

# VERMONT LEAGUE OF CITIES AND TOWNS

## LEGISLATIVE WRAP-UP



**2008**

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

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Your VLCT advocacy staff represent local government and serve as liaison to the Vermont legislative and executive branches as well as to the federal government. VLCT's advocacy program supports legislation that advances local self-governance and implements policies established by the membership, which may be found in the 2008 Municipal Legislative Policy. We follow hundreds of bills that represent hundreds of millions of dollars of potential and realized impact on municipal governments in Vermont. With the membership's assistance, advocacy staff assure that municipal priorities are addressed in the State House, by the executive branch, in rule-making procedures and in other policy-making forums throughout the year.

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# TABLE OF CONTENTS

	PAGE
<b>INTRODUCTION</b> .....	1
<b>MUNICIPAL FINANCE</b>	
The Appropriations Bill (H. 891).....	2
Local Option Taxes (H. 888).....	4
The Capital Bill (S. 365) .....	5
State Payment in Lieu of Taxes (H. 891).....	7
Tax Increment Financing Districts and Miscellaneous Tax (H. 888).....	7
Basic Needs Budget (H. 776) .....	9
<b>EDUCATION FINANCE</b>	
Education Property Taxes (H. 888, H. 891) .....	9
<b>MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION</b>	
Municipal Technical Amendments (H. 436, Act 121) .....	11
Instant Runoff Voting (S. 108 – <i>vetoed</i> ) .....	12
Public Records (S. 229; S. 351) .....	12
The Right to Attend Town Meeting (S. 45) .....	13
Administration of the Voter’s Oath (S. 366, Act 113).....	13
Mobile Polling (S. 232, Act 111) .....	13
Executive Fee Bill (H. 691).....	14
<b>TRANSPORTATION</b>	
The Transportation Bill (H. 889).....	14
Ancient Roads (S. 107).....	17
<b>HOUSING</b>	
Vermont Neighborhoods, et al. (H. 863) .....	18
Mobile Homes (H. 330, Act 120; H. 331; H. 332; H. 863).....	20
<b>PUBLIC SAFETY</b>	
Justice Reinvestment (H. 859).....	21
Community Justice Centers (H. 257, Act 115) .....	23
Embezzlement by Public Officials (H. 636) .....	23
Law Enforcement (H. 619, Act 136; H. 891; S. 240, Act 140; S. 357).....	23
Fire Safety, Emergency Management and other Public Safety Issues (H. 112) .....	25
Law Enforcement Training (H. 599).....	25
<b>ENVIRONMENT AND QUALITY OF LIFE</b>	
Phosphorus Discharges and Cleanup of Lake Champlain (H. 873, Act 130).....	26
Energy Efficiency and Affordability (S. 209, Act 92) .....	28
Energy Independence (S. 350) .....	29
Groundwater (S. 304) .....	30
Downtown Board and Brownfield Remediation (H. 669).....	31
Monochloromine (S. 368, Act 133) .....	33
The Right to Express Milk at Place of Employment (H. 641).....	33

# TABLE OF CONTENTS

PAGE

**HEALTH CARE**

Health Care (H. 887) .....34  
Workers' Compensation (S. 345).....34

**LEGISLATIVE STUDY COMMITTEES** .....35

## **INTRODUCTION**

Welcome to the VLCT Legislative Wrap-up for 2008. The 2008 legislative session came to an orderly and early close Saturday afternoon, May 3<sup>rd</sup>, ending an otherwise tumultuous 2007-2008 biennium. We are already into the campaign season: Speaker of the House Gaye Symington announced her bid for governor on May 12. And we are already thinking about developing the VLCT Legislative Platform for the 2009-2010 biennium. Watch your mail for descriptions of our policy development process and an invitation to participate. Take your summer breather now, while you still have the time!

Bills affecting municipal government are always front and center in the Vermont Legislature. Vermont is one of the few “Dillon’s Rule” states in the country, which means that Vermont local governments must obtain permission from the state legislature for everything they wish to do and can be told to do whatever it is the legislature wants them to do. The result is a lot of proposed legislation that would affect local officials if passed – legislation that local governments request and legislation that they would prefer never becomes law. Your VLCT legislative staff follows hundreds of bills during the course of a legislative biennium usually playing offense (getting bills of benefit to municipalities passed) and defense (defeating bills that would harm local governments) at the same time.

Please note that all bills that did not pass by the May 3<sup>rd</sup> adjournment are dead. If someone wants to pursue the concept in a given bill, he or she will need to get it re-introduced in 2009. Everything starts afresh in the new biennium.

This was a year in which everyone felt the pinch of declining revenues. The likelihood that the legislature would shift costs to local governments in order to ease the strain on state revenues loomed throughout the session. Yet by and large, the legislature refrained from shifting costs it could not meet to local governments. You may read about some of those choices throughout this report. One way around actually paying for new initiatives was to establish a study committee on the issue. And despite the best efforts of the Appropriations committees, there are plenty of them this year. Those that are relevant to local governments are collected in the section on Legislative Committees, in addition to being mentioned in the context of the bill in which they were created.

The Wrap-Up describes those bills that passed as well as acts signed by the Governor that affect municipalities. Legislation is organized under the headings of policy areas, as are relevant sections of the Omnibus Appropriations Act, H. 891. The VLCT staff member responsible for each bill is noted under the bill’s heading. If an Act number has been assigned (which happens upon the gubernatorial signature), that is noted as well. As of this writing, most bills do not yet have Act numbers. To check on Act numbers or to obtain copies of bills, go to the legislative website, [www.leg.state.vt.us](http://www.leg.state.vt.us), or call the Legislative Council at 802-828-2231. Please note that the standard effective date for legislation is July 1, unless otherwise established in the bill and noted in the Wrap-Up.

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 2009 session, which is just six months away. Be sure to read your draft Municipal Policy when it arrives in late summer and

propose your changes then in preparation for the VLCT Town Fair and Annual Meeting on October 2 at the Grand Resort Hotel in Killington.

And thank you to all those local officials who helped staff during the session by making legislators understand the implications of their proposals on local government, and to all who visited the State House to make those points in person. Our success in the State House is due to your commitment to local government back home.

## **MUNICIPAL FINANCE**

### **The Appropriations Bill (H. 891) VLCT Staff Contact: Karen Horn**

This year, the appropriations bill – “The Big Bill” – touched almost every other issue that was addressed in legislation. As has often been the case in years past, legislation that could not find a home by the end of the session but was deemed crucial ended up in the appropriations bill. And because “The Big Bill” is a final resting place for so many issues, it is always one of the last bills to be settled.

Money was tight again this year. From day one of the session, legislators struggled with priorities for funding. The result is H. 891, a bill that anticipates surplus revenues only sparingly and contains no “waterfall” section. In the past when state tax revenues were increasing, unexpected budget surpluses developed between when the legislature adjourned and the end of the state fiscal year (June 30). Without direction on how to use such largesse, the money would “waterfall” into the next fiscal year and remain unused until the legislature returned the following January. In response, the legislature began attaching a section to the appropriations bill that would direct how such unanticipated surpluses (if there were any) should be spent. The legislature wisely directed much of this manna from heaven to one-time expenses and didn’t build it into the ongoing service program (and expenses) of state government. The waterfall sections from prior years were almost always funded because the revenues did materialize. But in FY09, there is no waterfall. Only five contingent allocations amounting to just \$1,025,000 are made in the FY 2009 budget. At the same time, the legislation creates a revenue shortfall reserve comprised of any budgetary basis unreserved and undesignated surplus in excess of one percent occurring at the close of the fiscal year after the existing general fund budget reserve has been brought to its authorized level. Clearly, legislators are not optimistic about the revenue outlook in the coming year.

The appropriations bill also contains significant doses of policy, including a directive to the commissioner of Education, VLCT, superintendents and school boards associations, principals association and Vermont’s National Education Association to develop incentives for collaboration among school boards, school administrators, selectboards and city councils so as to reduce property taxes. A report is due the legislature by January 15, 2009.

The first priority for community development block grants (CDBGs) is to create affordable housing, foster perpetual affordability and create jobs. Among other objectives, preference in funding shall go to projects that maintain the historic settlement patterns of compact village and downtown centers separated by rural working landscapes. The bill makes clear that no less than 50 percent of CDBG-

generated loan repayments shall remain available to municipalities awarded CDBG funds. The Department of Housing and Community Affairs shall report to the legislature by January 15, 2009 on the past performance of revolving loan funds supported by CDBG appropriations along with recommendations for improvements, standards and recapture of funds that have not been used within five years by grantees.

The table below shows a breakdown of funding for items of concern to municipalities and the evolution of the discussion through the legislative process this year. Areas such as education funding and finance, groundwater mapping and transportation that are included in the table are covered in greater detail in the relevant sections of this Wrap-up.

Relevant studies from H. 891 and other bills are collected in the copious section on Legislative Studies in the Wrap-up.

<b>MUNICIPAL FUNDING PRIORITIES IN FY 2009 BUDGET (in Millions)</b>					
<b>Budget Line Item</b>	<b>FY08 Final</b>	<b>FY09 Governor's Recommend</b>	<b>FY09 Final</b>	<b>FY09 Final from FY08 Final</b>	<b>FY09 Final from FY09 Governor's Recommend</b>
PILOT – ANR Lands	\$1.57	\$2.01	\$2.01	27.6%	0.0%
PILOT – Corrections Facilities <sup>1</sup>	\$0.04	\$0.04	\$0.04	0.0%	0.0%
PILOT – Montpelier <sup>1</sup>	\$0.18	\$0.18	\$0.18	0.0%	0.0%
PILOT – State Buildings <sup>2</sup>	\$3.50	\$4.20	\$4.50	28.6%	7.1%
Current Use – Municipal	\$8.86	\$9.85	\$9.85	11.2%	0.0%
General Fund Transfer to Education Fund <sup>3,4</sup>	\$293.86	\$291.13	\$291.13	-0.9%	0.0%
Town Bridge Grants <sup>5</sup>	\$22.39	\$17.73	\$16.53	-26.2%	-6.8%
Town Highway Aid Program	\$24.98	\$24.98	\$24.98	0.0%	0.0%
Town Highway Aid Program – Class 1 Supplemental	\$0.13	\$0.13	\$0.13	0.0%	0.0%
Town Highway Structures	\$3.49	\$3.49	\$3.83	9.7%	9.7%
Vermont Local Roads	\$0.38	\$0.38	\$0.38	0.0%	0.0%
Town Highway Public Assistance Grants	\$0.20	\$0.20	\$0.20	0.0%	0.0%
Municipal Mitigation Grant Program	\$2.11	\$2.11	\$2.11	0.0%	0.0%
Class 2 Highway Paving and Rehabilitation <sup>6</sup>	\$6.75	\$5.75	\$6.45	-4.5%	12.2%
Town Highway Emergency	\$0.75	\$0.00	\$0.25	-66.7%	
Total Local Highway Aid (except Emergency)	\$60.44	\$54.77	\$54.86	-10.3%	0.2%
Municipal Planning Grants	\$0.86	\$0.86	\$0.86	0.0%	0.0%
<b>TOTAL</b>	<b>\$369.32</b>	<b>\$363.04</b>	<b>\$332.43</b>	<b>-1.8%</b>	<b>0.1%</b>

1. FY09 adopted figures are shifted from being paid from the General Fund to the PILOT for state buildings special fund. This new cost reduces the amount distributed under “PILOT – State Buildings.”
2. FY08 contains \$3.4 million from local option taxes and \$50,000 General Fund plus \$50,000 approved in FY07 budget one-times for FY08 payments. FY09 figures are all from local options and no state monies.
3. FY08 contains an additional \$7.06 million in one-time General Fund revenue to make up for the transfer shortfall for FY07, along with \$6.6 million in one-time General Fund revenue.
4. Required to increase by New England economic project cumulative price index for government purchases (16 V.S.A. § 4025(a)(2)).
5. Includes state and federal aid only, no local match.
6. FY08 Included \$1 million in one-time money appropriated from the \$29 million General Fund surplus/waterfall.

