



# 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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## State of the State Address

On Thursday, Governor Peter Shumlin delivered his final State of the State speech in the House Chamber to a capacity crowd that included many who have benefited from his five years of efforts to make Vermont a “better place to live, work and raise a family than it was when [he] began.” During the hour-long speech, he cited increasing per capita incomes, expanded health insurance coverage, worker job training programs, and Vermont’s burgeoning local foods and farm to plate industry. But he admonished legislators that there is still much to do.



Governor Peter Shumlin

He cited the expanding number of youths earning college credit for free while still in high school and guaranteeing three- and four-year-olds access to high quality pre-kindergarten, but acknowledged that, while Vermont’s rate of success at graduating students from high school is high, its rate of getting students to attend or finish college is not. According to the Agency of Education, only 45 percent of Vermont students with high school diplomas complete post-secondary education within six years of first enrollment. Last year, the governor signed a bill to help families save for college from the day their children are born; this year, he expects to fund it at a rate of \$250 to 500 per child. Similarly, a new Step Up Program to help with college tuitions would be funded at a rate of \$2 million. We will need to wait for his January 21 budget speech to learn of the source of those dollars.

In passing, the governor mentioned last year’s passage of Act 64, Vermont’s clean water legislation, but he gave no indication of potential funding sources for the enormous obligations it imposes on cities, towns, and villages or any acknowledgement that the legislature and administration might bear some responsibility to fund those mandates.

In the context of climate change, he said that “we need more smartly-sited renewables to power Vermont. We’re learning as we go. Last year we gave local communities more say in the Public Service Board process. I believe we

should continue to build renewables on a Vermont scale, rejecting mega solar projects that gobble up hundreds of acres and require Vermonters to pay for costly grid upgrades.” Does “smartly-sited” mean in the context of locally adopted municipal planning priorities? Local officials can hope that in addition to giving automatic party status to host municipalities in the Public Service Board (PSB) process, the legislature and governor will require the PSB to address municipal recommendations in every instance in which they are provided to ensure that local land use considerations are taken into account.

Cities and towns along with the Agency of Human Services are on the front lines of dealing with Vermont’s opiate crisis. Models of coordinated response to opiate addiction, drug take-back programs, and the rapid arraignment of those arrested for opiate-related crimes have been developed in Rutland and Burlington, among other municipalities. Local officials welcome the governor’s continued commitment to addressing opiate addiction.

As the governor stressed, there is much to do in the last year of his governorship. With a continuing deficit, abiding reluctance to increase “broad based taxes”, and an election looming, we will work to assure that the enthusiasm to fund and implement programs already adopted neither wanes nor falls on the shoulders of local governments.

## **Siting Renewable Energy Facilities**

On Wednesday, January 20, local officials will have the opportunity to testify before both the House and Senate Natural Resources and Energy committees regarding their experiences with the siting of energy generation facilities in their communities. Last year, the pace of solar facility development was frenetic throughout the state and last week solar siting taskforce members learned that the rate of solar facility siting is expected to triple this year. According to the Solar Energy Industries Association, there are more than 75 solar companies in Vermont. There have also been several new proposals for large wind generation facilities.

With that kind of projection for deployment, it would be irresponsible for the legislature to again delay meaningful reform of the Public Service Board (PSB) process for addressing municipal concerns in its permitting decisions. As the governor mentioned in his State of the State speech on Thursday, Vermont needs “smartly-sited” renewable. Local officials in their adopted municipal plans have done and continue to do the work to establish what “smartly-sited” means in their communities. Local officials thank the legislature for granting host municipalities automatic party status in the Certificate of Public Good (CPG) process. However, there is not yet a balance between the public good that is renewable energy production and the public good that is represented by land use and other priorities at the local level. The land conservation measures in municipal plans, and recommendations of municipal planning commissions and selectboards are given “due consideration,” according to Section 248 that governs the PSB CPG permit process. However, local officials have found that due consideration is really *no* consideration. A balance must be re-established between achieving the goal of 90 percent renewable energy by 2050 and the many other land use goals that the state, regions, cities, and towns with volunteer commissions have worked for decades to achieve.

There are now 17 bills addressing renewable energy siting that have been introduced in the legislature above and beyond Act 56, which was passed last session. The Senate Natural Resources and Energy Committee took testimony on a number of those bills this past week. We expect that any legislation regarding siting of facilities would start in that committee. The Solar Siting Taskforce Report – which was a product of last session’s Act 56 – is due to the legislature on January 15.

