



WEEKLY LEGISLATIVE REPORT

January 23, 2015

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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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Water Quality of State Waters

Several bills have been introduced that would address the cleanup of Lake Champlain and other waters of the state. H.4 would ban the manufacture and sale of personal care products that contain plastic microbeads, which accumulate in waterways and fish. H.6 clarifies that a property is not subject to the Shorelands Protection Act of 2014 if the owner had applied for or obtained municipal zoning and development permits for a project before the effective date of the act and no changes were contemplated in the project. H.33 would authorize a municipality to regulate surface water used as a public drinking water supply, regardless of where the water supply is located. But the major bills thus far are H.29 and H.35.

H.29, introduced by representatives whose districts are in the Lake Champlain watershed, would establish a Water Quality Improvement Fund with a capital account to fund infrastructure projects related to stormwater management and an administrative account to support activities that improve water quality. The capital account would initially be funded with \$6 million to capitalize the Vermont Environmental Protection Agency Pollution Control Revolving Loan Fund, a new program. The \$6 million would be transferred from customary Capital Bill appropriations and also include "appropriations by the General Assembly to the Agency of Natural Resources (ANR) for any other capital construction or infrastructure projects related to stormwater management." The administrative account would receive 25 percent of the revenue from the property transfer tax (which is currently set at 1.25 percent of the value of property transferred or \$1.00, whichever is greater, except the tax is 0.5 percent on the first \$100,000 of property value) and other appropriations. That 25 percent of property transfer tax revenue would be diverted from the Vermont Housing and Conservation Trust Fund and reduce by half the amount that fund now receives.

H.29 would also establish priorities for disbursement of funds from either the capital or administrative account in the following order of importance:

1. projects addressing areas of high risk of pollution or high loading of sediment in Lake Champlain in municipalities with an established stormwater district, stormwater utility, or other similar mechanism for regulation of stormwater;
2. projects or programs addressing areas of high risk of pollution or sediment loading in Lake Champlain;
3. projects identified as significant contributors to water quality problems or in critical need of water quality remediation or response;
4. projects addressing areas of high risk of pollution or high loading of sediment to an impaired body of water;

5. projects implementing a total maximum daily load plan in an impaired body of water; and
6. projects addressing areas of high risk or high loading of sediment to an unimpaired body of water;

The ANR secretary could fund another project when he or she determines a severe risk to water quality or risk of discharge exists that requires immediate abatement.

The Water Quality Improvement Fund would be repealed on July 1, 2025, and the bill states the obvious – that the General Assembly would re-appropriate any unallocated funds.

H.35 is a comprehensive bill addressing water quality and includes the administration's recommendations. Much of it addresses the way in which agriculture is managed in the state. Cropland, farmsteads, and pastures account for 40 percent of the phosphorus pollution flowing into Lake Champlain. Why do municipalities care? Lake Champlain simply cannot recover as long as stormwater runoff and phosphorus loads from farms continue unabated. If measures to address non-point sources of phosphorus discharges (including not only farms but all impervious surfaces and roads) are unsuccessful, the federal Environmental Protection Agency will come down hard on wastewater treatment facilities – most operated by municipal governments. Over the years, those facilities have significantly reduced their pollutant discharges at great expense to their users and now contribute just 3 percent of the phosphorus load to the lake.

Accepted Agricultural Practices (AAPs) are standards in law that farms must follow to reduce pollutants entering the waters of the state. They have been in place for a long time and farmers who comply with the AAPs are presumed to be in compliance with state water quality standards. AAPs are currently only required to be implemented if they are found to be *cost-effective* to the farmer, an exemption that is not available to others subject to water quality regulation. Historically, investigations of AAP violations have been conducted by the Agency of Agriculture, Food and Markets (AAFM), pursuant to a memorandum of understanding with ANR, when a complaint was filed. H.35 would require AAPs to be amended to enhance practices to reduce adverse impacts to water quality and, for the first time, impose AAPs on small farms through a small farm certification program. The term “small farm” will need to be defined by the AAFM. The certification program would be mandatory on small farms on July 1, 2017.

