

# VERMONT LEAGUE OF CITIES AND TOWNS

## LEGISLATIVE WRAP-UP



2011

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## INTRODUCTION

### Punctual Adjournment Leaves Unfinished Business

At the very respectable hour of 6:30 p.m. on May 6, the 2011 Vermont legislative session came to a close. It was a less exciting session than others because the House and Senate chambers and the Governor's office were controlled by the same party, whose objectives were similar and their outcomes generally predestined. While legislative leaders congratulated themselves on their accomplishments and the orderly close to the session, results were somewhat more mixed and unpredictable for local governments, particularly in the waning hours of the session. Although the House and Senate adjourned, they left open the option to reconvene on October 18, on the joint call of the Senate President pro tempore and Speaker of the House. That would happen only to address funding shortfalls that resulted from Congressional budget cuts to federal programs.

On some key legislation (such as the transportation and capital bills), cities, towns and villages fared well. In other areas (education funding, tax increment financing, health care, and public records), municipal needs were not met. You will read more about these issues in this Wrap-up. The legislature also established several legislative study committees that will take place between now and the beginning of the second half of the biennium. Those that affect local governments are noted in the article on page 30.

The administration also committed to studying several issues that affect local governments, such as growth centers, downtown centers and scattered development, water quality, stormwater, and planning for federal government program funding.

When legislators return to the State House in January 2012, all the bills that were introduced this year will be "alive" again – that is, legislators could decide to amend and pass them. They could also ignore them altogether or introduce a new bill that addresses the same issue.

One bill that did not pass despite a lot of work having been done to it in the last days of the session was S.67, the open meetings bill. (See [Weekly Legislative Report No. 16.](#)) Expect amendments to that draft legislation to be taken up in January. The Speaker of the House and President pro tempore promised to write a letter committing the Senate Finance and House Ways and Means committees to take up the issue of tax increment financing in 2012 as well. Although no particular outcome is predicted, the commitment is important because it has been several years since the House comprehensively examined tax increment financing.

Legislation that would have changed how vital records in the state of Vermont are issued and managed did not gain final approval. The bill, originally H.99, was restructured and reintroduced as H.454 late in the session and time ran out before it could be taken up in the Senate. Therefore, the current system of vital records management remains unchanged, but expect H.454 to be a Department of Health priority in the second half of the biennium.

H.258, the environmental enforcement bill, likewise did not pass. (See [Weekly Legislative Report No. 11.](#)) The scope of its legislation goes far beyond the federal Environmental Protection Agency (EPA) requirement to provide for "aggrieved persons" to intervene in enforcement proceedings related to federally delegated environmental programs. On the last day of the session, S.111 was introduced. The bill would require the Environmental Division of the Superior Court to hold an enforcement order related to air quality, water pollution control and water quality, or hazardous waste and hazardous materials for 10 days to allow a person who has commented on the order to permissively intervene in

order to argue that the enforcement action proposed is insufficient to carry out the purposes of the law. S.111 as introduced would expire July 1, 2012. Expect both H.258 and S.111 to be taken up early next year.

Generally speaking, legislation that passed 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.

We urge you to take a few minutes to review legislation that passed and think about its impact on your municipality. If any of the articles in this Wrap-up generates additional questions, don't hesitate to contact a VLCT Advocacy staff member, namely:

- Steve Jeffrey: tax policy, educational issues, and municipal self-governance ([sjeffrey@vlct.org](mailto:sjeffrey@vlct.org));
- Karen Horn: environmental regulations including water issues, capital budgets, land use, and employee/employer matters ([khorn@vlct.org](mailto:khorn@vlct.org));
- Cory Gustafson: clerk and treasurer issues, including elections, transportation, public safety, and corrections ([cgustafson@vlct.org](mailto:cgustafson@vlct.org)); and
- Dave Sichel: health insurance, workers' compensation, unemployment, and other insurance issues ([dsichel@vlct.org](mailto:dsichel@vlct.org)).

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 2012 that targets local government's most pressing needs and addresses some of the lingering issues raised by the 2011 session. VLCT Advocacy will soon contact VLCT members about serving on one of these committees. Even if you are not a member of one of these committees this year, please send your recommendations for municipal legislative action to Karen Horn. Town Fair will be held on October 6 at the Killington Mountain Resort, where the VLCT Municipal Policy will be debated and adopted. Each town and city has one vote. Make yours count – join us in Killington for the Fair!

# Health Care

## Health System Issues (H.202, Act 48)

VLCT Contact: Dave Sichel

One of the defining issues addressed by the 2011 Vermont Legislature was health system reform. The culmination of this effort was the passage of H.202, “An Act Relating to a Universal and Unified Health System.” The intent of the bill is to create a single-payer health system called “Green Mountain Care” that will provide *“comprehensive, affordable, high-quality, publicly financed health care coverage for all Vermont residents in a seamless manner regardless of income, assets, health status, or availability of other health coverage.”* The bill intends to achieve this reform through “the coordinated efforts of an independent board, state government, and the citizens of Vermont, with input from health care professionals, businesses, and members of the public.” The bill seeks to maximize funding that becomes available through the federal health reform known as the “Patient Protection and Affordable Care Act” (PPACA).

To accomplish these goals, H.202 takes steps to establish the health benefit exchange as required in PPACA to start providing health insurance plans effective January 1, 2014. The bill also creates the Green Mountain Care Board and provides the board with a considerable amount of authority to regulate the Vermont health care system. And the bill begins work on development of a single-payer, universal health care system called Green Mountain Care (GMC). GMC cannot be fully implemented until a number of conditions are satisfied, including receipt of a federal waiver.

This comprehensive bill includes many issues of interest – and concern – to municipalities, which are discussed below.

**Health Benefit Exchange.** The federally required health benefit exchange will be developed and administered by the Vermont Department of Health Access, the department that currently runs state health insurance programs including Medicaid and Catamount Health. The exchange will offer health insurance plans to individuals and small employers and will also be the vehicle by which the state will develop the infrastructure for Green Mountain Care. While many details are still to be ironed out, tying the exchange to the development of the single payer system is significant because it will influence many of the issues under consideration. One goal of the federal PPACA is to create a health benefit exchange in each state that provides a marketplace where employers and individuals can purchase health insurance with a large choice of insurers with benefits and premiums being described in a way that allows for easy comparison between plan options. To be the tool used for development of the single-payer system, the goal of the exchange is modified by H.202 to have the exchange cover as many lives with as uniform a health system administrative structure as is possible. Issues include:

- Whether to have the exchange apply to small employers with up to 50 employees or up to 100 employees. (Most Vermont municipalities are small employers under either definition.) This is really a short-term decision because PPACA requires the exchange to be open to employers of up to 100 employees in 2016 and open to large employers in 2017 as well. From a single-payer perspective, having the exchange immediately apply to employers with up to 100 employees is preferable. From an employer choice perspective (as employers appear to continue to be the provider and majority funder of health insurance purchased during this timeframe), limiting the exchange to employers with up to 50 employees is better.
- How many insurers will participate in the exchange? The bill requires at least two, if possible. In addition, the exchange will offer two federally managed plans. From a single-payer perspective,

minimizing the number of insurers is preferable. From an employer choice perspective, the more insurers, the better, again hoping that competition can still play a role in limiting cost increases.

- How many plan options will be offered? From a single-payer perspective, minimizing the number of plan designs participating in the exchange is preferable. From an employer choice perspective, the more health plan options, the better.
- Will plans be available outside of the exchange for individuals and employers eligible to participate? From a single-payer perspective, not allowing any plans outside of the exchange is preferable. From an employer choice perspective, the more health plan and insurer choices, the better.

Most of these issues will be considered during the 2012 legislative session.

The Health Care Reform Priorities and Principles adopted by both the VLCT and the VLCT Health Trust Boards state:

*Health Insurance Exchanges created as a result of federal health reform must preserve choices for employers. This is best accomplished by fostering a competitive health insurance marketplace with options, including multiple plan designs and health insurers available to health insurance purchasers both in and outside of the exchange. All such plans must be allowed to operate on a level playing field.*

In other words, we support providing as many health insurance choices as possible, both in and outside of the exchange. As long as municipalities pay the bulk of health insurance premiums for their employees, they should have as many plan and insurer options as possible. This provides more choices to find a health plan that meets the needs of the municipality and its employees. While H.202, as passed, leaves these decisions open, the choices are reserved for the state to make, not the employers and employees who will pay the premium.

If the exchange is implemented with limited choices, most Vermont municipalities will have to change the health insurance plan that they offer. About 70 percent of Vermont's municipal employees are currently in High Deductible Health Plans (HDHP) compatible with Health Savings Accounts (HSA). Typically, the employee's health premium contribution is lower in this arrangement. In addition, most municipalities contribute to the employees' HSAs or create a Health Reimbursement Account (HRA) to help employees meet their deductible obligation. Most employers and employees have found this approach to be more cost-effective, with no adverse effect on coverage, than the traditional health plans that they previously offered. The Health Benefits Exchange will not likely offer HDHPs. If health plans are not available outside of the exchange, then employers will have to move back to a more expensive traditional plan. The likely result will be higher costs for both the employer and most employees. And for municipalities, higher health insurance costs translates to higher property taxes.

**Green Mountain Care.** Green Mountain Care (GMC) is the name given to the single-payer plan to be developed and implemented by the state as soon as practical after January 1, 2014. GMC will cover all Vermonters and will be funded by yet to be determined broad-based taxes. The start-up of the plan is subject to a number of conditions being met, including obtaining a federal waiver. There are also issues to be addressed relating to including large employers that operate self insured plans in GMC. These plans are "protected" from state regulation by the Employee Retirement Income Security Act of 1974, the federal ERISA law. How this issue is handled could result in legal action to delay implementation of GMC.

One of the primary goals of a single-payer system is to control health system costs. This is accomplished through a reduction of administrative costs coupled with health delivery system savings, which are achieved through eliminating waste and unnecessary care, payment reform, care coordination, and chronic care management, to name a few. But, some questions remain.

- **How will GMC be funded?** The bill does not establish a specific funding mechanism for GMC; rather, it will be determined after a study of funding options is delivered to the legislature by January 15, 2013. Until the funding structure is known, it is difficult to gauge the impact of GMC on individuals and employers.
- **How much will GMC cost?** This will be an ongoing question as coverage levels and cost sharing is determined. GMC presumes that costs of a single-payer system will be significantly lower than the current health care system. Some of the savings derived from moving to a single-payer system would be used to provide health care benefits to people currently uninsured or under insured.
- **How will costs controlled?** A key to the success of GMC is controlling cost increases. A goal of H.202 is to have health system costs remain affordable. This will be a tremendous challenge because currently health system costs are rising at a much faster pace than inflation in general. This means that the broad-based taxes levied to support GMC will be hard pressed to keep up with the increase in health system costs.
- **What health care plan design will be available through GMC?** The health care plan design is yet to be determined, and the Green Mountain Care Board is tasked with the job. The benefit design is to be based on providing benefits at an actuarial value of 87 percent, which is the current average health insurance benefit level in Vermont. This means that GMC will pay 87 percent of health costs while subscribers will pay the other 13 percent through co-pays and coinsurance. This benefit level is similar to plans such as the VLCT Health Trust HP 20/30 plan. Current annual premiums for this plan are \$8,748 for single coverage, \$17, 496 for two-person coverage and \$23,619 for family coverage. Most Vermont municipalities do not currently provide health plans at this premium level.
- **Will supplemental health plans be available in addition to GMC?** The legislation envisions supplemental plans to be offered to increase the health benefit provided by GMC.
- **What happens if after launch GMC is not successful?** There is no “plan B.”

