



# WEEKLY LEGISLATIVE REPORT

April 17, 2015

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

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## H.35 out of Senate Natural Resources

On Wednesday, the Senate Natural Resources and Energy Committee voted out [H.35, the Water Quality Bill](#), as a strike all amendment to the bill the House passed on April 2. Much of the House-passed bill is intact and would implement programs to clean up Lake Champlain and waters of the state in order to comply with eventual Environmental Protection Agency (EPA) mandates through Total Maximum Daily Loads (TMDLs). The bill is now in the Senate Finance Committee, where members already took testimony yesterday. As mentioned in earlier articles, the details of the programs to implement TMDL requirements cannot be finalized until the EPA issues the Lake Champlain TMDL, which is not expected until sometime this summer.

The bill voted out of Senate Natural Resources would still expand and increase permit fees on municipalities in order to fund new positions at the Department of Environmental Conservation (DEC) to administer new and enhanced stormwater programs. The committee did add a provision that permit fees would not be assessed on towns until they have had the opportunity to include those expenses in their municipal budgets for next year.

H.35 would assess a flat \$25 per parcel fee on every parcel not exempt from paying property taxes (non-profits, schools, state property, churches and more) to be billed and collected as part of the property tax bill at the local level and remitted to the State Treasurer. All properties exempt from paying property tax would also be exempt from paying this fee, regardless of the impact those parcels have on the water quality of the state. There are 323,000 taxable parcels in Vermont as well as approximately 10,000 properties that are tax-exempt that the Department of Taxes is aware of at this time. This is basically a new state property tax that towns will have to bill and collect. It is equal to another 0.8 cent tax rate across the state.

Language setting forth how town treasurers are supposed to bill and collect this fee is on pages 116-118 of the [committee's version of the bill](#).

The fee would raise approximately \$8 million and capitalize a new Clean Water Fund, which would be used to (1) assist the state in complying with water quality requirements; (2) fund staff positions at the agencies of Natural Resources, Agriculture, Food and Markets, or Transportation; and (3) provide funding to nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects.

In FY16, \$952,000 would be appropriated from the Clean Water Fund to pay for seven new staff positions at the Agency of Agriculture, Food and Markets. An additional \$1,312,556 would be diverted from the fund to pay for 13 positions to

implement water quality programs and contract with regional commissions. The Clean Water Fund Board would consist entirely of state agency secretaries and eliminate other members, including municipal representatives who were included as board members in the House-passed bill. In the first three years, aside from the \$2,264,556 diverted to pay for new agency staff positions in FY16, the board would need to prioritize awards or assistance to municipalities for municipal compliance with water quality requirements. After that period – and particularly if deficits continue – we strongly suspect that a board composed entirely of state agency secretaries would decide to use the new Clean Water Fund for state level administration and project costs. The per parcel fee would sunset on July 1, 2021.

Urge your senators to oppose the expansion of permit fees and increases in permit fees assessed on municipalities to pay for new DEC stormwater staff. Urge them to direct DEC to reprioritize existing staff to implement stormwater programs. Make clear to them that increased fees means increased property taxes.

Urge your senators to retain the current requirement that DEC pay 100 percent of capital costs of phosphorus removal projects at wastewater treatment facilities. The current statute conditions that requirement on availability of funds, and both the requirement and caveat have worked well for decades. Removing that requirement will increase property taxes.

VLCT supports a state revenue raising mechanism that is applied to all parcels or polluters in the state and that is collected at the state level and that does not further burden the property tax. More than in earlier versions of H.35, it is clear in the Senate Natural Resources draft that Clean Water Fund dollars will be used to fund state staff and state priorities as well as agricultural, municipal and private projects. Urge your senators to require the Vermont Department of Taxes – or a capable contracted entity such as the New England Municipal Resource Center – to bill and collect the per parcel fee.

