

# VERMONT LEAGUE OF CITIES AND TOWNS

## LEGISLATIVE WRAP-UP



**2009**



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Your VLCT advocacy staff represent local government and serve as liaison to the Vermont legislative and executive branches as well as to the federal government. VLCT's advocacy program supports legislation that advances local self-governance and implements policies established by the membership, which may be found in the 2009 Municipal Legislative Policy. We follow hundreds of bills that represent hundreds of millions of dollars of potential and realized impact on municipal governments in Vermont. With the membership's assistance, advocacy staff assure that municipal priorities are addressed in the State House, by the executive branch, in rule-making procedures and in other policy-making forums throughout the year.

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## INTRODUCTION

This was a legislative session for the history books! For the first time in Vermont, the governor vetoed the budget bill, which was overridden by the legislature in a special session on June 2. On June 3, the legislature passed both a “companion bill” (H.442, Miscellaneous Tax Provisions) and a “technical changes” bill (S.1, Technical Corrections) that made concessions to the governor’s most significant objections in the budget. Money woes, which were substantial as the legislative biennium commenced, only worsened through the winter and spring, setting the stage for a tense session completely dominated by dollars.

In this environment, the damage done to towns could easily have amounted to a bloodbath. While local governments took their hits – and they are significant, as you will read in this report – the damage is less than that which local officials sometimes feared. Legislators found themselves particularly attuned to the concerns of local officials because they heard often and loudly directly from you about the impacts of proposed legislation on your cities, towns, and villages.

In those instances where money was not the primary consideration, municipal issues were handled in a variety of ways. With few exceptions, legislators were happy to help local governments where they could. For example, of 14 charter changes that were introduced, 12 municipal charter change bills and one school district consolidation charter change were voted favorably out of the House and Senate Government Operation committees, passed by the legislature, and signed by the governor. Substantial amendments were made to only one of them, and that upon request of the town affected. Once again in 2009, these committees were very respectful of municipally voted changes and needs. For those who are new to the legislative process as it relates to municipal governments, such has not always been the case! Not too long ago, every charter change that went into the legislative process was sent there with great local trepidation because legislators freely amended them based on their own whims.

You will read in this report about the battles over use of the education property tax, dollars that are appropriated to local transportation needs, the use of American Recovery and Reinvestment (ARRA) dollars, incentives for economic development, who gets to make decisions about use of scarce state dollars and priorities for environmental programs. These conversations are not over! In July, the Joint Fiscal Committee will meet again and we expect state revenue projections to be downgraded. (The committee is authorized to make some budgetary decisions when the full legislature is out of session.) There will be mid-course corrections in spending either during the summer or when the legislature convenes in January, unless the economy makes a miraculous recovery in the interim.

The January 2010 session is the second half of the biennium. Thus, any bill that did not pass this year is alive again and may be acted upon in the upcoming session. VLCT municipal legislative policy committees will meet during the summer to develop a legislative policy for 2010 that is responsive to the vagaries of this economic recession and that targets local government’s most pressing needs. Even if you are not a member of one of those four committees, please send us your recommendations for municipal legislative action. Town Fair is October 1 at the Barre Auditorium this year and the VLCT Municipal Policy will be debated and adopted there. Each town and city has one vote. Make yours count: join us in Barre!

And please stay tuned during the summer and fall. Your advocacy staff will continue to email information and alerts as necessary. Finally, we offer a heartfelt **thank you** to all of the local officials who work tirelessly on behalf of their municipalities, who keep track of legislation, and who keep us alert to the ramifications of legislative proposals. We cannot stress enough the impact you had during discussions of the most difficult budget issues. When the legislature threatened to halve the April town highway payment, you responded to VLCT action alerts and called and emailed your legislators. Within a day, they had rewritten a conference committee report and had the bill approved by both houses, restoring the funds. When the budget conference committee considered in the morning halving payments to towns hosting Agency of Natural Resources lands, your emails and calls came so fast and furious that the proposal was off the table by the time of the afternoon committee meeting. When you talk, they listen ... at least most of the time. The fact that local governments and property taxpayers did not come out any worse than that which is described in this report is due to your actions in discussing your concerns with your legislators. We'll need a similar effort next year to keep the damage to a minimum.

We encourage local officials to thank their legislators and state officials for listening to and often responding to their concerns. The session left no one involved in local government happy with every result. In a tough year, there were tough choices that had to be made – and they were. Next year promises to be just as difficult, and we will all need to work together to find solutions that best serve all Vermonters.