The “Health Care Reform Priorities and Principles” adopted by both the VLCT and the VLCT Health Trust Boards states:

*Whichever comprehensive system reform is pursued – a public option, single-payer system, or consolidated public sector employee health program – it must be comprehensive, equitable, and provide the same benefits for all. Such a system must separate health care benefits from the employer-employee relationship.*

1. *To be successful, any of the above-mentioned approaches must assign financing, responsibility, and accountability to one place.*
2. *A system that provides the same benefits for all cannot incorporate bargaining for different deductibles, co-pays, or co-insurance for some. Those activities would undermine the very premise of “same benefits for all.”*
3. *Such a system should offer a limited number of actuarially equivalent payment/coverage options, if it offers any choice at all.*
4. *A successful system would move away from fee-for-service-based payment structures for most health care systems. It would align interests to medical best practices and outcome-based payments.*
5. *A successful system must control health system costs over the long term.*

While H.202 addresses many of these principles, this legislation does not offer equal benefits to all. While purporting to offer medically necessary health care benefits to all Vermonters, some Vermonters will be more equal than others. Supplemental health care plans to fill the gaps in the essential benefits plan will be permitted. If the single-payer, universal health care plan provides comprehensive benefits and controls cost, why would any supplemental benefits be necessary? By continuing to allow health benefits to be tied to employment through supplemental health plans, the system cannot meet the goal of assigning financing responsibility and, accountability, to one place.

**Collective Bargaining.** H.202 states “Nothing in this subchapter shall be construed to limit the ability of collective bargaining units to negotiate for coverage of health services ...” This is a bit odd since the

Health Benefit Exchange plan included could severely limit the options available to employees and employers over which to bargain. Once adopted, GMC would offer even less choice. It is not clear why this language is needed when a single payer is adopted and health insurance is separated from employment.

**Much to be resolved.** As already noted, many issues are left to be resolved in the future. We count no fewer than 23 reports and studies in the bill. These reports will assist the legislature in making decisions that move the anticipated reforms forward. Clearly, it is good to carefully consider these complex issues before making any decisions. On the other hand, the lack of clarity makes it difficult to determine whether the health system reform plan can succeed and how it will impact individuals and employers.

**Other legislative action.** There is little disagreement that our current health care delivery system is inefficient, extremely expensive and unsustainable over the long term. The goal of the state's Blueprint for Health and health care reform legislation is to deliver health care in a systematic way that reduces administrative cost and controls cost increases over the long term while providing necessary medical services to all Vermonters. Unfortunately, mandates and taxes passed in this legislative session alone will lead to higher health system administrative costs, a more fragmented health delivery system, and the addition of more than one percent to health care insurance rates.

How can this be? As the legislature grappled with meeting the projected state budget shortfall, it considered new revenue sources. One of these was an increase in the cigarette tax by \$1.00 per pack. In addition to raising revenue, this tax could also reduce smoking, which could lead to lower health system costs. This proposal ran into opposition in the Senate, and the increase was subsequently cut to \$.38. To replace this lost revenue, the tax on health insurance claims paid was increased by 50 percent and was extended to dental insurance claims paid. The original health claims tax was implemented to fund development and implementation of an electronic health record system. In addition taxes on hospitals, home health care agencies and nursing homes were increased to help close the General Fund deficit. In total, approximately \$18 million of taxes on the health care system were enacted to balance the General Fund budget. This represents 75 percent of the new taxes levied.

There's more. A mandate that became law last year requires health insurance, including state programs such as Medicaid, to cover a variety of services to people diagnosed with autism spectrum disorders beginning later this year. This mandate will be expensive. In fact, the state has decided that it is so expensive that Medicaid cannot afford the cost and therefore should be exempted from the mandate. Apparently it feels that those who purchase state-regulated health insurance can afford this additional cost but state taxpayers cannot. We beg to differ. This mandate is expected to add one percent to health insurance premiums. An additional mandate adopted this year requires insurance coverage for midwife services and home births. How are these extra premium costs anything other than a tax on most Vermont employers and some employees?

In addition to increasing health insurance costs, this uneven implementation of the autism coverage mandate will lead to further fragmentation of these services – which will lead to higher medical and administrative costs. In the process, the state loses a chance to provide autism treatment services in a coordinated, patient-centered manner as envisioned in the Blueprint for Health. This would have been a great opportunity to show what health care reform can accomplish.

The mixed messages emanating from the State House relating to health system reform make one wonder if there is the political will to make the tough decisions that will be needed to truly reform our health care system. This concern will become paramount as we move forward into a health care system that is increasingly state-controlled and that offers health insurance buyers fewer options.

## What does this mean for municipalities?

While the ultimate impact of the health system reform legislation is not known, there are a number of issues for municipalities to consider, such as:

- **Costs will be higher in the short term.** The new taxes and mandates adopted this year will increase health insurance premiums by at least one percent over what they otherwise would have been. In addition, increased health insurance regulation will lead to higher administrative costs, which will also be passed through to health insurance buyers.
- **Change is coming.** The old Chinese curse – “May you live in interesting times” – certainly applies to health system reform. No matter what else happens, federal and state health care reform will change our health care system and how it is funded. Even without these reforms, profound change is likely because the current rate of increase of health system costs is unsustainable.
- **The health exchange will impact your health benefit plan.** The exchange goes into operation on January 1, 2014, less than three years from now. It is not too soon to begin considering your options and taking the changes into account in any collective bargaining. It is important to maximize your flexibility in health care plan design and funding. This will provide the best ability to respond as the structure, health insurers and plan designs of the exchange emerge over the next two years.
- **Prepare for a single-payer, universal care system in Vermont.** This is clearly the goal of this health care reform legislation, and the current administration has made this a priority. The details are yet to be worked out, and whether the plan can ultimately be implemented will only be determined over time. As employers, municipalities should prepare themselves for the time when health care benefits are separated from employment. If it happens, be prepared to embrace the opportunity.
- **Collective bargaining issues are important.** Because of the possible twists and turns in the road ahead, endeavor to maintain flexibility in your collective bargaining agreements. As we move to a new system, there is an opportunity to fundamentally redefine the employer role in providing health care benefits. Be careful about offering new health care benefits, such as supplemental health care plans. Consider providing a defined dollar contribution towards health care benefits instead of a defined benefit. This will protect you from medical inflation.
- **There will be considerably more state control of the health care system.** If handled well, this will lead to a more universal, better managed, more affordable health care system. If not ... ?
- **The long term costs of these reforms are not easy to fathom.**

**What next?** Now that H.202 has become law, we need to pull together and work to make Vermont’s health care system the best it can be. There are many issues yet to be resolved and there is still plenty of opportunity for input. We all need to follow the issues and be part of the solution to what all agree is a most complex problem.

So, be prepared. Plan ahead. Leave flexibility. We at VLCT look forward to being your partners in this endeavor.

## Municipal Finance

### The Appropriations Bill (H.441, Act 63)

VLCT Contact: Steve Jeffrey

Barely a hair on Gov. Shumlin's FY12 state budget proposal that he released on Tuesday, January 25, was mussed through the entire legislative approval process, at least as far as line items affecting local governments are concerned. The final budget figures for such programs included in H.441 ended up just one percent different from the Governor's originally proposal, depending on how the Corrections Department's program is funded. (See paragraph on the Corrections Department program below.)

Of paramount importance to local officials is the reduction in General Fund support for the Education Fund from what it should be statutorily. Property tax rates will need to be almost three cents *higher than they otherwise could have been*. The General Fund reductions are \$23.2 million – justified by what had been hoped for school spending reductions from the short-lived “Challenges for Change” initiative of last year – and a \$1.1 million reduction for funds that will be diverted to the Agency of Human Services' early education initiative grants for at-risk preschoolers. The budget bill from last year included the following language: “[i]n fiscal year 2010 and fiscal year 2011, \$1,131,751 shall be paid by the education fund for early education initiative grants for at-risk preschoolers. These payments shall be made, notwithstanding 16 V.S.A. § 4025(b)(1). In fiscal year 2012, these expenses shall revert to the general fund, and the general fund transfer shall be adjusted accordingly.” (Act 156, Section E. 501) For the past two years, the legislature and former governor funded this program out of the Education Fund, despite the statutory language that states “[u]pon withdrawal of funds from the education fund for any purpose other than those authorized by this section, chapter 135 of Title 32 (education property tax) is repealed. (16 V.S.A. § 4025(d)) So the answer now is to pay for early education grants for at-risk preschoolers from the General Fund by simply reducing the state support to the Education Fund.

The appropriations bill also uses the other form of shifting additional costs onto the property tax – it simply adds new cost items as legitimate Education Fund expenses:

*Sec. E.513.2 16 V.S.A. § 4025(b)(1) is amended to read:*

*(1) To make payments to school districts and supervisory unions for the support of education in accordance with the provisions of section 4028 of this title, other provisions of this chapter, and the provisions of chapter 135 of Title 32, ~~and~~ to make payments to carry out programs of adult education in accordance with section 1049(a) of this title, and to provide funding for the community high school of Vermont (i.e., the DOC education program).*

This means that the Department of Corrections' education program is now permanently funded from the Education Fund, 70.1 percent of which comes from the property tax this year. This final disposition of this line item accounts for almost the entire difference between what the Governor initially proposed for budget line items affecting local government and the final budget as passed by the House and Senate. The Governor proposed that the Corrections program be funded by the General Fund and not the Education Fund, but that the General Fund support for the Education Fund would have been reduced by the \$4.33 million the program costs. Instead, the \$4.33 million cut is not made, but the \$4.33 million cost is shifted to the Education Fund. The language in the above statute allowing the funding for adult education programs was added in the budget adjustment act in 2010 (Act 67, Section 63). What new burden on local taxpayers will be added during the 2012 legislative session?

That being said, the state did move to partially restore cuts it made to fund education over the past two years. The state General Fund transfer to the Education Fund is up by \$41.4 million over last year. Offsetting most of that increase is the disappearance of most of the federal American Recovery and Reinvestment Act (ARRA) funds that went directly to school districts for the past two years to the tune of \$38.6 million a year. This year and next, districts can spend up to \$19 million of ARRA funds, part II. Assuming that they spend that amount evenly over the two-year period, there will be \$9.5 million a year in federal funds that the school districts can spend to offset property taxes. So there is \$12.4 million more for education from sources other than the property tax for this year (plus a little more from the lottery and some other state sources dedicated to the Education Fund). Remember that we will lose the \$9.5 million in federal bailouts after next year.

