



WEEKLY LEGISLATIVE REPORT

December 19, 2014

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The *Weekly Legislative Report*, a publication of the Vermont League of Cities & Towns, is published each Friday during Vermont's legislative session.

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Let the Games Begin

Last month's election failed to generate much interest, as nationally only 36.4 percent of those eligible to vote did so, the lowest turnout since World War 2. In Vermont, registered voter turnout was 43.7 percent, an all-time low. Six of 30 Vermont Senate seats and 65 of 150 House seats were unopposed. In only a few of the contested elections (albeit some key ones) were the results close, demonstrating again the power of incumbency. So who is actually involved in the making of policy and holding elected officers accountable? We expect *you* are!

Now it is time to turn our attention to the 2015 legislative session. At the State House, the work has already begun as an orientation for new legislators on November 19 and 20 was well attended. The new biennium begins on Wednesday, January 7, and VLCT will be there. Next year, local government will be affected by lots of issues, with education funding reform and spending controls being paramount among them. This Preview will introduce you to those and other issues, including transportation funding, paying to clean up Lake Champlain, public safety, and changes to the Open Meeting Law.

Because the legislature authorized numerous summer study committees, expect to see reports and possibly legislation evaluating, among other topics:

- state responsibility for maintaining county court houses;
- state funding for defending appeals of property tax valuations and valuation and payments in lieu of taxes for Agency of Natural Resources' lands;
- transitions to a system of tiered law enforcement certifications; and
- recommendations on infrastructure necessary to implement Act 148, the universal recycling law.

Please take time to read the VLCT Municipal Legislative Priorities Brochure that accompanies this *Report*. This document, which we provided to all incoming legislators and state officers as well as administration staff, will guide the actions of the VLCT Board and advocacy staff during 2015.

Vermont is a *Dillon's Rule* state, meaning that municipalities may do only what the legislature specifically allows them to do. In contrast, *Home Rule* states enable municipalities to do whatever they want to do unless they are specifically prohibited from doing so by the legislature. Forty-six states have some version of Home Rule legislation or constitutional protection.

In Vermont, the legislature gets involved in many aspects of local government. Examples include setting fees that may be charged at the local level for documents subject to the public records law and ratifying changes to municipal charters that have been voted by the people in those municipalities. This uneven relationship between local and state government is the source of continuing friction between the two levels of government and ensures that municipalities will always need a vigilant

observer and consistent voice in the legislature.

Your help is needed in this endeavor. Your legislators will listen to you because they know that you represent and were elected by the same people who elected them. If they meet you in the grocery store back home they may have to validate their actions in Montpelier. So, we look forward to working with you on all those issues that address municipal priorities and bugaboos. Remember that you and all Vermonters are welcome in the State House at any time and all committee meetings and full sessions of the two bodies are open to the public.

At the start of each session, all legislators and statewide officers are sworn in to a new term. Committee chairs and both Senate and House leadership are likewise newly appointed. Bills must be introduced anew; no bill that was left at the end of last session is “alive” this year. Legislators, who are the only people permitted to introduce bills, get their ideas from a wide range of sources: the administration, special interest groups, constituents and local government officials like you. Now is a good time to talk to your legislators about getting your priority issues introduced as bills. By informing VLCT Advocacy staff of these issues, we’ll be able to follow them as the session unfolds.

You can keep track of municipal issues via our *Weekly Legislative Report* as the session progresses. Every Friday, Advocacy staff sends the report out to our subscribers via email and U.S. mail and posts it on our website, www.vlct.org. We generally post a new You Tube video each Friday as well with a link from the VLCT website. We welcome comments on the articles and proposals for legislative language as bills progress through the House and Senate. Please let us know what you think!

VLCT Advocacy looks forward to working with our members in the new session – and it’s not too early to make plans to attend Local Government Day in the Legislature 2015, which will be held on Wednesday, February 18, 2015.

Let the games begin!

Education Property Taxes

Twenty-fifteen appears to be the year that we get some relief from ever-escalating state education property taxes. With their rejection of almost three dozen school budgets last March, the messages they sent during the campaign, and the outcomes of our November election, Vermont voters have made their demands clear. No longer are municipal officials the only voices calling for lower education taxes – which represent over 70 percent of the total they are required to collect even after subtracting the state homeowner education property tax adjustments. Those calls have been made through various means including adoption of the “Dorset Resolution,” which calls for capping education property taxes for two years while the legislature develops an alternative funding mechanism.

