



# 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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## Pot Luck

This week, following nearly a month of sometimes passionate testimony in several House committees regarding the legalization of marijuana, the House Judiciary Committee decided to completely rewrite [S.241](#), the Senate bill that would have legalized the possession, cultivation, and sale of small amounts of marijuana. The new version of the bill, which the committee presented on Wednesday afternoon, scrapped the legalization proposal from the Senate and instead focused on expanding decriminalization.

The strike-all amendment proposes to decriminalize the possession of up to two marijuana plants and paraphernalia and caps the number of plants in a dwelling, regardless of the number of occupants, to four. In instances where plants produce more marijuana than the maximum possession limit of two ounces, the additional marijuana must be stored in a secure indoor facility where the marijuana is grown. It increases the amount of marijuana that one may possess from one ounce to two ounces, though civil penalties still apply. The proposal also decreases penalties for possession of larger amounts of marijuana as well as the unlawful sale of marijuana. In instances where a person is driving under the influence of both alcohol and detectable amounts of marijuana, the legal blood alcohol concentration limit is reduced from 0.08 to 0.05.

The House Judiciary amendment increases funding for youth prevention, highway safety, and law enforcement and keeps intact a “Marijuana Advisory Commission” that was in the Senate version of S.241. The commission would provide guidance to the administration and the legislature on a number of issues related to marijuana legalization, ranging from recommending strategies for addressing impaired driving as it relates to marijuana use to considering the potential impacts of a regulated commercial marijuana market on employment and labor issues to proposing a comprehensive regulatory structure that establishes controlled access to marijuana.

Today, the committee voted the bill out 6-5 after language concerning decriminalization was removed. This still allows amendments and changes to be made to the underlying bill once it goes to the House Floor, then potentially back to the Senate, which may weigh in on the House amendments. Please

contact your representatives about S.241 and marijuana legalization in general, and stay tuned for more updates as the bill continues down its long and winding road under the Golden Dome.

—Gwynn Zakov

## Endangered and Threatened Species

Late last month, the House passed [H.552](#), which revises the authority of the Agency of Natural Resources (ANR) to adopt endangered and threatened species lists and expands agency authority to designate critical habitat for a species. Currently, the agency secretary has authority to designate threatened or endangered species – as does the federal government – but the state has not had the authority to designate habitat that is critical to the survival of one of those endangered or threatened species. The bill also amends the law relative to protecting and taking of endangered or threatened species.

H.552 is in the Senate Natural Resources and Energy Committee, where it is being reviewed in light of concerns voiced from a variety of interests. This includes local officials who are concerned about the juxtaposition of state authority to designate critical habitat and municipal plans that address forests open spaces reserved for floodplain and wetland protection, rare and fragile areas, and a host of other issues, including designations for downtowns, village centers, growth centers, new town centers, and neighborhood development areas.

H.552 would direct the ANR secretary to determine a species to be *endangered* if it normally occurs in the state and its continued existence as a sustainable component of the state’s wildlife or wild plants is in jeopardy. A species would be determined to be *threatened* if it is a sustainable component of the state’s wildlife or wild plants, it is reasonable to conclude that its numbers are declining and, unless it is protected, it will become an endangered species.

The secretary would be authorized to establish by rule a critical habitat designation list for a threatened or endangered species. A critical habitat would be defined as a delineated location within the geographical area occupied by the species that has features that are identifiable, concentrated, and decisive to the survival of a population of the species, and that is necessary for the conservation or recovery of the species and may require special management considerations or protection. Critical habitat could also:

- a. be a delineated location outside the current geographical area occupied by a species at the time it is listed that was historically occupied by a species; or
- b. contain habitat that is hydrologically connected or directly adjacent to occupied habitat; and
- c. contain identifiable, concentrated habitat that is decisive to the continued survival of a population of the species; and
- d. be necessary for the conservation or recovery of the species.

