



WEEKLY LEGISLATIVE REPORT

February 6, 2015

Inside This Issue

- 3 [Open Meeting Law Changes](#)
- 5 [Marijuana Legalization and the RAND Report](#)
- 6 [Local Government Day 2015](#)
- 8 [New Bills](#)

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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Who Will Pay to Clean Up Lake Champlain?

Local governments are committed to doing their part to clean up the waters of the state, and they *will* be asked to do a lot. Among the roles envisioned by state policy makers and the Environmental Protection Agency (EPA), local governments will have to put in place practices to eliminate stormwater runoff from roads and impervious surfaces; protect rivers and streams from erosion; enact regulations to ensure that development occurs outside the floodplain, flood way, and river corridors; retrofit downtowns and urban centers to allow stormwater runoff to infiltrate the soil before it reaches the surface waters of the state; upgrade wastewater treatment facilities to remove more and more phosphorus from discharges; address combined sewer overflows; sweep streets; educate the public; and conform municipal plans to tactical basin plans.

Local governments are well aware of the consequences of their failure to act, because municipal wastewater treatment facilities are in EPA’s cross hairs if Vermont’s focus on non-point sources does not reduce phosphorus discharges to the lake. The governor explained it well in his inaugural address:

“Should the EPA reject our plan, we know the measures they would require will be more costly and less targeted than the plan we have laid out for ourselves. We know the biggest contributors to our water quality problem – 40 percent from farm runoff and 20 percent from roads and developed lands. We also know the largest pollution sources that we should address first and where they are located. If the EPA does not approve our plan, we would lose the flexibility to target our biggest problems first and instead have to spend hundreds of millions of dollars on the limited areas where federal law gives the EPA direct authority – upgrading our municipal wastewater plants, even though pollution from these plants only contributes about 3 percent to our Lake Champlain water quality problem. That does not meet Vermont’s common sense test.

“First, with your support, we will help towns meet their obligation to properly maintain roads to prevent runoff leading to erosion, which will keep nutrients and sediment out of our water. We will help them implement modern storm water management systems that capture and treat the polluted runoff from dirt roads, streets, and parking lots.”

Municipalities are not the only ones being asked to do a lot more. Agriculture, which contributes 40 percent of the phosphorus into Lake Champlain, will need to comply with newly revised and more stringent Accepted Agricultural Practices to ensure acceptable water quality, small farms will need to be certified; livestock will have to be excluded from streams; manure, fertilizer, and pesticides must be stored away from waters of the state; and buffer strips will have to be established along surface waters and ditches. Land owners and developers will be subject to more intense regulation and fees to prevent stormwater runoff from reaching the waters of the state.

As the financing picture takes shape, it is evident that municipalities are being asked to pay for a lot more than merely implementing new mandated programs without much in the way of funding. The Agency of Natural Resources (ANR) advanced a proposal for fee increases and revisions, which it estimated would raise \$1.5 million in new revenues in FY16 to pay for 13 new positions at the Department of Environmental Conservation to administer new stormwater programs – much of that cost will be borne by municipal property taxpayers and sewer users. In FY15, the current fiscal year, water quality-related fees generated \$1 million in revenues, so the proposal increases these costs by 150 percent.

The proposal – which is now rolled into H.35, the Lake Champlain cleanup legislation–, includes 52 new fees for water quality programs. It would require municipalities to pay 16 existing fees that they have been exempt from in the past because those funds could not generally be recovered through user charges and, therefore, would be paid by increased property taxes. It doubles or more than doubles 11 fees. By some estimates, \$1 million of the \$1.5 million in new fee revenues would be paid by municipalities. Do you sense something wrong with this picture?

Almost all of those fees charged to municipalities will need to be paid by municipal taxpayers and service users because the administration is not willing to propose an upfront tax source to cover the costs of running state administrative departments. Fees are a back door way to generate revenues to run departments. Yet the governor in his inaugural address recognized, “With health care costs and education spending eating up income faster than Vermonters can earn it, we owe it to them to control spiraling health care costs, address property taxes, and keep growing jobs and expanding businesses.”

Today, according to the Department of Human Resources’ Workforce Report for 2014, the Department of Environmental Conservation has 284 employees, which, along with 136 Department of Fish and Wildlife, 103 Department of Forest, Parks and Recreation, and 35 Natural Resources employees, totals 523 ANR employees. One must ask whether the agency has taken a hard look at its priorities and obligations in light of the Lake Champlain Total Maximum Daily Load (TMDL). What is the agency doing now that it might not need to do? Where can efficiencies be found? How could some of those 523 staff members be realigned to address these new water quality obligations from the federal government without increasing staff at the expense of those who are mandated to implement the programs for which they must obtain permits and pay fees? Local officials do not have the answers to those questions. But municipal officials are asked those questions every time they put a budget before the voters. The state government should do the same.