**Local Option Taxes (H. 888)**  
**VLCT Staff Contact: Steve Jeffrey**

Once again, the Senate voted to expand to all Vermont municipalities the authority to levy local option sales, rooms and meals and alcohol taxes. However, in the end, the 2008 legislature extended that authority to only one more town – Middlebury. When Act 60 was imposed in 1997, the legislature did grant some towns (76 to be exact) that faced the largest increases due to the new state education property tax the limited authority to collect a “local option” sales, rooms and meals and alcohol tax. The tax is one percent and it is piggybacked on the state taxes on the same goods and services. The state collects it and the town gets 70 percent of the proceeds, less some costs that the state Tax Department retains for the administration. The remaining 30 percent goes into a state fund to reimburse cities and towns that host state facilities called the state Payment in Lieu of Taxes (PILOT) special fund. (More on this later.)

Two years ago, the voters of Burlington voted to amend their municipal charter to include authority identical to that granted the original 76. The 2006 legislature approved this change. Last year, South Burlington did the same thing. This year, voters in Middlebury adopted the same language in their charter and the legislature approved it (Act M.017). In addition to Middlebury, voters in Killington (one of the original 76 towns) approved collecting the local option taxes at Town Meeting this year.

In H. 888, the miscellaneous tax bill, it appears that the legislature is holding cities and towns with local option sales taxes harmless from the sales tax holiday the state will be holding on July 12 and 13. The state will be reimbursing \$100,000 from the General Fund to cities and towns (and the PILOT special fund) that will lose revenue due to not charging sales taxes on those days. To date, the following cities and towns are authorized to collect local option sales and rooms and meals taxes under either the general statute or their municipal charters:

<b>TOWNS ADOPTING LOCAL OPTION TAXES UNDER 24 V.S.A. § 138</b>		
<b>Sales</b>	<b>Rooms</b>	<b>Meals and Alcohol</b>
Dover	Brattleboro	Brattleboro
Killington	Dover	Dover
Manchester	Stratton	Manchester
Stratton	Stowe	Stratton
Williston	Williston	Stowe
		Williston

<b>CITIES AND TOWNS ADOPTING LOCAL OPTION TAXES UNDER CHARTERS</b>			
<b>Sales</b>	<b>Rooms</b>	<b>Meals and Alcohol</b>	<b>Entertainment</b>
Burlington	Burlington	Burlington	Burlington
Middlebury	Middlebury	Middlebury	Rutland City
South Burlington	Rutland City	Rutland City	
	South Burlington	South Burlington	

**The Capital Bill (S. 365)**  
**VLCT Staff Contact: Karen Horn**

The capital bill passed on the last day of the session, May 3. One reason for its late passage is that there is included \$5,200,000 for transportation capital projects approved in the FY 2009 transportation program. (See Transportation article on page 14.) That bill was also one of the last pieces of legislation to pass this session.

The Capital Debt Affordability Advisory Committee (CDAAC) is charged with annually reviewing the size and affordability of the net state tax-supported indebtedness and with recommending how much new bonded debt is reasonable to authorize for the next year. Traditionally, neither the legislature nor the administration has deviated from that recommendation as it pertains to bonded debt. In FY09, the CDAAC recommended a bonding limit of \$54,650,000. The governor proposed a capital budget that dedicated \$4,650,000 of that amount to road and bridge projects approved in the transportation bill. He also proposed leasing the lottery and dedicating the \$25 million in estimated revenue from the lease to reduce a substantial and continuing backlog in state commitments to school construction aid. The lottery lease idea never got traction in the legislature.

As passed by the legislature, \$54,650,000 is authorized in general obligation bonds for FY 2009. As mentioned above, a portion (\$5,200,000) is appropriated for transportation projects. S. 365 also authorizes the state treasurer to issue a further \$10 million in general obligation bonds for transportation upon the CDAAC considering how much “*additional long term net tax supported debt may be prudently authorized for transportation related uses that could assist in closing the gap between transportation needs and available revenues.*” The CDAAC must make its recommendation to the legislative Joint Fiscal Committee and the chairs of the House and Senate Transportation Committees by October 1, 2008 for both FY09 and FY10. Future debt service for any bonds authorized through this process will be repaid from transportation fund revenues. This is the first time that the legislature and governor have been willing to consider bonding for long-term transportation projects and represents a recognition of the scope of the shortfall in transportation funds relative to the need to maintain our transportation infrastructure.

Language in the bill also requires the Agency of Natural Resources (ANR), the administration’s office of Finance and Management and the Joint Fiscal Office to study their process for determining when to request general obligation bonds for projects to be funded from the pollution control and clean water revolving loan funds and when funds are paid to the recipient (the municipality). The results of this study are due January 15, 2009.

The commissioner of Buildings and General Services and the court administrator are directed to conduct an inventory of all county courthouses, including ownership of each courthouse, number of state courts occupying space in them, agreements for use of space and a recommendation for a fee for space formula for state court use. That report is due to the legislature January 15, 2009.

By October 1, 2008, the ANR secretary shall meet with representatives of any municipality that wants to evaluate treatment options for upgrade of their wastewater treatment facility. As part of the Agency’s evaluation, alternative options for upgrade, including tertiary filter options, shall be considered, as shall full life-cycle costs of the project, whether borne by ANR or the municipality. A report on this process is also due to the legislature by January 15, 2009.

CAPITAL BILL (S. 365)					
Agency/Department	Line Item	Governor Proposed FY09	Senate Adopted	House Adopted	Final As Passed
Dept. of Buildings and General Services	Recreational & Educational Grants	\$200,000	150,000	150,000	180,000
Dept. of Information & Innovation	Broadband Development Grants <sup>2</sup>	200,000	150,000	100,000	180,000
	Human Services Grants	200,000	150,000	150,000	180,000
Dept. of Taxes	Orthophotographic Mapping	200,000	100,000	100,000	100,000
Agency of Commerce & Community Development	Historic Preservation Grants <sup>1</sup>	200,000	150,000	150,000	180,000
	Historic Barns & Agricultural Grants <sup>1</sup>	200,000	150,000	150,000	180,000
	Cultural Facilities Grants <sup>1</sup>	200,000	150,000	150,000	180,000
	Unmarked Burial Fund	50,000	25,000	25,000	25,000
Department of Education	State Aid for School Construction <sup>3</sup>	25,000,000	10,000,000	10,000,000	10,056,750
ANR (\$11,131,000 total request <sup>3</sup> )	Clean Water State/EPA Revolving Loan Fund Match <sup>4</sup>	2,400,000	2,100,000	2,100,000	2,100,000
	Municipal Pollution Control Projects <sup>5</sup>	2,000,000	2,000,000	2,000,000	2,000,000
	Pownal wastewater treatment facility	1,120,000	1,120,000	1,120,000	1,600,000
	Water Supply Revolving Loan Fund <sup>6</sup>	1,950,000	1,900,000	1,900,000	1,900,000
Farmer's Watershed Alliance	(phosphorus removal in Lake Champlain)			30,000	30,000
Natural Resource Conservation Districts (NRCS)	phosphorus removal statewide			50,000	50,000
Clean & Clear Program Total Request \$2,250,000	Ecosystem Restoration & Protection Grants	1,550,000	1,000,000	1,120,000	1,120,000
	Unregulated Stormwater Management Grants	150,000	150,000	150,000	150,000
	Wastewater Treatment Facility Phosphorus Removal – Proctor facility	550,000	550,000	550,000	550,000
Montpelier Flood Study <sup>7</sup>		100,000	100,000	100,000	100,000
Fire Service and Criminal Justice Training Councils	8,800 sf fire training facility, Pittsford	2,500,000	2,500,000	2,000,000	2,000,000
	Reconstruction of Pittsford fire range	75,000			
Agency of Agriculture, Clean and Clear	Best Management Practices on Vermont farms	1,800,000	1,550,000	1,800,000	1,800,000
Dry Hydrant Program		100,000	75,000	100,000	100,000

1. Grants awarded on a 50-50 percent basis.  
2. FY09 funds used by Vt. Telecommunications Authority to provide grants to municipalities, telecommunication infrastructure developers and service providers.  
3. Payments would be funded from lease of Lottery.  
4. Grants to municipalities. Capitalization is matched \$1 state funds to \$5 federal funds.  
5. \$1,400,000 Springfield; \$600,000 Newport City.  
6. Includes \$1.7 million to match \$8.5 million federal capitalization grant.  
7. First year of 3-year request; cost shared equally by state and city.

The table above indicates appropriations of bonded debt for projects of concern to municipalities. Please note that the transportation portion is not included here. A list of projects is due from the

Agency of Transportation to the legislature before June 30, 2009. (In fact, it was given to the Joint Fiscal Committee on May 12.)

### **State Payments in Lieu of Taxes (H. 891)**

**VLCT Staff Contact: Steve Jeffrey**

There was the proverbial “goods news and bad news” on the state payment in lieu of taxes (PILOT) front. The FY09 budget figure has increased from \$3.5 million to \$4.5 million, a 28.6 percent increase. Since Middlebury and Killington adopted local option taxes this year, and given that 30 percent of the proceeds go to funding the largest PILOT program – that which reimburses cities and towns that host state buildings on which no property taxes are paid to provide municipal services – more funds will be available for this program. The state buildings PILOT fund is supported solely from the cities and towns levying the local option taxes upon themselves. There are no longer any “state” funds that pay for state PILOT payments.

The \$4.5 million figure would have been \$4.75 million if the legislature had not transferred the costs of two other long-standing PILOTs to the buildings PILOT fund. For decades now, the legislature has made a payment from its General Fund to Montpelier, the capital city, for partial reimbursement for the municipal services that state buildings consume. For at least a decade, the state budget paid a small amount to communities that host state prisons. This year, the Appropriations bill transfers these two payments totaling \$224,000 from being paid from the state General Fund (and thus from state taxpayers) to the state buildings PILOT fund that is funded solely from local option tax revenues.

The \$4.5 million figure means that, overall, cities, towns and villages that host state buildings are being reimbursed for approximately 67 percent of the municipal property taxes that would have been paid if the state paid full property taxes for its buildings.

### **Tax Increment Financing Districts and Miscellaneous Tax (H. 888)**

**VLCT Staff Contact: Karen Horn**

On the penultimate day of this legislative session it looked like the miscellaneous tax bill was not going to pass. Members of the conference committee agreed to disagree and return to their respective chambers with that report. Then, like a phoenix rising from the ashes, H. 888 was agreed to and passed on the final legislative day. The miscellaneous tax bill is just that – it makes changes to miscellaneous sections of statute affecting taxation in the state of Vermont. Many of the bill’s tax adjustments that affect local governments are discussed in other articles in this Wrap-up that pertain to education funding and municipal finance.

One of H. 888’s main stumbling blocks to getting various legislative factions to agree had to do with revisions to tax increment financing, and that is the subject of this article.

A TIF (tax increment financing district) is a geographic area designated by a municipality for redevelopment within which newly generated property tax revenues are dedicated to retire debt that is incurred to fund infrastructure improvements in the district. A municipality may establish a TIF pursuant to provisions of Title 24 chapter 53, subchapter 5. That statute allows municipalities to establish TIF district boundaries to provide revenues for district improvements that would encourage development or redevelopment, provide for employment opportunities, improve or

broaden the tax base, enhance the general economy of the municipality, region or state, or any combination of the above. Infrastructure to support that development would be paid for by indebtedness that is repaid from municipal property tax revenues from up to 75 percent of the increment of new education property tax revenue created as a result of the development or redevelopment within the district. The entire TIF is approved by the Vermont Economic Progress Council (VEPC).

Legislation passed in 2006 substantially revised statutes regulating the creation of TIFs, including the ability to use up to 75 percent of education fund money to repay TIF debt. In fact, some of the 2006 amendments inadvertently made it extremely difficult for municipalities to use the new TIF program. Last year, the Senate passed TIF legislation in S. 191. In April of this year, the House Ways & Means Committee took up the entire issue of TIFs – including not only the Senate legislation but also several amendments proposed by VLCT that grew out of roundtable forums with local officials last summer. In addition, three municipalities that host TIFs under the pre-existing statute requested amendments to address new issues around financing and reappraisals of property inside TIF boundaries.

As passed, the miscellaneous tax bill makes several amendments to TIF statutes. It deletes a reference to a definition of what is a “related cost” that may be paid with TIF revenues, thereby providing municipalities with more flexibility to pay costs associated with the ongoing operation of a TIF. The kinds of financing that may be repaid by TIF revenue are expanded beyond just bonds, which is how the Tax Department was interpreting “financing”. Now included in the definition of financing are bonds, Housing and Urban Development Section 108 financing instruments, inter-fund loans within a municipality, State of Vermont revolving loan funds and U.S. Department of Agriculture loans.

