



WEEKLY LEGISLATIVE REPORT

The Vermont League of Cities and Towns' **Weekly Legislative Report** is published each Friday during Vermont's legislative session.

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2015-1016 Biennium, Part Deux

First, let's consider the context that frames the 2016 session. It is the second year of the biennium. Last year, legislators started the session facing a General Fund deficit of \$93 million. They are still facing a \$40 million shortfall for this fiscal year. The deficit is projected to be \$58 million for FY17 and, as Administration Secretary Justin Johnson stated, most of the one-time funds and rainy day dollars have already been used. In addition to the deficit – which is a circumstance Vermont has faced for the last several years – the 2015 legislature passed several significant and costly pieces of legislation: Act 46 is designed to revamp the education delivery system in Vermont; Act 64 (the Vermont Clean Water Act) should implement both the Lake Champlain Total Maximum Daily Load (TMDL) once the U.S. Environmental Protection Agency adopts it and similar water quality protection programs across the state; and Act 56 furthers the deployment of renewable energy facilities and energy transformation projects (those that reduce the use of fossil fuels, do not generate electricity, and include efficiency projects). Whereas the initial health care proposal last January would have provided \$190 million to reduce Medicaid cost shift and implement a number of health system reforms, Act 54 ended up providing \$6.3 million for health reform initiatives and no funding to keep up with Medicaid cost increases or fully replace funding cut from the General Fund.

There are issues with each of these initiatives as they roll out. Legislators delayed addressing other issues until the 2016 session by establishing study committees to consider them, including (1) lowering stormwater permit thresholds from one to one-half acre of impervious surface and updated Phase 1 TMDL implementation plans; (2) the land use impacts, local screening, and other regulatory requirements of siting solar facilities; (3) new funding sources to support the Transportation Fund; (4) making payment in lieu of taxes (PILOT) on Agency of Natural Resources lands; (5) E-911 call centers; and (6) an update on the entire Vermont health care insurance system.

Vermont local governments are looking forward to engaging legislators on a wide range of issues related to municipal governance, from charter adoption to councils of government, to appointment of clerks and treasurers, to the potential legalization of marijuana. Remember, 2016 is an election year. All the discussions in the State House will take place in the context of lots of people running not only for election but also for higher office. We hope you will take time to re-focus their attention on local government and actually finding the resources necessary to get done the jobs they mandate. Invite your legislators to a legislative update before the session starts on January 5. Make sure they understand the impact that legislation such as Acts 46, 64, 54, and 56 is having on your city or town and its taxpayers.

Every bill that was introduced last year and not passed is alive again at the beginning of this session. Many times a new bill is introduced just to update the concepts in bills not addressed the previous year. The drafting deadline for new proposed legislation is December 11 for Senate bills and January 15 for House bills.

As the session progresses, you can keep track of municipal issues via our *Weekly Legislative Report*. Every Friday, Advocacy staff sends the report out to our subscribers via email and U.S. mail and posts it on our website, www.vlct.org. We welcome comments on the articles and proposals for legislative language as bills progress through the House and Senate because we really do want to know what you think!

VLCT Advocacy looks forward to working with our members in 2016 – and it's not too early to make plans to attend Local Government Day in the Legislature, which will be held on Wednesday, February 10, 2016, in Montpelier.

What Does the Vermont State Budget Look Like for Cities and Towns?

The strains on the state budget have been tremendous of late and they won't lessen next year. That has been the case ever since the Great Recession (which commenced in December 2007), and filling the budget gap has grown more difficult for the legislature each succeeding year. In the current fiscal year, Vermont is facing a \$40 million budget gap, which includes \$36 million in Medicaid related adjustments. As the secretary of the Agency of Administration said in his November 23 webinar hearings on the budget (<https://youtu.be/ESsnOnClhws> and https://youtu.be/1F8xr_tw_zw), most available one-time funds were used to balance the budget in the previous five years and the programs so funded are now ongoing expenses to the budget. The gap in FY17, which begins July 1, 2016, is projected to be from \$60-70 million, of which \$53 million are Medicaid-related costs.

Act 46, passed last session, reforms school governance in Vermont. There are expected to be 15 votes on mergers by July 1 2016, including one that voters in Essex, Essex Junction, and Westford already approved last month. The Department of Education has heard from 32 active Section 706b study committees (which study the feasibility to form a union school district pursuant to 16 V.S.A. § 706b). While considerations include potential mergers, incentives in Act 46 to merge, and likely impacts on education tax rates, schools are also facing health insurance rate increases that will push many districts over the allowable growth rates imposed by the act, with the result that they would trigger a penalty tax on spending over the allowable growth rate. Similar health insurance pressures also affect the budgets of municipalities and of private sector businesses that provide health insurance that are facing average rate increases of 5.5 percent (5.5 percent is an average; municipalities may see higher or lower increases) – but without the penalty that would be assessed on schools with excessive growth rate increases. The House Education Committee chairperson is already looking at ways to address the issue of budgets exceeding Act 46 limits because of line items such as health insurance.

On December 1, the Commissioner of Taxes sent her [annual letter to the legislature](#). She is required to forecast yield amounts based on a homestead property tax rate of \$1.00, an income tax rate of two percent, and a non-residential property tax rate of \$1.538. She estimates that average tax bills may rise a little over one percent in the coming year. However, the yields and corresponding non-residential tax rates will be set by the legislature based on updated information during the session.

