed
State Buildings & General Services	Downtown redevelopment funds	\$50,000	0	0
Corrections Work Camp Design Site Purchase, etc.		0	\$400,000	\$400,000
Department of Taxes	Vermont Mapping Program, digital ortho-photography	\$150,000	\$100,000	\$100,000
Commerce and Community Development	Barn grants made on a 50/50 matching basis up to \$10,000	\$90,000	\$100,000	\$100,000
	Historic Preservation grants on a 50/50 matching basis	\$150,000	\$100,000	\$200,000
	Cultural facilities grants	\$50,000	\$25,000	\$200,000
	Broadband communications development	\$200,000	0	\$150,000
Department of Education	School Construction Aid at 30% (original request was \$7,000,000)	\$4,000,000	\$9,300,000	\$9,300,000 (\$5,300,000 capital funds & \$4,000,000 general fund)
Agency of Natural Resources	Water Pollution Grants and Water Supply Program (original FY06 request was \$9,365,000)	\$6,653,660	\$7,350,000	7,550,000
Clean & Clear Program		\$1,250,000	\$2,810,000	\$2,200,000
	State-owned dam maintenance and reconstruction	\$300,000	\$450,000	\$450,000
Agency of Agriculture	Agriculture non-point source pollution reduction	\$900,000	\$1,800,000	\$1,800,000
	Farmland buffer strips	0	\$300,000	\$300,000
Dry Hydrant Program	Dry Hydrant Program	\$75,000	\$100,000	\$100,000
Recreational & Educational Facilities Grant Program 3:1 matching basis	Grant amounts up to \$25,000 to municipalities and non-profits	\$300,000	\$150,000	\$200,000
Human Service Grant Program		0	0	\$200,000

In lieu of the Capital Bill's old "deli program," programs were created or further developed to regulate the granting of funds for special projects. Grant program criteria and committees to direct them were created for the Recreational and Educational Facilities Grant Program, Human Services Grant Program and the Broadband Development Competitive Program. The commissioner of the Department of Buildings and General Services (BGS) is to convene a meeting of the recreational

and educational facilities grant program committee by July 1, 2005. Recreational and educational facilities grants up to \$25,000 may be made, provided a match of three local dollars to one state dollar is demonstrated. The Broadband Development Competitive Program committee could make awards of up to \$50,000 to eligible communities.

The Human Services Grant Program Committee could make awards for \$25,000, again upon a demonstration of a 3:1 match (local to state); that committee's first meeting must also take place by July 1, 2005. (As of this writing, these July 1 meetings have not yet occurred.) The human services grant program provides competitive grants to municipalities and nonprofit organizations for capital costs associated with the major maintenance, renovation, or development of facilities for the delivery of human services and health care in Vermont communities.

The BGS commissioner is also directed to convene a group meeting of representatives from each grant program noted above by September 1, 2005. Discussion would include development of a unified application form for all programs, establishing simultaneous deadlines for submission of applications and notification of awards, including legislators as members of the grant making entities. The committee would provide a report and recommendations to the Legislature by January 15, 2005.

The plan to build a second (or more) work camp(s) for convicted criminal offenders in Vermont is expected to relieve current overcrowded conditions in the state's correctional facilities and enable the return to Vermont of offenders housed in out-of-state facilities. The specific intent is to not increase the number of offenders sentenced to incarceration. Placement in new work camps would be restricted to offenders convicted of nonviolent offenses and who have served a portion of their current sentence within a correctional facility. No court could impose a sentence to be served initially or solely within a new work camp. (See also article on Corrections on [page 21](#).)

Both the House and Senate versions of the bill call on the Agencies of Natural Resources and Transportation (VTrans) and BGS to develop prototype designs to cover municipal salt and salted sand piles to comply with the multi-sector general permit requirements for stormwater established by the federal Environmental Protection Agency. VTrans has designs that towns can use; some towns are already using them. As a result of recent correspondence between the Department of Environmental Conservation and the federal Environmental Protection Agency, many towns will not be required to build salted sand pile sheds. See the [Weekly Legislative Report #18](#) (May 24, 2005) and the [July 2005 VLCT News](#).

Largely in response to concerns expressed by cities and towns that host state offices, as well as a propensity for the state to "buy high and sell low," the BGS commissioner is directed to hire one or more consultants to evaluate existing and potential state office space in Chittenden and Washington Counties. The evaluation would include considering state buildings in Burlington, Williston and Waterbury. Purchase or sale of buildings and consideration of the state's desire to promote traditional settlement patterns. A comprehensive proposal is due to the house and Senate Institutions Committees by December 1, 2005.

Amends various sections of Statute.

Miscellaneous Tax Bill: Appraisal of Subsidized Housing (H. 521, Act 75)
VLCT Staff Contact: Steve Jeffrey

Last year, the Town of Manchester won an appeal of the appraisal values its listers set for a subsidized housing project. The court found that the Town could use the value of an income tax credit several investors benefited from when appraising the property using the income method. This court decision prompted the Legislature to instruct several parties – including VLCT, the Vermont Assessors and Listers Association, housing advocates and the Division of Property Valuation and Review (PVR) – to work over the summer to develop a method for appraising such properties that was fair and that all sides could agree to. The process actually resulted in language to which all parties concurred and which is incorporated in the miscellaneous Tax Bill, H. 521.

For residential rental property that is subject to a governmental housing subsidy covenant or other legal restriction on rents that may be charged, fair market value will be determined by an income approach using the following elements:

1. market rents with utility allowance adjustments for the geographic area in which the property is located as determined by the federal Office of Housing and Urban Development;
2. actual expenses incurred with respect to the property as provided by the property owner and certified by an independent third party;
3. a vacancy rate that is 50 percent of the market vacancy rate as determined by the U. S. Census Bureau with local review by the Vermont Housing Finance Agency; and
4. a capitalization rate that is typical for the geographic area determined and published annually prior to April 1 by PVR after consultation with the Vermont Housing Finance Agency.

Amends 32 V.S.A. § 3481(1).

EDUCATION FINANCE

Appropriations Bill: Education Policy (H. 516, Act 71)
VLCT Staff Contact: Karen Horn

Section 160 of H. 516, the appropriations bill, established a high school completion advisory committee. Members will include one Representative, one Senator, and representatives of Vermont adult learning, the School Boards Association, a superintendent and the commissioner of the Department of Education. The committee shall recommend funding of high school completion programs. This committee is largely a result of local officials explaining, once again, the appropriate uses of the education fund, a discussion that came up many times this legislative session. Among issues the committee shall develop recommendations to address are allocation of payments between local school districts and supervisory unions and the statewide adult education and literacy system when programs are provided through contracts; implementation of funding through school districts and supervisory unions in a manner that maximizes the efficient use of existing services for adult education and literacy programs; improving services for students at risk

of dropping out of school; and whether funding for adult education and literacy activities should be funded through the current statutory funding mechanism or a categorical grant program.

