Weekly Legislative Report

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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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Senate Considers Budget – Municipal Priorities Unchanged from House with One Exception

On Tuesday, the Senate Appropriations Committee voted out its version of H.490, the FY16 state appropriations bill. With one exception – from a municipal perspective – the bill is unchanged from the one that passed the House last month. The full Senate will act on it on Thursday and Friday. The bill will then be the subject of a conference committee and the key to adjournment.

The actual line items and budgeted amounts of interest to municipalities are identical to that passed the House (see *Weekly Legislative Report No. 12*). The Senate committee shelved a proposal to take $500,000 from the 145 cities and towns that receive payments in lieu of taxes (PILOT) for state buildings. These funds are not raised from state taxes but from local option sales and rooms and meals taxes. The committee considered taking the money from those towns to provide a "soft landing" as the state changes how towns hosting Agency of Natural Resources (ANR) land are paid PILOT. (See below.) ANR PILOT payments have always been paid from the state's General Fund since its inception in the 1970s.

The buildings PILOT appropriation for FY15 is $5.8 million, which provides towns receiving PILOT for buildings with only about 70 percent of what they are due. Because more towns are enacting local option taxes (Colchester and Woodstock this year) and 30 percent of those taxes generated fund the building PILOT, it is expected that the PILOT special fund – into which those shared funds go for FY16 starting in July 2015 – could increase by as much as $1 million.

The ANR PILOT payments are provided to 205 towns in which such lands are located. They are reimbursed one percent of the fair market value (or current use value for state land enrolled in that program) of the 350,866 acres of ANR land. Reimbursements totaled $2,351,821 for the current year, but there is a story behind that figure. As the state has acquired more and more forest and park land and the value of those parcels has increased, this PILOT – though small in total dollars relative to the whole state budget – was increasing fairly significantly. In FY05, this line item was only $1.45 million. Towns with ANR lands should have received $2.82 million last year – the amount having almost doubled in ten years. Instead, the 2014 legislature cut that figure to $2.35 million, and Division of Property Valuation and Review (PVR), the ANR, and the legislature's Joint Fiscal Office were tasked to study this program and report on any changes that should be made to it. The committee's report recommended two options, both of which would decrease the amount that towns receive in the future. Option A would see total payments reduced by $170,000 statewide when fully phased in, whereas a fully phased-in Option B would be a total $283,732 hit on recipient towns.

In its version of H.490, the Senate Appropriations Committee included the adoption of Option A. Under this plan, payments would be:

- Based on fair market value of all state ANR lands, eliminating the option of having the payments based on current use values.
- Paid to all towns at a rate of 0.5 percent instead of the one percent paid now – a 50 percent reduction. This is based on the fact that the average town tax rate is approximately $0.50.
- For any new state lands, paid at the current one percent rate for the first year of state ownership. This is to maintain "(1) good faith with the communities within which land had most recently been acquired, and (2) local support for land acquisitions both currently in process or that may occur in the future."
- Phased in over three years –making one-third of the change in payment (up or down) in the first year, two-thirds in the second year, and having the full effects in place the third year. Under the Senate's H.490, payments for FY16 are frozen at the current levels, and the first year's phase-in will start with the state fiscal year starting on July 1, 2016.

If your town receives ANR PILOT payments, you should refer to the above-mentioned report and check out the proposed impact on your town's budget as you prepare for 2016 Town Meeting.

Given this reduction to the ANR PILOT recipients and the growth in the buildings PILOT funds available, the Senate Appropriations Committee proposed to rob Peter (the 145 towns receiving buildings PILOT) to provide Paul (the 205 ANR PILOT towns) a soft landing during this phase-down of funding. But after receiving some strong backlash from town officials, the committee decided not to do this. The problem is that the committee also did not provide Peter with the extra $500,000 that is available in the PILOT special fund set aside to make these payments. The good news is that those payments increase by $600,000 for the upcoming budget year in both House and Senate versions and the $500,000 remains in that fund for future distribution to towns hosting state buildings.

The Senate Appropriations Committee's version of H.490 still contains some troubling language concerning the potential of shifting the cost of operating the two state public safety answering points (PSAPs) from the state budgets to local property taxes through the county budget and tax.