Act 64, the new Vermont Clean Water Act, established a Clean Water Fund that uses revenues from a three-year increase in the property transfer tax to begin to fund implementation of the Lake Champlain Total Maximum Daily Load (TMDL), the municipal roads permit that will apply to every city and town, and stormwater management projects across the state. Last month, the Clean Water Fund Board recommended \$4.5 million for municipal stormwater, wastewater, and roads over the next two years out of a total projected amount of \$10.4 million. Municipal obligations are estimated to be more than \$140 million in each of the next ten years. Even with revolving loan funds for wastewater, \$3 million in additional commitments for transportation infrastructure, and assorted other small loans and grants, the revenues committed to funding these huge new water quality mandates fall far short of what is needed. As well, the Agency of Natural Resources (ANR) is required to adopt anti-degradation rules by July 1, 2016. The anti-degradation rule will apply to all new discharges requiring a water quality permit. (See related Water Quality article on page 7.)

Last year, the legislature changed the way in which payments in lieu of taxes (PILOT) are made to towns hosting ANR lands. It froze the amount appropriated for FY16 PILOT payments at 102 percent of the payments made in 2014 for the second year, established a new method of payment to take effect in FY19, and in the interim directed a summer study committee to come up with recommendations for making future ANR PILOT payments.

On December 3, the governor unveiled an \$8.4 million two-year proposal to address the increase in the number of children entering state custody. In the last two years, that number was 400, largely as a result of opiate addiction. Currently, 1,373 children are in custody of the Department for Children and Families. The governor's proposal would hire 35 additional department staff, dedicating \$3.4 million of the FY16 budget adjustment and \$5 million in FY17 to that effort. Opiate addiction and its related problems greatly affect community life in cities and towns, as you will hear throughout the session.

In a fairly astonishing move, the U.S. Congress just this month approved a five-year \$305 billion transportation bill, the Fixing America's Surface Transportation (FAST) Act. Since Congress last passed a multi-year transportation act in 2005, there have been 36 extensions to it. Although the FAST Act is far from everything people wanted – the federal gas tax, last raised in 1993 to 18.4 cents a gallon, was not increased and smaller communities have to deal with just as much red tape but have no more flexibility in spending federal transportation dollars – Agency of Transportation staff recently told the VLCT Transportation Advisory Committee that Vermont fared well in terms of transportation funding commitments. The fact that there will be a predictable funding stream and set of priorities for five years is immensely helpful to the State and any municipality that is undertaking transportation-related projects.

Again, 2016 will be a difficult year from a budgetary perspective. And in the State House, most conversations eventually come around to how to pay for initiatives or ongoing programs that are priorities for committees. Some huge obligations – such as education, Medicaid, clean water, and Human Services funding – are likely to overshadow other important priorities. The House Appropriations Committee has been working on the budget for some time now. Governor Shumlin will deliver his last budget speech to the General Assembly on January 21, and it is only after that speech that agency secretaries will be able to discuss the implications of the budget for their departments and programs – and, thus, for municipalities.

Municipal Governance – A Partnership Opportunity

Vermont is a Dillon's Rule state. That means, for better or worse, local governments have the powers that the State of Vermont expressly gives to them *only* if they are:

1. granted in express words in the law or in an approved governance charter;
2. necessarily implied or necessarily incident to the powers expressly granted; and
3. absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

In fact, this provides the Vermont Legislature – and in particular the House and Senate Government Operations committees – significant leeway to solidify a partnership between cities, towns, and the state that accords to local governments authority to make decisions for themselves when the matters being addressed are not of statewide significance.

By way of background, in the 1860s, Iowa Supreme Court Justice John F. Dillon ruled on several occasions that municipal corporations may exercise only those powers specifically granted to them or that are essential to the declared purposes of the municipal corporation. As one of only a few strict Dillon's Rule states, Vermont is stuck with that dictum today, despite the prevalent myth of Vermont local control. Vermont statutes grant municipalities the authority to carry out certain responsibilities and vest in them the obligation to carry out others. Over the years, 52 cities and towns have adopted governance charters at the local level and sought approval for them from the legislature. These cities and towns – Barre City, Barre Town, Bennington, Berlin, Bradford, Brattleboro, Bristol, Burlington, Cavendish, Chester, Colchester, Danville, East Montpelier, Enosburgh, Essex, Franklin, Hardwick, Hartford, Jamaica, Jericho, Middlebury, Milton, Montpelier, Newport City, Northfield, Panton, Plainfield, Poultney Readsboro, Richford, Richmond, Royalton, Rutland City, St. Albans City, St. Albans Town, Salisbury, Shelburne, South Burlington, Springfield, St. Johnsbury, Stowe, Underhill, Vergennes, Waitsfield, West Fairlee, Westford, Westminster, Weybridge, Williamstown, Williston, Windsor, Winooski, and Woodford – represent 53 percent of Vermont's population.

Additionally, 25 incorporated villages have governance charters listed in the appendix to Title 24: Alburgh, Bellows Falls, Cambridge, Derby Center, Derby Line, Enosburg Falls, Essex Junction, Hyde Park, Jacksonville, Ludlow, Lyndonville, Manchester, Morrisville, Newbury, Newfane, North Bennington, Northfield, North Troy, Orleans, Poultney, Swanton, Waterbury, Wells River, Westminster, and Woodstock. Title 24 also accords governance capacity to the Unified Towns and Gores of Essex County.

Governance charters enable municipalities to deviate from statute in specific instances, when the voters in a municipality have voted to change or adopt a charter, and when that locally voted amendment has been reviewed, dissected, frequently amended, and, finally, approved by the legislature. Once the legislators have commenced reviewing a charter adopted by the voters, they may amend any part of it they choose, or they may let the bill die in committee.