Farms subject to AAPs would be required to stack manure and store fertilizer and other nutrients in areas that prevent impacts to private wells or where land tends to flood, presents a danger of discharge to a surface water body, or is within 100 feet of a surface water body. Additional amendments would address animal holding areas, cultivation standards, building locations relative to surface waters, vegetative buffers along adjacent surface waters, standards for excluding livestock from surface waters, standards for reducing nutrient contribution to surface waters from subsurface tile drainage, and more.

The secretary of AAFM may require Best Management Practices (BMPs, a step above AAPs) on a case-by-case basis and will also be “practical and cost effective to implement.” When requiring a BMP, the AAFM secretary is to inform a farmer of resources available to help with the implementation.

H.35 would also require the certification of “custom applicators” – those who apply manure, nutrients, or sludge to land for hire – and that the applicators complete eight hours of training every five years to retain certification. Custom applicator trucks are often a significant problem for municipal roads, particularly during the spring when manure, sludge, and nutrients are being applied and roads are soft. Custom applicators are currently exempt from posted weight limits on municipal roads and can do significant damage to road structure and contribute materials that often end up in the state's surface waters. That exemption should be removed from the statutes.

The AAFM would be directed to consult with the Department of Forest, Parks and Recreation and the Division of Property, Valuation and Review and report to the legislature next January on compliance with AAPs and offer recommendations for making compliance a condition of participation in the current use program.



ANR proposed using the Basin Planning Process to address water quality throughout the state, a provision that is in H.35. According to the ANR's Watershed Management Division website, www.watershedmanagement.vt.gov/planning/htm/pl_basins.htm, there are 15 basins through the state, although the difference between a watershed and a basin is not clear. The Basin Water Quality Management Plans are revisited every five years, much as are municipal plans. The goals of the plans are to establish strategies that enhance, maintain, protect, or restore the basin's surface waters, ensure full support of uses of the waters, and engage all parties that are needed to reduce or eliminate pollution in a basin and protect high quality waters. H.35 authorizes ANR to contract with regional planning commissions to produce updated basin plans in their regions after consulting with all interested parties. It will be extremely important for municipal officials to participate in this new Basin Planning Process as impacts on the water will dictate how land uses are regulated and managed.

The bill would create a new stormwater management permitting program. It would define impervious surfaces as man-made surfaces including paved and unpaved roads, parking areas, roofs, driveways, and walkways from which precipitation runs off. Permits would be required for construction of any new impervious surface of one acre or more, municipal separate storm sewer systems (MS4s), industrial facilities including vehicle maintenance shops and wastewater treatment facilities treating more than one million gallons per day, construction operations, and expansions or redevelopment of more than 5,000 square feet that result in a total area of more than one acre of impervious surface. Permits would not be required for farms subject to AAPs, concentrated animal feeding operations (CAFOs), silvicultural activities subject to AAPs for forestry, or stormwater systems formerly permitted for which a municipality has assumed full legal responsibility. ANR would require permits for those discharges that would have adverse impacts on water quality or stormwater runoff.

