

VERMONT LEAGUE OF CITIES AND TOWNS

LEGISLATIVE WRAP-UP



2006

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



89 Main Street, Suite 4
Montpelier, VT 05602-2948
(802) 229-9111 / (800) 649-7915

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INTRODUCTION

Stepping out on a limb, we predict the 2005-2006 biennium will be over for good on June 1. That is the day the legislature established to reconvene to consider any gubernatorial vetoes of bills that were passed. To date, the Governor has vetoed two bills: H.865, nondiscrimination based on gender identification, and S.18, which relates to genetically modified seeds.

Despite a great deal of sometimes three-way wrangling amongst the Democratic Senate and House and the Republican Governor, 2006 was a fairly productive session. The pace was frenetic almost from the get-go as legislators committed themselves to adjourning early. Did municipalities see many of their top legislative priorities adopted into law? Not really. Were there many bills passed that will affect local governments? Oh, yes! Additionally, several bills began to address municipal legislative priorities, while others that local governments supported made it part way through the process but didn't cross the finish line. As always, the 2005-2006 legislative biennium was a mixed bag for municipalities. Plenty of issues remain to be addressed in 2007 and beyond.

In part, the last week of the 2006 legislative session was a repeat of the last week of the 2005 session. Extending enabling authority for adopting local option taxes to all cities and towns has been passed by the Senate many times in various bills, and once again it hung in the balance at the end, only to be lost just as it seemed to be a real possibility. The Speaker's commitment last year to study the issue of local option taxes came to naught. There are two bright lights in this dismal tale. The City of Burlington, having voted at Town Meeting to amend its charter to assess a 1% sales tax, was granted that charter change by the legislature. So there is now a precedent for voting a local option tax through a charter change. Additionally, language in the appropriations bill rescinded the sunset on authority to assess local option taxes in those towns given enabling authority when Act 60 was initially passed. That authority would have sunset December 31, 2008. Local officials may recall that the Town of Stowe passed a local option 1% meals and rooms tax at Town Meeting. Because it is one of the Act 60 towns originally authorized to adopt local option taxes, Stowe did not need to seek additional authority to enact its local option.

Updating and revising authority to create and implement tax increment financing districts hung in the balance at the end of last year but, due to a lot of hard work by numerous interest groups, including local officials, it passed in conjunction with growth centers legislation on the last evening this year's session. Another priority – amending the legislative process for amending locally voted charters – sat on the wall throughout the session despite local officials' efforts to see it passed. The Ancient Roads bill passed. And clerks were successful on the last day in seeing the same-day registration bill tabled until next session when, hopefully, issues around implementing a statewide voter checklist are resolved. A health care bill palatable enough to avoid a gubernatorial veto also passed.

This year saw the unprecedented involvement of Town Meeting in the legislative process. With the State Education Fund and property taxes under assault from all sides, voters in almost two-thirds of our cities and towns told their State leaders to keep their hands off! That action had a tremendous impact in the State House.

Despite 2006 being a campaign and election year, summer studies abound. They include studies on county court houses, managing state capital fund obligations, assessing the health of the State tax system, evaluating employment growth incentives and tax increment financing, planning coordination to implement growth centers, education finance and much more.

Because the legislative biennium has ended, any bill that did not pass the legislature is now dead – assuming it does not spring back to life during the (hopefully) short veto session on June 1st. If there was a bill you loved, it will need to be reintroduced in the new legislative session next January after the upcoming campaign season and elections. Talk to your candidates about those bills! Make them take positions on legislation important to local governments and make them work for your vote!

This 2006 Legislative Wrap-Up describes those bills and acts signed by the Governor that affect municipalities. Legislation is organized under the headings of our policy committees, as are relevant sections of the Omnibus Appropriations Act, H.881. The VLCT staff member responsible for each bill is noted under the bill's heading. If an act number has been assigned, that is noted. To check on act numbers or to obtain full copies of bills, go to the legislative website, www.leg.state.vt.us, or call the Legislative Council at 828-2231. The standard effective date for legislation is July 1 unless otherwise noted.

Do you have issues with legislation that was passed or topics that were ignored? We need to hear about it! Please let us know what priorities VLCT should address in the 2007 session, just six months away. Be sure to read your draft legislative policy when it arrives in late summer and propose your changes then.

Finally, thanks to all who let us know your positions on issues during the session, who informed us about the likely impacts of proposals, who contacted legislators to urge their support or defeat of legislation as it was unfolding and to all who traveled to the State House to make your points in person. Our successes are due to your involvement.

Karen B. Horn
Director, Public Policy & Advocacy
May 31, 2006

MUNICIPAL FINANCE

Appropriations Bill, Generally (H. 881, Act 215)

VLCT Staff Contact: Steven Jeffrey

The appropriations bill is usually one of the longest, widest ranging and last-to-pass bills of each legislative session. Such was again the case for the 2007 State fiscal year spending authorization. Throughout the Wrap-Up, you will find a variety of articles dealing with municipal priorities that became law through the passage of H.881. The table below lists those budget items that affect local governments generally.

As we mention elsewhere in the Wrap-Up, the appropriations bill leaves the Education Fund alone, makes some modest improvements in State assistance for funding local transportation needs, and provides more authority for towns to levy alternatives to the property tax. Additionally, the bill includes a steep increase in the State Payments in Lieu of Taxes (PILOT) funding for State buildings. Even though the State General Fund contribution remains unchanged from last year's \$600,000 and we lost an extra \$200,000 of "one-time" State General Fund contribution, the addition of Stowe and Burlington to municipalities approving local option taxes with 30% of the proceeds being distributed to towns through PILOT and an extra payment for excess funds the State had withheld from funds collected from retailers will result in a net 30% increase in PILOT payments to towns. This year, the \$3.5 million total will come from \$600,000 of State General Fund revenues, \$2.5 million from local option tax revenues and approximately \$400,000 of excess State withholdings.

The following subjects in H.881 are not addressed elsewhere in this Wrap-Up.

The legislature appropriated funds from the property transfer tax, again reserving for General Fund uses amounts above \$4,116,847 that are statutorily deposited into the municipal and regional planning fund, and amounts above \$13,763,883 usually deposited to the Housing and Conservation Trust Fund. In FY07, out of the property transfer tax, \$13,763,883 is appropriated from the Housing and Conservation Trust Fund to the Housing Conservation Trust Board, \$2,881,792 goes to regional commissions, \$823,369 to the municipal and regional planning grant fund for disbursement to municipalities, and \$411,685 to the Vermont Center for Geographic Information.

H.881 establishes some new priorities for the Community Development Block Grant Program (CDBG), the greatest of which will be to create and retain affordable housing and jobs. The "overarching priority and fundamental objective" for affordable housing funds is perpetual affordability. The State's goal is to maintain at least 45%-55% of CDBG dollars for affordable housing. Projects addressing deterioration of housing stock shall comply with housing quality standards with priority to lead hazard reduction and energy efficiency.

The bill also calls for a study of Vermont state taxes, including historical trends, state tax burdens per capita, simplicity, equity, stability and predictability of the income tax, sales, meals and rooms, business franchise insurance premium and education property taxes. The study is to be delivered to the legislature by December 15, 2006. The bill also directs the Vermont Economic Progress Council to conduct a long-term economic development planning process, a directive that is duplicated in S.165 (summarized on page 7).

MUNICIPAL FUNDING PRIORITIES IN FY 2007 BUDGET (in Millions)						
Budget Line Item	FY06 Final	FY07 Governor's Recommend	FY07 House Approved	FY07 Senate Approved	FY07 Final	Pct. Change from FY06
PILOT – ANR Lands	\$1.45	\$1.57	\$1.57	\$1.57	\$1.57	8.6
PILOT – Corrections Facilities	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	0.0
PILOT – Montpelier	\$0.18	\$0.18	\$0.18	\$0.18	\$0.18	0.0
PILOT – State Buildings ¹	\$2.70	\$2.70	\$3.50	\$3.50	\$3.50	29.6
Current Use – Municipal	\$6.90	\$8.11	\$8.11	\$8.11	\$8.11	17.6
General Fund Transfer to Education Fund ²	\$259.30	\$293.75	\$269.30	\$269.30	\$268.72	3.6
General Fund Appropriation for Teacher Retirement System	\$24.45	\$0.00	\$24.45	\$24.45	\$24.45	0.0
Town Bridge Grants ³	\$18.99	\$25.75	\$26.29	\$24.67	\$25.57	34.7
Town Highway Aid Program	\$24.98	\$24.98	\$26.31	\$24.98	\$24.98	0.0
Town Highway Aid Program – Class 1 Supplemental	\$0.13	\$0.13	\$0.15	\$0.13	\$0.13	0.0
Town Highway Structures	\$3.49	\$3.49	\$3.67	\$3.49	\$3.49	0.0
Vermont Local Roads	\$0.78	\$0.38	\$0.38	\$0.38	\$0.38	-52.2
Town Highway Emergency ⁴	\$0.06	\$0.75	\$1.50	\$1.00	\$1.25	2088.0
Town Hwy Public Assistance Grants	\$0.20	\$0.20	\$0.20	\$0.20	\$0.20	0.0
Municipal Mitigation Grant Program	\$0.00	\$2.00	\$2.00	\$2.00	\$2.00	#DIV/0!
Class 2 Hwy Paving and Rehabilitation	\$4.75	\$4.75	\$5.02	\$4.75	\$5.75	21.1
Total Local Highway Aid	\$53.39	\$62.43	\$65.52	\$61.60	\$63.75	19.4
TOTAL	\$348.40	\$368.79	\$372.68	\$368.76	\$370.33	6.3

1. FY06 contains \$600,000 General Fund, \$1.9 million from local option taxes and \$200,000 in “one time” State General Fund revenues (Sec. 255(a)(4)). FY07 contains \$2.5 million from local option taxes and \$600,000 from State General Fund revenues plus an estimated additional \$400,000 from a Tax Department vendor fund.

2. Required by Act 68 to increase by the same proportion that total State General Fund spending is increased. FY07 Gov.’s also contains former General Fund support for teachers’ retirement system. FY07 Final is reduced from what is required due to extra purchase and use tax revenues from raising the tax cap.

3. Includes state and federal aid only; no local match.

4. Extra \$250,000 added to addendum of conference committee report, House Calendar, 5/10/06.

Capital Bill (H. 864, Act 147)
VLCT Staff Contact: Karen Horn

The capital bill conference committee completed its work in a timely manner this year and with a minimum of theatrics – sort of the way one might imagine a legislative process works. The bill that passed incorporates most of the priorities for municipal governments that we have followed in our *Weekly Legislative Reports* this session.

The Department of Corrections is the responsibility of the Institutions Committees in the House and Senate. Thus, there is always some corrections-related policy in the capital bill. H.864 states that the purpose of work camps is to alleviate overcrowding in correctional facilities and bring prisoners in out-of-state facilities back to Vermont. Only offenders convicted of non-violent offenses who served a portion of their time in a correctional facility would be placed in work camps. There is funding for two supportive transitional houses for offenders returning to community life in Chittenden County. Both facilities – the Dismas House II and Northern Lights House – are in Burlington. Although the \$445,000 allocation does not begin to cover the costs of providing wrap-around transitional housing and services in those two facilities, it is a significant recognition of the

State's responsibility to address both community and offender needs in the context of persons being released from prison.

The town of Colchester is moving to electronic record keeping in the clerk's office as part of the electronic records pilot project funded last year. H.864 would provide that the electronic version of all documents created by Colchester as it undertakes that conversion would be exempt from the public records requirements provided that the paper record is retained and the paper document is subject to the public records law.

The Institutions committees have long grappled with funding needs for wastewater treatment facilities construction or upgrades and water supplies. This year was no exception as needs, particularly for wastewater treatment, far outstripped available resources. The legislature provided additional funds for Pownal's very expensive mandated wastewater treatment project, continued to fund the Clean and Clear Program, provided that a water pollution abatement project proposed by the Town of Waitsfield can receive grant funding and continued to fund the other wastewater treatment upgrade projects that are on the State's priority list.

County court houses are in the spotlight this session because they are in disrepair and because the Senate Institutions Committee visited several of them. H. 864 directs the Commissioner of Buildings and General Services to create a committee to consider obligations of the state and counties relative to capital expenditures at county courthouses. The committee will report on these expenditures to the Institutions Committees by January 15, 2007.

The bill authorizes assistant Orange County judges to borrow funds to purchase property adjacent to the courthouse, notwithstanding provisions of 24 V.S.A. § 82, which requires that voters approve any bond issue for capital construction. The assistant judges will hold one or more public hearings on the subject prior to borrowing the funds.