H. 888 makes clear that the purpose of TIF districts is to provide revenues for improvements that not only are physically within the boundaries of the district but also serve the district – for instance, that portion of a wastewater treatment facility outside the district that provides wastewater management capacity to the district.

A TIF may incur its first indebtedness at any time within the first five years after creation of the district. If the municipality misses that window, it must seek re-approval from VEPC. The education tax increment may be retained for up to 20 years beginning with the initial date of the first debt incurred within either the first five years or the re-approval period. In repaying TIF debt, the legislative body of the municipality will need to pledge and appropriate state education fund and municipal tax increments in roughly the same proportion to each other. In other words, if the municipality is using 50 percent of new education tax revenues to repay its TIF debt, it will also need to use 50 percent of its new municipal property tax revenues for the same purpose. The voters of the municipality must authorize the local legislative body to pledge credit of the municipality up to a specified maximum dollar amount for all TIF debt obligations.

Municipalities with TIF districts shall report annually to VEPC and to the Tax Department regarding their scope of planned improvements, equalized education grand list value prior to TIF approval, original taxable property, tax increment, and annual amount of tax increment used as well as actual investment, financing repayments, escrow status and related cost accounting.

The Joint Fiscal Office and Tax Department are directed to analyze the fiscal aspects of the four existing TIFS, how to include the TIF property in determination of the municipality's common level of appraisal (CLA), how TIFS meet economic development goals, how homestead property within TIFS are handled, and additional financing instruments. The report is due to the legislature by January 15, 2009.

In this bill, new TIFs are limited to six in five years, beginning July 1, 2008. VLCT staff have heard of 22 towns that are interested in using TIFS. At least two towns are moving ahead with applications. Competition may be stiff for the program during the next year or two.

### **Basic Needs Budget (H. 776)**

**VLCT Staff Contact: Karen Horn**

This bill establishes a basic needs budget technical advisory council and requires the Joint Fiscal Office to develop a basic needs and livable wage report every year, which may serve as an additional indicator of wage and other economic conditions in the state. The basic needs and livable wage report "shall not be considered official state guidance on wages or other forms of compensation." *Basic needs* are the essentials required to run a household, such as food, housing, transportation, child care, utilities, health and dental care, taxes, rental and life insurance, personal expenses and savings. A *basic needs budget* is the amount of money a Vermont household requires to maintain a basic standard of living, using current state and federal data to calculate the costs of basic needs. A *livable wage* is the hourly wage required for a full-time worker to pay for one-half of the basic needs budget for a two-person household with no children and employer-assisted health insurance averaged for both urban and rural areas. The basic need budget technical advisory council shall meet at least once every ten years to review and make recommendations for changes to the methodology used to arrive at a basic needs budget.

## **EDUCATION FINANCE**

### **Education Property Taxes (H. 888; H.891)**

**VLCT Staff Contact: Steve Jeffrey**

Even in a year in which education property tax revenues slowed, the Education Fund continued its trend toward becoming more a sieve than a bucket with more exemptions from the property tax, more diversions of other revenue sources and more uses funded from it. Several non-profit skating rinks will be exempt from paying the education property tax for two years under H.888, the miscellaneous tax bill, as will two hospital affiliated health, recreation and fitness centers (for one year only). The Houlton Home, a residential care facility in Brattleboro, will have the value of its building exempted from the education property tax increased from \$50,000 to \$500,000. Several towns received one-time dispensations for CLA issues that developed after reappraisals. Taxpayers who missed the filing deadlines for homestead declarations and property tax adjustments last fall will be allowed to receive adjustments. Changes were also made on the Education Fund status in regards to the "tax increment financing" districts that several cities and towns have created to spur development. These are discussed elsewhere in this report.

The appropriations bill takes \$500,000 in Medicaid payments received for schools providing eligible services to special education students and diverts it to pay for a portion of the state Corrections Department's education program. In the past, these funds had always been deposited into the Education Fund to lower property taxes. It also requires that “[t]he corrections department shall by January 15, 2009 report to the house and senate committees on appropriations and education, the house committee on ways and means, and the senate committee on finance on the goals, benchmarks, and achievements of the correctional education program along with future funding requirements.” You can bet that one of the recommendations or considerations will be that the Education Fund take on this new mandate.

Another expansion of the use of the Education Fund for providing state social service programs in the appropriations bill is a requirement that “a school district of residence shall make the following payments for a publicly funded pregnant or parenting pupil attending a teen parent education program:

*(1) The school district shall pay the teen parent education program 83 percent of the prior year's statewide average net cost per pupil, as calculated under 16 V.S.A. § 825 minus debt service, prorated based on the pupil's full-time equivalent enrollment, as defined by state board rule, in academic courses at the teen parent education program.”*

The Department of Education estimated that 150 student a year would be eligible for such new payments, with about 100 full-time equivalents. The statewide average cost last year was \$11,380 per student; schools will have to pay these service agencies \$960,000. Since schools only get their funds from the Education Fund, it is unlikely that school districts will be able to realize any savings from a student being absent at one of these programs to offset this new expense. And since property taxes are responsible for all funds not coming from some other source, there is no question that this will be borne by the property taxpayer. As we told you earlier this session, this Education Fund use came about after these programs were deemed ineligible for federal welfare funds and the scramble for replacement funds was on.

This year for the first time since the enactment of Act 68, the state education property tax rates remained unchanged from last year's rates. Non-residents will be paying \$1.36 and residents \$.87 on property values, or 1.80 percent of income if eligible. Right now it looks very likely that the rates will have to be increased next year by at least one cent and possibly two, as all these changes above, continued growth in school spending and more normal growth in property values take effect.

No matter that the House passed language clarifying that the property tax adjustment information on the property tax bills and in town financial records were public – in the end, the legislature took no action clarifying whether such information is public or confidential. This means another year of confusion and uncertainty on the part of treasurers and taxpayers as to what should happen if a request for such information is made.

Lastly, H. 888 takes away the option voters in towns with more than one tax payment date had last year to decide how to apply the property tax adjustment payments – all against the first bill or prorated against all payments equally. Since the law has changed the process used last year so that towns will not have the adjustment payments made to them on July 1 to apply against the adjustments issued to taxpayers, the bill requires that the adjustments be made equally across all payments. The state will instead credit the appropriate amounts against what the towns would otherwise have to pay their school districts. Some town officials are concerned that taxpayers who have had either the credits or a check from the state to apply against the first payment may be rudely shocked when they

get their tax bills this summer. VLCT will be encouraging state officials to actively notify taxpayers to prepare for this change.

## **MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION**

### **Municipal Technical Amendments (H. 436, Act 121) VLCT Staff Contact: Karen Horn**

H. 436 was introduced to clear up some technical aspects of the statutes relating to municipalities. VLCT originally made the request based on the types of questions that are regularly asked of Municipal Assistance Center staff. As often happened this session, the legislation ultimately sported more than the originally requested items. Nonetheless, the Government Operations Committees were gracious in their strong support of the initial effort. In the House, committee members said they would like to consider a technical amendments bill every year, in order to clean up the municipal statutes over time. Anything of a controversial nature would not be included in such a bill.

As passed, H. 436 (Act 121) simplifies the petition to nominate a candidate for an office on a party primary ballot and clarifies that the town clerk must certify the authenticity and number of signatures on a statement of nomination for the office of president or vice president. Only the number of signers certified by the town clerk shall count toward the required number of signatures, which are 1,000 for president or vice president and 500 for state and congressional offices. A statement of nomination and completed and signed consent form shall be filed not sooner than the first Monday in June and not later than the third day after the primary election. These sections of the bill take effect upon passage (April 25); the rest of the bill takes effect July 1.

Act 121 deletes references to the non-existent office of “clerk-treasurer” where it appears in the election statutes. It provides that at all elections using the Australian ballot, the polls may open as early as 5:00 a.m. and must open by 10:00 a.m. Public discussion of ballot items and other issues appearing in the warning may take place at the annual meeting, regardless of where the polling place is – either at the same place as the annual meeting or somewhere else.

The selectboard may apply for and accept grants beyond those approved in the budget, and must report all such receipts of funds in its annual report. New language clarifies that a municipality may adopt its budget via one article or separate articles, putting to rest the concern raised by a court decision this winter that a budget could only be adopted via one article.

A municipal technical amendment bill could not escape without reference to domestic pets or wolf hybrids. Act 121 makes clear that the voters may authorize the local legislative body to deviate from statutes that regulate ordinances addressing domestic pets and wolf-hybrids. It also specifies that the municipality may regulate the keeping, leashing, muzzling, restraint, impoundment and destruction of domestic pets or wolf-hybrids and their running at large.

Selectboards shall still appoint a tree warden, because the office has specific responsibilities, but now may choose whether or not to appoint fence viewers, poundkeepers, inspectors of lumber and shingles and weighers of coal – offices that are generally considered to be archaic.

Numerous changes to the municipal planning statutes were proposed this session. In the end, the only change was to clarify that in a town with a population of more than 2,500, the local legislative body is the entity to adopt bylaws, bylaw amendments or bylaw repeals, unless the local legislative body decides to put the matter to a popular vote via Australian ballot. In a town with fewer than 2,500 residents, the voters may vote at a special or annual meeting to have bylaws, amendments or repeals adopted by a vote of the town. That method of adoption will then remain in effect until rescinded by the voters.

Several sections were added to this legislation that clarify the state auditor's authority to audit state entities. It also establishes that if a municipality, county or school district is using state dollars for a project, the state auditor may audit those funds.

### **Instant Runoff Voting (S. 108)**

**VLCT Staff Contact: Trevor Lashua**

**VETOED**

A bill that would have made Vermont the first state to elect its federal delegation via instant runoff voting (IRV) was vetoed by the governor following narrow votes to pass the bill by the House and Senate. The legislature did not attempt to override the veto.

The bill, S.108, would have used IRV in the elections for Vermont's lone seat in the U.S. House of Representatives as well as the state's two U.S. Senate seats. With an implementation date in 2008, IRV would only have been used to determine the winner in the congressional race. (The next U.S. Senate race is in 2010.)

IRV is an election method in which voters rank candidates in order of preference. A common example illustrating how it works is based on an election featuring three candidates. The voters rank the candidates in order of preference (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>). If one of the candidates receives a majority of the first place votes (50 percent of all votes cast plus one vote), he or she is declared the winner.

If no candidate receives the required majority, the two candidates receiving the highest totals of first choice votes advance. The second choice votes of those voters who marked the third candidate as their first choice are re-apportioned to the other two candidates, based on which of the remaining two candidates was ranked second on those ballots. The goal is to have a candidate at the end of the process with the necessary mathematical "majority" to be declared the winner.

While no state uses IRV in the manner proposed by the legislature, the City of Burlington does use it to determine the winner of its mayoral races.

### **Public Records (S. 229; S. 351, Act 96)**

**VLCT Staff Contact: Trevor Lashua**

The legislature passed a pair of bills this year in an attempt to clean up and clarify access to and management of public records.

S.229 changes the language, but not the substance (the new language conforms to the interpretation of the previous language), of the definition of a public record or public document. A public record or document is now defined as "any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business." Any denial

of access to public records or documents must be in writing, and may be appealed to the “head of the agency” (presumably the selectboard or city council, though it is not defined in the bill).

The bill also mandates that vital records – birth and death certificates, marriage and civil union licenses, and documents certifying a divorce – must be printed on unique paper approved and provided by the commissioner of the Vermont Department of Health beginning on January 1, 2010.

Another bill the governor has signed into law is S.351, which consolidates the state’s archival and records management programs under the state archivist in order to provide a more effective and efficient public records management program. The previous process included the archivist and the Department of Buildings and General Services, with that bifurcation occasionally preventing the program from operating most efficiently.

**The Right to Attend Town Meeting (S. 45)**  
**VLCT Staff Contact: Trevor Lashua**

This bill makes it illegal for an employer or school official to penalize an individual for attending Town Meeting. With seven days’ notice from the employee, and barring the absence of any conflict with the efficient operation of a business, all employees are free to attend Town Meeting. Leave granted for that purpose is considered unpaid leave. Students of voting age will not be considered truant and cannot be penalized for attending Town Meeting.

