



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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INSIDE THIS ISSUE:

Work Still to Do.....1	Summer Study Committees 5
Changes to the Open Meeting Law2	A Correction..... 6
Siting Renewable Energy Facilities.....3	Pending Municipal Charters Table 7

Work Still to Do

Sixteen weeks into the session, Vermonters have by now heard ad nauseam about a number of high profile issues that are consuming much of the oxygen in the State House. And you will read more about renewable energy facility siting, potable water, ethics, and marijuana legalization before the final gavel falls, presumably next month.

Before legislators go home, however, several bills should be passed that are vitally important to cities and towns that will allow them to do their jobs better and which, in some instances, are not the least bit controversial.

In the first week of the session, the Senate passed over to the House [S.94](#), a bill that would provide for the appointment of treasurers and clerks. Ever since then, that bill has been in the House Government Operations Committee, “hanging on the wall.” The Senate also sent to the House [S.114](#), a bill that amends the Open Meeting Law, making it more reasonable for local officials to comply with the law. S.114 was voted out yesterday (see article on page 2) and will be voted on by the full House next week.

[H.367](#), a bill that would provide for adoption of municipal plans every ten years instead of the current requirement for re-adoption every five years, passed the House last week and is now in the Senate Natural Resources and Energy Committee. H.367 includes a fairly intensive, interim every-five-years review process that needs to be moderated. It is tremendously burdensome for municipalities to have to rewrite and readopt their comprehensive municipal plans so often, especially since the legislature is continuously adding planning elements. Some planning commissions have complained that all they seem to do is to write, adopt, rewrite, and readopt their plans without sufficient opportunity to actually implement them.

[H.518](#) is a bill that would expand the membership of the Clean Water Fund Board to include six new members who are not agency secretaries. It passed the House last month and is presently in the Senate Natural Resources and Energy Committee. The bill adds a guarantee of a municipal presence on the board, which is important since much of the clean water work and mandates fall [on the shoulders of municipal officials](#).

On many occasions, the Senate has passed legislation that would extend authority to adopt local option taxes to all municipalities in the state only to see the bill die in the House. Yet every year, municipal charters are adopted at the local level and are eventually approved by the legislature to enable specific municipalities to adopt local option taxes. This is known as Home Rule, and Vermont is one of only a handful of states that still cling to this outdated concept. It is time to provide that authority to cities and towns statewide. The table on [page 7](#) shows pending municipal charters and their various stages of consideration.

The fee bill, a piece of legislation that is passed every year, contains fee increases or, very occasionally, deletions for an ever changing number of state agency fees. Many fees paid to municipal clerks are also established by the legislature and have not been amended in years. The fee bill should include language that ensures that the legislature updates clerk fees on a regular basis in the same way that it updates state agency fees. Recommendations for increases to clerk fees should be provided by a committee that includes representatives of clerks, municipal legislative bodies, and the Agency of Administration, which is practiced in evaluating fee increases.

We strongly encourage our members to contact their representatives and senators and urge them to move these bills forward. With only a few weeks left in session and many “must pass” bills dominating the legislature’s time, it is very important that your legislators hear directly from their constituents on these not-so-flashy but incredibly important pending pieces of legislation.

—Karen Horn

Changes to the Open Meeting Law

Thursday afternoon the House Government Operation Committee passed out [S.114](#), a bill that makes several important changes to provisions of the Open Meeting Law. As most readers know, the Open Meeting Law was last amended in 2014, and many of the changes created compliance concerns from local communities, particularly small municipalities that lacked the resources, personnel, and technical expertise to comply with the law. Two years later, after much discussion, input, and compromise from interested parties that included local municipal officials, VLCT, members of the Vermont Press Association, the Secretary of State’s office, and the American Civil Liberties Union, a compromise bill is heading to the floor of the House for a vote, making it one step closer to becoming law.

S.114 makes several important and practical changes to the law by creating greater clarity to public bodies that must comply with the law. VLCT’s Advocacy staff supported many changes to the law, and although the current version of S.114 does not contain all of the modifications our members have requested, it does reflect numerous adjustments that will help local government throughout Vermont, including:

1. When a member of a public body is participating in a meeting by electronic or other means, a roll call vote is required only if the vote is *not* unanimous. Current law requires each vote be taken by roll call, even those that are not substantive and are purely procedural.
2. All references to “days” and “business days” in the Open Meeting Law are amended to read “calendar days,” which is a definition that leaves no room for misinterpretation.

3. For towns that have a website, minutes posted to it must remain there for a minimum of one year, removing the uncertainty towns currently have because the law doesn't specify how long they should remain posted.
4. In instances where a public body is curing a violation of the Open Meeting Law, the public body will no longer have to ratify or declare void *any and all* actions taken during the meeting, but rather those actions that are the most egregious. Specifically, ratification or declaring an action void must occur when:
 - a meeting is noticed improperly;
 - a person is wrongfully excluded from attending a meetings; or
 - a public body utilizes executive session, or a portion thereof, for reasons not authorized under 1 V.S.A. § 313(a)(1)-(10).