In the meantime, Section 161 asserts that it is the Legislature's intention to fund adult education and literacy partially from the education fund, notwithstanding provisions of 16 V.S.A. § 4025(d), as was the case in 2003. 16 V.S.A. § 4025 (d) (*current law*) says, "upon withdrawal of funds from the education fund for any purpose other than those authorized by this section, chapter 135 of Title 32 (education property tax) is repealed." H. 516 specifically states "Neither this appropriation nor the appropriation from Sec. 173 of No. 122 repeals the education property tax." The Legislature expects to make a determination about funding adult education and literacy services in fiscal year 2007 and thereafter.

The appropriations bill also put into statute what has been longtime general practice regarding the funding of early childhood education (Section 162b). School districts are specifically enabled to offer early childhood education services (pre-school) through direct provision of services, collaborative programs, or direct contracting with other public or private providers. School districts may count resident early education pupils in their full-time equivalent enrollment.

Reduction in State Education Tax Rates (H. 61, Act 1) **VLCT Staff Contact: Steve Jeffrey**

Act 1 sets in law the administration's recommendation issued in December to reduce the base residential homestead property tax rate to \$1.02 from last year's \$1.05, the non-residential property tax rate from \$1.54 to \$1.51, and the base education household income tax rate from 1.9% to 1.85%. These rates are set annually and are lower than the rates originally established with the enactment of Act 68 (\$1.10, \$1.59 and 2%, respectively). On its face, this is good news, but increases in property values, increased school costs, lower student counts and smaller increases in non-property tax sources to fund education combine to overpower this rate reduction before Vermont taxpayers will see any lowering of the tax bills they must pay. The latest statistics from the Joint Fiscal Office project that non-residential state education property taxes will increase by 7%, and residential education taxes – even after income sensitivity payments – will increase 13.6% from last year.

Property Appraisals and Education Finance (H. 504, Act 38) **VLCT Staff Contact: Steve Jeffrey**

This bill contains several sections of interest to municipal officials:

Sec. 1. Clarifies that, in determining fair market value for appraisals, a sale price is only one factor to be taken into account, but is not solely determinative.

Secs. 2, 3, 4 and 4a. Creates a voluntary lister and assessor education program administered by the Division of Property Valuation and Review (PVR), that leads to certification at three levels. The bill establishes training accounts for each town within the equalization and reappraisal account within the Education Fund. Towns that send their listers to PVR training will be able to draw down funds from these accounts to pay for the training. Any funds not used by the towns at the end of the year will revert to the Education Fund.

Sec. 5. Clarifies that questionnaires (called “inventories”) used by listers to obtain information necessary for determining market value of a property may include questions on the income and expenses of an income-producing property.

Secs. 6, 7. Beginning in 2006, changes the late-filing deadline for homestead declarations from December 1 to July 15, and specifies that, for purposes of a prebate or rebate claim, the homestead must be declared.

Sec. 8. Increases the payment towns receive to defray the cost of reappraisals and grand list maintenance. The current payment of \$6.00 per parcel was based upon the state paying one-half of the town’s cost of reappraisal, assuming that reappraisals were done approximately every five years, and using a 1997 reappraisal cost-per-parcel of \$60.

The new figure of \$8.50 is based on the midpoint between the low-end reappraisal cost of \$50 per parcel and the high-end of \$120 per parcel. The state’s half on a five-year reappraisal basis would be \$8.50. An additional \$0.30 per parcel amount is appropriated to the town training accounts to be used per sections 4 and 4a above.

Note that towns also continue to receive an additional \$1.00 per parcel each year for aiding PVR in the equalization study under 32 V.S.A. § 5405(f).

Sec. 9. Creates a legislative staff study (in consultation with VLCT and Vermont Assessors and Listers Association) of three issues:

- how to define the homestead parcel to exclude land which underlies or is contiguous to the business portion of the parcel;
- the impact of adopting a replacement-value basis for property tax appraisals; and
- looking at the variety of residence ownership by family legal entities (usually to avoid taxes or for Medicaid eligibility of elderly or disabled family members) and farming families and how these fit into the state education funding system.

Sec. 13. Creates a legislative study committee on Income-Based Education Property Tax for Vermonters. The committee includes a representative of VLCT and the Vermont Municipal Clerks and Treasurers Association. The committee will study the prebate and rebate system and alternative ways for Vermonters to pay their education taxes based on their incomes. Report is due December 15, 2005.

Sec. 14. Allows listers to correct the grand list for late-filed homestead declarations without having to go through the errors and omissions process, which is cumbersome.

Secs. 16, 17 and 18. Provides that if the owner of a homestead dies before declaring the homestead, and the homestead is owned by the estate on April 1 and not rented, then the property will be taxed at the homestead education property tax rate for that year. Retains the current rule for the prebate and rebate: the estate may not claim either of those benefits.

Sec. 19. Provides that in calculating fair market value of land owned by Agency of Natural Resources, for purposes of determining a town’s payment in lieu of taxes for that land, the value

of the land will not be diminished because of conservation restrictions under Federal law or under a State agreement.

Sec. 20. Removes the limitation on special education expenditures, and appropriates \$4.1 million over the Governor's recommended FY2006 appropriation for special education costs paid by the state to cover the cost of removing the limitation.

Sec. 21. Requires the PVR Annual Report to include the value of all exempt property on each town's grand list. Towns are currently required to report these figures to PVR.

Sec. 25. Increases the limits on income sensitivity eligibility for the first time since the passage of Act 60. Since 1997, Vermonters with household income of up to \$75,000 per year could choose to pay their education taxes for their house and up to two acres of land based solely on their income. Those with incomes of over \$75,000 had some limited ability to do so, but the homestead value for determining eligibility was capped at \$160,000. This basically meant that the benefits of such option gradually shrink to zero at a household income of \$88,000 a year. Since that time, both incomes and house values in particular have soared. Statistics prepared by the Joint Fiscal Committee showed that by just adjusting the household income figure by the consumer price index between 1997 and today, the \$75,000 income should be \$90,364. Adjusting the \$160,000 cap for house values should now be \$296,270 if that figure were adjusted by Vermont's home price index. It also means that a growing number of Vermont families eligible for income sensitivity in 1997 have lost their eligibility due to inflationary adjustments in their incomes and house values. H. 504 as passed adjusts the household income to \$85,000 and the homestead value cap to \$200,000 for 2006 property taxes. It also increases the income level to \$90,000 for 2007 property taxes.