**Administration of the Voter’s Oath (S. 366, Act 113)**  
**VLCT Staff Contact: Trevor Lashua**

In another attempt to remove some of the perceived hurdles to voter registration and participation, the legislature passed a bill that broadens the list of people who can administer the voter’s oath to someone who registers.

In addition to town clerks and board of civil authority members are now included commissioned military officers and any other person who is at least 18 years old. Whoever administers the voter’s oath must sign, along with the voter, a document affirming as much. That document is then turned over to the town clerk.

The bill became law without the governor’s signature.

**Mobile Polling (S. 232, Act 111)**  
**VLCT Staff Contact: Trevor Lashua**

This bill creates a mobile polling pilot project whose goal is to deliver ballots to facilities where those with mobility challenges can cast absentee ballots. Local election officials who represent different political parties, coordinated by the town clerk, will make absentee ballots available at the mobile polling site. Absentee ballots collected at the mobile polling site are handled in a manner similar to absentee ballots received in the clerk’s office (placed in an envelope and sealed, then stored in the town vault with other absentee ballots received). The pilot project expires on July 1, 2009.

**Executive Fee Bill (H. 691)**  
**VLCT Staff Contact: Karen Horn**

The executive fee bill, which is passed every year, makes miscellaneous changes to fees assessed by state and (sometimes) local governments. This year, only a couple of fee changes affected local governments. The bill clarifies that a town taking over an orphan stormwater system does not have to pay application or operation fees thereon. Last year, the legislature had intended to relieve towns that assumed responsibility for orphan stormwater systems from paying operation fees. It was discovered after the previous session had adjourned that the legislature relieved those towns from paying application fees, but not the operation fees as well.

The bill provides for enhanced drivers' licenses in conformance with federal law. It increases the fees paid to courts, including the Environmental Court.

The state contracts with a private entity to run a statewide spay-neuter program (VSNIP) for domestic pets and wolf hybrids. The program is paid for by a \$2.00 surcharge on domestic pet and wolf hybrid licenses, and is paid by the municipal clerk to the state treasurer. That program ran out of money this year. We are told that is partly because towns do not aggressively compel the owners of unregistered, unlicensed pets to get their pets licensed. Whatever the reason for the shortfall – and despite our belief that the state should collect its own fees to run its own programs – the legislature tagged another dollar onto VSNIP. So, effective July 1, the surcharge will be \$3.00. At the same time, the legislature imposed a requirement on veterinarians to biannually provide a copy of certificates of rabies vaccinations to the Agency of Agriculture, Food and Markets. The Agency then provides copies of those certificates to the clerk of the municipality in which the animal's owner resides (also biannually).

This is not an exhaustive list of the bill's contents, but it does address the issues that relate to municipalities.

<b>TRANSPORTATION</b>
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**Transportation Bill (H. 889)**  
**VLCT Staff Contact: Trevor Lashua**

While downgrades in Transportation Fund revenue were expected by many, the new wrinkle to the transportation funding dilemma Vermont faces was a significant downgrade in General Fund revenue as well – a situation that temporarily put the funding levels for local highway and bridge programs in jeopardy this year and endangers funding levels in future years.

The final outcome, however, was decidedly better than what was once feared after the revenue downgrade. The local highway aid programs did not fare as well in FY09 as they did in FY08, but funding levels did end up in a better position than in the governor's recommended transportation budget for FY09. (See table on page 3 for a breakdown.)

Town Highway Structures received a funding increase for the first time in six fiscal years – the additional \$389,000 raises the grant program's level from \$3.49 to about \$3.83 million (a 9.7 percent

increase). Class 2 Paving, which had crested in FY08 at \$6.75 million, thanks to a one-time contribution of General Fund surplus, did not quite reach that level. However, the \$6.45 million approved by the legislature is an increase of 12 percent from the governor's budget recommendation (\$5.75 million).

Town Highway Aid was level-funded for the fourth consecutive fiscal year at \$24.98 million, though the House-passed version of the transportation bill did include a nearly \$450,000 increase. Class 1 Supplemental Aid was level-funded (\$130,000) for the third consecutive fiscal year.

The legislature did place an additional \$250,000 in the Town Highway Emergency Fund, and the fund – which already had about \$200,000 remaining from FY08 – is in good shape should an emergency situation (like flooding) occur.

Determining exactly how the Town Highway Bridge program fared is difficult, due to the fact that the program was included in the \$10 million in bonding approved in the Capital Bill as part of the governor's and legislature's economic stimulus package.

Looking first at the base funding levels, the program took a rather significant hit when compared with both the figures FY08 and the governor's proposed budget. State and federal funding for Town Highway Bridges in FY09 is down nearly \$6 million from FY08 levels, and is \$1.2 million below the governor's recommend. The breakdown of Town Highway Bridge funding at this time is:

- \$16.53 million in state and federal funding for FY09;
- the first \$136,000 of the \$10 million in transportation bonding from the economic stimulus package (this is for the Agency of Transportation to use to draw down federal earmarks included in the 2005 federal transportation authorization, known by its acronym, SAFETEA-LU);
- the second \$200,000 of the bonding package to fund other Town Highway Bridge projects in the transportation program.

Based on a list of Town Highway Bridge projects submitted to the legislative Joint Fiscal Committee by the Agency of Transportation after adjournment, it looks like another \$1.88 million (in federal and state funding) will be added to the program, bringing the total funding to \$18.41 million.

Also tied to the \$10 million bonding package is a further reduction of the cap on the transfer of Transportation Fund dollars to the General Fund to support public safety (primarily the Vermont State Police). Dropping the cap from a little more than \$35 million to a shade under \$33 million continues a trend the legislature and governor have supported in recent years as Transportation Fund revenue becomes ever more scarce.

Funding for the Enhancement Grant program and the Bike and Pedestrian Facilities decreased again. The 18 percent decrease in funding for the Enhancement Grant program (from \$2.85 million for FY08 to \$2.42 million in FY09) is actually less than what it was for FY08, when funding was cut by about one-third. The funding cut for Bike and Pedestrian Facilities came in at a more modest 9.5 percent (from \$6 million for FY08 to \$5.48 million in FY09), though that figure does represent a larger percentage decrease than last year. New projects are not being accepted for the Bike and Pedestrian Facilities program by the Agency of Transportation until projects currently in the program are completed, which is estimated to occur in 2012 or 2013.

The transportation bill also included \$3 million for an initiative introduced as “Operation Smooth Ride,” which called for pavement overlays on approximately 80 miles of highway – almost exclusively state highway miles – in response to the pothole problem experienced across Vermont this spring. Only 5.6 miles (7 percent) of the 80 miles identified are Class 1 town highways. None of the initiative’s funding was allocated for other municipal highways, despite the fact that they comprise 80 percent of Vermont’s more than 14,000 road miles. The House did pass a version of the paving proposal that would have allocated \$2 million of the \$3 million for paving on Class 2 town highways. Following a brief disagreement between the House and Senate, a decision was made to revert back to the original proposal. The funding for the initiative comes from an adjustment to the FY08 budget, however the language authorizing it was included in the transportation bill – which is the FY09 transportation budget.

The bill also includes a study by the state treasurer and the Agency of Transportation (VTrans) to find the best ways to analyze, maintain and rehabilitate bridges and culverts, as well as to find ways to fund those rehabilitation and maintenance needs. The report will include a five-year preventative maintenance plan and estimates on replacement costs for structures that are 70 or more years old, and must be in the hands of a “special committee” (comprised of legislators, state officials and two gubernatorial appointees – with no designated slots for local officials despite the potential impact on funding for local infrastructure) by mid-November. By setting mid-November as a due date for the report, the legislature is allowing the governor and his staff to examine the committee’s recommendations for possible incorporation into the proposed transportation budget for FY10.

The bill contains a few policy changes that will either have a direct impact on local government or will serve as points of interest.

The first is a provision that adds statutory language mandating that other motorists must yield the right-of-way to an authorized maintenance vehicle (state or municipal) engaged in “work” with its lights flashing.

Another policy addition is the legislature’s directive to VTrans to work with the Agency of Natural Resources to look at ways to increase the sources of aggregate materials (such as crushed rock) and examine the installation and use of portable asphalt pavement plants for resurfacing projects. The results of the effort must be reported to the House and Senate transportation committees next year. The goal is to find ways to reduce the costs of paving projects. Along those cost-saving lines, the bill allows the Agency to use an asphalt mix containing as much as 50 percent recycled asphalt (RAP) in certain projects. (The Agency must submit reports to the legislature in 2009 and 2010 on the results of that increased use.)

A study with potential policy implications is a public transit study that asks VTrans and the legislative Joint Fiscal Office to “further study and develop” how public transit is delivered in Vermont. Among the recommendations the report must include are funding and governance models. The stated aim of this study is improve intra-agency cooperation and explore funding mechanisms.

## **Ancient Roads (S. 107)**

**VLCT Staff Contact: Trevor Lashua**

The July 1, 2009 deadline for towns to research and add town highways commonly known as ancient roads before they become “unidentified corridors” has been extended to July 1, 2010.

S.107, the bill that includes the deadline extension, also restricts the use of the mass discontinuance procedure – the one tool municipalities have to obtain closure to the ancient roads question sooner than July 1, 2015 – to the point that only a handful of municipalities who have performed extensive ancient road research efforts will be able to use it.



The deadline extension refers to Act 178, a.k.a. “the ancient roads law” which, when passed by the legislature in 2006, was designed to establish a process from which certainty could be derived about whether and where hard-to-see or forgotten roads existed. Through its actions that year, the legislature created a new category of town highways known as “unidentified corridors.” A town highway may only become an unidentified corridor on July 1, 2009 if all four of the following criteria were met: it was legally established; it does not appear on a town highway map or sworn certificate of highway mileage on July 1, 2009; it is not a legal trail; and it is “not otherwise clearly observable by physical evidence of its use as a highway or trail.”

Act 178 also includes a provision that all unidentified corridors – and *only* unidentified corridors – will be automatically discontinued on July 1, 2015. Until then, a town can retain the highway by adding it to its town highway map and sworn certificate of highway mileage. The process for adding such a highway is much less rigorous before it becomes an unidentified corridor. As a result, many municipalities have recruited volunteers to engage in Herculean research and mapping efforts to identify all highways ever established in their communities. By passing S.107, the legislature gives those volunteer groups another year – until July 1, 2010 – to complete their work before roads become unidentified corridors.

The change made to the mass discontinuance procedure makes it available only for the discontinuance of town highways “not otherwise clearly observable by physical evidence of their use as a highway or trail.” The change effectively requires towns to have identified all highways within their municipal boundaries that are or are not “otherwise clearly observable by physical evidence of their use as a highway or trail” in order to discontinue any that might fit that description. For towns choosing not to embark on research and mapping efforts, the change almost ensures that the certainty desired by the legislature, title attorneys and insurers, bankers, and landowners will not occur until the July 1, 2015 deadline when all unidentified corridors are discontinued. The work needed to use the procedure will outweigh its value to many municipalities.

For more information on Act 178 and its impact on municipalities, please visit the VLCT Resource Library at [www.vlct.org](http://www.vlct.org) and search for “ancient roads.”

## HOUSING

### Vermont Neighborhoods, Mobile Homes, Landlord-Tenant Relations and Residential Lead-Based paint Poisoning Prevention (H. 863)

VLCT Staff Contact: Karen Horn

The process to finalize the Vermont Neighborhoods bill in the Senate and between the two chambers in conference committee was unconventional, but in the end produced a bill that could pass.

H. 863, as passed by the House, was sent to the Senate Economic Development and General Affairs Committee, where it disappeared for some time while an informally designated group of people tried to hash out some of the significant issues among developers, housing advocates, environmental advocates, local officials and administration officials that arose as a result of the House-passed language. H. 863 is yet another instance of a significant bill passing in the last throes of the session and getting all kinds of tangentially related issues piled on at the end. Thus, the finished bill touches all kinds of housing related issues.

H. 863 defines a Vermont Neighborhood as “an area of land that is in a municipality with an approved plan, a confirmed planning process, zoning bylaws and subdivision regulations and that is located in one of the following:

- (i) A designated downtown, village center, new town center, or growth center [we will refer to these as designated areas]; or
- (ii) An area of land that is within the municipality and outside but contiguous to a designated downtown, village center or new town center, and is not more than 100 percent of the total acreage of the designated downtown, 50 percent of the total area of a village center, or 75 percent of the area of a new town center ...”