In testimony to committee members, staff from the Department of Fish and Wildlife stated that they are currently concerned about only a few locations where a new critical habitat designation would help a population of an endangered species remain healthy. None of those areas is in a downtown or thickly settled (with people) place.

Municipal officials understand the very real threats to many Vermont animal and plant species that practices on the land and changing climate pose, and municipal plans address those issues in many respects through the various required plan elements. It is also longstanding state policy to encourage development in compact settlements surrounded by rural countryside. The Department of Housing and Community Development website states “Vermont’s landscape of compact centers surrounded by rural land is integral to our economy, community spirit and brand cache. Accordingly, Vermont has established a framework of “designations” to provide incentives to encourage communities to maintain this land use pattern. These programs are also designed to help align our environmental, housing, and transportation policies, programs, regulations, and public investments to maintain and enhance the landscape cherished by Vermonters and visitors alike.”

Both department and local officials urged the committee to prohibit critical habitat from being designated in designated downtowns and village centers because those places have been approved by municipalities and the state Downtown Development Board with the intent to deliberately direct new and infill economic and residential development to those densely developed areas and away from greenfields, woodlands, and other natural resources such as wetlands.

The Senate Natural Resources and Energy Committee is expected to finish its amendments to H.552 in the next few days. Local officials may want to discuss the legislation with their senators before it’s taken up by the entire Senate.

—Karen Horn

## Cemeteries

Last month, the House passed [H.640](#), a bill that would revise the statute regarding maintenance of cemeteries. The current law requires that the amount drawn from a town’s treasury in any year for the purpose of maintaining a cemetery “shall not exceed \$500.”



Moretown Cemetery photo by Amos Horn

Without changing the statutory obligation for municipalities to “cause lots and walks to be cleared of weeds and grass, the headstones or monuments to be replaced or repaired, or other disfigurements removed.” the House-passed bill would provide that funds spent for upkeep and maintenance shall be “in accordance with funds maintained for that purpose.” Many towns spend far more than \$500 per year on mowing and mainte-

nance of public burial grounds. Others are fortunate enough to have volunteers who care for those cemeteries and therefore do not spend money for their upkeep.

This week a proposal was made in the Senate Government Operations Committee to provide that municipalities would be required to spend *at least* \$500 on maintenance and upkeep of the cemetery. After some debate, the committee members agreed with local officials that the municipal process of developing a budget and putting it before the voters for adoption is an exercise in balancing multiple needs and ob-of taxpayers to pay for it. VLCT staff explained to the committee that citizens concerned about the upkeep of a public cemetery have the option of petitioning an item on the ballot to provide funds for those obligations. Again, without changing the statutory obligation to maintain municipal cemeteries, the committee decided to delete any reference to the amount of funds required to pay for that obligation and instead leave it to the municipal budgeting process.

While the \$500 maximum requirement in statute has been in place since the 1950s, it is clearly out of date today and is frequently ignored by towns. Changing the statute to a \$500 minimum would impose an arbitrary mandate to spend a certain amount on public cemeteries. Local officials are gratified that the Senate Government Operations Committee decided to allow municipalities to determine an appropriate amount to be spent on cemetery maintenance through their regular budgeting process. H.640 will probably be debated on the Senate floor next week.

—Karen Horn

## Education Funding

Last week, [H.853](#) – a bill to establish education property tax yields, non-residential property tax rates and excess spending penalties for FY20 – passed the House and now is under consideration in the Senate Education Committee. As passed the House, H.853:

- sets the property tax dollar equivalent yield at \$9,701 and the income dollar equivalent at \$10,870;
- sets the nonresidential property tax base rate at \$1.53 for FY 17 only;
- reduces the excess spending penalty for FY20 from 121 percent of the statewide average district education spending (per equalized pupil increased by inflation as determined by the Secretary of Education before November 15) to 119 percent;
- creates a process for the Joint Fiscal Office and the administration to estimate an “unfunded education mandate amount,” which is the total dollar amount required for supervisory unions and school districts to perform any action mandated in that session that is enacted without funding (The unfunded education mandate amount would be presented to the legislative Emergency Board at its July meeting, and that board would determine the unfunded education mandate amount. The governor’s budget would be required to include a transfer of that amount from the General Fund to the Education Fund for the fiscal year commencing on July 1 of the following year.);
- requires, going forward, fiscal notes prepared for legislation that requires action on the part of a supervisory union or school but does not have a specifically identified appropriation (Any fiscal note would need to identify whether or not the estimated costs would be considered part of the “unfunded education amount”);
- allows a study committee report on the topic of forming a union school district to include terms for transferring liability for any indebtedness held by a merging district from the merging district to the town or towns within the merging district (This is a school study committee and would not be binding in any manner on the towns within the district.);

- requires the Secretary of Education to collect data on budget surplus amounts, reserve fund amounts, and reserve fund uses;
- establishes a Common Level of Appraisal (CLA) study committee to evaluate the use of an aggregate CLA in a merged school district to determine the statewide education tax for each municipality in that district (Membership would include two town listers appointed by the Vermont Association of Listers and Assessors and one member appointed by VLCT. The committee would consider how to determine an aggregate CLA and the potential impacts of aggregating the CLA. A report would be due the legislature by December 15, 2016.); and
- requires two reports analyzing the impact of H.846 and H.656, two bills upon which the legislature has not acted. [H.846](#) would make changes in the calculation of the statewide education property tax, and [H.656](#) would establish an education tax adjusted by income for all taxpayers. As well, H.853 would require a report on how a study of pupil weighting factors could be conducted.).

As described in a letter the Commissioner of Education sent letter to the legislature last December, the property dollar equivalent yield and the income dollar equivalent yield illustrate the per pupil spending the homestead property rate of \$1 per \$100 of equalized education property value for 2017 and the income dollar equivalent yield of 2 percent education property tax rates will support in the coming year. How much each district chooses to spend per pupil compared to the enacted yield will determine its locally adjusted rates on homestead value and income.

Addison Rutland and Lamoille North will vote to consolidate districts on April 12. Study committee reports for Washington West, Chittenden South, Franklin Northeast, and Orleans Central will be submitted to the State Board of Education later this month; all are scheduled to vote in June.

—Karen Horn

## Workforce Housing

One issue that employers often hear about when they seek to hire or retain employees is that the cost of housing is high in Vermont and affordable housing is increasingly harder to find. [H.865](#), a bill that arrived late on the scene this session, would provide grants to fund infrastructure improvements to facilitate construction of two or more workforce housing pilot projects in targeted areas. Eligible infrastructure could include roads, sidewalks, bridges, culverts, water, wastewater, stormwater, and other utilities. Preference would be given to projects in which at least a portion of the units were perpetually affordable. Yesterday, the bill passed the House.

As introduced, the bill would also have provided grant funding totaling \$50,000 to municipalities to pursue designated downtown development districts, designated new town centers, growth centers, and designated neighborhood development areas and also to pursue workforce housing projects in those areas. However, that funding component was deleted from the bill before it passed the House. H.865 would also extend by an additional four years, to FY22, the First Time Homebuyer's Down Payment Assistance Program that provides loans for down payment assistance and closing costs. The bill would continue a package of tax credits to developers to help bring down the cost of developing such projects.

A workforce housing project would include 12 or more independent dwelling units. At least 25 percent of the units would be owned by or rented to occupants whose gross annual income is 80 percent or less of the county median income and whose total housing cost is not more than 30 percent of their gross annual household income. At least half of the remaining units would be owned by or rented to

occupants whose gross annual income does not exceed 120 percent of the county median income. The project would be located in a designated downtown, new town center, growth center, neighborhood, or in an area that has a residential density of at least four single-family houses per acre. Only one project could be located in a municipality whose population exceeded 10,000.

The bill would be funded with \$1 million from unspent money previously earmarked for replacing legacy technologies at the Agency of Human Services and would be appropriated to the Vermont Housing and Conservation Trust Board for making grants.