Testimony in the House Fish, Wildlife and Water Resources Committee this week indicated that the cost of a full time equivalent employee was about \$95,000 once benefits and overhead were included. Thirteen employees would cost approximately \$1,235,000. The remaining dollars would go to regional planning commissions for planning efforts, especially around transportation-related water quality programs.

Understanding that a lot of money will be required to pay for projects that reduce stormwater flow to the waters of the state, VLCT has proposed two revenue sources to support new programs. One is the gas tax. (See [Weekly Legislative Report No. 5](#).) One penny on the gas tax raises over \$3 million, and could be targeted to help pay for the pollution impact of our local road system. The second is agreeing that some kind of per-parcel fee enacted by the state legislature, assessed on everyone – *no* exceptions – and collected by the Vermont Department of Taxes, which, after all, was created to collect taxes, is appropriate. The amount raised by such an assessment would depend on its amount and frequency of its payment, which would be determined by the legislature.

The Agency of Agriculture, Food and Markets proposed hiring seven new staff with the proceeds of a fertilizer tax that was highlighted in the governor’s budget speech. In this case, the governor stepped up with a transparent funding mechanism – a new tax, to pay for those new positions. The Agency of Agriculture, Food and Markets has 95 employees, and by many accounts does not have the staff to

provide the intensive in-the-field technical assistance and oversight that new programs require.

Local officials should contact their representatives to oppose the administration's fee proposal, which will significantly impact municipal government and local taxpayers and fee payers. Instead, urge the legislature to raise revenues directly and transparently to fund programs that are determined to be essential instead of sliding them onto the property tax, after ensuring that these new costs cannot be borne through savings that can be realized in current state staffing.

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

Open Meeting Law Changes

On Wednesday, the Senate Government Operations Committee began to address some of the concerns that have been raised with the Open Meeting Law amendments passed last year. Towns have now had seven months of operating under the new, substantially expanded requirements. Now, we get to propose solutions to specific problems they have encountered.

Larger communities find that the new mandates were not far from what they had already been doing without the need of a state directive. However, the new law established new penalties for anything but strict compliance, required heightened vigilance, and quicker turnaround. For many smaller communities, the lack of staffing and the technical capacity to comply with the website posting requirements in particular have forced them to take advantage of a section of the law that relieved them of that obligation – but at the expense of a vehicle (their website) that had been providing their constituents with meaningful information and transparency.

The committee hearing began with an overview of the law as amended last year. VLCT then presented a draft bill that contained cures to the problems that towns have shared with us in their compliance efforts. The bill proposes to:

- *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 a website to ten business days;*

The draft bill would 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 local legislative bodies and make other municipal public bodies, including committees and subcommittees of public bodies, comply with the law only if their voters require it;*

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.

- *Extend the time in which a public body must meet to respond to and acknowledge alleged violations of the law from "seven business days" and "14 calendar days" respectively to the date of its next regular meeting.*

Many town boards and commissions meet only once a month. Depending on when an individual makes an assertion of an alleged violation of the law, the current process could require two additional special meetings, with each meeting requiring the extensive warning and minute preparation and posting requirements. If an allegation seriously jeopardizes actions taken at a meeting, this new language would allow the public body to cure it earlier if it felt it essential, but could wait until its next regular meeting if it felt the public would not be jeopardized.

- *Clarifies that by acknowledging that the strict compliance with the law might not have been met, a public body is not put in the position of admitting guilt to a misdemeanor.*

The new law requires that to cure a violation of the law, the public body must "acknowledge the violation of the subchapter." In lawyer-speak, that can be read as admitting guilt to the crime specified in the law that results in a fine of not more than \$500. The bill would allow the public body to cure its mistake, without admitting criminal guilt.

- *Postpone penalties for failure to meet 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 to and expand his service in this area.

VLCT believes that with these small but important changes, town officials can serve the public interests



and comply with law without threatening the willingness of our citizens who play an active role in their governance. We anticipate 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. Plan to speak to the open meeting amendments at Local Government Day on February 18, when local officials will meet with the House and Senate Government Operations committees.