“Contiguous land” must:

- complement the existing downtown district, village center or new town center;
- be served by either a municipal sewer infrastructure or an agency approved community or alternative wastewater system;
- incorporate minimum residential densities of no fewer than four units of detached dwelling units per acre and higher densities for multiple unit structures; and
- incorporate neighborhood design standards that promote compact, pedestrian and bicycle oriented development patterns that connect with adjacent development areas.

The dictionary defines contiguous as “touching, meeting or joining at the surface or border, close together.” Contiguous is closer than adjacent, another term used frequently in the discussions of designated areas legislation.

An eligible municipality may apply for a Vermont Neighborhood designation and will receive automatic approval if the acreage is within one of the designated areas. If designation is sought for acreage contiguous to a designated area in a municipality without a growth center (everywhere except Williston right now), the expanded downtown board shall review the application and decide if Vermont Neighborhood designation should be granted. The board may reduce the size of the proposed area, but may not increase it beyond that proposed in the application. The board’s

designation decision is not appealable. Initial designation is for five years. Thereafter, the designation renewal would coincide with that of the underlying downtown, village center or new town center. If the underlying designation terminates, so will that of the Vermont Neighborhood. If the board decides that a Vermont Neighborhood no longer qualifies for designation, it may require corrective action, remove designation while leaving previously accorded benefits in place, or limit benefits in the future.

New town centers have been allowed if they do not exceed 125 acres in area, an arbitrary limitation that effectively rendered useless the category of a new town center. This bill would allow a new town center of 175 acres in a municipality with a population of more than 15,000 under certain conditions established in statute.

There are incentives for developers in the bill. The Agency of Natural Resources (ANR) will charge no more than \$50 for municipal wastewater hookups, and Act 250 permit fees will be halved. No land gains tax will be levied on the first transfer of land after designation in a Vermont Neighborhood.

Act 250 criteria 5 (traffic) and 9(L) (rural growth areas) were the subject of intense disagreement during the session and H. 863 nearly foundered on the issue, however the bill makes no changes to them. That discussion is moved to a Smart Growth Study Committee, which must report back on these and other issues related to Act 250 and the program's effectiveness by January 15, 2009. A representative of VLCT is included on the committee.

The number of housing units that triggers Act 250 is increased in mixed income Vermont Neighborhoods based upon the overall population in the municipality hosting the Neighborhood. Also, Act 250's definition of mixed income housing is established in the bill. Affordable housing is likewise defined for Act 250 purposes.

By January 15, 2009 ANR must report to the legislature regarding its adherence to municipal pollution control priority system rules. While this may seem out of place, several environmental advocates are convinced that ANR does not follow its policy to extend wastewater treatment facilities only to smart growth locations – thus the requirement for the report.

Despite intense discussion, there are no incentives for local governments to host a Vermont Neighborhood.

The makeup of the Downtown Development Board is amended in this bill as well as in H. 669. The commissioner of Housing and Community Affairs and the secretary of Human Services are removed from the board. New members will be added from lists submitted by the Vermont Natural Resources Council, the Preservation Trust of Vermont, Smart Growth Vermont and the Association of Chamber Executives. This board's sole purpose is to approve or disapprove municipal designations of different kinds of planning areas. It is comprised of five state officials, three private non-profit environmental groups, one chamber of commerce representative, and three public members representative of local government.

The bill requires that recommendations for use of state land suitable for affordable housing be developed by the Department of Housing and Community Affairs (DHCA) in consultation with the Vermont Housing Finance Agency and the Vermont Housing and Conservation Board and

delivered to the legislature by January 15, 2009. Likewise, DHCA must report on the number of Vermont Neighborhood applications, the number and description of units created, fees charged by municipalities and how they are used, an evaluation of incentives or disincentives to municipal participation in the program and any other information useful to determining the program's success. Each regional planning commission is to inventory and map locations within its region served by municipal wastewater and water supply services and suitable for infill development and report to the legislature by January 30, 2009.

H. 863 also establishes a rental housing registry, a safe rental housing task force that includes a municipal inspection program representative, two town health officers, a rental housing safety and habitability fund, a rental housing safety inspector licensing program and inspection program, plus provisions for a municipality to administer the program itself, if it so chooses.

The bill incorporates legislation providing lead screening for children and processes for lead paint removal and certification of lead paint free housing. It amends the definition of mobile homes as real estate if financed as residential real estate and provides a deed for mobile home and a process for conversion from personal to real property in the clerk's office. It also amends the law relating to mobile home park sales as well as landlord tenant law and cause for eviction from rental housing.

While the final bill is enormous, much work remains to produce a meaningful housing program that meet all the needs of local officials, housing advocates, developers and environmentalists. Much of that work should be accomplished before the 2010 legislative session.

**Mobile Homes (H. 330, Act 120; H. 331; H. 332; H. 863)**  
**VLCT Staff Contact: Karen Horn**

Several provisions affecting the sale, ownership and regulation of mobile homes passed in the waning hours of the legislative session and they were attached to two different bills.

H. 330 repeals the statute enabling municipal ordinances that regulate mobile home/trailer parks if the ordinance was adopted pursuant to Title 24 chapter 61 subchapter 9. The ordinances may remain in effect until July 1, 2010. Chapter 61 establishes municipal police powers. And subchapter 9, adopted in 1957, both enables municipalities to regulate trailer parks and specifies the components of their regulation.

VLCT staff know of only two municipalities, Guilford and Benson, that still regulate mobile homes pursuant to the subchapter 9 ordinance. Most towns now address mobile homes and other residences in their zoning bylaws.

The substance of H. 331 (mobile home financing) and H. 332 (mobile home park sales and closures) both were included in what ended up being the omnibus housing bill, H. 863. The bill amends the definition of mobile homes to be real estate if a mobile home purchase was financed as residential real estate after July 1, 2008. The statute provides forms of a mobile home warranty deed and a quit claim deed for a mobile home and a process for conversion from personal to real property in the municipal clerk's office.

H. 863 as passed also amends the law relating to mobile home park sales revising when, to whom and under which circumstances they may be sold. The objective of the statute is to protect those who live in mobile home parks, whether they own their own unit or rent.

## **PUBLIC SAFETY**

### **Justice Reinvestment (H. 859)** **VLCT Staff Contact: Trevor Lashua**

Trying to find a way to reduce state expenditures on corrections, along with reducing the number of Vermonters entering and returning to prison, the legislature passed a bill that is the first step in implementing a strategy known as “justice reinvestment.”

The centerpiece of the bill, H. 859, is a shift in philosophy regarding how offenders with substance abuse problems are treated when incarcerated and in the community. The focus on offenders with substance abuse issues came from an analysis of Vermont’s offender data by consultants from the Council of State Governments (CSG) that found that substance abuse is an underlying factor in a large number of the crimes committed in Vermont.

The bill uses funding from the corrections budget for FY09, along with up to \$3 million saved from a major reorganization of correctional facilities, to reinvest in substance abuse treatment as well as supervision, transitional housing and vocational training.

The bill’s focus is primarily on getting non-violent offenders into residential and community-based substance abuse treatment programs. A likely result is that more offenders will be under the supervision of the Department of Corrections (DOC) in community settings. The legislature, realizing and responding to that reality, included offender supervision ratios in the bill as a way to ensure that caseloads of probation officers do not become overloaded – thus leaving offenders unsupervised or local police to do the job.

The offender supervision ratios, which are similar to those in place in other states and were agreed to by VLCT, DOC and the Vermont State Employees Association (representing corrections’ field staff employees) are:

- One probation officer for every 45 offenders in the “risk management” category (the highest level of supervision) who were convicted of listed offenses (the most serious offenses);
- One probation officer for every 60 offenders in the general “risk management” category;
- One probation officer for every 150 offenders in the “response supervision” category (low risk offenders);
- Unspecified numbers for “administrative probation” (the lowest level of risk possible).

Any probation officer with a “mixed” caseload profile (meaning that he or she is supervising offenders from a combination of the categories listed) will have caseload numbers capped at the “risk management” level if one-third of the offenders supervised fall into that category. Risk management is the category in which offenders require the most intensive supervision.

One of the more controversial provisions of the bill is the reorganization of three of Vermont's prison facilities. The first step is the closure of the Dale Facility in Waterbury – the smallest of the state's facilities and home to a group of female offenders. Dale is the state's most expensive facility on a cost-per-offender basis. The second step is to renovate the facility in St. Albans, home to only male offenders now, to become a facility for female offenders. The third step involves making the Windsor facility, the other location for female offenders, a work camp featuring intensive substance abuse treatment programming for male offenders. The women from Windsor would be moved into the St. Albans facility along with the women from Dale. The male offenders in St. Albans would be moved to other Vermont facilities, to out-of-state facilities, to the Windsor work camp, or, in some cases, released into community settings. The move is estimated to save the state as much as \$3 million.

In order to mitigate some of the increased transport costs that local law enforcement in Franklin County faces due to the reorganization (and subsequent loss of holding cells for male detainees), the bill includes \$20,000 for the construction of holding cells in St. Albans City. There are likely to still be increased transport costs for communities with law enforcement in that area that currently rely on the St. Albans facility for the placement of detainees.

Somewhat worrisome for local officials is the inclusion of language dealing with public inebriates. In July of 2011, the incarceration of individuals simply because they are inebriated will be illegal. In the meantime, a public inebriate task force (which includes a member designated by VLCT) has been directed to investigate and make recommendations on how to handle public inebriates, with a deadline of reporting to the legislature in January 2009.

While much of the discussion at the Statehouse focused on the idea that the Vermont Department of Health will acquire and provide secure beds for public inebriates (in either state-owned or non-profit facilities), there is a danger that the economic crunch faced by government at all levels will result in cities and towns being forced to accept the responsibility for public inebriates that the state took over decades ago. Municipalities would then be forced to construct or alter their own facilities, hire staff, find a way to provide necessary medical care and screening, and face potential liability issues.

The bill also includes a provision to establish transitional units at the correctional facility in St. Albans. Transitional units let offenders work or attend appointments during the day (such as substance abuse treatment) and still have a supervised place to return to at night. This allows the offenders to acquire employment and build up the necessary economic resources to obtain and retain housing – which they cannot do without that steady income. In recent years, as many as 100 offenders have remained incarcerated due to the lack of housing.

Electronic monitoring, along with the use of other technological options, is expanded in the bill as a way to augment DOC's supervisory capabilities. The most common is the global positioning system ankle bracelet, though the Department is investigating innovations such as transdermal patches, which can detect the presence of alcohol in an offender's system, and breathalyzer-style ignition locks for multiple DUI offenders that will not allow the vehicle to start if the offender is found to have consumed alcohol.

## **Community Justice Centers (H. 257, Act 115)**

**VLCT Staff Contact: Trevor Lashua**

The moment the governor affixed his signature to H. 257, the existence of the 12 community justice centers scattered across the state became official. The bill was drafted with the goal of making state law reflect what has become practice. H. 257 is also an attempt to further the state's commitment to restorative justice, along with extending and supporting the relationships among the justice centers, law enforcement and the general public.

Municipalities can create community justice centers through the action of a selectboard or city council. The justice centers can then be tasked with creating procedures to resolve civil disputes, as well as finding ways to repair the harm done by community members who have committed municipal, juvenile and criminal offenses.

With substantial focus on the rapidly escalating costs of corrections in this and past years, alternatives to the criminal justice system such as community justice centers may play an ever more important role.

Another important part of the bill is a section clarifying that a municipality is liable only for the "acts and omissions" of its employees working with the community justice centers and operating within the scope of their employment. All others, especially volunteers, fall under the liability umbrella of the Agency of Human Services (if the agency is the source of funding for the program – and it is the source of a majority of the funding for the community justice centers).

## **Embezzlement by Public Officials (H. 636)**

**VLCT Staff Contact: Karen Horn**

Unfortunately, there have been several instances of elected officials mishandling public funds in the last several years. H. 636 was introduced to address limitations in the law when the actions of elected officials related to the management of public funds are before the courts. H. 636 provides that if a person appearing before the court prior to trial is a state, county or municipal official, the court may suspend the officer's duties in whole or in part if it is necessary to protect the public. Once an officer is suspended, the bill specifies how his or her replacement is designated. In the instance of a local official, the local legislative body or the town may designate someone to perform that officer's duties.

The state auditor is also enabled to subpoena people to testify and administer oaths and examine persons regarding any matter relating to statutory duties of the auditor.