The VLCT membership adopted the following policy at their annual meeting last October:

“Accord automatic party status to affected adjacent municipalities as well as host municipalities in Section 248 proceedings. In the Certificate of Public Good (CPG) process, the Public Service Board (PSB) should give “substantial deference” to municipal concerns and determinations. In so doing, the PSB should 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 address local concerns raised in local determinations and adopted municipal plans in any CPG decision.”

Local officials should make sure their legislators understand the impact of solar facility deployment on their municipalities, from the perspective of both increasing renewable generation and changing the landscape from the state’s goal of compact settlement surrounded by rural countryside.

## **Privacy Protection**

The Senate Judiciary Committee wasted no time taking up the newly introduced S.155, a bill relating to privacy protections. The bill includes measures intended to enhance privacy protections with regard to medical records, drones, and automated license plate readers. S.155 would restrict the use of the automated license plate recognition (ALPR) system, which is a system of one or more mobile or fixed high-speed cameras combined with computer-readable files of license plate numbers. The bill addresses the confidentiality of data captured by ALPR systems, including how data are captured, where they are stored, and who has access to the data. It limits certain data from being retained from more than 18-months unless explicit exceptions apply. The bill also would establish regulations for the use of drones and would permit a law enforcement agency to use a drone only if the agency obtains a warrant or if emergency circumstances exist. S.155 also prohibits a person from equipping a drone with a dangerous or deadly weapon or firing a projectile from a drone. The legislation largely targets the use of drones by law enforcement agencies but does make clear that use of drones by non-law enforcement persons must comply with all Federal Aviation Administration requirements and guidelines, including new registration requirements. Additionally, any person who uses a “model aircraft” (whose definition under federal law includes drones) must comply with the Academy of Model Aeronautics National Model Aircraft Safety Code.

## **Open Meeting Law**

S.114 is a bill from last year that would amend the Open Meeting Law, which was last amended in 2014. Many municipalities have struggled to meet the new mandates created in the 2014 legislation and S.114 seeks to remedy some of their concerns. The bill would amend provisions of the law that relate to notice of and voting during meetings at which members of the public body participate electronically, the posting of meeting minutes, and criminal and civil enforcement of the law. On Wednesday, the bill was sent back to the Government Operations Committee by request of the committee chair to address newly introduced legislation. A new bill, S.170, would make further amendments to the law specifically redefining what a meeting *is* and what it is *not* for purposes of the Open Meeting Law. We don’t know how soon the Senate Government Operations Committee will take up S.114 and S.170, but we encourage municipal officials to contact their senators to ensure that this legislation moves forward and gets to the Senate floor for a vote, then on to the House for consideration.

## **Appointment of Clerks and Treasurers**

The Senate is set to continue discussion of S.94, a bill that concerns the appointment of municipal clerks and treasurers. The bill, which hit the Senate floor again this week after sitting in the Senate Rules Committee since adjournment last year, would allow a municipality to vote to authorize its legislative body to appoint its

municipal clerk or treasurer. Currently, Vermont law 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. In the last two years, nine municipal charters or charter amendments were adopted locally to provide for appointment of a clerk or treasurer. 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. This bill, which was reported favorably by the Senate Government Operations Committee, is supported by both VLCT and the Vermont Municipal Clerks' and Treasurers' Association.

## Education Fund Update

The House and Senate Education committees returned to the State House this week after having announced their immediate need to address the allowable growth percentages established in Act 46, the education funding legislation that was passed last year. If committee members were lacking any enthusiasm for that task, the governor added his voice to the call for a moratorium or repeal of the allowable growth percentages.

According to a legislative council memo from last May, underlying statute states that if a district's modified education spending is more than 123 percent of the statewide per pupil average, its spending is counted twice for the purpose of calculating statewide education property tax rates. In fiscal years 2017 and 2018 *only*, as a result of Act 46, the current excess spending threshold is redefined to be based on a percentage of the district's prior year spending. The allowable growth percentage is the percentage by which a district's spending may exceed its spending of the prior year. If a school district exceeds the allowable growth percentage, the spending above that percentage is counted twice for purposes of calculating the district education tax rates.