An agricultural buffer program is established in the Agency of Agriculture, Food and Markets to compensate farmers for maintaining harvestable perennial vegetative buffers on annual cropland adjacent to state surface waters. Agriculture is a significant contributor to phosphorus loading in Vermont surface waters, and the buffer program is an effort to encourage protective strips adjacent to streams, rivers and lakes. This section is also in response to fears that a developer who needed to provide mitigation for his or her project in addition to that which could be provided on-site might actually lead to a reduction in agricultural lands being used for agricultural purposes. Such was never the intent of the stormwater mitigation laws. Land enrolled in the buffer program would be considered current use lands.

Of concern to all who receive funds from the capital bill is the fact that capital needs into the future far exceed any funds that might be available. So the bill creates a committee to develop options to manage existing and future state capital obligation so as to stay within approved capital debt limits. A first meeting must be held by July 15 and a report will be delivered to the legislature by January 15, 2007.

Finally, the Criminal Justice and Fire Service Training Center in Pittsford will be rededicated in honor of the late Representative Robert (Bob) Wood, long-time chair of the House Institutions Committee and a tireless advocate not only for public safety personnel but also for local government needs.

The table on page 6 shows funding made available for municipal priorities in the capital bill this session.

Capital Bill						
Agency/Department	Line Item	Passed in FY 06	Governor Proposed FY 07	House Institutions Passed	Senate Institutions Passed	Legislature Passed
Buildings and General Services	Corrections work camp site acquisition and design ¹	\$400,000	\$750,000	\$450,000	\$750,000	\$750,000
	Recreational and Educational Grants	\$200,000	\$100,000	\$150,000	\$200,000	\$200,000
	Human Services Grants	\$200,000	\$75,000	\$150,000	\$200,000	\$200,000
Department of Taxes	Vermont Mapping Program, digital ortho-photography ²	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Commerce and Community Development, Building Communities Grants	Barn grants made on a 50/50 matching basis up to \$10,000	\$100,000	\$150,000	\$100,000	\$150,000	\$150,000
	Historic Preservation grants on a 50/50 matching basis	\$200,000	\$150,000	\$150,000	\$150,000	\$150,000
	Cultural facilities grants	\$200,000	\$50,000	\$100,000	\$200,000	\$200,000
	Broadband communications development	\$150,000	\$200,000	\$200,000	\$200,000	\$200,000
Agency of Human Services	Transitional Houses for offenders			\$463,768		\$445,000
Department of Education	School Construction Aid at 30% (original FY07 request was \$12,223,837)	\$9,300,000 ³	\$9,000,000	\$8,532,000 ⁴	\$8,532,000	\$8,532,000
Agency of Natural Resources (\$10,310,000 total request ⁵)	Water Pollution Grants and Water Supply.	\$7,550,000	\$5,800,000	\$5,800,000	\$5,800,000	\$5,800,000
Clean & Clear Program		\$2,200,000	\$2,870,000	\$2,870,000 ⁶	\$2,870,000	\$2,870,000
	State-owned dam maintenance and reconstruction	\$450,000	\$100,000	\$100,000	\$100,000	\$100,000
Agency of Agriculture, Clean and Clear	Agriculture non-point source pollution reduction	\$1,800,000	\$1,800,000	\$1,800,000	\$1,800,000	\$1,650,000
Dry Hydrant Program	Dry Hydrant Program	\$100,000	\$50,000	\$100,000	\$100,000	\$100,000
<ol style="list-style-type: none"> Commencing discussions with seven municipalities interested in hosting work camp. Will map Lamoille, North Washington, North Orange and South Caledonia. \$5,300,000 capital funds & \$4,000,000 general fund. Line item reads "at least \$8,532,000." (1,532,2000 capital funds, remainder from General Fund.) Total request includes \$1,900,000 for water pollution control; \$2,000,000 for Clean Water State Revolving Fund; \$1,900,000 for Drinking Water State Revolving Fund; \$2,870,000 for Clean & Clear including \$120,000 for storm-water assistance to towns; \$750,000 for municipalities to construct improvements to "orphaned systems"; \$100,000 for dam maintenance (as well as funds for Forest and Parks and Long Trail easements). Includes \$1,250,000 for stream stabilization grants; \$250,000 for wetlands restoration and protection; \$120,000 for stormwater assistance to municipalities through the local community implementation fund to help with developing TMDL and water quality remediation plans for stormwater impaired waters of the state; \$750,000 for Hardwick phosphorus removal; and \$500,000 for Waterbury phosphorus removal. 						

Local Option Taxes (H.881, Act M-11)

VLCT Staff Contact: Steven Jeffrey

Local governments took a solid step forward in obtaining the ability to diversify their revenue sources and to secure State reimbursement for municipal services provided to State facilities. The 76 cities and towns granted temporary authority to levy a one-percent rooms and meals and/or sales tax under Act 60 were given the authority to do so permanently under sections of the State appropriations bill, H.881. Additionally, the actions taken by the voters of the City of Burlington adopting similar authority became law under Act M-11.

Under Act 60, 76 towns and cities most adversely affected by the State education property tax imposed under the law were given the authority to levy a one-percent rooms and meals and a one-percent sales tax for a four-year period that expired in 2002. Towns voting to adopt the tax retained 70% of the proceeds and shared the remaining 30% with other cities and towns in the state through the State Payment in Lieu of Taxes (PILOT) program. This program reimburses towns hosting State facilities for municipal services provided to those facilities because the State has exempted itself from paying local property taxes. Over the years, the authority for the original 76 communities has been extended for two-year periods three times – the most recent sunset date is 2008. During that time, Manchester, Williston and Stratton have begun collecting those taxes – Manchester, just the sales tax; the other two, both. This year, Stowe voters approved using the rooms and meals option. H.881 now makes this authority permanent.

The City of Burlington was not one of the original 76 cities and towns authorized to impose the Act 60 local option taxes. It has had charter authority to levy and retain a local rooms and meals tax for over a hundred years, and has collected it for over 20 years and retained all the proceeds. This spring, its voters approved a local sales tax with a sharing mechanism similar to that granted the Act 60 towns. The legislature approved that change and the Governor signed it into law as M-11. Together, the City and the four towns imposing the taxes are projected to raise over \$8.3 million to support their own municipal operations. They will share \$2.5 million with the towns that host State buildings through the PILOT program.

Though almost one-third of Vermont local governments may now provide themselves some other tax source than the property tax, local officials still need to work on the 2007 legislature to assure that voters in all local governments are given equal opportunity to so. (*Amends 24 V.S.A. § 138.*)

Economic Development and Tax Increment Financing (S.165, Act 184)

VLCT Staff Contact: Karen Horn

The legislature sought to revamp several of its economic development programs over the last biennium to provide more accountability regarding how tax credits provide incentives for economic development, to make the tax increment financing district (TIF) program workable for mixed use downtown developments, and to provide tax credits for films companies filming in Vermont. S.165 is a bill that hung in the balance until the very end of the session. Throughout the process, it was questionable if the TIF program being created would be an economic development tool that municipalities could actually use or whether film tax credits would actually pass. But, phew! The new statute does establish a program that should work well for local governments.

Under this new legislation, a municipality may create a TIF for up to 20 years and establish TIF boundaries around a geographic area. Infrastructure improvements would be made to encourage development, provide for employment opportunities, improve or broaden the tax base, or enhance the general economy of the municipality, region or state. Infrastructure to support that development

would be financed by indebtedness that is repaid from municipal and education property tax revenues that are newly generated by the project. Those tax revenues are the “increment” in Tax Increment Financing. A municipality may dedicate its municipal property tax revenues to a TIF without State approval, but in order to use education tax revenues (by far the bulk of the property tax revenues that would be generated), the State must grant permission.

If a municipality creates and has approved a TIF, it has five years in which to incur indebtedness, if it intends to use education tax increment financing. To control the potential impact on future education fund revenues, the legislature agreed that if indebtedness is not incurred within five years of the TIF’s creation, the municipality would need to secure reapproval in order to use the education tax revenue. Likewise, the bill establishes that up to ten TIF districts – and no more than one per municipality – may be approved in the next five years. Within an approved TIF, property tax assessments before development would be established, and up to 75% of newly generated property tax revenues resulting from increased assessment over that established amount would be dedicated to repay TIF indebtedness. In a reappraisal of more than 20% of all parcels in the municipality, the value of the original taxable property in the district would be changed to reflect the town’s reappraisal results.

The Vermont Economic Progress Council is authorized to grant tax increment financing awards until April 1, 2009 when a new 11-member Economic Incentives Review Board is created that assumes responsibilities for administering the TIF program, certain tax stabilization and exemption programs, Vermont employment growth incentives (VEGI) and the economic advancement tax incentives program. VEGI, a new program created in the bill, allows a business to apply for approval of a performance-based employment growth incentive to be paid out of the business’s withholding account upon approval of the Department of Taxes. In any one year, the authorization for VEGI grants may not exceed \$1 million and awards shall be restricted to employment markets with higher than average unemployment or lower than average wages.

In order to secure permission to use future newly generated education tax dollars to repay indebtedness on infrastructure loans in a TIF a municipality must demonstrate:

- that the development would not have occurred or would have occurred in a significantly different and less desirable manner but for the TIF revenues (a designated growth center does not need to make this demonstration);
- the amount of additional time and cost to complete the project without TIF financing;
- how the proposed development components would differ without education property tax financing; and
- the additional revenue projected to be generated as a result of the proposed development, the percentage of revenue paid to the education fund, to the municipality to repay municipal tax increment debt.

In addition, a municipality needs to create a TIF district plan and development schedule and commit to using incremental municipal property tax revenues in the same proportion as education tax dollars to repay indebtedness. The municipality needs to demonstrate that:

- the TIF district supports development that is compact, high density, and located in or near existing industrial areas;
- the TIF is in a designated growth center, downtown village center or new town center; or
- the development will occur in an area that is economically distressed.

Finally a municipality needs to demonstrate that a TIF will accomplish at least three of the following five criteria:

- The development clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.
- It includes new housing that is affordable to most residents in the municipality and is at a higher density than at the time of application.
- The project will address mitigation and redevelopment of a brownfield within the district.
- The project will include at least one entirely new or expanded business which will provide new quality jobs at the prevailing wage.
- The project will enhance transportation by improving traffic patterns or public transportation systems.

S. 165 also creates a Commission on the Future of Economic Development. Its 12 members will develop five-year plans identifying long-term goals for economic development and job retention in light of the local and global economic climate and for increasing the well being of Vermonters. It amends the Vermont Seed Capital Program and creates a Vermont Film Production Incentive Program. (*Amends 24 V.S.A. §§ 1891-1900; 32 V.S.A. §§ 1, 163, 291, 651, 5830, 5930a, 5930b, 3102; and 21 V.S.A. § 1314.*)

Executive Branch Fees (H.702, Act 202)
(Liquor Licenses, Appeal of BCA Decisions, Vital Records)
VLCT Staff Contact: Karen Horn

The executive fee bill is another piece of legislation that is generally enacted once a biennium. It incorporates changes to fees charged by the State for a variety of programs, permits and licenses. This year's bill is short and does not include fee increases for the Department of Motor Vehicles. Those fee increases were initially proposed in H.702, the fee bill, but were subsequently moved to the transportation bill where they were passed.

H.702 doubles fees for liquor licenses – from \$50 to \$100 for second class licenses and from \$100 to \$200 for first class licenses. The entire increase is remitted to the Department of Liquor Control (DLC) enterprise fund, except in one instance: If a municipality assumes responsibility to enforce first and second class licenses pursuant to a contract with DLC, it may retain more than 50 percent of the fees collected. DLC needs to adopt rules to implement this section.

The fee to appeal a board of civil authority (BCA) decision to the director of Property Valuation and Review (PVR) or superior court is increased from \$30 to \$70.ⁱ The commissioner of Taxes is to report to the legislature regarding the effect of this increase on the length of the appeal process for appeals to the PVR director. The fee paid to town clerks for certified copies of birth, death, civil union or marriage certificates is increased from \$7.00 to \$9.50. This is consistent with fees paid to the State for copies of the same records.

The Judicial Bureau fee imposed on top of a civil penalty for a traffic violation, motor vehicle or local ordinance violation relating to operation of a motor vehicle (except seat belt violations) is \$22 until July 1, 2006. Of that amount, \$14.75 is deposited in the victims' compensation special fund and \$2.25 is deposited in the criminal justice training council training special fund. After June 30, 2006, the Judicial Bureau fee is increased to \$26.00, \$18.75 of which goes to the victims' compensation special fund. The same \$2.25 goes to the criminal justice training council special fund. (*Amends 7 V.S.A. § 231, 32 V.S.A. §§ 4461, 1712, and more.*)

Voted Veterans' Exemptions (H.843, Act 207)

VLCT Staff Contact: Steven Jeffrey

H.843 was the “Miscellaneous Tax Bill” that, as the title implies, attracts an assortment of tax amendments as it progresses through the legislative process. Sometimes it attracts so many additions that it ends up not being passed at all. This year’s bill did survive, but some of the features that VLCT liked didn’t stick to it through the whole process. H.843 was the bill that the Senate used to once again attempt to allow municipal voters the authority to decide whether or not to adopt local option sales and rooms and meals taxes. (See article on the issue on page 7.)