Language in the House-passed H.490 that gives county side judges huge new authority to unilaterally include services provided for by county government funded by the municipal property taxes is also included in the Senate version. Section E.208.4 of the bill (found at page 140 of the bill as introduced, page 95 of the version in the Senate Calendar Addendum of today) says: "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.

Both versions of the bill say that by May 15, 2015, the Commissioner of Public Safety must report to the Joint Fiscal Committee on the costs required to support the current level of dispatching services at the

four state-operated PSAPs in Derby, Rockingham, Rutland, and Williston. The commissioner is to consider dispatch calls for municipal police departments, constabularies, emergency medical services, and fire and rescue departments but not 911 calls. The commissioner will also meet with the regional groups and determine "whether each regional group can calculate the cost of dispatch services and whether they would like to contract for dispatch services with the State." If an agreement is reached with a regional group (municipal officials are only part of this group) by September 15, 2015, the commissioner would contract with the assistant judges to add this cost to the county budget. Revenues raised through the county budget – which is an assessment on municipal property taxes – would be remitted to the commissioner for deposit in a new Dispatch Fund. That money would be available to fund the PSAPs.

VLCT appreciates that the delay gained by the bill's measure would provide time for the commissioner to consult with affected municipalities, law enforcement, and emergency services assistant judges, and legislators. However, shifting the costs of dispatch to the county tax – which is the already severely stressed property tax – is no solution. If the commissioner's regional consultation is sincere and verifies concerns about safety, response time, and dispatch accuracy, then requiring that funding come from the municipal property tax is circular at best and a "Catch 22" situation at worst.

Contact your senators and representatives. Urge them to have the H.490 conference committee support recommendations for PSAP coverage that come from the regional consultations through state revenues and not through property taxes or a budget approved by two side judges. Instead, have the committee change the language so that only the towns that wish to contract for such services through the county are responsible for paying for them and this cost is not funneled through the county budget and taxes.

The Senate Judiciary Committee had recommended language that could have been included in H.490 that would have eliminated the choice of appellants of property tax appraisal decisions of boards of civil authority to either the Director of PVR or superior court. The proposed language would have allowed those decisions to go exclusively to the director. We could not find that language in H.490 as reported to the Senate floor and assume that it was not included.

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

No Spending Caps, Mandate Relief in Senate Education Reform Bill

Last week, the Senate Education Committee (SEC) wrapped up its consideration of H.361, the House-passed bill that is supposed to reform education governance structures and to "improve affordability and stability for taxpayers." The Senate proposal contains no spending caps on school spending, nor does it try to limit the continued burden of new state unfunded mandates impose on property taxes. The SEC's version was approved unanimously and is now headed to the Senate Finance Committee for its consideration.

The SEC bill sets out a "preferred education governance structure," with an "alternative structure" for those who don't prefer the preferred model. The preferred version is a prekindergarten-grade 12 district. This district is responsible for educating all its preK-12 students, is its own supervisory district, has an average daily membership of at least 900, and can deliver those educational services by: (1) operating a school or schools preK-12; (2) operating a school for preK-grade 6 or 8 and tuitioning older students; or (3) tuitioning all students. The alternative is a supervisory union composed of multiple member school districts, each with its own school board. There are several hoops through which districts must jump if they want to go down the alternative path. Neither structure is mandatory, but the SEC bill focuses on providing incentives to encourage merging.

Pages 6 and 7 of the SEC bill list all the things the committee says it is not its intention to do: close schools, particularly small schools; eliminate the ability to tuition students to other schools; or force

districts that operate schools for some grades and tuition others to stop doing that.

The SEC bill appears to give districts longer to accomplish mergers (July 1, 2020) and still get some of the incentives provided. Incentives include a decrease in the homestead property tax by $0.10 in the first year of a merged district's operation, declining over five years, with a similar reduction in the homestead income tax rate or a flat $400 per student during the first year of operation. Additional incentives are made available during the merging process and for soon-to-be former recipients of small school grants and some others.