Sec. 28. Changes the requirement for certain disabled military veterans eligible for the \$10,000 property value exemption under 32 V.S.A. § 3802(11)(A) from annually applying for such an exemption to having to only apply the first year the exemption is sought. Thereafter, the exemption would remain until the property is transferred.

The funding mechanism to provide the lister training authorized under sections 2 through 4a of the bill needs more discussion. H. 504 as voted out by the Ways and Means Committee had \$100,000 appropriated directly from the Education Fund to PVR to pay for the lister training. VLCT opposed the direct appropriation as a violation of the legal uses of the Education Fund. Here is the wording of 16 V.S.A. § 4025(c):

“An equalization and reappraisal account is established within the education fund. Moneys from this account are to be used by the division of property valuation and review to assist towns with maintenance or reappraisal *on a case-by-case basis*; and for reappraisal payments pursuant to section 4041a of Title 32.” [emphasis added]

The other uses permitted elsewhere in that section would not be appropriate, so this is the language that would need to allow such an appropriation. Here is the exact wording of 32 V.S.A. 4041a(a):

“A municipality shall be paid \$6.00 per grand list parcel per year from the equalization and reappraisal account within the education fund, to be used only for reappraisal and costs related to reappraisal of its grand list properties and for maintenance of the grand list.”

VLCT testified that we believed that a direct appropriation to PVR for lister training is an ongoing, general application and would not be on “a case-by-case basis.” We believe that, like other proposed uses of the Education Fund, this is a violation of 16 V.S.A. § 4025(d). (“Upon withdrawal of funds from the education fund for any purpose other than those authorized by this section, chapter 135 of Title 32 (education property tax) is repealed.”) One hundred and forty-three selectboards and city councils shared this concern about new uses of the Education Fund by approving the “Grafton Resolution” that opposes such new uses. Had VLCT not opposed these new uses, we would be in a poor position to argue any other new uses proposed by the many others interested in tapping into this fund.

In lieu of a direct appropriation, VLCT recommended that the House follow the existing law and distribute the money through the legal “per parcel” payments that could then be used for lister training to maintain the grand list. It is not the most efficient way to use the money and imposes some additional bookkeeping on the state PVR, but we believe it is the only way that Education Fund monies could be used to accomplish the important goal of providing our listers with training. Our thanks go out to those House members who shared our concerns and worked to find a solution. We had hoped that perhaps the Senate or the administration could find some state General Fund monies that could be put to such good use without going through the gyrations that using the Education Fund requires, but that did not happen. Hence, each town’s listers will get \$0.30 per parcel to purchase training provided by PVR.

MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION

Appropriations Bill: Public Documents and Privacy (H. 516, Act 71) VLCT Staff Contact: Karen Horn

Section 54(b) of H. 516, the appropriations bill, establishes a Social Security Usage Study Commission to study the use of Social Security numbers and other privacy issues in the public and private sector. The commission consists of one representative each from the Agencies of Administration, Human Services, Commerce and Community Development, the attorney general’s office the Department of Banking, Insurance, Securities & Health Care Administration, the Department of Labor, the state archivist, two Senate members chosen by the committee on committees, and two House members chosen by the speaker of the House. Chaired by the attorney general’s office, the commission shall solicit participation from VLCT and any other interested affected parties. The commission shall study the use of Social Security numbers by both public and private entities and develop proposals to reduce such use wherever possible and protecting privacy and security when the numbers must be used. It shall also study the costs and benefits of document destruction.

During the 2004 legislative session, H. 574 exempted social security numbers from the public records law. The legislative council was directed to study the public records law and privacy

concerns regarding dissemination of public records containing personal information and use of public records, and relevant legislative committees received that report last January. H. 574 was to expire on June 30, 2005. However, in this year's appropriation bill, H. 574's sunset was extended to June 30, 2006 to give the Social Security Usage Study Commission time to study the issues and make recommendations.

Municipal Governance **VLCT Staff Contact: Karen Horn**

Municipal governance charters had an easier time making it through the legislative process unscathed than has been the case in recent years. In the House, the merger of the Government Operations and Local Government Committees resulted in a new Government Operations Committee that received a tremendous number of bills affecting all aspects of state and local governance. There simply wasn't time to delve into locally voted and adopted charter amendments in the way the Local Government Committee had in the past. There also seemed to be a renewed willingness to allow municipalities to make some local decisions themselves in both the House and Senate. The Legislature passed charter amendments for Burlington, the Williamstown Fire District, Berlin, Bennington, Barre City and the Rutland Recreation District.

This is not to say that the 2005 legislative session was the best of all possible worlds when it comes to municipal self-determination. Vermont is still a Dillon's Rule state, still one of the most centralized state governments in the country. A Dillon's Rule state is one in which, contrary to law in 48 states, a municipality may do only those things the Legislature specifically enables it to do in statute. Bills to streamline the legislative approval process – H. 47 in the House and S. 8 in the Senate – were introduced, but neither was seriously taken up. The bills would allow municipalities to amend charters, adopt new charters or repeal existing charters without the approval of the general assembly, unless the attorney general, six senators or 30 representatives of the house petition for legislative approval. Early in the session, sponsors of H. 47 mounted a spirited plea for the bill to the House Government Operations Committee. The chair of the Senate Government Operations Committee said he would take up S. 8 in 2006.

School Board Vacancies (H. 201, Act 32) **VLCT Staff Contact: Karen Horn**

H. 201 amends statute to enable school boards to vote to appoint their own replacements when a vacancy occurs on the board. If a vacancy occurs in a majority of seats on the school board, a special election will be held to fill the vacancies. In the interim, remaining school board members are authorized to draw orders for continuing obligations. If all seats become vacant, the secretary of state would call the election and appoint the clerk or other qualified officer to draw orders for continuing obligations until the election is held. This mirrors the process the selectboard uses to fill vacancies on its own board. *Amends 16 V.S.A. §§ 424, 1572(8); 7061.*

Study Committees (various bills)

Following is a list of eleven committees to which VLCT is appointed, a representative of local government is requested, or consultation with municipal officers is required. You can follow the

progress of these committees or summer studies on the legislative website, www.leg.state.vt.us. Contact the Legislative Council (828-2231) or Karen Horn for more information. Otherwise, January 15, 2006 will be a banner day for reports!

H. 130, Executive Branch Fee Increases, Sec. 27.

Department of Finance and Management to study process for agencies to submit requests for fee increases to Legislature. Report to Legislature by January 15, 2006.