What issues do most charter changes address? In the last three years, most of the locally voted charter amendments proposed to merge a district or village into a town; adopt a local option tax, appoint the treasurer or clerk, provide for recall of officers at the local level, or adopt a conflict of interest policy; eliminate historically elected offices such as grand juror, town agent, or trustee of public funds; provide for bonding of officials; change the municipal fiscal year; consolidate services; and amend the method of

adopting ordinances. Where charter amendment proposals have been controversial, the committees of jurisdiction have not taken them up.

Forty-four states provide “Home Rule” to at least some of their municipalities in at least some governance areas though either their constitutions or statute. Home Rule states accord authority to local governments to pass laws and ordinances to govern themselves within the limitations established in state constitutions or laws. Home Rule initially was a concept of devolution of power and independence for the constituent nations of Great Britain and Ireland, and later Scotland, Wales, and Northern Ireland.

Given its legislative history, Vermont is clearly not ready for Home Rule. The Vermont Legislature has been exceedingly unwilling to discuss how home rule might work. Yet in 2016, when more than half the population resides in cities and towns where voters have approved charters or charter amendments governing themselves in a variety of aspects, it is high time to accord Vermont’s cities and towns, which are some of the oldest in the nation, *some* measure of self governance.

Charter changes, adopted by voters in accordance with statutory procedure, should take effect one year after their approval at the local level without a vote by the legislature unless both chambers vote by majority to take up the charter or charter amendment for consideration. If a provision of authority has been legislatively approved in a previously amended charter, it should automatically be accorded to municipalities which subsequently vote to adopt it as part of their charters.

State government is hugely over-burdened with obligations that it cannot meet, given its current limited human and fiscal resources. Last year, 87 separate pieces of legislation were referred to the House Government Operations Committee. Perhaps when legislators look to solve the state’s “structural deficit” and the costs to continue business as usual, overall workload, and its quest for efficiency, the legislature should consider local governments as partners and begin a conversation about how municipal self-governance could relieve some of those burdens. A good place to start would be with the introduction of a constitutional amendment.

Energy Siting: What Say do You Have?

At the end of last session, the legislature passed Act 56. The legislation, which establishes a renewable energy standard and energy transformation program, included several sections that address the treatment of renewable energy projects in the Public Service Board (PSB) Certificate of Public Good (CPG) process, most notably giving automatic party status to host municipal legislative bodies and planning commissions. It puts in place minimum setback requirements for ground-mounted solar generation facilities and gave municipalities limited authority to establish screening requirements for these facilities through a bylaw or ordinance, as long as the screening is no more restrictive than that required for other commercial facilities. The act created a Solar Siting Taskforce whose duty was to report to the legislature on issues pertaining to siting, design, and regulatory review of solar facilities. The commissioners of Housing and Community Development and Public Service were directed to identify municipalities that were adopting screening requirements, summarize the required provisions, and report the number of times the screening requirements were used in the CPG process. Recommendations are due to the legislature by January 15. The agency of Agriculture, Food and Markets and Commerce and Community Development as well as the Public Service Department (PSD) are also to report on environmental and land use impacts of solar siting as well as methods to mitigate those impacts. The PSD gave grants to three regional commissions to consider where to locate within their boundaries sites for renewable energy facilities. Some of that work is nearing completion.

During the summer and fall, while the above-mentioned work was underway, applications for CPGs for solar facilities were being approved all over the state. According to the Solar Industries Association, more than 75 solar companies are working in Vermont. According to a VT Digger report in September, [“Tax Breaks Drive Vermont’s Solar Gold Rush”](#), the PSB approved 79 non-residential solar projects in the first eight months of 2015, including 11 commercial scale installations, and 138 non-residential solar projects in 2014, including 23 commercial scale installations. At the same time, several new proposals for wind facilities are raising issues in the towns that would host them. Understandably, the demand to address the standing of local governments in the PSB CPG process has only increased since the legislature left town. Even in towns where no objections have been raised to a particular solar installation, local boards and commissions have voiced their frustration about the lack of standing to influence the appropriate siting of facilities.

The PSD is rewriting and will re-adopt the Vermont Comprehensive Energy Plan. The 380-page draft plan does an excellent job of meeting its first objective: to inform readers of the many challenges and opportunities facing Vermonters in maintaining a safe, reliable, affordable, and sustainable energy supply. However, the draft recommendations on how the state, region, and nation can move to a sustainable and affordable renewable energy future skirts the issue of what the impacts will be on municipalities and how municipalities should be able to affect the projects that are sited within or adjacent to their boundaries.

Currently, 51 towns have signed [resolutions asking for more say in the siting of renewable energy facilities](#). There is not presently a balance between the public good that is renewable energy generation to reduce Vermont’s carbon footprint and reliance on fossil fuels and the public good that is represented by land use and other priorities established in municipal plans, bylaws, and ordinances on the local level. The land conservation measures in municipal plans and recommendations of municipal planning commissions and selectboards are given no more than “due consideration” according to Section 248 that governs the PSB CPG permit process. Vermont must re-establish a balance between achieving the target of 90 percent renewable energy by 2050 and the many other land use goals that state agencies, regions, cities, and towns with volunteer commissions have worked for decades to achieve.