For those hoping for some relief from rapidly escalating state education property taxes, a glance at the fiscal note prepared on a version of the bill just prior to the one passed by the SEC contains the words "has no measurable fiscal impact" in the plurality of the sections. In the sections providing incentives for districts that merge is the statement, "These tax rate incentives would have a negligible fiscal impact in the short-term since any reduction in homestead taxes in districts that are part of a RED [regional education district] would be offset by an increase in those districts that are not yet part of a RED." So the incentive of lower tax rates comes at the expense of resident taxpayers in other districts, some of which are already large enough to pass Senate muster (i.e., 900 pupils) and don't need to consolidate. The only areas in which the fiscal note speaks of any potential cost savings comes ***if*** the pupil-to-teacher ratio can be increased or schools are closed. Both of these efforts could be accomplished without the bill, and the bill specifically purports its intention not to close schools.

One of the features of the House version of H.361 was the imposition of spending caps on school budgets. (See *Weekly Legislative Report No. 13* for our article on this.) That stick got whittled down and delayed as it made its way through the House, but is altogether absent from the Senate version. Coincidental with the SEC stripping it from its version of the bill, Senate Finance heard from a fairly knowledgeable attorney that any caps might be unconstitutional, given the Supreme Court decision that set in motion the adoption of Act 60/68. The lead attorney representing the plaintiffs in that case is quoted as saying that the House version of caps is "at least a little bit unconstitutional."

The Senate version does not contain some procedural changes proposed by the House, including the process for setting base education tax rates and education amount per pupil and how the school budget articles need to be worded. Also missing is the setting of the state education property and income tax rates for the coming year (at least at this point).

The SEC bill makes a big deal of encouraging voluntary mergers but has a section near the end that lays out how the legislature is to impose a plan that "would move districts into the more sustainable, preferred model" set forth above. The Secretary of Education is to prepare the plan on or before April 1, 2018, and the State Board of Education must approve it as proposed or amend it and submit it to the legislature. It is the "intent of the General Assembly in 2015 that the 2019-2020 General Assembly shall enact" the proposed plan or an amended version of it.

The SEC bill also acknowledges what many perceive as schools becoming as much providers of services formerly provided by the state Agency of Human Services as they are places where children are educated. Section 20 of the bill has the Secretaries of Human Services and Education developing a "plan for maximizing collaboration and coordination between the Agencies in delivering social services to Vermont public school students and their families."

It is hard to fathom what municipal officials and VLCT think of the SEC version of the bill. Much has changed since the VLCT Board of Directors supported H.361 as it was introduced. Much of the impetus for our support was based on the need to "bend the curve" of the rapidly-escalating state property taxes. There appears little left in the SEC bill that would give most interested parties any hope of seeing meaningful savings in that area any time soon.

We expect that the Senate Finance Committee will be acting on H.361 this week, with the Appropriations Committee then having to weigh in before the bill goes to the Senate floor for its action. Then starts the dance that is the conference committee process where three members of the House and three from the Senate try to hash out their differences to achieve a version to which both houses can agree and send it along to the governor for his signature.

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

Motor Vehicles Miscellaneous Bill Goes Back to Senate

On April 22, the House passed the Motor Vehicles Miscellaneous Bill, S.122, in concurrence with the Senate-passed bill and proposed amendments. Last Friday, the House-amended bill went back to the Senate. Some of the amendments relate to colored lights on fire and emergency service vehicles, towing, and the removal of abandoned and junked cars.

The bill would amend the statute passed last year relating to distracted driving to add in a definition of "operating" [a motor vehicle]. Operating would mean driving a motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other temporary delays. It would *not* include operating a motor vehicle with or without the motor running when the operator has moved the vehicle to the side of or off the highway and has halted in a location where the vehicle can safely and lawfully remain stationary.