## **Law Enforcement (H. 619, Act 136; H. 891; S. 240, Act 140; S. 357)**

**VLCT Staff Contact: Trevor Lashua**

This year, a number of law and policy changes affecting law enforcement can be found both in single-issue bills as well as in other multiple-issue ones. The majority, however, are located within the appropriations bill (H. 891).

The Vermont Drug Task Force, a cooperative venture between local and state law enforcement agencies, will receive \$190,000 to fund three new town task force officers to focus on heroin and

heroin-related (crack cocaine, oxycontin, methamphetamine, and so on) drug crimes. Another \$50,000 is set aside for the city of Rutland to fund a similar position for one year.

Another cooperative, multi-jurisdictional law enforcement venture, the Special Investigation Unit (SIU), received a significant boost in funding. SIUs investigate and prosecute crimes such as sexual assault. The funding for the grant program was increased to \$620,000 for FY09, up from \$496,000 appropriated for the current fiscal year. The grants help to fund the creation of SIUs, while also paying for ongoing operational costs such as training.

Of interest to law enforcement at all levels (though targeted at state law enforcement) is a report that examines ways to mitigate an anticipated public safety budget shortfall. A key component of the report is the management practices of the Department of Public Safety employed while reducing any shortfalls, such as keeping open positions vacant. Due to budgetary constraints at both the local and state levels, along with the difficulties associated with police officer recruitment and retention in Vermont, an increased number of public safety jobs may be left unfilled. Reports are due to the legislative Joint Fiscal Committee in September and November.

A question first raised when the House passed its version of the budget remains unanswered in that document's final version: will any of the funding for the state-operated public safety answering points (PSAPs) make its way to the four municipal PSAPs that will be handling an increased volume of E-911 calls? An examination of the language included in the budget ("... at public safety answering points operated by the department of public safety.") suggests the answer is no, though Vermont E-911 officials have indicated a desire to use revenue from the universal service fund to provide some assistance.

Stepping outside the scope of the appropriations bill, S. 240 extends the sunset of the law enforcement exemption included in personal information security breach legislation passed in 2006. The exemption from the law, which established procedures and penalties for the unlawful electronic dissemination of or access to personal information (such as social security numbers), was set to expire on June 30, 2008. The exemption will instead be in place until June 30, 2012.

A domestic violence bill (S. 357) that passed towards the end of the session includes several sections directly affecting local law enforcement, the foremost of which is the imposition of a new training requirement. The bill requires law enforcement officers to receive eight hours of domestic violence-related training by 2010 in a program approved by both the Criminal Justice Training Council and the Vermont Network Against Domestic and Sexual Violence. After that, officers must be re-trained on the subject every two years.

S. 357 makes it a crime to interfere with emergency service personnel (police, emergency medical technicians, etc.) performing their duties during or after a domestic violence incident. The penalty includes a prison term of up to one year, a maximum \$5,000 fine, or a combination of the two.

The bill also creates a new Vermont Council on Domestic Violence tasked to create a "statewide effort to eradicate domestic violence." The council includes a representative from the Vermont Police Chiefs' Association.

A harassment and bullying study also found its way into the bill. The study committee – which includes a law enforcement officer appointed by the Department of Public Safety who has some

knowledge of and experience in investigating computer crimes – is charged to examine training needs for school staff on harassment and bullying. That training provision includes the examination of necessary policy or legislative changes required to tackle the issue of cyber-bullying.

One final provision in S. 357 that affects local government more generally was oddly included in this bill and not the executive fee bill that also passed. The domestic violence bill contains a substantial (almost doubling) increase in the fees for issuing and recording marriage and civil union licenses. The fee, formerly \$23 per license, will now be \$45 per license. The \$22 increase is broken down into a \$2 per license increase for town clerks (raising the fee they retain from \$8 to \$10), plus \$20 headed for the victim’s compensation special fund. Neither VLCT nor the town clerks’ association was consulted regarding this significant increase.

An item of interest for local law enforcement is found in H. 619, a bill regarding the certification of nurses who perform examinations in cases of suspected sexual assault. A municipal police officer, along with an officer working with a Special Investigate Unit (who could also be a municipal police officer), has been added to the Sexual Assault Nurse Examiner Board. That board establishes the educational and training requirements for nurses to earn certification as sexual assault nurse examiners, as well as adopting standardized protocols and examination kits for hospitals and physicians.

### **Fire Safety, Emergency Management, and Other Public Safety Issues (H. 112)** **VLCT Staff Contact: Trevor Lashua**

The 2008 legislative session, in contrast to the previous two, was a relatively quiet one for fire, emergency medical service and emergency management policy. The appropriations bill included \$55,000 for dry hydrants in rural areas and another \$30,000 for the state to contract with a radio station serving the Vermont Yankee emergency planning zone (the evacuation area in the event of a problem at the plant located in Vernon). The Capital Bill included \$100,000 for dry hydrants as well, as it has for many years.

The legislature also passed H.112, which allows emergency services personnel (police, fire, EMS personnel) who have been exposed to the blood of someone they have encountered through the course of their duties to have that individual’s blood tested for communicable diseases. The “source patient” can be tested if he or she gives consent or is deceased. The cost of all testing is to be paid for by the employer (most likely a municipality). No additional funding sources were identified in the bill.

### **Law Enforcement Training (H. 599)** **VLCT Staff Contact: Karen Horn**

This bill is entitled “Boating While Intoxicated” and generally that is what it addresses. However, a requirement for elected officials (sheriffs or constables) who exercise law enforcement authority to first obtain law enforcement training (offered in Vermont at the Police Academy) was added to the bill at the end of the session. The subject had been discussed early in the session. The Constables’ Association, Sheriffs Association and VLCT agreed that people who engage in law enforcement activities should be trained before undertaking those activities.

## **ENVIRONMENT AND QUALITY OF LIFE**

### **Phosphorus Discharges and Cleanup of Lake Champlain (H. 873, Act 130) VLCT Staff Contact: Karen Horn**

At the onset of this year's legislative session, an explosive issue on the environmental front was legislation passed in 2007 that is slated to take effect July 1, 2008. That legislation (Act 43) stated, at section 5, that

“The secretary of natural resources shall reopen the total maximum daily load (TMDL) plan for Lake Champlain as it pertains to the waters of Vermont in order to:

... (C) Ensure that the total annual phosphorus discharged by all wastewater treatment facilities in the aggregate does not exceed the total phosphorus load discharged to Lake Champlain by all wastewater treatment facilities in the aggregate in 2006 and to adjust aggregate total phosphorus load allocations to Lake Champlain accordingly; ...”

The legislation presents two major problems. A TMDL is a total maximum daily load allocation agreement for a body of water – in this case, Lake Champlain. The TMDL affects the entire Lake Champlain basin, which includes 145 municipalities in Vermont, 57 in New York and 37 in Quebec. Reopening the TMDL is not a Vermont-only proposition. New York, Quebec and the U.S. Environmental Protection Agency (EPA), among which the TMDL was negotiated, were also implicated. Severely restricting phosphorus discharges from municipal wastewater treatment facilities will cost money that could be spent far more effectively on reducing the non-point source discharges that comprise 90 percent of the phosphorus problem in Lake Champlain.

In February, the House took up the phosphorus and TMDL issues and passed H. 873. Late in the discussion, the permitting of composting facilities – particularly the existing composting facility at the Intervale in Burlington – became a significant issue, so composting was added to the bill. The requirement to reopen the TMDL and to mandate that aggregate phosphorus discharges from wastewater treatment facilities meet 2006 limits was eliminated by the House, to the tremendous relief of local officials. VLCT supported H. 873 as passed by the House. The Senate Natural Resources Committee then took up H. 873 in April and made several substantial changes to the House-passed version, including reinserting a requirement that the Lake Champlain TMDL be reopened on July 1, 2013. Following stops in money committees, the amended bill was sent back to the House. But instead of appointing a conference committee, the House agreed to all of the Senate-proposed changes. The governor signed the bill on May 12.

The bill that the governor signed requires the Agency of Natural Resources (ANR) to issue a revised Vermont-specific implementation plan for the Lake Champlain TMDL by January 15, 2010 and give the legislature a description of the contents of the plan and the process followed to get there. The plan shall be amended and updated every four years, beginning January 15, 2013; reports to the legislature shall accompany each update. The implementation plan –developed with consultation of all interested groups, including VLCT – must include a comprehensive strategy to implement the Lake Champlain TMDL and for remediation of the lake. The implementation plan's components include:

- developing a process for identifying critical source areas for non-point source pollution in each sub-watershed of the lake;
- developing site specific plans to reduce point source and non-point source load discharges in critical source areas;
- developing a method for identifying public and private land pollution control projects to provide the greatest water quality benefits to the lake;
- developing a method to account for changes in phosphorus loading in the lake;
- developing phosphorus reduction targets for each water quality program and each segment of the lake, including benchmarks for phosphorus reduction;
- establishing a method for coordination and collaboration of water quality programs within the state; and
- developing a method of offering incentives or disincentives to reduce phosphorus contribution of stormwater discharges in the basin.

In addition, beginning February 1, 2009 and every year thereafter, ANR shall provide the legislature a report on the Clean and Clear program (the governor's program for reducing phosphorus discharges to Lake Champlain) that includes a summary of activities and measures of progress for each program supported with Clean and Clear Action Plan funding.

ANR must submit a schedule to issue implementation plans for TMDLs that address EPA-approved stormwater-impaired waters of the state. The schedule is to go to each municipality with a stormwater impaired water body and the legislature. Also included will be a schedule for submitting remaining TMDL plans to the EPA.

H. 873 also provides for a residential subdivision to transfer an ANR-issued stormwater discharge permit on or before June 30, 2004 (a pre-transition stormwater permit) to a municipality if the municipality assumes responsibility for permitting the stormwater system.

Under current law, up to 10 percent of the money in the state revolving loan fund for wastewater treatment facilities may be used to construct stormwater management facilities. This is a fund to which dollars are allocated each year in the capital bill. This year the total amount appropriated (and spoken for) is \$ 5.7 million. H. 873 allows up to 30 percent of state revolving loan fund dollars to be used for stormwater management facilities, although no additional dollars were put in the fund.

The bill that eventually passed amended the statute that was passed two years ago requiring wastewater treatment facilities to prepare and implement an operation, management and emergency response plan for their collection facilities. New language makes clear that, as part of a pollution abatement facility permit, the municipality must prepare and implement an operation, management and emergency response plan for those portions of each pollution abatement facility that includes the *treatment facility, the sewage pumping stations and the sewer line stream crossing*. As of July 1, 2010, ANR shall require a similar plan for the sewage collection systems that will be included in the permit. The plan will be subject to public review and inspection. Despite assurances that this language was just a clarification, it is clearly an expansion of the statutory requirements for operations, emergency and response plans to address the entire system.

The section on composting facilities establishes that, until July 1, 2010, a composting facility holding a solid waste permit issued after January 1, 2001, will not need an Act 250 permit, unless the composting activities exceed the limits of the solid waste permit or constitute a substantial change at

the facility from its activities as they were on April 29 (the date of passage). ANR is directed to convene a committee to review the existing regulatory requirements for compost and recommend changes thereto to the legislature by January 15, 2009. Its members will include a representative of VLCT.

ANR is also required to provide the legislature by February 1, 2009 a report on the development of incentives or disincentives for wastewater treatment plants to maintain 2006 levels of phosphorus discharge to Lake Champlain. Most of the bill – except the Lake Champlain TMDL reopener (effective July 1, 2013) and the section on composting regulatory review (effective upon passage and retroactive to June 1, 1970) – takes effect upon passage (April 29).

### **Energy Efficiency and Affordability (S. 209, Act 92)** **VLCT Staff Contact: Karen Horn**

S. 209 is the bill that the Senate passed during the special session in July 2007 after the governor vetoed H. 520. Last session, the legislature passed H. 520, an energy and climate change bill. The governor vetoed the bill because it contained an increased tax on Entergy, the nuclear power plant in Vernon. In a special session on July 11 that failed to override the governor's veto of H. 520, the Senate introduced and passed S. 209. The bill was sent to the House Natural Resources Committee on July 11, ready to be taken up by that committee when the legislature reconvened in January 2008. While the bill incorporated a number of sections that were in H. 520, the House and Senate committees worked with the administration to include some new sections. The Entergy tax was also not included, which enabled the governor to support and sign S. 209.

