



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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Siting Renewable Energy Facilities

A tumultuous and contentious few days resulted in the Senate passing [S.230](#), the renewable energy facility siting legislation, on Thursday evening. Complicating consideration of the bill in committee was the unforeseen Wednesday resignation of Senate Natural Resources and Energy Committee member Diane Snelling, who accepted the position of Chair of the Natural Resources Board. This left a vacancy that was immediately filled on the committee by returning veteran Senator Helen Riehle, who had one day to get up to speed on renewable energy facility siting issues. Senate Natural Resources and Energy is S.230's committee of original jurisdiction. (See [Weekly Legislative Report No. 11](#) for details on the bill as voted out of that committee.)

On Thursday, the Senate Finance Committee offered 19 proposals of amendment to the bill that included (1) providing \$300,000 for assistance in energy plan development and training to regional commissions and towns; (2) providing municipal and regional planning commissions publically available information about the location of electric transmission and distribution infrastructure; (3) requiring the recording of certificates of public good (CPG) for electric generation facilities in the land records; and (4) establishing a working group to assess citizen participation in the CPG process and make recommendations for increasing participation.

One amendment that was passed established a process for appealing a Public Service Board (PSB) decision to certify (or not) the energy element of a regional plan or a regional commission decision whether or not to certify the energy element of a municipal plan in accordance with standards to be established in the state Comprehensive Energy Plan. Pursuant to S.230, only certified regional or municipal plans would be granted “substantial deference” in the PSB permitting process. The appeal would be to a hearing officer within 30 days of the decision. The hearing officer would be one of five attorneys retained by the Department of Public Service; they would not be employees of the department. The parties to the appeal would jointly select the hearing officer from among those attorneys.

As the legislation was developed, the Senate Natural Resources and Energy Committee revised the statute that says a municipal plan *may* be consistent with the 18 planning goals in Title 24 Chapter 117 to say that the municipal plan *shall* be consistent with those goals – changing a suggestion to an imperative.

On the floor, however, that change was deleted, leaving municipalities to determine which goals are pertinent to their community vision and character.

A further amendment on the floor would require the PSB to conclude its investigation into potentially establishing standards related to sound levels from electrical generation, transmission, and distribution equipment (mostly wind) by October 1, 2016 and establish a list of considerations the investigation would have to address.

A PSB public assistance officer would also provide technical assistance on the CPG process to citizens or municipal officials who are attempting to understand and participate in the legalistic process that is PSB permitting.

In all, more than 30 amendments were offered and debated on and off the Senate floor, and by the end of the session last night, some of them had passed. Thanks to all of the local officials who contacted their senators to urge passage of S.230 with those amendments that would strengthen requirements to address municipal plan elements and recommendations of the selectboard or municipal or regional planning commission. In the end, S.230 was passed on a vote of 22 to 3. The bill next goes to the House Natural Resources and Energy Committee.

—Karen Horn

Marijuana Legalization

As the legislative session nears adjournment, the urgency surrounding passing legislation that legalizes marijuana has gained momentum. On Wednesday, the House Judiciary Committee held joint meetings with the House Human Services and Government Operations committees, and last night held a public hearing to elicit input on [S.241](#), a bill that would regulate marijuana in Vermont. Among those testifying to the joint hearing were individuals who spoke on behalf of municipal government. The Government Relations Advocate from the Association of Washington Cities and the Deputy Director the Colorado Municipal League testified about local government impacts from the perspective of two western states that have already legalized marijuana. Neither spoke to whether Vermont should legalize marijuana. Rather, they addressed problems and concerns municipalities from both states have faced since legalization occurred there. The overall message from both individuals was one of caution: Vermont should (1) identify how to administer local and state regulations, (2) provide for municipalities to opt in to hosting marijuana establishments, and (3) ensure that both the state and local governments have all the resources in place on day one to handle the many impacts that may follow.

Testimony from a City of Burlington assistant city attorney also identified several points of concerns that city has with S.241. He suggested:

1. amending the bill to include tax sharing with municipalities and/or allowing for local excise taxes the bill currently does not include a plan to share revenues or allow for local taxation;
2. adding specific funding for local law enforcement – S.241 provides no direct funding for local law enforcement;
3. amending the bill to clarify local permitting authority similar to the alcohol local control and licensing provisions, and specifically authorizing fees to cover those costs;
4. adding funding for zoning efforts – no local funding is currently provided;

5. amending the bill to include municipal representation on the proposed “Marijuana Program Review Commission” – the commission currently has no municipal representation and is charged with “facilitating efficient and lawful implementation” of the legislation, and examining issues important to “the future of marijuana regulation in Vermont”; and
6. amending the bill to provide funding for the increase in workloads for municipal code and regulation enforcement for all health, fire, and building safety regulations.