Our state leaders appear to have gotten the message. It began last summer when the Speaker of House announced that he would run for reelection based to a great degree on his interest in solving the education funding problem facing the state. This fall, he appointed an ad hoc group of current and former House members to develop proposals to relieve education property taxes to present to the 2015 legislature. Also last summer, the Governor tasked his Secretary of Education to mount a major jawboning effort to convince local school boards that there is a spending problem on the school side and to help them voluntarily lower those costs and build collaboration across school district boundaries. He also asked her to “develop a legislative approach that involves a moratorium on new legislation that adds cost to districts except for targeted legislation that streamlines operations in order to reduce overall costs and increase flexibility in schools.”

On December 1, the Commissioner of Taxes released the letter she is required to provide the legislature regarding her recommendations of what the state education property taxes should be for the fiscal year beginning July 1, 2015. Given the economics of school spending, new state expenses that are added to

them, grand list growth, and what other revenues available for the Education Fund are projected to do, she is recommending a two-cent increase for both the homestead base rate (to \$1.00) and the nonresidential rate (to \$1.535). The legislature last year directed that the 2015 base homestead income tax rate be set at 1.94 percent of total household income. That is a 7.8 percent increase over the base rate used for this year's tax bills.

It is important to point out that the residential rates that actually appear on property tax bills are adjusted by local school budget spending. The projections are that school spending will once again go up by just over three percent despite our student count dropping by another 631 (to a total of 88,626, a 0.7 percent drop). Combining the new property tax rate and the spending projections, the average homestead state property tax rate is projected to increase from \$1.50 to \$1.56 – a four percent increase in the rate despite an increase in spending of only three percent. Due to the same factors, the two-thirds of Vermonters who pay their school taxes based on their income will see that average rate go from 2.755 percent of household income to 3.026 percent – a 9.85 percent increase.

Assuming all these projections and recommendations come to pass, the legislature's Joint Fiscal Office's December 1 [Education Fund Outlook](#) projects a three-percent increase in total state education property taxes that need to be collected, with non-residential taxes increasing by 2.45 percent and homestead taxes increasing 3.79 percent.

According to a December 4 [VTDigger article](#), the working group put together by the Speaker of the House will be presenting its proposals to him on December 12. The group is working on three different approaches that may or may not be combined into one large proposal:

1. an assortment of cost control and consolidation-encouraging ideas that have been considered and acted upon by the House at least twice in the past four years;
2. to replace much of residential education property tax and property tax adjustment payments with an education income tax that reflects local spending decisions; and
3. creating a regional block grant system of funding and governance for school districts.

We will report on these proposals in more detail as the legislature begins to home in on what it plans to do.

The VLCT Board has taken the position that VLCT supports a comprehensive approach to education funding reform and supports all elements of that reform effort that decrease the pressures on the property tax necessary for funding municipal services. VLCT will oppose any initiative that increases education property taxes. Because many of the items being discussed to address the excessive education property tax may cut across other priorities of local government (e.g., mandatory consolidation and loss of electorate control), the Board will provide further guidance on any reform element that decreases the pressure on municipal property taxes but is also detrimental to other municipal goals or that violates some other tenant of VLCT legislative policy.

Roiling the Waters

The State of Vermont and the U.S. Environmental Protection Agency (EPA) are in the process of developing and implementing a new restoration plan for Lake Champlain. In November, the EPA held a series of meetings in Vermont to unveil its likely allocations of phosphorus discharge limits to each section of the lake and sectors of the economy. The EPA presentation and fact sheets and the Agency of Natural Resources' "Vermont's Clean Water Initiative" (a report to the legislature regarding the protection of Vermont's surface waters as required pursuant to Acts 97 and 171 of the 2013 legislative session) are posted at www.watershedmanagement.vt.gov/erp/champlain/. On December 9, the Agency of Natural Resources (ANR) and EPA held a technical workshop to address questions about the methodology used to establish load limits for each segment of the lake and each sector of the economy. Contributors to phosphorus discharges are streambank erosion, wetlands, forestry and agricultural lands, unpaved roads, and developed land including paved roads. EPA has not yet finalized

its plan for remediation, so you can still email comments to [Steve Perkins](#) of the EPA and [Kari Dolan](#) of the Vermont Division of Watershed Management.

