

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

December 2004

LEGISLATIVE PREVIEW 2005

HERE COME THE DEMOCRATS

The prognosis for the 2005 legislative session shifted on election day as it became clear that while the incumbent Republican governor and lieutenant governor would continue in office, the formerly Republican House would join the Senate in being controlled by Democrats. In the 2005 House there will be 83 Democrats, 60 Republicans, six Progressives and one Independent. In the 2005 Senate there will be 21 Democrats and nine Republicans.

The allocation of members among parties is not as important to local officials as it is to other advocates in the State House. Local officials themselves cover the political spectrum yet come together on issues that

affect the relationship between state and local governments. More interesting to local officials will be the makeup of the various committees and the newly elected legislators' background, if any, in local government, as well as their general sentiments about local government.

For instance, we know that several newly elected legislators cut their teeth in local government, and several still serve at the local level. They are highly likely to understand the nuances of local government and how a particular piece of legislation might affect a municipality. We do not yet have a count of current or former local officials who will take

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LATEST STORMWATER DECISION RAISES QUESTIONS

According to a new Water Resources Board decision, every stormwater discharge in an impaired watershed, except "de minimus" discharges (however they are eventually defined), needs to get a federal National Pollutant Discharge Elimination System (NPDES) permit. This decision, issued on October 14 in response to an appeal of an Agency of Natural Resources decision by the Conservation Law Foundation and Vermont Natural Resources Council, will have severe consequences for municipalities and developers in the five named watersheds, as well as for Lake Champlain and Vermont.

At issue is whether Vermont will be able to implement a stormwater management program developed last year through state legislation, or wait for the federal government to develop standards for a federal stormwater permitting program. The Water Resources Board decision states, "Discharges of stormwater pollutants into stormwater impaired streams, either directly in the

(Continued on Page Two)

NEW CALAIS TOWN OFFICE



It is cute as a button, and very functional too! Calais Town Clerk Eva Morse recently moved her office from her house, where it had been located for 41 years, to the Town's new office building. For more about the Calais project, and other municipal office building projects around the state, please watch for an article in next month's issue of the VLCT News. (Photo by Katherine Roe)

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VLCT NEWS

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STORMWATER -

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discharge waste stream or indirectly through additional bed and bank scour, cause or contribute to the violations of the Vermont Water Quality Standards in these waters and require federal discharge permits, except for any de minimus discharges." According to the Environmental Protection Agency (EPA), the federal Clean Water Act prohibits anyone from discharging "pollutants" through a "point source" into a "water of the United States" unless they have a federal NPDES permit.

Over the last two to three years, interested parties including municipalities, homeowners, realtors, developers, the Agency of Natural Resources, the Water Resources Board itself and the conservation organizations named in the first paragraph, met in intensive collaborative sessions. Their purpose was to devise a system under state law that enabled property owners and municipalities in impaired watersheds to move ahead with cleaning up their stormwater discharges, to proceed with transferring title when necessary and to provide developers of new projects an extremely high standard of stormwater management on their sites as a condition of proceeding with their projects. As part of those collaborative efforts, the Water Resources Board convened a docket investigating the science of stormwater management that concluded with some very useful, new information about this evolving science. The culmination of those years of efforts was legislation passed this last session in the form of Act 140 that had the support of all Senators and 127 of 130 House members voting on its final passage.

Act 140 incorporated the Water Resources Board investigative docket recommendations. It provided:

- A needed state system to allow homeowners to transfer property in impaired watersheds.
- Permits to owners of existing developments in the two to three year period between July 1, 2004 and adoption of Total Maximum Daily Loads (TMDLs) for the impaired watersheds.
- A mechanism for developers of new or expanded projects to proceed with those projects if their stormwater discharges met on-site the water quality, recharge and channel protection criteria in the 2002 state stormwater management manual and "if the sediment load from the discharge

approximates the natural runoff from an undeveloped field or open meadow that is not used for agricultural activity." (10 V.S.A. 1264 (b)(B)).

- A system of "offsets" whereby if a developer could not meet the discharge standards on his or her site, he or she could clean up a site currently exempt from stormwater regulations in the same watershed, thereby achieving a benefit that would not otherwise be achieved on the offset site.

Finally, Act 140 was clear that once TMDLs or watershed improvement programs were adopted, the standards a permittee would have to meet might be more stringent than those imposed in this interim period.

The parties who supported adoption of the legislation, including VLCT, spent all summer working with the Agency to implement this stringent and progressive program - the first of its kind in the nation. The Department of Environmental Conservation has decided to hold off submitting proposed rules regulating the state permit program until it is clear that it could be put into effect. On Friday, November 12, the Greater Burlington Industrial Corporation (GBIC) and the Attorney General's office, on behalf of the Department of Environmental Conservation, both appealed the Water Resources Board decision to the Vermont Supreme Court.