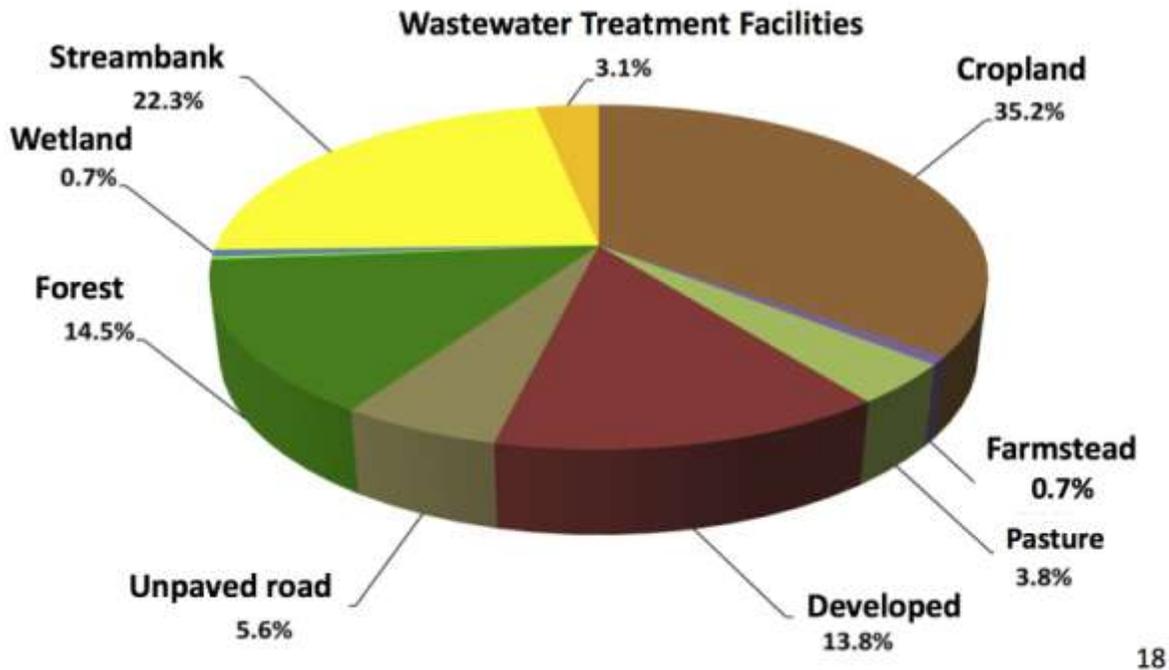
The agency would need to adopt rules to manage regulated stormwater runoff. The rules would ensure compliance with the Vermont Water Quality Standards and maintenance of pre-development runoff characteristics as much as possible. They would require using the Basin Planning Process to establish watershed-specific priorities for management of stormwater; include technical standards and BMPs to address stormwater discharges, including from construction sites; allow municipalities to assume full legal responsibility for a permitted stormwater system as part of an MS4 permit; and include standards for use of offsets (projects to mitigate stormwater impacts) and stormwater impact fees as well as for emergency permits. The ANR secretary could issue a general permit to cover a class of activities in lieu of requiring individual permits for each instance of that activity. Under a general permit, the affected persons are presumed to be in compliance with a set of standards.

H.35 would establish a Clean Water Fund with an 11-member Clean Water Fund Board (as opposed to the Water Quality Improvement Fund proposed in H.29). A new "impervious cover" assessment would capitalize the fund as could other gifts, donations, and impact fees. In his inaugural speech, the governor announced a donation from Green Mountain Keurig, Inc., of \$5 million over the course of five years that would be included in the Clean Water Fund. The board would recommend to the secretary of Administration any priorities and projects that address water pollution sources in impaired waters, that address critical sources of water pollution, riparian conditions that increase the risk of flooding, or pose a threat to life or property.

The impervious surface assessment of \$200 per parcel per year would be imposed on commercial and industrial properties, but only on those located in the Lake Champlain Basin. Industrial properties would be defined to include those used by a utility (private or public) to provide a regulated service, including a gas pipeline, water treatment plant, or electric generation facility, but not the administrative offices of the utility. Farms and forestry properties would not be subject to the fee, although the bill seems to make them eligible for project funding. The assessment would take effect on passage and apply to the April 1, 2015, grand list. The Clean Water Fund Board would provide an investment report to the legislature each

year that includes expenditures from any revenue source for water quality restoration over the past year.