The EPA identified 13 segments of Lake Champlain and apportioned allowable daily loads of phosphorus to each of them. Within those segments, the EPA allocated responsibility for meeting annual effluent phosphorus limits to wastewater treatment facilities; stormwater reductions from developed lands, including residential, commercial industrial, and roads, all to the extent they have impervious surfaces; agricultural best management practices; stream channel stabilization; and enhanced forest management practices. The agency took into account existing permit programs that will be “sustained” – that is, modified to enhance phosphorus reduction – and proposed new permit programs. Those new programs will include a state highway general permit, a local roads stormwater general permit, stormwater general permit for existing lands, and the designation of both additional municipalities subject to the municipal separate storm sewer system (MS4) permit and of additional sites subject to residual designation authority. Residual designation authority may be exercised when ANR – the delegated entity under the Clean Water Act – determines that stormwater controls are needed for unpermitted discharges based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address pollutants of concern, or if ANR determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to U.S. waters. In the Lake Champlain TMDL, the pollutant of concern is phosphorus. In 2009, ANR issued notices to 450 dischargers in municipalities in Chittenden County that they needed to apply for discharge permits.

It was evident in the November meetings that EPA heard the concerns that municipal officials raised throughout the past several years and responded to them, at least partially. The fact that the agency is willing to address non-point sources as part of the solution to the phosphorus pollution in the lake recognizes the challenges of a largely rural environment and the reality that non-point sources are by far the major contributors of phosphorus (97 percent, according to the EPA’s 2013 presentation on the Lake Champlain Phase 1 Cleanup Plan). It represents a departure from the usual practices of EPA which, in the past, has threatened to bring its heavy hammer down on wastewater treatment facilities at enormous cost and very little benefit if the non-point sources goals are not met.

In its 2014 Clean Water Initiative, ANR indicated that it has spent approximately \$100 million to support municipal wastewater treatment infrastructure (through loans), \$24 million in Ecosystem Restoration Grants, and \$26 million in grants and technical assistance to farmers, yet has been unable to “support the full set of investments necessary to meet all of the needs associated with clean water – in the Lake Champlain Basin and around the state.”

Why should this be of concern to towns outside the Lake Champlain basin? Vermont has 17 watershed planning basins. The recommendations for action in Vermont’s Clean Water Initiative rely on the management strategies, timelines, and accountability measures in the Vermont Lake Champlain Phosphorus TMDL Phase 1 Implementation Plan. The initiative states that the TMDL measures “provide a helpful framework for understanding how the state could use its tools to achieve water quality improvements throughout Vermont.” ANR representatives stated on several occasions that the measures put in place to address phosphorus in Lake Champlain will be extended statewide to address water quality in other damaged watersheds. Priority areas are:

- implementing agricultural best management practices;
- Treating stormwater runoff from developed lands;
- Installing pollution controls on state (approximately 4,000 miles) and municipal (approximately 11,000 miles) of highway;
- Restoring and protecting natural infrastructure such as river corridors, floodplains, wetlands, and forest cover; and
- Increasing investments in municipal wastewater treatment infrastructure.



In its “Water Quality Remediation, Implementation and Funding Report, Part 1,” which it delivered to the legislature in January 2013, ANR estimated that the average annual cost *in addition to what is already being spent* to achieve clean water in Vermont would be \$155,659,000 in each of the next ten years. Approximately 93 percent of that amount would be borne by municipalities. Within that 2013 cost estimate were two “unknown” amounts for municipal stormwater infrastructure needs and replacement or upgrade of failing and substandard septic systems. The estimated line items for addressing aging municipal wastewater treatment system infrastructure was \$18,000,000 and for addressing nutrient pollution control measures at municipal wastewater treatment facilities was \$11,300,000.

In the 2015 legislative session, Vermont legislators and the Governor need to demonstrate to the EPA that the State of Vermont is committed to implementing the measures in the cleanup plan and the clean water initiative. This means that they will have to address the matter of funding programs that include those stormwater management measures required by new general permits for municipal roads, projects to mitigate runoff from impervious surfaces on developed lands, and agricultural and forestry best management practices. In order to tackle the issue of funding programs, they first need to have an updated and complete estimate of what those measures will cost. And that is an issue that the administration and EPA must address now that they have identified the framework for cleaning up the lake.

The 2015 session will feature other proposals affecting the waters of the state, such as legislation that would encourage the removal of dams that have fallen into disuse. ANR will also go to the House Ways and Means and Senate Finance committees with proposals for updating the fees it charges for permits. Agency fees are on a three-year legislative cycle, and 2015 is the year for new fees. Its proposal will be colored significantly by the need to revise fees in order to address funding for the Lake Champlain TMDL. The overriding question will be how to pay for implementing that proposed cleanup of the lake and how many of those projects should be mandated statewide.