The Water Resources Board decision creates significant uncertainties. How does one issue a NPDES permit (until now required only of point-source discharges) before a TMDL is adopted? What happens to the offset program, an innovation designed to clean up discharges not otherwise subject to state rules? What exactly could a "de minimus" discharge be, and how long will it take for that definition to be litigated? When can a property owner in an impaired watershed gain confidence that stormwater management regulations will allow him or her to move ahead with cleaning up discharges, transferring property including single family homes, commencing or completing a project, or improving the culvert under the road that serves your home? What will be the impact of this decision on stormwater management programs in unimpaired watersheds? Exactly whose interests are served by this new decision and how the waters of the state are likely to be cleaned up as a result of this decision is not at all clear as this article is written.

- Karen Horn, Director, VLCT Legislative and Membership Services



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ASSESSING PILOT PROPERTIES

COURT REQUIRES MORE CAREFUL ASSESSMENT OF PILOT PROPERTIES

Last year, we reported to you on a trial court decision involving the Town of Victory and the State of Vermont, and the value of State-owned forestland in the Town for which the State paid the Town a payment in lieu of taxes (PILOT). The Vermont Supreme Court heard the appeal of that case and recently issued a decision, which affirmed the

court found that PVR's District Advisor had not changed the value on the property for four years in a row, essentially rubber-stamping the appraisal for the preceding years. Moreover, the trial court found that the District Advisor charged with appraising the property was not certified or licensed by the State to perform appraisals, and was only physically on the site on six occasions. The court found this appraisal unreliable, stating,

reluctant to impose their views, so long as the agency's actions comply with legal and constitutional requirements.

As far as the legal standard of review that courts must apply in reviewing appeals of PILOT determinations, the Supreme Court has imposed the "arbitrary and capricious" review standard, meaning that PVR's determination of PILOT value will stand unless a town can prove that the determination was "arbitrary and capricious." This is a difficult standard for towns to prove; however, it also imposes a requirement on PVR to justify its appraisals and show that they were performed by qualified appraisers using defensible assessment data – something that has not always happened with PILOT properties.

Municipalities should study their PILOT values and be aware of how those values were arrived at. VLCT recommends keeping the lines of communication open with your District Advisors and other PVR officials for an explanation of PILOT valuation in your community, which can be a valuable learning experience and provide a better understanding of the "why" behind your PILOT payments.

- Brian Monaghan, Attorney, VLCT
Municipal Assistance Center

Municipalities should study their PILOT values and be aware of how those values were arrived at. VLCT recommends keeping the lines of communication open with your District Advisors and other PVR officials for an explanation of PILOT valuation in your community...

trial court's finding that the State of Vermont's assessment, through the Division of Property Valuation and Review (PVR), was arbitrary and capricious, and ordered PVR to re-appraise the property. The take-home message for Vermont municipalities is that the Court has required PVR to take a more professional approach to its appraisals of State-owned property for purposes of PILOT. *Town of Victory v. State of Vermont, 2004 VT 110.*

First, some background on the PILOT program: Pursuant to statute, the State makes payments to towns in lieu of municipal property taxes on State-owned lands and buildings. These properties are supposed to be appraised annually, or their values reviewed each year. Towns have the ability to appeal the appraisal to the Director of PVR.

There are two issues that emerged from the Supreme Court's decision in this case: The first is that the Court upheld Judge Kathleen Manley's finding that PVR's valuation of the property was "arbitrary and capricious." The second is the legal standard of review that courts will look through in reviewing appeals of this sort.

Turning to PVR's valuation of the property, the Town made the decision that it was being shortchanged what it was owed from the State, and appealed the State's assessment of the property. In fact, the trial

"its ad hoc and essentially arbitrary nature reflects both the lack of any guiding standardized appraisal methodology or procedures on the part of PVR at that time, and an approach that relies primarily on vague general impressions rather than feasible empirical research and evaluation." While the Supreme Court did not recommend any procedures for PVR to follow, it remanded the case to PVR for a reappraisal, and to allow PVR's expertise in appraising property to guide future appraisals. This is because courts typically will defer to the expertise of a state agency, and are

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LEGISLATURE -

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their seats in the State House in January, but will let you know when we do.

Some changes in the House will be significant. With the retirement of Republican Speaker of the House Freed and the new Speaker to be chosen by the majority

The allocation of members among parties is not as important to local officials as it is to other advocates in the State House. Local officials themselves cover the political spectrum yet come together on issues that affect the relationship between state and local governments.