H. 504, Legislative Study of Income Based Education Tax System, Sec. 13.

Analyze current prebate and rebate system, including the renter rebate program, and propose a more understandable and efficient income-based system, taking into account taxpayer confidentiality. Committee includes six members of House Ways and Means, one from House Appropriations, two additional members of the House; one from the Department of Taxes, one from VLCT, one from the Vermont Municipal Clerks and Treasurers Association and one from Vermont tax preparers. Report to Legislature by December 15, 2005.

S. 156, Corrections. Transitional Housing Study Committee, Joint Legislative Corrections Oversight Committee, Sec. 16.

Department of Corrections to identify at least one community interested in being on a committee to propose transitional housing to help offenders successfully reintegrate into the community following incarceration. The committee includes the commissioner of Corrections or designee, local law enforcement, a VLCT representative (selected by the League's board), a representative of the community's governing body, a representative of a local or regional planning commission, and others. Report, including a proposal to develop and operate community-based structured transitional housing for offenders, to Legislature by January 15, 2006. The appropriations bill also establishes a joint Legislative Corrections Oversight Committee to address ongoing corrections issues.

H. 516, Commission on Social Security Number Usage and Other Privacy Issues, Sec. 54(b).

Social Security Usage Study Commission to study use of Social Security numbers and other privacy issues in the public and private sector. Commission chaired by the Attorney General's office. Commission shall solicit participation from VLCT and any other interested affected parties. Report to Legislature by January 15, 2006.

S. 15, Safe Communities Act, Sec. 12 (24 V.S.A. § 1940).

Grants to specialized investigative units organized and operating under section 1938 of this title for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities. A specialized investigative unit grants board is created that includes VLCT's executive director.

S. 56, Restructuring the Agency of Natural Resources.

A statewide advisory group of 13 members, the Natural Resources Reorganization Committee (NRRC) advises the secretary of the Agency of Natural Resources on design of a restructured agency. Includes one member representing local government. Appointments made by June 15, 2005 and are for one-year terms. First meeting by July 1, 2005. Report to Legislature by January 15, 2006.

S. 66, Pet Merchant Industries, Sec. 1.

Study of the sale, exchange, and donation of animals by Vermont merchants, including humane societies, sheriff's departments, or other local or municipal entities. The committee will be co-chaired by Senate and House members and shall solicit comment from interested parties, including VLCT. Report to Legislature by January 15, 2006.

The following committees are in the Appropriations Bill. (H. 516, Act 71)

Sec. 160, High School Completion Advisory Committee.

Committee shall develop recommended mechanism and procedure for funding high school completion programs offered by the adult education and literacy systems via school districts or supervisory unions or both. Among considerations whether funding for adult education and literacy activities should be paid through the education fund (16 V.S.A. § 4011(f)(2)) The Legislature will use these recommendations as a basis for funding adult education and literacy services in FY 2007 and thereafter.

Sec. 205c, Economic Development Study Committee.

Includes one person appointed by the VLCT Board. Committee guided by Legislature's support for a strong economic development policy that is "fiscally responsible and targeted for actual development results" and shall analyze effectiveness of incentive grants versus tax credits, consider types of new business Vermonters would like to attract to the state, targeting incentives to start-ups and small businesses and to areas with high unemployment or low wages. Report to Legislature by January 15, 2006.

Sec. 276, Working Group on Growth Centers.

Five House and five Senate members are directed to develop proposed legislation to support mixed use development in designated growth centers through local, regional and state planning, regulatory reforms and public investment financial incentives as well as agricultural lands mitigation under Act 250. Committee is expected to also consider statewide caps on square footage permitted for big box stores and several reports developed by the Vermont Council on Rural Development and the Governor's Committee on Downtowns and Growth Centers.

Sec. 277c, Commission on Health Care Reform.

Appointed by speaker of the House and president pro tem of the Senate to monitor health care reform and recommend to the general assembly actions needed to attain the health care guidelines and goals established in H. 524 as passed the House and Senate (and vetoed by the Governor). Commission to exist through July 1, 2009 and hire full-time commission director and two research support staff. Members are Sen. James Leddy, co-chair; Rep. John Tracy co-chair; Sens. Ann Cummings, Jane Kitchel, and Kevin Mullin; and Reps. Janet Ancel, Steven Maier and Francis McFaun. First meeting was June 30, 2005.

HEALTH, INSURANCE AND BENEFITS

Appropriations Bill (H. 516, Act 71) **(Health and Benefits sections, includes health reform measures)** **VLCT Staff Contact: Dave Sichel**

Because the Governor promised to veto H. 524, the Legislature included some of the provisions of that bill (in addition to Medicaid cost control provisions) in the appropriations bill, which the Governor signed on June 21st.

In the area that eliminates the Medicaid deficit for FY06, the appropriations bill carries forward a \$17 million balance from FY 05 to FY06. In addition, payments to providers are reduced by \$19.6 million. We expect that this will result in additional cost shifts to other health care system payers, including municipalities.

The bill includes \$1.25 million to fund health care reform initiatives. Funding is provided to develop a statewide health information technology plan. It also includes provisions and funding for the Commission on Health Care Reform created in H. 524 – and again in this bill – as well as the summer studies approved in the bill. A public hearing process is also included.

The bill increases the hospital assessments (tax) from 4.54% to 6%. Additionally, a new pharmacy assessment tax of \$0.10 per prescription is established. These new and increased taxes will likely be passed through to health care system users, including municipalities.

The appropriations bill also includes development of a consumer price and quality information system and a prescription drug and consumer protection program. Funding is also continued for the successful Chronic Care Initiative, a public/private collaborative that brings medical providers, health insurers and other experts together to develop medical best practices for treatment of chronic diseases, which are a major driver of health care system costs.

Health System Reform Bill (H. 524) **VETOED** **VLCT Staff Contact: Dave Sichel**

After much wrangling in conference committee, the House and Senate agreed to a version of H. 524, which passed in both chambers. The bill passed despite a promised veto from the Governor. True to his word, Governor Douglas vetoed the bill on June 22. The Governor's primary, though clearly not only, objection to the bill was the inclusion of a payroll tax on employers who do not provide health benefits to their employees. Governor Douglas wrote a lengthy, detailed letter explaining the reasons for his veto.

The Legislature also included many non-, or at least less, controversial provisions of the bill in the appropriations bill, which itself narrowly avoided the Governor's veto pen (only after the Legislature was called back to a special session on June 16th).

H. 524, as passed by both chambers, struck a compromise between the broad House-passed bill that started Vermont on a path towards a single-payer, universal care health system and the Senate version that, while containing many of the same studies and cost containment initiatives, focused on providing health care to the currently uninsured, and containing the costs of prescription drugs.