VLCT continues to oppose the legalization of marijuana and has voiced serious concerns with S.241, many of which are echoed in the testimony of the representatives from Colorado, Washington, and Burlington.

VLCT submitted its own testimony to the House Judiciary and Government Operations committees for the March 30th joint meeting:

Date: March 30, 2016
To: Hon. Maxine Grad, Chair, House Judiciary Committee
Hon. Donna Sweaney, Chair, House Government Operations Committee

Dear Representatives Grad and Sweaney:

Thank you for the opportunity to speak to concerns the Vermont League of Cities and Towns has with S.241, a bill which proposes to legalize recreational marijuana in Vermont. As you may already be aware, VLCT opposes the legalization of marijuana and believes the legislature should not expand beyond current law, where the possession of small amounts of marijuana has been decriminalized.

VLCT has serious concerns about the effects of legalization on municipalities, including the impacts on local school populations, law enforcement, first responders, municipal governance, and municipal budgets. The impacts on local communities cannot be understated, as the use, possession, testing, cultivation, and sale of marijuana will be wholly located in municipalities across the state. Interestingly, the Senate version of S.241 acknowledges the impacts legalization will have on the state as whole, and the need for resources at the state level, but those same considerations at the municipal level have been largely ignored. VLCT does not believe that marijuana legalization is a necessary or pressing issue at this time, nor do our member local officials believe the state is adequately equipped to address the litany of impacts Vermont will feel as the first state on the east coast to legalize a federally prohibited, Schedule I controlled substance.

As states out west that have legalized marijuana have shown, the municipal impacts are real. In Colorado, for example, schools have seen increases in youth use and exposure and visits to the emergency room. There have been increases in burglaries and thefts at residential, retail, and grow operations. Incidents of drugged driving involving marijuana have increased, as has the number of arrests for public display and use. Noxious odor complaints from homes and grow facilities have increased dramatically, stressing law enforcement and municipal ordinance enforcement resources alike. Communities have dedicated significant funding, regulatory effort, and human resources to hold local votes to prohibit marijuana establishments, to update local ordinances, building codes, and zoning, and to hire, train, and provide the necessary personnel to enforce local regulations. Communities have had to adjust to the new “marijuana tourism” industry that has landed in downtowns across western states, and local law enforcement have not been prepared for the mass exporting of marijuana across state lines.

Communities in Vermont will bear the deleterious burdens of marijuana legalization. Local hospitals, downtowns, first responders, schools, youth populations, employers, residents and neighbors, law enforcement, municipal officials, and municipal budgets will all be adversely affected by marijuana legalization. Strain on public safety and law enforcement will not be wholly left on the interstate and state highways, but also largely on our local roads, in our downtowns, and spread throughout our neighborhoods and rural landscape. At a time when communities are already struggling to address the negative impacts of substance abuse and illicit drug use, it does not seem prudent for the state to legalize a federally illegal substance. Stresses on municipal budgets and local property taxes are at an all-time high, and communities are trying their very best to deal with their normal day-to-day operations. We believe it is short-sighted to legalize marijuana without providing communities with adequate local control, authority, and revenue streams to handle the impacts.

The western states that have legalized marijuana – Alaska, Colorado, Oregon and Washington – all have robust local law enforcement presences in their communities. Vermont has towns that are 50 miles from the nearest police barracks or neighboring municipal police department. Municipal budgets in those western states are much larger, and access to resources from state government is greater. All four states also enjoy “Home Rule” legal authority and all four states provide for local taxing authority. Yet even with these resources, local autonomy, and authority, our western municipal counterparts tell us that they need more resources to address the wide range of negative fallout on local communities.

VLCT strongly urges the legislature to not move forward with legalization at this time. Municipalities and the state are ill-equipped and unprepared to handle the range of issues marijuana legalization will pose. Much more time, honest dialogue with impacted parties, and greater critical analysis are necessary before Vermont determines that marijuana legalization is the prudent move forward for the state as a whole. The legislature should not legalize marijuana in Vermont until it can ensure that all local communities in the state have the autonomy, the legal authority, and all the resources necessary to handle the impacts.

Thank you for the opportunity to provide testimony on this pending legislation. VLCT looks forward to working with you on this important issue.