Transportation

Transportation Revenues. Act 12, the \$632 million transportation bill of 2013, impacted Vermont municipalities because it included a much debated gas tax increase. This revenue raising option – unpopular with some but supported by VLCT – was included in order to avoid losing about \$60 million in matching federal transportation funding. When the bill was signed by the governor on April 29, 2013, the average price of a gallon of unleaded regular gas in Vermont was \$3.70. As of this writing, the price at the pump was well below \$3.00 a gallon and continuing to fall. Now is a good time to discuss if the tax should be increased or revised and to which programs any new revenues should be dedicated.

Appropriations to municipal highway programs have been constant for several years. While members of both House and Senate Transportation committees have been careful to ensure that funds to municipal programs did not decrease, they have not significantly increased those line items either. With the Lake Champlain Total Maximum Daily Load (TMDL) looming and requirements to address stormwater runoff from roads that will be extended statewide, the legislature must address the funding of those mandates in 2015.

Road Design Standards. The Agency of Transportation (VTrans) is partnering with Smart Growth America to consolidate and update highway design standards with the objective of supporting multimodal transportation and projects that further the state land use goals of compact, pedestrian-friendly downtowns and villages surrounded by rural countryside. VTrans has hosted several day-long workshops to discuss what these changes will likely entail. The first workshop focused on freight logistics. Participants, including VLCT and regional commission staff, examined how trucking firms make supply chain decisions, and how they could best match a product to the appropriate supply chain. The focus of the second workshop was intelligent transportation systems (ITS), in which advanced electronic and computer technologies are applied to transportation in order to improve safety and efficiency. This includes everything from real time updates on traffic and weather conditions to highway signs that show

illuminated warning messages when road conditions are poor. New highway design standards that incorporate such land use and traffic management considerations as well as stormwater runoff management would go far to help achieve Vermont's goals of land use and efficient transportation.

Local Roads Program. Another outcome of the 2014 session was that the legislature approved the transfer of the Vermont Local Roads (VLR) program from St. Michael's College to VTrans' Vermont Transportation Training Center (VTTC) by July 1, 2015. The agency is presently in the process of completing the transfer. In the short term, VTrans says there may be limited disruptions to the services the program offers to local officials. VTCC has enlisted the help of a transition manager, a temporary transition coordinator, and several temporary circuit riders. The [new website](#) has an extensive resource library with workshop materials, information guides, newsletters spanning the past 14 years, fact sheets, as well as a peer-to-peer exchange network where one can submit other resources to be listed on the site. VTTC offers workshops similar to those of the Local Roads Program. VLCT staff has received several comments about these workshops – such as a lack of focus on gravel roads and will be working with VTrans to address issues that members raise. VLCT and VTTC welcome your feedback.

Open Meeting Law Changes

The many accounts of towns across the state encountering problems trying to comply with some of the new amendments to the Open Meeting Law began before they went into effect last July 1. Five months later, they have not subsided. Larger communities found that, though it took more effort and the rearranging of priorities, the new mandates were not far from what they had already been doing without the need of a state directive. Many smaller communities, however, had neither the staffing nor the technical capacity to comply with the website posting requirements in particular and were forced to take advantage of a section of the law that relieved them of that obligation – but at the expense of a vehicle that had been providing their constituents with meaningful information and transparency.

Because of our experience in trying to operate under the new amendments, VLCT feels confident that, with several small changes enacted in the 2015 session, towns will be able to comply with the law with little or no loss of the transparency goals intended by the 2014 changes. Those changes are proposed in Section 1.03 of our 2015 Municipal Policy:

- *Require a roll call vote for anyone participating in a meeting telephonically only if the voice vote is not unanimous;*

Most motions made at any meeting are approved unanimously. Unless there is a dissenting vote when taken by a voice vote, conducting a roll call vote just wastes everyone's time.

Tie the notification of telephonic meetings to the agenda that is now required for all meetings and make that agenda detail how the public can participate instead of requiring an additional or separate "public announcement." The new amendments passed last year require some meetings to be "publicly announced," others to have "notice posted," and still others to have an "agenda posted." The fact that one or more members might participate telephonically shouldn't need to separately be "announced" 24 hours before the meeting so long as members of the public know where they can fully access the meeting through the other public notices required. The current requirement for a separate notice precludes members of the public body from participating in a meeting remotely if they find they are unable to be physically present at the meeting with less than 24 hours' notice (e.g., a sick child or a travel- or weather-related delay).