The legislatively adopted bill included the following provisions:

1. Establishment of a “Commission on Health Care Reform.” The Commission would include four Representatives appointed by the Speaker of the House, four Senators appointed by the Senate Committee on Committees, and two non-voting members appointed by the Governor. The Commission would oversee, study and develop alternatives, and monitor the progress in the health system reform process laid out in the bill, and would hire staff to help in its work. This language is also in the appropriations bill. Members of the Commission have already been named and the first meeting was held on June 30.
2. During the interim of the 2005 legislative session, the House Health and Senate Health and Welfare Committee will hold six public hearings to solicit input “from citizens, employers, hospitals, health care professionals, insurers, other stakeholders, and interested parties about health care.”
3. “Green Mountain Health” was created as the vehicle to provide health insurance to uninsured Vermonters.
4. Sets goals for phasing in Green Mountain Health coverage. Primary and preventative care services to the uninsured would be covered effective July 1, 2006. Additional coverage would be added based on available financing, quality of care improvements and meeting cost containment benchmarks. Target dates for expansion of services for Green Mountain Health are making primary and preventative care available to all Vermonters effective July 1, 2007, making hospital care available to all Vermonters effective October 1, 2008, and making a “minimum common benefit” available effective July 1, 2009.
5. Impose an “employer health effort tax” on employers to help fund Green Mountain Health coverage for uninsured Vermonters. This payroll tax would be 1% of payroll up to \$50,000 of payroll and 3% for payroll above \$50,000 reduced by the employer’s health insurance costs (but not less than \$0).
6. Impose an “Individual Health Effort Tax” of 1% of the taxpayer’s federal adjusted gross income excluding interest on U.S. government obligations. An individual is exempt from this tax if the taxpayer, his or her spouse and dependents are covered by “health insurance or government health coverage, other than Green Mountain Health at least 274 days in the taxable year.”
7. Several cost containment measures were included in the bill including:
 - a. Establishing a global hospital budget process. These budgets would be goals at first, but would become spending caps starting in fiscal year 2007. Growth in hospital budgets

- would be limited to no more than the sum of the “Consumer Price Index plus the rate of growth of the gross state product.”
- b. Barring an expression of regret or apology by a health care provider from being used in a civil or administrative proceeding against the health care provider. Studies have shown that sometimes a simple apology from the health care provider or acknowledgment that the medical treatment didn’t go as planned significantly reduces the likelihood of expensive medical malpractice lawsuit.
 - c. Allowing insurers to provide healthy lifestyles insurance discounts.
 - d. Developing a consumer price and quality information system to provide health care system users information that would allow them to make “economically sound and medically appropriate decisions” about their health care.
 - e. Developing a grant program to develop “integrated systems of care.”
8. A variety of provisions were designed to control the cost of prescription drugs, including a pharmacy best practice and cost control program, regulation of pharmacy benefit managers and, price disclosure by manufacturers.
 9. Creation of a health care purchasing pool “for the purpose of coordinating and enhancing the purchasing power of health care benefit plans for groups and individuals who choose to participate.” The health risks of participating individuals or groups would not be mixed.
 10. The following summer studies on the health care system would be conducted: economic impact study, financing options study, and governance and administration study.

Health care reform promises to continue as a major issue as both the administration and Legislature will be developing proposals and strategies for the upcoming election year legislative session. *Adopted by Legislature; vetoed by Governor.*

Workers’ Compensation Heart Attack Presumption for Full-Time Firefighters (H. 325, Act 69)

VLCT Staff Contact: Dave Sichel

This law changes the existing heart attack/heart disease presumption for full-time fire fighters. Under current law, when a public safety officer (including a full-time firefighter) suffered a “heart injury or disease incurred or aggravated and proximately caused by service in the line of duty” (or within 72 hours), it was presumed to be covered under worker’s compensation. However the insurer/employer could deny the claim if evidence showed that the incident wasn’t work-related. In all other non-public safety workers’ compensation claims, the burden of proof was on the employee to show that the injury was work related.

As originally proposed, H. 325 would have made all public safety employee heart injury or disease claims within 72 hours of being on duty presumptively covered and not rebuttable, even if the weight of medical evidence did not support the heart injury or disease to be work-related. The changes to the bill that ultimately became law narrowed the scope of who was included in the change to full-time firefighters only and continues to allow insurers/employers to deny the claim if evidence shows that it was not work-related. The current law did not change for all other public safety personnel. VLCT continues to oppose the bill for the reasons listed below.

VLCT believes that there should be limits on heart injury/disease workers' compensation coverage when a claimant engages in lifestyle choices – including smoking or substance abuse – that are scientifically shown to lead to heart attack or heart disease. This is consistent with other legislative initiatives relating to banning smoking in public places and allowing healthy lifestyle health insurance discounts.

VLCT also believes that individuals who are covered under the public safety heart injury/disease presumption should be subject to minimum health and physical fitness standards and periodic examination programs, such as those laid out in the National Fire Protection Association (NFPA) 1500, chapter 10 standards and OSHA 1910 standards. *Amends 21 V.S.A. § 601(11).*

Unemployment Compensation for Survivors of Domestic Violence (S. 41, Act 49)

VLCT Staff Contact: Karen Horn

This new law provides unemployment compensation for survivors of domestic violence, if protecting their health and safety means they must leave employment. The Vermont Department of Employment and Training will administer the benefits. Funding for these benefits is provided by a \$30,000 appropriation from the Crime Victims Restitution Fund. In its original form, S. 41 proposed that the benefit be funded through the unemployment insurance system. VLCT opposed this original funding source because it would have expanded unemployment insurance benefits on the basis of circumstances not related to employment. *Adds Chapter 16A to 21 V.S.A.*

Vermont Municipal Employee Retirement System Employee Contribution Rates (H. 528)

VLCT Staff Contact: Steve Jeffrey

VMERS employee contribution rates are set in statute and can only be changed by vote of the Legislature. In 2000, due to very good investment returns, the VMERS Board of Trustees recommended to the Legislature that the employee contribution rates be lowered by a half percent of salary for members of Groups A and B and by two percent for Group C for a period of five years. The Legislature complied and passed a bill to lower rates. That five-year period was due to expire on June 30, 2005, after which employee contributions would rise unless the Legislature extended the rate reduction. The VMERS Board learned from its actuary that it is financially secure enough to extend the rate reduction for another five years. H. 528 accomplishes this. From July 1, 2005 to June 30, 2010, contributions shall be: for group A members, 2½ percent of earnable compensation; for group B members, 4½ percent of earnable compensation; and for group C members, 9 percent of earnable compensation. *Amends 24 V.S.A. § 5064(b).*

TRANSPORTATION

Transportation (H. 523) **VLCT Staff Contact: Karen Horn**

The transportation bill conference committee finally agreed on the transportation bill in the final days of the session, but it was definitely nip and tuck for a few days when the bill went underground and it was impossible to discover how negotiations were proceeding. In the end, legislators kept in mind the transportation needs of municipalities and worked hard to address them. H. 523 passed on June 4, the last day of the session.