So what is the outlook for school property taxes this year? School spending came in at 0.2 percent below last year, and property values fell 1.5 percent, according to the Division of Property Valuation and Review. Homeowners will pay \$2.5 million *less* than last year after income sensitivity (or homestead property tax adjustments), and nonresident property owners will pay \$12.7 million less. Combined, \$15.2 million less in property taxes will need to be collected. However, that is on an increased base homestead tax rate of \$0.87 and a non-resident tax rate of \$1.36, both up a penny. These rates could have been almost three cents lower (or down a net of two cents) if the \$24.3 million had not been reduced and the funding for the Correction Department's programs had come from some source other than the Education Fund.

Municipal governments' appropriation levels on the whole did not see much change from last year. (See chart on page 11.) Municipal payments in lieu of taxes (PILOT) for state buildings increased a small amount, not due to any largesse of the state but to the success of local sales and rooms and meals taxes authorized in 24 V.S.A. § 138 and some municipal charters. Those laws allow the municipalities imposing the tax to keep 70 percent and share the remaining 30 percent with the municipalities that host state buildings.

For details on local transportation funding levels, see article on page 18.

The budget bill extends the level of employee contributions to the Vermont Municipal Employees Retirement System (VMERS) for another year at 2.5 percent, 4.5 percent, and 9.25 percent for Groups A, B, and C, respectively. The employee contribution rate for Plan D remains at 11 percent. The contribution rates will now last through June 30, 2012. Last December, the VMERS Board set the employer contribution rates for July 1, 2011 through June 30, 2012 at their existing rates of 4 percent for A, 5 percent for B, 6.5 percent for C, and 9.5 percent for D.

### **The Capital Bill (H.446, Act 40)**

VLCT Contact: Karen Horn

The legislature passed H.446, the FY12 state capital construction bill, on May 5 and the Governor signed it into law the next day. This year, the Governor recommended a two-year capital budget, a new animal in Vermont, and the House Corrections and Institutions and the Senate Institutions committees worked very hard to make it happen. The two-year capital bill and bonding authorization is ostensibly a temporary measure designed to accelerate the implementation of large projects, thus putting people to work sooner in an effort to reduce the effects of the recession.

The total authorization for the two-year capital budget is \$153,755,006 – almost all of it from bonding, with the balance from reallocations and transfers from the previous year's capital appropriations.

In the first year, \$92,249,757 of that total may be appropriated. Any adjustments in the second year would be made via a capital construction and state bonding adjustment bill. The adopted amount of spending in the second year (2012) is \$62,489,642. Within this two-year context, the committees introduced the concept of “fenced dollars” – that is, funds that are committed and not subject to budget adjustment in the second year. An appropriation over two years that totals \$415,000 for upgrades to county courthouse facilities to bring them into compliance with the American with Disabilities Act is an example of fencing.

The legislature made a few changes to the Governor’s recommendations on items of concern to local governments, such as increasing by \$50,000 for each of the next two years every Building Communities grant program, which includes historic preservation grants, historic barns, cultural facilities grants, recreational facilities grants, human services and educational facilities grants from the Governor’s recommendation. These are not fenced appropriations; therefore they could be revisited next year in order to revise the amounts or the allocations for each fiscal year based on activity in Fiscal Year 2012.

The Housing and Conservation Board is appropriated \$4 million in FY 2012. Up to 20 percent of the appropriation is for conservation grant awards to maximize drawdown of federal and private matching funds, particularly federal farmland protection funds allocated to Vermont from the Natural Resources Conservation District. The board shall prioritize affordable housing preservation and infill projects in or near downtowns or village centers, as well as housing for elders or persons with disabilities, mental illness or who might lose their homes. The Public Inebriate Task Force, established in 2008, is directed to work with the Housing and Conservation Board to provide public inebriate beds and develop a plan for support services, annual funding, and a facility in one or more of the unserved areas of the state.

A significant point of contention at the end of the session was how to address disposition of the Rutland Multi-Modal Transit Center and Asa Bloomer State Office Building in downtown Rutland City. The city is directed to present a plan to commissioner of the Department of Buildings and General Services that reduces costs to the state for maintenance and operations. The plan ultimately provides for the sale of the Transit Center and state office building.

Meanwhile, the budget battles in Washington, D.C. rage on. Whatever their outcome, funding for programs such as the Clean Water Act, the Safe Drinking Water Act, and the EPA’s Revolving Loan Fund will likely be reduced. If so, the Senate Institutions and House Corrections and Institutions committees will have to re-assess appropriations in those areas.

Line items of concern to local governments are included in the table on page 12.

**Municipal Funding Priorities in FY 2012 Budget (in Millions), Conference Committee Report Approved by House and Senate**

<b>Budget Line Item</b>	<b>FY11 Budget As It Became Law</b>	<b>FY12 Governor's Recommend</b>	<b>FY 12 House Passed</b>	<b>FY12 Senate Passed</b>	<b>Conference Committee Report</b>	<b>FY 12 Conf. Com. \$ Change from FY11 Final</b>	<b>FY12 Conf. Com. \$ Change from Gov. Recommend</b>
PILOT – ANR Lands	\$2.13	\$2.13	\$2.13	\$2.13	\$2.13	\$0.00	\$0.00
PILOT – Corrections Facilities	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.00	\$0.00
PILOT – Montpelier	\$0.18	\$0.18	\$0.18	\$0.18	\$0.18	\$0.00	\$0.00
PILOT – State Buildings <sup>1</sup>	\$5.65	\$5.65	\$5.80	\$5.80	\$5.80	\$0.15	\$0.15
Current Use – Municipal	\$11.70	\$12.40	\$12.40	\$12.40	\$12.40	\$0.70	\$0.00
Homeowner Rebate – Municipal	\$16.72	\$15.10	\$15.10	\$15.10	\$15.19	(\$1.53)	\$0.09
Renter Rebate – Municipal	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50	\$0.00	\$0.00
Special Investigative Units	\$1.06	\$1.25	\$1.25	\$1.25	\$1.25	\$0.19	\$0.00
Gen. Fund Transfer to Ed. Fund <sup>2</sup>	\$234.80	\$271.91	\$271.91	\$276.24	\$276.24	\$41.44	\$4.33
Federal Stimulus Funds Passed Directly to School Districts	\$38.60	\$9.50	\$9.50	\$9.50	\$9.50	(\$29.10)	\$0.00
General Fund Support of Teachers' Retirement System	\$46.91	\$51.67	\$51.67	\$51.67	\$51.67	\$4.76	\$0.00
Town Bridge Grants <sup>3</sup>	\$18.32	\$16.95	\$16.95	\$16.78	\$16.78	(\$1.55)	(\$0.18)
Town Highway 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 Highway Structures	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$0.00	\$0.00
Vt. Local Roads	\$0.39	\$0.38	\$0.38	\$0.39	\$0.39	\$0.00	\$0.02
Town Hwy Public Assistance Grants	\$0.20	\$0.20	\$0.20	\$0.20	\$0.20	\$0.00	\$0.00
Municipal Mitigation Grant Program	\$2.11	\$1.14	\$1.14	\$1.14	\$1.14	(\$0.97)	\$0.00
Class 2 Hwy Paving and Rehabilitation	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$0.00	\$0.00
Town Highway Emergency	\$0.75	\$0.75	\$0.75	\$0.74	\$0.75	\$0.00	\$0.00
Total Local Highway Aid	\$59.97	\$57.61	\$57.61	\$57.44	\$57.45	(\$2.52)	(\$0.16)
<b>TOTAL</b>	<b>\$420.27</b>	<b>\$429.96</b>	<b>\$430.11</b>	<b>\$434.26</b>	<b>\$434.36</b>	<b>\$14.09</b>	<b>\$4.41</b>

1 FY11and FY12 figures are all from local options tax sharing and no state monies.

2 Required by statute to increase by New England economic project cumulative price index for government purchases (16 VSA § 4025(a)(2)). In 2010 and 2011, the legislature reduced this with “Notwithstanding” language. FY10 and FY11 figures total \$18.4 million less than required by the above-cited statute. FY12 General Fund support is reduced to pay for a state Human Services Agency’s early education initiative. Corrections education program paid directly from the Education Fund. FY12 General Fund support reduced by \$23.2 million, but school districts will receive \$9.5 million in one-time federal stimulus money (included in figure below).

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

<b>CAPITAL BILL TWO-YEAR (FY 2012-2013)</b>						
<b>Agency/ Department</b>	<b>Line Item</b>	<b>Legislature Final Passage FY 2011</b>	<b>Governor Proposed 2- Year FY 2012-2013</b>	<b>House Proposed 2- Year FY 2012-2013</b>	<b>Senate Proposed 2-Year FY 2012-2013</b>	<b>Legislature Final Passage</b>
Dept. of Information and Innovation	Vt. Telecomm. Authority, Broadband Development	\$4,500,000	\$13,000,000	\$10,000,000	12,000,000	10,000,000 <sup>1</sup>
Dept. of Taxes	Orthophotographic Mapping	100,000	200,000	200,000	200,000	200,000
Agency of Commerce and Community Development <sup>2</sup>	Historic Preservation Grants (1:1 match)	180,000	350,000	400,000	500,000	450,000
	Human Services and Educational Facilities Grants	180,000	350,000	400,000	500,000	450,000
	Recreational Facilities Grants	180,000	350,000	400,000	500,000	450,000
	Historic Barns, Ag. Grants (1:1 match)	180,000	350,000	400,000	500,000	450,000
	Cultural Facilities Grants (1:1 match)	180,000	350,000	400,000	500,000	450,000
	Farmers' Markets Infrastructure Grants	25,000	350,000 <sup>3</sup>	400,000 <sup>4</sup>	500,000 <sup>4</sup>	450,000
Department of Education	State Aid for School Construction <sup>4</sup>	6,355,111	14,000,000	16,212,000	14,000,000	14,850,000
Agency of Natural Resources	Clean Water State/EPA Revolving Loan Fund Match <sup>5</sup>	2,375,400	4,035,800	4,035,800	4,035,800	3,575,400
	Pownal wastewater treatment facility	85,000	170,000	300,000	1,050,000	1,000,000
	Combined Sewer Overflow (ARRA FY11)	1,295,000	585,000	585,000	585,000	585,000
	Water Supply Revolving Loan Fund <sup>5</sup>	2,175,660	5,794,853	5,794,853	5,794,853	5,794,853
Clean and Clear Pgm. (Total request: \$2,250,000)	Ecosystem Restoration and Protection Grants	1,900,000	5,000,000	3,800,000	2,500,000	5,000,000
	Waterbury WWTF Phosphorus Removal		2,700,000	2,700,000	2,700,000	2,700,000
	Dam Safety and Hydrology		325,000	325,000	325,000	325,000
Agency of Agriculture, Clean and Clear	Best Mgmt Practices on Vt. farms and water quality buffer program	1,675,000	2,700,000	2,000,000	2,700,000	2,500,000
Rural Fire Protection Taskforce	Dry Hydrant Program	100,000	200,000	255,000	200,000	200,000
Housing and Conservation Board	Building and Conservation Projects		4,000,000	4,000,000	4,000,000	4,000,000
<p>1. In FY 2012.</p> <p>2. In FY 2010, the Agency of Commerce and Community Development Grants were \$200,000 in each category.</p> <p>3. Agricultural fairs.</p> <p>4. Original request was \$31,398,590.</p> <p>5. Amounts in Governor, House and Senate proposed columns include administrative support.</p>						

## Miscellaneous Tax Bill (H.436, Act 45)

VLCT Contact: Steve Jeffrey

H.436 is a veritable potpourri of tax changes several affecting municipal governments. The biggest change affecting municipalities is the increase of the state education property tax rate by a penny for both the nonresidential rate (from \$1.35 to \$1.36) and the base homestead rate (from \$.86 to \$.87). As discussed in more detail in the article on the budget (see page 8), the amounts of state property taxes actually collected under these increased rates will still be less than the current year's collection due to dropping property values and increased homestead property tax adjustments, which are a result of declining incomes.