- *Increase the five-day requirement for posting minutes to ten business days;*

Keep the five-day requirement for making available paper or electronic copy of minutes upon request but extend the website posting timeframe to 10 business days. This is the biggest problem for volunteer local officials in this year's changes. Many towns have boards, commissions, and committees that meet all nights of the week. These towns also rely on a different set of volunteers to assist them with their digital



presence (i.e., their websites). Getting those minutes transcribed and posted to the web is a multiple-step process relying on the public service of many unpaid volunteers with other duties and responsibilities to their own families, work, and health. Extending the timeframe within which minutes must be posted to the websites while keeping the old law's requirement of making them available upon request within the existing five-day limit should allow many towns to re-activate their websites while improving transparency without running the risk of being found guilty of a crime.

- *Limit mandatory application of the 2014 amendment's posting and penalty requirements to statutory- and charter-required public bodies; make other municipal public bodies, including committees and subcommittees of public bodies, comply with the law as it existed before July 1, 2014;*

Many municipal subcommittees, committees, and commissions take little or no binding action on the part of the town. Who is served by requiring their members to post agendas and minutes within strict timeframes when the cost is having members risk being found criminally at fault and potentially resigning from such bodies because so much effort has to go into work that has nothing to do with the focus of that body? Our proposal would limit the mandate of assessment of penalties or attorneys' fees to the governing bodies of local governments – selectboards, city councils and school boards – and would allow the voters of the municipality – those with the most at stake in this conversation – to decide whether or not to impose punitive measures on more of their volunteers.

- *Postpone web posting requirements and all consequences for non-compliance until July 1, 2015;*

The legislation passed last year delayed implementation of criminal penalties for non-compliance with time limits for the posting of minutes to the website, but did not delay implementation of awarding attorneys' fees or for failing to comply with posting of the agenda. VLCT proposes not to extend the delay but rather to expand it to all penalties for all website postings.

- *Have the state provide and maintain a website and staff to post all meeting agenda and minutes of municipal government public bodies; and*
- *Have the state provide sustainable funding for an educational program to acquaint municipal officials with the Open Meeting Law requirements.*

VLCT suggests that the legislature add to the Secretary of State's "job description" the responsibility to assist local governments on open meeting and public records compliance, including the maintenance of a website to aid in the posting requirements. The current secretary has tried hard to improve local government transparency. This amendment would provide him with the statutory basis to continue and expand his service in this area.

VLCT anticipates that members of the news media and some self-appointed government watchdogs will resist these small but important changes that would make the system workable again. Municipal officials may need to add their voices to that debate to ensure that their concerns are heard and acted upon.

Self Governance – An Opportunity in 2015?

One of the things that Vermont local government will be looking to the 2015 legislature is for a constitutional amendment granting more flexibility and authority for city and town voters. Much has changed in the last decade for cities and towns: the way we communicate; the focus on local economy, foods, and money; and the services residents expect from their local and state governments. What has *not* changed so much is the frustration of local officials at their limited capacity to apply innovative solutions to problems or change governmental structures without the blessing of the legislature. What that takes is a constitutional amendment.

The process for amending the Vermont Constitution begins again in 2015. The opportunity to introduce

a constitutional amendment arises in alternate biennia, and 2015-2016 is such a two-year period. In order for the Constitution to be amended, the Senate has to initiate and pass a bill and the House has to concur in two successive biennia (in the current situation, the 2015-2016 and the 2017-2018 sessions) and then it has to be approved by a majority of the voters at the November 2018 general election.

Vermont is a Dillon's Rule state. That means, for better or worse, local governments have the powers that the State of Vermont expressly gives to them *only* if they are:

1. granted in express words in the law or in an approved governance charter;
2. necessarily implied or necessarily incident to the powers expressly granted; and
3. absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

In the 1860s, Iowa Supreme Court Justice John F. Dillon ruled on several occasions that municipal corporations may exercise only those powers specifically granted to them or that are (as noted above) essential to the declared purposes of the municipal corporation. As one of only a few strict Dillon's Rule states, Vermont is stuck with that dictum even today. Vermont statutes grant municipalities the authority to carry out certain responsibilities and vest in them the obligation to carry out others. Over the years, at least 37 cities and towns have adopted governance charters at the local level and sought approval for them from the legislature. Additionally, 46 incorporated villages have governance charters. Governance charters enable municipalities to deviate from statute in specific instances, when the voters in a municipality have voted to change or adopt a charter, and when that locally voted amendment has been reviewed, dissected, frequently amended, and, finally, approved by the legislature. Once the legislators have commenced reviewing a charter adopted by the voters, they may amend any part of it they choose, or choose to let the bill die on the wall of a committee room.

On the other hand, many states provide "Home Rule" to at least some of their municipalities in at least some governance areas. Home Rule states accord authority to local governments to pass laws and ordinances to govern themselves within the bounds established in state constitutions or laws. Home Rule initially was a concept of devolution of power and independence for the constituent nations of Great Britain and Ireland, and later Scotland, Wales, and Northern Ireland.