The Joint Fiscal Office and Agency of Education estimate that approximately 127 districts will be over the allowable growth percentage. School business officials from around the state report that a significant driver of that budget growth is due to increased health insurance costs. As a result, a number of schools are looking at reductions in staff, programs, increases in class size above recommendations, and other cost saving measures. If the allowable growth percentage language were repealed and replaced with nothing however, the underlying statute regarding excess spending would take effect again and only the highest spending districts would pay a penalty in education property tax rates.

There are 13 district votes for consolidation scheduled for Town Meeting Day, down from last month's estimate of 15.

In our *Legislative Preview*, we reported that there is \$1.562 billion in education fund revenue. The Joint Fiscal Office's January 6 projection revised that amount upwards slightly to \$1.564 billion. We also erroneously reported the amount being contributed from the education property tax in December. The amount being contributed from education property taxes, after accounting for income sensitivity and homeowner rebates, is projected to be \$1.054 billion. The updated Education Fund Outlook is posted at <http://legislature.vermont.gov/committee/document/2016/10/Date/1-6-2016>.

Essentially, there are three options on the table in the Education Committees: (1) leave Act 46 intact; (2) amend the allowable growth percentages upward to accommodate increases in health insurance costs; or (3) repeal the allowable growth percentages. S.158, S.168, and S.233 would incorporate those options. Another bill, S.175, would adjust property taxes by income for all taxpayers and would create an Education Tax Study Committee to analyze how to change Vermont from a statewide education property tax to an education tax based completely on income.

## Ethics/Conflicts of Interests

A discussion that is continuing to brew in the State House involves matters of ethics and conflicts of interests as they relate to public entities and officials. The discussion began last year with H.215, a bill that would establish ethic rules for the General Assembly and the Executive Branch of government and creating a Vermont Ethics Commission. The bill did not make it out of House Government Operations, but discussions of the need for legislation addressing ethics and conflicts of interest generally, have since gained momentum.

A new bill, S.184, was introduced this week that would establish a State Ethics Commission. The House will also introduce a bill that will likely be differently nuanced. The House and Senate Government Operations committees will hold a joint meeting on Tuesday, January 12, which will address ethics, conflicts of interest, and financial disclosures of elected officials. It is unclear how far a net will be cast with regard to what public entities and individuals will be subject to proposed legislation. Municipal officials certainly could be subject to such conflict of interest and ethics legislation.

Municipalities already enjoy powerful enabling authority that allows for municipal legislative bodies and voters to adopt conflict of interest policies. Pursuant to 24 V.S.A. § 2291(20), selectboards may adopt a conflict of interest policy for all elected and appointed officials. Voters also have the authority to adopt a conflict of interest prohibition for all appointed and elected officials pursuant to 24 V.S.A. § 1984. Appropriate municipal panels – such as development review boards and zoning boards of adjustment – are already required to adopt rules governing conflicts of interest under 24 V.S.A. § 4461(a). More so than any other sector of Vermont government, municipalities have been leading the charge in addressing conflicts of interests and ethical concerns at the municipal level. VLCT encourages the legislature to allow local governments to continue addressing such matters at the local level.

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
<a href="#">H.510</a>	Would authorize the legislative body of a municipality to restrict and regulate cut-through traffic on class 3 and 4 town highways located entirely within the municipality.	House Transportation
<a href="#">H.511</a>	Would eliminate the requirement for a municipality to conduct a traffic and engineering investigation in order to establish a speed limit on town highway segments that abut residential property.	House Transportation
<a href="#">H.512</a>	Would amend the requirements for the humane shelter of dogs and cats.	House Ag. and Forest Products
<a href="#">H.513</a>	Would repeal the option for the developer of a telecommunications facility to obtain siting approval from the Public Service Board instead of Act 250 and local land use authorities.	House Commerce & Econ. Development
<a href="#">H.517</a>	Would amend the classes of waters in the State. Would require that when the Secretary of Natural Resources develops a basin plan, he or she must identify waters that should have one or more uses reclassified as Class A(1) or Class B(1).	House Fish, Wildlife and Water Resources
<a href="#">H.518</a>	Would require appointment of members of the public to the Clean Water Fund Board	House Fish, Wildlife and Water Resources
<a href="#">H.519</a>	Would approve the adoption of and codify the charter of the Town of Brandon.	House Government Operations
<a href="#">H.525</a>	Would authorize a municipality's legislative body to establish speed limits on town highways in school zones and on town highways adjacent to municipal parks as low as 15 miles per hour.	House Transportation