One feature of the bill with interest to local officials was a section that was added on the Senate floor. Section 3802(11) mandates that \$10,000 of valuation of a residence owned by certain disabled veterans or surviving spouses of certain veterans be exempted from all property taxes. Several years ago, the legislature allowed voters to raise the value of appraisal that would be exempt up to \$20,000. Approximately 1,850 homesteads received such an exemption in 223 towns, with 84 – more than one-third – allowing the \$20,000 value. At the \$10,000 figure, a total of \$625,000 in property taxes was shifted to other taxpayers to replace the property taxes exempted.

The Senate amendment on H.843 would have increased the mandatory statewide exemption to \$20,000. The final version of H.843 kept the mandated exemption at \$10,000 of valuation but allows voters to increase the locally-determined amount up to \$40,000 if they feel it’s appropriate.

H.843 also contains a proposal to redefine farm buildings in the use value program. The director of the Division of Property Valuation and Review (PVR) and the secretary of the Agency of Agriculture, Food and Markets shall study a proposal to establish that if a dwelling is used to house farm employees, it shall be on a parcel of up to two acres of enrolled land or surrounded by enrolled land that can be split by a road, as long as the dwelling and the enrolled land are in the same family.” PVR shall also analyze the effects of the definition on potential costs to the education fund, benefits to the agricultural community and the number and type of buildings that might be enrolled in the use value program. Farm and forest land enrolled in the use value program is assessed at its use value instead of its fair market value.

An additional section concerns trailer coaches (trailers towed by a motor vehicle that are designed for sleeping, eating or living quarters). Legislative council, along with PVR, the Vermont Association of Listers and Assessors, and the Vermont Campground Association, shall draft a proposal to amend property tax laws to allow for taxation or tax exemption of trailer coaches that can be applied uniformly across the state. The group will present its draft to the legislature by January 15, 2007. (*Amends 32 V.S.A. § 3802(11)(A).*)

EDUCATION FINANCE

“Education Finance Simplification” (H.880, Act 185)

VLCT Staff Contact: Steven Jeffrey

We don’t make these titles up – we just report them. As difficult as it is to write the term “education finance” and the word “simplification” in the same sentence, that is the title assigned to this act.

H.880 lowers the state education tax rates and changes the current system of the State sending out prebate and rebate checks to income-eligible taxpayers to sending the funds to towns to credit against the property tax bills they send out.

When Act 68 was passed, it set the state education property tax rates at \$1.59 for all non-residential property and \$1.10 for the base rate for homesteads. For households with incomes less than \$85,000 for the current year, the homestead rate is 2% of the household income. Homestead rates are adjusted upwards relative to the district spending per pupil. If State officials projected a surplus in the education fund, Act 68 also required the commissioner of Taxes to recommend a reduction – for the following fiscal year only – in the statewide education tax rates to eliminate the surplus. The law requires the commissioner to also recommend a proportional adjustment to the applicable percentage base for homestead income-based adjustments, referred to as the income sensitivity rates.

Each year since then, the tax rates for homestead and non-residential properties have been reduced, as have the household income sensitivity rates. Last year, the rates were \$1.51, \$1.02 and 1.85%. H.880 lowers these rates for the school taxes that will be billed this summer to \$1.44, \$.95 and 1.80%. These reductions are the result of the continued growth in appraisal values of property and the financial impact of the other big change included in H.880.

As we mentioned above, under Acts 60 and 68, income sensitivity reductions for eligible Vermont households have been distributed through the use of State “prebate” checks sent to almost 100,000 households prior to property tax due dates and “rebate” checks sent to 33,000 eligible households that come back after the applicants file their income tax returns the following year. Long before Act 60, a property tax relief program provided rebates for lower income households so that total property taxes for a house and two acres did not exceed 5% of the household income. The income sensitivity features of Act 60 were a massive expansion of that program. Its creators wanted to link the State relief checks to the school property taxes that Vermonters were paying, and have them understand that their school taxes were now based on their income and their spending decisions on school budgets at Town Meeting. All sorts of schemes were suggested and dismissed, including local education income taxes and having the State bill and collect “income-sensitized” property taxes for residents.

For property tax bills that cities and towns will send out in 2007, H.880 significantly changes the mechanics of income sensitivity. Homeowners will complete all the tax forms (HS 131, 138, 139 and/or 144, among others) and the Tax Department will determine a “property tax adjustment” amount based on the previous year’s income and property taxes paid. Instead of sending checks to the individual taxpayers, the Tax Department will now make the payments to “the municipality in which the housesite is located, for credit to the claimant for homestead property tax liabilities, on July 1 for timely-filed claims [those filed on or before April 15] and on September 15 for late claims filed by September 1.... The commissioner [of Taxes] shall also pay to the municipality, for credit to the taxpayer for homestead property tax liabilities, any income tax overpayment..., which the taxpayer has directed to be used for payment of property taxes.” Taxpayers who choose to direct income tax overpayments toward their property tax get an additional property tax adjustment equal to 1% of the refund allocated. Taxpayers who file after April 15 will have their property tax adjustment reduced by \$15, which will be sent to the town toward the cost of generating a revised property tax bill.

The plan is for towns to receive from the State somewhere close to \$130 million in State property tax adjustment payments on July 1. In conjunction with notifying towns which parcels are eligible to be taxed at the homestead rate (for which HS 131 forms have been filed), the State will notify the towns how much each tax bill needs to be credited. The tax bill the town sends out will need to show the amount of the State credit and the balance of the property tax bill due. “The payment received by the municipality from the State for credit to the taxpayer shall be credited first to current-year property tax on the homestead parcel, next to current-year homestead parcel penalties and interest, next to any prior year homestead parcel penalties and interest, and last to any prior year

property tax on the homestead parcel. No payment shall be allocated to a property tax liability for any year after the year for which the claim or refund allocation was filed. If the payment received by the municipality exceeds the amount allocated under this subsection, the municipality shall refund the excess to the taxpayer, without interest, within 60 days of receipt by the municipality. No municipal tax-reduction incentive for early payment of taxes shall apply to any payment made to a municipality by the state under this chapter.”

If the town has eligible homeowners who file after April 15, the town will receive an additional State payment on September 15 and will receive \$15 for each late filer. The town will have to issue a new homestead property tax bill with notice of the credit received from the State and the balance due.

H.880 again changes the date by which individuals have to file for income sensitivity. It had just been moved to July 15 from December 1; now it is moved to September 1 for 2007 and after.

Part of the bill appropriates from the General Fund \$120,000 “for changes to the New England Municipal Resource Center [NEMRC] property tax software,” \$240,000 “for notification to tax filers and to town officials” and \$182,000 for Tax Department costs. There is an understanding that not all cities and towns use the NEMRC system for tax billing and/or grand list maintenance and that there may be an opportunity for some reimbursement for changes municipalities need to make to accommodate the new system. VLCT will keep you posted on this.

The bill caps the amount a taxpayer can receive in property tax adjustments to \$10,000 and also limits the income sensitivity rate from dropping below 1.8%. Many, including VLCT, argued this year that the reason that education tax rates could drop was due only to the dramatic run-up in property values, reflected in the plummeting common levels of appraisal (CLA) of towns across the state. With property values going up over 13% a year, unless the tax rate drops by a comparable figure, property owners will see an increase in their tax bills. Figures prepared by VLCT staff showed that in the average town (with an average drop in the CLA and an average increase in the per-pupil spending), residential property taxpayers not eligible for income sensitivity will see their property tax bills rise nearly 5% and non-residents 5.75%, while income-sensitized Vermonters will see their income sensitivity rate *drop* by 1.25%. The property tax bills would have risen much higher – by about 8% each – except that H.880 allows a one-time drop of an extra three cents on the tax rates due to how the property tax adjustments are determined. Hopefully, future increases in property values will prompt steeper reductions in just the property tax rates, with the income sensitivity rate now restricted to no less than 1.8%.

Under H.880, the lowest income households in the state will get an extra break: the homeowner and renter rebate benefits are increased for those earning under \$10,000 a year.

The bill establishes an “Education Finance Advisory Working Group” to advise the Tax Department and town officials during its implementation. The group may include appointees from the commissioner of Taxes, VLCT, the Vermont Municipal Clerks and Treasurers Association, the Vermont Association of Realtors, the Vermont Tax Preparers Association, the Vermont Society of CPAs, one person familiar with the NEMRC system, one appointed by the Speaker of the House, and one appointed by the Senate Committee on Committees. The Working Group will focus on public education on the changes coming under H. 880.

The bill also instructs the legislature’s Joint Fiscal Office (JFO) to “create a fiscal model of Proposal #1” of the House Legislative Study Committee on Income-based Education Property Tax for Vermonters. The Committee had recommended that the whole income sensitivity system under Acts 60/68 be replaced with a state education income tax equal to 1.5% of income. The JFO is also

to analyze the distribution of income and property tax burdens, the effect on town CLAs, and the administrative costs of a transition to and operation of such a system.

The JFO will have a busy summer and fall because H.880 also requires it to analyze the relative tax burdens borne by nonresidential, homestead and income-sensitized taxpayers under Act 68. It, along with the legislature's Legislative Council, also must examine the issue of whether the income sensitivity system "is more accurately defined as a mechanism which enables the traditional majority of Vermont homestead owners to pay education property taxes based on income or as a benefit," and whether the income sensitivity adjustments are a reduction in revenues or as an expense. Lastly, the two groups need also to analyze whether capping income sensitivity adjustments are "advisable." (*Amends 32 V.S.A. chapter 154.*)

Education Fund Use (H. 880 [Act 185], S. 222 [Act 176]) **VLCT Staff Contact: Steven Jeffrey**

One of the highest priorities of local officials this year was protection of the Education Fund and the property taxes that provide almost two-thirds of its revenues. With the hard work of municipal officials, we were successful in turning back significant proposals to have the property tax shoulder a larger portion of the State's responsibilities and to correct some misuses of the Fund already in place. As long as rapidly escalating property values continue to make the Fund appear to be flush (current projections put the Fund surplus at the end of FY08 at \$27 million, due to a 13.5% increase in property values this coming year and 13.1% the next), the Education Fund will continue to be the target of State officials wrestling with growing State fiscal concerns.

The year started with the Governor proposing to "redirect" \$14 million of Education Fund revenues (one-half of the State purchase and use tax on motor vehicle purchases currently dedicated to the Education Fund) to the State Transportation Fund to provide the State match for the significant increase of federal highway money available. He also proposed in his budget to shift the responsibility for funding the State teachers' retirement system – a system created by the State in 1947 which has been allowed to accumulate a \$315 million deficit – from the State General Fund to the Education Fund. Even though the Governor proposed to shift some of the currently insufficient General Fund appropriations with it this year, there was no promise of future General Fund taxes supporting either the elimination of the deficit or of paying for future obligations. These two initiatives would have resulted in a \$17 million increase in the amount of property taxes – about a three-cent tax increase – needed to fund the education services originally included as the only services that could be paid from the Education Fund. These initiatives came on top of several proposals last year (to pay for a State Education Department computer program and for special education services provided to state prison inmates) along with funding in place where a private, non-profit organization was receiving Education Fund revenues directly to partially fund adult education and literacy programs. (Act 60 specified payments could only be made to school districts.)

In response to these property tax uses, local selectboards and city councils sent a message to state leaders that the Education Fund and property taxes were to be used for local school budgets only. Voters in no fewer than 165 cities and towns voted on an advisory Town Meeting article opposing such new uses; at least 155 of the municipalities voted in favor of the article.

State leaders took the message to heart. No funds were "redirected" out of the Education Fund, and the State found a way to pay for at least another year of support for the teachers' retirement system along with a small down payment on the deficit from sources other than the Education Fund. In S.222, the legislature also revised the way that the adult education program is designed and funded, assuring that education funds can only be used through school budgets approved by the voters and

that the only programs receiving such funding are for high school completion programs for 16- to 22-year olds – individuals that schools are mandated to educate under federal law.

One disturbing development in H.880 deals with the arcane world of the definition of household income for determining income sensitivity eligibility under Acts 60/68. The more that is included in the definition of income, the higher the school tax bill is for those eligible. The more that is excluded from the definition, the lower the bill is for the individual, but the more everyone else has to pay in property taxes. Is the income sensitivity feature of Acts 60/68 a way to tax Vermonters through a fairer means, basing it on their income, or is it an opportunity to shift the burden of paying to educate our children from one group of taxpayers to another – or, further removed, to compensate for State social service programs that are not otherwise adequately funded? Should the Education Fund and the system of taxes raised to support it be used to replace or augment the General Fund's historic role of income redistribution?

