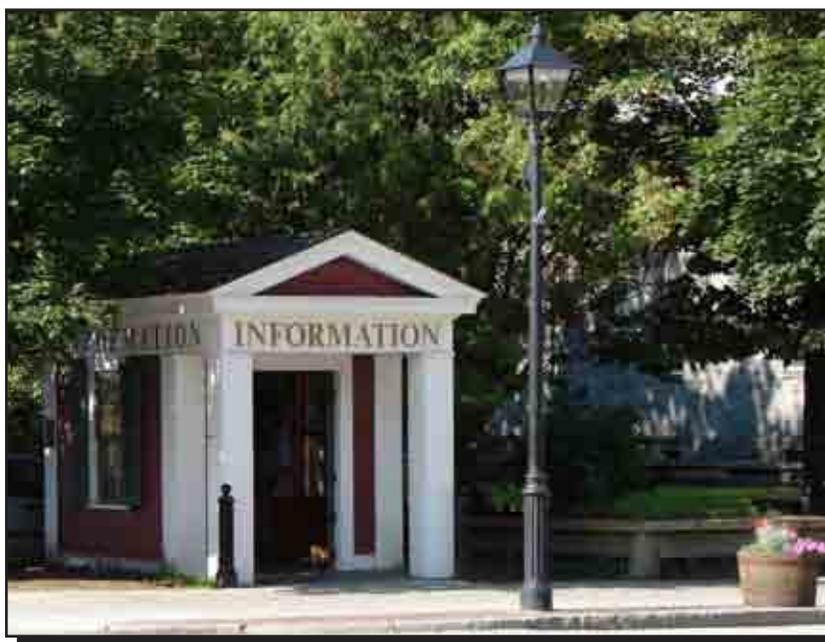


VERMONT LEAGUE OF CITIES AND TOWNS

LEGISLATIVE WRAP-UP



2010



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INTRODUCTION	1
MUNICIPAL FINANCE	
Appropriations Bill (H.789, Act 156).....	2
Capital Bill (H.790, Act 161).....	3
Current Use (H.485)	6
Restoring Solvency to the Unemployment Trust Fund (S.290, Act 124).....	11
Municipal Audit Reporting Requirements (S.187, Act 95)	12
Municipal Recovery of Costs of Fire Department Response (H.527, Act 90)	12
MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION	
Challenges for Change (H.792, Act 146).....	13
Judicial Restructuring (H.470, Act 154).....	18
Retirement Issues (H.778, Act 139).....	20
Fees (H. 759, Act 134).....	21
Primary Election Date Change (S.117, Act 73), Recounts (S.122, Act 98)	23
Sorting Early Voter Absentee Ballots (H.598, Act 70).....	24
Town Meeting Option (S.90, Act 125)	24
The Vermont Recovery and Reinvestment Act (S.288, Act 78)	25
Workers' and Unemployment Compensation (H.647, Act 142).....	26
Municipal Charters	26
EDUCATION	
Education Funding and Municipal Revenues (H.783, Act 160)	27
Other Relevant Education Law Changes (H.792, Act 146; H.66, Act 153; Act 74).....	30
TRANSPORTATION	
Transportation Bill (H.784, Act 123)	34
Overweight Commercial Vehicle Operation on the Interstate System (S.93, Act 63)	35
Private Road Maintenance Agreement Study (H.498, Act 131).....	36
Texting Ban, Junior Driver Restrictions (S.280, Act 150).....	37
Reserved Parking for People with Disabilities (S.150, Act 82).....	37
Chittenden County Transportation Authority (H.607, Act 71)	37
PUBLIC SAFETY	
Corrections Bill (S.292, Act 157).....	38
Constables; Municipality Exemption to Records Law (S.161, Act 108).....	40
Emergency Medical Services (H.647, Act 147).....	40
ENVIRONMENT AND QUALITY OF LIFE	
Renewable Energy (H.781, Act 159)	42
Growth Centers (S.64, Act 136).....	43
Potable Water Supply and Wastewater (H.779, Act 145).....	44
River Corridors (H.763, Act 110)	44
Encroachments on Public Waters (H.462, Act 117).....	46
Sale or Transfer of Mobile Homes (H.542, Act 140)	47
Guide Dogs (H.524, Act 121)	47
Liquor Tastings, Licenses (H.772, Act 102).....	48

	PAGE
Salvage Yards (S.237, Act 93)	48
Wood Fired Boilers (S.239, Act 94).....	49
Compost (H.614, Act 141).....	49
Removal of Bodily Remains (H.281, Act 151).....	50
 HEALTH CARE	
Health Care Reform (S.88, Act 128).....	51
Autism Coverage Mandate (S.262, Act 127)	53
 LEGISLATIVE STUDY COMMITTEES, NEW COMMISSIONS AND REPORTS.....	
	54
 CONSTITUTIONAL AMENDMENTS	
PROPOSAL 5	59

INTRODUCTION

The legislature finally adjourned at midnight on May 12 (or did it slide a bit into May 13?) after several botched attempts and a more chaotic than usual scramble to the finish. Confusion about what was or should be in the Challenges for Change legislation (H.792) as well as several failed efforts to reach agreement on both Challenges and the budget (H.789) with the governor delayed adjournment. Other bills hung in the balance until the very end of the session as well – the Miscellaneous Tax Bill (H.783), Health Care (S.88), and Corrections (S.292) were still up in the air on the final day. By the time the last gavel fell, everyone was tremendously relieved to depart the State House for the summer.

You will read in this report about the battles over use of the education property tax, responsibility for water quality, riparian buffers, and stormwater, renewable energy project permitting, current use, and corrections policy impacts in municipalities. No matter the session is over, these conversations are not! If the governor vetoes a bill, the legislature will reconvene to act on it June 9. Last year, the nine-member Joint Fiscal Committee met in July, August, September, October, and November, and while the straits are not as dire this year nor their latitude as broad, we should expect multiple meetings to address changes in revenue projections. The Government Accountability Committee, charged with legislative oversight of implementation of the Challenges for Change, already has scheduled meetings for June 7, July 12, August 2, September 13, October 4, November 8, and December 6. And a host of summer study committees were authorized on all kinds of subjects that relate to local governments – from charging for fire calls to regional planning and economic development to undergrounding of utilities in downtowns.

Generally speaking, legislation takes effect on July 1, concurrent with the start of the new fiscal year. If an article does not specify a date that a piece of legislation takes effect, you may assume that it is effective July 1.

Campaigns for statewide office – particularly governor, lieutenant governor, and secretary of state – have already begun, and legislators will be getting their names out this summer at farmer's markets and parades and community concerts. They may even knock on your door. If so, seize the opportunity to identify yourself as a local official. Talk to them about this session as well as your priorities for 2011. It is never too early to start the conversation!

VLCT's four municipal legislative policy committees – Finance, Administration and Intergovernmental Relations (FAIR); Public Safety; Transportation; and Quality of Life – will meet during the summer to develop a legislative policy for 2011 that is responsive to the continuing economic recession and that targets local government's most pressing needs. Even if you are not a member of one of these committees, please send us your recommendations for municipal legislative action (to Karen Horn at khorn@vlct.org). This year, Town Fair is October 7 at the Champlain Valley Fairgrounds, where the VLCT Municipal Policy will be debated and adopted. Each town and city has one vote. Make yours count! Join us in Essex for the Fair!

Municipal Finance

Appropriations Bill (H.789, Act 156)

VLCT Staff Contact: Steve Jeffrey

It was not until the day of adjournment that an accord was struck on the budget that would avoid a gubernatorial veto. That resulted in the approval of a state General Fund appropriation of \$1.08122 billion for fiscal year 2011, up by \$180,000 over the final version of the budget for the current year. Details of the state’s nearly \$578 million transportation budget were approved earlier in H.784 and represented an increase of \$40 million over that currently being spent.

Municipal priorities pretty much lined up with the overall budget outcomes, with many being level-funded or up modestly. There were a couple of bright spots in the transportation area as the table on page 3 shows in detail. The biggest budget line item affecting municipalities and property taxpayers is the General Fund support for local schools, which is down \$3 million net from last year. To reach the bottom-line figure of \$276.4 million, just follow the money in the table below.

General Fund appropriation	\$240,803,945	H.789, Sec. B.513
ARRA money provided to school districts	+ \$38,575,036	H.789, Sec. B.505
Contingent transfer to Ed. Fund to be repaid to General Fund in FY12	+ \$3,000,000	H.789, Sec. D.106
General Fund support for savings to be realized in school district administration and special education costs through the “Challenges for Change”	- \$6,066,375	Act 68, Sec. 9(c) (5), (6)
TOTAL	= \$276,400,000	

As we reported previously, this figure is down from what should have been almost \$300 million of General Fund support if this appropriation had continued to increase as required in 16 V.S.A. § 4025 (a)(2). Property taxes again represent 70 percent of the cost of education, just about the figure reached in 1997 as the *Brigham* case declared that such reliance on the local property tax to pay for education was unconstitutional. (It’s not local anymore.) Included in education costs again this year are the \$3.3 million for the Department of Corrections education program and \$1.1 million in Agency of Human Services early education initiative grants for at-risk preschoolers. The good news is that these programs will again be funded from the General Fund in FY12. The bad news is that the “general fund transfer shall be adjusted accordingly” (read “reduced”).

State support for the teachers’ retirement system will continue to be paid for from the General Fund and not the Education Fund and property taxpayers. The appropriation is more than last year but less than originally expected, due to changes implemented in the benefits and teacher contributions.

Current use reimbursements to towns are up by almost \$1 million over last year as more land continues to be enrolled in the program. Towns receiving payments in lieu of taxes (PILOT) for hosting state buildings will see their payments increased by \$750,000 due to more revenue being collected by local option sales and rooms and meals taxes. (Thirty percent of what is collected is shared with other cities and towns statewide through PILOT.)

Use of funding for regional planning commissions through the Municipal and Regional Planning Fund, whose source is the property transfer tax, is addressed in H.792, the Challenges for Change legislation. In this bill, \$2,632,027 is appropriated from the Municipal and Regional Planning Fund for regional

planning commissions and \$408,700 is appropriated for municipal planning grants. Because the administration threatened to not release the municipal planning grants even if they were funded, H.792 directs the grants to be awarded annually on or before December 31.

Municipal Funding Priorities in FY 2011 Budget (in Millions), Final Approved							
Budget Line Item	FY10 Budget as it Became Law	FY11 Governor's Recommend	FY11 House Passed	FY11 Senate Passed	FY11 Final	FY11 Final \$ Change from FY10	FY11 Final \$ Change from Governor's Recommend
PILOT – ANR Lands	\$2.13	\$2.13	\$2.13	\$2.13	\$2.13	\$0.00	\$0.00
PILOT – Corrections Facilities ¹	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.00	\$0.00
PILOT – Montpelier ¹	\$0.18	\$0.18	\$0.18	\$0.18	\$0.18	\$0.00	\$0.00
PILOT – State Buildings ²	\$4.90	\$5.50	\$5.65	\$5.65	\$5.65	\$0.75	\$0.15
Current Use – Municipal	\$10.81	\$11.70	\$11.70	\$11.70	\$11.70	\$0.89	\$0.00
Homeowner Rebate	\$13.73	\$16.74	\$17.20	\$16.32	\$16.72	\$2.99	(\$0.02)
Renter Rebate	\$2.54	\$4.08	\$2.50	\$2.50	\$2.50	(\$0.04)	(\$1.58)
General Fund Transfer to Education Fund ³	\$279.40	\$279.40	\$275.68	\$273.38	\$276.40	(\$3.00)	(\$3.00)
General Fund Support of Teachers' Retirement System ⁴	\$41.50	\$31.30	\$48.23	\$48.23	\$46.91	\$5.41	\$15.61
Municipal Planning Grants	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$0.00	\$0.00
Town Bridge Grants ⁵	\$24.68	\$18.32	\$18.32	\$18.32	\$18.32	(\$6.35)	\$0.00
Town Hwy Aid Program	\$24.98	\$24.98	\$24.98	\$24.98	\$24.98	\$0.00	\$0.00
Town Highway Aid Program – Class 1 Supplemental	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.00	\$0.00
Town Hwy Structures	\$3.83	\$5.83	\$5.83	\$5.83	\$5.83	\$2.00	\$0.00
Vt. Local Roads	\$0.38	\$0.38	\$0.38	\$0.39	\$0.39	\$0.02	\$0.02
Town Highway Public Assistance Grants	\$0.20	\$0.20	\$0.20	\$0.20	\$0.20	\$0.00	\$0.00
Municipal Mitigation Grant Program	\$2.11	\$2.11	\$2.11	\$2.11	\$2.11	\$0.00	\$0.00
Class 2 Highway Paving and Rehabilitation	\$5.75	\$7.25	\$7.25	\$7.25	\$7.25	\$1.50	\$0.00
Town Hwy Emergency	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.00	\$0.00
Total Local Hwy Aid	\$62.81	\$59.95	\$59.95	\$59.97	\$59.97	(\$2.84)	\$0.02
TOTAL	\$418.45	\$411.44	\$423.68	\$420.51	\$422.62	\$4.16	\$11.18

1. These line items were shifted from being paid from the General Fund in FY08 to the PILOT for state buildings special fund. This new cost reduces the amount distributed under PILOT – State Buildings.

2. FY11 figures are all from local options tax sharing and no state monies.

3. Required by statute to increase by New England economic project cumulative price index for government purchases (16 V.S.A. § 4025(a)(2)). Last year, the legislature reduced this with “Notwithstanding” language. FY11 figure includes \$38.6 million of ARRA federal stimulus funds in place of General Fund support and still totals \$18.4 million less that required by the above-cited statute. FY11 budget continues to carry shift responsibility for state’s Correction Department education program and a Human Services Agency’s early education initiative to be paid for out of the Education Fund. FY11 figure is further reduced by the \$6 million reduction authorized by the “Challenges for Change” legislation and is increased by an additional \$3 million made available from a contingent transfer that is paid back to the General Fund in FY12.

4. The FY11 final appropriation assumes the teacher retirement changes reflected in H.764 as passed.

5. Includes state and federal aid only – no local match.

In recent years, the legislature has included directions on priorities for project funding with Community Development Block Grant (CDBG) money, which this year totals \$8,535,530, including \$1,089,000 in ARRA funds. As directed in H.789, the highest priority for CDBG dollars is creating and retaining affordable housing and jobs.

The objective of the use of funds for affordable housing is to achieve long-term affordability. At least 55 percent of CDBG funds should be used for affordable housing applications. Of these applications, the highest priorities are to preserve and increase the supply of affordable family housing, eliminate childhood homelessness, preserve affordable housing developments and extend their useful life, and to serve people at or below the 30 percent HUD area median income as well as those with special needs. Preference shall be given to projects that maintain historic patterns for compact village and downtown centers separated by a rural landscape.

For details on municipal transportation aid figures in the budget, see related Transportation article.

Capital Bill (H.790, Act 161)
VLCT Staff Contact: Karen Horn

H.790, the Capital Bill, passed on the last day of the session. From the perspective of local governments, the bill that was adopted did not differ much from the House- or Senate-passed version, and that was a good thing.

The legislature agreed to general obligation bonding for FY11 in the amount of \$71,825,000. When added to funds reallocated from previous years (\$2,355,033) and the Clean Energy Development Fund (\$2 million), the amount available for the capital bill totaled \$76,180,033. Legislators were attentive to the needs of local governments, both municipal and school. The House Institutions Committee discussed funding a program for municipal infrastructure projects of the sort that municipalities identified last year when they were first notified of federal stimulus funding. But in the end, there simply was not enough room in the capital bill to accommodate every need at both the local and the state levels.

Both House and Senate members were clear that investments in local programs – such as water supply and wastewater facilities – put people to work in their communities quickly and efficiently. A new category of funding was specified for both of these programs. Up to \$50,000 may be used to provide municipalities with grants or loans to study the feasibility and planning of site-appropriate potable water supply and wastewater systems, including innovative decentralized systems for historic village and existing settled areas. The systems will have to comply with the adopted municipal plan. The Agency of Natural Resources (ANR) will determine eligibility for and amounts of funds provided to municipalities for feasibility studies and planning. It will report to the legislature by January 15, 2011 regarding how the municipal grant program is working, the demand for the grants, what projects were funded, and their anticipated future construction costs.

Every year, the Building Communities Grants – which include Historic Preservation, Historic Barns, Cultural Facilities and Human Service Grants – have been put to good use on significant local projects. They were designed to take the politics out of seeking capital bill funding for special local projects and they have done so very effectively.

At least one of the governor's initial proposals was ignored. He proposed there be no money in capital bill funding for school construction, arguing that those projects should be paid out of the Education Fund (that is, put on the education property tax). Neither the House nor the Senate had any interest in

going down that road. Over the last few years, each capital bill has chipped away at school construction obligations while restricting the kinds of projects to be compensated. A significant boost in addressing backlogged projects (for which school boards largely have already spent the funds and await reimbursement) was received last year with the use of ARRA money.

CAPITAL BILL						
Agency/Department	Line Item	Final FY10 as Passed	Governor Proposed FY11	House Passed	Senate Passed	Legislature Final Passage
Dept. of Buildings and General Services	Human Services and Educational Facilities Grants	200,000	180,000	180,000	180,000	180,000
	Recreational Facilities Grants	200,000	180,000	180,000	180,000	180,000
	Community Capacity Grants	0	0	0	0	0
Dept. of Information and Innovation	Vt. Telecomm. Authority, Broadband Develop. Assistance ¹	1,000,000	5,000,000	3,000,000	5,000,000	4,500,000
Dept. of Taxes	Orthophotographic Mapping	100,000	100,000	100,000	100,000	100,000
Agency of Commerce and Community Development	Historic Preservation Grants	200,000	180,000	180,000	180,000	180,000
	Historic Barns and Ag. Grants	200,000	180,000	180,000	180,000	180,000
	Cultural Facilities Grants	200,000	180,000	180,000	180,000	180,000
	Farmers' Markets Infrastructure Grants	0	0	100,000	0	25,000
Department of Education	State Aid for School Construction ²	10,343,555	0	6,355,111	5,197,435	6,355,111
Agency of Natural Resources	Clean Water State/EPA Revolving Loan Fund Match ³	19,433,000	2,475,000	2,375,400	2,375,400	2,375,400
	Pownal wastewater treatment facility	140,000	85,000	85,000	85,000	85,000
	Combined Sewer Overflow (ARRA)		1,295,000	1,295,000	1,295,000	1,295,000
	Water Supply Revolving Loan Fund	19,500,000	2,175,660	2,175,660	2,175,660	2,175,660
Clean & Clear Program Total Request: \$2,250,000	Ecosystem Restoration and Protection Grants	1,500,000	1,900,000	1,700,000	1,700,000	1,900,000
Montpelier Flood Study		142,000	177,000	177,000	177,000	177,000
Agency of Agriculture, Clean and Clear	Best Management Practices on Vermont farms & water quality buffer program	1,775,000	1,675,000	1,675,000	1,675,000	1,675,000
Dry Hydrant Program		100,000	100,000	100,000	100,000	100,000
1. FY09 funds used by Vt. Telecommunications Authority to provide grants to municipalities, telecommunication infrastructure developers and service providers. 2. The governor proposed funding \$5 million from the Education Fund starting in FY11. 3. \$19,433,000 Clean Water Revolving Loan Fund Match in FY10 was due to ARRA money.						

Corrections policy is always a key issue area for local governments. The Challenges for Change (S.286, Act 68) and the corrections legislation (S.292) both anticipate the release of non-violent offenders into Vermont communities. H.790 establishes a task force to consider the best ways to provide correctional services within the correctional system and the community, including inventories of correctional and community facilities to handle persons incapacitated due to drugs or alcohol, the need for more bed capacity within the correctional system, and ways to reduce the need for “incarcerative” beds through use of alternative sentencing and community services to reduce crime. The seven-member task force is made up of two representatives of municipalities – one large and one small – chosen by the VLCT Board of Directors, one prosecutor chosen by the Vermont state’s attorneys and sheriff’s association, one representative of community justice centers, one representative of the Department of Corrections, one member of the Judiciary, and one representative chosen by the Vermont Police Chiefs’ Association.

One area in which anticipated need outstrips available funds to the point of being ridiculous is Clean and Clear, the governor’s priority program to clean up phosphorus discharges to Lake Champlain. At the end of last year, ANR issued a report that ranked the five biggest threats to lake water quality in Lake Champlain:

1. discharges from farmsteads and agricultural production areas,
2. poorly managed cropland,
3. land conversion,
4. poor municipal and residential road construction and maintenance, and
5. untreated and unmanaged runoff from existing development.

At that time, ANR staff estimated that to address those threats in a strategic and effective manner over the next 15 years would cost between \$500 and \$800 million. As the following table shows, the agency requested \$2,250,000 for Clean and Clear ecosystem restoration and protection but the appropriation was \$1,900,000. Other capital bill line items – such as combined sewer overflow projects in the Lake Champlain basin – will help ameliorate the phosphorus problem for Lake Champlain, but even if you add up every expenditure, you won’t come close to the anticipated needs for the Clean and Clear Program.