The bill expands last year's requirement of the Tax Department to report on developing an electronic system for the state to administer, bill and collect the state education property tax. The new language this year requires the report to include recommendations on whether the common level of appraisal can be applied separately and independently from the tax rate on the tax bills.

Vermont's education financing system will be studied yet again under the provisions of H.436. The legislature's Joint Fiscal Office, assisted by its Legislative Council, has to develop a proposal for a provider to evaluate the outcomes of Acts 60 and 68, including reviewing the existing data and studies already completed on the system and reviewing other states' systems (particularly those "committed to equity"). The evaluation will include comparisons of communities within the state and of Vermont and other states based on the following factors:

- equity, including student opportunity, access to resources for schools and for taxpayers,
- educational quality,
- comparative costs,
- funding reliance by types of taxes and revenues,
- demographic changes,
- the economic impacts, if any, that the education funding system has had on state and local economies,
- the relationship between per pupil spending and the total amount spent by each community, and
- the extent to which spending is correlated to community income wealth.

The study is budgeted for \$210,000 and must be submitted by January 18, 2012.

H.436 also changes (or maybe clarifies) the penalties associated with the inappropriate filing (or non-filing) of the homestead declaration for school property tax purposes. The bill gives the municipalities the option of penalizing someone who inappropriately files a homestead declaration in a town where the homestead tax rate is higher than the nonresidential rate – three percent, or eight percent if the homestead rate is lower. The same penalties would apply to homestead owners who should have filed but did not – eight percent if the homestead tax rate is higher, three percent if it is lower.

The bill orders the Division of Property Valuation and Review (PVR) and the Department of Public Service to examine the method of taxation of real property that includes a renewable energy plant, and whether the current method "disproportionately burdens" such plants. The report should recommend whether the current method should continue or whether there are more appropriate methodologies, and include both positive and negative aspects of each option. Renewable energy plants include solar (both photovoltaics and thermal), woody biomass, and farm methane.

An interesting section inserted into the bill late in the legislative process would subject land enrolled in the current use program to the land use change tax “two years after the issuance of all permits legally required by a municipality for any action constituting development or two years after the issuance of a wastewater system and potable water supply permit issued by the state.” The bill also tasks PVR with tracking the issuance of wastewater system and potable water supply permits for land enrolled in the current use program. The Tax Department was not involved in drafting or requesting this language and is currently struggling to determine what it means and how it will be implemented.

The current use program is also changed because the preferential property transfer tax treatment when enrolled land is sold is eliminated. Such land sold was only taxed at one-half percent rather than the one and one-quarter percent charged for all other property, except for the first \$100,000 worth of homestead value. The additional revenue will be used to help transfer administration of the current use program to an electronic format.

The miscellaneous tax bill also includes a remedy for disabled veterans who were not realizing any benefit from a property tax exemption made available to them. Disabled veterans have had some form of property tax exemption since 1947. By 1977, that exemption had risen to a statutorily mandated amount of \$10,000 of assessed valuation. Additional increases in the exemption had been proposed, but VLCT opposed increased mandated property tax exemptions until a compromise was reached in 1991 when Act 41 allowed local voters to approve raising the exemption to \$20,000 through a town meeting vote. VLCT argued successfully that it was the voters who were being generous, as they would be paying additional taxes to provide the exemption. That voted exemption was increased to \$40,000 of property value in 2006.

The impact of that exemption was profoundly affected by Act 60 in two ways. First, because the \$30,000 difference between the statutorily-mandated \$10,000 exemption and the \$40,000 voted exemption that many towns have now adopted is an exemption enacted by the voters, the remaining taxpayers have to not only make up the reduction in the municipal taxes, but must, through the “fourth tax rate” (32 V.S.A. § 5404a (d)), also make up the state education property taxes lost. Second, because of income sensitivity (or homestead property tax adjustments), any disabled veteran earning less than \$90,000 of household income is paying his or her education tax based on income and not property value. This means the veteran realizes no tax savings whatsoever from the voted or the mandated exemption on his or her school taxes. School taxes represent 74.3 percent of all property taxes collected, even after the adjustments, so the impact of such a property tax exemption is on the municipal taxes that comprise only one-quarter of the bill. This creates a double whammy: the voters that approve the extra exemption pay more into the Education Fund, but most veterans fail to receive any additional property tax break.

H.436 at least fixes the second whammy. The bill states that the property tax adjustments that the veterans get shall be calculated without regard to any exemption voted or mandated, meaning that they will get bigger property tax adjustments on their property tax bills. The Tax Department will have to specially calculate these adjustments for these individuals. Town property tax payers will have to continue to pay extra into the Education Fund to pay for the reduction for the veterans, who at least are getting the benefit the voters meant to give them.

Certain properties that have been exempted from the state property tax through special legislation are getting a partial comeuppance in H.436. Two health, recreation, and fitness organization properties associated with hospitals and nonprofit skating rinks have been getting annual extensions to exemptions from the state education property tax that aren’t available to other similar properties. H.436 cuts that exemption down to 50 percent for the current year with the intention that next year, they’ll have to pay full state education property taxes.

The only legislation that passed regarding tax increment financing districts (TIFs) ended up in H.436. Under current statute, if a TIF district is created and no indebtedness is incurred within the first five years, a municipality must apply to the Vermont Economic Progress Council (VEPC) for re-approval before it may incur indebtedness in the TIF. The amendment provides that VEPC consider only material changes in the application and presume the application qualifies for re-approval for an additional five-year period if the inability of the district to incur indebtedness was the result of the macro-economic conditions (i.e. an undefined term referring to the recession) in the first five years after creation of the district.

Current law also requires the State Auditor to audit TIF districts every three years, an expense that is borne by the Auditor's office. The amendment in H.436 provides for the State Auditor to audit a TIF every four years and bill the municipality for the cost of the audit. That cost will be considered "related" to the TIF and thus the municipality could pay it out of new education tax increments that are created in the district. Any audit must include a validation of the portion of the tax increment retained by the municipality and the portion directed to the state education fund.

As a result of the discussion between the House and Senate related to TIF districts, both the President Pro Tempore of the Senate and the Speaker of the House agreed to write a letter committing the House and Senate to taking up the issue of TIFs "in a substantive way" in the 2012 session.

This bill also includes tax increases to reduce the state deficit (see health care article on page 3) and many other tax changes. So, you see why this bill is called the *miscellaneous* tax bill.

## **MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION**

### **Public Records (H.73, Act 59)**

VLCT Contact: Steve Jeffrey

In the first thorough rewrite of the Public Records Law since its enactment 35 years ago, the 2011 legislature made some substantial changes that will affect how Vermont municipal government operates. As passed the House and Senate, H.73:

- Sets the time during which public records can be requested to all customary business hours of municipal public agencies, limiting the current restriction of 9 a.m. to noon and 1 p.m. to 4 p.m. to all state agencies.
- Defines a "business day" as a day that the public agency is open to provide services. (This has rather interesting implications at the local level, as the law's definition of a "public agency" remains "any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state." Does this mean that a "business day" for the selectboard is limited to days on which it meets?)
- Makes clear that any ticket, citation, or complaint issued for a traffic violation is a public document.
- Extends from two business days to three business days the time that a public agency has to respond to a request for records, and requires the public agency to certify within that timeframe if it believes

the document is exempt. The certification must include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

- Requires a public agency to consult with persons making requests for public records in order to clarify the request or obtain additional information that will assist in responding to the request and facilitating the production of the record. In unusual circumstances, the agency may request that a person requesting a voluminous amount of separate and distinct records narrow the scope of the request. Nothing in the act requires the record requester to comply with any requests made by the agency.
- Clarifies that no record can be withheld in its entirety if just some of its contents are exempt. Instead, the public agency is required to redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.
- Requires the Secretary of State to provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act through websites, toll-free telephone numbers or other methods.
- Mandates that public agencies “*shall*” pay the legal fees for any complainant who substantially prevails in taking an agency to court to force the release of documents except that if a public agency concedes that the contested records are public and complies with the request before having to make an appearance before the court, the court, in its discretion, “*may*” award attorney’s fees to the substantially prevailing party.
- Establishes a legislative study committee to review whether exemptions to the requirement for release should be repealed, amended, or remain unchanged; determines whether the term “personal documents” needs to be clarified when used in the exemption granted personnel records; recommends whether or not the legislature should authorize public agencies to charge for staff time associated with a request to inspect or copy a record and for the staff time incurred in locating, reviewing, or redacting a public records; and recommends whether the legislature should require towns, cities, villages and school districts to appoint an official, officer or employee responsible for advising all agencies and employees in the municipality regarding the requirements of the law and proper management of public records, and if so how. The committee is supposed to wrap up its work by 2015.
- Requires the Secretary of State, after consultation with VLCT, to annually survey municipalities on whether they are receiving an increased number of requests to “inspect” records (not “copy” records for which municipalities can charge staff time). The secretary is supposed to provide legislative committees with the results of his first survey on or before January 15, 2012.
- Requires the court administrator to report annually on the number of contested cases involving public records requests, since no data on the number of cases won, lost or filed or whether court costs were assessed under the current law are currently available.

Noticeably absent from the final version of H.73 is any mention of the Government Transparency Office (GTO), which was the key element of the administration’s proposed changes in December. The office would have been dedicated to providing an expert and impartial resource to resolve public records disputes. In the end, the legislature found the GTO too expensive and too formal to be worth the

investment of personnel and state tax dollars, given what it believed was apparently limited public good to be realized from such an effort.