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

Marijuana Legalization and the RAND Report

Last May, Governor Shumlin signed Act 155 (S.247), which required the Secretary of Administration to produce a report about the consequences of legalizing marijuana in Vermont. The Secretary contracted with the RAND Drug Policy Research Center to submit a report to the Vermont Legislature, which it did on January 16, 2015. This 218-page report, titled [*Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions*](#), begins by examining the current global climate of marijuana legalization and states and countries that have either eliminated or loosened prohibition against marijuana.

While federal law still prohibits the production, distribution, sale, and possession of marijuana, the U.S. Department of Justice has issued priorities for enforcing such laws that focus on public health and safety. The report examines:

- the marijuana landscape in Vermont – data indicate that marijuana prevalence is among the highest in the nation;
- scientific literature and evaluates the medical and psychological consequences associated with marijuana consumption;
- the range of choices between complete legalization complete prohibition of marijuana; and
- 12 supply alternatives to prohibition – two options are to regulate marijuana similarly to alcohol or to allow adults to grow their own marijuana.

The report then focuses on how to derive revenue from marijuana sales and the options that exist for taxing marijuana – for example, by weight or based upon its potency and percentage of tetrahydrocannabinol (THC), the chemical responsible for most of marijuana’s psychological effects. Regulation of marijuana is a significant issue and can influence other market factors. A major issue that has arisen in Colorado – where use of the drug is legal – is how to keep it from crossing to a state where its use is not legal. The report also considers the costs of regulating legalized marijuana: What time and resources would be spent enforcing the regulations? What agency would be in charge of regulations? Who would balance commercial interests with public welfare? The report also touches on issues such as personal liberty, potential generated state revenue, and substance abuse. The study provides a comprehensive look at the potential benefits and costs of marijuana legalization in Vermont but does not propose a suggested course of action to the legislature.

This year, there is potential for a bill to legalize tax and regulate the production, sale, and recreational use of marijuana in Vermont. The bill would allow for a regulatory framework for the sale of marijuana under the authority of the Liquor Control Board. One option is for the board to impose an excise tax on any sales of marijuana. State of Colorado reports indicate that legalizing marijuana has led to a number of negative consequences including:

- an increase in marijuana-related hospital visits for minors;
- an increase in minors’ use of marijuana; and
- an increase in the number of driving fatalities related to marijuana use.

Additionally, the correlation between marijuana use and students who drop out of high school is reported to be positive. Were marijuana to be legalized without stringent government control, some fear that marijuana could be advertised to younger people in the same way that tobacco has been marketed in the past.

Legalizing marijuana might also open up Vermont to potential lawsuits. Nebraska and Oklahoma, for example, have filed a lawsuit against Colorado with the U.S. Supreme Court, arguing that Colorado's law legalizing recreational marijuana is unconstitutional and places an undue burden on them, particularly in the area of law enforcement.

The Vermont Legislature needs to consider the potential for increased numbers of hospital visits, minors who are exposed to marijuana, driving fatalities resulting from marijuana use, and high school dropout rates before acting on marijuana legalization. VLCT opposes marijuana legalization.

Contact Chloe Collins at 1-800-649-7915 or ccollins@vlct.org.

Local Government Day in the Legislature

As articles in today's and former *Weekly Legislative Reports* attest, there are many issues that local officials will want to discuss with their senators and representatives. As we've said before, an excellent opportunity to do so is on Wednesday, February 18, **Local Government Day 2015**. Here's an agenda of the day's scheduled events. (You can *still* register online at www.vlct.org/eventscalendar.)

- 8:15-8:45 a.m.** **Registration at the Capitol Plaza Hotel**
Greet colleagues and VLCT staff over breakfast. Browse VLCT and VMCTA information.
- 8:45-9:00 a.m.** **Welcome**
John Hollar, Mayor, City of Montpelier
Tammy Legacy, Town Clerk, Roxbury; President, VMCTA
- 9:00-9:25 a.m.** **Legislative Relations: Use Today to Your Town's Best Advantage**
Karen Horn, Director, Public Policy and Advocacy, VLCT
- 9:25-9:40 a.m.** **Summary of the Day's Events and Speakers**
Steven Jeffrey, Executive Director, VLCT
- 9:40-10:20 a.m.** **Policy Briefing Roundtables**
Open meeting Legislation
Steven Jeffrey, Executive Director, VLCT, and
State and Federal Transportation Funding
Chris Cole, Deputy Secretary, Agency of Transportation
- 10:20-10:30 a.m.** **Walk to State House**
- 10:30 a.m.-noon** **Attend House and Senate Committee Meetings**
11:00a.m.-noon **Senate and House Transportation Committees (room 11)**
(local aid programs, gas tax, stormwater management, related issues)
- 11:00 a.m.-noon** **House Natural Resources and Energy Committee, Room 44**
(solid waste management issues)
- 11:00 a.m.-noon** **State House tour with David Schutz**



Sen. Bernie Sanders speaks at Local Government Day 2014.