Municipal officials are in a unique position to explain the impacts of renewable energy projects on their communities. Despite a lot of rhetoric to the contrary, local governments have been addressing energy matters in their municipal comprehensive plans for some time. Efforts to marginalize those adopted plans directly contradict the locally based planning envisioned in Vermont statutes such as Act 200. The legislature needs to consider how to achieve its energy goals while maintaining its locally based land use values and without destroying much of the landscape that state and local policies have been designed to protect.

Local officials will continue their calls in 2016 for the legislature to address the CPG process in a meaningful manner. The Public Service Board should:

- give “substantial deference” to municipal concerns and determinations;
- hold hearings in any municipality potentially affected by a proposed project; and
- include all local decisions concerning the project within the PSB docket, formulate areas of inquiry based on concerns raised in the local hearing process, and require any decision to address local concerns raised in local determinations and adopted municipal plans.

Water Quality

One of the most significant pieces of legislation for municipalities that was passed last year was Act 64, the Vermont Clean Water Act. The act implements the Lake Champlain Total Maximum Daily Load (TMDL) for Lake Champlain once the U.S. Environmental Protection Agency (EPA) adopts it, and establishes new statewide water quality requirements, upending how municipalities address stormwater runoff from developed impervious surfaces and how they will manage roads in the future. It also eliminated longstanding law that stated that any mandated phosphorus removal upgrades at wastewater treatment facilities would be paid for with 100 percent grants and requires the Agency of Natural Resources (ANR) to adopt an anti-degradation rule by July 1, 2016. You can read a detailed summary of the legislation in the [2015 Legislative Wrap-Up](#).

In a meeting with VLCT's Water Quality Advisory Committee earlier this month, the Commissioner of the Department of Environmental Conservation (DEC) said that she expects the 2016 session to be a year of implementing programs (unlike last year, which was a year of legislation). DEC is filling the 13 staff positions authorized in Act 64 and is beginning to develop the mandated programs and assess how much it will cost to implement them. A new website, www.Cleanwater.vermont.gov, lists upcoming and archived Act 64 Brown Bag Lunch Series webinars, Clean Water Fund Board recommendations for apportioning the estimated \$10.8 million in Clean Water Fund revenues over the next two years, timelines for implementing the many requirements of Act 64, and more.

Act 64 puts in place mandates for (1) agricultural practices to reduce stormwater flows through new Required Agricultural Practices (RAPs); (2) developing inventories of municipal roads and assessing vulnerable areas, then making improvements in those areas; (3) addressing flow from developed lands including parcels of more than three acres that never had a stormwater permit; (4) upgrading wastewater treatment facilities to address phosphorus discharges; (4) revising basin plans to address stormwater issues; and (5) accounting for the work already accomplished, particularly in cities and towns with Municipal Separate Storm Sewer System (MS4) permits.

In 2013, ANR estimated that it would need \$155 million in each of the next ten years to achieve clean water in Vermont. Of that amount, \$145 million was attributable to tasks that would be required of municipalities. More recently, those estimates have been refined to address funding needs in the next two to three years as programs required in the law are phased in. Given the draft Lake Champlain TMDL, DEC estimates that it will take \$78.4 million in near-term wastewater treatment facility infrastructure improvements and \$128 million in the longer term to achieve the proposed phosphorus limits in the lake (along with all of the improvements not related to wastewater phosphorus discharges). Among MS4 permittees, estimates are that it will take \$142 million to address flow restoration plans. Addressing what are likely to be requirements on municipal roads (paved and unpaved) may take north of \$100 million. In fact, no one really knows how much it will cost to satisfy the requirements of the still unapproved Lake Champlain TMDL or what the cost difference will be when one seeks to implement a management practice in a rural versus urban or developed setting. The EPA is expected to approve the Lake Champlain TMDL in the next month or two.

The Clean Water Fund Board, comprising agency secretaries and commissioners, recommended the following allocations from the Clean Water Fund in the next two years: \$4,500,000 for municipal stormwater, wastewater and roads; \$3,135,000 for agriculture; \$1,150,000 for river channel and floodplain restoration activities to reduce soil erosion and enhance flood resiliency; \$1,185,000 for “partner” support to aid municipalities and farmers; and \$430,000 for Light Detection and Ranging (LiDAR) mapping.

Other funds committed to implementation of Act 64 in FY16, according to the DEC calculations, are:

Capital Bill Agriculture Best Management Practices.....	\$2.1 million
Capital Bill Ecosystem Restoration Grants.....	\$6.32 million
Capital Bill State Revolving Fund Match.....	\$2.6 million
Municipal Mitigation Grants (including Better Back Roads).....	\$1.09 million
DEC Clean Water Permit Fees.....	\$3.3 million
VTrans Stormwater Compliance.....	\$4.2 million
VTrans set-aside in the Transportation Alternative Program.....	\$1.1 million

The federal government will support agriculture, wastewater, stormwater management, and transportation to the tune of approximately \$24 million.

Money is an enormous issue for municipalities. An easy-to-understand spreadsheet showing all the funds for implementing the Vermont Clean Water Act from all sources and the obligations in all sectors would be enormously helpful to the entire discussion of how Vermont will be able to comply with Act 64 or the Lake Champlain TMDL.

