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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Planning and Permitting Renewable Energy Facility Siting

According to the Department of Public Service's (DPS's) Comprehensive Energy Plan (CEP), Vermont has 4,996 solar sites generating 94,860 kilowatts (kW) of electricity and 13 wind turbines that generate more than 100 kW, with several more large turbines planned. At the beginning of the session, the governor said he expects solar installations to double in 2016. Decisions about where to locate those facilities are today driven by the choices of private renewable energy developers and *not* by the energy components of municipal plans or recommendations of municipal or regional commission officials.

On January 20, local officials from Fayston, Westminster, Strafford, Morgan, Irasburg, Swanton, Windham, Barre Town, Brighton, Shelburne, Rutland Town and Calais testified before the House and Senate Natural Resources and Energy committees on the issue of siting renewable energy facilities, including changes that should be made in the law to ensure that the Public Service Board (PSB) heeds municipal voices in the Section 248 siting process. In addition, 103 towns have to date signed resolutions calling for more municipal say in siting alternative energy projects, and that number continues to climb. In this charged atmosphere, the Senate Natural Resources and Energy Committee has spent most of the session revamping the siting process for renewable electric facilities; last Friday, the committee voted out S.230.

Twenty-four V.S.A. § 4302 states, "It is the intent and purpose of this chapter to *encourage* the appropriate development of all lands in this State by the action of its constituent municipalities and regions, with the *aid and assistance of the State*, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers. [Emphasis added.] ... In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess, and protect property."

The same section of statute establishes 18 goals, including:

- economic growth in designated growth centers (added in 2013);
- avoiding development in identified flood hazard, fluvial erosion, and river corridor protection areas (added in 2013);
- public investments, including construction or expansion of infrastructure (added in 2014);

- development in accordance with smart growth principles (added in 2014); and
- maintaining and improving Vermont's water quality according to the policies and actions developed in the basin plans (added in 2015).

This year, the legislature is well on its way to adding managing forestlands to maintain and improve forest blocks and habitat connectors in H.789. The energy bill, S.230, would add some specific goals, including:

- encouraging the efficient use of energy and developing renewable energy resources consistent with Vermont's greenhouse gas reduction goals;
- attaining 25 percent of electricity needs from renewable energy by 2025 (a.k.a. 25 by 25);
- building efficiency energy policy and specific recommendations in the state plan pertaining to the efficient use of energy and siting and developing renewable energy resources; and
- distributing renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard.

The bill is currently being reviewed in Senate Finance, which may vote it out as early as today.

S.230 as it was voted out of the Senate Natural Resources and Energy Committee last Friday, would establish that municipal plans "shall" be consistent with all the planning goals in 24 V.S.A. § 4302. Suddenly, volunteer planning commissions in every size municipality are mandated and no longer encouraged to write and adopt plans that are consistent with land use planning goals. Over the years as various goals have been added, there has been little evaluation of whether those goals remain appropriate or timely, whether they fit in every municipality, or what kind of time and money it takes to develop a plan that meets every goal. With the change in language from "may" to "shall," a plan that was not consistent with every goal would not be approved by the regional commission, would have no standing in Act 250 or Section 248, would be ineligible for municipal planning grants, and would be lower on priority lists for other state grant or loan programs.

At the same time that the number of planning goals and plan elements has substantially increased, funding for municipal planning grants has been flat since at least 2010. As the table below shows, demand for planning grants far outstrips available money.

Municipal and Regional Planning Grants

Property Transfer Tax (legis. session)	MPG Funds Requested	Municipal Planning Fund Appropriation	Regional Planning Fund Appropriation	Total Appropriation	No. of MPG Applications	No. of MPG Awards
2010	$530,258	$408,700	$2,632,027	$3,040,727	56	38
2011	$599,362	$408,700	$2,508,076	$2,916,776	63	46
2012	$638,368	$408,700	$2,508,076	$2,916,776	63	42
2013	$609,707	$449,570	$2,758,884	$3,208,454	61	46
2014	$733,817	$449,570	$2,758,884	$3,208,454	63	42
2015	$657,516	$457,482	$2,924,417	$3,381,899	58	44
2016	$770,490	$457,482	$2,924,417	$3,381,899	72	45

Actual = base appropriation plus recaptured funds (which can come from multiple fiscal years)
Source: Agency of Commerce and Community Development, March 16, 2016.