Sources of phosphorus in the Vermont portion of the Lake Champlain Basin (from EPA – Tetra Tech, 2013)



On Thursday, the VLCT Board of Directors voted to support applying revenue-raising mechanisms developed to pay to clean up waters of the state statewide instead of only in some sub-state areas (such as the Lake Champlain Basin proposed in H.35). If such a revenue source is an assessment on property, it would be applied to all forms of property ownership and use. The board voted to oppose any effort to mandate that cities and towns bill or collect any “per parcel” fee levied to pay for such clean up. H.35 appears to task the state Department of Taxes with the billing and collection of the impervious cover assessment.

Additionally, H.35 includes an annual fee of \$50 per ton of fertilizer (up from \$0.25 per ton) except for agricultural limes, the proceeds of which would go to the Agency of Agriculture, Food and Markets for general administration of the agricultural statutes.

All MS4 communities would be eligible for grants and assistance from the Ecosystem Restoration Program or any other water quality financing program.

H.35 and H.29 would begin to address some of the biggest sources of phosphorus loading to Lake Champlain and would set up a fund for implementation projects. Yet we still do not have estimates of what the cleanup will cost, either overall or to each sector, particularly municipalities. Nor do we have the Lake Champlain Total Maximum Daily Load (TMDL) to spell out Vermont’s obligations. How much of the total cost would a Clean Water Fund meet? There are many questions to be answered, not all of them related to the money, before Vermont can move ahead with any certainty. VLCT will be following developments in this area very closely and informing you of the impact on local governments as they develop through the legislative process.

Contact Karen Horn at 1-800-649-7915 or khorn@vlct.org.

VLCT Board Meets with Governor, Adopts Legislative Positions

On Thursday, the Vermont League of Cities and Towns' Board of Directors met with Governor Peter Shumlin to discuss the 2015 municipal legislative agenda. The governor and the board discussed his education property tax reduction efforts, the possibility of state financial assistance to towns to help the Lake Champlain cleanup effort, his proposed employer payroll tax which he would levy to reduce the "Medicaid cost shift," the proposed elimination of the E-911 board to be replaced by the service being housed in the Department of Public Safety, and his proposals concerning the current use program.

At the meeting, the board took the following positions on legislative issues before the 2015 legislature:

- To support the governor's proposed payroll tax *if and only if* the entire proceeds of the tax plus any federal matching funds that are generated go solely to reducing or eliminating the Medicaid cost shift and that result in a dollar-for-dollar reduction in health insurance premiums, and to ensure that all providers – including municipally-funded ambulance services – get the increased Medicaid reimbursement.
- To support a temporary increase in motor fuel taxes while the cost of gasoline remains low for the purposes of assisting towns pay to improve their roads, to clean up Lake Champlain, and to increase assistance for the Class 2 and structures programs.



Staff member Dave Sichel, Dorset Town Clerk Sandy Pinsonault, Roxbury Town Clerk Tammy Legacy, and Colchester Town Clerk Karen Richard listen as Governor Shumlin addresses the VLCT Board on Thursday.

- To oppose the governor's proposals concerning the current use plan of taxing farm buildings at 30 percent of fair market value and putting a moratorium on new applications to the program for three years. Instead, the board supported replacing those proposals in the miscellaneous tax bill with last year's House-passed version of H.326. That bill would increase the penalties for withdrawing land from the program and would have towns keep one-half the revenue from such penalties in exchange for taking on more administrative duties under the program.
- To support the governor's proposal to require all farms enrolled in the current use program to use "accepted agricultural practices" or lose the tax preference, and also to support his idea of prohibiting enrollees from posting their lands against hunting and trespassing.
- To support the statewide application of any revenue source that pays to clean up our lakes and rivers,

and not only in some sub-state areas. If such a revenue source is an assessment on property, it must be applied to all forms of property ownership and use. The board voted to oppose any effort to mandate that cities and towns bill or collect any state “per parcel” fee levied to pay for such clean-up.

- To oppose the state mandating binding arbitration to resolve any local government employee collective bargaining dispute.
- To support limited municipal regulation of shooting ranges (e.g., hours of operations, nuisances such as noise) as our Municipal Policy states that “it shall be the position of the Vermont League of Cities and Towns to support provision of authority, autonomy, and resources to cities and towns.”