As passed, H.73 does **not** include several other changes that were in earlier versions of the bill, including:

- Extending from 30 minutes to two hours the amount of time taxpayers would be responsible for paying for the public agency's staff time to respond to a request for copies of records.
- Allowing state and local government agencies to charge for the staff time necessary to allow individuals to inspect public records in addition to the cost of copying that is already allowed\*.
- Asserting that a person's "right to privacy" or "personal privacy" if his or her information is in public agency records is violated "only if disclosure of information about the person reveals intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends." This is how the Vermont Supreme Court has narrowed the exemption for personnel documents\*.
- Requiring every municipal legislative body to appoint a municipal public records officer to provide guidance to all in the municipality regarding compliance with the Public Records Law\*. Earlier versions of the bill required this officer to annually complete a records management training course offered by the state archivist.

\* These aspects are currently being studied by the legislative committee.

### **Municipal Charters (Acts M001-M008)**

VLCT Contact: Karen Horn

The legislature passed eight municipal charter amendments this session. Only the Brattleboro charter amendment change – H.459, introduced on April 27 – did not pass. Those charters amendments include Jamaica (H.8, Act M002), Danville Town and School District (H.81, Act M001), Montpelier (H.294, Act M006 – with the exception of a voted merger with the Berlin Fire District), Barre Town (H.335, Act M003), Rutland City (H.442, Act M005), Burlington (H.444, Act M004), Shelburne (H.451, Act M007), and Barre City (H.460, Act M008). Also passed were H.30 (Act 4), which requires the Board of Governors of the unified towns and gores of Essex County to hear tax appeals, and H.452 (Act 15), which establishes the boundary line between St. George and Shelburne – an issue that was reported to date back "to the beginning of time." There have been years in which charter changes have languished on the walls of committees, or were amended in areas well beyond the voted changes, but such has not been the case in recent years in the House and Senate Government Operations committees.

The relevant bill that did not pass and wasn't even taken up was H.31. That bill, strongly supported by local officials, would allow municipalities to amend charters, adopt new charters, and repeal charters without the approval of the General Assembly, unless the attorney general, six senators, or 30 representatives of the House petitioned for legislative approval. In that case, the charter proposal would proceed through the process that is now in place. Local officials hope the proposal will receive a long overdue hearing in 2012.

### **Voter Eligibility (H.420, Act 66)**

VLCT Contact: Cory Gustafson

H.420, the Office of Professional Regulation bill, was amended in the final days of the legislative session to include language regarding the eligibility of voters. In addition to existing requirements, anyone who will be 18 years of age on or before the date of a general election may register and vote in the primary immediately preceding that election. This provision was tacked on to the bill so that state statute would be consistent with the Vermont Constitution, which was amended in 2010 with the passage of Proposition 5. The push to pass Prop. 5 was led by the desire to allow voters who would be 18 on or before the Presidential election to vote in the primary. However, the language refers to “primary” in the singular tense, so it is unclear to the Secretary of State’s office whether or not it applies to both the March (Presidential) and the September (Congressional and statewide) primaries. The Secretary of State has requested an opinion from the Attorney General.

## **TRANSPORTATION**

### **Transportation Bill (H.443, Act 62)**

VLCT Contact: Cory Gustafson

The bill that annually addresses transportation appropriations and policy for Vermont’s next fiscal year was without major controversy again this year. H.443 was agreed upon by the committee of conference a full week before adjournment. The FY12 Transportation Bill (T-Bill) includes a \$554 million spending plan, which is about \$41 million less than last year’s version. The reason for the drop, of course, is the disappearance of American Recovery and Reinvestment Act (ARRA) funding that has boosted state spending for the last two and a half years. Even though the ARRA tap has been turned off, the Vermont transportation program continues to be propped up by an extremely advantageous formula for the disbursement of funds from the current federal transportation authorization, known by the acronym SAFETEA-LU (the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users). With the help of these federal funds, the administration and legislature were able to maintain a commitment to rebuilding Vermont’s transportation infrastructure. State paving is slated for \$77 million in FY12 and state and town bridge projects will see \$106 million, amounts that are still above traditional levels. Continuing Resolutions by the U.S. Congress have kept SAFETEA-LU in place well past its original expiration date, however it appears that Congress is poised to take up the next federal transportation authorization later this year, which will likely result in reduced federal dollars flowing into Vermont. (A continuing resolution is a type of short-term appropriations legislation the U.S. Congress employs to temporarily fund government agencies if a formal appropriations bill has not been signed into law by the end of the fiscal year.)

The Vermont Town Highway (TH) grant programs funding levels in H.443 were essentially left unchanged in FY12. (See table on page 11 for a detailed year-to-year comparison.) The two programs that saw increases for the FY11 budget cycle, TH Class 2 Roadway and TH Structures, were kept at the increased levels. In fact, the legislature raised the statutory minimum to equal the FY12 appropriations for Structure and Class 2 Paving grants to be awarded on an annual basis. The TH Aid was also held at the same level as the previous year – however it has not seen an increase since 2005.

Town highway bridge funding dropped from FY11 by \$1.55 million to \$16.78 million (excluding local match), however this amount fluctuates from year to year based on the number of town bridges in the queue, the amount of federal dollars available, and other factors. A good example of this fluctuation is the change in the TH bridge appropriation that occurred during the 2011 session. In January, the

Governor recommended that the TH bridge funding be \$16.95 million, but when New Hampshire delayed action on the Brattleboro-Hinsdale cooperative bridge project, the Vermont Agency of Transportation (VTrans) re-allocated the funds into a Stratton culvert project.

The Senate Transportation Committee recommended, and the House concurred, that the Vermont Local Roads program should be level-funded next year at \$390,000. (The Governor recommended \$375,000 for this program.) A more significant difference between the Governor's budget and the legislature's final appropriations is in the funding of rest areas. The Governor recommended that in FY12, and going forward, funding for rest areas would come from the Transportation Fund (T-Fund), rather than from the General Fund. The General Fund took on the funding of this program from the T-Fund in 2006 due to consistently slow growth in transportation revenues and increases in the cost of operating rest areas that serve as information centers. Since transportation-dedicated revenues have continued on a relatively flat trajectory, the transportation committees were not eager to take back this responsibility. In the end, the plan is to fund the \$4 million rest area line item in FY12 from the T-Fund but leave future funding responsibility with the General Fund. The caveat to this is that in FY13, there will not be a previously scheduled \$4 million reduction in the T-Fund transfer to the General Fund to help fund state police operations, meaning that there will be no real relief of T-Fund responsibility before FY14. In the meantime, H.443 asks that a summer committee – including representatives from the Joint Fiscal Office, Buildings and General Services and VTrans – study how the cost of constructing, rehabilitating, maintaining, staffing, and operating rest areas, information centers, and welcome centers could be apportioned between the General Fund and the Transportation Fund.

Final approval was given to the cancellation of projects that have been part of the transportation program for a number of years and in many cases have been closed out by the Federal Highway Administration, which means they no longer have access to federal funding, even though they have not been completed. VTrans officials testified that this process is a cleaning up of the state's transportation program to fall in line with the statutory system of prioritization (19 V.S.A. § 10g(l)) that went into effect in 2007. The projects that were cancelled fall below the level of priority set in statute when compared to others given the level of funding available. The prioritization process intends to focus the state's transportation program so that projects on the books will make progress in the near term and, in the case of some state projects, not be so broadly described. Each project has its own set of circumstances concerning cancellation, and in all cases VTrans had been provided input from at least one of the following: the regional planning commission, regional transportation advisory committees, or municipality. A final list can be found in Section 9 of the Committee of Conference report that is in the May 3, 2011 Senate Journal (page 1,696).

Due to the slow project delivery time that accompanies federal funds, VTrans proposed state funding for municipal sidewalk construction early in the session. Both the House and Senate transportation committees approved language that would achieve this goal. The House recommended a separate municipal sidewalk program with \$200,000 in funding taken from another budget line. Grant awards would have been capped at \$75,000 with a 50 percent local match. The Senate, on the other hand, approved making sidewalks eligible for TH Structure grant funds with no cap and a 50 percent local match, but no additional funding. In the end, the committee of conference could not come to an agreement, so neither was adopted. We expect the agency to return next session with another proposal that may include dedicated funding for sidewalks.

Section 20 of the bill makes a temporary change to a law regarding municipal utility adjustments located within a state highway right-of-way when the adjustment is part of a federal earmark highway project. The provision allows for the state to pay from federal money the cost of adjustments, provided that the earmark involves no state matching funds. This authorization ends after Fiscal Year 2013.

The last section of the T-Bill amends existing language that allows a disabled person – or someone who is transporting a blind person – to park free in a space where a parking fee is assessed for at least 10 continuous days. In state- or municipally-owned parking garages, the minimum time to park without a fee is now 24 continuous hours.

### **Complete Streets (H.198, Act 34)**

VLCT Contact: Cory Gustafson

According to the National Complete Streets Coalition, there is a growing trend across America to task transportation agencies to build roads that are safe and accessible for all users, not just motor vehicles. These are “complete streets.” Legislation in Vermont to address this issue was first introduced last year, but it did not make it out of the House Transportation Committee mainly because of the requirement to incorporate shoulders on all types of projects – including new construction, upgrades, and resurfacing – unless it exceeded 20 percent of the total project cost. H.198, the 2011 “complete streets” bill, took a less prescriptive approach and therefore made its way successfully through the legislature.

The bill requires that municipalities *consider* “complete streets” principles for all transportation projects except those that involve unpaved highways. H.198 identifies three circumstances in which these principles would not be incorporated:

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

If the project does not include “complete streets” after consideration, the managing municipality must make a written determination accompanied by supporting documentation that is available for public inspection at the office of the municipal clerk and the Agency of Transportation. Written determinations will be final and not subject to appeal or further review.

## **Public Safety**

### **War on Recidivism (S.108, Act 41)**

VLCT Contact: Cory Gustafson

Act 41 (S.108), the War on Recidivism Bill, is a continuation of the state’s effort to advance corrections policy and stem the uncontrolled growth of the Department of Corrections’ (DOC) budget. The process began with Justice Reinvestment legislation in 2007 and continued in 2010 with Challenges for Change legislation (Act 147) and the Corrections Bill (Act 157). From 1996 to 2006, Vermont’s prison population doubled, while the crime rate remained stable. At the same time, corrections spending more than doubled. Policy changes that have been instituted over the last few years have caused the state’s incarcerated population and spending to level off. Addressing the issue of recidivism – the act of a former prisoner to re-offend – is the next step in the process of changing the criminal justice system in Vermont.

Although recidivism is the bill's flagship issue, S.108 covers a range of corrections related provisions.

In the short term, savings that have been projected as a result of Act 41 come from amendments to the furlough program (treatment, reintegration, and home confinement) for offenders convicted of non-violent misdemeanor offenses. Act 41 authorizes DOC to approve home confinement or treatment furlough for such an offender without prior court approval, provided the offender is determined to be of low risk. In addition, DOC will be permitted to release a non-violent, low-risk misdemeanor offender on reintegration furlough at the discretion of the department if it is likely to reduce the offender's risk of recidivism. Beyond the savings realized by having an individual under supervision rather than in a costly correctional bed, keeping low-level offenders out of incarcerated settings improves the chances that they will not commit another crime, according to expert testimony. Until April 1, 2013, the bill authorizes the court to make otherwise eligible individuals *ineligible* for furlough by making a written finding at sentencing that such a move would risk public or victim safety or is unlikely to reduce the risk of recidivism for the offender.