Section 15 of the bill amends 23 V.S.A. § 1252 on sirens and colored lights. Previously, lights on police cars had to be blue or blue and white. Under the amendments, law enforcement vehicles could employ blue, red, amber, or white signal lights. New language would allow fire and emergency vehicles to mount one blue signal light that is visible primarily from the rear of the vehicle. The amendment also extends the use of red and white lights from just ambulances to all emergency medical service and fire department vehicles. The current statute regarding red and white signal lamps and sirens applies to vehicles owned or leased by or provided to volunteer firefighters and voluntary rescue squad members, including a vehicle owned by a volunteer's employer when the volunteer has the written authorization of the employer to use the vehicle for emergency, fire, or rescue activities. The bill also repeals previous language that limited a vehicle from having more than one of the combinations of lights mentioned in this section.

Section 23 of the bill amends 23 V.S.A. § 1102 by providing that an enforcement officer moving or removing (towing) a vehicle must notify the Department of Motor Vehicles instead of the Agency of Transportation (VTrans) and the Transportation Board. Language is added that a towed motor vehicle may qualify as an abandoned motor vehicle and be dealt with under 23 V.S.A. Chapter 21, subchapter 7.

Current law prohibits placing, discarding, or abandoning a junk motor vehicle where it is visible from the main traveled way of a highway or upon the land of another, with or without the consent of the land owner. Those vehicles are defined as nuisances. Section 24 of S.122 amends 24 V.S.A. § 2272, which stipulates that any junk motor vehicle in violation of that law must be removed from view of the highway by the owner of the land upon notice from VTrans. The owner of the property containing an abandoned vehicle may move it to a place not visible from the road. In that case, the statutes regulating disposal of junked vehicles apply.

The abandoned vehicle statute (23 V.S.A. Chapter 21, Subchapter 7) gives law enforcement officers authority to remove abandoned motor vehicles from public property based upon personal observation or from private property based on a complaint from the property owner. The owners or agents of private property are authorized to remove an abandoned vehicle on their property so long as they notify the police agency in their jurisdiction. This notification must include identification of the registration plate number, the public vehicle identification number, as well as the make, model, and color of the vehicle.

The property owner can move the abandoned vehicle without incurring any civil liability to the owner of the abandoned vehicle.

The Senate took up the bill today.

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Managing Solid Waste

On July 1, 2015, several mandated deadlines will kick in for solid waste management in Vermont:

- Statewide unit based pricing takes effect, requiring residential trash charges to be based on volume or weight.
- Recyclable materials are banned from the landfill.
- Transfer stations and drop-off centers must accept leaf and yard debris.
- Haulers must offer residential recycling collection at no separate charge.
- Public buildings must provide recycling containers alongside all trash containers in public spaces except in rest rooms.
- Food scrap generators of 52 tons per year must divert material to any certified facility within 20 miles.

At last year's VLCT Annual Meeting, the membership adopted this policy: *4.04 B. 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.*

In January, VLCT hosted a solid waste workshop that was attended by more than 100 solid waste district officials, state solid waste staff, local officials, and directors of alliances and independent towns. They were very concerned about how they would be able to meet the statutory deadlines. Out of that workshop came five recommendations for action:

1. Municipalities, alliances, groups, and districts should be able to offset costs of recycling and organics processing with assessments, sticker fees, property taxes, or any other funding mechanism that works in their circumstances.
2. The state requirement for individuals to separate food residuals by July 1, 2020, should be eliminated.
3. Municipalities, alliances, and districts should retain the discretion to determine the appropriate number of household hazardous waste collection days for their member towns. Each collection event is reported to cost from $5,000 to $8,000 in rural areas.
4. Municipalities and public places should be accorded flexibility to determine the appropriate number and placement of recycling bins relative to trash receptacles.
5. There should be flexibility in the deadline to separate leaf and yard waste from the waste stream that takes into consideration the proximity of processing facilities.

In 2014, the House Natural Resources and Energy Committee initiated a roundtable discussion that led to the creation of the Solid Waste Infrastructure Advisory Committee, which issued a report to the legislature in January. The House committee also held a hearing on solid waste at VLCT's Local Government Day in the Legislature last February during which many local officials testified about the difficulties they were facing with figuring out how to comply with the July 1 deadlines. They said that while they believe in the goals of Act 148, they need flexibility in terms of how to achieve them, which the act does not provide.