Current Use (H.485) VETOED!

VLCT Staff Contact: Steve Jeffrey

One of the final bills acted upon by the 2010 legislative session, H.485 makes a number of important changes to Vermont’s Use Value Appraisal (Current Use) program. The bill was the result of the following directive in last year’s budget bill: “[t]he current use tax coalition is requested to study options for savings of \$1,600,000 from the use value appraisal program in fiscal year 2011.” Supporters of the program developed the genesis of H.485 that changed substantially through the legislative process.

The bill now goes to the governor. Briefly, H.485 included the following:

- **One-Time Surcharge.** Town treasurers will have to bill all 12,500 enrolled landowners a one-time \$128 surcharge as part of their 2010 property tax bill “and the assessment shall show as a separate amount on all towns’ bills. For the purpose of assessment and collection, the one-time assessment shall be a lien upon the real estate in the same manner and to the same effect as taxes are a lien upon real estate under 32 V.S.A. § 5061, and collection of the assessment shall be subject to all other provisions of chapter 133 of Title 32. The director of property valuation and review shall provide all towns with electronic notice of the parcels within each town that shall be subject to the one-time assessment. Using a form provided by the director, towns shall remit to the state treasurer for deposit in the general fund on May 1, 2011, the full amount collected as of that date. At the time of

the May 1 payment, towns also will indicate the full amount that should have been collected and any amount that remains delinquent. Payment of any amount outstanding due to delinquencies shall be payable in full to the state treasurer on December 1, 2011.”

The Division of Property Valuation and Review and New England Municipal Resource Center (NEMRC) insist that they have the database and the electronic means to transmit this information to treasurers seamlessly and without duplication. NEMRC also has stated that there is room on the tax bills that they prepare for towns for this extra charge.

This meets the \$1.6 million target set by the legislature for FY2011 from Current Use, and eliminates the need for a one-year moratorium on new enrollees included in the House-passed version of the bill. It is also expected that towns will not have to collect this surcharge again.

- **Land Use Change Tax.** The “development penalty” in Current Use will change from the present formula based on pro-rated values to 10 percent of the fair market value of the developed land. Towns will collect the tax and share one-half with the state. As is explained in more detail below, landowners will have the option to withdraw all or a portion of their land from Current Use by September 1 or October 31, 2010.
- **Property Transfer Tax and Electronic Administration.** The preferential Property Transfer Tax (PTT) rate for sales of enrolled land has been eliminated. After July 1, buyers of Current Use lands will pay the normal PTT rate of 1.25 percent. For the fiscal years 2011-13, the additional \$300,000 that this change is expected to generate will be allocated to the conversion of Current Use from paper files and maps to electronic files and GIS (geographic information system)-based digital maps.
- **Study Committee.** H.485 also establishes a two-year study committee to examine a variety of issues affecting Current Use, including the state’s formula for reimbursing towns for lost municipal taxes due to Current Use enrollment, overvaluation of enrolled land, eligibility of agricultural parcels under 25 acres, and other topics. State agencies, VLCT, the Vermont Assessors and Listers Association and private citizens appointed by the governor, House and Senate will make up the committee, which is directed to make an interim report next January and a final report a year later.

The Land Use Change Tax (The “Development Penalty”). The change to the penalty for developing land enrolled in Current Use was the most contentious issue in H.485. Yet, for the proponents of the legislation, including municipal governments, this was an essential structural reform that will correct a problem that could, if left unresolved, eventually undermine public support for the law. Because Current Use was intended to apply only to land that is devoted to long-term productive management, the primary purpose of the Land Use Change Tax (LUCT) is to deter short-term enrollment of land that the owner intends to develop. If, for example, an owner owns 100 acres of timberland on which he or she intends to build a housesite, the LUCT, if properly set, will encourage the owner to keep the housesite out of Current Use, and enroll only the remaining land. That ensures that the landowner will pay a fair share of property taxes on the housesite.

When Current Use was adopted in 1978 and first implemented in 1980, the LUCT was set at 10 percent of the fair market value (FMV) of the developed land. If an owner enrolled 100 acres, and subsequently withdrew two acres to develop a housesite, the LUCT was 10 percent of the FMV of the two acres. Early analysis showed that the break-even point – the point where the saved property taxes of enrolling the two acres begins to exceed the penalty paid upon development – was in the range of 6-7 years. In other words, if the owner intended to build a house within 6-7 years, he or she was financially better served by keeping the housesite out of Current Use.

Because the LUCT has been administered at the state level instead of by the towns, this created an administrative bottleneck, since state officials are less familiar with local land values than are town listers. To relieve the bottleneck, the LUCT formula was changed in 1995 so that the LUCT is now based on the *pro-rated* value of the entire property. In other words, if the owner develops two acres out of 100, the LUCT was based upon two percent of the value of the 100-acre total value. To offset the anticipated loss in revenue, the penalty was increased to 20 percent, although it was later reduced to 10 percent if the land had been enrolled for more than 10 years.

The problem with this approach is that while a landowner may develop only two acres out of 100, those two acres are rarely average in value. It is usually the land with good road access, with soils suitable for septic systems, and with views or other amenities that are valued in the marketplace. The two acres may have a pro-rated value of only \$2,000 of the \$100,000 total parcel value, but they may have a fair market value of \$30,000 if sold separately on the open market. In this example, the original LUCT would have resulted in \$3,000 being collected, while the current pro-rata valuation system collects only \$400 or \$200, depending upon how long the land had been enrolled.

That has a substantial impact on the break-even point for landowners who decide to enroll their entire 100 acres, rather than holding out two acres of their housesite, where the amount of property taxes saved is larger than the LUCT paid. In certain situations, especially where a small amount of land is withdrawn from a larger parcel in a town with high land values, the break-even point can be as little as 220 days. Obviously, that is not an effective deterrent to enrolling the two acres, if the owner intends to build within the next 2-5 years. Returning the LUCT to its original formula – 10 percent of the fair market value of the developed land – the break-even point is restored to an average of 6-7 years in most cases.

H.485 returns the LUCT to a flat 10 percent of the fair market value of the land developed. If the whole enrolled parcel is developed, there is no change in the tax charged for properties enrolled for more than 10 years, and actually a reduction in the tax paid for whole parcels enrolled for less than 10 years. The fair market value is determined as of the date the land was developed or at an earlier date, if the owner so requests and pays the tax within 30 days of notification from the local assessing officials. This tax is in addition to the annual property tax imposed upon such property. The listers determine the fair market value of the parcel on which a LUCT is due in accordance with the land schedule and the appraisal model used to list property of similar size to the withdrawn parcel in their town divided by the town's most recent common level of appraisal – provided, however, that if the tax is the result of a land sale pursuant to a bona fide arm's length transaction*, the purchase price shall be deemed the fair market value of the property for the purpose of calculating the land use change tax.

Under H.485, the LUCT is due and payable within 30 days after the notice of tax due is mailed. The tax is paid to the town that will forward one-half of the amount received to the state and retain the other half. These changes to the LUCT do not take effect until November 1, 2010, and parcels withdrawn but not developed prior to that date will pay the LUCT under the current law, with all the proceeds going to the state.

Here is the change in the LUCT included in H.485. Its impact in an example of withdrawal of enrolled land for development:

Changes in Land Use Change Tax in H.485

Enrolled Land Developed	Time Land Enrolled	Current Land Use Change Tax	H.485 Land Use Change Tax
Total parcel	10 years or less	20% of the fair market value of the parcel	10% of the fair market value of the parcel
	More than 10 years	10% of the fair market value of the parcel	10% of the fair market value of the parcel
Portion of parcel	10 years or less	20% of the fair market value of the parcel pro-rated on the basis of acreage	10% of the fair market value of the land actually developed
	More than 10 years	10% of the fair market value of the parcel pro-rated on the basis of acreage	10% of the fair market value of the land actually developed

Example: 100-acre parcel with a fair market value of \$100,000. Town’s land schedule and appraisal model used shows the fair market value of parcels similar to the two-acre parcel withdrawn in the “portion of parcel” example below are valued at \$30,000.

Enrolled Land Developed	Time Land Enrolled	Current Land Use Change Tax	H.485 Land Use Change Tax
Total 100 acre parcel	10 years or less	\$20,000	\$10,000
	More than 10 years	\$10,000	\$10,000
2-acre portion of parcel	10 years or less	\$400	\$3,000
	More than 10 years	\$200	\$3,000

Withdrawal Options and the Tax Consequences. H.485 gives landowners a number of options to withdraw all or part of their enrolled property. Each option has different impacts upon the LUCT owed, when the withdrawn land goes back on the grand list at full value, and restrictions on re-enrollment of the property. In this regard, there are three dates that listers should keep in mind.

July 1, 2010: Landowners who applied last year to enroll land in Current Use for the tax year 2010-2011 will be notified of the changes in the law. If they wish to withdraw their *entire* parcel, they must do so by July 1 of this year. No Land Use Change Tax will be charged, and their application fee will be refunded. Listers will then put the land back on the grand list at full value as of April 1, 2010.

If a new enrollee wishes to withdraw only a portion of his or her property and keep the remaining land enrolled, he or she would keep the parcel enrolled and use the November 1 deadline to make a partial withdrawal, as explained below.

September 1, 2010 (Whole Parcel “Easy Out”): This option is available to landowners who were enrolled in Current Use prior to this year. They are permitted to take out an *entire* parcel – in most cases, without a development penalty – by September 1. Only if their total LUCT exceeds \$100,000 from the withdrawal of one or more entire parcels, will they have to pay a LUCT on the overage. This means that unless the total value of the withdrawn parcels exceeds \$1 million (or \$500,000 if the land has been enrolled for less than ten years), the landowner will escape the tax entirely.

Two limitations apply: First, the listers place the withdrawn parcel back on the tax rolls at full value as of April 1, **2010**. In other words, the owner will pay the full property tax for this year. Second, for a period of five years, the owner or a successor owner is prohibited from re-enrolling less than the entire parcel.

This is intended to prevent the owner from withdrawing a two-acre housesite and re-enrolling the remaining land to avoid a development penalty. If, for example, Landowner A withdraws the entire parcel without penalty and then sells the property to Landowner B, Landowner B will have two options if he or she wants to re-enroll but keep out two acres to build a house: (1) to build the house and wait five years to enroll the remaining land; and (2) to re-enroll the entire parcel, then withdraw two acres and pay the LUCT on that land.

November 1, 2010: This is the date that landowners who want to make only partial withdrawals should pay the most attention to. If an owner has enrolled property but plans to develop a portion of that land in the next 1-7 years, he or she should withdraw that land from Current Use *before* November 1, the date when the new formula goes into effect. If a withdrawal is made before that date, the LUCT will be calculated under the old pro-rated formula. Therefore, if two acres are being withdrawn from 100 acres that have a total market value of \$100,000, the pro-rated value on the two acres will be \$2,000, and the LUCT is 20 percent or 10 percent of that amount. Even then, the owner doesn't have to pay the LUCT until the land is actually developed. Finally, the withdrawn land will still be taxed at Current Use value for 2010, but will go back on the grand list at full value beginning in April 2011.

On November 1, 2010, the LUCT changes to 10 percent of the fair market value for any land enrolled in Current Use, but that is subsequently developed.

Property Transfer Tax and Electronic Administration. In 1988, when the legislature increased the PTT on sales of real estate from 0.5 percent to 1.25 percent, it exempted sales of enrolled Current Use land from that increase. Twenty-two years later, the reasons why that preferential rate was retained have been lost. What is the policy justification behind charging a 0.5 percent rate to a buyer who purchases enrolled land which he intends to develop, while another person who buy un-enrolled land with the intention of enrolling it in Current Use pays a 1.25 percent PPT?

The 1.25 percent rate on enrolled land goes into effect on July 1, 2010. It is expected to raise an additional \$300,000 annually. In FY2011, H.485 allocates that money to the Tax Department so that it can accelerate the conversion to electronic administration. The legislation also indicates the legislature's intent to make similar calculations in FY2012 and 2013.

Although the Tax Department has made great strides in recent year to improve the flow of information between it and the towns, Current Use is still a largely paper-driven system. There are at present more than 16,000 enrolled parcels, a figure that is increasing by 700-900 parcels annually. Given that three state agencies – the Tax Department, Agency of Agriculture, Food and Markets, and Department of Forests, Parks and Recreation – plus the towns and 12,500 landowners are engaged in the administration of Current Use, it is essential that the system move to electronic administration as quickly as possible. Similarly, 16,000 maps of varying quality and accuracy need to be digitally formatted and integrated into the state's GIS database. This will be a major undertaking, but, in the end, Current Use will be administered more efficiently and accurately with greater ability to analyze trends and identify problems in the future.

Current Use Study Committee. Finally, H.485 activates a new study committee to examine a number of problems and policy issues that the Study Group and others have identified over the past year. The committee will make an initial report to the legislature in January 2011, and a final report in January 2012. The director of Property Valuation and Review will chair the committee, which will be comprised of members of the Agency of Agriculture, Food and Markets, the Department of Forests, Parks and Recreation, and the Current Use Advisory Board, VLCT, the Vermont Assessors and Listers

Association, as well as members of the public appointed by the governor, the speaker of the House, and the Senate Committee on Committees.

Six study topics are specified the legislation, although the committee will undoubtedly identify other areas for future inquiry:

1. The state's formula for municipal reimbursement payments ("hold harmless payments");
2. The extent and degree of over-assessment of enrolled land;
3. Whether there is a need to create incentives for landowners who keep enrolled land open for public recreation (and, if so, what incentives);
4. The feasibility of allowing enrollees to omit on an initial application for withdrawal from the program an undesignated two-acre housesite that would be assessed at the highest value (the "floating housesite" proposal);
5. Deferral of the Land Use Change Tax payment for development of on-farm housing; and
6. Eligibility requirements for agricultural parcels smaller than 25 acres.

* An arm's length transaction is conducted between two affiliated parties as if they were unrelated so that there is no question of a conflict of interest.

Many thanks to Darby Bradley of the Vermont Land Trust for much of the content of this article.

Restoring Solvency to the Unemployment Trust Fund (S.290, Act 124)

VLCT Staff Contact: Dave Sichel

This bill was one of the major accomplishments of the legislation session. Because the state unemployment trust fund ran out of money early this year, the state began borrowing money from the federal government in order to continue to pay unemployment claims.

The final version of this bill has something for everyone to hate, except for reimbursable employers, including most municipalities and all those that are members of the VLCT Unemployment Insurance Trust. The base wage – and, thus, unemployment insurance premiums – for employers participating in the state's program will go up, benefit levels will be frozen until the unemployment trust fund returns to solvency, and eligibility and benefit calculation rules will be tightened.

Specifically, the base wage against which state premiums are charged, currently at \$10,000, will increase to \$13,000 on January 1, 2011 and \$16,000 on January 1, 2012. Thereafter, the base wage will be adjusted based on the health of the unemployment trust fund and indexed to increase in statewide annual average wages.

The maximum weekly unemployment benefit amount will be frozen at its current level of \$425 until the state fund returns to solvency. Once this happens, the weekly maximum benefit will be allowed to increase based on changes in the statewide average weekly wage.

Benefit eligibility and calculation rules will also be tightened. The penalties to benefits based on separation for misconduct and gross misconduct will be strengthened. A new waiting period of one week before eligibility for benefits begins July 1, 2012. The calculation of benefits will be based on a longer period of earning. This will reduce benefits paid to seasonal and other temporary employees.

Reimbursable employers will be impacted differently than those employers that pay state unemployment taxes. Reimbursable employers' costs will be driven by the cost of claims, which continue to increase at

an alarming rate. Changes in the base wage do not impact those costs. Capping benefit levels and changes in the benefit eligibility and calculation rules will serve to put a damper on claims costs. The final adopted legislation *did not* include a new fee on reimbursable employers. As has been its practice for its entire 32-year history, the VLCT Unemployment Insurance Trust board of trustees will be reviewing the current legislation, the claims that the Trust is paying on behalf of participating municipalities, and its financial situation to determine sometime later this year the contributions necessary for 2011

Municipal Audit Reporting Requirements (S.187, Act 95)

VLCT Staff Contact: Steve Jeffrey

Act 95 allows selectboards (and city councils and village trustees) to hire a certified public accountant to perform an annual audit on their own motion without the voters having to approve one “to aid in the work of the [elected town] auditors,” as the current law requires.

When municipalities have audits performed pursuant to this new law, they “shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report on internal control over financial reporting that shall be provided to recipients of the financial statements.” The act also requires that if there are “material weaknesses or significant deficiencies found in the internal control over financial reporting or the auditor’s or public accountant’s opinion is qualified, adverse, or disclaimed:

1. the auditor or public accountant shall present the findings or opinion to the legislative body of the town and explain those material weaknesses or significant deficiencies or his or her opinion at a meeting duly warned for the purpose;
2. after the audit report is delivered to the legislative body of a municipality, the notice for the next meeting of the legislative body shall also notify the voters of the availability of the audit report and the accompanying report on internal control over financial reporting;
3. the next published annual report of the town shall include a summary of material weaknesses or significant deficiencies found in the internal controls over financial reporting or a statement that the audit report sets forth an opinion that is qualified, adverse, or disclaimed; and
4. the legislative body shall post the audit report and the accompanying report on internal control over financial reporting on the municipality’s website, if the municipality has a website.”

Municipal Recovery of Costs of Fire Department Response (H.527, Act 90)

VLCT Staff Contact: Cory Gustafson

This act creates a study committee to evaluate whether or not, or to what extent, to allow municipalities to recover the costs of fire department responses to calls.

The eight-member committee, which includes two members appointed by VLCT – one representing a large municipality and one a small municipality – will study the state’s public policy and responsibilities, costs to insurance companies, possible inequities between municipalities and approaches taken in other states. The House Commerce Committee indicated that the study and its recommendations not impact towns with existing ordinances that require payment for calls. A committee report of recommendations in the form of proposed legislation is due to the General Assembly by January 1, 2011.

MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION

Challenges for Change (H.792, Act 146)

Staff Contact: Karen Horn

Passage of the Challenges for Change bill, H.792, was key to adjournment and not easily achieved in the last week of the session. The House passed H.792 after passage of the appropriations bill, H.789, on April 16. On April 21, it was sent to Senate Appropriations, which was considering the appropriations bill. Key to the entire discussion was the fact that savings anticipated in the Challenges for Change bill were inextricably linked to the bottom line in the appropriations bill.

A number of Senate committees took up sections of the bill related to their jurisdiction and then reported to the Senate Appropriations Committee, which assembled and then reported out the entire 99-page document late on Friday May 7. Then the legislature's photocopier broke and no one could get a hard copy of the bill. Everyone went home. The next full legislative day (Saturday, May 8), the bill was taken up on the Senate floor. The Appropriations Committee made its report on H.792 along with some rapidly morphing and last-minute proposals of amendment. After several more proposals of amendment and sometimes-acrimonious debate, the Senate passed H.792. But the bill wasn't finished. It was sent back to the House, where members took most of Wednesday, May 12, to consider several more House member amendments, rejecting them all and finally concurring with the Senate proposal of amendment late Wednesday evening.

Legislators agreed that they would not know the details of implementing a redesigned government upon the session's adjournment, nor would they have implemented changes sufficient to reach the \$38 million in savings that is required for FY11. Many of the details of implementation, although fewer than originally expected, are left to the administration. As mentioned in our introductory article, the Government Accountability Committee will meet monthly between now and the next legislative session to keep track of implementation.

So, what is in this bill that pertains to local governments? A lot.

Corrections. The bill establishes new procedures for fines, penalties, surcharges, court costs, or other assessments imposed as part of a sentence for a criminal conviction that remain unpaid for 75 days or longer. Such matters may be referred to a collection agency or the court may initiate civil contempt proceedings. Civil contempt could culminate in a term of imprisonment on furlough to participate in a program that provides reparation to the community in the form of supervised work activities. A person ineligible for that could serve a sentence in a correctional facility. Persons unable to pay a fine might have their assessments minus surcharges waived or be required to attend restorative justice programs.

A home detention program is established that restricts a defendant to a pre-approved residence continuously, except for authorized absences. Restrictions are enforced by "appropriate means of surveillance" and electronic monitoring.

Terms of probation for non-violent felonies shall not exceed four years or the statutory maximum term of imprisonment for the offense, whichever is less, unless the court finds that a longer term serves the interests of justice. A court diversion program is to be established to assist adults charged with a first or second misdemeanor or first felony. The court diversion programs, the Vermont Department of States Attorneys and Sheriffs, and the Vermont Network Against Domestic and Sexual Violence (local law

enforcement or municipalities are not named) shall develop referral criteria to identify persons who have elements of underlying domestic or sexual violence or stalking.