Act 41 adds language to statute that says a sentence shall not be considered fixed as long as the maximum and minimum terms are not identical. This provision stems from situations where offenders who have no prior connection to a Vermont city or town forge new relationships and ties while serving their sentences in the community. After having served their minimum term, they are released from incarceration to serve the remainder of their punishment under DOC supervision, guaranteeing that they will be in the community for an extended period of time. The likelihood that offenders will return to their previous communities of residence is lower after having established new connections under supervision in Vermont. The legislative change simply gives the courts the option to hand out minimum and maximum sentences that are not far apart to mitigate the potential negative impacts on communities and residents, but it remains to be seen if it will be utilized. This section took effect May 19 upon the Governor's signature.

The bill creates a nonviolent misdemeanor sentence review committee to:

- Review the statutory sentences for all nonviolent misdemeanor offenses as defined in 28 V.S.A. § 301.
- Consider whether incarceration for such misdemeanors may be counterproductive because it disrupts stabilizing factors such as housing, employment, and treatment.
- Examine the policy of housing low-risk misdemeanants with the general prison population and whether alternatives should be employed.
- Consider restorative justice principles in its deliberations.

The review committee will include the chairs of the House and Senate Judiciary committees; a member of the Senate appointed by the Senate Committee on Committees; a member of the House appointed by the Speaker of the House; the Governor's special assistant on corrections; the administrative judge; and a former member of either the House or Senate Judiciary committees appointed jointly by the Speaker of the House and the Senate Committee on Committees. The committee will consult with stakeholders in its deliberations and produce a report along with legislative recommendations for the General Assembly by December 1, 2011.

There is currently no standard national measure of recidivism. Possibilities include a previously incarcerated individual's arrest, conviction, or a return to prison. The Council of State Governments Justice Center advised the legislature to establish a standard measure in order to set a goal for a reduced level of recidivism. Act 41 directs DOC to calculate the rate of recidivism based upon offenders who are sentenced to more than one year of incarceration, who, after release, return to prison within three years

for a conviction for a new offense or a violation of supervision, and the new sentence is at least 90 days. DOC will produce data based on this measurement and present it to the Joint Corrections Oversight Committee, which will then establish a goal for reducing the number of recidivists over a one- to two-year period.

The Council of State Governments Justice Center also recommended employing place-based strategies to serve communities that have a disproportionate number of residents who have been through the correctional system, because improved concentration of treatment, services and supervision in these areas can provide better return on investment with regards to public safety and reductions in recidivism. Act 41 calls for DOC to work with VLCT, the Association of the Chiefs of Police, and other law enforcement agencies to develop strategies that coordinate services provided by the state, local, and non-profit entities to persons in the custody of the department.

The bill also attempts to reduce the burden of administrative duties on probation and parole officers so that they can spend more time in the field engaged in home visits, employment checks, housing searches, and similar activities. Act 41 mandates that paperwork handled by probation and parole officers be halved by July 1, 2012.

Other provisions in the bill include requiring a recidivism reduction study from the Vermont Center for Justice Research, suspending the use of video arraignments and requirements relating to the advertising of contracted programming and services for offenders.

#### **Raising the Penalties for Eluding a Police Officer (S.73, Act 42)**

VLCT Contact: Cory Gustafson

S.73 was introduced in response to a police high-speed car chase that resulted in the death of an innocent individual when the driver attempting to elude the officers rammed her car. The bill raises the penalty for attempting to elude a police officer from a misdemeanor to a felony and increases the penalties for the offense when death or bodily injury results. Adding a felony-level eluding offense provides law enforcement with another tool for investigations of vehicles that fail to stop when signaled. Once a vehicle has been identified, a chase could be called off because of the increased probability that a suspect will be apprehended at a later time.

A person who attempts to elude an officer while operating a motor vehicle in a negligent or grossly negligent manner shall be imprisoned for up to five years, fined up to \$1000, or both. If serious bodily injury results, the penalty increases from a maximum of three years to a maximum of 15 years in prison, a fine of up to \$5000 (it was previously \$3000), or both.

If death results from such a violation, the penalty increases to one to 15 years of incarceration and/or a fine of up to \$10,000. If more than one death results, the operator may be convicted of separate violations for each.

#### **Employment Separation Agreements (H.264, Act 56)**

VLCT Contact: Karen Horn

During the 2010 session, the legislature passed language regarding the employment of an individual whose “duties may place that person in a position of power, authority, or supervision over or permit unsupervised contact with a minor or vulnerable adult.” That language was appended to the end of S.292 (Act 157) at the end of the session. This will affect municipalities that run recreation programs for children or that have programs for seniors. Those provisions established a state policy prohibiting

confidential employment separation agreements between an employer and employee when the employee has “engaged in conduct jeopardizing the safety of a minor or vulnerable adult.” This provision was effective when then Governor Douglas signed the bill into law on June 3, 2010. The provisions also required prospective employees whose duties may include authority over, or permit unsupervised contact with, minors or vulnerable adults to sign waivers authorizing prospective employers to obtain information from previous employers involving “all factual information that would lead reasonable person to conclude that the prospective employee engaged in conduct jeopardizing the safety of a minor or vulnerable adult.” Prospective employers were required to seek that information from current and former employers. This provision was to be effective April 1, 2011, and cover the most recent ten years of the prospective employee’s work history.

This year, H.264, a bill that primarily concerns motor vehicle law, included more legislation pertaining to hiring procedures for employers whose employees work with minors or vulnerable adult populations. H.264, which was signed into law on May 6, repeals the requirement that these employers contact each of a prospective employee’s current or former employers over the prior ten years and that the employers seek written responses regarding the person’s work history (the so-called “ten-year look-back”). H.264 replaced that requirement with a new provision of law extending immunity from liability to current or former employers who share certain work-history information with prospective employers. The provision provides immunity from liability to current or former employers who lawfully share “job performance” information with prospective employers only if the prospective employer’s employees work with minors or vulnerable adults.

This provision is effective July 1, 2011 and will be codified as 21 V.S.A. § 308. The immunity is void if the current or former employer knowingly discloses false or misleading information, or if the information is disclosed in violation of other laws.

## **Environment and Quality of Life**

### **Planning and Permitting (H.287, Act 52; S.17, Act 65; JRH.19)**

VLCT Contact: Karen Horn

This session saw several bills that sought to remedy Vermont’s permitting and planning process. Two of them, S.28 and H.332, would do so in a comprehensive and sometimes distressing manner, but the bills were not acted on. Pieces of zoning and planning and permitting legislation also cropped up in other bills, such as the jobs bill (H.287).

S.28 would establish a new system of oversight, administration, and adjudication of state permitting, and H.332 would establish a commission to comprehensively review permitting and make recommendations for its reform. Neither bill passed, in part because the Governor appointed a new chair of the Natural Resources Board and tasked him to review permitting in the state. In light of legislative time constraints and the fact that the administration expressed its commitment to examining Vermont’s land use permitting process, the legislature passed a resolution supporting that process and asking for inclusion of all affected parties in every part of the state.

Joint Resolution 19 endorses the administration’s initiative to assess the environmental protection and permitting system in Vermont – including the Agency of Natural Resources (ANR), the Natural Resources Board, and local government – and to make recommendations on increasing the process’s effectiveness. That investigation is being led by the chair of the Natural Resources Board who has begun

to coordinate with the secretary of ANR and representatives of the agencies of Agriculture, Food and Markets, Commerce and Community Development, and Transportation, and the environmental division of superior court, as well as municipal permitting officials. The Natural Resources Board chair plans to use public meetings, the Internet, and focus groups to gather input and has begun to compile the multitudinous studies that have been completed on this topic in years past. Joint Resolution 19 asks the board to consult regularly with the House and Senate Natural Resources and Energy committees as they go through their processes this summer and to report their findings to those committees by January 15, 2012. The resolution asks that recommendations for improvement include making Vermont's land use and environmental permit process "more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens." Local officials should watch the websites of the Natural Resources Board ([www.nrb.state.vt.us](http://www.nrb.state.vt.us)) and VLCT ([www.vlct.org](http://www.vlct.org)) for information on how to provide input to this process during the summer.

Another bill, S.17, provides for the establishment of up to four medical marijuana dispensaries to serve not more than 1,000 registered patients. It requires that no dispensary be located within 1,000 feet of the property line of a preexisting public or private school or licensed or regulated child care facility. A new section in the statutes (18 V.S.A. Chapter 86, "Therapeutic Use of Cannabis," § 4474l) states that "Nothing in this subchapter shall be construed to prevent a municipality from prohibiting the establishment of a dispensary within its boundaries or from regulating the time, place, and manner of dispensary operation through zoning or other local ordinances." In this instance at least, the legislature sided with municipal self-governance.

H.287, the "Jobs Bill," started in the House Commerce and Economic Development Committee, then went to the Senate Economic Development, Housing and General Affairs Committee, where it was substantially amended to accommodate the requests of local governments related to Tax Increment Financing Districts (TIFs) and new municipal planning requirements imposed in the House-passed version. H.287 also includes amendments to the Vermont Neighborhoods Program that were requested by the Department of Economic, Housing and Community Development. TIF amendments were stripped from the bill in conference committee and the fight moved from H.287 to H.436, the Miscellaneous Tax Bill. (See article on page 13.) As a result of the TIF language being removed from H.287 in conference committee and not really addressed in H.436, the chair of the conference committee – in a very unusual move – refused to sign the conference committee report, protesting that problems with the one economic development tool provided to local governments were not addressed. Local governments are grateful for that support.

Section 23a of H.287 amends the Vermont Neighborhood Program so that a landowner may apply to the Downtown Board for a Vermont Neighborhood designation after a joint public hearing held with the municipality's appropriate municipal panel that is concurrent with the local permitting process for the project. A Vermont Neighborhood may be designated in a municipality that has an approved plan and confirmed planning process, has enacted zoning and subdivision regulations, and has a designated downtown, village center, or growth center. If the Vermont Neighborhood is entirely within one of those designated areas, the Downtown Board shall issue the designation. If not contiguous with one of those areas, the Downtown Board shall consider the application along with plans, municipal permits, a letter of support from the municipality provided to the applicant within 30 days of municipal permits being issued, and a demonstration of compliance with the program's minimum density standards. To date, only Essex has a designated Vermont Neighborhood.

H.287 amends the activities of the development cabinet, which consists of the secretaries of the agencies of Administration, Natural Resources, Commerce and Community Affairs, Transportation, and Agriculture, Food and Markets. The development cabinet – which the administration said it would

revamp regardless of legislation – advises the governor on implementing measures to support conservation of working lands and open spaces; strengthen agricultural and forest product economies; educate the public about the impacts of poorly designed growth; administer tax credits, loans and grants for water, sewer, housing, schools, transportation and other community or industrial infrastructure; encourage revitalization of village and urban centers including brownfields, housing stock and vacant or underutilized development zones; encourage development close to community resources; support Vermont recreational opportunities; encourage mixed income and affordable housing; and, now, participate developing a long-term economic development plan.