DEC has also established a Municipal Taskforce and stakeholder process. The department will provide a number of reports to the legislature in January on recommendations for a regulatory threshold for permitting runoff from impervious surfaces, land application of sludge and septage, managing agricultural subsurface tile drainage, progress in implementing the lake shoreland protection program, and revising basin plans and water quality ecosystem restoration programs. The Agency of Agriculture, Food and Markets is continuing work on adopting rules for Required Agricultural Practices related to water quality; DEC is developing rules for combined sewer overflows, groundwater protection, a revised MS4 permit, a Stormwater Practices Advisory Handbook, and a revised Phase I TMDL Implementation Plan; the Department of Forest, Parks and Recreation is working on acceptable management practices for logging operations; and VLCT is reaching out to local officials and regional commissions for practical solutions to stormwater management issues.

While an enormous amount of work is being accomplished by the State and by municipalities, we hope that the 2016 legislature will take a break from mandating new, expensive and confusing water quality programs. The job of the legislature must now be to find the revenue to fund the programs it has already mandated.

Public Safety

Marijuana legalization. The 2016 legislative session will bring the topic of marijuana legalization to center stage. Legislative committees, particularly the Senate Government Affairs Committee, have already spent time this fall discussing marijuana legalization and regulation. The topic is not new in Vermont, and, over the years, several bills have been introduced to accomplish that goal. Currently, both chambers have bills in committee that relate to the regulation and taxation of marijuana: H.277 is in House Judiciary and S.95 is in Senate Judiciary. This year, there is a greater likelihood than in years past that a legalization bill will make it to the Senate and House floors for action.

VLCT membership affirmed its continued opposition to legalizing marijuana at its annual meeting last October. The legislature should identify the effects of the legalization on cities, towns, and villages, including the impacts on local school populations, municipal police and first responders, and municipal

ordinances and budgets. This same general perspective is applied to any discussion of drug and opiate abuse which impacts local government and Vermont's communities.

Opiates and Corrections. As legislators convene in January to address an estimated \$40 million budget shortfall in this fiscal year and put together a FY17 budget that will bridge a projected \$60-70 million gap, one factor is driving up costs in spending: opiate abuse. Since Governor Shumlin made his famous State of the State address in 2014 that specifically addressed opiate and heroin abuse, several bills have been signed into law that target this problem yet it continues to expand. As the legislature funds these programs and grants – and possibly expands available resources – it must provide municipal public safety officials the necessary tools, information, authority, and funding. Early this month, the governor announced plans for an additional \$8.4 million to hire additional staff in the Department for Children and Families, an additional superior court judge, and increased resources for the Defender General and State's Attorneys' offices to address increased child abuse and neglected caseloads.

Department of Corrections (DOC) programs and initiatives must be funded to ensure criminal justices system decisions will not adversely affect local government. The DOC budget should be funded to guarantee that offenders housed in local communities – including juveniles and those with drug or alcohol dependencies – receive appropriate DOC supervision and access to support services. Meanwhile, DOC is struggling to find adequate housing for those who have served their term of incarceration but can't find housing that meets the requirements of their release. As the State seeks answers to this dilemma, DOC must respect municipal zoning in approving housing for offenders. Host municipality public safety and human resources must be included in decisions about where to provide temporary housing. And DOC should coordinate with municipal law enforcement and monitor the release of offenders, especially those no longer under DOC supervision, so the responsibility for addressing issues that arise with the release of offenders is not shifted to the host municipality.

Suspended license restoration. Earlier this year, the State estimated that approximately 22,000 residents had their driver's license suspended for failure to pay overdue traffic fines. Many of those outstanding fines were assessed at the local level, although there is not a reliable record of how many those might be. In a rural state like Vermont, not having a driver's license can be a significant barrier to transportation (and economic opportunity) for many, especially those of low income. Many of those with suspended licenses are still driving, but without insurance, which puts all motorists at risk, and with the likelihood that they will be assessed additional fines. Last March, Burlington's Costello Courthouse hosted Vermont's first ever Driver Restoration Day. The one-day event allowed residents from five counties – Chittenden, Franklin, Grand Isle, Lamoille, and Washington – whose licenses were suspended for failure to pay traffic tickets to have their licenses reinstated by paying reduced fines. Almost 1,200 individuals took advantage of the amnesty. Today, December 11th, Windsor County is scheduled to hold Vermont's second Driver Restoration Day.

The success of the amnesty has prompted discussion of what other efforts the State could take to address the problem of license suspensions statewide. The Shumlin Administration said it would be proposing legislation that levies traffic tickets on an economic sliding scale to help low-income Vermonters afford to pay them. Taking up the issue is the Tri-Branch Task Force on Mental Health/Co-occurring and Justice Collaboration, an interdisciplinary group that includes representatives of Vermont's judicial, executive, and legislative branches, along with advocates and consumers. The group is presently writing legislation that they believe would provide statewide relief. As well, VTTrans has been hosting meetings of a task force to address issues concerning relief for those driving with their license suspended. Details of these proposed legislative ideas are not clear, but it looks like the legislature may be taking up this matter at some point this winter.

Open Meeting Law Changes

Several changes to the Open Meeting Law that affect municipalities went into effect in 2014. Since then, VLCT has heard from many local officials who have struggled to meet the new mandates. Smaller towns in particular do not have the staffing or the technical capacity to fully comply with the law's new dictates. For example, one unintended consequence has been that some municipalities have had to remove town websites because they didn't have the manpower and/or knowhow to comply with the website posting requirements in the amended law. Last session, the Senate Government Operations Committee addressed some deficiencies of the Open Meeting Law in S.114. The bill passed out of committee and, in late March, went to the Senate floor. On that same day, the bill was referred to the Senate Rules Committee, where it remains today, awaiting further action.