Contact Steve Jeffrey at 1-800-649-7915 or sjeffrey@vlct.org

Follow-Up on Governor’s Budget Article

Last week we told you of the governor’s proposed FY16 budget and that we’d get back to you on one issue we were still trying to digest – which was this: *The General Fund transfer [to the Education Fund] is supposed to be increased by an obscure cost inflator figure every year. Adding a bit of mystery to the figure is the fine print in the budget (Section E.513) that states “[t]he general fund appropriation to the education fund is calculated to reflect a **reduced contribution** to the current use appropriation, and a **re-focusing** of the Corrections Community High School of Vermont program.” [Emphasis added.]* Sure enough, the General Fund transfer figure included in the governor’s budget is not what is statutorily required to be made, but rather is reduced by several millions of dollars. This reduction is apparently justified by the administration based on two initiatives. The first proposal is to subject farm buildings on land enrolled in the current use program to the state education and municipal property taxes based on 30 percent of their fair market value. Farm buildings on enrolled property have been valued at “0” since 2003. State House historians believe that farm buildings were originally added to favorable “current use” valuation back in the late 1980s as part of something called the Working Farm Tax Abatement Program (WFTAP). At that point, their taxes were dropped based on a 50 percent valuation. The rate was later dropped to 30 percent as part of Act 60 in 1997, before being eliminated in 2003.

The Division of Property Valuation and Review reports that 1,879 current use parcels contain at least one farm building and that the total listed value of all farm buildings on enrolled lands is \$272.4 million. At the projected average residential state education property tax rate of \$1.56, this would mean a reduction of current use benefits (and an increase in state education property taxes) on farmers of about \$1.275 million annually. Farmers would pay about \$425,000 more in municipal property taxes, but towns would realize no increase in revenue as the state has made municipalities whole by reimbursing them for taxes lost due to the current use program.

We haven’t seen the whole formula yet, but we expect to see some of the reduction in General Fund support for education resulting from the administration arguing that the Education Fund benefits from this new property tax revenue. Thus, the General Fund would keep some or all of the savings, which means that other property taxpayers who have paid higher state education tax bills all along to pay for the tax reduction for current use enrollees will see no benefit.

It appears that the same will be done with an administration “re-focusing” of the Corrections Department’s education program. As we explained last week, it appears that the appropriation for the program is being cut in half from \$4 million in FY14 to \$2 million in the proposed FY16 budget. We haven’t yet seen any written testimony that explains this, but it appears that the program was providing education programs to many, many Vermonters, both in and out of our state prisons. This state cost had been shifted from the state’s Human Services Agency budget to the Education Fund in the FY12 budget, with no accompanying state money to pay for it, so the move increased property taxes that year and all

years following. Now, the administration is proposing to limit those served by the program to actual inmates— and to reduce the General Fund transfer by some amount to reap the savings. In FY12, the state transfers \$4.3 million in costs to the property tax, then this year cuts the costs to \$2 million, keeps the savings, and reduces the General Fund transfer. (We are still awaiting confirmation of the exact amount by which the transfer has been reduced in the Governor’s budget.)

Municipal officials should be speaking with their legislators and insisting that the General Fund support for the Education Fund should be fully-funded as required by state law (16 V.S.A. § 4025(a)(2)) and not “re-calculated” to a reduced amount.