Make sure your senators understand the tremendous amount of work and money that will be required of municipalities to comply with stormwater permits on municipal roads and impervious surfaces.

Contact Karen Horn at 1-800-649-7915 or [khorn@vlct.org](mailto:khorn@vlct.org).

## House Set to Vote on Mandatory Paid Sick Leave

The House of Representatives appears poised to vote on [H.187](#), a bill that would mandate almost all employers – including all municipalities – to provide paid sick leave to all employees except seasonal and temporary workers. The bill is expected to be voted out favorably by the House General, Housing and Military Affairs Committee today. From the municipal perspective, the bill:

1. Requires that all employees, except those working fewer than 20 weeks a year and temporary employees, accrue not less than one hour of earned sick time for every 40 hours worked (limiting employees who are exempt from the Fair Labor Standards Act and who work more than 40 hours a week to earning one hour of paid leave per work week). There are no minimum hours of work per week that an employee has to work to accrue this amount of paid sick leave. There is no minimum size of an employer's workforce, so a municipality with one part-time employee needs to comply;
2. Allows employers to require new hires to wait a year or work 1,400 hours, whichever occurs first, before actually taking any paid sick leave earned;
3. Allows the employee to use the state-required sick leave earned if:
  - the employee is ill or injured;
  - the employee has health care services provided (such as appointments);
  - the employee is caring for a sick or injured parent, grandparent, spouse, child, sibling, parent-in-

law, grandchild, foster child, person residing with the employee, or family member for whom the employee is primarily responsible to arrange or provide care, including helping that individual obtain health care services;

- the employee is arranging social or legal services for or obtaining medical care or counseling for any of the above listed individuals who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of such crimes being committed against them; or
  - the employee is arranging or providing care for any of the above listed individuals whose school or business is closed for public health or safety reasons;
4. Allows an employer to provide a “combined time off” or “paid time off” policy (i.e., one pot of paid time off to be used for sick, vacation, personal, bereavement and sometimes holiday leave) in lieu of a dedicated sick leave program so long as it can be used for all the reasons listed above and provides as much or larger rate of earning the time off required above;
  5. Allows the employee to use this sick leave earned in the smallest time increment that the employer’s payroll system uses to account for other absences;
  6. Allows employers to limit the amount of paid sick leave an employee can earn or use for 2016 and 2017 to 24 hours in a 12-month period and 40 hours in a 12-month period for the years following 2017;
  7. Requires that paid sick leave be paid at the hourly wage rate of the employee or the minimum wage, whichever is more;
  8. Requires employee benefits provided for working hours to be provided during any period in which an employee uses such paid sick leave;
  9. Requires that any such unused sick leave accrued at the end of the calendar year be carried over into the next year “and the employee has the right to earn the balance between the unused portion and maximum allowed,” unless the employer chooses to pay the employee for any unused leave available at the end of the year;
  10. Does not require the employer to pay an employee terminating employment for any of this paid leave that is unused at termination;
  11. Specifies that an employee rehired within 12 months after separation of employment begins earning and is able to use such sick leave immediately but does not retain or recoup any sick leave lost when originally separated;
  12. Prohibits an employer from requiring the employee using such paid leave time to arrange to find a replacement;
  13. Allows an employer to require an employee planning to take such paid leave to make reasonable efforts to schedule routine or preventive health care outside of work hours and notify the employer “as soon as practicable” of his or her intent to use and the expected duration of such leave;
  14. Allows the employee to avoid using such paid leave with the agreement of the employer if the employee works some other hours or trades shifts with another employee to make up the time off; and
  15. Requires the employer to calculate the amount of earned sick leave that each employee has accrued each pay period or quarterly, so long as the employee may use the sick leave as it is earned during that quarter.
  16. Any employer violating these requirements shall be subject to a fine of not more than \$5,000 and be liable to the employee for actual damages caused by the failure to pay for the benefits.