The bill also directs the Joint Fiscal Office to work with one or more independent third parties to conduct an analysis of the current functionality and long-term sustainability of the technology for the Vermont Health Benefit Exchange, including a review of deficiencies in Vermont Health Connect functionality. That report would be due to the legislature by December 1, 2016. An appropriation of \$224,320 accompanies the directive.

H.865 is an effort to begin to address the shortage of available housing for middle income Vermonters near their workplaces that local officials have heard about for some time. It is an innovative approach that would help to build the infrastructure needed to support new housing construction in the very areas that municipalities have designated for development. The bill now goes to the Senate Economic Development, Housing and General Affairs Committee. Contact your senators to offer support for H.865.

—Karen Horn

## Heading to the Finish Line

This week, the legislature has been working hard to take up legislation that came to their committees in the aftermath of last month's Crossover deadline. We are heading toward the end of the session – now predicted for the first week of May – and the end of the 2015-2016 biennium. That means that any bill not passed by adjournment in May will be dead and would need to be reintroduced in the next session as a new bill.

There's no doubt that next session will be different, with the Speaker of the House, the President Pro Tem, the Lieutenant Governor, and the Governor all retiring from their respective offices. On an almost daily basis we hear from legislators who are retiring at the end of their current terms. While almost a third of the legislators faced no challenges to their seats last election season, many will have contested elections this fall and not all of them will be back. Bills that were introduced with high hopes this session but were not passed will face a very different group of legislators and dynamic come January 2017. And so the pressure is on to get key priorities passed before the biennium adjourns. We are certainly heading into the tumult that signals the end of the session.

Time for consideration of recently received bills is shorter than in the chamber in which a bill originated. Nonetheless, committee members continue to make changes in them that address new information, outstanding concerns, and different priorities on a host of issues.

As the pace quickens during the next few weeks, we may not want to wait till Friday to publish information that is especially timely. In those cases, watch for our *Legislative Alerts* to appear in your electronic mailbox if it is important to contact your legislators promptly if we ask for your help. Bills

traditionally move much more quickly during this part of the session. Later this month, we will probably cease publishing the *Weekly Legislative Report*, because any information we write on Friday may be obsolete by Monday. We will, of course, summarize the entire session in our *Legislative Wrap-Up* soon after the final gavel falls.

Some of the legislation that addresses municipal priorities and their current committee location include:

<a href="#">H.130</a>	Agency of Public Safety	Senate Government Operations
<a href="#">H.458</a>	Automatic Voter Registration	Conference Committee
<a href="#">H.552</a>	Endangered Species	Senate Natural Resources and Energy
<a href="#">H.610</a>	Revolving Loan Funds	Senate Institutions
<a href="#">H.674</a>	Public Notice of Discharges	Senate Natural Resources and Energy
<a href="#">H.853</a>	Education Funding	Senate Education
<a href="#">H.855</a>	Fire Wardens and Fire Suppression	Senate Natural Resources and Energy
<a href="#">H.875</a>	Appropriations	Senate Appropriations
<a href="#">H.877</a>	Transportation Capital Bill	Senate Transportation
<a href="#">S.94</a>	Appointment of Clerks and Treasurers	House Government Operations
<a href="#">S.114</a>	Open Meeting	House Government Operations
<a href="#">S.230</a>	Siting Renewable Energy Facilities	House Natural Resources and Energy
<a href="#">S.241</a>	Marijuana Legalization	House Judiciary

—Karen Horn

### Legislative Update Webinar 4

Please join us at noon on Monday, April 11, for the fourth installment of our Legislative Update Webinars. VLCT Advocacy staff will provide recent updates on the 2016 legislative session including legislation ranging from renewable energy siting and water quality, to marijuana legalization and law enforcement matters. The webinar will include sufficient time for Advocacy staff to answer your questions. The link to the webinar is <http://www.vlct.org/events-news-blogs/event-calendar/legislative-report-webinar-series/view/2016-04-11>.