Contact Steve Jeffrey at 1-800-649-7915 or sjeffrey@vlct.org

VMERS Contribution Rates to Increase Slightly (Again)

The good news is that the Vermont Municipal Employee Retirement System (VMERS) has resumed its march back to full funding. The bad news is that it is going to take another slight increase in both employer and employee contribution rates for plans B, C, and D, beginning July 1, 2015. Group B rates for both employers and employees will increase by 0.125 percent of payroll to 5.5 and 4.875, respectively. Both Group D rates will increase by 0.1 percent to 9.85 percent for employers and 11.35 percent for employees. Group C rates will see two 0.125 percent increases – one to take effect on July 1, 2015, and the other on January 1, 2016. This will be the third year in a row of similar rate increases for these three groups. Group A contribution rates will remain unchanged again this year, remaining at 4 percent for employers and 2.5 percent for employees. The rates for employers were set by the VMERS Board of Trustees on Wednesday, January 21, 2015, as authorized under state law. State law requires that the legislature set employee rates, and the VMERS Board and the State Treasurer recommended those to the appropriate House and Senate committees this week.

	VMERS EMPLOYER CONTRIBUTION RATES				VMERS EMPLOYEE CONTRIBUTION RATES			
	GROUP A	GROUP B	GROUP C	GROUP D	GROUP A	GROUP B	GROUP C	GROUP D
Current	4.000%	5.375%	7.000%	9.750%	2.500%	4.750%	9.750%	11.250%
7/1/2015	4.000%	5.500%	7.125%	9.850%	2.500%	4.875%	9.875%	11.350%
1/1/2016	4.000%	5.500%	7.250%	9.850%	2.500%	4.875%	10.000%	11.350%

VMERS has traditionally been the best funded Vermont state retirement system. (Vermont also has a state employees and a teachers’ retirement system.) In 1999, it reached a funded status of 124.6 percent of what it needed to pay all its obligations, assuming all the actuarial prognostications were accurate. At that point, the VMERS Board lowered the employer and employee rates which held for twelve years, and also established a Retirement Health Savings Account program depositing close to \$10 million into individual accounts to help retirees pay for health care costs.

Everything was going hunky-dory until the Great Recession. VMERS’ funding ratio dropped from 105.1 percent of accrued liability in 2007 to 84.4 percent in 2013. However, due to the gradual increase in contributions over the past three years and a very good year of gains on its investment portfolio (returning 10.87 percent for the year), VMERS’ ratio increased to 86.2 percent as of June 30, 2014.

The VMERS Board hopes that it has turned the corner and can return to fully-funded status in the near future. Thanks are due to the concerted efforts of employee groups that agreed with the need for

employee rates to increase along with those of the employers. It also asks that the legislature quickly act to implement the rate increases proposed by the Board so that everyone can begin to better prepare their budgets.

Contact Steve Jeffrey at 1-800-649-7915 or sjeffrey@vlct.org

LGD2015

A new legislative biennium demands new efforts from local officials to ensure that our representatives and senators truly understand local issues. Join us in Montpelier on Wednesday, February 18, for **Local Government Day in the Legislature 2015** where you will be able to:

- learn the latest on funding for education and transportation at VLCT-sponsored policy briefings;
- talk to the members of the Government Operations and Transportation committees;
- attend a meeting of the House Fish, Wildlife and Water Resources Committee, which expects to vote out its Lake Champlain cleanup bill that day;
- tour the State House with State Curator David Schütz;
- join your legislators at the Capitol Plaza for lunch, where the governor will speak.

You can register for Local Government Day online at www.vlct.org/eventscalendar. More details to the day's agenda will follow as the February 18 date approaches.

Vermont Senate Standing Committees, 2015 Legislative Session

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Sen. Michael Sirotkin

Sen. David Zuckerman, Vice Chair

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TRANSPORTATION**Sen. Dick Mazza, Chair**