Just because your town may provide more paid sick leave than 24 hours a year does not mean that you can set it and forget it if H.187 becomes law. Is your paid sick leave available to every employee (except those working 20 weeks or fewer or temporary employees), regardless of how many hours a week they may work, or do you have some threshold (e.g., 20 or 42 hours a week of work) to be entitled to such leave? Does your policy allow for sick leave to be used for all the purposes set forth in the list above? Do you allow it to be used for meeting the needs of the cast of characters associated with the employee above? Unless your policy allows for all the uses and applies to all your employees set forth above, regardless of how many hours they work, you will either need to conform your sick leave policy to the above or provide two sets of sick leave – that required by H.187 and a different amount of town-provided paid sick leave available to only those employees to whom you wish to make it available, for the purposes for which you wish to make it available, and the conditions under which it can be carried over as well as other requirements and processes you wish to use.

All but 17 of the 131 towns that responded to the 2014 VLCT Municipal Benefits Survey reported having an “official sick leave policy,” and seven of those reported not having an official policy reported providing paid sick leave. The minimum sick leave made available was 2.5 days a year, and that is in a town with 108 inhabitants. Six towns reported providing three paid sick days a year, the minimum under H.187 for its first two years of implementation. The largest town reporting not having sick leave available to its employees listed four full-time employees and three part-time employees.

VLCT has not taken an official position on H.187. Ninety-two percent of reporting cities and towns already provide at least the minimum number of paid sick leave hours to at least their full-time employees for at least some of the reasons allowed under H.187. Town officials should review their personnel policies and, in particular, their sick leave policies to determine what changes they would need to make to come into compliance if H.187 becomes law. Let your representatives and senators know what impact you think H.187 might have on your town.

Contact Steve Jeffrey at 1-800-649-7915 or [sjeffrey@vlct.org](mailto:sjeffrey@vlct.org).

## PSAPs Funded by County Property Tax?

Please remind your senators that H.490, the FY16 Appropriations Bill, needs to be amended from that passed by the House by eliminating language that allows county side judges to provide public safety dispatch services at a public safety answering point (PSAP) as part of the county budget and paid for by the county property tax paid by the towns. VLCT supports language that would allow towns that wished to procure such services to contract with the county and pay for such services on their own. VLCT reported this issue in our [Weekly Legislative Report No. 12](#).

The PSAP consolidation “solution” included in the House-passed [H.490](#) is a good news/bad news story. First, the good news. The House bill includes a measure to put off until next September the decision to consolidate the four state-run PSAPs into two. This measure gives the Commissioner of Public Safety a chance to consult with local and regional entities, including legislators, to search for funding solutions.

The bad news is that language included in H.490 could give county side judges huge new authority to unilaterally include services to be provided by county government, whether or not municipalities wanted them, funded by the municipal property taxes – and, potentially, very soon. Section E.208.4 (found at page 140 of the [bill](#) as passed the House) includes the following: “if agreement is reached with a regional group on or before September 15, 2015, the Commissioner of Public Safety shall contract with the **assistant judges, acting on behalf of a county** of the State under this section, **to provide dispatching functions**, at a public safety answering point, **paid for at the local level as part of the county budget.**” [Emphasis added.] The “regional group” referred to comprises “state legislators, assistant judges,

municipal officials, and emergency representatives for the areas served by the dispatching functions of the State-operating public safety answering points.”

Municipal officials are aware that the two side judges unilaterally adopt the county budgets (after holding a required public hearing) and then are authorized by 24 V.S.A. § 133 to “*make and deliver to the county treasurer a written order directing the treasurer to issue, on or before March 1 following, the statements required by 32 V.S.A. § 4965, and warrants to the several treasurers of the towns for the collection of a tax sufficient to pay such indebtedness and estimated expense.*” Unlike every other expense on the municipal property tax, it is *not* subject to town voter approval.