Any offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the Department of Corrections (DOC) commissioner's discretion, except that an offender sentenced to a minimum term of less than 365 days shall not be eligible for furlough until he or she serves at least half the minimum term. Probationers shall not be incarcerated for technical violations of probation unless they failed to pay restitution or committed a new crime, except in specified instances. In addition to the options available to a court for determining a sentence, the court may refer an offender to a reparative board, which may accept or reject the case.

In FY11, \$6,350,500 in investments in communities and services are included in the DOC budget. In H.789, \$3,186,000 is allocated for investments and \$3,164,500 is allocated in H.792. These investments are intended to decrease overall costs in the corrections budget by reducing the levels of incarceration and recidivism from the current three-year rate of 53 percent to 40 percent. Appropriations are:

- \$1,324,000 for grants for transitional beds;
- \$80,000 for prison treatment programs;
- \$650,000 for grants to community justice centers and similar programs;
- \$200,000 to the judiciary to increase the capacity of community service providers; and
- \$910,500 to purchase electronic monitoring equipment and additional field services to supervise offenders released to probation, parole, furlough, home confinement, and home incarceration.

There continue to be concerns about DOC's interest in closing the Windsor facility to meet the Challenges for Change cost reduction goals. As a result, the bill says that DOC shall not close or substantially reduce services at a correctional facility or field office in FY11. However, according to the appropriations bill, which trumps the Challenges' legislation, DOC *may* close a correctional facility between January 31 and May 1, 2011 if 60 days prior to the closure the secretary of the Agency of Administration provides a proposal to the legislature or the Joint Corrections Oversight and the Joint Fiscal committees.

The Challenges for Change bill also required that DOC work with communities in which a large number of individuals are under custody – including those living in the community and those who are its incarcerated residents – to help the community reduce the number of people entering into custody, giving priority to projects located in the four communities that have the highest number of people under custody. The appropriations bill made a change here as well – it requires the commissioner to prioritize projects located in the four communities that have the highest percentage per capita of people under his custody, including those living in the community and residents who are incarcerated.

Publication of Proposed Rules. H.792 changes the way rules are published for public information. The secretary of state is now required to publish an online notice within two weeks of receipt of a proposed rule, including information about how to participate in the rulemaking process. The agency proposing the rule may hold one or more hearings on the rule, the first one to be scheduled not less than 30 days following the online notice. One consolidated notice will be published in newspapers of record around the state. By January 15, 2011, the secretary of state must report to the legislature with recommendations on providing notice for rulemaking in newspapers.

The Public Service Board must hold a non-technical hearing for a project seeking a certificate of public good. Notice of the public hearing, which includes an Internet web address, must be published once in newspapers of general circulation in the host county (or counties). The notice will also be published at that web address and maintained on the board's website for at least 12 days prior to the hearing.

Permit Reform and Bill Back Provisions. H.792 enables the Agency of Natural Resources (ANR), the Land Use Panel, a district commission, or the Public Service Board to require a permittee to file an affidavit under oath or affirmation that its facility, project, development, subdivision, or activity complies with an assurance of discontinuance or order. Failure to file an affidavit within the prescribed timeframe is a violation and grounds for revocation of the permit.

H.792 also allows ANR to require “an applicant for a permit, license, certification or order to pay for the cost of research, scientific or engineering expertise or services that [ANR] does not have when such expertise or services is required for the processing of the application for the permit, license, certificate or order.” Those costs could be assessed only if they exceeded \$3,000. The same kind of assessment authority is provided the agency to recover costs incurred when staff provides research, scientific or engineering services or expert witnesses in Act 250 or before the Public Service Board in Act 248 proceedings. The governor must approve such costs. An applicant may meet with the agency to review cost estimates and may enter agreements for either the agency or the applicant to secure the identified services. If reasonable costs so assessed are not paid, the agency doesn’t have to approve or process the permit. Nor does the district commission. A court may reverse the ANR or district commission decision only if it determines the act, decision or allocation was arbitrary, capricious or an abuse of discretion. This is in addition to the permit application and operating fees established in statute for every ANR permit, many of which were increased this legislative session to cover these very costs. Fortunately, the House Ways and Means Committee insisted the bill contain language directing the agency to report to the legislature annually about the costs it assesses and the names and amounts assessed each entity.

Likewise – and even more worrisome – ANR may require a *potentially* responsible person or violator to pay for the time of agency personnel or cost of other research, scientific or engineering services ANR incurs in response to a “*threat to the public health or the environment presented by an emergency or exigent circumstance.*” This authority presumably would be in addition to the agency’s authority to assess fines of up to \$42,500 for each determination of a separate violation and \$17,000 per day of a continuing violation up to \$170,000, which is current law (10 V.S.A. § 8010). Revenues from the new assessment authority would not go to the general fund, as fines do, but rather directly to ANR.

H.792 also requires that the chairs of the House and Senate committees of jurisdiction for environmental and agricultural regulation meet quarterly in January, April, July, and October. In October, ANR is to report to these committee chairs about reallocating staff and resources in response to any efficiencies created under this section.

Municipal Bylaw Provisions. H.792 requires local officials to include an ANR-approved statement in each municipal permit or approval issued that indicates that state permits may be required and the permittee should contact state agencies to determine what permits must be obtained prior to commencing any construction.

Regional Commissions and Economic Development. One of the most contentious sections of H.792, and the last to be settled, was the section addressing economic development, state employment offices, micro-business development programs, small business development and employee training, regional development corporations, and regional commissions. The statutory language that resulted from intense negotiating in the last days of the session is confusing and it is not clear how the new process will work.

Funding for every regional planning commission and regional development corporation will continue in FY11 at 95 percent of the rate provided in FY10, which, from the previous year (FY09), was actually a

13 percent cut for regional planning commissions and an 8 percent cut for regional development corporations. However, total funding for a combined regional planning and regional economic development entity shall not be cut by more than 2.5 percent. Implementation of performance-based contracting for regional planning commissions and regional development corporations begins February 1, 2011; initial contracts will run for one year. Regional development corporations not awarded a performance contract will receive no further funding. The secretary of the Agency of Commerce and Community Development (ACCD) will thereafter annually award performance contracts to regional planning commissions or regional development corporations or both to provide economic development and/or planning services for a period agreed to by the terms of the contract.

The secretary must issue requests for proposals by July 1, 2010. Regional planning commissions and regional development corporations shall notify the secretary of their intent to apply by August 1, and proposals must be submitted by October 1, 2010. The decisions to award performance contracts must be made by November 1. Performance contracts will take effect February 1, 2011, unless terminated by the legislature before then. Disbursement of planning grant dollars to regional commissions shall be based upon meeting performance contract provisions and measures. Performance measures relating to economic development include:

- serving an economic development region generally consistent with one or more regional planning commission regions;
- demonstrated ability and willingness to provide planning and resource development services to local communities and to help them evaluate economic conditions and prepare for economic growth and stability;
- demonstrated capability and willingness to assist existing business and industry, encourage development and growth of small business, and attract industry and commerce;
- presented operating budget and adequate funds available to match the performance contract award;
- offered membership to representatives of all municipalities in the region, who shall elect the directors of the governing board; and
- demonstrated willingness to coordinate activities with planning functions of any regional planning commission in the same area.

Performance measures relating to regional planning commissions or regional planning and regional development corporations that offer regional planning services to improve outcomes and achieve savings compared to the current system may include:

- a proposal for current service areas or a joint proposal to provide different services under one contract or merger with one or more regional service providers;
- co-location with other local, regional or state service providers; and
- operating efficiencies and consolidation of administrative functions.

A performance contract shall address how the regional planning commission – or regional planning commission and regional development corporation jointly – will improve outcomes and achieve savings compared with the current regional service delivery system. It may include:

- a proposal without change in the makeup or change of the area served;
- a joint proposal to provide services under one contract with one or more regional service providers;
- co-location with other local, regional, or state service providers;
- merger with one or more regional service providers;
- consolidation of administrative functions and additional operational efficiencies within the region; or
- other available cost-saving mechanisms.

Regional plans will now expire in eight rather than five years. Municipal plans continue to expire every five years. However, the regional commission will review compatibility of municipal plans with the

regional plan and each other every eight years. (The current requirement is every five years.) Likewise, the regional planning commission will now consult with municipalities regarding their planning efforts and processes twice in eight years instead of the current five-year requirement.

Two or more regional planning commissions may merge to form a single commission by act of the legislative bodies in a majority of the municipalities in the proposed region. A municipality may withdraw from a regional planning commission on terms approved by the ACCD secretary.

A new eight-member oversight panel to be appointed by June 1, 2010 is created. Its members include four representatives of business or employers appointed by the speaker of the House and president pro tem of the Senate, two appointed by the governor, and two jointly appointed by the speaker, president pro tem and governor who have a background in municipal planning and do not currently serve on the board of a regional development corporation or regional planning commission. The panel shall consult with the ACCD secretary and approve performance contracts before the secretary makes awards. The panel will also help the secretary develop outcomes and performance measures for the agency and identify appropriate functions as well as how they relate to regional development and planning services. It will also study and identify a process to develop a comprehensive statewide economic development plan, with a report due to the legislature by January 15, 2011.

By August 1, 2010, and as often as necessary thereafter, the agency shall develop region-specific measures to evaluate economic growth, wage and benefit levels, job creation and job retention. Regional planning commissions and development corporations are to provide information necessary to complete this work. The executive economist or analyst and Joint Fiscal Office shall also jointly submit to the Government Accountability Committee program-specific outcome and performance measures for all economic development programs as well as economic development related tax expenditures, incentives, and subsidies identified in the Unified Economic Development Budget (developed by the commissioner of the Department of Finance and Management each year), and, in telecommunications, new initiatives and revisions to the Unified Economic Development Budget. The economists and Joint Fiscal Officers shall also submit program outcomes achieved in FY10, outcome and performance measure projections for FY11 both prior and subsequent to implementation of the Challenges for Change legislation. The Government Accountability Committee shall vote on each measure and require the economists to submit new measures to the agency for each one they reject.

Government Accountability Committee. The joint legislative Government Accountability Committee is created in statute (2 V.S.A. Chapter 28). Its job is to recommend mechanisms for state government that are forward-thinking, strategic, and responsive to the long-term needs of Vermonters. The committee shall report to the legislature annually by November 1 with its findings. The administration shall report to the chairs of committees of jurisdiction for each “Challenge” area, and to the Joint Fiscal and Government Accountability committees on a quarterly basis.

Effective Date. Except for several sections that do not relate to municipalities (and are not described herein), the effective date for H.792 is July 1.

Despite its length and the breadth of topics covered, H.792 is no more than the beginning of a long process to revamp the way in which state government operates on a number of fronts. At the same time, there is an election this fall – both the administration and legislature that return in January to fully implement Challenges for Change will be different. Depending on how H.792’s directives are implemented, municipal governments may benefit from some of the anticipated changes ... or they may be left holding the bag. Implementing Challenges for Change should be a campaign subject for you! It is

important to stay on top of activities of the Government Accountability Committee and the agencies as the summer and fall unfold.

Judicial Restructuring (H.470, Act 154)

VLCT Staff Contact: Karen Horn

One of the most organized and rational efforts to restructure state government came from the judicial branch, which worked on the issue over the past two years. In May 2008, a Commission on Judicial Operation – comprised of 15 people drawn from the three branches of government as well as private citizens – was directed to investigate:

- consolidation of staff, including clerks, and of their functions across courts;
- regionalization of court administrative functions at the county and state levels;
- use of technology to reduce unnecessary expenditures, including the transport of prisoners;
- flexibility in use of resources to respond to changing demands on the judiciary; and
- reallocation of jurisdiction between courts consistent with efficient operation.

In May 2009, the legislature also directed the commission to recommend ways to reduce the FY10 adopted Judiciary budget by at least \$1 million.

The commission and the Court Administrator's Office systematically analyzed the current operations of the court system and recommended how a new unified court system could operate more consistently across courts, deliver needed services more efficiently and lower costs to the General Fund. Those recommendations, with few amendments were incorporated in H.470 in the House. The Senate was concerned about some of the measures for unified administration of the courts, particularly as they pertained to the probate court and county court/assistant judge systems and their staffs. Finally, the House and Senate agreed to a bill that moves the court system toward unified administration and consolidated service delivery while preserving the essential functions and presence in each county of the probate and county courts.

H.470 makes revisions to every court system in Vermont.

- The new superior court has statewide jurisdiction that includes civil, criminal, family, environmental and probate divisions.
- The supreme court will now have administrative control of the unified court system, which will be divided into 14 geographical units that follow county lines.
- The environmental division will continue to have statewide jurisdiction.
- The administrative judge will assign superior and environmental judges, including him or herself, to the superior court and its divisions.
- In the civil or family divisions (except certain cases in the family division involving vulnerable populations), cases will be heard by one presiding superior judge and two assistant judges, if available. (Availability is up to the assistant judges themselves to determine.)
- An assistant judge sitting along may hear cases in the judicial bureau upon completion of 40 initial hours of training provided by the court administrator and eight hours of continuing education annually, *supervised* (as opposed to *provided*) by the court administrator.
- Assistant judges who hold office as of July 1, 2010 in Essex, Caledonia, Rutland, and Bennington counties will hear small claims cases. Assistant judges in the remaining counties will hear small claims cases if they have completed required training.
- By January 15, 2011, the Association of Assistant Judges will report to the legislature on the participation rates of assistant judges who elected to hear cases they were authorized to hear, and on changes in county budgets directly attributable to judicial restructuring.
- An assistant judge may also be elected as probate judge and thereafter may serve in both roles.

The issue of probate court took up a lot of time in the judiciary committees. In the end, it was agreed that each county would have one probate district and one elected probate judge “who shall have been admitted to the bar unless he or she was already a probate judge as of July 1, 2010.” Prior to this legislation, there was no statutory requirement that a probate judge be admitted to the bar (although most were).

Of most concern to local officials is the role of assistant judges and the projected savings to the county budgets from changes made to the system for administering the county courts. Small claims fees will now be divided 50-50 between the state and the county, except where the court facilities are provided by the state. Assistant judges may maintain a county law library and shall appoint a county clerk and treasurer. As has always been the case, assistant judges will establish compensation for the county clerk and pay them out of the county property taxes assessed on the towns, but other former county employees will work under the jurisdiction of the court administrator and be paid by the state. The state will pay assistant judges at rates established in statute, except when the assistant judge sits in the civil or family division of superior court. In that case, the county will pay the judge at the same rate. The legislation requires that some costs be shifted to the state from the county, while other costs are shifted to the county from the state. The upshot of these shifts should be reduced costs assessed on the county budget. Resulting savings to all 14 counties is estimated to be \$280,382 in FY11 and \$1,220,454 in FY12. To put that in perspective, counties assessed their towns about \$6.9 million in property taxes in 2009.

Current law, which is not amended by H.470, provides a county budget adoption process: the two assistant judges in each county develop a budget, hold a hearing to receive comment on it, and then adopt the budget that only the *assistant judges* decide is appropriate. That statute establishes both the process and also that the amount of the county tax shall not exceed five cents on a dollar of the county equalized grant list. While the legislature was not sympathetic to assure the savings anticipated by H.470 are realized at the county budget level, the bill does include language that requires a report to the legislature on changes in county budgets attributable to this judicial restructuring.

H.470 clarifies that a law enforcement officer may amend or void a ticket to a lesser included violation (that is, a ticket carrying a lesser penalty) and return it to the Judicial Bureau at the reduced rate.

H.470 also incorporates provisions from the “innocence protection” legislation. The Law Enforcement Advisory Board (LEAB) is directed to develop a proposal to implement a system for the governmental entity having custody of evidence to preserve any item of physical evidence containing biological material in connection with a criminal case or investigation. LEAB is to make its recommendations to the legislature by January 15, 2011. The departments of Public Safety and Buildings and General Services, the Police Chiefs’ Association and the Sheriffs’ Association shall develop a proposal to establish one or more facilities to retain physical evidence containing biological material secured in connection with a criminal case or investigation. That report is also due to the legislature by January 15, 2011. LEAB is directed to develop a proposal to implement a program to make an audio or audio-visual recording of any custodial interrogation of a person that is handled in a place of detention and relates to investigation or prosecution of a felony and to report to the legislature regarding costs associated with that requirement. Finally, LEAB shall develop a proposal to establish best practices suited to Vermont and rural law enforcement agencies with respect to eyewitness identification, with a report to the legislature on the same January 15, 2011 date.

The Judicial Restructuring bill also allows certified full-time law enforcement officers, Department of Fish and Wildlife employees in connection with their duties and the National Guard to use and possess gun silencers.

H.470 is a comprehensive and thoughtful restructuring of an entire branch of government, and its impact will be far reaching over the course of the next several years. Local government will certainly be one of the affected users of the judicial system, and will hopefully experience a more effective, efficient, and timely process.

Retirement Issues (H.778, Act 139)

VLCT Staff Contact: Steve Jeffrey

H.778 makes several changes to the Vermont Municipal Employees Retirement System (VMERS) in which most municipal employees participate. (Some larger cities and towns still have their own retirement systems.) VMERS offers four different “defined benefit” retirement plans (creatively referred to as “A,” “B,” “C,” and “D”) and a defined contribution plan. Because of the financial health of the system in the year 2000 (the system was funded at 124.6 percent of what the actuaries said we needed to assure retirement benefits for participants for the life of the system), the VMERS Board of Trustees voted to lower the employer contributions and asked the legislature to lower the employee contributions that are set in statute. The Board asked the legislature to lower the rates for a period of five years, and then in 2005 asked it to extend the lower rates until this year, as follows. (The legislature approved both requests.)

Plan	VMERS Employee Contribution Rate, Pre-2000	VMERS Employee Rates, 2000-2010
A	3%	2.5%
B	5%	4.5%
C	11%	9%

Plan D, a public safety plan, was not created until 2000. Its original contribution rate as recommended by the actuary of 11 percent for employees has been unchanged, and the VMERS Board increased the initial 9.0 percent for employers to 9.5 percent in 2006.

The recent investment losses experienced worldwide reduced the VMERS system-wide funding level to 90.3 percent of its long-term needs. However, the actuaries believed that the lower contribution rates in effect for Groups A and B could be sustained for another year, but because Group C was not as financially sound, its rates needed to be 1.17 percent higher. Based on that advice, the VMERS Board raised the employer contribution rate for Plan C by one-half of one percent and kept the employer rates for A and B at their current rates. The Board asked the legislature to extend the lower employee rates for A and B for another year and to raise the Group C rate for employees by the same one-half of one percent it imposed on the employers, but not all the way back to the original 11 percent employee rate. Some municipal employee unions fought the Group C increase in the legislature.

In the final hours of the session, H.778 was approved and the VMERS Groups A and B employee contribution rates stayed at their current level for another year. The Group C employee rate ended up at 9.25 percent for the year beginning July 1, 2010.

H.778 also changes the VMERS Board composition for the first time since its inception in 1975. The current Board is comprised of the state treasurer, an appointee of the governor, two municipal employee representatives and one employer representative elected by the members of VMERS. Under H.778, the treasurer remains a member. There are two employer representatives “who shall at all times during their term of office be a member of a governing body, the chief executive officer, or a supervisor as defined in 21 V.S.A. § 1502(13), of an employer participating in the system,” one of whom is elected by the

governing bodies of the participating employers and the other who is “appointed by the governor from a list of not less than three nominations jointly submitted by the Vermont League of Cities and Towns and the Vermont School Boards Association.” There are also two employee members “who shall at all times during their term of office both be contributing members of the system and have completed five years of creditable service, elected by the membership of the system” who cannot be “eligible to serve as an employer representative.” These changes go into effect on June 30, 2010, so watch your mailboxes for an opportunity to elect members to the VMERS Board.

Lastly, VMERS’ defined benefit plans have a cost of living adjustment (COLA) feature that allows pension checks to reflect changes in the consumer price index. For the first time (on June 30, 2009), the CPI was a negative 1.4 percent from the previous year. Since VMERS COLAs are adjusted by one-half the change in the CPI, VMERS retirees saw a .7 percent reduction in their checks beginning January 1, 2010. According to H.778, “[n]o adjustment shall be made [in the retirement allowance of retirees] in January if the Consumer Price Index as of the previous June 30th is a negative rate.” This change is *prospective only* and will not undo the reduction implemented on January 1, 2010. It will cost VMERS some money that can mean anything from higher employer and/or employee rates, fewer opportunities for other pension enhancements, or less money available to distribute in its retirement health savings accounts. The actuaries do not believe the change will have a substantially negative effect on the System.

Fees (H. 759, Act 134)

VLCT Staff Contact: Karen Horn

Every year the legislature passes a bill that updates (and generally increases) fees for different sectors of government. Agency fees are reviewed on a three-year schedule. This year it was the Agency of Natural Resources’ (ANR’s) turn. The recession, reduced applications for permits with accompanying fees from the private sector, and budget cuts have been rough on the agency. For ANR, the fee bill opportunity probably could not have been better timed; for those who pay ANR fees, the timing and the proposal’s scope could not be much worse – no new revenues are flowing to cover the increases and agency staff, already stretched thin, have had more difficulty than usual providing timely responses.