H. 523 establishes the state transportation program for FY06. It is a key bill for local governments in that it funds local transportation programs, the coming year's project lists, and policy direction to the Agency of Transportation (VTrans). The funding pieces of the transportation capital bill also appear in the appropriations bill, H. 516. To see funding amounts for local transportation aid programs, see the table that accompanies the general appropriations bill article on page 3.

Following are the programs that affect local governments.

Transfers from the Transportation Fund. This year, the maximum amount of transportation funds appropriated to the general fund and other special funds was 18.5% of the total prior fiscal year transportation fund appropriations. In FY 2006, that percentage is 18%; in FY 2007, the amount is capped at \$38,221,563. Weaning the general fund from transportation funds dollars is difficult. Switching to a dollar amount (which represents the dollars that equal 18% this year) has the specific result that the dollars flowing out of the transportation fund do not continue to increase as transportation fund appropriations increase over the years. (*Section 11a*)

Maintenance districts. Consolidation of the Agency's maintenance districts was an idea that VTrans floated early in the session and that legislators sent down in flames. The compromise language requires maintenance districts to provide the same level of service, or better, to the public and district municipalities as in prior fiscal years. VTrans will report to the House and Senate committees on transportation on the configuration of management and administrative personnel in the Agency's nine maintenance districts and on the level of service provided by the maintenance districts to the public and district municipalities by January 15, 2006. (*Section 10*)

Public Transit. Each year, VTrans and the public transit advisory council report on all financial and performance data of all public transit systems receiving any state or federal subsidies. The report is delivered to the Legislature each January 15th. In 2006, that report must include subsidies related to elders and persons with disabilities. The new Rural Public Transit Preventive Maintenance Project is added to the public transit program, and \$500,000 is reallocated from the "new starts" program to fund it. The bill specifies that any new dollars provided to a public transit provider in FY2006 shall not be used to reduce local funds committed to the project. There was much discussion throughout the session about how to fund public transit in Vermont, given its rural nature, but no long-term resolution to the problem was achieved. (*Section 5-7*)

Town Highway Bridge Program, Town Highway Class 2 Roadway, Town Highway Emergency, Vermont Local Roads, Town Highway Structures. These are all ongoing programs to assist municipalities with their statutory duty to maintain highways. See the table on page 3 for FY 2006 funding levels. (*Sections 34-39*)

Vermont Bridge Maintenance Program. A new Vermont Bridge Maintenance Program is created to take advantage of additional federal money that may flow from passage at the federal level of a new transportation bill and to maximize the useful life of Vermont's bridges. Types of eligible projects for funding include: (1) bridge painting, particularly projects that remove lead-based paints; (2) deck membrane replacement; (3) deck replacements of structurally deficient decks; (4) large culvert rehabilitation; and (5) substructure repairs where deterioration has affected the structural stability of the bridge. (*Sections 57-59*)

Inspection Stickers. Inspection stickers fees will be raised from \$.50 to \$3.00. One hundred percent of the revenue from the inspections stickers will be allocated to the Transportation Fund in FY06. In FY07 and thereafter, half of the revenue will be allocated to the Transportation Fund while the other half will go to the Bridge Maintenance Program. The increase was adopted to assure that if additional federal money is allocated, the state of Vermont has the funds to provide state match. If transportation funds are insufficient to match all available federal dollars, the secretary may withdraw funds from the transportation fund budget stabilization reserve while leaving a balance equal to 3.5% of the prior year's appropriations. (*Section 54*)

Joint Transportation Oversight Committee. The Joint Transportation Oversight Committee (JTOC) has not met regularly over the last several years. This year, JTOC will meet in coordination with the legislative Joint Fiscal Committee in July, September, and November. At those meetings, the Agency secretary shall report on the status of the state's transportation finances and programs, including a report on contract bids versus projects estimates and cost overruns and project savings. VTrans shall also report on actions to reallocate projects savings, cover overruns and delayed project funds. If the secretary delays or suspends work on approved projects to reallocate funding for other projects because other funding options are not available, she must notify JTOC. The Legislature felt strongly that there must be more oversight of Agency activities that affect the transportation capital plan while the Legislature is not in session.

Also, VTrans is directed to develop a numerical grading system to assign a priority rating to all program development projects. The system shall include asset management – based factors and functional importance factors (importance to the transportation network and the social and cultural life of the host community). Each project will receive a numerical grade. (*Sections 44, 52*)

Prefab Bridges and Municipal Equipment Loan Fund. VTrans is directed to identify state, interstate and town highway bridges that could be repaired with prefabricated components and construction techniques. The treasurer and state traffic committee shall also investigate using a portion of the municipal equipment loan fund to cover costs of municipal salt and sand sheds. *Note that the Department of Environmental Conservation, pursuant to letters from the Environmental Protection Agency, has determined that most salted sand piles will not need to be covered unless they directly influence the waters of the state.* (*Sections 50, 51*)

PUBLIC SAFETY

Appropriations Bill: Establishes Public Safety Policies (H. 516, Act 71)

VLCT Staff Contact: Karen Horn

Section 80 of H. 516, the appropriations bill, addresses public safety and funding for homeland security and state police. The appropriation for Vermont state police of \$44,318,150 includes funding for 316 state troopers, including 10 “corridor troopers.” Three additional troopers are funded from the homeland security appropriation, resulting in 319 troopers, the same number as in 2004. \$35,000 in general funds is set aside for the southern Vermont wilderness search and rescue team, which includes state police, the Department of Fish and Wildlife, county sheriffs and local law enforcement in Bennington, Windham, and Windsor counties for snowmobile enforcement.

Of a total of \$230,000 appropriated for local heroin interdiction grants, \$190,000 is allocated to the Vermont drug task force to fund three town task force officers dedicated to heroin and heroin-related (methadone, oxycontin, crack cocaine and methamphetamine) drug enforcement efforts. The remaining \$40,000 is a pool of money available to local and county law enforcement to fund overtime costs of heroin investigations.

Corrections Bill (S. 156, Act 63)

VLCT Staff Contact: Karen Horn

S. 156 establishes a context for releasing prisoners to reduce overcrowding in prisons and returning out-of-state prisoners to Vermont. It is also about curbing the spiraling Department of Corrections (DOC) budget. As well, the bill as passed the Legislature and signed by the Governor is about providing assurances to municipalities that prisoners released from prison into communities will not result in additional shifts of responsibility and financial burdens for offenders to municipalities. This is indicated in several sections of S. 156 and the appropriations bill. This very issue of how offenders would be supervised in the community was sufficiently difficult that it threatened to scuttle the entire bill in the last days of the session. The following paragraphs describe the sections of S. 156 and the appropriations bill pertaining to local governments.