Local officials have repeatedly said that with just a few minor changes to the law, towns will be able to comply with the law with no loss of transparency. Urge your senators to support the following provisions of S.114 that address some of these concerns:

- Require a roll call vote for anyone participating in a meeting telephonically only if the vote is not unanimous;
- Increase the five-day requirement for posting minutes to 10 days;
- Limit mandatory application of the 2014 amendment's posting and penalty requirements to statutory, and charter required public bodies; make other municipal public bodies including committees and subcommittees of public bodies, comply with the law as is existed prior to July 1, 2014, and;
- Provide sustainable funding for an educational program to explain the Open Meeting Law requirements to municipal officials.

Appointing Municipal Clerks and Treasurers

Last March, the Senate Government Operation Committee passed S.94, a bill that would allow town voters to authorize their legislative bodies to appoint the municipal clerk or treasurer. The bill is in the Senate Rules Committee awaiting further action. Currently, Vermont statute only allows for treasurers and clerks to be elected into office. Towns that opt to appoint the treasurer or clerk must secure that permission in a governance charter approved by the legislature. Under S.94, a vote to authorize the legislative body to appoint a clerk or treasurer would remain in effect until rescinded by the voters, and a clerk or treasurer so appointed could only be removed by the legislative body for just cause after notice and hearing. VLCT members requested this legislation and will work to get the bill out of the Rules Committee and to the Senate floor in 2016.

Education Funding

At the end of last session, we wrote that “Nothing in this bill [Act 46] affects municipal officials directly. It will affect school board members, school district employees, students, and parents of students. Taxpayers and voters will see some minor procedural changes and, as hoped by some who voted for H.361, may see some bend in the curve of rising state education property taxes over the next five years.”

Act 46 – which concerns education funding, spending, and governance amendments – establishes several pathways to combining school districts and governance on the school side. (Options – Accelerated, Regional Education Districts and Conventional – available to school boards are posted at <http://education.vermont.gov/laws/2015/act-46>). The act addressed the education property tax directly in only two ways: by changing the methods by which the Commissioner of Taxes forecasts education tax

yields for property and income and a non-residential tax rate, and by establishing penalties if a supervisory union or school district exceeds its “allowable growth rate.” We won’t know for some time if the long term result of school district consolidations due to Act 46 will be reduced education fund spending.

There are expected to be 15 votes on school district mergers by July 1 2016, including one merger that voters approved last month. The Department of Education has heard from 32 active Section 706b study committees (which are appointed to study the feasibility of forming a union school district pursuant to 16 V.S.A. § 706b). Act 46 provides a variety of incentives via tax rate reductions to school districts that merge. The most significant tax rate reductions accrue to those that develop a single pre-kindergarten through Grade 12 district with a minimum of 900 students on an accelerated schedule and that vote on the district by July 1, 2016. A comprehensive explanation of Act 46 and school board options is posted on the Agency of Education website, <http://education.vermont.gov/laws/2015/act-46>.

Whether those mergers result in actual savings to taxpayers is an unanswered question and, in fact, Act 46 was not sold with any such assurances. The act calls on the Joint Fiscal Office to hire a consultant to study the implementation of an adequacy-based education funding system in the state, including a recommendation on the determination of “adequacy.” You can follow the study’s progress at www.leg.state.vt.us/jfo/education_adequacy.aspx.

The Commissioner of Taxes is required to issue a letter on projected education tax rates and – new this year – expected education tax yields based on a homestead property tax rate of \$1.00, a non-residential tax rate of \$1.535, and base tax rate on household income of 2.0 percent in FY17. The property yield per equalized pupil in FY17 is estimated to be \$9,955; the income yield per equalized pupil is anticipated to be \$11,157. The number of equalized pupils continues to decline, from 89,257 in FY15 to 89,163 in FY16 to an estimated 88,572 in FY17. An equalized pupil is not an *actual* pupil. The formula for “equalized pupils” gives less weight to pre-kindergarten pupils and extra weight to students in secondary school, those from economically deprived backgrounds, and those whose first language is not English. The statewide grand list growth rate, upon which education property taxes are assessed, is anticipated to grow at 1.7 percent. The statewide education spending growth rate, which depends on school budgets passed at Town Meeting, is anticipated to grow at 2.52 percent in FY17 despite the continued decline in student enrollment. Of the total \$1,562 billion in revenue to fund education, \$1,223 billion is from the education property tax. It must be noted that the legislature fully funded its General Fund obligation to the Education Fund in FY16. In terms of financing sources, nothing has changed. The Preliminary Education Fund Outlook is posted at www.leg.state.vt.us/jfo/education/2015-December-Letter-Balance-Sheet.pdf.

With each passing year, the education funding structure makes it harder for municipalities to craft municipal budgets and then have the voters approve them. It is especially difficult to fund expensive but needed municipal improvements. And, as we note elsewhere in this Preview, there are many of them. Municipal officials who have to administer the billion-dollar-plus property tax system and who provide essential services and infrastructure must rely overwhelmingly on property taxes. Yet Act 46 does little to ease the education property tax burden. Additions to the costs to the Education Fund will eliminate any savings that school district consolidation efforts might generate.

Municipal and school officials, the state administration, and the legislature should begin immediately, as equal partners, to analyze the issues within Acts 60 and 68 (including ways in which they do not meet the *Brigham* decision), and now Act 46. Then they must create a new education finance system that reduces and reforms the property tax burden. The legislature should assess Act 46’s success in curbing the rate at which education property taxes increase and establish the target rate of increase that will define the

legislation's success. Until then, Education Fund monies should *only* be used to pay for functions mandated by 16 V.S.A. § 4025(b).