Democrats, the committee landscape will be drastically altered. The voters did not return many key committee leaders and members. Five of the 11 members of the Ways and Means Committee - people who were intimately involved in enacting the Act 68 changes to Act 60 - will not be back. Several members of the House Agriculture Committee, including the chair and vice-chair, will not be back. Likewise, the Local Government Committee and Transportation Committee will look different, with last session's chairs having lost reelection. Both of these are committees that handle a lot of legislation affecting local governments. At least two House members who were instrumental in crafting last year's stormwater bill will not return, although the issue has recently been put back on the front burner! (See article

elsewhere in this issue.) Five senators are not returning to the Senate.

How will VLCT legislative priorities fare in the 2005-2006 biennium? It is far too early at this time to guess what these changes will mean for local governments. Will there be more of a willingness to address the paternalistic relationship between the Legislature and local governments in the House Local Government or Senate Govern-

ment Operations committees? What will be the assessment of local transportation needs and how they should be handled? Will this Legislature be able to control itself and keep the Education Fund for its statutorily established education purposes, even as that Fund's surplus grows and deficits in parts of the General Fund obligations skyrocket? Local officials will need to be as vigilant as ever in the next two years to address these issues as they arise.

A good place to start is to ask your newly elected legislators to join you at a selectboard meeting before the session begins. Let them hear part of your budget discussions! In November and December, legislators may be far more able to attend a meeting and more willing to listen than in January when they are traveling to the State House and hearing from all the constituencies that bombard them with information and requests.

Watch the mail for the 2005 *Municipal Policy* Priorities brochure, which should be in your hands in early December. This brochure highlights those issues, among all the 2005 *Municipal Policy* issues adopted at our annual meeting, that the VLCT Board agreed are most compelling in 2005.

VLCT legislative staff will also host three morning legislative preview meetings around the state: **on Monday, January 10, 2005, at the Milton Town Offices; Tuesday, January 11, 2005, Hartford Town Offices; and Friday, January 14, 2005, Manchester Town Offices.** Please plan to join us for an informal discussion about the issues as they take shape early in the session, and as they are presented in the VLCT Municipal Priorities brochure. And take a deep breath of that fresh invigorating Vermont air! January is almost upon us.

- Karen Horn, Director, VLCT Legislative and Membership Services

SUMMER LEGISLATIVE STUDY COMMITTEES

VLCT followed the committees listed below over the summer and into the fall. We'll monitor any recommendations that they make to the Legislature in 2005, particularly if they result in proposed legislation. Watch the VLCT *Weekly Legislative Report* for more information.

LOCAL MATCH REQUIREMENTS FOR TRANSPORTATION PROJECTS

In consultation with VLCT staff, the Agency of Transportation is developing and assessing the impact of applying the principle of functional necessity to local match rates, whereby the municipality would be responsible for a greater percentage of costs of project attributes not considered "functionally necessary" to the core project.

ELECTRONIC DOCUMENT STORAGE

This committee is drafting a common set of technical requirements for purchasing electronic document imaging systems. These systems will allow cities and towns in Vermont to scan, image, index, store, and retrieve many types of documents. In addition, the group is moving forward with testing various electronic document imaging systems and technical standards in five pilot towns.

IDENTITY THEFT

This committee was formed to study the use of Social Security numbers by both public and private entities and develop proposals for reducing their use wherever possible. Its recommendations should be of concern to town clerks, many of whom have public records in their offices with social security numbers on them.

CENTRALIZED OVERWEIGHT PERMITTING

This committee is studying the feasibility of a centralized permitting system, located within the Department of Motor Vehicles (DMV), to issue permits for use of town highways and bridges by commercial vehicles. The system would be voluntary and phased in with an initial pilot project of up to five municipalities.



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ASK THE LEAGUE

FIRE PERMITS; SELECTBOARD'S PAY; INDEPENDENT OFFICERS AND PERSONNEL POLICIES

Can a selectboard member issue a fire permit?

No. The town fire warden is responsible for preventing forest fires in a town. In furtherance of this responsibility, the fire warden is charged with issuing permits for open burning. 10 V.S.A. § 2645(a).

As a general matter, it is unlawful to start an open fire for the purpose of burning brush, weeds, grass, or rubbish without the permission of the fire warden. The fire warden may give verbal permission to start such a fire, but must issue a written permit within 12 hours. Permission is not required for burning in a location more than 200 feet from any woodland, timberland, or field containing dry grass or other inflammable material contiguous to the woodland. 10 V.S.A. § 2645(a). The commissioner of the Vermont Department of Forests, Parks, and Recreation may notify the fire warden that no burning permits are to be issued for a specific period of time. 10 V.S.A. § 2645(a).

While the town fire warden's salary is determined by the selectboard, the commissioner of the Vermont Department of Forests, Parks, and Recreation, with selectboard's approval, appoints the warden. 10 V.S.A. §§ 2642, 2641(a). Because the commissioner appoints the fire warden, there would appear to be no statutory authority for a selectboard member to issue a fire permit.