Findings established in the Senate-passed bill were restored in the final version. Findings (9), (10), (11), and (17) describe increases in numbers of offenders released over the last decade to approximately 12,300 on a typical day; increases in the number of offenders convicted of violent felonies in the community (up 33% in the last 8 years); inadequate numbers of supervisory DOC field staff; and describe last year’s report of the Governor’s Commission on Corrections Overcrowding supporting grants to communities and private organizations to help establish supervised transitional housing and alternatives to incarceration for female offenders.

The practice of awarding time off for good behavior to offenders has evolved into an entitlement for prisoners rather than a reward for good behavior. S. 156 eliminates “good time” by awarding all reductions in minimum and maximum terms to which an offender is entitled, as appropriate, on

June 30, 2005. This will result in the early release of additional offenders, although estimates of how many varies considerably. DOC will need to notify victims of the impact of good time on minimum and maximum sentences. After granting these awards, the current “good time” system is eliminated.

Much committee discussion focused on the concept that offenders should move out of prison into the community while still under DOC control so they can be supervised and supported in their reintegration into communities. Instead of the current “good time” system, the bill would authorize reductions of up to 30 days in the minimum and maximum terms of confinement in any month in which an inmate in a workcamp demonstrates “consistent program performance” or “meritorious work performance” beyond the level normally expected.

DOC may also authorize “reintegration” furlough for any offender up to 90 days prior to completion of the minimum sentence based on risk factors of re-offense, history of violent behavior, history of compliance with community supervision and progress in treatment programs. Awards of up to five days toward reintegration furlough for each month served in a correctional facility will be made in the sole discretion of the commissioner and shall in no event be awarded automatically. Furlough is not available to those serving minimum sentences of more than five years or those convicted of violent crimes such as arson causing death, assault and robbery causing bodily injury, murder, kidnapping, maiming, sexual assault, aggravated sexual assault or lewd or lascivious conduct with a child. Additionally, S. 156 specifies that the effect of a reintegration furlough policy shall be reducing the total number of Vermont offenders housed in out-of-state facilities. DOC must adopt rules regulating the granting of reintegration furlough by November 1, 2005. No offender with a minimum sentence of fewer than 180 days would be eligible until 90 days were served.

Along with the reintegration furlough authorization for the commissioner is a requirement that each offender sentenced to a term of imprisonment other than life without parole shall begin to develop and implement a plan preparing for returning to the community within 30 days of receiving his or her sentence.

Three categories of release are addressed in Sections 8, 9 and 10 of S. 156. DOC must adopt rules establishing graduated sanction guidelines for *probation* violation which the court could follow in ordering sanctions but doesn’t have to follow. *Deferred sentences* could be ordered for offenders of 28 years or younger who did not commit a “listed crime” (serious crimes listed at 13 V.S.A. § 5301 (7)) and who meet other criteria. Upon successful completion of the deferred sentence, the record would be expunged upon full payment of restitution unless there is a finding of good cause by the court (the provision for expunging records is current law). Upon violation of probation or deferred sentence agreement, the court shall impose sentence. As part of conditions of *release prior to trial*, new language allows the court to require the accused to participate in an alcohol or drug treatment program. The Department is required to provide essential substance abuse and domestic violence programming to targeted offenders in correctional facilities, which may include out of state facilities.

The bill provides for a transitional housing project in “at least one community interested in engaging in a pilot process designed to create a proposal to develop transitional housing to assist offenders to achieve successful reintegration into the community.” A transitional housing

committee would be established to include a member of VLCT appointed by the VLCT Board. A new joint legislative corrections oversight committee will oversee DOC and work with other legislative committees on corrections issues. The committee would have four members each from the House and Senate and produce a report annually on its activities to the Legislature.

A vital component of S. 156 is language at section 22 that requires DOC to adopt rules to ensure a sufficient number of trained correctional field staff and, if necessary, to increase the number prior to the release of inmates into the community, and that offenders be released at a rate that permits adequate supervision to ensure community safety and to support each offender's successful reintegration. When there is insufficient supervision from DOC, as is the case with current field staff levels around the state, municipal officials assume the burden for addressing offenders' issues when they re-offend, a burden local governments are not prepared to assume.

The bill includes a pilot global positioning monitoring (GPS) program. The program may include only 20 offenders at a time – those convicted of driving under the influence (DUI) and nonviolent offenders who might otherwise be incarcerated for violating conditions of release. The DOC commissioner reports to the Legislature regarding progress in implementing the program to the legislature by January 15, 2005.

House Judiciary Committee language is included to reduce the numbers of persons on probation by categorizing them into three groups and directing DOC to review case files and determine if termination of probation is warranted by “conduct of the misdemeanor and the ends of justice.”

S. 156 includes the following language in Section 26 (which is session law). “It is the intent of the general assembly that the provisions of this act will result in an eventual decrease in the total incarcerated population and that offenders housed in out-of-state facilities be brought home to Vermont. It is also the general assembly's intent that “savings realized in any given fiscal year from the reduction in the incarcerated population will be dedicated to improving correctional services including provision of: (1) adequate support, programming, and supervision for offenders within the community, including a sufficient number of trained correctional field staff as required by Sec. 22 of this act; and adequate programming and an adequate number and ratio of trained correctional officers within the correctional facilities.” From August 2005 to August 2006, DOC shall provide to the Joint Corrections Oversight Committee a monthly accounting of costs and numbers of offenders in out-of state facilities, numbers furloughed and allocation of excess expenses.

Corollary language to implement the community supervision purposes of S. 156 is in the appropriations bill at Section 142. The \$101,082,206 total appropriation to DOC includes:

- \$87,000 grant to Dismas House of Vermont Inc.
- \$35,000 grant to Morningside House to serve 3-5 offenders in southern Vermont.
- \$20,000 employment placement and retention program expansion in Bennington County.
- \$318,750 seven new classified community supervision positions, contingent upon the out-of-state census being, on average, at or below 400 during May, June and July 2005, excluding impact of renovations at the St. Albans correctional facility. If out-of-state beds fall below 399, savings of allocated funds for the first 50-bed reduction will be used first to fund five new community supervision positions. Remaining funds to be used for corrections services. For each additional increment of 50-bed

reduction out-of-state, savings are to be used equally between community supports or supervision and other correctional services needs, which may include up to four mental health counselors if they were not already hired.

Amends various sections of titles 28 (304, 808, 81) 13 (7041,7554(a)).