That issue came to light with a proposal to exempt from the definition of household income payments made by the State or mental health agencies to persons who provide live-in assistance to developmentally disabled adults. The Tax Department determined that the incomes of those individuals – as live-ins – should be counted when determining income sensitivity for education taxes. H.880 exempts all such payments for tax years 2005-2007 for all foster care payments, “flexible family funding” and “difficulty of care payments” for the developmentally disabled and the first \$6,500 for years following. It also requests the Agency of Human Services to study the issue and report back to the legislature in January.

This issue just shows how complicated and sensitive the effort to maintain the “purity” of the Education Fund continues to be.

MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION

Lister Training Funds (H.881, Act 215)

VLCT Staff Contact: Steven Jeffrey

The appropriations bill provides an improved appropriation of a total of \$100,000 from the Education Fund for lister training. It is in compliance with the restrictions placed on the uses of the Education Fund. Currently “[a]n 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.” Those reappraisal payments may “be used only for reappraisal and costs related to reappraisal of its grand list properties and for maintenance of the grand list.”

H.881 amends those payment under 4041a of Title 32 so they will now include “\$3.65 per grand list parcel for the first 100 parcels, \$0.20 for the next 100 parcels, and \$0.01 for all parcels in excess of 200 from the equalization and reappraisal account within the education fund, to be used only for costs to acquire assessment education provided under section 3436 of title [32].” This will provide all towns with between \$365 and \$485 a year for lister training – enough to pay for at least one full course for one lister.

The appropriations provided last year gave each town \$.30 per parcel and deposited it into tiny sub-accounts managed by the Department of Taxes. Listers could draw down those funds as Tax Department-approved training opportunities became available. This was unwieldy and denied the smaller towns adequate funding to obtain training.

The 2006 changes give every town almost equal funds for obtaining training. VLCT staff cannot stress enough that these funds are to be used for lister training only. The legislature has heard stories of selectboards redirecting the per-parcel payments made available for reappraisal and grand list maintenance purposes for uses other than those intended. Whether true or not, it has made the legislature less willing to provide any latitude to local governments in these funding matters. Listers and selectboards need to work together to assure that these training funds are used only for that purpose, or they may not be available in the future. (Amends 32 V.S.A. § 4041a.)

Same Day Voter Registration (S.164) **VLCT Staff Contact: Trevor Lashua**

Same day voter registration was one of the first items on the House agenda this past session. The fate of S.164, the Senate bill passed last year, would not be determined until the next to last day of the session when the bill was ordered to lie just before midnight on May 9th. By ordering the bill to lie, the House was effectively killed it.

A number of questions about the implementation of same day voter registration remained unanswered throughout the session, as town clerks stayed vigilant until the end. Most of those questions focused on the new (and federally mandated) statewide voter checklist, particularly its inability to function properly during an informal test at Town Meeting in March.

Among the issues with the checklist cited by many town clerks were incorrect voter data, a lack of access to the on-line database, problems with printing the checklists and other functions of the software. The availability of technology, or lack thereof, is also a concern, since broadband or high-speed internet access is severely limited in some regions of the state.

Proponents of S.164 claimed that a “live” voter checklist providing clerks with accurate, real-time information was not integral to the implementation of same day voter registration. They argued instead that the checklist and same day voter registration are completely separate issues. In fact, the six other states (including New Hampshire and Maine) that have same day voter registration implemented it without a statewide voter checklist.

The clerks disagreed that the two were not connected, saying that any implementation needs to include a working statewide checklist as its backbone. The checklist, a requirement of 2002’s federal Help Americans Vote Act (HAVA), is the primary vehicle clerks would use to conduct elections – relying on some copy of that checklist to determine who gets to vote and where.

Clerks had other issues with the various incarnations of S.164, especially with a section outlining what pieces of identification would be needed to verify identity and residence and the implementation date of 2008 – making the general election (in a presidential election year) the first application of same day voter registration in Vermont.

During the session, the House passed a version of S.164 with a number of amendments with which the Senate did not agree. The two sides worked out a compromise in conference committee, but the bill could not find its way through the House before the session was adjourned.

Instant Runoff Voting (S.48) **VLCT Staff Contact: Trevor Lashua**

S.48, based on a bill introduced last year, would have directed the Secretary of State to conduct a study on the logistics and mechanics of the use of instant runoff voting for Vermont’s six statewide offices and for federal elections as well.

The bill, however, could not make it through both the House and Senate in time to beat the gavel for adjournment, thus denying the extra legislative day it would need to possibly become law.

The study would have directed the Secretary of State to work in consultation with VLCT and town clerks in examining the potential use of instant runoff voting in Vermont.

When voting using the instant runoff system, voters rank their choices on the ballot in order of preference. The votes are all tallied, and if one candidate receives a majority (more than 50 percent of all first place votes) he or she is declared the winner. If no candidate receives a majority, the tally moves to another round. The candidates receiving the fewest votes are subsequently eliminated, and their second, third or fourth choice votes are apportioned among the remaining candidates until one of those candidates has received a majority.

Burlington used instant runoff voting (commonly known as IRV) in its most recent mayoral election. IRV is not used for statewide or federal elections in the United States at this time, though some cities use the method for mayoral or council races.

A common question, particularly in examining IRV's use in Vermont, is whether the method is constitutional. Vermont's attorney general, in a 2003 informal opinion for the Senate Government Operations Committee, stated that in order to use IRV for elections for governor, lieutenant governor and treasurer, the State would first need to amend the Vermont Constitution. To use IRV for electing the attorney general, auditor of accounts, and Secretary of State would not require the amendment, because the conduct of those elections is not as clearly defined in the State Constitution.

Social Security Number Protection (S.284, Act 162)

VLCT Staff Contact: Trevor Lashua

S.284 is the result of the study committee authorized by the legislature last session, and applies only to personal information (such as social security numbers) contained in electronic records.

It specifically exempts records stored in a town clerk's office, but does include municipalities in its definition of data collector – meaning that any electronic records a town keeps in a location accessible by the internet are subject to the protection guidelines (primarily redaction or encryption) established in the bill.

The bill establishes procedures should there be a security breach, and personal information is subsequently made available to non-authorized personnel. The attorney general's office is charged with enforcing the provisions in the bill.

Personal information is defined in the S.284 as a social security number, a driver's license number, any credit, debit, or other bank account numbers and any other account or personal identification numbers. (*Adds 9 V.S.A. Chapter 62.*)

Deliberative Process Privilege (H.615, Act 132)

VLCT Staff Contact: Trevor Lashua

The original bill, H.615, sprang from a public records access fight between the Agency of Natural Resources (ANR) and the Conservation Law Foundation (CLF). CLF had requested documents that ANR claimed were protected due to the deliberative process privilege.

Deliberative process privilege is a common law privilege generally claimed during the policy creation process, before subsequent policy decisions are made. Act 132 strips the privilege from both the legislature and State agencies.

An amendment proposed in House during the debate over the deliberative process privilege would have also stripped the exemption for municipalities (1 V.S.A. § 317(c) 17). The amendment was quickly removed from consideration. VLCT argued, among other points, that the locally elected or appointed bodies that decide local policy do so in a duly warned public forum where the public is invited to attend, whereas the State agency decision-making process is not as open.

The legislature directed legislative council to study the exemptions to the public records law. VLCT is one of the entities with which the legislative council is directed to consult. The appropriations bill clarifies that any request for assistance, drafting or fiscal research related to writing legislation shall be confidential unless the requester designates it not confidential. Bills are public information once they are published. (*Amends 1 V.S.A. §§ 317(c) and 318(a)(2).*)

State Labor Relations Board (S.88, Act 187)

VLCT Staff Contact: Karen Horn

S.88 amends the State labor relations board membership and method of appointment. The board would now be comprised of six members appointed for six-year terms from a list of nominees presented by a newly created labor board review panel. The review panel's five members include the director of the Vermont bar association, the commissioner of Labor, the state court administrator, and representatives of labor and of employers. The commissioner of labor will appoint the last two for two-year terms from names provided by labor organizations and state employers. Current members of the board will serve until their terms expire. Once board members are appointed, they shall elect a chair for a two-year term and three or five member panels will hear cases. (*Amends 3 V.S.A. § 921.*)

Non-Discrimination (H.865)

VLCT Staff Contact: Trevor Lashua

VETOED

This bill, one of two vetoed by the Governor, would have made it illegal to discriminate against individuals based on gender identity or expression (for those who have undergone sex change operations or live in a different gender). The protection would have been included in sections of statute dealing with employment practices and would have extended to all places of "public accommodation" (offices, schools, hotels, etc.).

HEALTH CARE

Health Care Reform (H.861 [Act 191]; H.895 [Act 190])

VLCT Staff Contact: David Sichel

After a protracted and difficult negotiation, legislative leaders and the Governor agreed on provisions of a major health reform bill, which paved the way for closing the 2005-2006 legislative session. The bill, H.861, and a companion bill, H.895, were passed by both the House and Senate and signed by the Governor on Thursday, May 25th. Governor Douglas often stated that he would veto earlier versions of H.861 because, in his view, the State took too much risk with the Catamount Health program that was designed to provide affordable health insurance for the uninsured. Legislative leaders and the House-Senate conference committee said they had gone as far as they

would go in changing the bill. The impasse was broken at the last hour by H.895, which amends H.861 to have private insurers provide the Catamount Health coverage, either voluntarily or State-mandated, for two years. Catamount Health is slated to be available starting in October 2007. After the two-year period, the results of this arrangement will be studied to determine if it's a cost-effective way to provide health insurance to uninsured Vermonters. This legislation is paid for through a combination of increased tobacco taxes, an employer assessment on employers who have uninsured employees and additional federal Medicaid reimbursement.

This bill moves Vermont to the forefront of state health reform initiatives. In addition to addressing health care financing and providing health insurance for the uninsured, this legislation also addresses health care delivery issues. Special emphasis is placed on managing chronic disease. Treating people with chronic disease(s) makes up 80% of health system costs today.

There have been a number of articles in this session's *Weekly Legislative Reports* on H.861 and S.310, the Common Sense Initiative (CSI). S.310 was rolled into H.861 and H.881 (the appropriations bill) at the end of the legislative session. While Catamount Health, the mechanism to provide health insurance to the currently uninsured, received the most attention, there are other portions of the bill that will impact municipalities.

A new employer assessment will be levied on employers who have uninsured employees on their payrolls. This annual assessment of \$365 (a dollar a day) per full-time equivalent (FTE) uninsured employee will begin with the quarter starting April 1, 2007. The assessment, which is payable to the State, will be due and payable quarterly and will apply to:

- all employees of employers who do not offer health insurance to anyone;
- employees of employers who offer health insurance to some employees, but who are not eligible themselves (for example, part-time and seasonal employees); and
- employees who are eligible for coverage through their employer plans, but choose not to enroll, and are uninsured.

The first eight FTEs are excluded from the calculation of the assessment in 2007 and 2008. The exemption will be reduced to six FTEs in 2009 and four FTEs in 2010. The FTE calculation is based on full-time equaling 520 hours per quarter (40 hours per week × 13 weeks). The assessment amount will increase at the same rate as the increase in premium for Catamount Health, which is similar to coverage provided by Blue Cross' Freedom Plan (\$200 deductible). Minors are excluded from the FTE calculation.

Many municipalities that provide excellent health benefits for their employees will find that they will need to pay this assessment for some seasonal employees, part-time employees who do not qualify for health benefits through the city or town, and for employees who choose not to participate in the municipality's health plan but do not obtain health insurance through a spouse or in some other manner.

One complication for municipalities is defining who is an employee. For example, are elected officials who receive a stipend considered employees? If so, what is the full-time equivalency? What about volunteer firefighters or constables who receive a stipend?

In addition to the cost, which should be modest for most municipalities, there will be the administrative burden of gathering information about employee health insurance status and hours worked and filing quarterly reports and payments with the State. We expect the reporting requirement to be much like the quarterly reporting required for unemployment insurance.

Another program that may impact some municipalities is a new State subsidy to encourage people to move from State-funded health programs (such as Medicaid and VHAP) onto employer-provided health plans. Adding employees to an employer health plan increases the employer's health insurance cost. At present, some employees find better, less expensive health insurance through government-funded health insurance plans instead of employer-provided plans. The new State subsidies would encourage these people to move to employer-sponsored plans by providing financial assistance in paying the employee share of the premium as well as deductibles and co-pays.

Other provisions of the bill that will impact municipalities are increases in Medicaid reimbursements to medical providers and hospitals. This, along with bringing uninsured Vermonters into Catamount Health, should help reduce cost shifts to current private health insurance policy payers. Additionally, work towards improving medical technology and administrative efficiency should help control costs. The legislation also includes steps to reduce medical errors and provide more consumer information about health care providers.