S. 209 is a comprehensive bill (much of which does not directly affect municipalities). It establishes a state goal of producing 25 percent of the energy consumed in Vermont from renewable energy sources, particularly from Vermont's forests and farms, by the year 2025. The secretary of the Agency of Agriculture, Food and Markets and the commissioners of the Departments of Public Service (DPS) and Forests, Parks and Recreation are to present a plan to achieve that goal by January 15, 2009. DPS must also present an updated comprehensive energy plan by that date.

The DPS commissioner is also directed to incorporate updated standards for residential construction under the international energy conservation code in updates to the Residential Building Energy Code. Similar updated standards are to be incorporated in Commercial Building Energy Standards (CBES). Commercial building construction projects that seek a local building permit or construction plan approval from the DPS commissioner shall be designed and constructed to comply with CBES standards after January 1, 2007, unless they are exempted in statute or receive a variance from the commissioner. The program would be self-certifying and a private right of action would be established.

The bill calls for several studies or investigations:

- smart metering (installing meters that can send two-way signals and support differentiated pricing based on time of use of electricity);
- energy pricing schedules that encourage conservation;
- the potential to create a public power authority;
- guidelines for property valuation of net-metered systems;
- evaluation of the need (if any) to amend conservation flow standard for water quality review of proposed hydroelectric facilities; and

- an estimate of the cost to produce a fish study methodology for the state that addresses flow needs and protection of aquatic habitat while also providing permit applicants with a reliable and agency accepted method for conducting fish studies.

It would allow utility customers to develop a facility to generate electricity of up to 250 kilowatts capacity and net-meter (i.e., feed electricity that the customer does not use) back into the system and receive payment for it from the utility in whose service area the customer resides. A municipality at an annual or special meeting could vote to exempt net-metering facilities from real and personal property taxation. Each utility or municipal electric department would have to implement a PSB-approved renewable energy pricing program for customers, or offer the option of making a voluntary contribution to the Vermont Clean Energy Development Fund by July 1, 2009.

An all-fuels efficiency fund would be established to augment the efforts of Vermont Energy Investment Corporation (VEIC) and Efficiency Vermont in the areas of electricity efficiency. The fuel efficiency fund will be used to support the delivery of energy efficiency services to Vermont heating and process fuel consumers and to carry out cost-effective efficiency measures and reductions in greenhouse gas emissions from those sectors.

Wind-powered generating facilities with an installed capacity of at least five megawatts – placed in service after January 1, 2007 and holding a valid certificate of public good from the Board – would pay an alternative education property tax on buildings and fixtures used exclusively to generate electrical energy from wind power. The tax rate would be \$0.003 per kilowatt hour produced as evaluated by DPS, but not less than the rate assessed if the facility operated at 15 percent of its capacity. This special method of assessment applies to education property taxes, however it would have no affect on municipal property taxes.

The Agency of Natural Resources is required to report to the legislature by January 15, 2009 with an estimate of the cost to produce a fish study methodology for the state, provided that the methodology is feasible and addresses flow needs and the protection of aquatic habitat. It must also provide applicants for Agency permits and certification for hydro capacity with a reliable and Agency-accepted method for conducting fish studies.

The legislature did not ignore the issue of Entergy this session – it passed S. 373. The bill would require that a company with a nuclear plant seeking a certificate of public good from the Public Service Board demonstrate that it has adequate funds to pay for complete and immediate decommissioning at the time of the acquisition, and that the means are in place to assure on at least an annual basis that these funds and financial guarantees will be adequate for such purpose at all times during the future operation of the plant. The governor vetoed that bill.

## **Energy Independence (S. 350)**

**VLCT Staff Contact: Karen Horn**

Energy conservation, climate change and encouraging energy independence in Vermont are the subjects of this second energy bill which started in the Senate Natural Resources Committee, ballooned to include a vast array of energy related issues and then, when considered in the House Natural Resources Committee and passed by the House, shrank back to a fairly manageable bill. Much of S. 350 does not specifically relate to local governments but rather directs the state

government to reassess its operations and infrastructure in light of energy conservation, greenhouse gas emission and renewable energy goals.

S. 350 establishes a Vermont Climate Collaborative (among state government, higher education, business, agriculture and environmental communities) to develop state programs to reduce greenhouse gas emissions in ways that are permanent, quantifiable and verifiable. A climate change oversight committee is also created. It consists of nine members who shall not be members of the general assembly at the time of appointment and who have skills and knowledge that support the committee's needs. The primary mission of the committee shall be to consider the recommendations of the governor's commission on climate change and its plenary group, and the recommendations of the Vermont Council on Rural Development, and to delegate and oversee program development by appropriate working groups that make recommendations with regard to how climate change issues should be addressed in statute and as part of the climate change action plan.

The bill directs the secretary of the Agency of Natural Resources to:

- develop a Vermont greenhouse gas inventory and greenhouse gas reduction goals;
- provide for participation in regional greenhouse gas inventory and registry;
- ensure energy efficiency in the operation of wastewater treatment facilities; and
- address recycling and composting in solid waste planning.

Legislation directs the Agency of Transportation to coordinate planning and education efforts with the Vermont Climate Change Oversight Committee and those of local and regional entities, as well as to assure that the transportation system and access to it are integrated, and statewide, local and regional conservation and efficiency opportunities and practices are likewise integrated. Specific consideration is to be given to public transit, alternative transportation and ride share opportunities

S. 350 amends municipal planning statutes (24 V.S.A. § 4414) to specifically enable municipalities to include green development incentives in zoning bylaws.

### **Groundwater (S. 304)** **VLCT Staff Contact: Karen Horn**

On April 28 the legislature passed S. 304, a bill that would establish a program to regulate the withdrawal of groundwater. S .304 establishes groundwater resources as public trust waters, but specifies that *“designation of the groundwater resources of the state as a public trust resource shall not be construed to allow a new right of legal action by an individual other than the state of Vermont, except to remedy injury to a particularized interest related to water quantity.”* Under the bill, the following would be presumed to be consistent with the public trust:

- groundwater withdrawals permitted by the newly established program;
- public water systems using groundwater, except for bottled water systems permitted prior to April 28, 2008 (the date the bill passed);
- potable water systems permitted under the Potable Water Supply and Wastewater System Permit; and
- appropriate agricultural withdrawals.

Beginning September 1, 2009, any person who withdraws more than 20,000 gallons per day averaged over 30 consecutive days at a single source would have to file a groundwater report with the

secretary of the Agency of Natural Resources (ANR) by September 1 for the preceding year. Exempt from the reporting requirement are:

- withdrawals for fire suppression or other public emergency purposes;
- public water systems (defined as providing drinking water through pipes or other conveyances that have at least 15 service connections or serve at least 25 individuals for at least 60 days);
- geothermal heat pumps used for residential heating; domestic, residential use; and
- withdrawals reported to ANR that require the reporting of similar data because of other regulations.

After July 1, 2010, anyone who seeks a new or increased withdrawal of more than 57,600 gallons a day from wells or springs on a single tract of land or place of business would need to obtain a permit from ANR. Public water systems and the rest of the list in the previous paragraph are likewise exempt from this permitting requirement. An applicant would need to notify the clerk, legislative body and any conservation commission in the municipality in which the proposed withdrawal is located, adjoining municipalities and the host regional commission as well as all adjacent homeowners, including all residents of any mobile home park that might adjoin the proposed withdrawal site, and any public water systems. The applicant must demonstrate that the proposed withdrawal is consistent with the host town or regional plan and with any adopted state policy to manage groundwater as a shared resource for the benefit of all citizens of the state, including state policies and programs regarding long-range planning, management, allocation and use of groundwater and surface water in effect at the time the application is filed. Permits would be valid for ten years. Any permit would specify that groundwater withdrawals for drinking water supplies, farming or dairy processing be given priority in times of shortage. A person who obtains and complies with provisions of the permit shall be presumed to be engaged in a reasonable use of groundwater, and not to be causing unreasonable harm.

A large farm operation or licensed milk handler that withdraws more than 57,600 gallons of groundwater per day averaged over a 30-day period shall annually report estimated water use to the secretary of Agriculture, Food and Markets, and share that information with the secretary of ANR. Any withdrawal of more than 340,000 gallons per day is defined as a development subject to Act 250.

Despite the above exemptions, the bill provides that the ANR secretary may require any person not otherwise exempted that withdraws groundwater to obtain a permit if the withdrawal violates the Vermont Water Quality Standards, or has an “undue adverse effect” on an existing use of groundwater, a permitted public water system, wetlands or water resources hydrologically connected with the well or spring from which the withdrawal occurs.

The secretary of ANR must adopt rules implementing provisions of S. 304 by July 1, 2010.

## **Downtown Board and Brownfield Remediation (H. 669)**

**VLCT Staff Contact: Karen Horn**

Early in the session (February 1), the House passed H. 669, a bill that would add the state historic preservation officer as a new member to the Downtown Board. In a change that reflects the real time it takes to implement provisions of a designated area, the Downtown Board would review a designation every five years instead of the three years now required. It could review compliance more often than every five years. The bill clarifies that if a designated downtown, village center or

new town center no longer meets the designation requirements, the Board may limit eligibility for benefits under the program without affecting previously awarded benefits.

When the bill arrived in the Senate, the Senate Economic Development, Housing and General Affairs Committee added a new chapter to create a brownfields property cleanup program in the Agency of Natural Resources (ANR). In substantially the form voted out of that Senate committee, H. 669 passed the legislature and now (as of May 24) awaits the governor's signature.

Brownfield sites that could help revitalize an area if remediated are often located in or adjacent to designated downtowns or village centers, which are historic centers of commerce. The proposed program would enable interested parties to request ANR assistance in investigating, abating, removing, remediating and monitoring certain brownfield properties if the properties are not the subject of court orders, corrective action or closure requirements pursuant to specific federal laws. The applicant pays an oversight payment fee, initially \$5,000 to cover ANR's costs to review a site investigation or corrective action plan, or both.

In exchange, eligible interested parties would be protected from certain liabilities for hazardous waste releases addressed in a corrective action plan approved by the ANR secretary. Owners or secured lenders whose interest in a property is primarily to assure repayment of a financial obligation and who had no role in any generation, storage, disposal, or release of hazardous material at the site, never operated or controlled operation of a facility, nor generated the hazardous materials disposed of at the site, are considered "eligible interested parties."

The program will require development and implementation of a site investigation work plan followed by a site investigation report. Once the many T's are crossed and I's are dotted, the secretary will either approve the site investigation report or require submission of a corrective action plan for approval. An implemented, corrective action plan must meet remediation standards developed on a site-specific basis that address future land use, requirements for source removal, treatment and containment, and any issue related to protection of public health and the environment.

If everything is completed to the ANR secretary's satisfaction, he or she will issue a certificate of completion. The certificate will include a description of any land use restrictions and other conditions required by the corrective action plan, any conditions for operation and monitoring at the site, and a statement that a release from liability is in effect. The applicant is then be relieved of liability for:

- releases addressed in the corrective action plan;
- releases discovered after completion of the corrective action plan by means not available or recognized at the time of approval of the plan; or
- releases of materials not recognized as hazardous waste at the time of approval of the plan.

The liability release will not be transferable upon change of ownership.

The bill also establishes a brownfield advisory committee and brownfield revitalization fund to aid applicants in the assessment and remediation of sites. The Agency of Commerce and Community Development (ACCD) will administer the fund in consultation with ANR. The fund may provide grants from the ACCD secretary or loans from the Vermont Economic Development Authority. ANR and ACCD are directed to jointly develop a state plan for brownfield reclamation, including an inventory and assessment of potential sites, prioritized by the ease of reducing the threat to public health, the availability of development opportunities and the highest expected return on public

investment. The existing chapter regulating redevelopment of contaminated properties would be repealed.

**Monochloramine (S. 368, Act 133)**  
**VLCT Staff Contact: Karen Horn**

An issue that exploded in the Senate early in the session was the use of monochloramine by water supply systems. Monochloramine is a disinfectant comprised of a blend of chlorine and ammonia. Presently, only one system in Vermont uses monochloramine, but its use has raised concerns about the health effects on users of the water.