S.114 does not address requests municipalities have made to better enable them to comply with the law, such as allowing public bodies more time to post minutes to websites, or limiting several posting and penalty provisions of the law to statutory- or charter-approved public bodies – and not small subcommittees that have no decision-making authority – however, S.114 does reflect a step in the right direction.

Please contact your representatives and urge them to support S.114. The bill will be on the House floor for second reading on Tuesday, April, 19, and for a final reading and vote on Wednesday.

—Gwynn Zakov

Siting Renewable Energy Facilities

All this week, the House Natural Resources and Energy Committee has taken testimony on [S.230](#), a bill that proposes to improve the process for siting energy projects that passed the Senate two weeks ago. Yesterday, committee members began to discuss how they might amend the bill. As it passed the Senate, S.230 would direct the Department of Public Service (DPS) to establish guidance and standards that would be applied to expanded energy components of municipal and regional plans. In a true departure from historical practice – whereby regional commissions approve municipal planning efforts – the department would also certify whether or not, in its estimation, the regional or municipal plans met those guidance and standards. The Public Service Board (PSB) would then “defer” to certified municipal plans in the Certificate of Public Good (CPG) permit process.

As legislators and DPS staff have gained an understanding of the existing process for updating and securing approval of municipal and regional plans, their level of comfort with the current statutory structure for approval of plans has fluctuated significantly, as has their desire to establish a DPS-driven process for approving or certifying energy components of regional and municipal plans. On Thursday afternoon, committee members discussed whether or not the DPS should include in its certification of municipal and regional plans an allocation of responsibility to municipalities for renewable facility installations within their borders.

It is worth remembering that in the current environment for siting renewable energy facilities, private commercial developers drive the process while municipal and regional plans are peripheral to deployment of facilities on the landscape. That is why 136 municipalities have signed the Rutland Town Resolution (<http://rutlandtown.com/wp-content/uploads/2016/02/rutland-resolution.pdf>) calling on

the legislature to “ensure that Vermont municipalities have a more meaningful role in the CPG process and to require compliance with appropriately developed municipal siting standards.”

It is also true that the number of Vermonters who want to partake of renewable energy opportunities to power their homes and write down both energy consumption and costs has significantly increased, with the welcome result that small distributed installations of solar panels (and some wind or hydro facilities) owned by Vermonters who benefit from the renewable energy that is generated occupy an ever increasing number of roofs and back yards across the state. Technology is evolving at a dizzying rate and no one can predict what state-of-the-art renewable energy facilities will look like in the next few years, or how much space they will take or how much they will cost. Much remains unknown about the future profile of distributed renewable energy generation, both in Vermont and across the country.

On April 8, VLCT testified that the existing process for developing and approving municipal plans or municipal plan elements results in plans that address and balance all statutory required elements, including:

- economic growth in designated centers and avoiding development in flood hazard, fluvial erosion, and river corridor protection areas (mandates added in 2013);
- public investment and infrastructure construction in accordance with smart growth principles (2014 addition);
- improving water quality in accordance with basin plans (2015 addition); and
- maintaining and improving forest blocks and wildlife corridors (2016 addition).

The expanded energy element requirement in S.230 for towns and cities that undertake planning and for regional commissions is appropriate, as is the direction to the DPS to establish guidance for municipal and regional planning commissions and to provide information on the location of electric transmission and distribution infrastructure.

Municipal plans should continue to be approved by regional commissions. No other state agency has demanded that it be authorized to approve a regional or municipal plan despite the very real interest it might have in those documents. Rather, those agencies have offered “aid and assistance” and established goals and guidance, and have provided relevant information and left the adoption and approval of the plans to the regional and local levels of government.

Approved municipal plans should receive substantial deference in the PSB CPG process. Substantial deference should be defined. Language should also be added to make clear that a municipal recommendation to the PSB may be based on a duly adopted bylaw.

“Substantial deference” would mean that “a recommendation or land conservation measure shall be presumed valid, correct and reasonable and shall be applied in accordance with its terms unless there is a clear and convincing demonstration that it lacks a rational basis or that other factors affecting the general good of the State outweigh application of the recommendation or measure.” That definition, which was in S.230 until the day it was passed by the Senate, makes clear that the final determination continues to rest with the PSB. In rendering a decision, the PSB should also be required to explain in detail the reasons for its determination that the general good of the state outweighs the recommendation or measure.

A municipality should also be specifically allowed to base its recommendations on a bylaw adopted under 24 V.S.A. Chapter 117 by the municipality in which the facility is located.

Local officials should urge their representatives to ensure that (1) municipal plans continue to be subject

to approval by the regional commission, (2) guidance and information is available from the Department of Public Service, and (3) substantial deference is accorded to plans that have been approved in the CPG process.

—Karen Horn

Summer Study Committees

Summer study committees and commissions abound in legislation at the end of this session. That is interesting, to say the least, because all the reports generated by those committees will be delivered to a new legislature next January whose members will be significantly different from the senators and representatives that directed the reports. That body may – or may not – pay any attention to the reports’ recommendations.