Again, urge your senators to amend H.490 to prevent expanding the county budget or county property tax. Instead, allow towns individually to contract with and pay the county for any dispatch services they wish to have provided. This system works well already in Lamoille County.

Contact Steve Jeffrey at 1-800-649-7915 or [sjeffrey@vlct.org](mailto:sjeffrey@vlct.org).

## Dam Safety

Over the last few weeks, the House Fish, Wildlife and Water Resources Committee has taken testimony on [H.37](#), a bill that addresses the safety of dams in the state.

The bill, introduced by the committee chair, would require the owner of a dam to register it with the Department of Environmental Conservation (DEC) by April 1, 2016, if it is capable of impounding 500,000 cubic feet or more of water. Any other dam would have to be registered by April 1, 2017.

The definition of “dam” (10 V.S.A. § 1080 (6)(A)) would include any impoundment on a perennial stream *or* a structure capable of impounding 500,000 cubic feet of water, regardless of its location. It would include dams that have not been properly removed or mitigated. A dam would not mean a highway culvert “*if its invert at the natural bed of a surface water has adequate discharge capacity and does not impound water under normal circumstances.*” A stormwater retention basin that is ten feet or more in height or has a stormwater retention basin with a maximum storage of six acre feet or greater would meet the definition of a dam.

Currently, 80 municipal dams are on the Agency of Natural Resource’s list of hazardous dams ([www.vlct.org/assets/Advocacy/Legislative\\_Reports/hazardous\\_dams.pdf](http://www.vlct.org/assets/Advocacy/Legislative_Reports/hazardous_dams.pdf)) capable of impounding 500,000 cubic feet or more of water or other liquid: 20 are of significant hazard, 19 are of high hazard, and 41 are of low hazard. How many more structures would be considered dams under the provisions of H.37 is not known. Highway culverts are very heavily regulated already, and a stream alteration permit needs to be obtained prior to any work on them. Culverts should not be defined as dams under any circumstance. Stormwater retention basins are built to address stormwater management requirements, and defining any of them as a dam would certainly chill any desire to build them.

The bill would require the department to identify dams pursuant to standards equivalent to U.S. Army Corps of Engineers standards for low, medium, and high hazard dams or as an undetermined hazard. As the DEC already has those lists, this requirement would seem to be redundant.

If no one owned title to a dam (and this is not an uncommon situation with old dams), the person owning the property on which the dam is located would be on the hook to register the dam and submit an annual dam safety fee, not yet specified. Upon notification from DEC that an owner had failed to register a dam, that person would have 60 days to submit the registration. DEC could inspect the dam or retain an engineer to inspect it and bill the owner for the inspection. DEC could also declare a dam abandoned if no one registered it, inspect it, repair it if necessary, and place a lien on the property in order to secure repayment of its costs.

It is getting late in the session to pass bills out of a committee of origin. Nonetheless, as the committee is presently hearing testimony on H.37, local officials may want to review the DEC list of dams to verify whether one of their municipal dams is on the current list and consider whether any of their culverts, stormwater retention basins, or impoundments on perennial streams would be considered a dam if H.37 becomes law.

Contact Karen Horn at 1-800-649-7915 or [khorn@vlct.org](mailto:khorn@vlct.org).

## Travels of the Transportation Bill

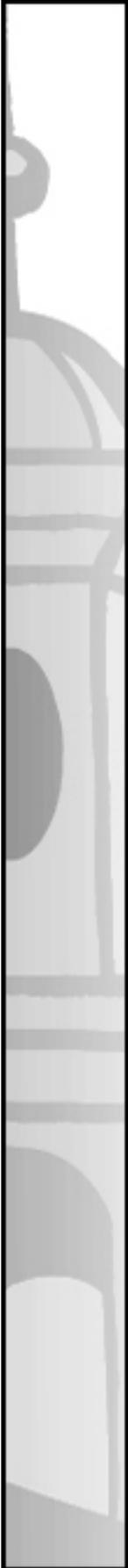
Last week, the Senate Transportation Committee voted H.488, the Transportation Bill, out of committee. The bill, which has already passed the House (see [Weekly Legislative Report No. 11](#)), covers many transportation issues, including researching alternatives to motor fuel tax, public transportation services, and the transportation funding program, including grants to municipalities. Like the House-passed bill, the Senate bill requires that the secretary of the Agency of Transportation (VTrans) find program savings through personnel, labor costs, or consulting cuts for FY16. Whereas the amount of targeted savings was \$1 million in the House-passed bill, it is \$1.5 million in the Senate Transportation Committee version.