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
<a href="#">S.155</a>	Would propose a number of measures to enhance privacy protection, including establishing a private right of action for a person whose protected health care information is improperly disclosed; establish regulations for the use of drones; and restrict the use of automated license plate recognition (ALPR) systems, to address the confidentiality of data captured by ALPR systems.	Senate Judiciary
<a href="#">S.156</a>	Would require an evaluation of the effectiveness of Vermont's tax expenditures.	Senate Finance
<a href="#">S.160</a>	Would authorize the operation of all-terrain vehicles along State highways for limited purposes and subject to specific requirements.	Senate Transportation
<a href="#">S.161</a>	Would exempt persons operating or riding on a motorcycle from the requirement to wear a helmet during a parade and while on the officially designated parade route.	Senate Transportation
<a href="#">S.165</a>	Would prohibit employers from making non-job-related inquiries that indicate a preference limitation, specification, or discrimination based on a protected trait.	Senate Econ. Develop., Housing and General Affairs
<a href="#">S.170</a>	Would amend the definition of "meeting" under the Vermont Open Meeting Law to describe communications that fall outside the definition.	Senate Government Operations
<a href="#">S.172</a>	Would authorize the Commissioner of Motor Vehicles to issue a permit for the use of one blue light on a fire department or EMS vehicle, provided the light is mounted so as to be visible primarily from the rear of the vehicle.	Senate Transportation
<a href="#">S.173</a>	Would establish immunity from civil liability for persons who volunteer for nonprofit organizations and municipalities, and limit the liability of municipalities that make municipally-owned property available for recreational uses without compensation.	Senate Judiciary
<a href="#">S.174</a>	Would require the Law Enforcement Advisory Board to propose a model State policy for use of body cameras by law enforcement officers.	Senate Judiciary
<a href="#">S.175</a>	Would create an education property tax system where the amount of tax due is adjusted by income for all taxpayers.	Senate Finance
<a href="#">S.182</a>	Would permit disclosure of the decision when a grand jury does not return a true bill in a matter involving actions committed by a law enforcement officer.	Senate Judiciary
<a href="#">S.184</a>	Would establish an Ethics Commission and its support staff to receive and investigate complaints alleging unethical conduct committed by legislators outside the scope of their core legislative duties and by elected and appointed officials in the Executive Branch.	Senate Government Operations
<a href="#">S.187</a>	Would allow a municipal legislative body to suspend with pay an elected official arraigned on a felony charge and require each chamber of the General Assembly to consider adopting a rule also to allow such suspensions.	Senate Government Operations
<a href="#">S.191</a>	Would require the Public Service Board, when making a siting determination for wind generation, to defer to municipal and regional recommendations unless there is a clear and convincing demonstration to the contrary.	Senate Finance
<a href="#">S.195</a>	Would create a committee to examine and make recommendations on requiring large buildings that are heated or cooled to install solar electric generation.	Senate Natural Resources & Energy
<a href="#">S.203</a>	Would exempt from Act 250 changes to existing sport shooting ranges that are for the purpose of safety, abating noise, or mitigating environmental impacts.	Senate Natural Resources & Energy
<a href="#">S.204</a>	Would ensure that renewable generation is sited in Vermont only if it is used to meet Vermont's Renewable Energy Standard and that it is sited in regions in which electric consumption exceeds the amount of renewable electricity already produced or to be produced in the region. Would clarify that an existing exemption from local land use regulation for "public utility power generating plants" includes only plants by retail electric utilities and small, customer-owned net metering systems.	Senate Finance
<a href="#">S.205</a>	Would incorporate the Act 250 criteria for primary agricultural and productive forest soils into the Public Service Board siting process for energy facilities.	Senate Finance