Carbon Monoxide Detectors (H. 243, Act 19)

VLCT Staff Contact: Karen Horn

All residences and commercial buildings in which people sleep shall be equipped with carbon monoxide detectors when constructed, sold or rented. H. 243 prohibits constructing or maintaining any building that is likely to be unsafe in case of fire or generation or leakage of carbon monoxide. Such buildings must conform to rules promulgated by the Department of Public Safety (DPS). The rules will require DPS to inspect buildings using gas-heating systems. *Amends 9 V.S.A. §§ 2881-2883; 20 V.S.A. § 2729.*

Safe Communities Bill (S. 15)

VLCT Staff Contact: Karen Horn

“Safe Communities” legislation was a priority of the administration this year. The bill that eventually passed addressed a number of the issues that the administration promoted, but did not include a process for civil commitment of violent sexual offenders.

S. 15 bans voyeurism (“peeping Tom” activity). It redefines stalking and aggravated stalking in terms of a reasonable person’s expectations of safety or fear and gives jurisdiction of stalking complaints to the family court. Stalking is defined to mean “to engage in a course of conduct which consists of following, lying in wait for or harassing a person and (A) serves no legitimate purpose and (B) would cause a reasonable person to fear for his or her safety or would cause a reasonable person substantial emotional distress.” Two or more separate such acts would constitute stalking. The bill also amends the definition of aggravated assault, and establishes a special investigative unit grants board to fund units investigating sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities. In an amendment to the sex offender registry, the bill would list a sex offender’s convictions for crimes designated in 20 V.S.A. § 5401 (10) if his or her information was required to be posted electronically.

Section 18 of S. 15 would amend the section of the statute providing for community notification of members of the public when they are likely to encounter a dangerous sex offender. Emphasis is now placed on law enforcement’s authority to notify the public. The Department of Corrections shall identify and designate high risk sex offenders under its supervision by September 1, 2005. The House Judiciary Committee would meet in the summer and fall of 2005 to investigate public safety and corrections policy regarding sexual violence and the return of sex offenders to the community. Consideration would include the possibility of civil commitment of dangerous sex offenders (commitment to a facility beyond the expiration of a term of imprisonment). The commissioners of health, public safety, and corrections would submit a report to the House Committee on Judiciary regarding administration proposals for civil commitment by August 1, 2005. This Act was effective upon passage, June 4, 2005.

QUALITY OF LIFE AND ENVIRONMENT

Appropriations Bill (H. 516, Act 71) Environmental and Growth Management Issues VLCT Staff Contact: Karen Horn

H. 516, the appropriations bill, is the only significant bill that passed the Legislature this session that addresses growth management and environmental issues affecting local governments. Issues include:

Brownfields and the Community Development Block Grant Program

Section 184 of H. 516 appropriates funds for the Agency of Natural Resources (ANR). It appropriates \$400,000 from the solid waste management assistance fund to the brownfields revitalization fund in the Agency of Commerce and Community Development (ACCD). This fund was established because in the past Vermont has not been able to access federal funds for brownfields redevelopment for lack of state matching funds. As a result, Vermont has lost out on significant federal dollars. The \$400,000 will be used as match for federal funds available through the federal Environmental Protection Agency (EPA) for brownfields redevelopment and for grants to specific projects. The secretary of ACCD may grant up to \$50,000 for site characterization and assessment, up to \$200,000 for site remediation, and grant an unspecified amount to help purchase environmental insurance or create a risk pool relating to the characterization, assessment or remediation of a brownfields site in accordance with an ANR-approved corrective action plan. The bill also enables the Vermont Economic Progress Council to make loans to brownfields projects with the ANR secretary's approval and after the ACCD secretary has determined eligibility.

Section 210 of H. 516 establishes priorities for the Community Development Block Grant Program (CDBG). The highest priority for use of CDBG funds is the creation and retention of affordable housing and jobs, particularly perpetually affordable housing. Preference shall be given to projects that maintain the historic settlement pattern of compact village and downtown centers separated by a rural working landscape. Funds "generally should not be awarded to projects that promote or constitute sprawl, defined as dispersed development outside of compact urban and village centers, along highways and in rural countryside." Brownfield sites are often in compact village or downtown areas. Returning them to productive use will promote Vermont's historic settlement patterns. The appropriations bill enables a set-aside of \$750,000 of CDBG funds for brownfield sites after submitting a plan to the Joint Fiscal Committee.

Mercury Added Products

A one-time set-aside from the solid waste management assistance fund is made to provide grants to municipalities for recycling, collection and proper management of household hazardous waste and waste mercury-added products.

Economic Development and Growth Management

Section 205c creates an economic development study committee (including a member of VLCT) that will meet this summer to make recommendations on attracting economic development. A working group on growth centers comprised entirely of legislators (see article on study committees on page 12) is also authorized to meet this summer to recommend legislation on growth centers and disposal of primary agricultural soils in Act 250.

Solid Waste (H. 187, Act 23) **VLCT Staff Contact: Karen Horn**

H. 187 prohibits the dumping of solid waste “or any noxious thing” outside a certified solid waste management facility. Language in this section of Title 24 was inconsistent with language in the state solid waste law in Title 10. Before this amendment, Title 24 said it was illegal to dispose of solid waste or refuse “on lands of others or within 300 feet of the lands of others ... or into the waters of this state; or on the shores or banks thereof or on or within view of a public highway.” The old law was oriented more toward aesthetic than public safety and environmentally responsible solid waste disposal.

In addition, H. 187 prohibits open burning (burn barrels) or incineration of solid waste without a permit. Neither untreated wood nor leaves are defined as solid waste, and permits to burn them are still required from fire wardens. A state environmental enforcement officer may now bring action in the Judicial Bureau against persons who violate this statute. And finally, H. 187 provides that if a municipal official brings action against a person for violating this statute, a state official could also bring action for the same offense if the state felt such action was warranted. *Amends 4 V.S.A. § 1102(b)(6), 24 V.S.A. § 2201.*

Smoking In Public Places Prohibited (H. 241, Act 34) **VLCT Staff Contact: Karen Horn**

H. 241 amends the definition of a “place of public access” to include buildings or facilities owned or operated by a social, fraternal or religious club. Current statute prohibits smoking in all common areas of enclosed places of public access, and publicly owned buildings and offices. H. 241 exempts workplace smoking areas and areas in owner-operated businesses that are not commonly open to the public.

Section 68a of H. 516, the appropriations bill, allows a holder of a third class cabaret license to request a refund of the license fee – pro-rated from the date of the request through the expiration date of the license – if the cabaret license was acquired to permit smoking in the cabaret licensed area. *Amends 18 V.S.A. §§ 1741, 1743; repeals § 1744.*