A municipal plan must contain all 12 elements established in section 24 V.S.A. § 4382. Each element was added to statute because legislators determined that a concerted effort at both the municipal and regional levels was required to address the future disposition of those land use priorities. S.230 would require the energy element of the plan to include a "comprehensive analysis of energy resources, needs, scarcities,

costs, and problems within the municipality across all energy sectors, including electric, thermal and transportation ... a statement of policy on conservation and efficient use of energy, siting of distributed and utility-scale renewable energy resources, and a statement of policy on and identification of potential areas for development and siting those resources or particular categories or sizes of those resources."

The CEP would need to include specific recommendations on the conservation and efficient use of electric energy and development and siting of renewable electric generation, as well as a list of standards for determining whether municipal and regional plans should receive a certificate of energy compliance from the department. All that work would need to be completed by October 1, 2016.

DPS would thereafter certify that a regional plan conformed to the state energy plan and a regional commission would certify that a municipal plan conformed to both the regional and state energy plan. Only then would the PSB be required to give "substantial deference" to the land use conservation measures and policies in the duly adopted regional and municipal plans. As local officials suggested, substantial deference would be defined to mean that a land conservation measure or specific policy "shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the state outweigh the application of the measure or policy."

There are problems with the requirement that municipal and regional plans conform to the CEP recommendations and standards without knowing what those standards might be or how stringent they will be. What would be the standards for receiving a certificate of compliance? Would a municipal plan receive a certificate of compliance if it deviated from the regional plan or state CEP? How many municipal plans would be able to meet the CEP requirements and standards to achieve a certification and, thus, substantial deference in the PSB certificate of public good process? The CEP should express policy, further describe statutory energy goals, and develop strategies to meet those goals – much as it does now. According to 30 V.S.A. § 202a(1), statutory goals "assure, to the greatest extent practicable, that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure and sustainable; that assures affordability and encourages the state's economic vitality, the efficient use of energy resources and cost effective demand side management; and that is environmentally sound."

A regional plan should provide a general assessment of the status of renewable energy facilities in the region, develop regional plans "that build from a shared set of goals, and reflect local knowledge and preferences," and point to general areas that are reasonable for renewable energy facilities because of their proximity to transmission lines or similar infrastructure. The municipal plan is the level at which policies, siting attributes, maps, and priorities are established within the context of the complete municipal plan that addresses each of the aforementioned mandated planning elements. "This CEP recognizes that there is no single path for Vermont to attain the goals, or to enact the strategies identified here or discussed in detail within the rest of the plan. Required instead will be incremental policy changes, along with progress on education, finance and innovation. Vermont must work with both public and private sectors, including with utilities, to advance these objectives in cost-effective, affordable, efficient, and innovative ways, and to encourage each and every citizen to do what they can to help all of Vermont achieve a transformative energy future". (Vermont Comprehensive Energy Plan, Executive Summary, p. 10.)

S.230 would (1) provide incentives to locate facilities on preferred sites such as parking lots, brownfields, and sites designated in a municipal plan; (2) provide for the Agency of Agriculture, Food and Markets, municipalities within 500 feet of a project, and regional commissions to be parties by right before the PSB: and (3) establish requirements for mitigation, documentation, and maintenance of vegetation to screen facilities.

Language in the statute that says "a plan for a municipality *may* be consistent with the goals established in section 4302 ..." should be maintained, thus leaving municipal planning commissions some discretion to prioritize where they will focus scarce resources and time and which goals are the most important for their community. Funding for municipal planning grants should be increased substantially to at least address pent-up demand for funds and ensure that assistance will be available to develop the new comprehensive and very technical energy elements of the plan.

The bill should make clear that while municipal plans have an obligation to address renewable energy deployment, municipal planning commissions have discretion to implement the state CEP goals and to utilize maps, technical assistance, and information from regional commissions in a manner that fits with the landscape, other planning elements, and goals of that community.

—Karen Horn

PILOT

Payments in lieu of taxes (PILOTs) are made to municipalities by the state for buildings owned by the state, correctional facilities, lands owned by the Agency of Natural Resources (ANR), and a payment to the City of Montpelier. Payments are made based upon valuations of state-owned property provided by the Secretary of Administration to municipalities. The state does not raise any of the "buildings"' (buildings, correctional facilities, City of Montpelier) PILOT money provided to cities and towns. All that PILOT revenue is raised from 30 percent of local option tax revenues collected in each of the 13 municipalities that have adopted local option sales tax and the 15 municipalities that collect local option meals, alcoholic beverages, and rooms taxes.