Towns and cities are captive audiences for many of these fees. According to 3 V.S.A. § 2822 (i), municipalities shall be exempt from payment of fees unless they can recover the cost of the fee by charging users. The statute also establishes the fees that meet this standard that municipalities must pay, including:

1. air pollution control permits or registrations;
2. wastewater discharge application and operating permits (includes stormwater, pre-treatment, indirect discharge, on-site sewage);
7. public water supply, bottled water permits, and interim groundwater withdrawal;
8. all classes of water supply operator certification;
14. sewage plant operator certifications; and
15. sludge or septage facility certifications.

Except for the operator certifications, this bill increased all of these fees, most by about 20 percent. Some fees, such as \$1,000 for an MS4 stormwater discharge application, will be assessed for the first time. Assessment for others, such as stormwater, began a few years ago when the Stormwater Section ramped up its permitting activity. Readers should also be aware that the Challenges for Change legislation allows the agency to bill back applicants for many of the activities that fees traditionally cover. (See Challenges for Change article.)

Wastewater discharge permit fees have changed as follows.

Stormwater

- individual operating or general permit for collected stormwater runoff discharged to Class B waters, application, amendment: \$360/impervious acre; \$180 minimum.
- individual operating or general permit for construction activities, application, amendment for increased acreage: \$36/project for low risk to state waters; \$300/project for moderate risk to state waters; and \$600/project for each individual permit.
- individual operating permit or general permit for runoff from industrial activities with specified SIC codes, application or amendment: \$180/facility.
- individual operating or general permit for runoff from municipal separate stormwater systems, application or amendment (new fee): \$1,000/system.
- renewal, transfer, minor amendment of individual or general permit: \$0.

Annual Operating Fees

Discharges

- industrial, noncontact cooling water and thermal discharges: \$150 to \$105,000 (\$0.001/gallon design capacity).
- municipal: \$150 to \$12,500 (\$0.003/gallon actual flows).
- pretreatment discharges: \$150 to \$27,500 (\$0.0385/gallon design capacity).

Stormwater

- individual operating or general permit for collected stormwater runoff to Class B waters: \$66/acre impervious area.
- individual or general permit for stormwater runoff from industrial facilities with SIC codes: \$66/facility.
- individual or general permit for stormwater runoff from municipal separate storm sewer systems (new fee): \$66/system.

Indirect Discharge or Underground Injection Control

- sewage individual permit: \$400.00 plus \$0.035/gallon design capacity above 6,500 gallons per day (gpd), maximum \$27,500.
- approval under general permit: \$220.

Public Water Supply

Source Permit Applications

- community water systems: \$615/source.
- transient non-community: \$250/source.
- non-transient, non-community: \$500/source.
- amendments to any of above: \$110/application.

Sludge or Septage Facility

- land application sites, facilities to further reduce pathogens, disposal facilities: \$950/application.
- all other types of facilities: \$110/application.

The fee bill requires several reports from the legislature. The first report covers all fees in existence on the prior July 1 within general government, labor, general education, development and community affairs and transportation; it's to be submitted by the third Tuesday of the legislative session beginning in 2011

and every three years thereafter. The second report covers all fees in existence on the prior July 1 within human services and natural resources; it must be submitted by the third Tuesday of the legislative session and every three years thereafter starting in 2012. A third report covers all fees within the protection of persons and property. It, too, is due the same day starting in 2013. The fee bill also requires the commissioner of the Department of Finance and Management to provide a detailed report concerning the use of bill-backs in general, and in addition to or in lieu of fees.

Primary Election Date Change (S.117, Act 73), Recounts (S.122, Act 98)

VLCT Staff Contact: Cory Gustafson

The U.S. Congress passed legislation in October 2009 called the MOVE (Military Overseas Voter Empowerment) Act. The Move Act requires that an absentee ballot must be sent 45 days before the election to any voter who has requested a ballot. In 2010, 45 days before the November 2nd election is Saturday, September 18. The primary election date in Vermont was set for September 14 this year, but that was not early enough because the election would not be certified until September 21. The state director of the Division of Elections and Campaign Finance estimated that absentee ballots would not be printed and sent out until October 4, a full 15 days after the federal law requires.

A provision in the federal legislation allows states to apply for a waiver from the 45-day transmittal time, but Vermont needed to prove “undue hardship” and provide a comprehensive plan in order to have had the waiver granted. Former Department of Justice attorneys suggested that a waiver would not be easy to attain.

It is noteworthy that nine states (including Mass., N.H., R.I. and N.Y.) will continue to hold their 2010 primary elections in mid-September or later. Unless the legislatures in those states change the date of their primary, they will be applying for the “undue hardship” waiver. Even if the waivers are granted, they are only for a single election and may include additional compliance requirements from the Department of Justice. On the other hand, if a waiver is denied, it will be interesting to see the repercussions because the enforcement actions are not yet clear. Whether granted or denied, it appears that there are unknowns when it comes to the “waiver” road these states have chosen to go down.

On advisement from the Federal Voting Assistance Program and the Department of Justice, the Vermont Secretary of State’s office recommended to the legislature that the primary date be changed. The earlier date would avoid the aforementioned unknowns and guarantee that Vermont would be in compliance for the next election.

After much debate in the State House but without the signature of the governor, S.117 became law on April 7, 2010, resulting in the following changes:

- The primary election will be held on the fourth Tuesday in August. This year the date is August 24.
- The primary election date for a special election will be held on the Tuesday that falls not less than 60 days but not more than 66 days prior to the date set for the special election.
- Primary petitions and statements of nomination from minor party and independent candidates shall be filed no sooner than the second Monday in May and not later than 5:00 p.m. on the second Thursday after the first Monday in June preceding the primary election.
- In the case of a special election, primary petitions and statements of nomination from minor party and independent candidates shall be not later than 5:00 p.m. of the 62nd day prior to the day of a special primary election.
- The Secretary of State shall furnish the prepared ballots to the clerk of each town no later than 45 days before the election.

S.122, which was passed later in the session, made amendments to several sections in S.117 that pertain to filing statements and justices of the peace, including:

- Filing statements cannot be filed sooner than the first Monday in June and not later than 5:00 p.m. on the third Monday of July preceding the primary election, and not later than 5:00 p.m. of the 42nd day prior to the day of a special primary election.
- In the event of a death or withdrawal of a candidate after the primary, the party committee will have seven days to nominate a candidate, but a statement cannot be filed later than 60 days prior to the election.
- Nominations of candidates for justice of the peace by party members in each town must now occur on or before the first Tuesday in August in each even numbered year. The chairman and secretary of the nominating committee must file the required statements (see 17 V.S.A. § 2385) no later than the third day following the primary election.

S.122 changes the law by adding a new calculation regarding recounts in elections for statewide office, county office, or state senator. In these elections, if the difference in the number of votes cast between the winning candidate and the losing candidate is less than two percent of the total votes cast for all the candidates, the losing candidate may have the votes recounted.

The existing recount statute stays in effect for all other elections. If the difference in the number of votes cast between the winning candidate and the losing candidate is less than five percent of the total votes cast for all the candidates when divided by the number of persons to be elected, then the losing candidate may have the votes recounted.

Sorting Early Voter Absentee Ballots (H.598, Act 70)

VLCT Contact: Cory Gustafson

H.598 makes a change to the election laws concerning the handling of early voter absentee ballots. Within 30 days of election day, a town clerk may direct two election officials to open the outside envelope in order to sort early voter absentee ballots by ward and district, data-enter the return of the ballots by the voter, check for a signature, and place the ballot inside an envelope in a secure container to be transported to the polling place on election day – that had been the option of clerks in municipalities with at least 5,000 registered voters. Now the legislature has opened the 30-day window to towns with at least 300 registered voters.

Town Meeting Option (S.90, Act 125)

VLCT Staff Contact: Steve Jeffrey

S.90, passed by both houses and signed by the governor, would allow towns with populations of more than 5,000 to adopt the “representative town meeting” (RTM) as an option to the traditional open meeting and the voting by Australian ballot now allowed by law. Supporters hope that this alternative will preserve the best features of traditional open town meeting and address some of its shortcomings, such as poor attendance. The bill defines RTM as “a meeting of members elected by district to exercise exclusively all powers vested in the voters of the town to act upon articles.” However, general law still prevails in the election of officers, public questions, and all articles to be voted upon by Australian ballot, as well as the reconsideration of articles.

The bill allows voters the option to establish the following concerning the form of RTM that a particular town will adopt:

- the number and range of elected members, or a ratio of elected members to the number of voters (but in no case shall the number be fewer than 100);
- the number of districts and their boundaries;
- who shall be ex officio voting members of the meeting;
- the procedure to accomplish the representative meeting;
- any specific action to be taken at the meeting; and
- a procedure whereby the voters of the municipality may reconsider any action taken at a representative meeting.

Brattleboro voters adopted the RTM system in 1959 and have been using it ever since. On the first Tuesday of March, voters elect by Australian ballot three members of the RTM for every 180 voters. Other town officials are also elected at that time. The powers of the Brattleboro representative town meeting include:

- ratifying or rejecting the date set for the annual town meeting by the selectboard;
- ratifying or rejecting the selectboard’s appointees for town clerk, treasurer, and attorney;
- electing the library board of trustees;
- establishing the parameters of a town finance committee;
- approving the annual budget and capital bonding; and
- acting on all town meeting articles except those that relate to the election of officers, referenda, and all matters to be acted upon by Australian ballot.

The voters of Brattleboro can overturn any action of the RTM through referendum.

According to “The New England Town Meeting: Democracy in Action” (Joseph F. Zimmerman, 1999), 42 towns in Massachusetts, seven in Connecticut, and one in Maine also use the RTM form of government. New Hampshire law allows it but no town has adopted its use.

The Vermont Recovery and Reinvestment Act (S.288, Act78)

VLCT Staff Contact: Cory Gustafson

The Vermont Recovery and Reinvestment Act of 2010 that passed this session is intended to provide short-term economic stimulus to certain sectors of the Vermont economy and invest in long-term strategies that are consistent with four principal goals, namely:

1. Collaborative workforce development.
2. Investment in digital, physical and human infrastructure.
3. State government policies and regulations that support business growth and economic prosperity.
4. Leverage the Vermont brand to encourage a diverse economy.

The bill, S.288, appropriates \$8.6 million for various programs and agencies to work towards these goals. Although most of the bill relates to private business and funding state economic development programs, several provisions in the bill relate to local governments.

The Vermont Telecommunications Authority will publish requests for proposals to provide broadband coverage to all of Vermont households and businesses within target communities. To be considered, a proposal must meet several criteria, including the construction of physical broadband infrastructure to be owned by the authority; initiatives by public–private partnerships or retail vendors. A municipality where broadband services are currently unavailable or where business districts are underserved could be part of a proposal if it met the criteria.

S.288 also reiterates the availability funds for municipal bonding. The recovery zone economic development bonds (RZEDBs) are a category of Build America Bonds. The bill says, “[RZEDBs] reduce by 45 percent the cost of the kind of tax-exempt bonding normally done by towns, counties, school districts, and the state. They may be used to fund capital expenditures for real and personal property; public infrastructure and facilities; and expenditures for job training and education programs.” The American Recovery and Reinvestment Act of 2009 gave authority for the issuance of \$90 million of recovery economic development bonds to Vermont. The Vermont Municipal Bond Bank is responsible for issuing the bonds, which must be issued before the end of calendar year 2010.

Workers’ and Unemployment Compensation (H.647, Act 142)

VLCT Contact: Dave Sichel

H.647 primarily addresses misclassification of employees for workers’ and unemployment compensation purposes. Some employers misclassify employees as independent contractors to reduce or avoid their workers’ and unemployment compensation premiums. While this is not a big issue for municipalities, penalties for late reporting of employment information that will impact municipalities that file their unemployment reports late have increased. The current \$35 penalty will rise to \$100 effective July 1, 2010.

This bill also includes an unrelated section addressing standards, certification and statewide licensing of emergency medical service (EMS) providers.

Municipal Charters

VLCT Staff Contact: Karen Horn

This year, 14 municipalities adopted charter changes at Town Meeting that required legislative ratification in order to take effect. . Most of the matters addressed in those bills were local in nature, and no one would argue that the proposed changes might affect governments outside of the confines of the municipality seeking the change.

In the past few legislative sessions, the House Government Operations Committee has treated local government charter changes very respectfully and adopted most of them. This year, it reviewed and passed in substantially unchanged form charters from St. Johnsbury, Berlin, South Burlington, Swanton, Burlington, Essex Junction, Westminster, Enosburg Falls, Hartford, Barre City, Stowe, and Cabot. Those charters then passed the House and Senate and were signed by the governor in a timely manner. Issues addressed in those charter changes included merger of town and village (Westminster and Cabot), establishing the date of Town Meeting (Enosburg), charter review committees, notice of budget contents and votes, and recall of elected officials (Stowe), replacing listers with an assessor (Berlin), and residency of the fire chief (Essex Junction). Burlington’s charter change to repeal instant runoff voting (IRV) was passed enthusiastically.

A few proposals for charter amendments were more problematic for the legislature and serve to remind local officials that the legislature retains the authority to change any amendment in any manner it desires. It can also take up sections of the charter that were not amended by the voters at all. The voters of the City of St. Albans adopted a general re-write of their charter. Included was a provision that allowed the city to require placing utilities underground, which the City intended to require in its downtown revitalization project. The utility companies strongly opposed that measure despite the fact that several other municipalities accord the same authority in their charters. In the end, the provision was deleted from the city charter and H.780 was passed without that section. The growth center bill (S.64, Act 136) does, however, contain language that calls on the Public Service Department to hold workshops on placing utilities underground.

Voters in the City of Rutland adopted three charter amendments that never saw the light of day in the legislature. The first amendment would have established term limits for members of the board of aldermen and the mayor. The second would have required school district employees to contribute 20 percent of the cost of their basic premium for health insurance and 100 percent of any enhancements to the basic premium, and the third would have done the same for city employees.

EDUCATION

Education Funding and Municipal Revenues (H.783, Act 160)

VLCT Staff Contact: Steve Jeffrey

Many changes important to local officials were included in H.783, the Miscellaneous Tax Bill – key among them was keeping the state property tax rates for education at last year’s rates. It is referred to as the “Miscellaneous Tax Bill” so it has all sorts of little tax- and non-tax-related sections that bear little in common with anything else in the bill.

Section 8 of the bill lowers the amount the state Department of Taxes charges cities and towns, levying the “local option” sales and rooms and meals taxes and those that receive payments in lieu of taxes for hosting state buildings. The bill sets the fee for the Department of Taxes to collect the local option sales and rooms and meals tax at \$9.52 per business return rather than the \$10.80 it has been charging. The \$9.52 in the bill is halfway between the real cost of processing the tax of \$8.24 identified by the department and the previous charge. This change will result in local option tax towns keeping an additional estimated \$46,000 of taxes raised in their towns and towns receiving payments in lieu of taxes (PILOT) for state buildings to receive an additional \$20,000 per year through the state PILOT program. The bill also requires that in the future, the fee be set by the legislature, not the commissioner.

Section 9 of the bill adds a new subsection to the enumeration of powers of municipalities in 24 V.S.A. § 2291. This will allow municipalities to recover the costs of maintaining uninhabitable buildings from the owners and having such costs recoverable as if they were property taxes. Any municipality wishing to avail itself of this authority will have to adopt rules determining the habitability of buildings and providing notice to the building’s owner prior to incurring expenses and allowing for an administrative appeals process.

Section 11 arose out of an issue of property appraisal of lands with Vermont Association of Snow Travelers (VAST) trails on them. The final bill language requires the Division of Property Valuation and Review (PVR) to convene a meeting of VAST, VLCT, the Vermont Assessors and Listers Association (VALA), the Town of Canaan, and other interested parties to review and discuss appropriate factors in assessing land that has or is proximate to recreation trails and report to the legislature early next year.

Section 13 requires that any changes in the methodology used by the Current Use Advisory Board to determine use values for farm and forest land be subject to the state rulemaking process.

H.789 also changes statutes to allow the paying of the property transfer tax directly to the state Department of Taxes and for the electronic filing of the property transfer tax return (PTTR). PVR sought and got the input of municipal clerks in the new process; the language in H.789 was the result of almost two years of development involving clerks, real estate attorneys, title companies, and banks. At the real estate transaction closing, the parties agree and submit the PTTR to the online system. The system generates a PTTR that is provided in paper form along with the other real estate documents by

the closing agent to the town clerk for recording and storage. When the clerk receives the return, he or she logs into the state online system, validates the School Property Account Number (SPAN), adds the recording information, and acknowledges the return. The parties make any appropriate transfer tax payments directly to the state, taking the clerks out of their state tax collection requirement. Clerks provided with a paper copy of the PTTR by the Department of Taxes may provide a paper copy of the acknowledged copy of the PTTR back to the department. The effective date of these changes is January 1, 2011.

Section 22 extends for another year the exemption from the state education property tax certain nonprofit skating rinks that are used for some school sports programs. This extends a two-year exemption that was about to expire to the 2011 fiscal year only.

The bill also makes some changes in the income sensitivity provisions of Act 68. In determining the income eligibility of homeowners to pay their education property taxes based on their income, some new income is counted toward the \$90,000 maximum eligibility. For the years 2010, 2011 and 2012, interest and dividend income in excess of \$10,000 a year now doubly counted as income. For the years 2011 and 2012, certain items included as adjustments to total income (Line Q Adjustments) cannot be used, except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, and deductions for tuitions and fees. Income sensitivity adjustments will henceforth only apply to the first \$500,000 in homestead values, so eligible homestead owners will pay the appropriate percentage of their income (1.8 percent increased by the spending adjustment of the local school district) plus the homestead property tax rate on the value of the homestead in excess of \$500,000. Also, income-sensitized homeowners will lose the additional property tax adjustment of \$10 an acre for the first five acres above the two acres included in the homestead that has been provided. Lastly, the renter rebate (a “property tax” adjustment available to renters with household incomes of less than \$47,000) is changed by eliminating one of the methods to determine how much of the rent paid goes towards the property taxes paid on the rental unit. The renter has been able to file using a figure of either 21 percent of the gross rent or that provided by the landlord indicating how much of the rent he or she felt was attributable to the taxes paid on the unit. This second option will no longer be available.

The bill sets the FY11 statewide property tax rates for education at \$1.35 for nonresidential property and the base rate for homestead property at \$.86. Homeowners’ actual rates will be the \$.86 base rate multiplied by the district spending adjustment. (“The more you spend, the more you pay.”) Homeowners with household incomes of less than \$90,000 will continue to pay 1.8 percent of that income multiplied by the same district spending adjustment. All three figures are the same as for FY10.

H.783 also addresses the sales tax status of municipalities and school districts that sell stuff. Municipalities have been exempt from paying the sales tax when they buy stuff, but not legally exempted from collecting it when they sell stuff. The bill makes it clear that municipalities are exempt when they sell products, services, or admissions to a place of entertainment (think wrapping paper, ski and skate sales, high school plays). However, if the school or municipality involves a private vendor “who receives a share of the proceeds from the sale of property at a school or municipal premises, [it] shall collect and remit tax on the total sale price of such sale regardless of who is the direct recipient of the payment.”

The Department of Taxes must provide the legislature’s Joint Fiscal Committee with a feasibility report on developing an electronic system for the state administration, billing, and collecting of the education property tax. The report is due by July 15, 2011. A “Blue Ribbon Tax Structure Commission” created under previous legislation to study and make recommendations pertaining to the state’s tax structure is now also tasked with coming up with:

- the five most important short-term and five most important long-term goals for Vermont's education system;
- evaluating Vermont's current education governance, finance, and spending controls systems in light of those goals and determine which elements of the current system should be considered and which should be modified or eliminated; and
- developing new systems of education finance, spending controls, and cost savings guided but not limited to the goals and elements developed and evaluated above.

The commission may appoint an advisory panel of individuals familiar with education assessment, governance and finance “and who have a demonstrated commitment to supporting a high-quality and efficient public education systems with high outcomes and have a demonstrated understanding of both the state and local aspects of public education in Vermont.” The commission shall also propose “an appropriate balance between education funding from education property taxes and ... from the general fund and other sources and analyze and recommend alternative means of maintaining the balance. In fiscal year 2011, the balance will be 68.2 percent of education funding from education property taxes and 31.8 percent of education funding from the general fund and other education funding sources. In comparison, in fiscal [year?] 2005, that balance was 60.8 percent and 39.2 percent, respectively.” The commission is to complete its tasks by September 15, 2011.