The new legislation also allows small group insurers to provide healthy lifestyle discounts.

Another important feature of the new legislation is the chronic care initiative. This is a plan to better manage chronic disease, which makes up about 80% of our health care expenditures. By implementing prevention, early stage intervention and disease management strategies, it is hoped that these costs can be better controlled. Many of the elements of the chronic care initiative will eventually apply to private insurers as well as public programs.

It is important to note that, amid all the fanfare, you will not hear claims that this legislation will reduce medical costs. Rather, it is hoped that this legislation will lead to *a lower rate of increase in health insurance and health care costs*. Clearly, there is still much work to do, but this legislation is a step in the right direction.

Firefighters Heart Attack/Disease Workers' Compensation Presumption (S.251, Act 108)

VLCT Staff Contact: David Sichel

The legislature passed and the Governor signed legislation to change the mandate that a volunteer firefighter who suffers a heart attack or heart disease "symptomatic within 72 hours of service in the line of duty" will have a claim that would be presumed compensable under workers' compensation. The new law changes the heart attack or heart disease presumption for volunteer firefighters to match the presumption adopted for full-time firefighters at the end of last year's legislative session.

Under current law, either a full-time or volunteer firefighter who suffers a "heart injury or disease incurred or aggravated and proximately caused by service in the line of duty" (or within 72 hours) is presumed to be covered under workers' compensation. Previously, full-time firefighters were "presumed to be compensable;" for volunteers, the assumption was "presumed to be incurred in the line of duty." In any event, the insurer can deny the claim if evidence shows that it was not work-related. In most if not all other non-public safety workers' compensation claims, the burden of proof is on the employee to show that the injury was work-related.

We do not expect any immediate impact in workers' compensation costs from this bill, although time will tell. With new language comes new administrative and court rulings that define the meaning of the new language. This does have the potential to increase allowable claims and, thus, workers' compensation costs over time. (*Amends 21 V.S.A. § 601(11)*.)

Vermont Municipal Employees Retirement System Amendments (H.884, Act 197)

VLCT Staff Contact: Steven Jeffrey

This bill contained several housekeeping changes to the Vermont Municipal Employees Retirement System (VMERS), but also includes two significant changes. First, current law requires a town meeting vote to allow public safety employee groups to participate in Group D, a plan that comes close to offering the benefits now enjoyed by the state police. H.884 eliminates that requirement and now allows selectboards and city councils to offer this plan whether on their own action or through collective bargaining, similar to all other employee compensation and benefits.

Second, the legislation authorizes the VMERS Board to establish an uninsured program to reimburse certain health care costs of retired members and their dependents. VMERS retirees' retirement plans do not afford any health insurance like that made available to state employees and teachers. The cost of providing an insured plan would be cost-prohibitive to the System. Under the bill, if the Fund has an actuarially determined surplus, it may redirect some of the employer contributions into a trust to hold and invest those funds and pay the benefits and administrative costs of the program. The Board is just now determining how this benefit program will operate, but it is assumed it will be similar to a Section 125 flexible spending account many municipal employers now offer their employees. Funds will be deposited into an account for the retiree to draw down for eligible medical expenses. Contributions, interest earned and withdrawals for approved expenses will be tax-free to the retiree. It is hoped that, unlike the Section 125 accounts, these funds do not need to be used in the plan year, but will be allowed to grow over time and be used when the retiree needs to draw upon them. The VMERS Board also hopes to make payments into these accounts for current retirees and for employees to use when they retire. The Fund is in a position to make an immediate contribution toward starting this program as its actuarial report for June 30, 2005 showed the Fund at 104.4% of full funding with a surplus of almost \$11 million.

The VMERS Board will notify members of any progress and what they need to do to take advantage of the program. (*Amends 24 V.S.A. Chapter 125, specifically sec. 5068(c) and adds sec. 5069(b).*)

TRANSPORTATION

Transportation (H.869, Act 175)

VLCT Staff Contact: Trevor Lashua

With the passage last fall of the Safe, Accountable, Flexible, Efficient Transportation Act: a Legacy for Users (SAFETEA-LU), the federal transportation authorization, the State of Vermont was presented with an opportunity to begin and complete a vast number of transportation projects well beyond what would otherwise have been anticipated over the next five years.

The reason: SAFETEA-LU included an influx of federal cash for transportation projects in Vermont, with the State reaping more than \$300 million in earmarked projects. An earmark is an amount of money set aside for a specific project. The federal authorization also came with a modest increase in the annual amount of aid the State receives.

While SAFETEA-LU presents a remarkable opportunity, it also provided the legislature with the daunting challenge of how to come up with the money needed to match those federal dollars and put them to work in the coming fiscal year. This challenge was compounded by the fact that the State's Transportation Fund has underperformed (from a revenue perspective) in recent years.

Earmark projects generally require that federal dollars be matched by a combination of state and local dollars, usually somewhere between a 10% and 20% match. The match ratio depends on the earmark category and the project.

The Governor's recommended budget placed the new revenue needed at \$24 million to make the federal match and compensate for the anemic performance of the Transportation Fund. The administration's budget proposal level-funded four local highway aid programs, while funding for Town Bridge Grants increased significantly thanks to the influx of federal money made available by SAFETEA-LU.

The House Transportation Committee took the Governor's recommended budget and immediately began working to increase the funding for Town Highway State Aid, Class 2 Paving and Rehabilitation, Town Highway Structures, and Town Highway Class 1 Supplemental Aid. To do so, the Committee (along with the House Ways and Means Committee) proposed a funding package that included \$8 million in revenue from increased motor vehicle fees, and another \$18 million from an increase in the gas (four cents per gallon) and diesel (six cents per gallon) taxes. In total, the House proposal raised more than \$26 million in new revenue.

The revenue from the fuel tax increases would have been deposited in a dedicated municipal fund for the four highway programs listed above. For the 2007 fiscal year, that would have meant nearly \$2 million in additional funding, with an estimated \$650,000 increase in each of the following fiscal years. H.869 passed the House after lengthy debates about the gas and diesel tax increases and with the eventual inclusion of a sunset (in 2011) on those fuel tax increases.

The Senate Transportation Committee rejected the House's funding proposal. Once the fuel tax increases were taken off the table in the Senate, so was the \$2 million for town highway programs that went with it. The Senate Transportation Committee focused first on finding additional places to make cuts in the Governor's recommended budget. Through that effort, the new revenue target was lowered to \$20 million, with no increase in funding for the four local highway aid programs.

The Senate Transportation Committee eventually settled on a package that included \$13 million in new revenue from increased motor vehicle fees, but was still left with a \$7 million gap between its revenue target and what it had raised. The Committee decided to look for that \$7 million in the General Fund. Based on a recommendation that came from the administration and with the approval of the Senate Appropriations Committee, the \$7 million was found in a number of General Fund locations, with the largest single chunk (\$4.4 million) coming from the State's Weatherization Trust Fund.

With different funding mechanisms proposed by the House and Senate, the two sides headed to a committee of conference to try to reconcile their differences on how the federal match would be made, and also to determine the fate of the House-passed boost in funding for local highway aid programs.

The conference committee agreed on an increase in Department of Motor Vehicles (DMV) fees that was close to what the Senate originally proposed, garnering nearly \$13 million in revenue. Using the Senate's revenue target of \$20 million, the two sides still needed to come up with \$7 million. In the end, that amount was obtained from moving the responsibility of funding for rest areas from the Transportation Fund to the General Fund (\$4.8 million), and a \$2.2 million reduction in the Joint Transportation Oversight Committee (JTOC) transfer (\$2.2 million that would have been moved from the Transportation Fund to the General Fund but now stays in the Transportation Fund). The House and Senate both accepted the conference committee's report.

While there was not an increase in funding for local programs as proposed by the House, H.869 did eventually include an additional \$1 million for the Class 2 Paving and Rehabilitation Grants, \$1.25 million for the Town Highway Emergency Fund (an increase of \$500,000 from the Governor's recommend), and an additional \$100,000 to help fully draw down the federal money made available for Town Bridge Grants in FY07.

In the process, the legislature completed its work without cutting any projects. It did change the construction schedule for a couple of projects, and the funding formulas were converted to 100 percent federal monies on others.

H.869 contains a number of other provisions of interest to municipal government beyond funding for local highway aid programs. For a further breakdown, see the table in the appropriations section on page 3.

Municipal Equipment Loan Fund. H.869 increases the maximum loan amount available from the Municipal Equipment Loan Fund from \$90,000 to \$110,000. A corresponding change was made to extend the useful life requirement for equipment purchased through the loan fund from three years to five years.

Project Prioritization Process. The Agency of Transportation (VTrans) has been working since last year on a project prioritization process, which it unveiled to the House and Senate Transportation Committees early in the session. The process includes different ranking processes for different categories (bridge vs. paving, for example). Those rankings are subsequently being used to order projects within the State's transportation program. The only avenue for local input into the process is through the Transportation Advisory Committees of each Regional Planning Commission (RPC).

Culvert and Bridge Inventory Software. Along the same lines of the prioritization process, H.869 also mandates VTrans to "complete and deploy" a bridge and culvert inventory software product to be made available to towns and RPCs. Similar language was included in last year's transportation bill as well. VTrans is also required to start collecting data from towns and RPCs on any culvert and/or bridge inventories completed.

Salt/Sand Sheds. In the latest salvo in the salt/sand shed debate, H.869 authorizes up to \$200,000 of enhancement grant money to construct salt/sand sheds. The maximum grant award amount is \$50,000. Funding in the enhancement program is up from the current fiscal year, again due to the influx of federal money. The State's contribution for the FY07 enhancements is less than half of what it was in FY06.

"Ancient Roads" (H.701, Act 178) **VLCT Staff Contact: Steven Jeffrey**

Towns will have to include town highways that "are not otherwise clearly observable by physical evidence of their use as a highway or trail" on the town highway map prepared annually by the State Agency of Transportation (VTrans) on or before July 1, 2009, or they will become "unidentified corridors" on that date. If an unobservable town highway becomes an unidentified corridor:

- it is open for use by the public, "but only in the same manner as [it] was used during the 10 years prior to January 1, 2006";
- the municipality is not responsible for its maintenance;
- neither the municipality nor the abutting landowner has any "duty of care" to persons using the corridor;

- it is not a subdivision with respect to “zoning, tax, and septic issues”;
- it is discontinued and the right-of-way shall belong to the owner(s) of the abutting land on July 1, 2015, unless the corridor is reclassified back to a town highway or discontinued and designated a trail before that date, using the existing law (subchapter 2 of chapter 7 of Title 19) for reclassification and discontinuance of town highways.

To keep an unobservable town highway from becoming an unidentified corridor, a selectboard needs only to include the highway on the sworn statement it must submit to VTrans every February 10. Currently, the statement is only required to include all Class 1, 2 and 3 town highways, as its only use has been to determine State highway grant aid based on the mileage of each type of highway maintained by the town. Towns receive no State aid for Class 4 town highways or town highways that have been discontinued but have been designated as trails.

H.701 expands what the selectboard files on the February 10 statement to now include Class 4 town highways and trails along with the Class 1, 2 and 3 highways. It also states that, by July 1, 2015, “all class 1, 2, 3 and 4 town highways and trails shall appear on the town highway maps” the agency prepares from the sworn statements. To request a change in mileage (i.e., to include a town highway or trail not previously included on the statement), the selectboard will now have to “include a description of the affected highway or trail, a copy of any surveys of the affected highway or trail, minutes of the meeting at which the legislative body took action with respect to the changes, and a current town highway map with the requested deletions and additions sketched on it.” A survey need not be filed for any town highway being added to the map that was legally established prior to February 10, 2006. The bill also adds a new requirement for highways not clearly observable that selectboards may wish to add to the sworn statement: “At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement ..., the legislative body shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning land through which such highway passes or abuts.”

The act also gives selectboards the authority to conduct a “mass discontinuance” of all town highways not included in the most recent sworn statement to VTrans. Under current law, selectboards can only discontinue specific town highways after notifying by certified mail all persons owning or interested in lands through which the highway may pass or abut to examine the premises and receive testimony. They must also set forth their decision in writing, including a complete description of the highway discontinued.

Prior to voting to discontinue all town highways not on the statement, the selectboard must hold a public informational hearing and post notices at least 30 days in advance of it. The notice must include the VTrans map that depicts all town highways on the statement and that therefore will continue to be town highways. Copies of the notice must also be sent to the chairs of the local planning and conservation commissions, abutting municipalities’ selectboards, the regional planning commission and the commissioner of the Department of Forests, Parks and Recreation. The selectboard may designate specific highways or portions thereof as trails. Persons who are either voters or landowners can save a highway from discontinuation under this process by filing a petition requesting such with the selectboard prior to the vote, so long as it contains a number of signatures equal to five percent of the voters. Likewise, if the voters at an annual or special town meeting so vote, they may add a highway to the sworn statement in order to avoid its discontinuance.