- 12:00-12:10 p.m. Return to Capitol Plaza**
- 12:15-1:30 p.m. Luncheon with Your Legislators at the Capitol Plaza Hotel**
Sandra Harris, President, VLCT, will introduce Governor Peter Shumlin
VLCT Lifetime Achievement Award presented to John Cushing, Town Clerk,
Milton
- 1:45-2:00 p.m. Return to State House**
- 2:00-3:00 p.m. Observe floor action in House and Senate Chambers**
Attend House and Senate Committee Meetings in Committee Rooms
Senate and House Government Operations, Senate Chamber
(Open Meeting Law, same-day voter registration, public records, self governance)
- 2:30-3:00 p.m. Treats in the Cafeteria**

BILL NUMBER	NEW BILLS SUMMARY	CURRENT LOCATION
H.107	Would establish an Office of the Landowner Advocate to ensure landowners have representation during siting and condemnation proceedings for energy facilities to be constructed by public utilities and in easement negotiations with those utilities.	House Commerce & Econ. Development
H.109	Would clarify that municipalities, in their land use bylaws, may regulate signage associated with certain listed uses.	House Government Operations
H.115	Would require the Secretary of State to prepare separate ballots in presidential primaries for military or overseas voters to enable these voters – who by federal law must receive their ballots 45 days in advance of the election – to rank their choice of candidates in case a candidate withdraws by the time of the election.	House Government Operations
H.117	Would establish a Division for Telecommunications and Connectivity within the Department of Public Service, create a Telecommunications and Connectivity Advisory Board, and make various other amendments and clarifications regarding the Vermont Universal Service Fund fiscal agent, the Connectivity Fund, the High-Cost Program, and the Connectivity Initiative.	House Commerce & Econ. Development
H.124	Would adopt multiple economic development provisions.	House Commerce & Econ. Development
H.125	Would exempt public towing and storage service operators from the laws governing salvage yard operations.	House Natural Resources & Energy
H.127	Would create a simpler education finance system that offers greater accountability by transitioning to a tiered education tax that would vary based on income and per-pupil spending per town, along with a fixed statewide residential property tax that would be significantly lower than the current base residential rate. The income-based education tax would be administered through the current income tax system.	House Education
H.128	Would amend Vermont law in accordance with Act 186 of 2014, which established the framework enabling state government to use results-based accountability (RBA) to assist in its decision making. Would change language in Vermont laws that already require performance analysis so that those laws use RBA’s common language.	House Government Operations
H.129	Would make miscellaneous amendments to election laws that contain the term “town,” “municipality,” or “political subdivision” in accordance with the definitions of those terms: under 17 V.S.A. § 2103(34), “town” includes a city; under 1 V.S.A. § 126, “municipality” includes a city, town, town school district, incorporated school or fire district, incorporated village, and all other governmental incorporated units; under 17 V.S.A. § 2103(24), “political subdivision” means any county, municipality, representative district, senatorial district, school district, fire district, water, sewer, or utility district, ward, and any consolidation of the foregoing entities authorized under Vermont law.	House Government Operations
H.130	Would elevate the Department of Public Safety to an Agency of Public Safety and make amendments in accordance with this change.	House Government Operations
H.152	(Short form) Would make various changes to Title 18, chapter 84, subchapter 2, “Forfeiture of Regulated Drugs.”	House Judiciary
H.153	Would define the scope of the executive privilege in the context of its applicability as an exemption to the Public Records Act. Would limit the applicability of the Public Records Act exemptions for executive privilege and for records relevant to litigation, in connection with records relating to a report or other material required to be submitted to the General Assembly by a date certain, if the report or other material is not timely submitted.	House Government Operations
H.158	Would amend Act 250’s “settlement patterns” criterion to exempt development to be located in an existing commercial or industrial district if the municipality approves the development under its land use bylaws.	House Natural Resources & Energy
S.57	Would change the fee that deputy sheriffs and their assistants are paid to transport prisoners, juveniles, and persons with a mental condition or psychiatric disability from \$18.00 to a rate to be established by the Department of State’s Attorneys and Sheriffs in accordance with the appropriation made to the department.	Senate Government Operations