Homestead owners will no longer have to file an HS-122 homestead declaration form annually. The form will now only have to be filed for property acquired or made the homestead of a declarant after April 1 of the previous year. Once filed, the declaration will remain in effect until the earlier of the sale of the property or when the property or any portion of the property ceases to qualify as a homestead. The declarant is required to notify the Department of Taxes of either of those two developments within 30 days. Failure to notify the department of changes joins filing an ineligible declaration or failing to file as being subject to a penalty of three percent of the education tax on the property, if the municipality's nonresidential tax rate is higher than the municipality's homestead tax rate – or eight percent in any other case.

The last major section of H.783 is a two-year freeze of the property tax appraisals on hydroelectric facilities. Towns hosting hydroelectric generating facilities owned by Central Vermont Public Service and Green Mountain Power were notified in April that their 2010 appraisals should be reduced by about one-half from their 2009 valuations. This notice was based on substantially reduced costs of replacement electricity on the wholesale market. PVR adopted this method of appraising such property about five years ago, and has advised both towns and the companies of the value at which the hydroelectric facilities should be appraised *as a recommendation*. Listers were still able to set the values at what they felt were appropriate, but the town would be on the hook to defend them. The replacement cost for electricity was fairly constant for the first four or five years, so everyone got comfortable with it. This year, the bottom fell out and 29 host towns would have lost between .01 percent and 8.4 percent of their grand lists values and municipal property taxes. VLCT estimated that towns would lose \$427,000 in municipal taxes and the state education fund would lose \$1.4 million. The bill holds all hydroelectric facilities (including the Trans-Canada facilities along the Connecticut and Deerfield Rivers that are appraised differently and are actually being reappraised as we write) at “no lower than” the grand list value of 2009 for the 2010 and 2001 grand lists. The bill provides some exceptions for agreements between towns and companies and tax stabilization agreements that may be entered into. The bill also requires the Department of Taxes, in conjunction with the Department of Public Service and representatives of municipal government, to study the feasibility of implementing an appraisal method that uses three-to-five year rolling appraisal values for hydroelectric facilities and to report to the legislature by January 15, 2011.

Other Relevant Education Law Changes (H.792, Act 146; H.66, Act 153)

VLCT Staff Contact: Steve Jeffrey

Challenges for Change (H.792). The Challenges for Change legislation (reported separately in this Wrap-up) also targeted lowering the costs (and/or increasing the efficiency) of local school districts. The original Challenges proposal presented in January had schools reducing “administrative” costs by \$11.3 million in the year starting in July and another \$30 million net savings for the FY12 year with 35 percent of the savings accruing to the state General Fund and the rest to property taxpayers. It also recommended savings in special education spending of \$6 million and \$10.5 million over the next two years with the same proportion accruing to the General Fund and property taxpayers. In the March 30th progress report on Challenges, the commissioner of the Department of Education declared that since voters had approved school budgets “\$22 million below the 2009 estimates of fiscal year 2011 education spending used to determine property tax rate adjustments [by the commissioner of Taxes in December],” he had concluded that the FY11 fiscal challenge had been met. The final version of H.792 focused on achieving the savings projected for FY12.

The Department of Education will be required to develop a formula that will assign voluntary spending reduction targets to each supervisory union (SU) and technical center school district for fiscal year 2012 budgets. The targets will total \$23.2 million statewide and would ask school districts collectively to cut approximately two percent from their fiscal year 2011 education spending.

The formula that the department must devise will not assign each SU an equal dollar amount or percentage as its target. Instead, the formula must favor SUs with districts that (1) have demonstrated fiscal restraint in recent years, (2) have low per-pupil administrative costs, (3) have high student-to-staff ratios, (4) have high percentages of students in poverty or who are English-language learners, or (5) have “other unique circumstances that affect education spending.” The commissioner of Education must notify SUs of their targets by August 1, 2010.

The boards of the supervisory union *and* each district within it must notify the commissioner “whether their combined budgets will be able to meet recommended reductions” by December 15, 2010.

After receiving the information from SUs and districts on December 15, the Department of Education will be tasked with developing a “detailed proposal” that will “ensure” the spending targets for FY12 overall will be met, presumably with legislative action. There are almost no parameters given for the plan, other than that its dollar target will be \$23.2 million less the expected savings that SUs and districts report.

*Thanks to the Vermont School Boards and Superintendents Associations
for much of the content of this portion of the article.*

Teachers’ Retirement (Act 74). In late January, legislative leaders, the state treasurer and leaders of the Vermont National Education Association announced an agreement changing teacher retirement benefits and contributions that will save state taxpayers \$15.2 million in the coming fiscal year. What became Act 74 helped solve the state’s fiscal crisis without shifting the cost of the teachers’ retirement system to the Education Fund as proposed by the governor.

Estimates show that benefit reduction for future retirees will generate \$6.7 million of the savings. An increase in how much teachers contribute will make up the other \$8.6 million of the savings to the taxpayers. The employee contribution rate will increase from 3.54 percent to 5.0 percent for all teachers.

Voluntary District Mergers; Supervisory Union Functions Reorganized; Miscellaneous Education Law (H.66). H.66 includes reconfigured duties for supervisory unions and superintendents and incentives for a voluntary school district merger program that are intended to lower school costs.

Duties of Supervisory Unions. H.66 changes the roles of supervisory unions (SUs) and superintendents across Vermont, not just in districts that voluntarily merge. These changes, effective July 1, 2012, will largely require SUs to manage and provide services that currently may be offered by the SU or individual districts; therefore, they will have a greater effect on the operations of more decentralized SUs. The duties will be expanded to include:

- establishing an SU-wide curriculum and ensuring its implementation;
- providing for professional development for member district educators and staff;
- providing special education and compensatory and remedial services;
- providing financial and student data management services;
- procurement and distribution of goods and operational services;
- construction project management;
- contract negotiations with educators, administrators, and other school personnel (contract terms may vary by district, and districts must still individually ratify agreements);
- providing or arranging for transportation in districts that offer student transportation;
- providing human resources management support.

The commissioner of the Department of Education is authorized to grant waivers to individual SUs for any or all of the above requirements, except for curriculum and professional development, if an SU shows that it can provide the service more effectively and efficiently at the district level.

Duties of Superintendents. Superintendents will see their statutorily-required duties expand on July 1, 2012. These include:

- reporting all financial operations of the supervisory union and/or its member districts;
- hiring non-licensed staff and dismissing all staff, subject to all legal and contractual procedures;
- nominating individual candidates for licensed positions (e.g., teachers) for school board approval (If the board rejects the nominee, the superintendent would bring forth another single nominee.);
- developing and implementing class size policies in conjunction with school boards. (See more about class size policies below.)

Virtual Merger Reimbursement. Supervisory unions will be encouraged to reach agreements to provide services jointly. If the joint agreements include cost-benefit analyses demonstrating expected “financial savings or enhanced outcomes, or both,” the supervisory unions will be eligible for up to \$10,000 in reimbursement from the Education Fund for transitional costs including legal and consulting fees.

Class Size Policies and Student-Staff Ratios. Each supervisory union and member school board must adopt class size policies by January 15, 2011, specifying minimum and optimal class sizes. The policies may include differentiated minimum and optimum figures for various districts, courses, and grade levels. The policies must be posted on the supervisory union website and conveyed to the commissioner of Education. The commissioner is required to develop at least two model class size policies and make them available online by August 31, 2010. He or she is also directed to study student-teacher and student-staff ratios in Vermont public school systems and report on “cost-effective student-to-staff ratios” to the legislature next January.

Voluntary School District Merger Incentives Program. H.66 provides temporary financial incentives to school districts that choose to voluntarily merge according to certain conditions. The merger process will use existing union school district formation law. A merged district will be known as a Regional Education District (RED).

Each SU board is required to discuss by December 1, 2010 whether to formally explore a merger within the SU or with neighboring districts. By October 2012, each supervisory union board must vote whether to engage in a formal merger planning analysis process.

To earn the incentives provided by H.66, the merger would need to meet the following conditions (in addition to the existing requirements):

- The RED must comprise at least four existing school districts, and/or comprise an average daily membership (ADM) of at least 1,250.
- The RED must be a unified union district that operates one or more schools for K-6, and operates one or more schools, designates a school, or pays tuition for students in grade levels 7-12. (Prekindergarten is optional.) In other words, the RED cannot be a union elementary or a union high school district only.
 - *Non-operating RED:* Notwithstanding the above requirement, if four or more non-operating K-12 districts merge to pool tuitions and administrative costs, they would be eligible to earn the financial incentives as a non-operating RED.
- The RED cannot close a school in the first four years of operation without the consent of the electorate of the town in which the school is located.
- The merger plan must include a cost-benefit analysis that “shall identify cost efficiencies and improved educational outcomes that will result from merger...”
- The merger plan must include “structures and processes” that provide opportunities for local participation in the creation of policies and budgets for the RED.
- A RED will need to undertake specific steps when it assumes the employment contracts of the participating districts. These steps include recognizing existing bargaining units, and negotiating an agreement that clarifies issues of seniority, reductions in force, layoff, and recall among employees of the member districts.
- The vote to merge must occur by July 1, 2017.

A RED that meets the above conditions will be eligible for the following incentives:

- For homestead tax purposes, the RED’s tax rate and income sensitivity percentage would be reduced for four years. The amount of the homestead rate reduction would be:
 - Year 1: -8 cents
 - Year 2: -6 cents
 - Year 3: -4 cents
 - Year 4: -2 centsFor income sensitivity, the reduction would be proportional to the reduction in the homestead tax rate. Also during the first four years of RED operation, each of the participating districts that comprise the RED would not see its homestead tax rate or income sensitivity percentage increase or decrease by more than 5 percent annually. This provision is intended to smooth the transition from a participating district’s tax rate to the RED’s tax rate over time.
- The merger planning committee can be reimbursed up to \$20,000 from the Education Fund to pay for the cost of planning a merger.

- If any of the participating districts were eligible for a Small Schools Grant prior to merger, the RED would receive state aid in the amount of the Small Schools Grant for the first five fiscal years of its operation.
- The RED would have the option to operate with two-year budgets during the first four years of operation, and two- or three- year budgets thereafter, subject to approval from the electorate.
- If a RED or a participating district sells a school building, it would not have to repay the state the share of the sale price equal to the percentage of construction aid the state provided when the building was constructed.
- If a school district is awaiting state aid for a construction project that was approved prior to July 1, 2010, the district merges into a RED, and the RED has still not received that state aid in FY2017, at that point the RED would be reimbursed annually from the Education Fund for interest payments paid to a lender in anticipation of receiving the state aid.

The voluntary merger incentive program also includes the following provisions:

- The Department of Education is required to develop a merger template to assist districts in evaluating whether a merger would be beneficial to the district or its students. The template will be made available by December 15, 2010.
- The James Jeffords Center at the University of Vermont will collaborate with the Department of Education and local school districts to conduct analysis of districts that choose to merge, and will report to the legislature on whether fiscal efficiencies or improved student opportunities and outcomes resulted from the merger.

Additional sections of H.66 are designed to reduce school costs:

- The commissioner of Education will develop and present a plan by January 15, 2011 to restrict the recipients of Small Schools Grants to districts that are deemed geographically isolated. The report will include an analysis of what amount of supplemental financial support is necessary to allow these geographically isolated districts to provide an adequate education. The plan would also include a timetable to withdraw grants “gradually” from districts that are not geographically isolated.
- The existing exceptions to the requirement that collective bargaining be conducted at the supervisory union level have been repealed (i.e., there will be no exceptions). Contracts can still have district-specific terms and individual school districts must still ratify contracts.
- A provision of existing law that provides up to \$150,000 to any school district merger or consolidation has been extended through 2014. Unlike the voluntary merger incentive program, there are no specific conditions, other than completing a merger, that need to be met to earn this incentive.
- Districts will be explicitly permitted to offer educational services by entering into contracts with distance learning providers that are approved by a nationally recognized accrediting agency or are approved by the state’s Department of Education.

*Thanks to the Vermont School Boards and Superintendents Associations
for much of the content of this article.*

TRANSPORTATION

Transportation Bill (H.784, Act 123)

VLCT Staff Contact: Cory Gustafson

The FY 2010 transportation bill, H.784, proved less controversial than transportation bills we have seen in past years. The committee of conference that worked out differences between the House and Senate proposals for transportation policy changes and spending took only a few short days to reach agreement. The main reason for the lack of contention was that the Transportation Fund didn't face the budget gap that plagued the General Fund this year – a fortunate turn as Vermont continues to play catch-up on maintaining and rehabilitating the state's transportation infrastructure. Including all sources of funding and types of spending, the bill makes available \$595 million for Vermont's transportation system, a record amount.

Eighty million dollars in American Recovery and Reinvestment Act (ARRA) funds and \$13 million in bonding provided for significant enhancement in FY11 spending. Additional revenue upgrades and cost savings were achieved over the course of the session to further improve the Transportation Fund's outlook. The gas and diesel taxes that were established last year as a dedicated source of revenue for Transportation Infrastructure Bonding (TIB) created a TIB fund. Money collected in this fund that is not needed to pay for bonding costs can be used to pay for projects in the transportation program. The TIB revenues have been upgraded by \$2.5 million so far this year and a new labor contract was reached with the state police, reducing a transfer from the Transportation Fund to the General Fund by \$719,000. Toll credits (federal credits for spending on infrastructure unrelated to roads) and the removal of a diesel fuel tax exemption for tour buses also contributed positively to the fund.

Somewhat unexpectedly, two of the Town Highway Grant programs, Structures and Class 2 Roadway, have been tabbed for an additional \$3.5 million in funding. These increases were recommended by the governor, but were pitted against a reduction in the Joint Transportation Oversight Committee (JTOC) transfer to the General Fund. The JTOC transfer essentially helps fund state police. When the House Appropriations Committee refused the transfer reduction, the House Transportation Committee spent considerable time finding a way to retain the \$3.5 million increase to towns. It proved to be time well spent when the Senate Transportation Committee signed off on the plan, although the committee expressed concern that the increases might not be sustainable next year when ARRA funds are no longer available.

Town Highway Aid held steady again this year at \$24.98 million, a level it has been at since 2005. Funding for the Town Highway Bridge decreased from \$24.68 million in FY10 to \$18.32 million in FY11. However, this appropriation fluctuates on a yearly basis because it is primarily funded by federal dollars (\$16 million in FY11) and the placement of individual town bridges in the statewide transportation improvement plan (a.k.a. STIP). The FY09 appropriation was \$16.53 million. The Vermont Local Roads Program received an additional \$15,000, which makes its total appropriation \$390,000 for FY11. The table in the Appropriations article (see related article) contains a full breakdown of town transportation funding.

In addition to the funding components, there are several policy changes in the Transportation Bill.

Locally managed projects that have secured federal funding will be subject to a new process if they are cancelled. Previously, the state was on the hook for the full amount to the federal government if repayment was required, regardless of who cancelled the project. The changes will require the

municipality to repay the federal dollars received based on their proportional role in the project cancellation. When a federally funded project is cancelled, the state must consult with the local entity and determine who is responsible for paying the money back, if required. Within 15 days of the state's determination, a municipality may petition the Transportation Board for a hearing to determine if the cancellation was due to circumstances outside the municipality's control. If so, it will order the municipality's repayment obligation to be reduced in proportion to its responsibility.

H.784 also changed language related to parades and special occasions. Presently, a town may exclude motor vehicles from certain public highways and may make such traffic rules and regulations as the public good requires. The change allows towns to make special regulations as to motor vehicle operation only on *town* highways rather than "*certain public*" (*the term in current statute*), and requires public notice of the special occasions to be given. Look for detailed recommendations in the next VTrans *Handbook for Local Officials* (a.k.a. the "Orange Book") regarding this subject. In a nutshell, VTrans wants municipalities to communicate with their district administrator when planning a special occasion that will impact the flow of traffic.

The bill also eliminates the requirement that municipalities send the Transportation Board a copy of their annual report.

Under current law, municipalities must erect school warning signs on all public highways near a school. H.784 adds "school-district operated prekindergarten program facilities owned or leased by a school district" to the definition of what qualifies as a school. Also, signs will no longer be required to bear the legend "school zone."

Senate and House Transportation Committee members should be recognized for their support of Vermont municipalities this legislative session. They began by paying attention to local officials' comments and concerns on Local Government Day in the Legislature, and finished by finding a way to provide much needed financial assistance to towns. If your representative or senator is on either of these committees, don't hesitate to thank them for their efforts.

Overweight Commercial Vehicle Operation on the Interstate System (S.93, Act 63)

VLCT Staff Contact: Cory Gustafson

The first piece of legislation passed in the 2010 Legislative Session was of particular interest to Vermont cities and towns. The issue of overweight commercial vehicles on state and local roads has long been a major concern, and the legislature wasted no time addressing it when the opportunity presented itself in January.

For years, an 80,000-pound weight limit on the Interstate Highway System has forced larger trucks onto the state secondary roads that connect our cities and towns. Vermont municipalities and others have argued for the limit on the interstates to be raised to match those approved for state highways, citing the dangers and costs associated with having upwards of 99,000-pound rigs rumbling through local streets. Efforts of state lawmakers – such as a Senate Transportation Committee bill that proposed \$1 fines for overweight trucks on the interstate highways – perhaps drew attention to the issue but did not solve the problem of regulation at the federal level.

Last December, however, the U.S. Congress passed a measure allowing higher weight limits – up to 99,000 pounds – on Vermont interstates. This opened the door for lawmakers at the State House to act, and they acted fast. Within 24 hours, weight limit legislation passed both the House and the Senate, and the next day the governor signed Act 63 into law.

Act 63 allows a semi-trailer combination to be a maximum of 99,000 pounds by special annual permit on state highways. The same holds for the interstate system, as long as it is authorized by federal law. Previously, the allowance to haul commodities up to the 99,000-pound limit on state and town highways applied only to unprocessed milk, forest, or quarry products. Act 63 opens that provision to all commodities now, and it will remain even if the federal authorization for higher weight limits on the interstate ends as currently planned on December 16th of this year.

The federal exemption is a one-year pilot program that will require a study of its benefits before it can be made permanent. The Federal Highway Administration will conduct the study, which is not due until December 2011, a year *after* the pilot program is scheduled to conclude. Unless the pilot period is extended, the federal and state regulations regarding overweight vehicles on the interstate system will revert to the previous incarnations (save for the exceptions noted above).

Many parties are expected to benefit from this legislation, and the impact on Vermont's towns and villages should be positive. State and local roads that run near interstate roadways should be spared the additional traffic of overweight vehicles, reducing hazards for pedestrians, motorists, and the truck drivers themselves. The wear and tear on these municipal roads and bridges should also be reduced, leading to decreased maintenance costs over time.

VLCT appreciates the efforts of lawmakers at the federal and state level to take action on this longstanding issue. However, the one-year timeframe for the pilot program may be inadequate to make a sound decision regarding the impacts of this legislation. Your congressional delegation needs to hear from municipal officials about their experiences regarding changes in large truck traffic through their cities and towns. Please send your observations and comments to Cory Gustafson at cgustafson@vlct.org or call 802-229-9111.

Private Road Maintenance Agreement Study (H.498, Act 131)

VLCT Staff Contact: Cory Gustafson

The mortgage crisis that began in 2007 and spurred the global economy into recession has led to an overall tightening of the mortgage industry. Fannie Mae (the Federal National Mortgage Association, whose purpose is to stabilize the housing market) has become stricter in its underwriting standards and in enforcing the private street maintenance agreement requirement. Most mortgage lenders rely on selling mortgages to Fannie Mae on the secondary market (where previously issued securities and financial instruments such as stocks and bonds are bought and sold).

The absence of statutory provisions that define the responsibilities of property owners to maintain and repair private streets has delayed mortgage closings and created uncertainty for Vermont homeowners. H.498 establishes a committee to study the creation of default statutory requirements that define the responsibilities of property owners for maintaining and repairing private roads and to recommend legislation. The committee will report to the Senate committees on Finance and on Transportation and to the House Committee on Commerce and Economic Development by January 15, 2011. The Vermont League of Cities and Towns will have one member on this committee. (See the Summer Study Committee article for details about becoming a VLCT representative on this or other study committees that have been required by the legislature this session.)

Texting Ban, Junior Driver Restrictions (S.280, Act 150)

VLCT Staff Contact: Cory Gustafson

The subject of highway safety was a front-burner topic early in the session. S.280, originally known as the texting bill, passed out of the Senate in February. Both chambers labeled passage of legislation a priority – the House passed a strike-all version in March – but differences on what should be included in the bill held up action until the very end of the session. The House wanted a comprehensive bill that included a texting ban, primary seat belt enforcement, junior operator restrictions, and requirement of “hands free” cell phone usage while driving. The Senate, on the other hand, wanted the ban on texting provisions only. The final product was a compromise of the two versions.

The bill went into effect June 1, making Vermont the 27th state to ban texting while operating a motor vehicle. The penalty for doing so will be \$100 for the first violation and \$250 for a second or subsequent violation within any two-year period. S.280 also includes provisions that prohibit junior operators from using any portable electronic devices while driving and extends primary seat belt enforcement to persons under 18 years of age.