In 2009, the legislature created the Transportation Infrastructure Bond (TIB) Fund, which is a revenue based bond program with the revenue coming from a two percent assessment on the retail price of gas. (See [Weekly Legislative Report No. 11](#).) H.488 as voted out of Senate Transportation decreases FY16 TIB funding into the transportation program by \$6.6 million because of projected decreases in revenue from the expected continuation of lower gas prices. The bill would establish a floor of 3.96 cents per gallon on the TIB two percent assessment so that if gas prices during a calendar quarter average less than \$2.47 per gallon, the threshold would protect TIB revenues. The House-passed bill established a threshold of 4.15 cents.

The bill also increases transportation funds by \$3.35 million in additional revenues, which are a reflection of the January revenue forecast combined with extra funds VTrans acquired through a property sale in Shelburne. In addition to the \$6.6 million decrease in TIB revenue, the bill achieves \$3.1 million in savings in state transportation funds by estimating the number of projects that will not advance according to the projected schedules. The bill decreases expected federal funds by \$12.34 million that VTrans could have used in project development, which is the corresponding federal share of the projects that VTrans anticipates would be naturally delayed. If not enough projects are delayed of their own accord, VTrans would specify projects to delay to meet the savings established in the bill. The bill designates excess revenues to go toward the paving program, but the administration believes there is not likely to be any extra revenue, given the current economic climate.

VTrans is tasked with identifying and evaluating new funding sources, other than the motor vehicle fuel tax, to maintain the state's transportation system. In doing so, the agency must review current funding sources and policies, review funding options in the transportation report, examine how other states have reduced or eliminated motor fuel tax and replaced them with other funding options, and consider alternative funding sources, other than the property tax to support the local share of increasing costs or expansion of public transportation services. VTrans must report these findings to both Transportation committees by January 15, 2016. Under the House-passed bill, this task was assigned to a Transportation Revenue Study Committee that included, among others, a member designated by VLCT.

The agency is also directed to evaluate the merits of implementing an Adopt a Park and Ride Program, providing for volunteers to clean up litter at state park and ride facilities with permission of VTrans. By January 15, 2016, VTrans would need to implement that program or tell the legislature why it doesn't recommend it.



The Senate Transportation Committee bill also retains several pertinent sections for municipalities, including studies regarding commuter rail and transportation services to the elderly and disabled. VTrans would have to assess the costs associated with operating a commuter rail service between St. Albans, Essex Junction, and Montpelier with connecting service to Burlington and report its findings to both Transportation committees by January 15, 2017. The agency must also examine the possibility of bus service from Albany to Bennington to Manchester and present those findings to the committees by January 15, 2016.

The bill makes a significant change to the Transportation Alternatives Program by setting aside \$1.1 million from a total of \$2.2 million for environmental mitigation to treat stormwater runoff from town highways. These funds are part of the state's commitment to municipalities to assist in meeting the requirements of the water quality legislation.

These funds also continue to be available to fund eligible salt and sand shed projects located near a stream or river. The set-aside would reduce available funding to municipalities for sidewalk and bicycle projects, but the agency has created a Municipal Sidewalk Grant program that currently has \$150,000 for municipalities. The agency wanted to create a state-funded-only sidewalk program because it recognized that a federally-funded program increases administrative costs to municipalities.