Over the years, Vermont legislators have offered a number of proposals to authorize local governments to increase their level of self-determination. Some have argued that Vermont should join 44 other states by enacting this constitutional home rule amendment: *"A city, town or village shall have the power, through approval by a majority of its voters, to adopt, amend, and repeal a charter of incorporation."* Others have proposed that charter changes adopted by voters at the local level be ratified automatically unless a certain number of legislators objected to the changes and called for the measure to be taken into committee. In some states, only certain types of municipalities may choose a self-governance model – those of more than a certain number population or those organized as cities. Vermont could choose one of those options. It could offer the authority to exercise home rule to municipalities that joined together to share government responsibilities, such as through a Council of Government or Metropolitan Association or Shire.

In fact, the Vermont Legislature has been exceedingly unwilling to have any conversation about how home rule might work or what kind of authority should be devolved from the state to municipalities. Yet, clearly, the state government is over-burdened with obligations that it cannot meet given its current resources. Perhaps when looking to solutions for the state's "structural deficit," the legislature should look to local governments as partners and begin a conversation about what self-governance could look like here. A good place to start would be with introduction of a constitutional amendment.

Public Safety

Last year, the legislature passed four bills regarding public safety and law enforcement practices:

- **Act 141** created a three-tiered system for law enforcement officials and eliminated part-time



classification of officers, a classification used by sheriffs' departments and a number of police departments and constables. It included guidelines for the executive director of the council to implement studies and surveys related to the establishment, operation, and approval of criminal justice training schools and to present findings to the council.

- **Act 180** was written to ensure that law enforcement officials use Tasers judiciously and not in specific situations spelled out in the law. It requires the Criminal Justice Training Council to report to the legislature by January 15, 2015 concerning the recommendations and policy developed pursuant to the act and report on any progress made implementing the required rules, training, and certification standards.
- **Act 193** required every law enforcement department and every constable to adopt a fair and impartial policing policy by September 1, 2014.
- And **Act 196** created a certification process and regulatory framework for precious metal dealers operating in Vermont. Updates on the progress made in implementing each of the above mentioned laws will be provided to the Government Operations Committees in the new session.

In 2013, the Vermont Supreme Court addressed Vermont's policy of incarcerating some prisoners out of state. *State (of Vermont) vs. Carpenter* involved a lawsuit over the equal protection clause, as only men were being lodged out of state. The state argued that male prisoner overcrowding is an issue in Vermont but female overcrowding is not. In this case, the court did not find in favor of the state, and the state has not shown any inclination to appeal. This means that the Department of Corrections may need to find new accommodations for several hundred prisoners who are currently being incarcerated out of state. In turn, low-risk criminals may be released into the community. As always, local officials in municipalities into which the offenders are released are concerned about what level of support services will be available to those released and what responsibilities will fall to municipalities.

Drug dependency drives petty crime and, according to many accounts, Vermont is facing an illegal opiate and prescription drug problem unprecedented in its history. Drug-related crime is a continuing and significant threat to Vermonters' quality of life. The argument about whether there is a nexus between marijuana use and other drug use or crime that results from drug use continues to rage. On November 12, the state held a public hearing on Vermont Interactive Television regarding the legalization of marijuana in Vermont. Many residents came out to speak on both sides of the issue. VLCT formally opposes the legalization of marijuana.

Last session, the legislature created a study committee of legislators to assess funding for special investigative units (SIUs) and to make recommendations for a sustainable funding source in the future. SIUs are designed to work collaboratively with federal, state, county, and local organizations including police and investigative agencies, victim advocates and social service providers to investigate sex crimes, child abuse, domestic violence, or crimes against those with physical or developmental disabilities. Twelve SIUs, serving one or more counties, are supported from a variety of sources. Program support grants, law enforcement grants, and law enforcement reimbursement grants, which are funded from the state general fund, are approved for a portion of SIU administrative and operational expenses to sustain the core functions of the respective units. Some municipalities also contribute either financial or in-kind support, and a variety of grants from federal and even private sources round out the current funding picture. The committee, which has met three times, discussed the need for efficiencies in the operation of the SIUs, creating a statewide SIU system, the potential for 100 percent state funding of the SIUs, giving authority to the assistant judges to assess a property tax to support ten percent of the cost of the SIUs, and weighting funding so that more dollars are directed to SIUs with heavy caseloads. Discussions also included equal access to justice and fair allocation of resources among counties. The committee will submit its report to the legislature and finalize recommendations for funding sources in January.