Transportation

Because Vermont's cities and towns are responsible for close to 85 percent of all highway miles in the state (the state is responsible for the other 15 percent), VLCT continues to advocate for increased funding for Town Highway Aid payments, Class 2 Paving and Town Highway Structures grant programs, and the Town Highway Bridge program. Generally speaking, approximately 75-85 percent of a municipal budget is dedicated to repair and maintenance of transportation infrastructure. The legislature has essentially level-funded local transportation programs for several years, even in the face of pressure for budget cuts. Local officials will strongly advocate for full funding for all programs that help municipalities comply with legislative mandates, particularly those that relate to stormwater management to comply with Act 64. Pursuant to Act 64, municipalities will need to implement water quality improvement and protection projects on their road networks. Additionally, the Agency of Transportation (VTrans) must be held responsible for paying their fair share of stormwater fees that are locally assessed, as other state agencies are already doing.

Act 40, the 2015 transportation bill, covered a lot of ground, including directives to research alternatives to motor fuel taxes, public transportation services, transportation funding, and grants to municipalities. It required the Transportation Secretary to save \$1.5 million through cuts to personnel, labor, or consulting for FY16. By January 15, 2016, VTrans must report to the House and Senate Transportation committees with new funding sources they've identified and evaluated. VTrans must also report to the legislature on other matters such as a Park and Ride program for volunteers to clean up litter at state park and ride facilities, possible bus service from Albany, N.Y. to Bennington to Manchester (Vt.), and review of the Persons with Disability Transportation Program, which addresses transportation services to the elderly and disabled.

Act 40 adjusted Program Development funding by reducing the FY16 Transportation Infrastructure Bond (TIB) fund by \$6.6 million (a revenue-based bond program from two percent assessments on retail gas prices.) It increased project spending authority by \$3,514,996 in transportation funds and reduced project spending authority by \$12,340,016 in federal funds. It also established a floor of 3.96 cents per gallon on the TIB two-percent assessment, so if gas prices during a calendar quarter averaged less than \$2.47 per gallon, the floor would protect TIB revenues. FY16 funding for highway aid programs, including the Town Highway Structures Program, were level-funded. The exception is that Town Bridge Grants funding was increased by \$6 million from FY15 to \$21.63 million for FY16. That amount is a repayment of an earlier loan from the fund to cover other transportation obligations.

The legislature made significant changes to the Transportation Alternatives Program by setting aside \$1.1 million for environmental mitigation to treat stormwater runoff from town highways. These funds are part of the state's commitment to help meet the requirements of the water quality legislation. Those program funds also continue to be available to fund eligible salt and sand shed projects located near streams or rivers. VTrans will disburse monies to municipalities from the Clean Water Fund created last year in Act 64 for environmental mitigation projects related to stormwater and highways through the Municipal Mitigation Grants Program. Last month, the Clean Water Fund Board recommended spending \$10.4 million to reduce nutrient pollution in Vermont waterways over the next two years. That figure included only \$1.4 million for municipal road inventories and improvements. The amount recommended for municipal stormwater support is \$2,140,000. Grants provided to municipalities under the program would need to be matched by local funds sufficient to cover 20 percent of project costs.

Act 64 created the new DEC (Department of Environmental Conservation) Municipal Roads General Permit to apply to all municipal highways, paved and unpaved. State administration, education, and enforcement will be supported by a \$400 application fee and annual \$2,000 permit fee per municipality. This is the first time that permits have been required for the general maintenance and operation of municipal highways. Pursuant to Act 64, DEC administers the permit program, however DEC and VTTrans are in the process of developing new financial and technical assistance programs to help municipalities comply with the new mandates. The permit is to include a schedule for implementation by each municipality and the date by which it will:

- apply for municipal road permit coverage (to be phased-in between 2018 and July 1, 2021);
- inventory necessary projects on roads;
- establish a plan for prioritizing and implementing stormwater improvements; and
- implement stormwater improvements of municipal roads according to the plan.

The rules will also establish criteria and technical standards such as best management practices for mitigating stormwater runoff from municipal roads.

VLCT will continue to update local officials as requirements of the permit are developed. Urge your representative and senator to fully fund municipal transportation needs, including mandates from Act 64, when they craft bills during the 2016 legislative session.

For the first time in more than a decade, federal legislation was signed into law that establishes the next five years of highway funding. The Fixing America's Surface Transportation (FAST) Act, signed into law on December 4th, will fund federal surface programs through FY20 and provides \$305 billion for roads, bridges, and mass transit. This will enable state and local governments to take on more long-term planning for transportation projects because funding levels and policy objectives are guaranteed for at least the next five years. The law also increases the amount of Surface Transportation Program (STP) funding to local governments from 50 to 55 percent over the life of the bill and converts the STP to a block grant program which allows local leaders greater flexibility to choose how those dollars are spent. Although Vermont did not secure a great increase in federal funds, the act's guarantee of funding will help the state and municipalities move forward with desperately needed long-term planning and projects.

Health System Issues

Increasing Medicaid Costs. One of the first orders of business for the 2016 legislature will be to deal with the current year General Fund budget shortfall, which has been caused largely by Medicaid costs. The Medicaid shortfall should come as no surprise. As part of the administration's payroll tax proposal to address Medicaid cost shift, \$16 million in Medicaid and other ongoing health system costs that were previously funded through the General Fund were proposed to be funded by the payroll tax. It does not appear that funding these expenditures was addressed when the payroll tax proposal did not move forward. Increased Medicaid enrollment and utilization resulting from the federal Affordable Care Act's (ACA's) expansion of eligibility also exerted pressure on Medicaid funding.