As a practical matter, if there is a vacancy in the town fire warden office, the selectboard should promptly contact the Department of Forests, Parks, and Recreation to arrange for a new appointment. To facilitate the issuance of permits, the Department will usually issue a temporary appointment to a selectboard member while a new fire warden is sought.

- Jim Barlow, Attorney, VLCT Municipal Assistance Center

(Editor's Note: For more information about what types of materials are permitted in an open burn, visit the Vermont Department of Environmental Conservation's Air Quality Division at <http://www.anr.state.vt.us/air/html>

OpenBurnForumPresentations.htm. You may also request a model local open burning ordinance from VLCT MAC.)

Who sets the selectboard's pay if there are no town auditors?

The voters set the selectboard's pay. However, if the voters failed to fix the selectboard's pay and the town voted to eliminate the office of auditor, then the "selectboard shall be compensated at the rate at which they were compensated during the immediately preceding year." 24 V.S.A. § 933.

Generally, a town has two mechanisms for compensating its officials and employees. First, a town may vote at town meeting to

compensate its officials and employees and also to fix the amount of that compensation. If the voters fail to do so, this duty defaults to the selectboard, wherein lies the conflict. If the selectboard had the authority to fix the compensation for all the town's officials and employees, it would be able to set its members' pay. Vermont law resolved this potential conflict by authorizing the auditors to fix the selectboard's pay at the time of the annual town audit. 24 V.S.A. § 933.

Unfortunately, for many towns it has become increasingly difficult to find people willing to either run for, or accept appointment to, town office. The result is that some towns are left without auditors and, conse-

(Continued on next page)

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ASK THE LEAGUE -

(Continued from previous page)

quently, without a mechanism for setting the selectboard's pay. If this has occurred, towns should seriously consider eliminating the office of auditor. This may be done by ballot at town meeting. In place of the auditors, the selectboard must contract and appoint a licensed public accountant to assume their duties. 17 V.S.A. § 2651b.

But what if the voters failed to fix the selectboard's pay and the town hasn't voted to eliminate the office of auditor? Technically, members of the selectboard can only be "compensated at the rate at which they were compensated during the immediately preceding year" if neither of these events take place. Therefore, if the voters or auditors have not set the selectboard's pay and the town has not voted to eliminate the office of auditor, the selectboard's pay should remain at its current level, at least until the town votes to change it at the next town meeting.

- *Garrett Baxter, Associate, VLCT
Municipal Assistance Center*

Should independent town officers be exempt from the town personnel policies?

It depends how "independent" they are. If they work full-time for the town, receive benefits such as health insurance and retirement contributions, and are compensated via the general fund, it is reasonable to expect that they comply with the personnel policies of the town.

The only areas where "full-time independent officers" should be treated differently from employees is in the discipline and dismissal sections, from which they should be exempt. This is because if they exhibit behavior that is inconsistent with town personnel policies, it is, of course, up to the voters to decide whether the officer should be re-elected. However, this lack of enforcement ability is no reason to exempt independent officers from the expectations that apply to everybody else who works for the town.

A possible exception to this general rule is independent officers who are compensated entirely by fees, and who receive none of the additional benefits traditionally reserved for employees such as health insurance. One example is the collector of delinquent taxes,

who is usually compensated exclusively by delinquency penalties. Yet even here, the collector receives general liability insurance coverage from the town and there is no reason why the collector should not be included in policies that address sexual harassment, use of town facilities, etc.

One way to handle the varying degrees of independence among town officers is to establish four classifications within the personnel policies: employees, full-time independent officers, appointees of independent officers, and volunteers. Volunteers would include members of boards and commissions and very part-time elected officials whose compensation is more akin to a stipend than a wage or salary. Examples include selectboard members, justices of the peace, planning commission members, etc. Using these classifications, personnel policies could distinguish between provisions that apply to some, such as payroll procedures, and provisions that should apply to all, such as a sexual harassment policy.

- *Dominic Cloud, Manager, VLCT
Municipal Assistance Center*

For assistance drafting and reviewing personnel policies, contact the Municipal Assistance Center.

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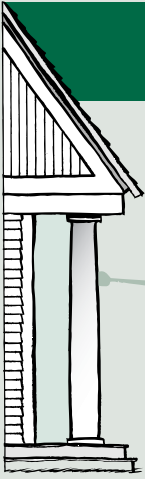
TRIVIA

Congratulations to **Dick Rogers**, Court Officer for the Windsor Superior Court in Woodstock. Dick knew that Vrest Orton was born in 1897, died in 1986 in Springfield, and founded Weston's well-known Vermont Country Store.

Here's another bit of trivia to consider:

In 1933 a strike shut down six out of seven major companies in this municipality and prompted Governor Wilson to call in the National Guard. The president of an Ivy League school led the successful arbitration. What industry struck and where? Who led the arbitration team and what school was he or she in charge of?