Solid Waste, Act 148

Vermont's Universal Recycling Law, Act 148, was passed in 2012; many of the phase-in dates will be

effective this July 1, 2015, including:

- Certain recyclables will be banned from landfills. (The complete list is posted [here](#).)
- Businesses and municipalities must offer recycling containers alongside trash containers in public spaces (except in restrooms).
- Haulers and municipalities must offer curbside collection of certain recyclables.
- Collection facilities must offer leaf and yard debris collection.
- Any large scale food generator that creates more than 52 tons of food waste a year must separate food scraps.
- Municipalities must implement a Variable Rate Pricing System for all municipal solid waste collection based on weight or volume of the trash by, for example, passing an ordinance.

Additionally, municipalities must adopt a Solid Waste Implementation Plan (SWIP) by June 18, 2015, to conform to the Vermont Materials Management Plan that went into effect on June 18, 2014. VLCT will host a day-long workshop on Solid Waste Management in Vermont on January 28, 2015, at the Capitol Plaza Hotel and Conference Center to address these issues. Two questions to be answered are what flexibility municipalities – which are ultimately responsible for solid waste management under the law – will have to implement the law, and will the infrastructure be in place to facilitate implementation of all the mandates listed above.

As a result of the passage of Act 175 last spring, the legislature established a Solid Waste Infrastructure Advisory Committee, to advise the Agency of Natural Resources (ANR) on the status of solid waste infrastructure and what additional infrastructure and funding are needed to accomplish the goals of the new Materials Management Plan. The committee's recommendations are due to the legislature January 15.

Act 175 also amends multiple provisions regarding solid waste management in the state. It establishes an architectural waste recycling program, under which, beginning January 1, 2015, a person who produces 40 cubic yards or more of architectural waste at a commercial project located within 20 miles of a solid waste facility that recycles architectural waste must arrange for its transfer and disposition. Also, ANR must report to the legislature by January 1, 2017, regarding the progress of the architectural waste recycling program facilities. Act 175 also strikes the one-ton vehicle exemption from the permit requirement for commercial haulers and authorizes an exemption for solid waste haulers from the requirement to collect mandated recyclables when collecting solid waste.

To address problems that passage of Act 148 may have created for cities and towns, VLCT members adopted the following Waste Management sections of the 2015 VLCT Municipal Policy:

- Ensure that the State of Vermont's rules, regulations, and guidelines are flexible enough to enable local governments to determine the most appropriate collection, storage, and treatment methods for sewage, solid waste, wastewater, and recyclables.
- Act 148 (the universal recycling law passed in 2012), should be implemented only upon ensuring that new requirements are feasible, available, and affordable for municipalities and their residents. Give municipalities the maximum flexibility to implement the Act."

The Public Service Board and Municipalities: Is There Common Ground?

According to Act 170 of 2012, 55 percent of each retail electric utility's annual sales must be met by renewable energy in 2017 and 75 percent by 2032. The Public Service Department (PSD) also established a goal that renewables will supply 90 percent of Vermont's "total energy" consumption (electric, heating, and transportation) by 2050. These ambitious goals do much to drive renewable energy projects around the state. On one hand, local officials strongly support those goals, and energy committees dedicate significant efforts to help meet them. On the other hand, renewable projects



proposed by private businesses often run afoul of other priorities that the planning statute (24 V.S.A. Chapter 117) has directed municipalities to put in place.

Renewable energy project proposals are heard at the Public Service Board (PSB) through a permitting process known as a Certificate of Public Good (CPG) and not a local zoning or development review board, or Act 250 district commission. While the PSB is required to consider municipal plans, it is under no obligation to ensure that priorities expressed in the plans are addressed. The impact of proposed wind projects, transmission projects including natural gas pipelines, and large solar installations – and the PSB’s permitting decisions on these projects – have resulted in a continuing public outcry from residents and local officials who worked hard to develop municipal planning priorities that are subsequently given short shrift in the CPG process.

According to longstanding statute 30 V.S.A. § 248, a municipality is not allowed to regulate any public utility power generating plant or transmission facility that the PSB regulates. This law has tied the hands of municipal officials who want to address the local impacts of energy projects on behalf of their municipalities. Municipalities that want their issues to be heard in the CPG hearings regarding proposed energy facilities within their borders need to be certain that their town plans are detailed and comprehensive and establish “a clear community standard.” As part of its CPG process, the PSB is required to evaluate whether or not a new project “unduly interfere[s] with the orderly development of [a] region with “due consideration” having been given to the recommendations of the municipal legislative bodies and the land conservation measures contained in the plan of any affected municipality,” according to 30 V.S.A. § 248 (b) (1).