—Gwynn Zakov

DEC Permitting

[S.123](#) is a technical bill that would revise the standards for public notice, public meetings, and decisions related to applications for permits from the Department of Environmental Conservation (DEC) and that would affect every permit that municipalities need to secure from DEC. The bill passed the Senate on March 10 and is now being taken up in the House Natural Resources and Energy Committee.

The bill would re-organize the statutes and processes for securing permits from DEC and establish several categories of permits:

- complex projects;
- general or individual permits under the Clean Air Act or Clean Water Act;
- general permits other than those issued under the Clean Air Act or Clean Water Act;
- dam safety orders;

- shoreland or aquatic nuisance permits;
- public water supply treatment;
- mercury containing lamps, electronic waste, and battery collections;
- general permits other than those issued under the Clean Water Act or Clean Air Act permits; and
- emergency permits.

The bill would establish five types of procedures to be followed depending upon which category of permit is being sought.

In an effort to make the Agency of Natural Resources' Environmental Notice Bulletin easier to navigate, the bulletin would need to include a website accessible from the agency's main web page along with an email notification system.

Rules to adopt the new requirements and procedures would need to begin before September 15, 2016. On successive dates in February 2017 and 2020, the agency would have to report on its implementation of the new system that includes an assessment of public participation and number of appeals.

The bill would also revise the appeals process and provide that a person could only appeal a permitting decision of the agency secretary if he or she had provided a written comment during the comment period (if there was one).

The bill's objective is to standardize and shorten the many disparate and sometimes conflicting, confusing, and time-consuming permit processes at the DEC. The entire bill as passed by the Senate is archived [here](#).

—Karen Horn

Capital Bill

[H.878](#) is this year's Capital Bill. A few years ago, the Corrections and Institutions inaugurated a process of writing two-year capital bills. Thus, the first year of a biennium is the complete capital appropriation; the second year's capital bill comprises adjustments to the first year's legislation.

Only a few items would affect municipalities in H. 878:

- The Drinking Water State Revolving Loan Fund for drinking water supplies would be raised \$100,000 to \$2,638,000 in FY17, which is an increase from the governor's recommendation.
- Municipal Pollution Control Grants, pollution control projects, and planning advances for feasibility studies would total \$2,276,494 in FY17, an increase of \$198,994 from the Governor's recommendation.

The total General Fund capital bonding borrowing, premiums, and premiums budget adjustment for the two fiscal years would equal \$164,824,117.

The legislation passed the House on Friday. It now goes to the Senate Institutions Committee.

—Karen Horn

Toxins in Drinking Water

In response to the recent discovery of perfluorooctanoic acid (PFOA), a suspected carcinogen, in both private and public drinking water sources in several locations in southwestern Vermont, the legislature has taken up a larger discussion of addressing toxins and toxicants in the state's drinking water. The discussion has focused on possibly resurrecting a 2011 bill, [S.77](#), that would have required all newly drilled private wells be tested for drinking water contaminants. That bill was passed by the legislature but the then governor vetoed it, and it never became law.

The House Fish, Wildlife and Water Resources Committee has shown some interest in bringing this legislation back to life and mandating that all new groundwater sources be tested for harmful contaminants such as arsenic, lead, uranium, total coliform bacteria. The mandate for testing only applied to newly drilled wells, not existing ones. The federal government and the state estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.

There appears to be interest in legislation that would regulate toxins in drinking water, however with limited time left in the legislative session, it may be difficult to get a bill passed this year. The committee will continue discussing the issue, and its members have made it clear that legislation is needed to ensure that Vermonters' drinking water is safe. We will keep you updated as this topic develops in the coming weeks.

—Gwynn Zakov

The Vermiculture Bill



[H.899](#), a bill that would encourage the development of vermiculture in Vermont, has stalled in the House Committee on Paranormal Activities. The bill's proponents assert that the process of using worms to decompose organic food waste saves water and energy, helps rebuild the soil, and reduces the need for synthetic fertilizers. However, the committee's chairperson, Rep. Meptang, opposes H.988, insisting that it will hasten the onset of global worming.

—David Gunn

Advocates Testimony

Next Tuesday, April 5, at 1:30 p.m., the Senate Appropriations Committee will begin taking testimony from advocates regarding the Fiscal Year 2017 Budget ([H.875](#)) in Room 10 of the State House. H.875 includes funding for PILOT for buildings and lands owned by the Agency of Natural Resources as well as funding for town highway aid programs, municipal planning grants, education fund transfers, and other items that affect local governments. (See related article in [Weekly Legislative Report No. 12](#).) To schedule time before the Committee, contact Becky Buck at the Legislative Joint Fiscal Office (828-5969 or rbuck@leg.state.vt.us).