It is noteworthy that there are no exemptions for law enforcement officials using their laptop computers while on the road.

Reserved Parking for People with Disabilities (S.150, Act 82)

VLCT Staff Contact: Cory Gustafson

This simple piece of legislation makes two changes to the law regarding reserved parking for people with disabilities. The first is to double the fine from \$100 to \$200 for persons who illegally park in a reserved space. The second is to require that each space be designated by a clearly visible sign that cannot be obscured by a vehicle parked in the space – in other words, symbols painted on the pavement are not adequate.

Chittenden County Transportation Authority (H.607, Act 71)

VLCT Staff Contact: Cory Gustafson

H.607 codifies the charter of the Chittenden County Transportation Authority (CCTA) and makes several changes relating to its expansion.

The bill expands the area of operation to include Chittenden, Franklin, Grand Isle, Washington, Addison, and Caledonia Counties. The towns of Orange, Washington and Williamstown of Orange County are also included but the rest of the towns in the county are included only for the provision of commuter services. Lamoille County is also included, but only for the provision of published scheduled services.

Membership in the authority consists of municipalities that elect to join by majority voters present if the question is specifically authorized under the charter or by resolution passed by the CCTA board of commissioners. Barre City, Berlin, Colchester, Hinesburg, Montpelier, Morristown, Richmond, St. Albans City, Stowe, and Waterbury were authorized in H.607.

Municipalities outside of Chittenden County that vote to join the CCTA must negotiate with the board the amount to be assessed upon the municipality and terms of payment. The municipality cannot join prior to agreeing with the authority on terms of the levy and payment.

There are also changes to the way the formula for apportionment is attained. Previously, once a budget was agreed on, the treasurer apportioned the sums required to be contributed by each member municipality using a formula that averaged the number of weekly miles of service for a 12-month period in a municipality compared to the same calculation for all member communities. The language regarding the calculation is removed in H.607. Now, the formula for apportionment may be changed by the board of commissioners with concurrence of at least three-quarters of the member municipalities.

The final change is to the makeup of the CCTA board of commissioners. Rather than two commissioners from each member municipality, the board will now include one commissioner from each member of the authority and two from the City of Burlington.

PUBLIC SAFETY

Corrections Bill (S.292, Act 157)

VLCT Staff Contact: Cory Gustafson

The budget of the Department of Corrections (DOC) has grown 388 percent since 1990, while the number of crimes in Vermont has essentially stayed the same (according to DOC and Dept. of Public Safety websites). This unsustainable trajectory made corrections an easy target for the Public Services Group that produced the Challenges for Change goals discussed throughout this Wrap-up. The corrections bill, S.292, which began in the Senate Judiciary Committee, eventually became linked to the challenges process because it accomplished a major portion of the goals outlined in the corrections rebalance. The first Challenges for Change bill, S.286, which passed early in the session, set targets for corrections to achieve \$10 million in savings and reinvest \$3 million in programs and services that would reduce the number of people requiring DOC supervision and decrease the recidivism of those who do enter the system. The second Challenges for Change bill (H.792) and S.292 are inseparable when it comes to implementing the intent of the legislature. (The linkage is expressly made in H.792.) In short, the combined legislation intends to achieve long-term reductions in the corrections budget while enhancing community safety.

Achieving savings was a strong impetus for the corrections legislation. In the end however, the Senate and House committees that worked on the bills paid greater attention to community safety by augmenting reparative boards, transitional housing, community justice centers, and monitoring equipment. In fact, more money was appropriated for investment than is projected to be saved in the first year of implementation. The corrections legislation of this session constitutes a concerted effort to impose structural changes on the system that will hopefully result in reductions in recidivism and sustainable savings over the long term.

While the investments reside in the Appropriations and Challenges bills, much of the reductions in DOC population – and, therefore, savings – are found in S.292. The provisions are intended to reduce the number of detainees (persons who have been charged and are awaiting court appearance) and reduce the number of individuals incarcerated, which is currently around 2,260 inmates. Vermont's average detainee population had grown to around 400 for the last half of 2009. S.292 asks that court administrators, the administrative judge of the trial courts, the DOC commissioner, the executive director of the Department of State's Attorneys and Sheriffs, and the Defender General work cooperatively to reduce that number to 300 by January 1, 2011. Although the numbers vary among facilities, the average annual expense of an inmate in Vermont is \$50,871 according to DOC's *FY2009 Facts and Figures* report. Inmates who are in out-of-state facilities cost taxpayers \$23,728 per year.

Closing the Windsor Work Camp was one of the proposals put forth by the administration to meet the savings goal, but for most of the session, the legislature resisted shutting down any Vermont facilities fearing the negative impact that it would have on the community. (In the end, this option was left on the table in the appropriations bill.) Not closing any Vermont correctional facility left the numbers pretty simple: 420 inmates would need to be moved from out-of-state prisons via release or transfer to an in-state facility following the release of an offender who had been held in Vermont. However, the Senate Judiciary and House Corrections committees were unwilling to take such a “mathematical” approach to the corrections dilemma. Instead, they focused on groups of offenders that they felt could be released without compromising public safety. The result was a group of provisions that often revolve around individuals who have been convicted of or are awaiting trial for committing nonviolent misdemeanors or nonviolent felonies – that is, crimes that are *not* defined in 13 V.S.A. § 5301(7) or are *not* an offense involving sexual exploitation of children.

One such provision meant to reduce the incarcerated population is the directive to DOC that it should not use lack of housing as the sole factor in denying furlough to inmates who have served at least their minimum sentence for a nonviolent misdemeanor or felony.

S.292 also directs the DOC to request that the court discharge from probation offenders who, on July 1, 2010, have served at least two years of an unlimited term of probation for a nonviolent misdemeanor and have less than six months of term probation remaining for a nonviolent misdemeanor or a nonviolent felony. These offenders must also have completed all court ordered services or programming designed to reduce the risk of recidivism.

Probationers who have been charged with a technical violation – something that is not a crime but forbidden under the terms of their probation – will now have the right to bail or release if the person is on probation for a nonviolent offense.

The bill allows the court to sentence inmates and place them on home confinement furlough, restricting them to a preapproved place of residence. Home confinement furlough carries a number of restrictions and cannot exceed 180 days.

These provisions are estimated to save around \$3.2 million. S.292 calls for using a portion of these savings to provide grants to community justice centers, community providers for transitional beds, support services, and residential treatment centers for offenders reentering the community. Support for these offenders may also include helping them seek employment, pursue an education, or engage in community service while they are on furlough. The bill also requires DOC to aid the offenders’ by removing barriers that impede their participation in such endeavors, when appropriate. This may include removing unnecessary driving restrictions and changing the timing of probation appointments and programs that inhibit regular employment.

As the release of offenders and community investments go forward, DOC has been directed to perform certain tasks to aid communities. First, it must notify local and state law enforcement officers of certain information regarding a person released from incarceration on probation, parole or furlough and residing in the community, namely: name; address; conditions imposed by the court, parole board, or commissioner; and the reason for placing the person in that community. Second, when considering investments in services at the community level, the DOC commissioner should give priority to projects located in communities that have a high percentage per capita of people under DOC custody, including those living in the community and residents who are incarcerated.

The issue of public inebriates also takes a modest step forward in S.292 as the date approaches when police can no longer take dipsomaniacs to correctional facilities. The Office of Alcohol and Drug Abuse Programs (ADAP) is directed to develop a uniform screening tool to determine if an inebriated person is incapacitated or needs medical attention. In addition, ADAP must develop supervised two-bed units for incapacitated persons taken into custody. These units are to be placed in counties where no such space currently exists. Priority will be based on population density and demonstrated collaboration between stakeholders. Unfortunately, funding for these units was not appropriated.

The approach the Senate and House took in their changes to Vermont's correctional system will not result in the release of 400 inmates as was feared by many early on in the process. Best estimates put the number at around 150, most of whom are detainees (awaiting court appearance) or offenders convicted of only nonviolent crimes who would be released in the next six months anyway. Considering that the department has more than 9,500 people under supervision in communities already and the dollars to be spent on transition, programming and monitoring will be boosted significantly, accepting the new releases will hopefully prove manageable for Vermont communities. S.292 and the corrections sections of H.792 should be considered responsible steps in helping to address the state's growing corrections predicament.

Constables; Municipality Exemption to Records Law (S.161, Act 108)

VLCT Staff Contact: Cory Gustafson

This bill was introduced as a ratification of the National Crime Prevention and Privacy Compact. S.161 still includes this provision, but in its journey through the House, it became a vehicle for several other pieces of legislation that needed a home. A couple of these are significant to local governments.

In 2008, Act 195 repealed the provision that made law enforcement training standards optional for constables and removed language that said "a town may vote to prohibit constables from exercising any law enforcement authority without having successfully completed a course of training." The date for the repeal was to be July 1, 2010, meaning that elected law enforcement officials would be subject to the minimum training standards outlined in 20 V.S.A. § 2358 at that time. This year, S.161 amended Act 195 by extending the effective date to July 1, 2012. The net result of the repeal is that the onus will shift to the constables to make themselves eligible for law enforcement authority. Even with this change, a town will still have the right to vote to prohibit constables from exercising law enforcement authority at a special or annual town meeting.

S.161 also provides a new exemption to a "local governmental entity" with regard to criminal conviction record checks required for licenses or vendor permits. Previously, municipalities were bound by a law that says an applicant cannot be required to obtain, pay for, or personally submit a copy of his or her criminal record. With the new exemption, municipalities can request records directly through the Vermont Criminal Conviction Record Internet Service and pass the \$30 cost on to the applicant. This provision should actually streamline the process for those seeking liquor licenses, entertainment permits, cab licenses, or street vendor permits, as well as for the municipality itself.

Emergency Medical Services (H.647, Act 147)

VLCT Staff Contact: Cory Gustafson

The Employee Misclassification Bill, H.647, is intended to lower premiums for unemployment and workers' compensation by increasing investigations and instituting stiffer penalties on those who are not in compliance. It also includes provisions related to emergency medical services in the state. Actually, language was originally passed in S.288 of the 2010 session but it was amended further in this bill.

The legislature approved substantive changes to levels of certification and application forms for advanced emergency medical care. The bill requires that the Department of Health establish the changes by rule, and includes provisions to guide the rulemaking process, including:

1. The commissioner of the Department of Health must use the guidelines established by the National Highway Traffic Safety Administration (NHTSA) as a standard, except that felony convictions do not automatically disqualify applicants.
2. Individuals can apply for and obtain more than one certification as an advanced emergency medical technician (EMT) or paramedic.
3. Individuals certified by the commissioner as an EMT-basic (b), EMT-intermediate (i), or paramedic can practice fully within the scope of practice for that level of certification as defined by NHTSA's National EMS Scope of Practice Model.
4. Written and practical examinations shall not be required for recertification but the commissioner must require a specific amount of continuing education hours in order to maintain certification.
5. An applicant who has served as an EMT in the U.S. Armed Forces or is a licensed registered nurse or physician's assistant must be granted a permanent waiver of the training requirements, provided he or she passes the applicable examination for certification.
6. An applicant who is certified on the National Registry of Emergency Technicians as an EMT- (b), EMT- (i), or paramedic will be granted the corresponding level of certification in Vermont without needing further testing.
7. Trainees will not be required to have advanced certification if they are enrolled in an approved training program and supervised by an individual holding certification.

The rules are required to be in place by March 1, 2011.

Additionally, the bill requires the Department of Health, in consultation with interested parties, to study and develop a proposal for a statewide licensing mechanism for Emergency Medical Services (EMS) providers. The study is to assess the state's EMS capabilities and training requirements and consider the consequences of a properly certified individual providing emergency medical service that exceeds the scope of practice for the license level of the EMS with which he or she is affiliated. The proposal, findings, and recommendations must be submitted to the legislative committees of jurisdiction by January 15, 2012.

The changes to EMS law are of concern to municipalities and the medical directors of ambulance service providers. It is unclear what these changes will finally look like in Department of Health rules, but the loosening of restrictions puts providers at the risk of increased cost and less control over quality of service. Permanently exempting armed forces personnel and licensed nurses from training could open the door to a greater pool of candidates; however, there are questions as to how ready these individuals would be to perform on-site from a truck. Nurses typically are trained in a controlled setting, while armed forces medics work from helicopters with a completely different set of protocols. Until now, the level of care on scene has been defined by the certification of the ambulance service. But if paramedics are allowed to perform procedures beyond the EMS's level, there are questions as to how this would play out. For example, a paramedic can independently administer drugs beyond the scope of those allowed by an intermediate level ambulance service. EMS directors are concerned that the result could be paramedics carrying their own "drug kits" or ambulances being forced to incur the expense of stocking drugs and instruments to paramedic level. Further, when a paramedic performed a procedure that exceeded the EMS's certification in the past, the associated risk fell on the paramedic. Going forward, the EMS could be included in the liability because the law has given paramedics the right to perform procedures within their scope of practice, regardless of the EMS's level of certification. Service providers worry that this increased exposure would lead to increased costs. Effective emergency care is the goal of

all interested parties, but the open-ended nature of this bill raises many questions as to how Vermont will efficiently achieve this in the future.

ENVIRONMENT AND QUALITY OF LIFE

Renewable Energy (H.781, Act 159)

VLCT Staff Contact: Karen Horn

Another bill that passed on the last day of the session was the renewable energy bill, H.781. It updates and refines previously passed legislation that encourages the development of renewable energy. Several of the bill's provisions affect municipalities both as potential generators of or hosts to renewable energy projects and as regulators.

The bill provides for state solar energy investment tax credits of up to \$9.4 million pertaining to solar energy plants of 2.2 megawatts or less. The solar energy plant owner must file a complete petition for a certificate of public good with the Public Service Board (PSB) by July 15, 2010, and the facility must be built and ready for commissioning by September 1, 2011. Several municipalities are discussing investor-backed solar energy projects in their towns that would take advantage of this fleeting state tax credit.

Current law defines renewable energy as “energy produced using a technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate.” Language that disqualified Hydro Quebec from being considered renewable because of its generating capacity was deleted. This change takes effect July 1, 2012 so it won't affect the development of in-state renewable energy resources required by statute that was adopted in 2005. That renewable portfolio standard (RPS) requires retail electric utilities to supply an amount of energy equal to its total energy growth between 2005 and 2012 from electricity generated by renewable resources.

Also in 2005, the legislature adopted a plan whose goal was to generate 20 percent of total electric retail sales by Sustainably Priced Energy Enterprise Development (SPEED) program resources before July 1, 2017. Last February, PSB reported to the legislature that it expected the goal to be met, so the RPS requirement would not have to be implemented. H.781 directs the PSB to report to the legislature by October 1, 2011 regarding potential development of a revised and updated RPS and SPEED program.

The Agency of Natural Resources (ANR) is directed to adopt and implement stormwater management rules for renewable energy projects in high elevation settings (that is, for wind projects). ANR was given a January 15, 2010 deadline to provide guidance for such developments, but the agency did not meet that deadline.

H.781 directs appeals of ANR permit decisions relating to renewable energy projects to the PSB. PSB may consolidate those appeals with other related project appeals. Appeals of decisions relating to renewable energy projects that involve hydroelectricity would remain at the Environmental Court. The House proposed language that would have transferred appeals of any municipal permit relating to a renewable energy project from the Environmental Court to the PSB as well, but that proposal was withdrawn in the final days of the session.

The commissioner of the Public Service Department is directed to update the Residential Building Energy Standards (RBES) and adopt them by January 1, 2011 to ensure that residential construction complies with the 2009 edition of the International Energy Conservation Code (IECC) of the International Code Council. Thereafter, the commissioner will update the RBES as appropriate to keep

up with IECC amendments. The standards would apply to new construction of residential buildings as well as alterations, renovations, or repairs. Residential buildings are one family, two-family and multi-family housing of three stories or less in height. They are not hunting camps. This requirement doesn't apply to an owner who is making his or her own improvements. However, the owner/builder does have an obligation to disclose RBES non-compliance to potential purchasers.

Growth Centers (S.64, Act 136)

VLCT Staff Contact: Karen Horn

Growth centers legislation (S.64) was passed on May 6 and signed by the governor on May 29. The initial legislation was the result of negotiations between the secretary of the Agency of Commerce and Community Development and smart growth advocates who disagreed with most growth center designation decisions that have been made since passage of original growth centers legislation in 2005.

This bill eliminates the Planning Coordination Group, which worked with applicants before they submitted a formal application. The main function of the Planning Coordination Group was to make recommendations to an expanded Downtown Development Board about whether or not to grant designation to growth centers. That board's proceedings tended to be controversial, detailed in scope, and drawn out. In its place, S.64 expanded the Vermont Downtown Development Board's 10-person membership to include a member of the Vermont Planners Association, the chair (or representative) of the Natural Resources Board, and a representative of the Vermont Association of Planning and Development Agencies. A subcommittee of the Downtown Development Board, the growth center subcommittee, shall develop a pre-application review process. The subcommittee is comprised of the secretary of the Agency of Commerce and Community Development, representatives of the Vermont Natural Resources Council, Preservation Trust, Smart Growth Vermont, chambers of commerce, VLCT, and the Vermont Planners Association; as well as the chair of the Natural Resources Board. Municipalities must submit a preliminary application to the growth centers subcommittee for review before they can submit a formal application.

In addition to current growth center requirements, an applicant would have to demonstrate that it meets each provision enumerated in statute or explain why, if it didn't meet a provision, the application still represents a growth center. An application must include an analysis of current vacancy rates within each existing designated downtown or village center within the applicant municipality and opportunities to develop existing undeveloped or underdeveloped properties as well as an assessment of their economic viability. The applicant also needs to discuss opportunities to revise bylaws so as to permit future development at a higher density than currently exists. Applicants must demonstrate that they met a growth center definition with respect to planned land uses, densities, settlement patterns, infrastructure and transportation, and zoning bylaws that at least require residential development of four dwellings per acre and a higher density if required to conform to historic densities and settlement patterns. The proposed growth center must support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality. The applicant will have to demonstrate that growth proposed for the growth center cannot reasonably be attained within an existing designated downtown, village center, or new town center located within the applicant municipality.

S.64 provides for reconsideration of a Growth Center Board decision if a person who participated in that decision so requests. All the sections relating to revisions of the growth centers process take effect on July 1, 2010 and pertain to applications filed after that date.

An issue that was raised by the St. Albans City Charter but not included in that charter approval was authority of the city to place utilities underground. (See article on municipal charters.) S.64 requires the Public Service Board to conduct a workshop before November 1, 2010 on paying to bury utility facilities and apparatus located in a designated downtown, village center, new town center, growth center or Vermont neighborhood. By December 15, 2010, the Department of Public Service must issue a report to the legislature that recommends payment to bury utilities by the utility, customers of the utility within the boundaries of the host municipality or the boundaries of the designated area, shared payments by the utility and the municipality or the municipality alone, or other sources and arrangements for payment.

Potable Water Supply and Wastewater (H.779, Act 145)

Staff Contact: Karen Horn

H.779 amends the statute regulating issuance of potable water supply and on-site wastewater system permits. As of passage of the bill, an applicant must notify an adjoining property owner if a proposed or built water supply or wastewater (septic) system includes isolation distances that extend onto the other property. The applicant must provide a copy of the application, permit or as-built drawings to the other property owner no later than the date he or she files an application with the secretary of the Agency of Natural Resources (ANR). Should any revisions to a planned or built system result in its extending onto another property, that property owner must also get a copy of the revisions. The ANR secretary may not issue a permit until seven days had passed from the date the permit was applied for and the affected property owner was notified, so as to give that person an opportunity to comment.

In the culmination of efforts that extended over (no joke) ten to fifteen years H.779 allows a food establishment that prepares and serves food for off premises uses to provide temporary seating for up to 16 persons from May 1 to October 31 without providing toilet or handwashing facilities for patrons. You may now enjoy your creemee from the general store at a picnic table outside, even if no restroom is provided.

In 2007 after a struggle in the legislature, municipalities were provided authority to adopt bylaws that prohibit initiation of construction under a zoning permit unless and until ANR issued a wastewater and potable water supply permit (except in Colchester and Charlotte, which have taken delegation of that program). This year, without any struggle at all *and* with a few more years of experience, the legislature beefed up that section. H.779 strengthens that authority by clarifying that a municipality may adopt a zoning or subdivision bylaw that conditions issuance of a final municipal zoning or subdivision permit on the issuance of a potable water supply and wastewater permit from ANR. This section of Title 24 provides authority under the zoning and subdivision statute but does not amend the process for obtaining a potable water supply or wastewater permit from the agency or provide new authority for a municipality to issue a potable water supply or wastewater permit.