In section 30 of the bill, regional commissions had asked that the statutory language adopted last year as part of the Challenges for Change legislation be amended so that regional plans must again be re-adopted every five years, instead of every eight years. They also recommended that both regional and municipal plans include an assessment report submitted to the Agency of Commerce and Community Development and regional commissions detailing:

1. the extent to which an existing plan had been implemented,
2. evaluation of the goals and policies and amendments necessary due to changing economic conditions,
3. changes needed in the land use element,
4. priorities for implementation in the next five years and
5. updates to information and data necessary to support goals and policies.

The commissions also recommended that an economic development plan be a required element of a regional and municipal plan. Local governments had lots of concerns about the proposal for new work elements to be added as a requirement to the municipal plan when, as usual, no state resources are available to help municipalities fund the work. The state provides \$450,000 in competitive municipal planning grants for 246 cities and towns as well as a number of incorporated villages to undertake planning projects that do not include re-adoption of municipal plans. At the end of the day, the regional commissions' plans are required to be re-adopted every eight years as established in Challenges for Change, although there is no prohibition on their being re-adopted sooner if the commission chooses. Regional commissions will have to accompany re-adopted plans with an assessment report as they requested; municipalities do not have that new obligation. And both regional and municipal plans will need to include an economic development element. This section of H.287 takes effect on July 1, 2012. There is some question as to whether a municipal plan must contain an economic development element on that date or needs to include that element the next time the plan is updated for its five-year cycle.

Section 46 of H.287 establishes a building code study committee to consider two building codes used to regulate construction in public buildings: the International Code Council that publishes the International Building Code, and the National Fire Protection Association that publishes the Life Safety Code and Uniform Fire Code. The committee will evaluate present use of both codes, assess the costs and benefits of each, recommend whether one or both codes should be used, and to what types of buildings those codes should apply. This is a separate study committee from the one established in H.56 to evaluate the residential building energy standards code, which also applies to all commercial and residential buildings. (See following article on energy legislation.) The H.287 building code study committee has 12 members, two of whom are appointed by VLCT, as well as one from a city and one from a town that represents the interests of a municipality administering a building code. A report is due January 15, 2012.

Twenty-five thousand dollars are allocated to the secretary of the Agency of Commerce and Community Development to fund the completion of the Southeast Vermont Economic Development Strategy (SeVEDS), which includes workforce development and similar activities. SeVEDS is designed to prepare

for the economic shift and job loss that will occur when Vermont Yankee closes.

Local officials, who will hear more about all these initiatives as the summer unfolds, should participate in discussions about what planning and permitting in Vermont may look like in the future, as any recommendations will affect local governments.

### **Energy (H.56, Act 47)**

VLCT Contact: Karen Horn

The Energy Bill was one of the larger bills – both in size and importance – that the legislature passed this year. Several elements of the legislation would benefit municipalities that seek to initiate renewable energy generation projects.

**Net Metering.** Net metering is an electricity policy that allows utility customers to offset some of their energy use with self-produced renewable energy. A net metering *system* is defined in H.56 as a renewable electric generation facility of no more than 500 kilowatts (kW) capacity that is intended to offset a customer's electricity, is on the customer's premises – or that of a group member – or is a micro-combined heat and power system of 20 kW or less.

Eligibility for net metering projects was expanded so that projects may now generate up to 500 kW of electricity and so that a group net metering project may be located on the property of one of the members of the group. A municipality may participate in a group net metering project. If there are credits because a project generates more than it uses in a month, the credits are to be apportioned amongst the owners.

The Public Service Board (PSB) must develop rules that provide for permitting of solar net metering systems of five kW or less within ten days after it and the interconnecting electric company receive a registration form and certification of compliance with interconnection requirements. The interconnecting electric company may issue a letter detailing issues with the solar facility interconnecting to the grid. If it doesn't, a Certificate of Public Good (CPG) will be deemed issued on the 11th day. A CPG for a net-metering or self generation system that is not used for one year will be considered abandoned, unless the PSB grants an extension or litigation holds up construction. Electric companies must offer a credit to each net metering customer using solar energy that applies to each kilowatt hour generated by the solar net metering system. The credit is a significant incentive to use solar net metering.

**Self-Managed Energy Efficiency.** H.56 expands the pool of transmission and industrial electric ratepayers who may undertake a self-managed energy efficiency program. Participants would be exempt from all statewide energy efficiency charges but would have to spend an annual average of at least \$1 million annually for three years on efficiency programs. The sole eligible business we know of prior to this expansion is IBM in Essex, which has demonstrated great success in its efficiency programs.

**SPEED.** The Sustainably Priced Energy Enterprise Development (SPEED) Program would be amended to establish a process for notifying generators of the availability of a standard price offer for renewable projects, for signing up for the program as well as creating a market for the renewable energy produced, including energy from an existing hydroelectric facility. A baseload renewable power portfolio would be created comprised of electricity produced essentially continuously at a constant rate, capable of taking all or part of a minimum load of a transmission or distribution system. East Ryegate Wood Energy is the sole facility that meets the criteria of this section.

**PACE.** The House passed H.155, the Property Assessed Clean Energy (PACE) Bill, on April 5. Although strongly supported by local officials, the bill did not make it through the Senate, and its contents were appended to H.56 at the end of the session.

As amended, the PACE statute establishes a voluntary mechanism that allows individuals who want to make eligible energy improvements on their residential properties to opt in to a special assessment district created by an act of the voters of their municipality. Only those who seek to make such improvements – and who, after completion of an energy savings analysis, are deemed eligible to participate in the program – would be involved in the district. Energy efficiency or renewable energy improvements are funded with municipal debt or other money and are repaid over a period of up to 20 years as a surcharge on the property tax bill. All improvement work must be performed by licensed contractors and must be approved by an energy efficiency utility – Burlington Electric in Burlington and Efficiency Vermont in the rest of the state. Residential property owners may not enter agreements to make PACE improvements before January 1, 2012.

Both in Vermont and around the nation, PACE programs ground to a halt last year just as they were beginning to take off. The Federal Housing Finance Agency, which has assumed a role in Fannie Mae and Freddie Mac mortgage programs, ruled last July that PACE programs were not acceptable if a repayment obligation on a PACE loan was in a position ahead of a first mortgage that they had insured.

The PACE legislation in H.56 addresses those issues. A PACE assessment will be secondary to the primary mortgage. With respect to all subsequent mortgages or loans, PACE takes precedence. The legislation creates a mandatory reserve account administered by the treasurer to which PACE participants and the Clean Energy Development Fund would contribute, creating a reserve pool should participants default and a property go to foreclosure. All municipalities establishing PACE districts will participate in the fund. The commissioner of Banking Insurance, Securities and Health Care Administration is directed to develop standards and criteria to assure a property owner can meet assessment payment obligations and determine his or her contribution to the loss reserve fund. The Department of Public Service (DPS) is to monitor compliance with those standards and criteria. With three different state agencies involved in administration of the reserve fund, rest assured it will be a complicated program!

The energy efficiency utility shall provide information regarding implementation of a PACE district to each municipality that requests it or is contemplating forming a PACE district. With the exception of Burlington, the energy efficiency utility in Vermont is Efficiency Vermont. The Burlington Electric Department is farther along in implementing a PACE district and is working with Efficiency Vermont to design a statewide model. These measures allow PACE programs to proceed.

**Propane.** Propane vendors came under a lot of scrutiny for their billing practices this session as the price of the fuel skyrocketed and customers ran into issues with their vendors. A consumer is defined as anyone who purchases propane for consumption, not resale, and has propane delivered to one or more storage tanks of 2000 gallons or less. Sellers are now prohibited from assessing a minimum usage fee, a fee for propane that is not actually delivered to a consumer, or requiring a consumer to purchase a minimum number of gallons per year, except as part of a guaranteed price plan. When terminating service after 12 months, a fee may not be charged to remove the seller's storage tank from the premises, or to pump out or restock propane or to terminate service. If a consumer has received service for less than 12 months, a termination fee may only include the disclosed price of labor and materials. A seller must deliver propane to someone who provides proof of ownership of a tank and the seller has conducted an approved safety check of the tank. Interruption or disconnection of service is allowed only

for non-payment of propane, leak or pressure test, safety check, restart of equipment, after-hours or special delivery, and meter read charges.

**Building Energy Disclosure.** H.56 establishes a working group on building energy disclosure to study how to require disclosure of the energy efficiency of commercial and residential buildings so as to make data on building energy performance available to renters or purchasers of property. The working group of 16 includes a person who is an active member of a local energy committee that is part of the Vermont Energy and Climate Action Network (VECAN), appointed by the governor from a list of three names recommended by VECAN. The working group will consider whether there should be requirements to disclose energy use of a building that allows comparison and assessment of energy use among multiple buildings. Recommendations must be submitted to the legislature by December 15, 2011. The Department of Public Service (DPS), the Agency of Commerce and Community Development and the Legislative Counsel will assist.

**Energy Plan.** DPS is currently updating the State Comprehensive Energy Plan and expects to have a new plan draft by October. H.56 directs the department to consider:

1. the relative merits of implementing a renewable energy portfolio standard (RPS) for utilities or continue with the SPEED program, and whether energy efficiency should be part of an RPS;
2. whether there should be tiers of desirable renewable energy resources based on the characteristics of their deployment, such as impact on the environment;
3. the relationship of energy use and land use, including land devoted to biomass cultivation and the interrelationships among modes of transportation, energy consumption and settlement patterns;
4. work of the Agency of Agriculture, Food and Markets;
5. the potential for developing a land capability map for renewable energy;
6. finding new money for the Clean Energy Development Fund (CEDF);
7. citizen participation in deciding on energy generation projects;
8. ensuring that consumers receive the benefits of so-called “smart-grid” technology;
9. the residential building and commercial building energy standards, including their effectiveness in increasing efficiency and reducing carbon impacts;
10. mitigating fuel price volatility in Vermont; and
11. a timeline for implementing the 2007 Governor’s Commission on Climate Change recommendations on climate change.

The website to participate in comprehensive energy plan development is <http://publicservice.vermont.gov/pub/state-plans-compenergy.html>

**Street Lights.** Electric utilities must enact a rate schedule for street lighting that provides one option for efficient street lights and another for customers to own street lighting and install efficient lighting, including LEDs, on their fixtures. This is legislation that local officials sought for several years without getting anywhere, so its inclusion in H.56 is indeed welcome.

**Clean Energy Development Fund (CEDF).** The DPS is made the administrator of the CEDF, and the seven-member Clean Energy Development Board has decision-making authority over five-year strategic plans, the annual operating budget, and program designs. In all other respects, the board is advisory to the department commissioner.

H.56 is an exhaustive (and exhausting) piece of legislation. Many of its components are of significant interest to local governments. The DPS and PSB will be busy throughout the summer addressing the

changes in this legislation as well as developing the state Comprehensive Energy Plan and will likely be back with more proposals in the next session.