Primary disinfection treats bacteria, viruses and other organisms found in source water for public water supplies. Secondary disinfection treats microbial organisms that grow in the distribution system that carries potable water to homes and businesses. The U.S. Environmental Protection Agency (EPA) established maximum contaminant levels for disinfection byproducts in water supplies that will take effect in 2012. Municipal surface water supplies will have to meet those levels. There are three disinfectants in common use in public water systems today that address secondary disinfection: chlorine, monochloramine and chlorine dioxide. Each of these disinfectants has been used around the country successfully to address different situations. According to the EPA website, monochloramine has been used successfully since the 1930s.

In April 2006, after considerable research and approval of the Department of Environmental Conservation, the Champlain Water District applied monochloramine to its water supply as a secondary disinfectant. The District determined that the other two options (chlorine or chlorine dioxide) would be ineffective at disinfecting the distribution pipes, particularly those some distance from the treatment plant. The Champlain Water District, which serves nine towns in Chittenden County and 68,000 customers, is the first district to attempt to meet EPA's new stringent disinfection standards, but is by no means the only system that will be required to change its practices to meet those standards.

Local officials in at least 27 municipalities served by municipal water supplies are under the gun to comply with federal secondary disinfection requirements. At this time, there are only three options for disinfectants, and one of them – chlorine dioxide – seems to be ineffective in most Vermont water distribution systems. As passed, S. 368 requires the Agency of Natural Resources to consult with the Department of Health and not approve new disinfectants for water supply systems if there are likely to be adverse effects that result in public health hazards. Public notice is required of applications to use new types of disinfectants and public hearings must be held if requested.

**The Right to Express Milk at Place of Employment (H. 641)**  
**VLCT Staff Contact: Karen Horn**

This bill establishes the right for nursing mothers to express breast milk at a place of employment for three years after the birth of a child, unless providing the time to do so would seriously disrupt an employer's operations. The time may be compensated or uncompensated at the discretion of the employer unless there is a contract covering that issue. The employer must provide appropriate private space that is not a bathroom stall. Governmental bodies are entities included in the bill.

## HEALTH CARE

### Health Care (H. 887) VLCT Staff Contact: Dave Sichel

Although the legislature wanted to push forward with a broad and comprehensive health reform bill, a lack of funding prevented this. Many of the proposals that died because of a lack of state funding would also have increased health insurance premiums and thus put additional burdens on property tax payers. The bill that passed, H. 887, contained a variety of studies and plans to reform the health care system and improve public health. It also contains a number of provisions aimed at reducing the number of uninsured Vermonters and sets rules for payment of medical claims.

Of particular interest to municipalities is a study to develop a proposal to merge, by calendar year 2011, the non-group (including Catamount Health), small group, and association (including the VLCT Health Trust) markets. The study is to be done by the legislative Health Care Commission. The language of the bill concludes that, “The continued fragmentation of risk pools and structural issues with the individual and small group markets present major obstacles to achieving universal coverage and stable premium rates.” We disagree with this conclusion, which is the basis for the study. We believe that merging these groups would lead to *higher* health insurance costs that increase at a faster rate, worse service, and fewer health insurance options for employers and employees. For more information on this topic, please see [Weekly Legislative Report No. 10](#).

Also of interest is a new “fee” (which seems like a tax to us) on private health insurance plans. This new “fee” of 0.199 percent of health claims paid was included in the appropriations bill. The tax provides funding to Vermont Information Technology Leaders (VITL), a private not for profit group set up to develop a statewide electronic medical records system. The funding from this tax will help fund the operation of VITL and provide grants to doctors to purchase computer systems and cover annual maintenance costs for these systems. The tax will raise an estimated \$27 million over the next seven years. Very little testimony was taken on this tax. This is another form of Medicare cost shift because the state-funded Medicare system is not contributing a proportionate share of the cost of the VITL plan.

### Workers’ Compensation (S. 345) VLCT Staff Contact: Dave Sichel

A workers’ compensation reform bill, S.345, was adopted this session that makes a number of tweaks to the system. Of particular interest to municipalities are three sections of the bill.

First, the bill allows employers to pay small, up to \$750, “work-related first aid only treatment” claims without reporting them to their workers’ compensation insurer. The employer will still be required to file a First Report of Injury with the state Department of Labor. Although allowing the employer to pay these small claims may appear to save money, we believe it will, in fact, increase costs and complicate the system. A much better way to allow employers to manage their workers’ compensation risk and reduce insurance costs is provided by another new provision of the bill.

This new provision requires insurers to offer small deductible (\$500) workers’ compensation policies. This deductible would apply to all workers’ compensation claims and would continue the

current system in which the employer files a First Report of Injury with the insurer and then the insurer electronically files the First Report of Injury with the Department of Labor. This allows a claim to be properly investigated and assures that medical payment will not exceed the amount allowed in the state medical fee schedule.

Finally, the bill changes the number of weeks of wages to be used in the calculation of the Average Weekly Wage. This amount is used to determine weekly lost time benefit payments to injured workers. Currently, 12 weeks of history is used for this calculation. The recently passed bill increases the time period to 26 weeks. This will require some additional administrative work by employers to provide this data. It will also provide a better snapshot of an injured employee's earnings by smoothing out overtime and other seasonal variations in hours worked.

## **LEGISLATIVE STUDY COMMITTEES**

Generally in an election year, there is a noticeable drop in the number of summer study committees that are established in legislation. Legislators have other things on their minds as the campaign season gears up. But this year is an exception – the legislature established summer study committees to refine recommendations on numerous issues in lieu of providing funds to actually implement programs. As always, these committees are add-ons to already full plates for agencies, legislative staff and other participants. Frequently, some of those other participants include local government representation. If you have a particular interest in one of these issue areas, please let Karen Horn or Trevor Lashua know. Study reports to the legislature are due January 15, 2009 unless otherwise noted.

Following is a summary of those committees that local officials will need to follow.

### **Energy Efficiency and Affordability (S. 209, Act 92)**

The Department of Public Service (DPS), Agency of Natural Resources (ANR), Agency of Agriculture, Food and Markets (AAFM), Public Service Board (PSB) and Department of Taxes (DOT) are directed to undertake investigations of a number of issues that include:

- a plan to produce 25 percent of energy needed in the state through renewable energy resources by 2025, with updates generated every three years (ANR, AAFM);
- an update and evaluation of residential building energy standards and commercial building energy standards (DPS to update and implement via rule);
- an investigation of smart metering – i.e., installing meters that send two-way signals and support differentiated pricing based on time of use of electricity (PSB);
- an investigation of expanding efficiency programs of gas utilities (DPS);
- energy pricing schedules that encourage conservation;
- creation of a public power authority;
- guidelines for property valuation of net-metered systems;
- an evaluation of the need (if any) to amend conservation flow standard for water quality review of proposed hydroelectric facilities; and
- an estimate of the cost to produce a fish study methodology for the state that addresses flow needs and protection of aquatic habitat while also providing permits applicants with a reliable and agency accepted method for conducting fish studies.

### **Lake Champlain Cleanup and Phosphorus Discharge Reductions (H. 873)**

ANR must issue a revised Vermont-specific implementation plan for the Lake Champlain TMDL (Total Maximum Daily Load) by January 15, 2010 and provide the legislature with a description of the process to get there. The plan shall be amended and updated every four years, beginning January 15, 2013. Reports to the legislature shall accompany each update.

Beginning February 1, 2009 and every year thereafter, ANR shall give the legislature a report on the Clean and Clear program (governor's program for reducing phosphorus discharges to Lake Champlain) that includes a summary of activities and measures of progress for each program supported with Clean and Clear Action Plan funding.

ANR must convene a committee (including a representative from VLCT) to review the existing regulatory requirements for compost and recommend changes thereto to the legislature.

ANR is also required to give the legislature a report on the development of incentives or disincentives for wastewater treatment plants to reduce phosphorus discharges to the lake.

### **Capital Construction and State Bonding (S. 365)**

S. 365 authorizes the state treasurer to issue a further \$10 million in general obligation bonds for transportation upon the Capital Debt Affordability Advisory Committee (CDAAC) considering how much "additional long term net tax supported debt may be prudently authorized for transportation related uses that could assist in closing the gap between transportation needs and available revenues." CDAAC must make its recommendation to the legislative joint fiscal committee and the chairs of the House and Senate transportation committees by October 1, 2008, for FY09 and FY10. (The Agency of Transportation gave an initial project lost to the Joint Fiscal Committee on May 20.) Future debt service for any bonds authorized through this process will be repaid from transportation fund revenues. This is the first time that the legislature and governor have been willing to consider bonding for long-term transportation projects and represents a recognition of the scope of the shortfall in transportation funds relative to the need to maintain our transportation infrastructure.

Language in the bill also requires ANR, the administration's office of Finance and Management and the Joint Fiscal Office to study their process for determining when to request general obligation bonds for projects to be funded from the pollution control and clean water revolving loan funds and when funds are paid to the recipient (i.e., the municipality).

The commissioner of Buildings and General Services and the court administrator are directed to conduct an inventory of all county courthouses, including ownership of each courthouse, number of state courts occupying space in them, agreements for use of space and a recommendation for a fee for space formula for state court use of them.

By October 1, 2008, the ANR secretary shall meet with representatives of any municipality that wants to evaluate treatment options for upgrade of their wastewater treatment facility. As part of the evaluation, ANR shall consider alternative options for upgrade, including tertiary filter options, as well as full life-cycle costs of the project, whether borne by ANR or the municipality.

The commissioner of Education, VLCT, superintendents and school boards associations, principals association and Vermont's National Education Association are directed to develop incentives for school boards, school administrators, selectboards and city councils to collaborate in ways to reduce property taxes.

The Department of Housing and Community Affairs shall report to the legislature on past performance of revolving loan funds supported by Community Development Block Grant (CDBG) appropriations along with recommendations for improvements.

### **Public Inebriate Task Force (H.859)**

With a pending (July 2011) change in law that makes it illegal to incarcerate an inebriated individual in a facility operated by the Department of Corrections, an essential question remains unanswered: what happens to public inebriates then? A task force created in the bill, which includes a member appointed by VLCT, is tasked with answering that question.

### **Vermont Council on Domestic Violence (S.357)**

Included in a broad reaching domestic violence bill, the Vermont Council on Domestic Violence is really a long-term committee as opposed to a summer study committee. The job of the Council – which includes a representative from the Vermont Police Chiefs' Association – is to create and subsequently improve Vermont's "statewide effort to eradicate domestic violence."

Also included is a summer study committee to focus on harassment and bullying. The committee includes a law enforcement officer appointed by the Department of Public Safety who has both a knowledge of and experience in investigating computer crimes. The study's report must include an examination of and recommendations for training for school staff on harassment and bullying, including cyber-bullying.

### **Transportation Bill Studies (H.889)**

From a municipal perspective, one of the most important summer study committees is one by the state treasurer and the Agency of Transportation (VTrans) to find the best ways to analyze, maintain and rehabilitate bridges and culverts and to find ways to fund those rehabilitation and maintenance needs. Included in the study is a five-year preventative maintenance plan and directive to work out estimates on replacement costs for structures that are 70 or more years old. A "special committee" of legislators, state officials and two gubernatorial appointees will review the plan and make recommendations. There is no designated local representative, so, despite the potential funding impact for local highway aid programs, the study could be incomplete. The special committee's recommendations will be forwarded to the governor for potential inclusion in her or his proposed transportation budget for FY10.

Another study in the transportation bill that affects municipalities is a public transit study that asks VTrans and the Joint Fiscal Office to "further study and develop" how public transit is delivered in Vermont. Recommendations must include funding and governance models and achieve the goals of improving intra-agency cooperation and funding mechanisms.

### **Miscellaneous Tax Bill (H. 888)**

The Joint Fiscal Office and DOT are directed to analyze the fiscal aspects of the four existing TIFs, how to include TIF property in determining the municipality's common level of appraisal (CLA), how TIFs meet economic development goals, how homestead property within a TIF is handled, and additional financing instruments appropriate to a TIF.

### **Vermont Neighborhoods (H. 863)**

ANR must report to the legislature regarding its adherence to municipal pollution control priority system rules. Several environmental advocates are convinced that the Agency does not follow its policy to extend wastewater treatment facilities only to smart growth locations. Thus, the requirement for the report.

A smart growth committee will review Act 250 criteria 5 (traffic) and 9 (L) (rural growth areas) as well as other issues related to Act 250 and the Vermont Neighborhood program's effectiveness. A representative of VLCT is included on the committee.