Contact us with your answer: VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602, tel. 800/649-7915, fax, 802/229-2211, e-mail, kroe@vlct.org.



EMPLOYEE ASSISTANCE PROGRAM (EAP)

Money a problem? Not enough to go around? Living paycheck to paycheck? Credit card debt piling up? Wondering about financing a house, college or retirement? EAP can help! Call 800/287-2173 for assistance. The VLCT Employee Assistance Program is co-sponsored by the VLCT Health and PACIF Trusts for their member municipalities. Employees *and their household members* are eligible to use the EAP for free.

UNEMPLOYMENT BOARD FINALIZES 2005 RATES AND CREDITS

The VLCT Unemployment Insurance Trust Board met on November 9 and finalized its 2005 rates, member distribution credits, and operating budget. Members of the Unemployment Insurance Trust will generally receive good news when they receive their bills in early December.

Rates will remain stable while member distributions will increase by 25%. For the current year, distributions totaled \$158,990. Two thousand and five distributions have been increased to \$200,000. The distributions credits will lower member premiums by 32% overall. The increased distributions should lower unemployment insurance costs for most member municipalities. Some members will see their premiums increase due to higher claims.

For 2005, unemployment claim costs are expected to rise by 3%, primarily due to increased wages and cost of living benefit increases. This increase is partly offset by a 3% decrease in operating expenses.

ATTENTION HEALTH TRUST MEMBERS

A detailed 2005 rates memo was mailed to all Health Trust members in early November.

(Continued on next page)

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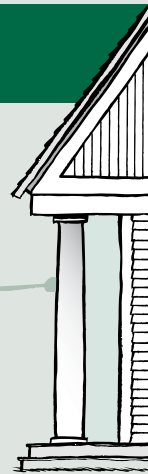
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FLU FACTS

LEARN MORE ABOUT HOW TO KEEP IT AT BAY

It's still early in the season, the flu is already beginning to rear its ugly head. These facts from the Centers for Disease Control and Prevention (CDC) can help you learn

more about this disease, which hospitalizes more than 100,000 Americans each year.

- Flu is the result of infection by one or more of three flu virus strains:
 - Influenza A causes moderate-to-severe illness and affects all age groups.
 - Type B generally causes milder disease and occurs primarily in children.
 - Influenza C is rarely reported.
- Each year in the United States, flu and its complications kill 36,000 people. This is more than any other "vaccine-preventable" illness.
- In the northern hemisphere, flu season peaks December through March.
- Symptoms include sudden fever, muscle aches (mostly in the back), sore throat, and coughing. The flu is often confused with colds. The most common complication of flu is pneumonia.
- Flu vaccines may be available and are generally covered by health insurance. CDC advises getting a shot even late in the season.
- The period when infected people are contagious depends on age. Adults may be contagious one day before becoming sick and from three to seven days after developing symptoms. Some children are contagious for more than a week.



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CUTS -

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(See also "Health Trust Sets 2005 Rates" on Page One of the November 2004 *VLCT News*.) In addition to listing the 2005 rates, the memo discussed upcoming plan changes and a new plan option – the high deductible health insurance/health savings account plan. Also new for 2005 are a variety of disease management programs, offered to Health Trust members under the name Blue Health Solutions.

If you would like assistance from a VLCT Group Services' Member Relations staff member as you review your health insurance options for 2005, please send in an On-Site Visit Request Form (available on the Group Services/Printable Forms section of www.vlct.org). Once we receive your form, we will contact you to arrange a meeting at your town office, at your convenience.

WELCOME

The **Winooski Natural Resources Conservation District** recently joined VLCT PACIF, bringing total membership up to 341 members.



MUNICIPAL LAND RECORDS COMMISSION REPRESENTATIVE SOUGHT

The Vermont League of Cities and Towns is looking for an interested and qualified municipal legislator or chief administrative officer to appoint to the State's Municipal Land Records Commission for a two-year term.

The Municipal Land Records Commission was created during the 2004 legislative session and charged with a variety of tasks, including but not limited to: 1) proposing standards for formatting, filing, recording, and preserving municipal land records; 2) proposing a uniform system of indexing municipal land records which may include the use of numerical identifiers; and 3) proposing continuing education requirements for municipal officials and corresponding compliance requirements for municipalities. A full description of the Commission and its members along with a meeting schedule can be found on the Web at <http://vermont-archives.org/records/vtmlrc/index.htm>.

The individual selected is expected to follow the direction of VLCT's Board of Directors and represent the interests and policies of VLCT. In addition, the selected representative is expected to abide by VLCT's policy for representation on state boards. A copy of the representation policy is available upon request. VLCT's specific policy on land records can be found in section 1.06 of VLCT's *2005 Municipal Policy* available at <http://www.vlct.org/pdf/munipolicy05.pdf>.