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
<a href="#">S.206</a>	Would limit imposing conditions of probation, parole, and furlough to restrict otherwise legal behavior of the person under supervision and prohibit revocation of probation, parole, and furlough for technical violations that are not new crimes.	Senate Institutions
<a href="#">S.207</a>	Would establish a judicial procedure to allow for the compassionate release of certain inmates, including those who have been diagnosed with a terminal disease, and increase parole eligibility for older inmates and inmates who have served their minimum sentence.	Senate Institutions
<a href="#">S.210</a>	Would prohibit the installation of industrial wind generation.	Senate Natural Resources & Energy
<a href="#">S.211</a>	Would create an interagency commission to investigate, evaluate, and address the negative impacts on workers' compensation rates, unemployment insurance contributions, and State tax revenues from employee misclassification in Vermont.	Senate Econ. Develop., Housing and General Affairs
<a href="#">S.213</a>	Would establish a private insurance system for the provision of up to five weeks of paid leave for the birth or adoption of a child.	Senate Econ. Develop., Housing and General Affairs
<a href="#">S.215</a>	Would impose several requirements on vision care plans in their contracts with plan enrollees and in their financial arrangements with optometrists and ophthalmologists. Would create a private right of action for anyone adversely affected by a violation of the provisions of the bill.	Senate Finance
<a href="#">S.221</a>	Would make miscellaneous amendments regarding the Vermont Criminal Justice Training Council and its regulation of law enforcement officers' certification; require that in a municipal police department the chief of police and any police officer who is employed in a supervisory capacity or who holds the rank of sergeant or higher shall be certified as a Level III law enforcement officer; and add to the membership of the Law Enforcement Advisory Board representation from the departments of Fish and Wildlife and of Motor Vehicles.	Senate Government Operations
<a href="#">S.226</a>	Would require the Public Service Board, when making a siting determination for energy facilities within its jurisdiction, to defer to municipal and regional recommendations unless there is a clear and convincing demonstration that they are outweighed by other factors affecting the general good of the state.	Senate Finance
<a href="#">S.228</a>	Would provide an exemption from the statewide education property tax for nonprofit Level III residential homes with a residential population that is at least 25% Medicaid-eligible.	Senate Finance
<a href="#">S.229</a>	Would encourage the conservation of land in and around interstate interchanges to protect Vermont's traditional settlement patterns.	Senate Natural Resources & Energy
<a href="#">S.230</a>	Would propose various improvements to the siting of energy projects and the process for siting them, including establishing a position at the Public Service Board to provide information and assistance to the public about siting cases; disallowing a company subject to the Board's jurisdiction from using eminent domain power on a project if the company has executed nondisclosure agreements with landowners in connection with the project; and passing on to ratepayers the costs of building three-phase lines to serve renewable generation if the use of the line will allow siting the generation in a location that reduces its impact on scenic beauty.	Senate Finance
<a href="#">S.232</a>	Would amend the stream flow requirements of the Vermont Water Quality Standards to establish new stream flow requirements for municipally-owned hydroelectric plants in existence on or before January 1, 2016.	Senate Natural Resources & Energy
<a href="#">S.233</a>	Would amend Act 46 (H.361) of the 2015 legislative session to repeal spending caps.	Senate Education
<a href="#">S.236</a>	Would direct that municipal and State land use permits require new commercial and residential construction to have the capacity to site solar energy generation on the roof of the structure, unless the structure is a single-family residence to be built and occupied by the owner.	Senate Natural Resources & Energy

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
<a href="#">S.237</a>	Would amend multiple requirements related to timber harvesting, forestry operations, and State lands; provide that certain forestry operations would not be subject to liability as a public or private nuisance; and require the owner of land to notify the Department of Forests, Parks and Recreation of a proposed timber harvest operation on his or her land.	Senate Natural Resources & Energy
<a href="#">S.238</a>	Would treat the municipalities that are parties to an intermunicipal agreement as a single entity for purposes of obtaining health coverage.	Senate Finance
<a href="#">S.241</a>	Would regulate the cultivation and distribution of marijuana in Vermont.	Senate Judiciary
<a href="#">S.242</a>	Would require towns to collect civil process fees for constables and remit 15% of the fee to the state treasurer for deposit into the General Fund.	Senate Judiciary
<a href="#">S.243</a>	Would increase the frequency with which health care providers query the Vermont Prescription Monitoring System when prescribing opioids to their patients and require the Commissioners of Health and of Public Safety to establish a statewide prescription drug disposal program.	Senate Health and Welfare
<a href="#">S.247</a>	Would create recordkeeping and reporting requirements in relation to the equal pay provisions of Vermont's Fair Employment Practices Act.	Senate Econ. Develop., Housing and General Affairs
<a href="#">S.254</a>	Would create a Family Leave Insurance Program within the Department of Labor that will provide employees with six weeks of paid family leave and that will be funded by contributions from employers and employees.	Senate Econ. Develop., Housing and General Affairs

# Local Government Day 2016

**Local Government Day in the Legislature 2016** will take place on Wednesday, February 10. This will be a great opportunity for local officials to talk with their representatives and senators concerning the issues that we address each week in our Reports. You can register online at [www.vlct.org/eventscalendar](http://www.vlct.org/eventscalendar).