And remember: you can download copies of all bills introduced this year from the legislative website, [www.leg.state.vt.us](http://www.leg.state.vt.us).

## **MUNICIPAL FINANCE**

### **Appropriations Bill (H.441: Subjects Affecting Local Government)**

VLCT Staff Contacts: Karen Horn and Steve Jeffrey

The appropriations bill is the “big” bill every session; once it is put to bed, the session is over. This year, of course, the session was *not* quite over when the appropriations bill (H.441) passed, or even when concurrent bills amending it were passed on the last day of the regular session, and again on the second day of the two-day special session in June. The appropriations bill was vetoed. But the legislature overrode that veto. Many of the big ticket items in play as the bill was amended, vetoed, and then passed notwithstanding the veto were municipal matters.

H.441 touches every aspect of state government and programs that affect cities, towns, and villages in all instances where local and state governments interact. In this article as well as in other sections of the Wrap Up you will read about the sections of H.441 that are important to municipalities.

**Municipal Funding Priorities in FY 2010 Budget (in Millions)  
with Addendum Bill Changes Included (June 2, 2009)**

<b>Budget Line Item</b>	<b>FY09 Final</b>	<b>FY10 Governor's Recommend</b>	<b>FY10 House Approved</b>	<b>FY10 Senate Approved</b>	<b>FY10 Budget as it Became Law</b>	<b>FY 10 Final Change from FY09 Final</b>	<b>FY10 Final Change from FY10 Gov Recommend</b>
PILOT – ANR Lands	\$2.01	\$2.13	\$2.13	\$2.13	\$2.13	6.0%	0.0%
PILOT – Corrections Facilities <sup>1</sup>	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	0.0%	0.0%
PILOT – Montpelier <sup>1</sup>	\$0.18	\$0.18	\$0.18	\$0.18	\$0.18	0.0%	0.0%
PILOT – State Buildings <sup>2</sup>	\$4.50	\$4.35	\$4.90	\$4.90	\$4.90	8.9%	12.6%
Current Use – Municipal	\$9.85	\$10.81	\$10.81	\$10.81	\$10.81	9.7%	0.0%
General Fund Transfer to Education Fund <sup>3</sup>	\$291.13	\$274.78	\$297.78	\$297.78	\$277.88	-4.6%	1.1%
General Fund Support of Teachers' Retirement System <sup>4,5</sup>	\$33.55	\$0.00	\$40.30	\$40.30	\$41.50	23.7%	
Municipal Planning Grants	\$0.86	\$0.41	\$0.41	\$0.41	\$0.41	48%	0
Town Bridge Grants <sup>6</sup>	\$16.53	\$19.17	\$19.31	\$19.31	\$24.68	49.3%	28.7%
Town Highway Aid Program <sup>7</sup>	\$24.98	\$24.98	\$27.28	\$24.98	\$24.98	0.0%	0.0%
Town Highway Aid Program – Class 1 Supplemental	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	0.0%	0.0%
Town Highway Structures <sup>8</sup>	\$3.83	\$3.83	\$7.67	\$3.83	\$3.83	0.0%	0.0%
Vermont Local Roads	\$0.38	\$0.38	\$0.38	\$0.38	\$0.38	0.0%	0.0%
Town Highway Public Assistance Grants	\$0.20	\$0.20	\$0.20	\$0.20	\$0.20	0.0%	0.0%
Municipal Mitigation Grant Program	\$2.11	\$2.11	\$2.11	\$2.11	\$2.11	0.0%	0.0%
Class 2 Highway Paving and Rehabilitation	\$6.45	\$6.45	\$7.45	\$6.45	\$5.75	-10.9%	-10.9%
Town Highway Emergency	\$0.25	\$0.75	\$0.75	\$0.75	\$0.75	200.0%	0.0%
Total Local Highway Aid	\$54.86	\$58.00	\$65.28	\$58.15	\$62.81	14.5%	8.3%
<b>TOTAL</b>	<b>\$396.12</b>	<b>\$350.29</b>	<b>\$421.42</b>	<b>\$414.29</b>	<b>\$400.25</b>	<b>1.0%</b>	<b>14.3%</b>