If you would like to serve on this Board, please send a letter of interest detailing your qualifications to Charles Lusk, c/o Vermont League of Cities and Towns, 89 Main Street, Suite 4, Montpelier, Vermont, 05602. Questions regarding this Board position may be directed to Todd Odit at 800/649-7915 or via e-mail at todit@vlct.org. VLCT would like to fill this position early in December.

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Vermont's ambulances now come equipped with new tools that help provide comfort and treatment to children—teddy bears. Blue Cross and Blue Shield of Vermont and The Vermont Health Plan learned that emergency crews use such toys to open the lines of communication between EMTs and children, who respond positively to the familiar comfort of a teddy bear. Teddy bears for children, the most innovative health plans, and the largest provider networks in the state—these are signs of a healthier Vermont. To learn more about The Vermont Health Plan, our teddy bear initiative and other programs, visit www.bcbsvt.com.



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Tech Check

APPLICATION SOFTWARE: BUY IT OR BUILD IT?

Senior management, elected, and appointed officials often ask whether they should be purchasing commercial, off-the-shelf software packages or developing them using in-house staff. For the information systems industry, this has been a point of debate, with very vocal advocates on each side of the issue.

From our experience, local governments should be purchasing commercial, off-the-shelf packaged software (simply called "packaged software") unless there is a valid, definable reason not to do so. That is, this decision should be approached with the concept that "we will purchase packaged software unless we can be convinced otherwise."

ADVANTAGES OF PURCHASING PACKAGED SOFTWARE

1. Predictable cost and timeframes:

Purchasing packaged application software allows a local government to more accurately predict costs. Properly identified features, functions and capabilities needed by a jurisdiction will lead to a highly predictable total cost of ownership for the life of the software. When developing application software using in-house staff, costs tend to vary widely and rarely are accurate or predictable. Local-government technology staffs often are responsible for both supporting current operations and developing new systems. This leads to conflicting priorities, delayed implementations and escalating costs.

Another reason for cost escalation and project delays is the lack of fully defined or accurate functional requirements. For the most part, software packages have been used in many other municipal environments, and a forgotten or missed functional need is likely to have already been programmed into the software. Unlike in-house development efforts, the cost and time needed to install and implement packaged software can be closely estimated and, in fact, can be fortified through contractual penalties for delays.

2. Improved Maintenance and

Support Cost: Maintaining an internally developed application requires a dedicated, knowledgeable maintenance team. Issues arise relating to internal staffing levels, how to maintain the skills of the support staff, and retention of trained technology personnel. Often, local governments cannot afford to dedicate the resources needed to staff such a team on a continuing basis. Typically, it is easier for a municipality to justify financial needs than to obtain additional personnel. Packaged software is backed by a commercial business dedicated to maintenance and viability of the system. In order to remain a commercially viable product, the software must be updated at regular intervals to keep pace with new technology and the functional needs of its clients. Because of this, internally built software tends to become obsolete in a much shorter time frame and, over time, may experience poorer ongoing maintenance and support.

3. Functionality of the application:

Building a system in-house requires local government users to develop detailed specifications and functional requirements of the application before it can be built. This step is often shortcut, with disastrous results. Mature packaged software vendors have functional experts to design, develop, test and enhance the application over a period of many years with many clients. Also, these vendors support a wide variety of environments and attempt to put the best practices of the

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TECH CHECK -

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industry into their application to make their software more commercially attractive.

4. Improved use of limited resources: With the ever-increasing demands being placed on local governments, an emphasis on reducing cost of government while improving services to citizens is paramount. Purchasing packaged software applications allows limited technology resources to focus on those unique applications and services not readily available through packaged software.

5. Rapid deployment: With the rapidly changing technology environment and the limited application development resources of most local governments, many systems built in-house are obsolete before they are implemented. The ability to use packaged software applications reduces the time to make a system operational, thus allowing a local government to gain productivity improvements sooner.

DISADVANTAGES OF PURCHASING PACKAGED SOFTWARE

1. Licensing issues: Perhaps the most difficult task in contracting for a software package is understanding the type, terms and conditions of the licensing. This varies from vendor to vendor, and may include enterprise licensing, per-seat licensing, server licensing, or a combination of these. Depending upon how the license is enforced (through security codes, etc.), issues may arise when the server/workstation hardware is broken, or you have to move the software to a new machine during a disaster. What about licenses for a test machine? What happens if we decide to allow employees to work from home? All of these issues should be reviewed, understood and negotiated during the contracting process.

2. Evaluating software packages can be difficult: Evaluating packaged software can be a difficult process. Unless you are able to obtain an evaluation copy and fully test the system, you are purchasing based upon vendor literature, references from other sites, and possible site visits. Often, local governments purchasing packages do so without creating any functional requirements. This makes a proper selection more difficult. It is often wise to obtain consulting help from an unbiased third party for the selection process.