If passed, H.35, the Water Quality Bill (see article on page 1), would create a Clean Water Fund. VTrans would disburse monies from the fund to municipalities for environmental mitigation projects related to stormwater and highways through the Municipal Mitigation Grants Program. Grants provided to municipalities under the program would need to be matched by local funds sufficient to cover 20 percent of project costs. This would be one source of funds for municipalities implementing stormwater management projects on highways to conform with stormwater management requirements.

Whereas the Senate version of the bill utilizes the municipal mitigation grants program, the House bill creates a new VTrans Town Highway Clean Water Program to help municipalities implement stormwater management requirements in connection with town highways. The bill authorizes the secretary of VTrans to provide training and instruction for Vermont municipal employees on any transportation-related issue that the agency covers. Where appropriate, the agency would pay for the trainings.

H.488 would exempt lots that are transferred as part of highway or transportation projects authorized under the Transportation Program from obtaining potable water supply or wastewater permits. Likewise, property transfer tax returns would not be required for transfers of property for highway purposes valued at \$10,000 or less. The entity acquiring those properties would need to notify the listers of the grantors, grantees, consideration, date of execution, and location of the property when it records a deed for the property.

And finally, the bill removes the Board of Libraries discretion to name roads, and gives that authority to the Transportation Board including state transportation facilities, state owned, controlled or maintained highways and the bridges thereon, airports, rail facilities, rest areas, and welcome centers. That authority would be exercised only upon petition of the legislative body of a municipality, a state agency or department head, or petition of 50 Vermont residents. Likewise, the Byways Council is repealed and its authority to designate or discontinue state scenic roads or byways would be transferred to the Transportation Board.

H.488 is now in the Senate Finance Committee. It will then go to Senate Appropriations before being debated on the Senate floor next week.

Contact Chloe Collins at 1-800-649-7915 or [ccollins@vlct.org](mailto:ccollins@vlct.org).

## VLCT Board of Directors Position Available

There is a vacancy on the Board of Directors of the Vermont League of Cities and Towns. The Board of Directors appreciates your assistance in obtaining names of persons who qualify to be a Director. The term is for two years expiring in October of either 2015 or 2016.

The VLCT Bylaws state that a member of the Board of Directors shall be “a qualified official of a member city or town” and that “a qualified official is a person currently holding the position of selectperson, mayor, municipal manager, clerk, treasurer, or position established in a municipal charter with responsibilities comparable to one of the aforementioned.”

A person appointed to the Board of Directors must be able to attend the monthly Board meeting, which is held at the office of the Vermont League of Cities and Towns in Montpelier, usually on a Thursday commencing at noon and lasting three to four hours.

As a Board member, you will be asked to:

- provide overall governance of the organization;
- help formulate League legislative policy for approval by the membership;
- provide direction for VLCT’s long-range goals and objectives; and
- assist staff on specific legislative positions, including possibly testifying before legislative committees.

The position also demands approximately two days in late September or early October of each year to help with VLCT’s Town Fair and Annual Meeting. It may also involve membership on VLCT policy committees or legislatively established study committees. Lastly, many of the members of the Board are asked to act on occasion as “ambassador” for the League by visiting neighboring towns and cities to explain our programs and policies, and to seek input from other local officials. VLCT provides reimbursement for travel expenses plus a small per diem for attendance at Board meetings.

If you or a qualified individual you know is interested in municipal issues of statewide significance and would like to be involved in VLCT’s work on these issues as a member of its Board of Directors, please go to the VLCT Board website [page \(www.vlct.org/aboutvlct/boards-meeting-agendas-warnings-and-minutes/nomination-forms/\)](http://www.vlct.org/aboutvlct/boards-meeting-agendas-warnings-and-minutes/nomination-forms/) and fill out and email the nomination form **by Thursday, April 30, 2015**, to [sjeffrey@vlct.org](mailto:sjeffrey@vlct.org) or return to:

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