Finally, H.779 reinstates the Wastewater and Potable Water Supply Technical Advisory Committee (which never really went away), directing that it be reconvened before July 1, 2010. Language directs the committee to review alternative wastewater systems and alternatives to isolation distances spilling onto adjacent property.

River Corridors (H.763, Act 110)

Staff Contact: Karen Horn

The purpose of the riparian buffer bill is to “encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development and protection of the state’s water resources.”

H.763, which is enabling legislation for municipalities, establishes new definitions, including:

- buffer: “an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream, as determined by the secretary of [the Agency of Natural Resources (ANR)].”
- lake: “a body of standing water ... [that] may have natural or artificial water level control” but does not include private ponds or reservoirs for snowmaking, golf course irrigation, stormwater management or fire suppression.
- river corridor: “land adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and necessary to maintain or restore fluvial erosion hazards, as delineated by [ANR] in accordance with river corridor protection procedures.”
- river: “the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow” but not constructed drainageways.”

The ANR secretary is directed to develop a shoreland management program to support municipalities in adopting municipal shoreland bylaws by February 2011. The secretary of administration is directed to consult with relevant agencies and offer financial incentives to municipalities “through existing grants and pass-through funding programs” that encourage municipal adoption and implementation of zoning bylaws that protect shorelands, river corridors and buffers. By that same date, ANR shall define minimum standards for eligibility for any financial incentives.

In fact, there is no new money allocated to these programs or to address these issues. These priorities would be added to the current list of funding priorities for grants and pass-through programs. Despite concerns early in the session, the legislature continued to partially fund the water resources coordinator, a position that has been funded since 2006 out of the Clean and Clear budget to assist cities, towns and villages in developing bylaws, policies, guidance and activities to prevent pollutants carried in stormwater from entering waters of the state.

Act 110 specifically enables a municipality to regulate uses within a river corridor and buffer, as those terms are defined above. Fluvial erosion hazard areas, stormwater runoff, water pollution, streambank and floodplain stability, wetland and habitat protection, design and location of development, re-establishment of vegetation and screening of development from waters may all be addressed in the zoning regulations. The ANR secretary is directed to provide designated river corridor maps to municipalities upon their request.

ANR shall report to the legislature by January 15, 2011 and annually thereafter on the status of river corridor, shoreland and buffer zoning in Vermont as well as recommendations to improve the river corridor management and shoreland management programs.

Act 110 provides additional incentives to farmers to abate non-point source agricultural waste discharges into the waters of the state. They’ll be eligible for state financial assistance if they construct temporary fencing to keep livestock out of the water. Likewise, conservation practices in ditch networks on agricultural land adjacent to waters of the state are included in the agricultural buffer program. The Water Resources Panel is directed to maximize state participation in the federal wetlands reserve program to secure funding for increased implementation of conservation practices on farmland protected or preserved by the Housing Conservation Trust.

Section 13 of the bill amends the “Stream Alteration” statute. It redefines “watercourse” in the statutes regulating stream flow (Title 10 Chapter 41) to mean any perennial stream. One difficulty with Vermont statutes is the many definitions of “watercourse,” “public waters,” “waters of the state,” “navigable waters,” etc. that apply to various sections of the statutes and that are not interchangeable. In this case, the “watercourse” definition would not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure, but would include anything else that flows perennially. Any activity in any watercourse, regardless of its drainage area, would require an ANR permit. Current law requires a permit for a watercourse (currently defined as a depression two feet or more below the elevation of surrounding land serving to five direction to a current or flow of water having a bed and well defined bank) if the drainage area is more than ten miles at the location of the proposed change, alteration, or modification.

Act 110 authorizes ANR to issue general permits for stream alteration permits. By January 15, 2011, the agency shall report to the legislature about a proposed general permit program. The report will include thresholds, classes of activities, or other categories of alteration activities that will be regulated under the general permit program. It will also summarize the requirements and management practices to which stream alteration activities are subject and summarize the scientific basis for any of those thresholds, classes, or categories of activities.

Finally, Act 110 requires the Agency of Transportation to work with municipal representatives to revise town highway and bridge standards to incorporate practical and cost-effective best management practices as approved by ANR for construction, maintenance, and repair of all existing and future state and town highways. The new standards would include measures to reduce potential for pollutants entering the groundwater and waters of the state, including stormwater runoff and direct discharges to waters of the state. A report to the legislature is required by January 15, 2011. Beginning January 15, 2013 and every four years thereafter, the secretary of Transportation, in consultation with municipal representatives and approval from the secretary of ANR, shall review and revise as appropriate town road and bridge standards in order to ensure the standards protect water quality.

By July 1, 2011, municipalities would have to adopt road and bridge standards and annually certify their compliance with those standards in order to qualify for a 10 percent (instead of 20 percent) local share of town highway structures project costs, and a 20 percent (instead of 30 percent) share of project costs under the class 2 town highway roadway program. Part of that certification of compliance would include incorporating the best management practices described above. The compromise developed for this section is to insure that the proposed best management practices do not go into effect until the legislature has reviewed them in the 2011 legislative session.

Encroachments on Public Waters (H.462, Act 117)

VLCT Staff Contact: Karen Horn

H.462 expands the jurisdiction of the Department of Environmental Conservation to permit encroachments, such as docks and piers, on all public waters (the navigable waters of the state) – not just lakes and ponds. The bill requires permits for encroachments on boatable tributaries of Lake Champlain and Lake Memphramagog from the lakes themselves upstream to the first barrier to navigation, such as a dam.

It will also apply to encroachments on Connecticut River impoundments and boatable tributaries from the river upstream to the first barrier to navigation. Current law requires encroachment permits for construction in lakes and ponds that are public waters up to the mean water level of the pond or lake. Docks of more than 50 feet in length and 500 square feet of surface area must obtain permits under the

current law. The expansion of jurisdiction to tributaries of Lake Champlain, Lake Memphramagog and to the Connecticut River will take effect July 1.

Sale or Transfer of Mobile Homes (H.542, Act 140)

VLCT Staff Contact: Cory Gustafson

H.542 establishes a more detailed description of the responsibilities of the various parties involved in a mobile home sale or transfer and outlines an updated version of the mobile home uniform bill of sale.

The seller must provide an unexecuted mobile home bill of sale to the town clerk for endorsement and to the owner of the real property on which the home is located, if the mobile home will be moved. The real property owner must be notified by certified mail at least 21 days prior to the actual sale. A bill of sale must naturally go to the buyer when the transaction occurs.

The town clerk may only endorse the bill of sale if all property taxes have been paid in full as of the most recent assessment or installment if the town collects in this manner and *if* the mobile home is not being relocated to a different municipality. If the sale or transfer will result in the removal of the mobile home from the town, the clerk can only endorse the bill of sale if all property taxes assessed have been paid. In either case, the property taxes that must be paid are only those assessed on the mobile home, not the mobile home site. Within 14 days of the filing, the clerk must mail a copy to each buyer, seller, and owner of real property for whom a mailing address is provided in the bill of sale.

The buyer must file the bill of sale with the clerk of the town where the mobile home will be located within ten days of the actual sale. The clerk can only accept it if it is properly completed and endorsed. If the property where the home will be located is not owned by the buyer, he or she must also provide the owner of the new location with a copy of the bill of sale at least 21 days prior to the sale.

H.542 also creates parameters for mobile home rent-to-own agreements. It is set to take effect September 1, 2010.

Guide Dogs (H.524, Act 121)

VLCT Staff Contact: Karen Horn

H.524 was initially written to address mistreatment of guide dogs. However, language was added that amended the current statutory authority of a local legislative body to order the destruction of unlicensed dogs or wolf hybrids. None of the local officials with whom we spoke said that their first option in handling unlicensed dogs was to order their destruction. Revised language at 20 V.S.A. § 3621 now authorizes the local legislative body to issue a warrant to a police officer, constable, poundkeeper, or elected or appointed animal control officer directing him or her to impound but not immediately destroy unlicensed dogs or wolf-hybrids.

An impounded animal may be transferred to an animal shelter or rescue organization for the purpose of finding an adoptive home. If the dog or wolf-hybrid cannot be placed in an adoptive home or transferred to a humane society or rescue organization within ten days or a longer amount of time established by the municipality, it may be destroyed in a humane way. The municipality will not have to pay to keep the animal at the shelter or rescue organization beyond the established time period.

H.524 also authorizes a municipality to waive the current year's license fee for an unlicensed dog or wolf-hybrid that is impounded upon showing current vaccinations and financial hardship. In that case, the state would not receive its portion of the dog license fee either. This bill took effect upon passage, May 12.

Liquor Tastings, Licenses (H.772, Act 102)

VLCT Staff Contact: Cory Gustafson

The liquor tasting bill, H.772, does nothing to change the functions of municipal liquor control commissioners (the selectboard or city council), but it includes a number of technical changes to various permits. “Special events permits” for holders of manufacturer’s or rectifier’s licenses have seen some of those changes. These permits are granted by the Liquor Control Board but must be approved by the “local licensing authority.” The maximum number of events permits that can be issued has risen from 12 to 36, the notification time was shortened from 15 to five days, and each permit is now valid for the duration of the event, or four days, whichever is shorter.

Producers of vinous beverages will no longer be able to obtain second class licenses for the manufacturing premises. Instead, a fourth class license will be required.

Changes were also made to the tasting permit that is granted by the Liquor Control Board but impacts second class licensees (that enables the selling malt and vinous beverages to the public from the business’ premises for consumption off the premises). The notification time has again been shortened to five days and the number of tastings conducted by a second class licensee has been increased from 30 to 48. A second class licensee is allowed to conduct up to five tastings per week, provided they are part of an educational food preparation class on the premises.

Manufacturers may now conduct 48 tastings per year rather than four per month, and the restriction has been removed that limited them to one tasting per day on the premises of a second class licensee. Staff or management of a second class licensee who participate in tastings are required to be off duty for the rest of the day.

Other provisions of general interest include one that allows trains to obtain permits to conduct tastings from the Department of Liquor Control and another that allows hotels to put mini bars in its rooms.

Salvage Yards (S.237, Act 93)

VLCT Staff Contact: Karen Horn

Beginning July 1, 2010, salvage yards will have to meet operational standards and hold certificates of registration. In legislation passed last year, the term “salvage yard” replaced “junkyard” in the statute. A salvage yard is “any place of outdoor storage or deposit for storing, keeping, processing, buying or selling junk or a scrap processing facility,” and any “outdoor area used for operation of an automobile graveyard” but *not* “a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.”

The operational standards include:

- complying with statutory screening and fencing requirements;
- draining motor vehicles of all fluids prior to crushing and within 365 days of receipt – however, if there were visible signs of leaking, the vehicle would be drained immediately;
- vehicle draining and crushing on surfaces that retain seepage, or by a crusher with an onboard fluid recovery and storage system.

A salvage yard with a new (not renewed) certificate of registration issued after July 1, 2010 may not be sited or operated within 100 feet of a Class I or Class II wetland, or within 300 feet of a potable water supply, unless (1) the water is for the salvage yard or (2) the Agency of Natural Resources (ANR) approves management practices to prevent contamination of the water supply. By March 31, 2011, the

ANR secretary will adopt rules to site, operate and close salvage yards and may provide general permits for a salvage yard certificate of registration. On March 31, the statutory operational standards would expire because the ANR rules (presumably) would then be in effect.

Salvage yard owners or operators will have to attend training conducted by ANR at least annually that address requirements and best practices.

S.237 newly defines “automobile hobbyist” and ‘automobile graveyard’ in Title 24, the municipal law volume of Vermont statutes. An automobile hobbyist could not sell motor vehicles or parts or accept, store or dismantle junk motor vehicles. An automobile graveyard would be an outdoor area used to store four or more junk motor vehicles. It would not be an area used by an automobile hobbyist, an area used for vehicles exempt from registration, or an area used to store operational commercial motor vehicles that are temporarily unregistered but are expected to be used in the future.

For purposes of *Bianchi v. Lorenz*, a municipal land use permit would include a certificate of approved location for a salvage yard. (*Bianchi* was a 1997 Vermont Supreme Court decision that addressed defects in title to real estate due to a failure to obtain and comply with an on-site septic permit.) The current statute addressing the decision establishes that failure to obtain or comply with conditions of similar permits (zoning, subdivision, site plan or building permit, certificate of occupancy, municipally issued wastewater permit or minutes relating thereto) does not create an encumbrance on record title to real estate. S.237 would also establish that there is no 15-year statute of limitation to institute legal action, injunctions, or enforcement proceedings against salvage yards that violate the salvage yard statute.

This legislation gives more teeth to the current salvage yard statutes, which to date have provided little in the way of effective enforcement.

Wood Fired Boilers (S.239, Act 94)

VLCT Staff Contact: Karen Horn

Act 94 requires the Secretary of the Agency of Natural Resources (ANR) to establish a change-out program to buy and retire inefficient, high emission outdoor wood-fired boilers (OWBs) and replace them with lower emission and higher fuel efficiency appliances. Many wood-fired boilers are used to heat residences and commercial establishments, and when they are located in residential neighborhoods can create adverse neighbor issues. OWBs eligible for the program are those that do not meet either Phase I emission limits for particulate matter of 0.44 pounds per million BTUs of heat input or the Phase II emission limit of 0.32 pounds per million BTUs of heat output.

The ANR secretary shall fund the program with at least \$500,000 available for environmental mitigation projects under the 2007 consent decree, *US et al v. American Electric Power Service Corp et al*. He may use \$360,000 in FY11 and at least \$140,000 in FY12. Priority will be given to replacing eligible OWBs that have spawned valid complaints regarding emissions. Any OWB that is not certified under the air pollution control regulations to meet Phase I, Phase II or a more stringent emission limit shall be retired by December 31, 2012 if it is within 200 feet of a residence, school or health facility but not owned or used by those facilities. Act 94 was approved May 7, 2010 and took effect upon passage.

Compost (H.614, Act 141)

VLCT Staff Contact: Karen Horn

Composting operations have been controversial in some towns of late because it has not been clear when a composting operation is an agricultural enterprise – and, therefore, exempt from municipal zoning and Act 250 – or a commercial enterprise subject to both of those regulatory programs where

neighborhood issues may be addressed when they arise. A group of interested parties (including municipalities) has been working for more than two years to develop a proposal to regulate composting operations that meets the needs of all parties – not an easy task. H.614 is the result of those discussions.

H.614 defines compost in Act 250 as “a stable humus-like material produced by the controlled biological decomposition of organic matter through active management ...”; it is not sewage, septage, or their byproducts. This legislation exempts the on-site storage, preparation, and sale of compost from Act 250, provided:

1. the compost is produced from no more than 100 cubic yards of material per year;
2. the compost is principally produced from inputs grown or produced on the farm;
3. the compost is principally used on the farm where it was produced;
4. the compost is produced on a farm primarily used to raise, feed or manage livestock, from manure produced on the farm and unlimited clean, dry high-carbon bulking agents from anywhere or from manure, and up to 2,000 cubic yards per year of organic inputs allowed by the Agency of Natural Resources (ANR) acceptable management practices, including food residuals and manure from off the farm ... or
5. the compost is produced on a farm used to cultivate or grow food, fiber, horticultural or orchard crops that complies with ANR solid waste management rules, from up to 5,000 cubic yards per year of total organic inputs, including up to 2,000 cubic yards per year of food residuals.

“Farm” is a key definition in assessing whether or not composting is a farm activity. H.614 requires that for a farm to be considered a “farm” for purposes of the composting program, income from the farming activity must exceed income from the composting activity; not more than 10 percent or 10 acres (whichever is smaller) is used for commercial composting on a farm raising livestock; or no more than four acres or 10 percent of a parcel (whichever is smaller) are used for commercial compost.

The composting exemptions established in H.614, the definition of farm for purposes of this bill, and authority that prevents circumvention of the law all are repealed by July 1, 2014. ANR must consult with the Agency of Agriculture on composting operations, including the number of operations that have applied for an Act 250 permit since July 1, 2010. The report will also include recommendations to extend, amend or repeal the aforementioned exemptions slated for repeal in 2014. Presumably, the report will either recommend to continue those exemptions or propose alternatives to them.

ANR must report to the legislature by January 15, 2012 and January 15, 2014.

Removal of Bodily Remains (H.281, Act 151)

VLCT Staff Contact: Cory Gustafson

One of the final bills passed this biennium was the Removal of Bodily Remains bill, H.281. Municipal clerks have always had a role in the burial transfer permit process and will continue to do so under the changes made in this bill. A clerk’s workload may be reduced as the group that may sign off on a permit has grown. H.281 also forms a summer study committee, expands the list of persons who can object to the removal of bodily remains, and create new provisions for the removal of remains from historic burial sites.

H.281 changes the burial transfer permit process by adding Vermont-licensed funeral directors or managers of a crematorium to the list of those who may sign off on the permit. The process itself remains intact.

An unmarked burial site treatment plan committee will be created to address issues relating to known or discovered unmarked burial sites of human remains, including what to do when the site is on private property. The nine-member committee, which includes a representative from the Vermont League of Cities and Towns, will issue a report describing the procedures and treatment plans to the House General, Housing and Military Affairs Committee and the Senate Economic Development, Housing and General Affairs Committee by January 15, 2011. (See the Summer Study Committee article for details about becoming a VLCT representative on this or other study committees that have been required by the legislature this session.)

The requirements are unchanged regarding application for a removal permit and public notice – they are to be published for two successive weeks in a general circulation newspaper in the municipality in which the body is interred or entombed. The notice must include a statement that the spouse, child, or sibling may object. H.281 adds a descendant of the deceased, “the cemetery commissioner”*, or other municipal authority responsible for cemeteries to the list of those who may object.

The bill also defines procedures to remove historic remains (that is, a human being who has been deceased for 100 years or more). An application for a permit must go to the town clerk where the remains are located. Notice must be sent by first class mail to “the cemetery commissioner”, historical societies, any descendants know to the applicant, and the state archeologist. Any of these parties may object by filing with the probate court in the district and the town clerk within 30 days after the noticed was mailed.

If no objections are received, the municipal clerk will issue a permit. If the probate court receives an objection, it will notify the town clerk and schedule a hearing to consider the impact of the removal on the public good. After the hearing, the court will order the clerk to grant or deny a permit that may require all remains, markers and funeral related materials to be removed under the supervision of a qualified professional archeologist. All costs associated with the removal of historic remains shall be paid by the applicant.

Finally, H.281 expands the list of individuals who may fill out a certificate of death to include a physician assistant or an advance practice registered nurse. This section of the bill takes effect January 1, 2012 while the rest of H.281 went into effect upon passage.

* We put “the cemetery commissioner” in quotes because towns that have voted to place their public burial grounds under the charge of “the board of cemetery commissioners” shall elect a board of three or five cemetery commissioners that must act as a board. Picking “the” cemetery commissioner to perform the tasks included in this act is unusual to say the least.

HEALTH CARE

Health Care Reform (S.88, Act 128)

VLCT Contact: Dave Sichel

The legislature adopted S.88 at the very end of the legislative session. The portion of the bill dealing with disclosure of prescription drug samples was controversial. Based on his opposition to this section of S.88 and his concern over the cost of the health system study, the governor chose not to sign this bill, but allowed it to become law. The final bill combined provisions included in the Senate version of S.88 with portions of the House health reform bill H.627. It addresses a wide range of issues, including the following:

Blueprint for Health Expansion. The Blueprint for Health is changed from a strategic plan and guidance document to a state-run health management system for chronic care, disease management, electronic records and physician reimbursement. Insurers will be required to participate and pay for participation in the plan starting in 2011 (more than likely from the premiums they collect). Hospitals will also be required to participate starting in 2011. The Blueprint for Health will be expanded to at least two primary care practices in every hospital services area no later than July 1, 2011, and no later than October 1, 2013 to primary care practices statewide whose owners *wish* to participate.

The expansion of this program may save money over the long term, but this is not known. The Blueprint for Health community health team pilot program has not yet demonstrated its value and remains to be fully evaluated. Employers do not appear to be participants/partners in this pilot program despite being required to provide a substantial part of the funding. In many cases, employers already provide disease management, on site health promotion, wellness, and safety programs for employees and their families. It is not clear how these programs will integrate with the Blueprint and how employers that already provide these services will not pay double and be provided duplicative programs. Hard numbers are needed that make a business case for the many more millions of dollars that they will be mandated to pay. Is either the health insurance or Blueprint model cost-effective? Which model is getting the best return on investment?

Healthcare System Design and Implementation Plan. The Health Care Reform Commission is to hire a consultant to design three possible health care systems for Vermont. One option is for a government-administered and publicly financed “single-payer” health benefits system decoupled from employment that would allow for private insurance coverage only of supplemental health services. A second option is for a public health benefit option administered by state government, which allows individuals to choose between the public option and private insurance coverage and allows for fair and robust competition among public and private plans. Any additional options are to be designed by the consultant in consultation with the commission.

Each design option must include sufficient detail to allow the governor and the general assembly to consider adopting one design during the 2011 legislative session and to initiate phasing in the implementation of the new system by July 1, 2012.