3. Lack of ability to customize the software: Customizing software packages to meet specific and/or unusual needs of a local government can be difficult and costly. In most instances, the software vendors have a

robust set of parameters that will allow package customization to suit known differences between local government organizations. When working with a package, the local government should be ready and willing to modify its business practices (if appropriate) to live within the parameters of the package. Local governments need to select software packages that minimize customization. (None is preferred.)

4. Vendor corporate issues: When using packaged software applications, you are partnering with a commercial vendor. There is always the possibility that the vendor may go out of business. Choosing mature companies with large customer bases can minimize this risk. If the company falls on hard times, the odds are that another vendor will purchase the company and the contracts will be honored. However, there is a

possibility that you could be stuck with software which is unsupported, or worse, that won't run when you thought you would have it forever. These risks can be minimized by proper selection and contractual protections (such as escrowing the source code). Again, an unbiased, knowledgeable third party can be invaluable.

5. Responsiveness of the vendor: With in-house development software, you can demand immediate attention for urgent bugs, training or other issues. When dealing with a packaged software application vendor, you may find it difficult to have a bug fixed or special customizations developed. Your ability to "control" is significantly reduced over use of in-house resources. The commercial vendor is going to work with the most pressing issues for all customers (which may

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TECH CHECK -

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not be your particular issue), and will place its emphasis on where revenue can be generated. Again, contractual terms and conditions can help to minimize this downside.

WHEN TO BUILD A SYSTEM IN-HOUSE

1. When the function is unique: This is often overplayed as “no ones does it like we do,” but there are legitimate functions that may be unique and for which no packaged application software is available. In these instances, the only recourse is to build the system in-house, or to contract to have it built for you.

2. When, clearly, there is a significant cost difference: When you can *clearly* define the functions needed, *accurately* calculate the total cost of developing the software in-house over its life cycle, and that cost is *significantly* less than the packaged software cost, you may want to develop the system in-house. The trick here is to accurately calculate the total life-cycle cost (not just a single phase) of the in-house development effort. Don't forget the timing issue. If you can purchase and

implement a package solution within six months, but it's going to take two years for in-house development, what is the lost productivity opportunity cost?

3. Small, quick hit projects: If the total project is small and can be accomplished by the technology staff within a few months, it may be less costly and more advantageous to build the system in-house. This consideration is especially important if an RFP process is required to obtain the commercial, off-the-shelf packaged software.

THE BOTTOM LINE

Purchasing commercial, off-the-shelf packaged software always should be considered as a viable alternative to building an application in-house. Gartner, a leading technology research and consulting firm, says that “build activities within an organization should be focused on quick and inexpensive ‘hits,’ as well as projects that just cannot be purchased at any price.” When considering whether to buy or build an application system, local governments should ask the following questions:

1. Do we have the skills and resources? Does the technology organization have the skilled staff and resources necessary to develop the new system in the timeframe

desired while maintaining current operations?

2. Can our limited resources be better utilized elsewhere? Building applications that are available from commercial firms may delay the building of more critical applications that are not commercially available.

3. What's best in the long term? Market forces affect technology-staff turnover. How will this affect the in-house development effort and long-term maintenance of the system?

4. How fast do I want the application implemented? Software built in-house has never been used or tested in other locations, and therefore requires extensive testing. This, coupled with generating detailed analysis and functional requirements, equates to significant lead times for implementing an in-house system of any size and complexity.

- Frank R. Hagy, Chief Information Officer,
Florida League of Cities.

(Reprinted with permission from Quality Cities, May/June 2004, published by the Florida League of Cities.)

Please tell us what you would like to see in future Tech Check columns. E-mail us at techcheck@vlct.org. Thank you!

RFP^{ower!}

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Dot Matrix Printer, Epson LQ-2070, and a **Compaq Deskpro Windows 95 computer** (no monitor). Both work well. FREE. **Overhead Projector**, 3M 9100, only used a few times. Excellent condition. \$50.00. **Large flat file** for maps, etc. Very good condition, five, 2 3/4" drawers, 42" D x 53.5" W x 17" H, on a six-inch base. \$300. Call Cyndi Humphrey, Town Administrator, Jericho, 802/899-9970. (10-21)

HELP WANTED

Road Crew Employee. The Town of Huntington, VT has an opening on its road crew. Requirements: CDL (class B), experience with dump truck, snowplow, loader, grader and backhoe. Overtime as needed, particularly in winter. Benefit package. Send letter of interest, resume, references and salary required to Town Administrator, 4960 Main Road, Huntington, VT 05462, or fax 802/434-4779, or e-mail townhunt@accessvt.com. (10-7)