Medicaid costs continue to increase rapidly and contribute to the projected FY17 General Fund budget deficit and will put pressure on future General Fund budgets and cost shifting.

Public Employee Benefit Study. Act 54, last session's health system reform legislation, required a study to "identify options and considerations for providing health care coverage to all public employees,

including State and judiciary employees, school employees, municipal employees, and State and teacher retirees, in a cost-effective manner that will not trigger the excise tax on high-cost, employer-sponsored health insurance plans imposed pursuant to 26 U.S.C. § 4980I. One of the options to be considered shall be an intermunicipal insurance agreement.” The legislation further required the administration to prepare the report in consultation with various stakeholders, including VLCT. The study, released on December 4, thoroughly discussed the looming federal excise tax (Cadillac tax) and its impact on public sector employers in Vermont. It reviewed a variety of options to mitigate the impact of the tax. While some alternatives delay the impact of the excise tax, none eliminates it other than simply having public employers no longer offer health insurance benefits (which comes with other costs). Most options that reduce the tax liability do so by reducing health insurance premiums and increasing out-of-pocket health costs for subscribers. The most likely outcome of this study is ... further studies.

Universal Health Care. A number of publicly funded universal health care proposals will likely be considered. One idea is to expand Dr Dynasaur, a state/federal health insurance program for children up to age 19 from households with incomes under 300 percent of the federal poverty level. Dr. Dynasaur would be expanded to cover all children up to age 26, regardless of household income. Another proposal would provide universal primary care to all Vermonters.

Vermont Health Connect. The saga of Vermont Health Connect (VHC), the state-operated health insurance exchange, continues to be in the news. While VHC has made significant improvement in its implementation, problems and glitches persist, and the legislature will continue to monitor its operations. At present, small group employers – including most municipalities – continue to purchase their VHC plans directly through their health insurer, and this has worked well. The ACA requires states to operate an exchange for employer-provided health plans. Vermont has not yet developed this exchange and has petitioned the federal government for an exemption from this requirement.

We also expect some discussion about the upward pressure on health plan rates in VHC and how high deductible health plans impact underinsured Vermonters.

Health Reform Efforts. What biennium would be complete without health reform legislation? Much focus will be placed on the movement of the Green Mountain Care Board (GMCB) towards major health service payment reform. The GMCB is negotiating with the federal government for an “all payer waiver,” which would allow the state to manage medical charges for most of Vermont’s medical payers including commercial insurers, self-insured plans, Medicaid, and Medicare. This waiver would allow the state to move away from the fee-for-service payment system that is currently the primary method of payment for medical services. Instead, it would pay based on outcomes with medical providers sharing the risk. In theory, paying for medical services based on outcomes and keeping people healthy will reduce the increase in the cost of health care going forward.

We also expect continued discussion of mental health and substance addiction and abuse treatment access and cost issues. Opioid addiction and overuse are also issues being addressed in discussions of workers’ compensation and public safety.

Summer Studies and Reports

The legislature called for a number of reports at the end of last session and many of them affect local government. You can read about them in the [2015 Legislative Wrap-Up](#).

Those and many more reports are beginning to be delivered to the legislature in advance of the start of the 2016 session. You can find them listed chronologically by date of submission on the [legislative website](#).

Receiving the Report

Last session, nearly 2,800 local officials were emailed a link to the *Weekly Legislative Report* soon after it was written each Friday morning. Another 644 received paper copies in their mailboxes the following Saturday or Monday. We also delivered 180 paper copies to the State House when legislators convened there on Tuesday mornings. We say this every year, but we do believe that reading the *Weekly Legislative Report* online is a great idea. You'll get the news quickly and conveniently and be able to instantly access related online information via hyperlinks embedded in the articles. Plus it'll reduce VLCT's printing and mailing costs. At www.vlct.org/advocacy/weekly-legislative-reports/, you'll find all of our Reports from the 2015 legislative session. We also link to the *Weekly Legislative Report* via Facebook and Twitter at VLCT Advocacy.

If you receive this Report via email, you will need Adobe Reader installed on your computer to view it. You can download a free copy of the software at <http://get.adobe.com/reader/>.

VLCT emails the *Weekly Legislative Report* to all municipal officials for whom we have current email addresses. If you are a municipal official who did not receive the Report directly but want to receive it by email, please send an email message to wlr@vlct.org with "subscribe email" in the subject line. Include your name, municipality or organization, municipal position or title, and email address in the message. There is no charge to be added to the email distribution list. Municipal officials who do not automatically receive the Report can subscribe to a paper copy for an annual \$25 fee.

But please consider going all-electronic this year.

Where's the *Yellow*?!

For the first time since 1975, when it was known as the *Weekly Capitol Report*, the *Weekly Legislative Report* has shed its yellow hue. Along with a few other changes at VLCT in general and in its Public Policy and



Karen Horn

Gwynn Zakov

Advocacy Department in particular, we are updating the *Weekly Legislative Report*. But, except for a couple of formatting changes, the *Report* will continue to describe legislative activities to local officials as well as keep legislators, the governor's office, state agency heads, and the media informed about municipal legislative priorities – just no longer featuring the color “of ripe lemons basking in the noon-day sun.”

**Local Government Day in the Legislature
Wednesday, February 10, 2016
Capitol Plaza Hotel and Conference Center
Montpelier**