1. All FY09 and FY10 figures have been shifted from being paid from the General Fund in FY08 to the PILOT for state buildings special fund. This new cost reduces the amount distributed under PILOT – State Buildings.
2. FY09 and FY10 figures are all from local options tax sharing and no state monies.
3. Required to increase by New England economic project cumulative price index for government purchases (16 V.S.A. § 4025(a)(2)). Governor proposed to reduce for this year and then to change the automatic adjustment to reflect changes in Vermont state spending. Conference committee report uses \$38 million of ARRA federal stimulus funds and totals \$18.4 million less that required by the above-cited statute.
4. Governor proposed shifting responsibility for paying for system to the Education Fund without any state assistance.
5. Despite the title, in the House version only \$33.5 million is coming from the state General Fund. The remaining \$6.8 million comes from ARRA, the federal stimulus money. Conference committee report contains \$1.275 million of Medicaid reimbursement funds that used to go into the Education Fund to reduce property taxes.
6. Includes state and federal aid only, no local match. In the House version, \$16.27 million of this is included in H.441, the appropriations bill from federal funds. The other \$3.04 million is coming from state bonded money included in H. 428. Conference committee reports include ARRA stimulus funds as well.
7. FY09 figures have been reduced by \$925,000 (15% of the January payment) from this figure.
8. In the House column, one-half of the FY10 House Appropriations figure is included in H.441, the appropriations bill from the Transportation Fund. The other half is coming from state bonded money included in H.428.

**State Payments in Lieu of Taxes (PILOT).** The state currently makes four different payments in lieu of taxes (PILOTs) to cities and towns that host state buildings and land. This year, two were level-funded from last year: the City of Montpelier (\$180,000), and municipalities hosting state corrections facilities (\$40,000). Like last year, both of those payments are being paid out of the state PILOT special fund, which is solely funded from revenues raised by cities and towns levying local option sales and rooms and meals taxes. No state General Fund revenues support these two payments, nor does the state contribute to the largest PILOT payment – for state buildings. That figure rose from \$4.5 million last year to \$4.9 million for this coming year, because more municipalities have adopted the local option taxes to raise local revenue, and 30 percent of what is raised is deposited into the state PILOT special fund. If the host municipalities were reimbursed at the insurance value of the state buildings located in the municipality at their municipal (not school) tax rate, towns would be reimbursed a total of \$6.6 million. Because the state has never fully funded such payments and discontinued any state General Fund support two years ago, towns can expect to receive about 74 percent of full reimbursement in FY10.

The last PILOT payment did cause some consternation in the waning days of the session. The state has reimbursed towns hosting Agency of Natural Resources land for decades. The state does not do the best job of maintaining up to date values on these lands and is allowed to enroll them in the current use program and then not reimburse towns for the difference that reduced valuation causes. As the state continues to acquire land –and as land values do tend to rise – the payment this year was projected to rise from \$2.01 million to \$2.13 million for FY10. Both houses passed the budget bill (H.441) with that increased figure. In conference committee, the idea was floated to cut the reimbursements to the municipalities' actual effective non-school tax rate, rather than the flat one percent of the assessed value of the land. That would have cut payments to towns in half to \$1 million. Due to an outpouring of opposition from host towns when they heard of it, the proposal was dropped and the \$2.1 million agreed to in the budget that has become law over the governor's veto.

**Current Use.** In the original conference committee report on H.441 – the budget bill the governor vetoed and the legislature made law by overriding his veto – there was a provision to cap payments to current use program participants at a value of \$5,000 an acre, except for farmers. Landowners would be responsible for paying for town and school taxes on the value above \$5,000. When it appeared questionable whether the House would vote for that version of the bill due to this section and the amount of the “raid” on the Education Fund, a different bill, H.12, was quickly amended and passed to respond to those concerns. H.12 actually repealed the sections that capped the current use payments, so there is no net change in the current use program for FY10.

Appropriations to the Municipal and Regional Planning Fund are reduced this year. Regional commissions will receive \$2,632,027. The Municipal Planning Grants and the Vermont Center for Geographic Information will each receive \$408,700. The 11 regional commissions receive \$880,000 from Clean Energy Development Fund ARRA money to conduct energy efficiency and energy conservation activities that are eligible under the new Energy Efficiency and Conservation Block Grants. The Department of Economic Development receives a one-time appropriation for grants to regional commissions and development corporations. The Two Rivers-Ottaquechee Regional Commission receives a \$12,500 grant to recommend water management type designations for the White River Basin; \$12,500 is also granted to the Windham Regional Commission for recommending water management type designations for the West, Williams, and Saxons River Basins. Recommendations are to be made to the Agency of Natural Resources and the Natural

Resources Board by January 31, 2011; three months later, the Natural Resources Board must commence rule-making to consider the recommendations.