Hospital Budget Caps. The bill places caps on hospital budget growth. This has the potential to control health system costs, though there is no guarantee that the savings, if any, will pass through to health insurance buyers. For fiscal years 2011 and 2012, the aim is to minimize rate increases for each hospital to ensure that the systemwide increase is lower than that of the prior year. The total systemwide net patient revenue increase for all hospitals is not to exceed 4.5 percent in FY11 and 4.0 percent in FY12.

Mandated Coverage. What health reform bill would be complete without adding new health insurance coverage mandates? In addition to the mandate for insurer participation in the Blueprint, the bill includes additional health insurance mandates. Their expected cost is small, but mandates are an inefficient way of assuring that all Vermonters receive a benefit that the legislature has determined to be in the public interest. This year’s new mandates are:

- Anesthesia coverage for dental procedures performed on a covered person who is seven years of age or younger and who a dentist determines is unable to receive needed dental treatment in an outpatient setting.

- Coverage for tobacco cessation programs of at least one three-month supply per year of tobacco cessation medication, including over-the-counter medication, if prescribed by a licensed health care practitioner for an individual insured under the plan. A health insurance plan may require the individual to pay the plan's applicable prescription drug co-payment for the medication.

Other Provisions

- **Payment Reform Pilots.** The Office of Vermont Health Access shall be responsible for developing pilot projects to test payment reform methodologies to manage the total costs of the health care delivery system in a region, improve health outcomes for Vermonters, and provide a positive health care experience for patients and providers.
- **Disclosure of Prescription Drug Samples.** Pharmaceutical manufacturers are required to annually disclose to the attorney general the physician's name and the amount of prescription drug samples provided to that physician.
- **Obesity Prevention.** No later than November 15, 2010, the attorney general shall report to the legislature regarding the results of his initiative on the prevention of obesity.
- **Menu Labeling.** Restaurants or similar retail food establishment that are part of a chain with 20 or more locations doing business under the same name shall disclose the number of calories contained in the standard menu items.
- **Primary Care Workforce Development.** A primary care workforce development committee is created to determine the additional capacity needed in Vermont's primary care delivery system and develop a strategic plan to ensure that the necessary workforce capacity is achieved.

Autism Coverage Mandate (S.262, Act 127)

VLCT Contact: Dave Sichel

S.262 requires health insurers to cover diagnosis and treatment of autism spectrum disorders for children from the age of 18 months to 6 years, or until they enter the first grade, whichever occurs first. The coverage may not impose greater coinsurance, co-payment, deductible, or other cost-sharing requirements for coverage of the autism spectrum disorders than apply to the diagnosis and treatment of any other physical or mental health condition under the plan. The effective date for this coverage mandate will be on the renewal or inception dates of health insurance plans occurring after July 1, 2011, but not later than July 1, 2012.

The bill also requires the agencies of Administration and Human Services and the Department of Education to evaluate the feasibility and budget impacts of requiring health insurance plans to provide coverage of autism spectrum disorders for children under the age of 18 who have been diagnosed with such a disorder. The agencies are required to report back to the legislature no later than January 15, 2011.

The cost of this mandate could be substantial. A 2008 report to the general assembly estimated that Vermont spent \$57 million on services for individuals with autism spectrum disorders during Fiscal Year 2007. The cost for young children can be high because early, intensive intervention is considered the best course of treatment. Much of the savings from this type of treatment would accrue to the state and local school districts in the form of lower special education costs.

All state health mandates should be treated as public health issues. These needs should be publically funded and available to all Vermonters, not just those with state-regulated health insurance. This will allow these services to be managed for service delivery and cost.

LEGISLATIVE STUDY COMMITTEES

Summer Study Committees, New Commissions and Reports

VLCT Staff Contact: Karen Horn

The summer study committees and new or reconstituted commissions described below will address subjects that concern local governments. Several require appointments of local government officials, and that is noted in the committee description if applicable. If you are interested in serving on a committee or commission, please contact Karen Horn (khorn@vlct.org). Generally, all reports required from the summer study committees (and there are lots of them) are to the legislative committees of jurisdiction.

H.281 (Act 151), Removal of Bodily Remains. This legislation creates an unmarked burial site treatment plan committee to develop procedures for addressing issues relating to known or discovered unmarked burial sites of human remains, including treatment plans for when the site is located on private property. The nine-member committee includes a representative from the Vermont League of Cities and Towns. The committee will issue a report describing the proposed procedures and treatment plans to the legislature by January 15, 2011.

H.470 (Act 154), Restructuring the Judiciary. The Law Enforcement Advisory Board (LEAB), an ongoing advisory group to the commissioner of Public Safety and the legislature, is directed to develop three proposals: (1) to implement a system for a custodial governmental entity to preserve any item of physical evidence containing biological material in connection with a criminal case or investigation; (2) to implement a program to make audio or audio-visual recordings of any custodial interrogation that is handled in a place of detention and relates to investigation or prosecution of a felony and report to the legislature regarding costs associated with that requirement; and (3) to establish best practices suited to Vermont and rural law enforcement agencies with respect to eyewitness identification. Recommendations are due to the legislature by January 15, 2011. By the same date, the departments of Public Safety and Buildings and General Services, the Police Chiefs' Association, and the Sheriffs' Association are to develop a proposal for establishing one or more facilities to retain physical evidence containing biological material secured in connection with a criminal case or investigation.

By January 15, 2011 the Association of Assistant Judges will report to the legislature on the participation rates of assistant judges who elected to hear cases they were authorized to hear, and on changes in county budgets directly attributable to judicial restructuring legislation.

H.498 (Act 131), Maintenance of Private Roads. H.498 establishes a committee to study the creation of default statutory requirements that define the responsibilities of property owners for maintaining and repairing private roads and to recommend legislation. The committee will report to the legislature by January 15, 2011. VLCT will have one member on this committee.

H.647 (Act 142), Misclassification of Employees/Emergency Medical Service Providers. The commissioner of the Department of Health – in consultation with the Vermont Secretary of State's Office of Professional Regulation, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters' Association, the Vermont Ambulance Association, the Vermont Association of Hospitals and Health Systems, a representative from the Initiative for Rural

Emergency Medical Services program at the University of Vermont, and a representative of three of Vermont's 13 emergency medical services (EMS) districts – shall develop a proposal for a statewide licensing mechanism for EMS providers and assess the state's EMS capabilities and training requirements. The commissioner shall also study whether an individual may provide emergency medical services that exceed the scope of practice for the license level of the service or department with which the individual is affiliated, if he or she is licensed and certified at a more advanced level. A report is due to the legislature by January 15, 2012.

H.527 (Act 90), Municipal Recovery of Costs of Fire Department Response. This act creates a study committee to evaluate whether or not to allow municipalities to recover the costs of fire department responses to calls. The eight-member committee, which includes two members appointed by VLCT – one from a large municipality and another from a small one – will study the state's public policy and responsibilities, costs to insurance companies, possible inequities between municipalities, and approaches taken in other states. The House Commerce and Economic Development Committee said that the study should not impact towns with existing ordinances that require payment for calls. A committee report is due to the legislature by January 1, 2011.

H.614 (Act 141), Compost. Effective July 1, 2014, this act repeals the composting exemptions established in H.614, the definition of “farm” established for purposes of this bill, and the authority that prevents circumventing the law regarding farm composting operations. The Agency of Natural Resources (ANR) must consult with the Agency of Agriculture on composting operations, including the number of operations that have applied for an Act 250 permit since July 1, 2010, and recommendations to extend, amend or repeal the exemptions provided by H.614, and report to the legislature by January 15, 2012 and January 15, 2014.

H.759 (Act 134), Fees. The fee bill requires several reports to be provided to the legislature. The first covers all fees in existence on the prior July 1 within general government, labor, general education, development and community affairs and transportation to be submitted by the third Tuesday of the legislative session beginning in 2011 and every three years thereafter. The second covers all fees in existence on the prior July 1 within human services and natural resources; it must be submitted by the third Tuesday of the legislative session and every three years thereafter starting in 2012. The third report covers all fees within the protection of persons and property areas and is due the same day starting in 2013. The fee bill requires the commissioner of Finance and Management to provide a detailed report concerning the use of billbacks to generate revenues in addition to or in lieu of fees. The report shall include a definition of a billback for services provided by the legislative, executive, and judicial branches of state government and address:

1. the appropriateness of using billbacks;
2. the relationship between fees and billbacks;
3. the prevalence of the billback provision in Vermont state government;
4. statutory authority for each billback program;
5. whether billback rates for various services adequately cover the cost of the governmental services being performed;
6. whether there should be limitations on amounts subject to billback;
7. whether there ought to be oversight and reporting of billback programs; and
8. how billbacks are categorized and accounted for in state budgets.

H.763 (Act 110), River Corridors. By January 15, 2011, ANR shall report to the legislature about a proposed general permit program for stream alteration permits. The report will include thresholds, classes of activities, or other categories of stream alteration activities that will be regulated under the general permit program. It will also summarize the requirements and management practices to which

stream alteration activities are subject and summarize the scientific basis for any of those thresholds, classes, or categories of activities. ANR must report by January 15, 2011, and biennially thereafter, about the status of river corridor, shoreland, and buffer zoning and recommend statutory or rule changes to improve river corridor and shoreland management.

Act 110 also requires the Agency of Transportation (VTrans) and ANR to work with municipal representatives to incorporate practical and cost-effective best management practices (BMPs) as approved by ANR for construction, maintenance, and repair of all existing and future state and town highways in the Town Highway and Bridge Standards. The new standards would include measures to reduce the potential for pollutants entering the groundwater and waters of the state, including stormwater runoff and direct discharges. A report is required by January 15, 2011. Beginning January 15, 2013 and every four years thereafter, the VTrans secretary – in consultation with municipal representatives and approval from the secretary of ANR – shall review and revise Town Highway and Bridge Standards to ensure continued protection of water quality. By July 1, 2011, municipalities must adopt road and bridge standards and annually certify their compliance to qualify for a 10 percent (instead of 20 percent) local share of town highway structures project costs, and a 20 percent (instead of 30 percent) share of project costs under the Class 2 town highway roadway program. Part of that certification would include incorporating the BMPs described above. The new BMPs will not go into effect until the legislature has reviewed them in the 2011 legislative session.

H.779 (Act 145), Potable Water and Wastewater. H.779 reinstates the Wastewater and Potable Water Supply Technical Advisory Committee (which never really went away), directing that it be reconvened before July 1, 2010. Language directs the committee to review alternative wastewater systems and alternatives to isolation distances spilling onto adjacent property. The committee was first created by legislation in 2001 to advise the ANR secretary. The governor-appointed members include professional engineers, site technicians, well drillers, hydrogeologists, town officials with jurisdiction over potable water supplies and wastewater systems, water quality specialists, and technical staff from ANR and the Department of Health.

H.781 (Act 159), Renewable Energy. The commissioner of the Public Service Department is directed to update the Residential Building Energy Standards (RBES) and adopt them by January 1, 2011 to ensure that residential construction complies with the 2009 edition of the International Energy Conservation Code (IECC) of the International Code Council. Thereafter, the commissioner will update the RBES as appropriate to keep up with IECC amendments. The standards would apply to new construction of residential buildings as well as alterations, renovations, or repairs. Residential buildings are one-family, two-family, and multi-family housing of three stories or less in height. They are not hunting camps.

H.783 (Act 160), Miscellaneous Tax. Section 11 of H.783 arose out of a dispute about property appraisal of lands with Vermont Association of Snow Travelers (VAST) trails on them. The final bill language requires the Division of Property Valuation and Review (PVR) to convene a meeting of VAST, VLCT, the Vermont Assessors and Listers Association (VALA), the Town of Canaan, and other interested parties to discuss appropriate factors in assessing land that has or is proximate to recreation trails and report to the legislature early next year.

The Department of Taxes must provide the legislature's Joint Fiscal Committee with a feasibility report on developing an electronic system for the state administration, billing, and collecting of the education property tax. The report is due by July 15, 2011. A "Blue Ribbon Tax Structure Commission" created under legislation last year to study and make recommendations pertaining to the state's tax structure is now also tasked to:

- determine five important short-term and five important long-term goals for Vermont’s education system;
- evaluate Vermont’s current education governance, finance, and spending controls systems in light of those goals and determine which elements of the current system should be considered, modified or eliminated; and
- develop new systems of education finance, spending controls, and cost savings guided by the goals and elements evaluated above.

The commission may appoint an advisory panel of individuals familiar with education assessment, governance, and finance who will support high-quality and efficient public education systems and who understand both state and local aspects of public education in Vermont. The commission shall also propose “an appropriate balance between education funding from education property taxes and ... from the general fund and other sources” and recommend alternative means to maintain the balance. In FY11, the balance will be 68.2 percent of education funding from education property taxes and 31.8 percent of education funding from the general fund and other education funding sources. (By way of comparison, in FY05 that balance was 60.8 percent and 39.2 percent, respectively.) The commission is to complete its tasks by September 15, 2011.

The bill also requires the Department of Taxes, in conjunction with the Department of Public Service and representatives of municipal government, to study the feasibility of implementing an appraisal method that uses three-to-five year rolling appraisal values for hydroelectric facilities and to report to the legislature by January 15, 2011.

H.790 (Act 161), Capital Construction. H.790 establishes a taskforce to consider the best ways to provide correctional services within the correctional system and the community, including inventories of correctional and community facilities to handle persons incapacitated due to drugs or alcohol, the need for more bed capacity within the correctional system, and ways to reduce the need for “incarcerative” beds through the use of alternative sentencing and community services to reduce crime. The seven-member task force includes two representatives of municipalities – one large and one small – chosen by the VLCT Board, one prosecutor chosen by the Vermont State’s Attorneys and Sheriff’s Association, one representative of community justice centers, one representative of the Department of Corrections, one member of the Judiciary and one representative chosen by the Vermont Police Chiefs’ Association.

H.792 (Act 146), Challenges for Change. Section G6 of the bill creates an oversight panel to work with the secretary of the Agency of Commerce and Community Development to develop performance measures and to identify agency functions that relate to regional development and planning services. The panel shall identify a process for developing a comprehensive statewide economic development plan and report its findings by January 15, 2011. The Speaker of the House and the President Pro Tem each makes two panel appointments who represent business or employers. The governor also makes two appointments. They jointly appoint two people who do not serve on a regional planning commission or regional development corporation but who do have a background in municipal planning.

Section H2, codifies the Government Accountability Committee as of July 1, 2010, and adds new members and new responsibilities. Its 12 members include six representatives (not all from the same party) and six senators (also not all from the same party). The governor shall appoint one person to serve as a nonvoting liaison. During the legislative session, the committee shall meet at least once a month; when the legislature is not in session, the committee may meet monthly. By each January 15, the committee shall report its activities, together with recommendations, if any, to the legislature.

Section H4 requires quarterly reporting to committees of jurisdiction on implementing Challenges activity. Beginning July 1, 2010, the administration shall provide a report that includes a statement of measures and milestones for a particular challenge, a brief summary of any progress, and the data collected to measure that progress. The report shall also include any modifications proposed for the implementation plan. Committees of jurisdiction may meet during the interim to discuss the reports and report each quarter to the Government Accountability Committee regarding progress made on each challenge and whether any proposed changes will achieve the required outcomes.

The Department of Education will be required to develop a formula that will assign voluntary spending reduction targets to each supervisory union (SU) and technical center school district for FY12 budgets. The targets will total \$23.2 million statewide and ask school districts collectively to cut two percent from their FY11 education spending. The formula must favor SUs with districts that have (1) demonstrated fiscal restraint in recent years, (2) low per-pupil administrative costs, (3) high student-to-staff ratios, (4) high percentages of students in poverty or who are English-language learners, or (5) “other unique circumstances that affect education spending.” The commissioner of Education must notify SUs of their targets by August 1, 2010.

The boards of the supervisory union and each district within it must notify the commissioner “whether their combined budgets will be able to meet recommended reductions” by December 15, 2010. The Department of Education will then develop a detailed proposal to ensure the spending targets for FY12 overall will be met, presumably with legislative action. There are almost no parameters given for the plan, other than that its dollar target will be \$23.2 million less the expected savings that SUs and districts report.

H.792 also requires that the chairs of the House and Senate committees of jurisdiction for environmental and agricultural regulation meet quarterly in January, April, July, and October. In October, ANR is to report to these committee chairs about reallocating staff and resources in response to any efficiencies created under the natural resources sections of the Challenges for Change legislation.

S.64 (Act 136), Growth Center Designation. An issue raised by the St. Albans City Charter (but not addressed therein) was the city’s authority to place utilities underground. (See article on municipal charters.) S.64 contains language requiring the Public Service Board to conduct a workshop before November 1, 2010 on paying to bury utility facilities and apparatus located in a designated downtown, village center, new town center, growth center, or Vermont neighborhood. By December 15, 2010, the Public Service Department must issue a report to the legislature that makes recommendations regarding payment to bury utilities by the utility, by customers of the utility within the boundaries of the host municipality, or within the boundaries of the designated area, shared payments by the utility and the municipality or the municipality alone, or other sources and arrangements for payment.

S.64 eliminates the Planning Coordination Group, which worked with applicants before they submitted a formal application for growth center designation. The main function of the Planning Coordination Group was to make recommendations to an expanded Downtown Development Board about whether or not to grant designation to growth centers. In its place, S.64 expanded the Vermont Downtown Development Board’s 10-person membership to include a member of the Vermont Planners Association, the chair (or representative) of the Natural Resources Board, and a representative of the Vermont Association of Planning and Development Agencies. The Downtown Development Board’s growth center subcommittee shall develop a pre-application review process. The subcommittee is comprised of the secretary of the Agency of Commerce and Community Development, the chair of the Natural Resources Board, and representatives of the Vermont Natural Resources Council, Preservation Trust, Smart Growth Vermont, chambers of commerce, VLCT, and the Vermont Planners Association.

Municipalities must submit a preliminary application to the subcommittee for review before they can submit a formal application.

S.93 (Act 63), Overweight Trucks. Act 63 allows a semi-trailer combination to weigh up to 99,000 pounds by special annual permit on state highways. The same is true for the interstate system, as long as it is authorized by federal law. Previously, the allowance to haul commodities up to the 99,000-pound limit on state and town highways applied only to unprocessed milk, forest, or quarry products. Act 63 opens that provision to all commodities; it will remain even if the federal authorization for higher weight limits on the interstate ends as currently planned on December 16, 2010. The federal exemption is a one-year pilot program that will require a study of its benefits before it can be made permanent. The Federal Highway Administration will conduct the study, which is not due until December 2011, a year *after* the pilot program is scheduled to conclude. Unless the pilot period is extended, the federal and state regulations regarding overweight vehicles on the interstate system will revert to the previous incarnations (save for the exceptions noted above).

H.441 (Act 1), Stimulus Oversight. This bill, from the 2009 Special Session, directs two legislators to serve as liaisons between the Office of Economic Stimulus and Recovery and the legislature, and to ensure there is legislative oversight over American Recovery and Reinvestment Act (ARRA) grants. The Vermont Office of Economic Stimulus and Recovery shall prepare status reports to be posted on the web and emailed to the legislative Joint Fiscal Office and other interested parties. The biweekly reports shall include:

1. notification and summaries of ARRA state grant proposals under development and any related timelines, discussion meetings, or other opportunities for input;
2. a list of grants submitted by state agencies, amounts solicited, description of purpose and activities to be carried out, and their status; and
3. grants received by budget function or policy area.

S.88 (Act 128), Health Care. Section 6 of the Health Care Bill directs the Joint Fiscal Committee – with a recommendation from the Health Care Reform Commission – to hire a consultant to create at least three design options for a health care system in Vermont. The act contains the goals and principles of reform, a lengthy description of the design elements, and requirements for the report. A draft is due by January 1, 2011; the final report is due by February 1, 2011. Section 6 requires the commission to recommend the design consultant to the Joint Fiscal Committee. The commission also must monitor the study to design the health care system options for Vermont throughout the summer and fall, but it is prohibited from influencing the outcome of the study.

CONSTITUTIONAL AMENDMENTS

Proposal 5

VLCT Staff Contact: Cory Gustafson

This year, the legislature gave its final approval to Proposal 5, a constitutional amendment that would allow 17-year-olds to vote in a primary election, provided they turn 18 before the general election. The proposal was introduced in the first half of the biennium. As a constitutional amendment, it had to pass through both the House and Senate twice. Now the citizens of Vermont must approve it: Proposal 5 will be on the ballot in November 2010.

The Vermont Municipal Clerks' and Treasurers' Association raised concerns about the proposal before final legislative approval. The questions were largely procedural: How would eligibility be tracked? What

if local questions were on the primary ballot? Would separate ballots be required? Would a 17-year-old need the signature of a parent or guardian because he or she cannot take an oath? Regardless of the answers, the final say will be in the hands of the voting public in November.