The towns that have enacted local option taxes have done so under a section of state statute or a local charter that allows them to impose a one-percent tax on sales and/or rooms and meals in their towns as a "piggyback" on the state's tax base. The state administers the tax (for which the towns pay a service fee) and the towns retain 70 percent of the revenues. The remaining 30 percent is deposited into the state PILOT fund for the state building reimbursements to towns hosting such facilities, their workers, and their visitors. \

Whereas in the past there have been suggestions to raid the buildings PILOT fund, the Appropriations Committee is taking no such approach this year.

PILOT reimbursements to towns for buildings, correctional facilities and Montpelier totaled $6,024,000 in both FY14 and FY15. In FY16, the current fiscal year, reimbursements totaled $6,715,218. The 30 percent of local option taxes remitted to the state for the PILOT fund totaled more than $7 million in FY14 and FY15. This year, acknowledging the surplus in the PILOT fund, the drive to slow the rise of property taxes and the level funding of the PILOT payments for correctional facilities and Montpelier since 1997, the Appropriations Committee is proposing to increase the buildings PILOT payment to $7,350,000.

	FY 2016	FY 2017
PILOT	$6,400,000	$7,100,000
PILOT Correctional	40,000	45,000
PILOT Montpelier	184,000	205,000

In 2015, the towns of Colchester and Woodstock voted to adopt local option taxes, and the legislature approved those votes. (Remember, Vermont is still a Dillon's Rule state!) In 2016, Montpelier, Hartland, and Brandon voted to enact local option taxes. Local officials will need to be vigilant to ensure that PILOT fund balances are retained for local government.

In our *Weekly Legislative Report No. 8*, we reported on the summer study committee for ANR PILOT lands. The Appropriations Committee also took up language to implement many of that committee's recommendations on ANR PILOT lands. The state would annually make a payment in lieu of taxes that would be the "base payment" for all ANR lands. It would establish the base payment for all ANR land as 0.6 percent of the fair market value as appraised by the Division of Property Valuation and Review (PVR) as of April 1, 2016. For parcels acquired after that date, the base payment would be the total municipal actual tax rate as reported in the most current PVR Equalization Study of the fair market value as assessed on April 1 in the year of acquisition. Beginning in FY22, each base payment would be adjusted by the rolling three-year average of the statewide median municipal tax rate change as determined by the Director of PVR. The adjusted base payment would be the base payment for the next fiscal year.

In FY17 only, a selectboard aggrieved by the appraisal of property may appeal from that appraisal within 21 days of receipt of the notice of appraisal of its property by the listers.

The new PILOT payments would be phased in such that:

- in FY17, the payment would be the amount received in 2016 plus or minus one-quarter of the difference between that amount and the amount due under the revised system;
- in FY18, the payment would be the amount received in 2016 plus or minus one-half of the difference between that amount and the amount due under the revised system; and
- in FY19, the payment would be the amount received in 2016 plus or minus three-quarters of the difference between that amount and the amount due under the revised system.

Newly acquired land after April 1, 2016, would not be subject to the phase-in. Draft language before the committee would also provide a soft landing for municipalities whose PILOT payment would decrease from the FY16 payment.

The entire ANR PILOT Lands Report, which includes spreadsheets showing anticipated payments, is posted here.

Please take time to thank your representatives for supporting both the ANR and buildings PILOT payments.

—Karen Horn

Fair and Impartial Policing

This week, the House Judiciary Committee voted out H.743, a bill that addresses fair and impartial policing policies for law enforcement in the state by updating and expanding upon current anti-bias policing law.

The bill would require law enforcement officers to receive a minimum number of hours of anti-bias training approved by the Vermont Criminal Justice Training Council by December 31, 2018, and to receive a refresher course every two years thereafter. The law requires law enforcement agencies to track roadside stop data consisting of the age, gender, and race of drivers, the reasons for the stop, the type of search conducted, what evidence was located, etc. H.743 would take the additional step of requiring that the data collected go to the Crime Research Group of Vermont in electronic format and be made public and be posted online.