Highway Superintendent. The Town of Morristown, VT, a community of 5,500 and the hub of Lamoille County, seeks candidates for the position of Highway Superintendent. The Superintendent is responsible for budget development, implementing construction projects, repairs and maintenance of highways and related equipment. The department has two highway facilities, which requires coordinating of operations. Applicants must be high school graduates and have five years of highway experience. Engineering training would be beneficial. A class B CDL is preferred, but not required. Salary is commensurate with education and/or experience. To obtain a detailed job description, contact the Administration Office at 802/888-5147, or write to Paul

D. McGinley, Town Administrator, Town of Morristown, P.O. Box 748, Morristown, VT 05661. The Town reserves the right to deny any and all applications. **Position open until filled.** Equal Opportunity Employer. (6-9, rev. 10-12)

Utilities Maintenance Team Leader. The City of Lebanon, NH (pop 12,700) is seeking a highly motivated individual to work in a team environment for the position of Utilities Maintenance Team Leader. This position performs responsible supervisory work for the Public Works Department in the planning, reviewing, and scheduling of maintenance, repair and construction work on City stormwater, drainage, water and wastewater distribution and collection systems by (1) coordinating and supervising the activities of subordinate staff, (2) coordinating activities with the other City divisions and departments, (3) working with private utilities and construction companies to minimize service disruptions, and by (4) responding to emergency situations as necessary. This position is represented by the Lebanon Professional and Salaried Employees. Requirements: A minimum of an associates degree in construction and public environment, 3 to 5 years in water, wastewater, and construction, water distribution and wastewater collection

systems, a Commercial Driver's License Class B, State of NH Water Distribution System License, and a State of NH Wastewater Collection Systems License. Salary Range: \$38,333-\$51,770, DOQ, with a competitive benefits package. **Resume and applications accepted until the position is filled.** Send to Michael Lavalla, Director of Public Works, City of Lebanon, 20 Spencer Street, Lebanon, NH 03677 (applications available there or from www.LebCity.com.) No faxes accepted.

Equal Opportunity Employer. (11-5)
Assistant Highway Superintendent. The Town of Randolph, VT is accepting applications for the position of Assistant Highway Superintendent. This position will be under the direct supervision of the Highway Superintendent. Ideal candidates should possess 3 years of supervisory experience, knowledge and experience in the construction industry, and the ability to work independently while directing the activities of others. Successful candidates should have an appropriate CDL (Class B) license. Interested applicants should submit a resume or an employment application no later than **November 24, 2004** to: Assistant Highway Superintendent, Town of Randolph, Drawer B, Randolph, Vt. 05060. (11-9)

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Calendar

For more information about VLCT-sponsored events, please contact Jessica Hill, VLCT Conference Coordinator, tel., 800/649-7915 or e-mail, jbill@vlct.org. You may also visit www.vlct.org, select the Calendar, and select a workshop for more information or to register on-line (on-line registration option available for VLCT-sponsored events only).

Managing the Municipal Highway

System. Wednesday, December 8, 2004. Suzanna's Restaurant, Berlin. Sponsored by the VLCT Municipal Assistance Center. This popular workshop will focus on the legal, pragmatic, and fiscal concerns related to the municipal highway system. This is a near sell-out every year; please register early.

Planning & Zoning Series #2: Required Changes to Zoning Bylaws by

September 2005. Thursday, December 16, 2004. Vermont Interactive Television sites around Vermont. Sponsored by the VLCT Municipal Assistance Center and your local Regional Planning Commission. This evening workshop will focus on the steps towns must take by September 1, 2005 in order to comply with the "Saving Clause" provisions of Act 115.

Regional Legislative Preview. Monday, January 10, 2005, Milton Town Offices; Tuesday, January 11, 2005, Hartford Town Offices; Friday, January 14, 2005, Manchester Town Offices. Sponsored by VLCT. Please watch your mail for an invitation and plan to join VLCT legislative advocacy staff for morning coffee and conversation about the 2005 session.

Local Regulations of Telecommunications. Thursday, January 20, 2005, Lake Morey Inn, Fairlee. *Please note location change!* Sponsored by the VLCT Municipal Assistance Center. The last few

years have seen many developments in local governments' abilities to both regulate and attract telecommunications facilities. This workshop will review recent technological changes and discuss how local governments can best position themselves to respond to this changing landscape.

Wellness Coordinator Workshop.

Thursday, January 27, 2005, White House Inn, Wilmington (the first of several around the state). Sponsored by the VLCT PACIF and Health Trusts. This annual, half-day workshop is designed to work with municipal wellness coordinators on health promotion programs and services they can take back to their municipalities. Coordinators may also pick up materials for this year's health and exercise-related program, "The Catamount Trail Pedometer Challenge." We hope all VLCT Health Trust and PACIF members will send one person to the workshop.