A number of those reports would include a representative appointed or recommended by VLCT. Once the session adjourns, we will compile a list of summer study committees that affect the interests of municipal government. We will also ask for local officials to serve on those committees. In the meantime, here is a partial list of committees that will require municipal representation.

S.230. The Department of Public Service (DPS) would develop guidance and standards for municipal and regional plans to meet in order to secure a “certificate of energy compliance” so that the Public Service Board would defer to it in Certificate of Public Good proceedings. The DPS would provide notice and an opportunity to comment to an extensive list of interested parties, including municipal utilities and planning commissions.

H.518. The Clean Water Fund Board would be expanded to include six additional members, two of whom would be municipal officials.



Clean water in Montpelier (North Branch of the Winooski River)

[H.595](#), Potable Water Supply and Toxins. Would establish a working group to recommend how to identify, regulate, publicize, and prevent exposure to toxic chemicals, hazardous materials, or hazardous wastes (no specific interested parties identified).

[H.853](#), Education Property Dollar and Income Dollar Yield. Would establish a Common Level of Appraisal Study Committee to study the use of an aggregate common level of appraisal in a merged school district to determine the statewide education tax for each municipality in that district. VLCT will appoint one committee member.

[H.789](#), [H.855](#), [H.857](#). A Study Committee on Land Use Regulation and Forest Integrity will study potential revisions to Act 250 and Title 24 Chapter 117, the municipal planning and zoning statute, to protect contiguous areas of forestland and promote habitat connectivity. VLCT will appoint one committee member.

[H.870](#), A Telecommunications Working Group will make recommendations on the most efficient, reliable, and cost-effective means to provide statewide call-taking operations for Vermont's E-911 system. Members will include a representative from VLCT, the Vermont Ambulance Association, and the Vermont Association of Chiefs of Police.

[H.130](#). An Agency of Public Safety Study Committee is to recommend whether to create an Agency of Public Safety. It will consider whether the state police's provision of general municipal and regional law enforcement services is sustainable, whether municipalities should be required to maintain their own police department, the manner in which state, county and municipal law enforcement coordinate services, and the manner of dispatch service provision. The committee will include a representative of the Chiefs of Police Association but not a non-law enforcement municipal official who represents a municipality either with or without a police department.

[H.629](#). A Vital Records Study Committee will study Vermont's laws governing the administration and issuance of vital records and best practices with respect to administering and issuing vital records. The committee will include a town clerk appointed by the Vermont Municipal Clerks' and Treasurers' Association.

If any of these committees sounds intriguing to you, please contact Karen Horn at khorn@vlct.org.

—Karen Horn

Correction

The paper copies of last week's *Weekly Legislative Report No. 14* erroneously stated that, as part of [H.865](#) – the bill to provide workforce housing pilot projects – the First Time Homebuyer's Down Payment Assistance Program had been eliminated. In fact, **the program remains in effect**. We regret the error.

Bill	Municipality	Major Provisions	Location	Status
H.90/ H.567	City of Burlington	Police confiscation or seizure of deadly or dangerous weapons	House Gov Ops	No further action anticipated
H.91/ H.566	City of Burlington	Storage of firearms in locked device or in safe storage depository	House Gov Ops	No further action anticipated
H.92/ H.568	City of Burlington	Prohibition of firearms at establishments licensed to serve alcohol on premises	House Gov Ops	No further action anticipated
H.519	Town of Brandon	Local option taxes	Senate Finance	Awaiting passage in committee; potential vote in Senate
H.871	City of Montpelier	<ul style="list-style-type: none"> Regulation of public water supply sources Local option taxes 	House Gov Ops	Awaiting consideration in committee
H.880	Town of Bridport	Allow for appointment of town clerk and town treasurer	House Gov Ops	Awaiting consideration in committee
H.881	Town of Charlotte	Hybrid, two-part process (floor vote <i>and</i> Australian ballot vote) to consider and vote on annual town budget	House floor	Pending passage in House; potential consideration in Senate
H.882	City of Burlington	<ul style="list-style-type: none"> Miscellaneous administrative changes to annual fiscal report Increase membership to Board of Police Commissioners 	House floor	Pending passage in House; potential consideration in Senate
H.883	City of Winooski	<ul style="list-style-type: none"> Amend job descriptions of mayor, city council, and city manager Terms of office, suspension and removal provisions for certain officers Process and procedure changes to voter referendum for ordinance adoption 	House Gov Ops	Awaiting consideration in committee
H.884	City of Barre	Decrease membership to the Board of School Commissioners	House floor	Pending passage in House; potential consideration in Senate
H.885	Town of Shelburne	Appointment of town treasurer	House Gov Ops	Awaiting consideration in committee
H.886	Town of Brattleboro	<ul style="list-style-type: none"> Amend early voting criteria for town meeting Amend nomination of candidate process for town meeting member (under the Representative Town Meeting structure in Brattleboro) 	House Gov Ops	Awaiting consideration in committee