The voters may overturn the selectboard’s action in this mass discontinuance by filing a petition with five percent of the voters within 44 days of the selectboard’s action. That would trigger a special town meeting at which a majority of the voters can disapprove the selectboard’s action.

The act also makes other changes to the regular highway discontinuance process to facilitate the procedure. A single landowner can petition the selectboard to consider discontinuing an unidentified corridor. Currently, even though the selectboard can initiate such an action on its own motion, if the people want the board to consider discontinuing a highway, it takes a petition of five percent of the voters. Also, several selectboard actions discontinuing town highways in the past have been overturned by the courts decades later because all the legal process was not followed exactly. H.701 would allow such a discontinuance to stand if, after the selectboard action, the town did not maintain the highway for a period of thirty years. The act also codifies court decisions that have indicated that landowners whose sole means of access to their property was through a road that was then discontinued would continue to have a private right of access over the former highway. The act also clarifies that selectboards have the authority to discontinue town highways originally laid out by the courts, the General Assembly, turnpike companies or any other means. They cannot discontinue Class 1 or 2 town highways without the approval of the secretary of VTrans. If a town highway extends into an adjoining town, they can only discontinue it after notifying its selectboard. That selectboard can appeal the discontinuance to the State Transportation Board.

To help identify highways that towns may wish to preserve, the act appropriated at least \$100,000 annually until at least 2012 through the municipal and regional planning fund to research and map them. When we learn how this grant money will be made available, we'll let you know.

Commercial Driver's Licenses (S.302, Act 166) **VLCT Staff Contact: Trevor Lashua**

As passed, S.302 amends the restrictions on vehicles with air brakes to disallow a driver who has failed the air brake component of the knowledge test or performs the skills test in a vehicle without air brakes from driving a vehicle with air brakes. The bill also amends the fines for violation of an out-of-service order for a driver (from \$1,000 to \$1,500) and an employer (\$2,500 to \$4,000). (*Amends 23 V.S.A. § 4103(4)(D)(iii), (9), (10), (12) and (18).*)

Emissions from Diesel-powered Vehicles (S.211) **VLCT Staff Contact: Trevor Lashua**

This bill directs the commissioner of the Department of Motor Vehicles (DMV), in consultation with the secretary of the Agency of Natural Resources, to establish emissions standards for diesel-powered commercial motor vehicles. In setting up the standards, the commissioner must review other states' standards and try to achieve "consistency" with them. The commissioner must also take into account vehicle types and ages when crafting the new standards.

A law enforcement officer, defined in the bill as a sworn officer employed by the DMV, can perform the inspections. The officer can stop a vehicle if he or she observes an "apparent violation of the exhaust-smoke emission standard." Failure to submit to an inspection is deemed to be non-compliance, and the operator automatically fails the emissions test.

A graduated sanction process is established in the bill, and allows the operator to remedy a defect that may be causing him or her to fail the inspection. The fine for a first violation is \$200; however, if the defect is repaired within 45 days the fine is nullified. The fines then escalate on a two-tier system: (1) if the initial attempt to make the repair is done; or (2) no attempt to repair the defect is made. Under the first tier, fines range from \$200 to \$400; under the second tier, fines range from \$200 to \$800. Any revenue from the fines is deposited in to the State's Transportation Fund.

DMV is directed to develop a plan to implement the emission standards program. One thing the legislature directs the DMV plan to examine is the cost and logistics of extending inspection authority to include other law enforcement agencies (municipal police departments, the state police, sheriff's departments). (*Amends 23 V.S.A. §§ 1229 and 1222a.*)

PUBLIC SAFETY

Public Safety Bills

(H.97 [Act 167], H.373 [Act 193], H.480 [Act 164], S.186 [Act 149], S.265 [Act 156])

VLCT Staff Contact: Trevor Lashua

Driving with a Suspended License. H.97 essentially re-criminalizes driving with a suspended license on the sixth offense. A person who is caught for the sixth time since July 1, 2003 may be imprisoned for up to two years and fined up to \$5,000. Any offenses of driving with a suspended license prior to that July 2003 date do not count toward an individual's total number of offenses. The law enforcement officer is also given the authority to remove the license plates from the vehicle the offender is operating at the time of the sixth offense.

Law enforcement officers have also been authorized to remove license plates from any vehicle for which the plates do not belong. (Only motor vehicle inspectors could do it previously.) Licenses can also be suspended for the failure to pay an amount due – defined as all/any penalties, fines, surcharges, court costs, or other assessments authorized by law (23 V.S.A. § 2307). (*Amends 23 V.S.A. § 674.*)

Stalking. H.373 introduces to Vermont law a definition of stalking and allows a victim of stalking or sexual assault a process through which to seek relief. Stalking is defined in H.373 as someone engaging, “in a course of conduct which consists of following or lying in wait for a person, or threatening behavior directed at a specific person or a member of the person's family, 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.”

The bill establishes a procedure and guidelines for seeking an order against someone for stalking or sexual assault that the plaintiff must file with the county court. Orders can include restrictions on contact with children, pets or other animals. Emergency relief orders are also available to a victim.

H.373 directs law enforcement agencies to establish their own procedures for filing notice of stalking or sexual assault orders, and for making their personnel aware of the existence and content of such orders. At the same time, the orders will be logged in a protection order database operated and maintained by the Department of Public Safety.

The bill also gives police the authority to enforce the orders, which includes the final step of arresting someone for violating an order. Punishment for violation can be six months in jail, a \$1,000 fine, or both. A court can also order someone convicted for violation of an order to participate in treatment (mental health, sex offender, etc.) at his or her own expense. The effective date is October 1, 2006. (*Adds 12 V.S.A. Chapter 178; amends 13 V.S.A. § 1030, and 15 V.S.A. §§ 1103, 1104, 1107.*)

Precursor drugs of methamphetamine. H.480 requires a retailer of any product containing ephedrine, pseudoephedrine or phenylpropanolamine to keep the product in either a locked display case or behind a counter and out of the reach of the public. Often, ingredients in over-the-counter

cold medications, ephedrine, pseudoephedrine, or phenylpropanolamine can be used to manufacture methamphetamine in small, homemade labs.

H.480 makes it a crime to possess a product with one of the three ingredients listed above with the intent to use it to manufacture methamphetamine, and sets out penalties (fines and imprisonment) depending upon the amount possessed. The bill also establishes penalties for businesses that do not keep products with any of the three precursor ingredients out of public reach as prescribed and/or sell more than 3.6 grams to an individual in a calendar day.

The bill sets up an education program, one component of which is to require retailers to have a customer who purchases a product with a precursor to sign a log at the time of purchase. The effective date is September 30, 2006. (*Adds 18 V.S.A. § 4234b.*)

False reports to Law Enforcement. S.186 adds language to the existing statute that makes it a crime for someone to give a law enforcement officer false information to deflect an investigation from him or herself or another suspect, in addition to the existing language regarding the false implication of another person. (*Amends 13 V.S.A. § 1754.*)

Larceny penalties. S.265 increases the fines for a number of larceny crimes, in many cases doubling and quadrupling them. The bill also changes the value for money or property stolen to \$900 in all larceny situations, establishing a consistent standard in determining the severity of the crime and what punishment is appropriate. Previously, the range had been from as low as \$25 to as high as \$500. (*Amends 13 V.S.A. §§ 2001, 2002, 2501, 2502, 2577, 2582 and 2591.*)

Corrections (H.856, Act 192)

VLCT Staff Contact: Trevor Lashua

It appeared that the legislative session would be a chaotic and lengthy one when it came to corrections and public safety, as the year started off with a controversial decision by a judge in a case involving the sexual assault of a child. After that initial period of press conferences and passionate floor speeches, things quieted down as the various committees got into their respective work.

The main product of House and Senate Judiciary Committee work is H.856. While this bill addressed a number of offender issues, the prime focus throughout was on whether or not mandatory minimum sentences for offenders convicted of aggravated sexual assault or lewd and lascivious conduct with a minor (multiple offenses) would find their way into law. The House and Senate initially disagreed on that topic, but ended the session by establishing a mandatory minimum sentence along with presumptive minimum sentences.

The bill contains some sections of interest to local government that speak to the ongoing and often fractious dynamics of supervision in communities and offender re-entry. They're described below.

GPS. H.856 extends the use of the pilot program for electronic monitoring of offenders from 20 participants to 100. The offenders will be monitored using passive global positioning system (GPS) technology. Only "non-violent" offenders (those convicted of DUI are the only ones named in the bill) will be eligible for this method of supervision.

Passive GPS technology requires the monitoring device (an ankle bracelet, for example) to be plugged into some type of transmittal equipment in order to download the information it has stored into a software application. Once downloaded, the data can be used to find out where an offender had been previously (on that day).

Offender Re-Entry Planning. The bill requires the Department of Corrections (DOC) to work with communities to establish offender re-entry plans when an offender who is designated as a high

risk to re-offend is scheduled to be released. The plan, as stated in the bill, must begin to be developed during the 12 months prior to the offender's release. Offender re-entry plans must look at issues such as housing, treatment, "community support and network accountability," potential employment and the needs and desires of the victim. The DOC is authorized to carry out the provisions of this section of the bill by internal directive.

Sentencing. As mentioned earlier, much of the focus on H.856 centered on its establishment of mandatory and presumptive minimum sentences for offenders convicted of aggravated sexual assault. H.856 mandates that anyone convicted of aggravated sexual assault serve at least five years in prison (the mandatory minimum sentence). The presumptive minimum sentence for said crime shall be 10 years. If a judge departs from the presumptive ten-year sentence, he or she must explain in writing why a lesser sentence will "serve the interests of justice and public safety."

The bill also establishes presumptive minimum sentences ranging from five to ten years for the second and third (or more) offense of lewd and lascivious conduct with a child.

Prior to the start of the session, the Governor had recommended a program he called civil commitment, where the DOC could indefinitely hold offenders considered high risks to re-offend if released. The legislature stayed away from that idea, however it did allow a provision for an indeterminate life sentence. The indeterminate sentence provision in H.856 allows offenders convicted of sexual assault, aggravated sexual assault, or lewd and lascivious conduct with a child (second or subsequent offense) to be held after the expiration of their maximum sentence if treatment is a condition of their sentence and they do not complete that treatment or other required programming.

Special Investigative Units (SIUs). H.856 directs the Department of State's Attorneys to work collaboratively with law enforcement, victims advocates and social service providers to ensure access in all regions of the state to special investigate units (SIUs) by July of 2009. SIUs will be charged with investigating sex crimes, child abuse, domestic violence and crimes against people with developmental or physical disabilities. Currently, there are only two SIUs in Vermont.

Municipalities will be able to work cooperatively with the organizations listed above to establish SIUs, and may donate financial or personnel resources. Grant funding is available through the SIU Grants Board, an entity that includes VLCT as a member. Grants available through the board can cover the cost of salaries, employee benefits and operating costs (rent, utilities, equipment, training, supplies, etc.). The grant cannot exceed 50 percent of the annual salary and benefit costs of a particular unit. The budget (H.881) includes \$363,000 for SIU grants.

Other bills that passed – notably the budget (H.881) and capital bill (H.864) – include provisions related to corrections of interest to local government.

Transitional Housing and Work Camps (H.864, Act 147)

VLCT Staff Contact: Trevor Lashua

The capital bill (H.864) included funding for a pair of new transitional housing projects in Burlington. The two projects, known as Dismas House II and the Northern Lights House (a facility for female offenders only), will have \$445,000 from the State to continue their work to establishing both facilities. No other transitional housing projects are included in the capital bill.

Transitional housing is envisioned (generally) as a DOC-supervised residence where offenders receive wrap-around services (substance abuse counseling, employment counseling, prescription drug programs and so on) during their re-integration into the community. Dismas House, which already operates facilities in Burlington and Rutland, does not rely on DOC to supervise its

residents. A primary target population for transitional housing is offenders on conditional re-entry, also known as furlough or house arrest.

The capital bill also includes \$750,000 for the design and site acquisition for a minimum-security work camp. This is in addition to the \$400,000 included in the FY06 capital bill. A site has not yet been selected, though DOC has sent letters of interest to communities throughout the state.

Community Supervision (H. 881, Act 215)

VLCT Staff Contact: Trevor Lashua

This year's budget included language similar to last year's budget with regards to the addition of field supervision staff for the DOC. As many as five new field supervision officers may be added, but that is conditioned upon a corresponding drop in the need for beds in out-of-state prison facilities. That drop (which must be below the number of beds budgeted for) must be for a 12-month period, a prospect that seems unlikely anytime soon.