Last month, the Governor created a Climate Cabinet to coordinate efforts to address climate change across state agencies, reduce the state's reliance on fossil fuels, coordinate with all local government and regional commissions, and improve the state's understanding of the effects of climate change. Although the cabinet was not a part of H.56, local officials should be aware of it because the cabinet will be a forum for many of the upcoming energy policy discussions.

### **Telecommunications (S.78, Act 53)**

VLCT Contact: Karen Horn

S.78 establishes policies and programs to achieve statewide cellular and broadband service in Vermont by the end of 2013. Vermont received grants and loans totaling \$174,108,400 to build out the system under the American Recovery and Reinvestment Act (ARRA), but the money must be spent by July 1, 2014. Additionally, Vermont utilities received \$69 million in ARRA matching funds through the U.S. Department of Energy to finish building a statewide smart grid. Taken together with private investments, state appropriations, and bonding authority accorded the Vermont Telecommunications Authority, almost \$400 million is available to provide universal availability of cellular and broadband services in Vermont. (The Federal Communications Commission defines broadband as digital subscriber lines, cable modem, fiber, wireless, satellite, and broadband over power lines.) The legislature agreed that with the recent influx of federal dollars, Vermont is well positioned to achieve the goal of providing universal availability of cellular and broadband services. Language in S.78 asserts that the new technology will include a 4G LTE wireless network.

S.78 continues a three-year-old pre-emption of municipal zoning authority until July 1, 2014, when unspent federal dollars will revert to the U.S. government. Local officials opposed the pre-emption when it was originally established. However, the language of the exemption does contain some improvements, added mostly at the behest of the Senate Natural Resources and Energy Committee:

- An application to the Public Service Board shall include a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.
- S.78 defines the terms “ancillary improvement,” “de minimus modification,” and “limited size and scope.”
- S.78 provides for notice to the landowner of record, the municipality and the commissioner of the Department of Public Service and its public advocate of proposals for de minimus modifications and allows for objection to the designation as a de minimus modification.
- S.78 also provides language that establishes a rebuttable presumption in the Public Service Board Certificate of Public Good process regarding compliance with a municipal plan from an affected municipal legislative body or planning commission and compliance with a regional plan from a regional commission.

All of these improvements reduce somewhat the impact of the local permitting pre-emption. Local officials made clear that they rely upon the July 1, 2014 sunset to remain in effect.

Until July 1, 2014, and with the exception of compliance with national flood insurance program, new language prohibits municipalities from regulating an ancillary improvement that does not exceed a footprint of 300 square feet and a height of 10 feet, the attachment of a new or replacement cable to an existing electrical distribution or communications distribution pole, and the replacement of an existing

electrical distribution or communications distribution pole with a new one, so long as the new pole is not more than 10 feet taller than the pole it replaces.

Likewise, local telecommunications ordinances adopted pursuant to 24 V.S.A. § 2291 (19) have no effect until July 1, 2014.

Language that was added in the last days of the session amends 24 V.S.A. § 4412 (8)(A) in a manner that may prove problematic for towns and require further amendment in 2012. It states that “except to the extent bylaws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for placement of an antenna used to transmit, receive, or transmit and receive communications signals on that property owner’s premises if the area of the largest face of the antenna is not more than 15 square feet, and if the antenna and any mast support does do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.” The question arises as to whether this language will apply to a single antenna or multiple antennae. The previous language applied to the aggregate size of antennae in an application.

The drive to ensure that a universal telecommunications system is built out within the specified time frame is enormous. Municipalities clearly need broadband service in all areas of the state. And because zoning has been pre-empted for the last three years, municipal permitting is not the impediment to building out a functioning system today.

### **Phosphorus and Nitrogen Fertilizers (H.26, Act 37)**

VLCT Contact: Karen Horn

A bill prohibiting the application of both phosphorus and nitrogen fertilizers to turf (not including agricultural land, sod farms, or golf courses) passed on May 4. Phosphorus fertilizer may be applied if an approved soil test indicates the soil is deficient in fertilizer or if turf is being first established. The Agency of Agriculture, Food and Markets, in consultation with the University of Vermont, shall approve soil tests by October 1, 2011. No fertilizer may be applied to an impervious surface or before April 1 or after October 15 or when the ground is frozen, or to turf within 25 feet of waters of the state. The Judicial Bureau would have jurisdiction over violations of the prohibition, and persons who knowingly violate it are subject to a civil penalty of up to \$500 per violation. Golf courses will be required to submit a nutrient management plan for fertilizers to the secretary of Agriculture, Food and Markets beginning July 1, 2012. Inasmuch as phosphorus is the contaminant of concern in the Lake Champlain total maximum daily load (TMDL) and it will cost millions of dollars to prevent its discharge to the lake as well as to clean it up, trying to prevent unnecessary phosphorus from entering the environment in the first place is a logical objective. Likewise, nitrogen is the contaminant of concern in the Long Island Sound TMDL into which the Connecticut River drains. No matter Vermont is a miniscule contributor to nitrogen loads in Long Island Sound, the Environmental Protection Agency wants to reduce nitrogen loads to the Sound from all sources. The prohibition on applying phosphorus and nitrogen fertilizer takes effect on July 1, 2012.

If a retailer sells phosphorus fertilizer that consumers have access to, the retailer shall display non-phosphorus fertilizer separately; and post where phosphorus fertilizer is accessible a sign that states “Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn or lawn that is deficient for phosphorus as indicated by a soil test.”

## Pharmaceutical Waste (H.11, Act 27)

VLCT Contact: Karen Horn

H.11 was passed by the House on March 17; on April 15, it was voted out of the Senate Natural Resources and Energy Committee without amendment, and it passed the legislature on May 3. It provides that any person to whom a prescription drug was prescribed or other authorized person may lawfully deliver any leftover drug to a person who is lawfully authorized to dispose of it. In the past few years, several police departments have hosted days when people can bring their leftover prescription drugs to them for appropriate disposal, and thus avoid the dangers of having these drugs, that might be attractive to unauthorized users, around the house, or disposing of them by flushing them down the drain, where they contaminate the water supply.

# Legislative Study Committees

## Study Committees and Workgroups

VLCT Contact: Karen Horn

**H.56** establishes a working group on disclosure of building energy efficiency to study whether and how to require disclosure of the energy efficiency of commercial and residential buildings so as to make data on building energy performance available to renters or purchasers of property. The working group of 16 includes a person who is an active member of a local energy committee that is part of the Vermont Energy and Climate Action Network (VECAN) appointed by the Governor from a list of three names recommended by VECAN. Recommendations must be submitted to the legislature by December 15, 2011. The Department of Public Service, the Agency of Commerce and Community Development and the Legislative Counsel will provide assistance.

**Joint Resolution 19** endorses the administration's initiative to assess Vermont's environmental protection and permitting system. The chair of the Natural Resources Board is leading the process by coordinating with the secretary of the Agency of Natural Resources and representatives of the agencies of Agriculture, Food and Markets, Commerce and Community Development, Transportation, and the environmental division of superior court, as well as municipal permitting officials. He plans to invite input through public meetings, the use of the Internet, and focus groups. Joint Resolution 19 asks the board to consult regularly with the legislative committees on Natural Resources and Energy and to report their findings and recommendations to those committees by January 15, 2012. The resolution asks that recommendations for improvement include making Vermont's land use and environmental permit process "more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens." Local officials should watch the Natural Resources Board and VLCT websites for information on providing input to this process over the course of the summer.

**Section 46 of H.287** establishes a building code study committee to consider two building codes used to regulate construction in public buildings, the International Code Council that publishes the International Building Code and the National Fire Protection Association that publishes the Life Safety Code and Uniform Fire Code. The committee is directed to evaluate present use of both codes, assess the costs and benefits of each, recommend which code should be used, and to what types of buildings those codes should apply. This is a separate study committee from that established in H.56 to evaluate the residential building energy standards code, which also applies to all commercial and residential buildings. (See related article on page 24.) The H.287 building code study committee has 12 members, two of whom are appointed by VLCT, plus one from a city and one from a town that represents the interests of a

municipality administering a building code. A report is due January 15, 2012.

**Section 28 of H.443** establishes a State Highway Condemnation Law Study Committee to investigate possible changes in the state's highway condemnation law (Title 19 Chapter 5). Its goal is to achieve improved integration with the transportation planning process, federal and state environmental reviews and the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Currently, state projects must undergo a two-step condemnation process. The necessity of the project must first be proven in Superior Court. Only then is the issue of compensation addressed. VLCT will have a representative on this committee.

**H.202**, the health care bill, calls for a number of studies to be conducted by the commissioner of the Department of Banking, Insurance, Securities and Health Care Administration, the Green Mountain Care Board, or other groups. One such study committee is a Medicaid and exchange advisory committee, created to advise the commissioner of the Department of Vermont Health Access with respect to policy development and program administration for the Vermont Health Benefit Exchange, Medicaid, and Medicaid-funded programs, consistent with the requirements of federal law.

Vermont's education financing system will be studied yet again under the provisions of **H.436**. The legislature's Joint Fiscal Office, assisted by its Legislative Council, has to develop a proposal for a provider to evaluate the outcomes of Acts 60 and 68, including reviewing the existing data and studies already completed on the system and reviewing other states' systems (particularly those "committed to equity"). The evaluation will include comparisons of communities within the state and of Vermont and other states based on equity, including student opportunity, access to resources for schools and for taxpayers; educational quality; comparative costs; funding reliance by types of taxes and revenues; demographic changes; the economic impacts, if any, that the education funding system has had on state and local economies; the relationship between per pupil spending and the total amount spent by each community; and the extent to which spending is correlated to community income wealth. The study is budgeted for \$210,000 and must be submitted by January 18, 2012. The bill orders the Division of Property Valuation and Review (PVR) and the Department of Public Service to examine the method of taxation of real property that includes a renewable energy plant, and whether the current method "disproportionately burdens" such plants. The report should recommend whether the current method should continue or whether there are more appropriate methodologies, and include both positive and negative aspects of each option. Renewable energy plants include solar (both photovoltaics and thermal), woody biomass, and farm methane.

**S.108** creates a Nonviolent Misdemeanor Sentence Review Committee to review the statutory sentences for all nonviolent misdemeanor offenses as defined in 28 V.S.A. § 301; consider whether incarceration for such misdemeanors may be counterproductive because it disrupts stabilizing factors such as housing, employment, and treatment; examine the policy of housing low-risk misdemeanants with the general prison population and whether alternatives should be employed; and consider restorative justice principles in its deliberations. The review committee will include the chairs of the House and Senate Judiciary committees; a member of the Senate appointed by the Senate Committee on Committees; a member of the House appointed by the Speaker of the House; the Governor's special assistant on corrections; the administrative judge; and a former member of either the House or Senate Judiciary committees appointed jointly by the Speaker of the House and the Senate Committee on Committees. The committee will consult with stakeholders in its deliberations and produce a report along with legislative recommendations for the General Assembly by December 1, 2011.