Sen. Dustin Degree
Sen. Jane Kitchel

Sen. Richard Westman, Vice Chair

Sen. Peg Flory

BILL NUMBER	NEW BILLS SUMMARY	CURRENT LOCATION
H.24	Would (1) provide individuals and families with incomes between 300 and 400 percent of the federal poverty level with premium and cost-sharing assistance for plans purchased through the Vermont Health Benefit Exchange, (2) increase the amount of the cost-sharing subsidies available to individuals and families with incomes between 200 and 400 percent of the federal poverty level, and (3) impose an excise tax on sugar-sweetened beverages.	House Health Care
H.25	Would enable a landowner to designate his or her property for use as a natural burial ground.	House Gen., Housing and Military Affairs
H.27	Would eliminate the requirement that the Secretary of Agriculture, Food and Markets determine that adequate financial assistance is available to farmers before he or she requires the implementation of best management practices to control agricultural runoff to surface waters.	House Agriculture and Forest Products
H.29	Would establish a Water Quality Improvement Fund to use existing revenues to fund water quality improvement, including implementation and administration of municipal stormwater management programs.	House Fish, Wildlife and Water Resources
H.31	Would prohibit a person from being intoxicated in a public place if as a result of the intoxication the person cannot exercise care for his or her own safety or the safety of others, or interferes with, obstructs, or prevents the use of a street, sidewalk, or other public way.	House Judiciary
H.33	Would authorize municipalities to adopt ordinances to regulate the surface water use of a public water used as a public drinking water supply, excluding any transboundary lake or pond.	House Fish, Wildlife and Water Resources

BILL NUMBER	NEW BILLS SUMMARY	CURRENT LOCATION
H.35	Would adopt multiple provisions related to the remediation and preservation of the waters of the State.	House Fish, Wildlife and Water Resources
H.36	Would establish a product stewardship program for waste motor vehicle tires.	House Natural Resources & Energy
H.37	Would require the owner of a dam in the state to register the dam with the Department of Environmental Conservation (DEC), and would establish a process by which DEC may designate a dam over which it has jurisdiction as abandoned.	House Fish, Wildlife and Water Resources
H.38	Would prohibit a school district from paying tuition for a resident student to attend an out-of-state public or independent school.	House Education
H.40	Would repeal the Sustainably Priced Energy Enterprise Development Program effective July 1, 2015. Effective in 2017, would create a Renewable Energy Standard and Energy Transformation (RESET) Program for electric utilities that would: (1) convert Vermont's existing total renewables targets for those utilities into a requirement to own renewable energy or renewable energy credits (RECs) from renewable energy plants; (2) require ownership of specified amounts of renewable energy or RECs from smaller scale distributed renewable generation, which would count toward the total renewable energy requirement; and (3) establish an energy transformation requirement that utilities would meet through distributed renewable generation or projects that reduce Vermont's fossil fuel consumption, or both.	House Natural Resources & Energy
H.42	Would prohibit the Public Service Board from establishing a low-income energy assistance program funded by ineligible ratepayers on a mandatory basis and make residential ratepayer funding of the program voluntary.	House Commerce & Econ. Development
H.44	Would impose a moratorium through June 30, 2016, on any new legislation that would increase education property tax rates.	House Education
H.45	Would require opioid treatment programs authorized by the Department of Health to report to the Vermont Prescription Monitoring System when methadone or medication containing buprenorphine is first dispensed to a patient or when the patient's prescription is altered.	House Human Services
S.23	Would prevent an injured worker from agreeing to a final settlement of his or her workers' compensation claim without being fully informed as to the terms and potential consequences of such an agreement.	Senate Finance
S.29	Would allow voters to register to vote on the day of an election.	Senate Government Operations
S.31	Would prohibit a person convicted of a violent crime from possessing a firearm; require a criminal background check to be conducted on the proposed purchaser before a firearm may be sold unless the sale is between immediate family members, by or to a law enforcement agency, or by or to a law enforcement officer or member of the U.S. Armed Forces acting within the course of his or her official duties; and require the court administrator to report to the National Instant Criminal Background Check System in certain circumstances.	Senate Judiciary
S.32	Would require beverage manufacturers and distributors to remit abandoned beverage container deposits to the state for deposit in a Clean Environment Jobs Fund established to provide grants to business engaged in solid waste management and recycling.	Senate Natural Resources & Energy
S.33	Would transfer the administration of the Vermont Enhanced 911 system to the Department of Public Safety.	Senate Finance