Access to Criminal Records (S.262, Act 169)

VLCT Staff Contact: Trevor Lashua

This bill opens up employer access to criminal records. Any prospective employer may now obtain from the Vermont Criminal Information Center (VCIC) a criminal record for any applicant who has given it written permission to do so.

Previously, State law only allowed criminal records to be obtained for prospective employees for organizations that provide care and services to children, the elderly, persons with disabilities, and postsecondary schools with student residences. S.262 keeps that access in place, with those employers still able to access criminal records from Vermont and other jurisdictions without cost.

Before obtaining a criminal record from the VCIC, the employer must first sign a user agreement with the Center. The agreement is sent with other materials that address how to obtain a criminal conviction record, how to interpret a criminal conviction record, and what constitutes misuse of a criminal conviction record. The cost to obtain a record from VCIC will be \$10, and only the individual's Vermont criminal record will be available.

A municipality that wants to see if a prospective employee or volunteer has a criminal conviction record in Vermont can obtain that record if one of four criteria is met: the offer of employment is conditioned on the criminal record check; an offer of a volunteer position is conditioned on the criminal record check; the criminal record check is the final step in receiving a professional license or certification; and if the applicant (such as a candidate for police officer) has been accepted to the police academy by the Vermont Criminal Justice Training Council conditioned on a criminal record check. (*Amends 20 V.S.A. § 2056b(a) and § 2056c.*)

Emergency Management (H.890, Act 209)

VLCT Staff Contact: Trevor Lashua

With heavy fall and spring rains, the bird flu and other pandemics constantly in the news, and the persistent potential for natural and manmade disasters, emergency management planning and response has been a topic that has garnered both attention and legislative action in recent months.

The House Government Operations Committee began work on changes to Title 20, Vermont's emergency management statute, early on in the session. The resulting bill, H.890, largely clarifies and updates terminology or procedures that are in Vermont's emergency management law. One example

of this type of change is in the switch to defining emergency events in planning and law as “all-hazards” events (20 V.S.A. § 1). The definition of an all-hazards event includes every natural, health or manmade disaster scenario. Previously, each was defined separately.

A number of other bills that deal with emergency management were rolled, either wholly or partially, into the Title 20 changes included in H.890. For example, in a community that has adopted the town manager form of government, the town manager is named as the municipality’s emergency management director if another one is not appointed. In a municipality that does not have that form of government, the legislative body may serve as the emergency management director (if another is not appointed). Both of those changes started in another bill.

H.890 requires the State to prepare and maintain a comprehensive state emergency management strategy (20 V.S.A. § 3a). That includes folding all-hazards planning and the radiological emergency response plan into a single emergency management framework. At the same time, separate plans will be created and maintained for all-hazards events and radiological emergency response.

Emergency management districts are redefined as “public safety” districts that coincide with Vermont’s four state police troop regions. Previously, statute gave the Governor the authority to designate as many as 10 emergency management districts, with consideration given to factors such as geography. Public safety districts shall be “reasonably self-sustaining” emergency management units, with each needing to prepare and maintain an all-hazards response plan in cooperation with the local emergency planning committees (LEPC).

The LEPCs are generally left unchanged, though the representation and duties of those committees are now defined. The section on representation defines who should be included on an LEPC, such as fire, police, and emergency medical service personnel, along with any other interested public or private individual/organization.

LEPC-created response plans, as required by H.890, must include at a minimum: the identification of storage facilities or transport routes of hazardous substances; descriptions of emergency response procedures; outline notification procedures; a method for determining affected areas and populations; designated LEPC and facility coordinators to implement plans; a description of emergency equipment and facilities (and who’s responsible for them) in the LEPC’s area; an outline of evacuation plans; methods and schedules for exercising response plans; and local training that is coordinated with the State and its emergency operations plan (20 V.S.A. § 32).

QUALITY OF LIFE AND ENVIRONMENT

Stormwater Management (H.817, Act. 154)

VLCT Staff Contact: Karen Horn

Act 154 creates a pilot program to upgrade and bring into compliance “orphan stormwater systems” and – in a part that was added from S.319 when it became evident that that bill would not progress – to force wastewater treatment facilities to address potential failures in their infrastructure.

An orphan stormwater system is one that was permitted – and, on some occasions built – in conjunction with the development of a residential subdivision. Since the time of actual construction, units have been sold, the developer has departed the scene, permits have long expired and no one in the subdivision feels any responsibility for the stormwater system. In addition to being in an unimpaired watershed, a stormwater system eligible for the pilot program in this bill must meet four criteria: (1) serve a residential subdivision, (2) operate (or more likely doesn’t) under an expired

stormwater discharge permit, (3) does not discharge to a stormwater-impaired watershed, and (4) the original permittee is no longer associated with the system. In extenuating circumstances, the original permittee could still be associated with the system if the Agency of Natural Resources (ANR) secretary made an exception. A stormwater system includes storm sewers, outfall sewers, surface drains, manmade wetlands, channels, ditches, wet and dry bottom basins, rain gardens and other control equipment managing stormwater discharges. After substantial effort on the part of the Agency's Stormwater Division staff to reduce the number of expired stormwater permits (from a total of 1,251), 67 subdivisions are in the unimpaired watersheds, including 781 single family homes, 124 multi-family homes, 122 mixed single and multi-family homes and 53 mobile homes in 38 towns. Eighty-nine orphan stormwater systems in impaired watersheds in Vermont are not addressed in this bill, but have been previously addressed in statute.

Act 154 establishes a pilot program of grants to municipalities for costs associated with construction, repair or renovation of these systems. The bill includes an appropriation of \$600,000 to the local community implementation fund for grants and \$50,000 for implementation and program administration. A municipality would need to consider its options before seeking an orphan stormwater system grant. While the stormwater system would be brought into compliance or accorded a "best fit" solution, the municipality must agree to be a co-permittee with a homeowners' association or a sole permittee and must acquire all necessary easements or access agreements necessary to inspect, maintain, repair and construct the system. Repair, construction and renovation would be funded with a 100% grant, but maintenance and operation would be a municipal responsibility. If a municipality were a co-permittee, it would negotiate an agreement with the homeowners' association for funding and performing future maintenance.

The pilot program provides the legislature with a report identifying costs associated with coming into compliance, the numbers of towns seeking grants, the number of expired permits eliminated under the program and a summary of mechanisms proposed for assuming municipal responsibility for permitting, operating and maintaining orphan systems.

This bill requires the secretary to review a permit applicant's history of complying with stormwater management requirements when a new permit is requested. He may deny an application if the applicant is discharging stormwater in violation of the permit requirements or if the applicant holds an expired permit for an existing stormwater discharge.

The section on wastewater treatment facilities compels the ANR secretary to require a pollution abatement facility to prepare and implement an operation, management and emergency response plan for each facility as its discharge permit comes up for renewal (a five-year cycle). The plan will need to identify elements of the facility prone to failure and those that, if they fail, would result in a significant release of untreated or partially treated sewage to surface waters, as well as a requirement to inspect those system components and an emergency contingency plan if a spill occurred. ANR expects to incorporate these new requirements in discharge permits without amending rules. It will cost money, but no money is provided. However, the bill does not require municipalities to immediately spend what might have been millions to survey collection systems, pinpoint vulnerable areas and make repairs. Such a draconian directive would have forced the reprioritizing of system management and operation, possibly leaving aside more immediate and important activities than removing potential threats of possible emergencies. (*Amends 10 V.S.A. §§ 1264, 1264c; Adds 10 V.S.A. §§ 1263, 1278.*)

Telecommunications Capacity Development (H.855, Act 172)

VLCT Staff Contact: Karen Horn

This bill requires each State agency or department with regulations or procedures that affect broadband deployment to propose changes to stimulate broadband deployment in Vermont. The Agency of Commerce and Community Development and the Department of Public Service shall develop an on-line map that identifies areas of the state that have broadband internet access available at prices commonly sold to residential and small business consumers. A report to the legislature will:

- identify a way to reach the goal of 90% of Vermonters having access to broadband service,
- identify the percentage of Vermonters to whom broadband service is available,
- show how current state and federal regulations and programs help or hinder deploying additional broadband service, and
- recommend legislative or administrative actions that could stimulate further development of broadband services.

H. 855 also prohibits municipal regulation of telecommunications antennae structures less than 20 feet high if they are located within the boundaries of a downhill ski area.

Outdoor Lighting (H.28, Act 155)

VLCT Staff Contact: Karen Horn

H.28 creates a 20-member legislative outdoor lighting advisory board, including a representative of VLCT, to develop performance-based outdoor lighting guidelines. In developing its guidelines, the board would consider the need for lighting, public safety considerations, the differences among urban, suburban and rural needs, skyglow and light trespass, and energy conservation measures. The bill also defines a number of lighting technical terms in statute. (*Adds 10 V.S.A. chapter 24.*)

Economic Development (H.109, Act 212)

VLCT Staff Contact: Trevor Lashua

H.109 contains a number of different pieces, some of which are related to each other, some of which are not. However, all are related to economic development in some way.

The bill makes changes to the states Human Resources Investment Council, slightly amending its membership along with renaming the body the Workforce Development Council. The Council's duties are spelled out and include such tasks as speaking for the workforce needs of employers, establishing and overseeing the workforce investment boards, and advising the governor on the establishment of "an integrated network of workforce education and training for Vermont." The bill also reduces the number of members of the Department of Labor Advisory Council from nine to eight.

H.109 also adds that, should benefits be given to an employee for a liability or worker's compensation claim that were not due to him or her, that employee may be ordered to pay back the employer (pending a hearing with the commissioner). Conversely, if the employer does not pay benefits but is found to be responsible for them, an employee may now recover reasonable attorney fees along with payment for those benefits (with interest).

Among the other items included in the bill is the creation of a Vermont Commission on International Trade, an extension of the wood products manufacture tax credit to July 1, 2008,

studies on electrician licensing and housing inspectors and a 10-year extension of two tax increment finance districts in Milton. (*Adds 10 V.S.A. § 541; amends 21 V.S.A. §§ 643a, 650(e), 662(b) and 652(c).*)

Amateur Radios (H.12, Act 200)
VLCT Staff Contact: Karen Horn

Passed in the last week of the session, H.12 clarifies that municipal ordinances regulating amateur radio antennae, or antennae support structures, must comply with federal law C.F.R. §97.15(b) by allowing for erection of an amateur radio antenna or support structure at a height and dimension sufficient to accommodate amateur radio service communications. C.F.R. § 97.15 states:

“Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority’s legitimate purpose...)”

H.12 also required the Department of Housing and Community Affairs to report to the legislature about municipal permitting and siting of amateur radio antennae and structures and municipal requirements of the new law. (*Adds 24 V.S.A. § 2296.*)

Groundwater (H.294, Act 144)
VLCT Staff Contact: Karen Horn

Act 144 establishes a committee to examine regulatory programs to protect state groundwater resources. A report, due to the House and Senate Agriculture and Natural Resources Committees by January 15, 2008, would include recommendations on declaring groundwater resources a “public trust resource” and regulatory implications thereof; a proposed schedule and appropriation to map state groundwater resources; and proposed legislation to regulate groundwater withdrawals. A preliminary report is due January 15, 2007. The 14-member committee would include representatives of municipalities. The bill would also place a moratorium on new groundwater withdrawals at pumping rates of more than 50,000 gallons per day by private (bottled water) systems until July 1, 2011. The Agency of Natural Resources must explore all alternatives to immediately map groundwater resources. (*Adds 10 V.S.A. chapter 48, subchapter 5.*)

Eminent Domain (S.246, Act 111)
VLCT Staff Contact: Karen Horn

Eminent domain allows a government to appropriate private property for public use, with compensation to the owner. Any such taking must comply with Vermont general statutes and the State Constitution, which states that, in Vermont, a government must show *necessity* before taking property. Findings of necessity are also specifically required in most Vermont statutes that pertain to eminent domain.

S.246 makes clear that no government or private entity may use eminent domain to take private property if the taking is primarily for economic development purposes, unless it’s pursuant to the Urban Renewal statute, Title 24 Chapter 85. According to the bill, eminent domain *is* permissible for purposes of constructing, maintaining or operating transportation projects, public utilities, public property or water, wastewater, stormwater, flood control, drainage or waste projects.

S.246 adds language to the definition of “blighted area” in the Urban Renewal statute to read: “No area shall be determined to be a blighted area solely or primarily because its condition and value for tax purposes are less than the condition and value projected as a result of the implementation of any state, municipal, or private redevelopment plan.” The bill would direct a judge who is considering the necessity of a taking to not give weight to a projected increase in economic value for a property primarily because it would be more valuable after the redevelopment project. Legislators also acknowledged the lengthy process and judicial reviews required in the urban renewal statutes to establish an urban renewal area, to seek to take property to implement the urban renewal area, and to establish a fair price for a taking.