There are presently nine bills in the legislature that address various aspects of the solid waste law. What

has the legislature done to address the need for flexibility particularly in small rural parts of the state? Nothing. And time is running out for the current session. At this point, any action would need to be initiated from the Senate. Contact your senators immediately if the solid waste deadlines in Act 148 will present a problem for your community.

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

Transferring Federal Military Property to Law Enforcement Agencies

Last Thursday, the House passed H.8, a bill that addresses the transfer of military equipment to municipal law enforcement agencies. H.8 is currently in the Senate Rules Committee, where all House bills land if they arrive in the Senate after the March crossover deadline. H.8 would require any municipal police department to notify the local legislative body of the local, county, or state municipality to which it provides law enforcement services that it applied to receive a dangerous or deadly weapon or armored or mine-protected vehicle from the federal government within 15 days of the application.

A sheriff's department would need to notify each legislative body of a municipality within the department's designated county within seven days of learning from the federal government that it had been awarded the weapon or vehicle.

Thirteen V.S.A. § 4016(a)(2) defines a dangerous and deadly weapon as "any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury."

The bill also requires the Commissioner of Public Safety to annually examine the records of all property acquired by a state or local law enforcement agency transferred through the U.S. Department of Defense Excess Personal Property Program and report the results to the attorney general.

With just a few weeks remaining in the session, it is unclear if the Senate Rules Committee will release H.8 so the Senate committee of jurisdiction can address it. If not, the bill would still be alive at the beginning of the 2016 session when it could again be taken up.

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

Into the Home Stretch

The pace under the golden dome will be stepping up in the coming weeks as the weather is at last warming up and legislators are realizing that they are heading into the home stretch for this year. Probably three weeks of heavy legislative lifting are left before the session ends.

Bills that made it from one chamber to the other by the March Crossover deadline will need to be heard, voted out of committee, and passed by the second chamber (the House for Senate-introduced bills and the Senate for House-introduced bills) in order to secure passage. If both chambers pass identical versions of the bill, it goes to the governor for his signature. If the two chambers pass different versions of a bill and do not concur with one another, the Speaker of the House assigns three representatives to a conference committee, and the Senate Committee on Committees likewise assigns three senators. A separate conference committee is assigned for each bill that ends up with different House and Senate versions. The job of the conferees is to reconcile the two versions of the legislation and take the result back to their chamber for a final vote before the end of the session.

The *very* end of the session is generally signaled when the Senate Appropriations Committee votes out its version of the appropriations bill, which this year is H.490. Then everyone knows they need to get their

bills settled before the Appropriations Conference Committee finishes its work. Things can get pretty frantic at this point as conference committees pile up and major initiatives of each chamber hang in the balance. In theory, a conference committee may only address issues that were in either the House or Senate version of a bill. However, conferees frequently deviate from that standard, and it is incumbent upon anyone interested in a bill to keep up with its evolution in conference committee. The times and places of meetings may be posted, but maybe not. You may see bills merged or issues whose survival looked grim tacked on to another germane bill that "has legs." You may think a priority action issue is good to go, only to watch it slip away in the final hours. Or, after you breathe a sigh of relief that you helped to kill a threatening piece of legislation, you may discover that it was passed on to a bill you were not following at all. Legislative history has some notorious examples.

Remember, this is the first year of a biennium. Thus, even though a bill may have gone nowhere (or only part way) this year, it will be "alive" at the beginning of the next session and committees may take it up. They are under no obligation to do so, but they may.

As the session end nears, producing a timely *Weekly Legislative Report* is a futile endeavor. We'd planned on publishing this *Report* last Friday, but legislative developments caused a five-day delay. So this newsletter will likely be the last to materialize in your electronic in-basket or home mailbox. We will publish a subsequent issue only if something unexpected occurs with the budget, taxes, the water quality bill, or education reform. Look instead for VLCT *Action Alerts*, Facebook posts, or the occasional Tweet, because *we* won't be done until the final gavel falls! As always, we thank you, our readers, for your attention to the myriad issues that affect local government during the course of the 2015 legislative session!

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

Whither S.25?

S.25 would have recognized the beagle as the State Dog. Do you know your beagles? Which of the images below is a beagle?