VLCT commented to legislative committees throughout the last biennium – and to the Energy Siting Commission, established by Governor Shumlin in October 2012 – that municipal findings regarding projects seeking a CPG should be given “substantial consideration,” as is the standard in the PSB 248a process for permitting telecommunication facilities. Those recommendations have yet to be acted upon, so we will renew our call for this in the 2015 session.

On the other hand, last session the legislature did address the CPG process in the context of telecommunications applications to the PSB under 30 V.S.A. § 248a. The bills provide automatic party status to a host municipality in CPG proceedings for telecommunications infrastructure if the municipality requests it. During the statutorily-required 45-day notice period preceding filing of a 248a application, the applicant must attend one meeting with a municipality’s legislative body, its planning commission, or both, if requested by the municipality. The PSD must attend the public meeting if the municipality asks it to. The PSD then will consider any comments made at the meeting in making its recommendations to the PSB on the application. The PSD may hire experts to evaluate the project and make recommendations to the PSB. The applicant could make adjustments to the project before applying for a CPG. In turn, the PSB’s decision in issuing a CPG must include a detailed written response to each recommendation of the municipal planning commission and legislative body. These protocols would be a good start toward addressing the standing of municipalities in Section 248 CPGs for energy generation and transmission projects as well.

The PSB was also required to define “good cause” and “substantial deference” – existing terms in the statute – in a “board order.” It issued a “Second Amended Order Implementing Standards and Procedures for Issuance of a Certificate of Public Good for Communications Facilities Pursuant to 30 V.S.A.248a (Act 199 (S. 220))” in October after receiving comments from local officials, regional planning commissions, and the PSD. The PSD argued that substantial deference should mean that the measures in the local and regional plans and the recommendations of the local and regional bodies based on those plans are “presumed correct, valid, and reasonable” unless shown otherwise.

The department also recommended that “good cause” to deny substantial deference to municipal and regional conservation measures, standards and recommendations would exist where the land

conservation measures in a plan “would create a substantial shortcoming detrimental to the public good or State’s interests in 30 V.S.A. § 202c.” Municipalities would endorse both the “good cause” and “substantial deference” definitions developed by the PSD.

The board decided instead to define “substantial deference” as giving “meaningful weight” to municipal and regional comments. It ruled that “good cause” to discount municipal findings will exist where the land conservation measure in a plan would be detrimental to the public good or the state’s interests in 30 V.S.A. § 202c.

VLCT addresses these issues in its 2015 Municipal Policy which, at Section 4.06E, says: “Accord automatic party status to host municipalities in Section 248 proceedings. In every Certificate of Public Good process, the Public Service Board (PSB) should give “substantial consideration” to municipal determinations by holding hearings in municipalities that are potentially affected. The PSB should include all local determinations regarding the project within the PSB docket, formulate areas of inquiry based on concerns raised in local hearings, and ensure that the PSB decision addresses concerns raised in local hearings, determinations, and adopted municipal plans.”

The Public Service Department’s updated Telecommunications Plan, Total Energy Study, report on the Sustainably Priced Energy for Economic Development (SPEED) program, Renewable Portfolio Standards Report, and an Evaluation of Net Metering in Vermont Report are all posted [here](#). As well, the department completed a report on the impacts of requiring water and wastewater facilities to join Dig Safe at the request of the Chair and Vice Chair of the House Commerce Committee. Next session, the PSD will need to update its Comprehensive Energy Plan. Watch for opportunities to participate in that process as it gets underway.

It’s Quick; it’s Convenient; it’s Online

Last session, thousands upon thousands of local officials were emailed a link to the *Weekly Legislative Report* soon after it was written each Friday morning. Another 700 received paper copies in their mailboxes the following Saturday – but this may change as postal authorities recently advised us that in-state delivery of bulk mail could soon increase from 1-3 days to 3-5 days. We also deliver paper copies to the Vermont legislators at the State House on Tuesday mornings. We say this every year, but we do believe that reading the *Weekly Legislative Report* online is a great idea. You’ll get the news quickly and conveniently and be able to instantly access related online information via hyperlinks embedded in the articles. Plus it’ll reduce our printing and mailing costs. At www.vlct.org/advocacy/weekly-legislative-reports/, you’ll also find VLCT Advocacy’s weekly Policy Highlights that we post to You Tube. We also link to the *Weekly Legislative Report* via Facebook and Twitter at VLCT Advocacy.

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