The preexisting definition of blight provided the potential for eminent domain to be misused in Vermont in order to benefit a private party. The new language would eliminate that possibility.

Junkyards (H.708, Act 181) **VLCT Staff Contact: Karen Horn**

By January 15, 2007 the secretary of the Agency of Natural Resources (ANR) shall present to the legislature draft legislation to transfer jurisdiction over junkyards from the Agency of Transportation to ANR. The legislation shall include an education and outreach plan that explains existing and proposed regulations affecting junkyards.

Shooting Ranges (H.447, Act 173) **VLCT Staff Contact: Karen Horn**

H.447 establishes that only an owner of a property that abuts a shooting range may bring a nuisance action for civil damages against the range if the range is out of compliance with any noise use condition of any issued municipal or state land use permit. A shooting range now has a rebuttable presumption that it is not a nuisance if it was established prior to the acquisition of the property by the abutting property owner, and the frequency of the shooting or other alleged nuisance activity has not significantly increased since the abutting property owner acquired his or her property. That presumption may only be overcome by a showing that the activity has a noxious and significant interference with the use and enjoyment of the abutting property.

H.447 now requires that, prior to nighttime use of a shooting range by law enforcement agencies for training, the range shall notify abutting property owners if they’ve requested notice. A range shall also try to resolve issues through mediation if an abutting property owner requests it. Parties may thereafter submit the dispute to binding arbitration. The shooting range and property owner will share the cost of arbitration and mediation.

The bill also severely limits municipal authority by amending Section 8 of the enumerated powers of a municipality. A municipality may regulate the use or discharge of but not possession of firearms within the municipality or portions thereof, “*provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce or limit discharge at any existing sport shooting range, as that term is defined in section 5227 of Title 10.*”

The relevant section of Title 10 defines a sport shooting range as “*an area designed and operated for the use of archery, rifles, shotguns, pistols, skeet, trap, black powder, or any other similar sport shooting.*”

H.447 took effect upon passage, May 5, 2006. (*Amends 10 V.S.A. § 5227 and 24 V.S.A. § 2291; adds 10 V.S.A. § 5227a.*)

Growth Centers (S.142, Act 183)

VLCT Staff Contact: Karen Horn

Growth centers legislation passed in the last days of the legislative session once it was clear that tax increment financing (TIF) legislation (S.165) would also pass. In fact, conferees on differing versions of S.142 held off signing a conference committee report until it was clear that TIFs would be available as incentives for municipalities that decide to seek growth center designation, and that the TIF legislation could work for municipalities. (See article on tax increment financing, page 7.) S.142 culminates decades of discussion about what growth centers are and who should establish them. Simply defining a growth center is a major accomplishment.

Growth Centers Defined. S.142 requires a growth center to (1) be located in a designated downtown, village center or new town center or in an area adjacent to one of those designated sites; (2) have clearly identified boundaries; (3) result in compact concentrated areas served by infrastructure; and (4) accommodate a significant share of growth anticipated in the municipality over the next 20 years. Towns must apply to an expanded Downtown Board for growth center designation. A municipality may seek growth center designation concurrently with the designation of a downtown, village center or new town center. The bill clarifies that municipalities may continue to create growth centers within their town boundaries without seeking Downtown Board designation (24 V.S.A. § 4414 (1) (A)). But, unless they had been approved through the designated process, those growth centers would not be eligible for benefits promised by the bill.

Think of growth centers as shining pods of civilization where municipalities get it right the first time by incorporating all the good stuff (transportation options, mixed uses, wastewater treatment and water supply facilities, underground wires, parks, schools, post offices) in a compact area of enticing design. But that is not the statutory definition. Statutorily, growth centers:

- incorporate mixed uses including affordable housing, new residential neighborhoods and public spaces promoting social interaction;
- are organized around one or more focal points;
- specify density of land development significantly greater than permissible densities in the rest of the municipality or, in already densely developed areas, encourage infill development;
- support investments in infrastructure and pedestrian-oriented traffic and public transit;
- result in compact land development separated by rural countryside or working landscape;
- attempt to conform to “smart growth principles” (defined in the bill) and plan in accordance with Title 24 Chapter 117 planning goals; and
- reinforce the purposes of 10 V.S.A. chapter 151 (Act 250).

Preparing for Growth Center Designation. If a municipality that is considering growth center designation asks for technical planning assistance, its regional commission shall provide it. This assistance includes preparing population, housing, employment growth projections, build-out analyses for 20 years and GIS mapping. Such projections could be prepared on a regional or municipal basis, although who makes the determination is not clear. The Natural Resources Board (formerly the Environmental Board) Land Use Panel and the Department of Housing and Community Affairs (DHCA) will convene a planning coordination group by October 1, 2006 to:

- develop a coordinated process to ensure consistency between regions and municipalities regarding growth center designation;
- provide a pre-application process;
- coordinate State agency review on issues of interest to agencies; and

- provide the State Downtown Board with staff support.

The Land Use Panel and DHCA will develop a growth centers planning implementation manual and checklist. Both the municipal planning grant program and community development program will consider activities associated with growth center planning priorities for funding.

Application. A local legislative body must vote to seek growth center designation, and that vote is subject to petition. A growth center application must:

- contain a map and conceptual plan for the growth center;
- demonstrate that the growth center definition is met;
- identify the natural and historic resources, anticipated impacts thereon and proposed mitigation;
- update bylaws and plans to identify agricultural lands. The secretary of Agriculture will develop guidelines for regional and municipal planning commissions to use to identify these lands;
- demonstrate that the approved municipal plan and bylaws will implement the growth center;
- assure that the plan and bylaws anticipate more rural character in the surrounding area;
- provide reasonable protection for primary agricultural soils, productive forestland and significant fragile features and natural and historic resources by excluding such areas within the proposed growth center as much as practical;
- demonstrate that existing and planned infrastructure is sufficient to implement the growth center and adopted capital plan;
- include a 20-year build-out analysis and needs study;
- demonstrate that the growth center is of appropriate size and will not cause inefficient land use;
- demonstrate that the growth center will support existing designated downtowns, new town centers or village centers; and
- demonstrate that the growth center cannot be achieved within an existing designated area, if it is adjacent to an existing designated downtown, new town or village center and that it will not diminish the vitality of those existing designations.

The expanded Downtown Board must hold a hearing and render a decision within 90 days of receiving an application. A designation is good for 20 years, with a review every five years that may coincide with municipal plan re-adoption. A municipality with a growth center identified in a regional plan may apply for designated growth center “agricultural mitigation benefits” before July 1, 2008 if it intends to seek growth center designation.

Benefits of Designation. In general, designated growth center benefits (a list of which follows) take second place to those for designated downtown programs.

- Vermont Economic Progress Council and Vermont Economic Development Authority incentives shall be provided on a priority basis.
- Qualified priority for a variety of State loan and grant program funding, including transportation enhancements, natural resources wastewater management facilities, stormwater management and brownfield remediation, given the existing priorities in those programs and feasibility of funding in designated downtowns, village centers or new town centers. (In a potential conflict with this bill, language in the appropriations bill establishes the highest priority of the Community Development Block Grant program as creation and retention of affordable housing and jobs.)
- Residential rehabilitation tax credits.

- The Department of Buildings and General Services must consider siting new buildings in growth centers, if not feasible in a designated downtown, village center or new town center. Schools are also encouraged to consider designated growth center locations.
- Establishing the threshold for Act 250 jurisdiction of mixed income housing or mixed use developments at 25 affordable units instead of 20 in a municipality of fewer than 5,000 population and providing that if a developer is building housing within a growth center, the housing he has built outside the growth center would not be counted when making a determination of Act 250 jurisdiction (as would be the case under current law if they were constructed within the previous five years). If the housing units are subject to housing subsidy covenants that preserve affordability for 99 years or longer and are within a designated downtown, village center or growth center, then they would be counted for purposes of determining Act 250 jurisdiction only if constructed within the previous twelve months – that is, their construction is less likely to throw a project into the Act 250 process.
- Potential for allowing additional conversion of primary agricultural soils if housing densities average more than ten units of housing per acre or housing units are affordable.

Primary Agricultural Soils, Mitigation and Housing. Under current law, a municipality or developer may seek to develop primary agricultural soils as part of a project. These soils are best for cultivating crops in Vermont, and, long ago, a policy decision was made to preserve them for agricultural use. When circumstances dictate and a project is in the Act 250 process, a developer may be allowed to build on those soils if he or she provides mitigation for doing so. New mitigation rates were established in S.142 for conversion of primary agricultural soils under Act 250 of a 1:1 ratio (acres required to be set aside for primary agricultural uses for each acre of primary agricultural soils developed). To achieve mitigation, the developer could either set aside the primary agricultural acreage or pay a fee equal to the cost of one acre of primary agricultural soils for every acre developed. On-site mitigation could be required if a municipal plan specifically called for protection of the acreage in question.

To differentiate between the growth center and more rural countryside outside the growth center, mitigation for use of primary agricultural soils is required at a ratio of 1:1 within a growth center. No mitigation would be required if perpetually affordable housing is built at a density of at least eight affordable units per acre.

If a project is outside a growth center, mitigation for use of primary agricultural soils shall be provided at a ratio of 3:1 or 2:1, unless circumstances called for off-site mitigation (the paying of dollars into the Housing Conservation Land Trust). If a development is in an industrial park as of January 1, 2010, mitigation rates will be 1:1.

Existing Designated Downtowns and Village Centers. In the final sections of the 34-page bill, S.142 would extend the Downtown Centers’ tax credit program to “village centers,” consolidate the tax credits program so that tax credits could be awarded in the program for which there was the most demand (e.g., elevator installation, code improvement or historic rehabilitation); and would increase the cap on tax credits that could be awarded to \$1.5 million. (Adds 24 V.S.A. §§ 2790, 2791 (12)-(14), 2792 (f), 2793c; 10 V.S.A. § 609; 32 V.S.A. chapter 151 subchapter 11J; amends 24 V.S.A. §§ 4414, 2793a(c), 2794(a); 10 V.S.A. §§ 6001, 8053(b), 32 V.S.A. § 9819.)

Locating Municipal Lines (H.544, Act 102)

VLCT Staff Contact: Karen Horn

H.544 changes the way that municipal boundaries between towns are located or altered. The issue of establishing boundaries between two towns occasionally arises in the legislature because that body is responsible for ratifying town lines. Towns had gotten into the habit of asking the legislature to pay the cost of surveying those lines prior to their establishment and legislative approval.

Under the new law, if a municipal boundary line is in doubt and the involved towns agree as to its location, each legislative body must hold a public hearing and then vote to adopt the location of the line. The legislative bodies shall then conduct a survey or ratify an existing one, and file certified copies of the minutes of the meetings, the survey, and a list of property owners whose legal location is changed by the agreement with their town clerks, the Secretary of State and the E-911 Board. When the line is new and pursuant to a survey, one or more of the involved towns shall petition the general assembly to establish location of the line and then file the survey and list of property owners after the general assembly has ratified the line.

If the boundary is in doubt and the two involved towns cannot agree as to its location, the dispute goes to arbitration. If the arbitration does not result in an altered line, the result shall be filed with the Secretary of State and the clerks of those towns.

If the arbitration results in an altered line, then the arbitration award shall require a survey of the line, the cost of which is apportioned between the towns. Following the survey, the involved local legislative bodies must post notice of a petition to the general assembly at least three weeks prior to at least one of the local legislative bodies filing a petition requesting the general assembly to adopt the alteration of the line pursuant to the survey. Next, the local legislative bodies must file the survey and a list of property owners whose legal location is altered with the Secretary of State, the clerks of the involved municipalities and the E-911 Board.

When the general assembly enacts legislation that ratifies a survey of a municipal line, it may provide funds to *monument* the line at points where it changes direction. Any additional “monumenting” is at the town’s expense.

The Secretary of State and Agency of Transportation are directed to develop a process for requesting proposals for surveying for use by municipalities.

The Uniform Mediation Act (H.33, Act 126)

VLCT Staff Contact: Karen Horn

H.33 (Act No. 126) establishes a uniform mediation act. The act applies to mediations in which parties are required to mediate by statute or court or administrative agency. The mediation is expected to be confidential, but will not apply to collective bargaining or if a judge who may rule on the case is conducting the mediation. Act 126 defines terms regularly used in mediation and establishes the parameters for mediation communications being privileged (confidential) and when that privilege may be waived or does not apply.

Both Act 102 and Act 126 take effect on July 1, 2006.

ⁱ However, the fee for appealing from the BCA to superior court (a taxpayer’s other option) has not changed. That fee, “prior to entry of any cause in the Superior or Environmental Court,” is \$225. [from page 9]