—Gwynn Zakov

Constables and Service of Process

Last Friday, the Senate Government Operations Committee voted out S.242, a bill that addresses constables and their ability to serve process. Current law provides that constables must be responsible for the entire administration of serving civil process, as set out in 32 V.S.A. § 1591. S.242 would amend that law to require that the legislative body be engaged in the process to "ensure that process is completed in a timely and orderly manner." The legislative body would remit ten percent of the gross civil process fees to the state treasurer, and five percent would remain with the town. The bill also would allow for towns to vote to prohibit a constable from exercising the service of process, similar to current law which allows towns to vote to prohibit a constable from exercising any law enforcement authority.

It is not clear how this new process would play out, given the infrequency of some selectboards' meetings, concerns with compliance with the Open Meeting Law, the general "separation of powers" between elected officials and other elected officials, and the reality that most selectboards are not trained in or familiar with how service of process operates and is administered.

The bill is currently in the Senate Finance Committee, but it may appear on the Senate floor for a vote before the entire body. If municipal officials have any concerns with this pending legislation, please contact your senators.

—Gwynn Zakov

Welcome, New Local Officials

Congratulations on your election to municipal office! There is much to do and to learn in your position, and we hope that you will turn to us (VLCT) to assist you with your new responsibilities. Our website, www.vlct.org, will detail the many services we provide to your municipality and to you. Our mission statement is "to serve and strengthen Vermont local government."

You will quickly learn that your town or city does not operate as an island. The Vermont Constitution establishes local government as "creatures of the state." State government has much to say about what

your municipality can and cannot do (and, with state mandates, what it *must* do), and determines the resources with which you will be able to meet the service demands of your residents, businesses, visitors, and taxpayers. VLCT represents the interests of local government, but you are really the advocates who hold sway with your legislators. You need to represent the interests of your town or city outside the municipal office – with your school district, neighboring local governments, county, regional commission, solid waste district or alliance, state administration, and the legislature.

The ***Weekly Legislative Report*** is VLCT's publication to communicate with municipal officials about legislative matters. It also keeps legislators, the governor's office, state agency heads, and the media informed about municipal legislative priorities. Each Friday during the legislative session we email or surface-mail it and post it on our website. The ***Report*** generally contains:

- analyses of key legislative developments during the past week;
- updates on any action on VLCT Municipal Policy priority bills;
- brief descriptions of bills introduced during the past week that affect municipal government and the committee to which the bill has been referred;
- calls for action on critical scheduled hearings and votes when municipal input is necessary; and
- periodic updates of federal issues of interest to municipal officials.

Newly elected officials will receive under separate cover a packet of information describing more of VLCT's services. Many of you attended a new selectboard training on March 12 in Montpelier whose focus was on the practice of local government and issues facing cities and towns.

In an effort to reduce printing, energy, and mailing costs, we are continuing our transition from an all-paper version of our *Weekly Legislative Report* to an electronic one. We post the *Report* on our website at www.vlct.org/advocacy/weekly-legislative-reports/, where back issues from the current biennium are archived. We urge local officials to read it there via an email link we send to each subscriber. If you request electronic notification of the *Report* (see below on how to do so), you will receive the latest news from Montpelier early Friday afternoon. Electronic notification also gives you access to our email-only *Legislative Alerts* to help you better represent your municipality's interests in the legislative process. During the last frantic weeks of the session, it allows us to communicate rapidly unfolding legislative events. We do not have high-speed internet everywhere yet, so we provide the mailed version to many municipal offices without additional charge – though that number continues to drop each year. Municipal officials who do not automatically receive the *Report* may subscribe to a paper copy for an annual $40 fee.

VLCT emails the *Weekly Legislative Report* to all municipal officials for whom we have current email addresses. If you are a municipal official and did not receive this message or a copy of the *Report* directly, but want to receive it by email on Friday afternoons, 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 for municipal officials to be added to the email distribution list.

Please know that all VLCT mailing lists, including email addresses, are public records. You can read the Statement of VLCT Communications as Public Records at www.vlct.org/assets/About-VLCT/VLCT_communications_statement_02-11.pdf.

—Karen Horn

Public Hearing

Last January, the Department of Environmental Conservation released a proposed rule on combined sewer overflows (CSOs). The department will host a hearing on CSOs on Thursday, March 24 from 3-5 p.m. at the Pavilion Auditorium, 109 State Street, in Montpelier. The rule is posted at https://secure.vermont.gov/SOS/rules/display.php?r=364. Comments will be accepted until Thursday, March 31, 2016. If your municipality has a combined sewer system as part of your wastewater treatment facilities, you may want to attend this hearing.