**Capital Bill (H.445, Act 43)**  
VLCT Staff Contact: Karen Horn

In the end, the capital bill this year was fairly straightforward. At the beginning of the session, the speaker of the House proposed to establish a state stimulus program similar to the federal ARRA program. That proposal evaporated as the session wound on and revenue projections continued to decline. As the table on page 6 illustrates, the House Institutions Committee's effort to steer state bonding dollars toward municipal building infrastructure projects met an early end. Substantial new money in the wastewater and water supply line items reflect ARRA money directed specifically to those projects from the federal level.

The capital bill legislation authorizes the issuance of \$69,955,000 worth of bonding, which is the amount recommended by the debt affordability committee. With the addition of the ARRA funds for wastewater and water supply, the total capital bill equals \$108,928,000. By contrast, last year (FY 2009) the capital bill recommendation from the governor was \$54,650,000, a figure the legislature adopted in that year. Of that amount, \$5,650,000 was set aside for transportation infrastructure needs, an allocation new to the capital bill. The legislature and governor agreed to provide for an additional \$10 million in general obligation bonds for transportation upon the Capital Debt Affordability Advisory Committee considering "how much additional long term net tax supported debt may be prudently authorized for related uses that could assist in closing the gap between transportation needs and available revenues." That additional expenditure was authorized early in the summer of 2008. This year, no capital bonding money from H.445 is dedicated to transportation projects – projects that are included in H.438, the House's transportation bill.

The capital bill also includes language that provides authority to the Windham County assistant judges to borrow up to \$200,000 to renovate the Windham County sheriff's office without a further vote of the electorate, "notwithstanding the provisions of 24 V.S.A. § 82." The assistant judges shall notify local legislative bodies in the county that they intend to borrow at least 30 days before making the loan request. This is money that will be repaid by the municipal property tax from each town in the county. The language found its way into the capital bill despite having been withdrawn from the floor of the House when it was a stand-alone bill because of objections from local governments.

The Department of Corrections commissioner is directed to consult with the U.S. Marshal to identify collaborative opportunities to provide secure facilities that meet the needs of federal, state, county, and municipal law enforcement officials regarding space for housing inmates and detainees. Opportunities include building a new facility with ARRA funds and reconfiguring the E Wing of the Northwest Regional Correctional Facility in St. Albans. A report to the corrections oversight committee is due by October 15, 2009. No plan to close a correctional facility shall be finalized without the approval of the corrections oversight committee.

<b>CAPITAL BILL</b>						
<b>Agency/Department</b>	<b>Line Item</b>	<b>FY09 Final As Passed</b>	<b>Governor Proposed FY10</b>	<b>House Proposed</b>	<b>Senate Proposed</b>	<b>Final as Passed</b>
Dept. of Buildings and General Services	Human Services and Educational Facilities Grants	\$180,000	\$180,000	\$300,000	200,000	200,000
	Recreational Facilities Grants	180,000	180,000	300,000	200,000	200,000
	Community Capacity Grants	0	0	1,000,000	0	0
Dept. of Information and Innovation	Vt. Telecommunications Authority Broadband development assistance <sup>1</sup>	180,000	0	5,000,000	1,000,000	1,000,000
Dept. of Taxes	Orthophotographic mapping	100,000	0	100,000	100,000	100,000
Agency of Commerce and Community Development	Historic Preservation Grants <sup>2</sup>	180,000	180,000	300,000	200,000	200,000
	Historic Barns and Agricultural Grants <sup>2</sup>	180,000	180,000	300,000	200,000	200,000
	Cultural Facilities Grants <sup>2</sup>	180,000	180,000	300,000	200,000	200,000
	Unmarked Burial Fund	25,000	0	0	0	0
Department of Education	State Aid for school construction <sup>3</sup>	10,056,750	0	14,672,360	10,343,555	10,343,555
Agency of Natural Resources (\$11,131,000 total request)	Clean Water State/EPA Revolving Loan Fund Match <sup>4</sup>	2,100,000	475,000	19,433,000	19,433,000	19,433,000
	Municipal pollution control projects <sup>5</sup>	2,000,000	650,000	650,000	1,125,000	1,125,000
	Pownal wastewater treatment facility	1,600,000	200,000	1,060,000	140,000	140,000
	Water Supply Revolving Loan Fund <sup>4</sup>	1,900,000	1,975,000	19,500,000	19,500,000	19,500,000
Clean & Clear Program Total Request \$2,250,000	Ecosystem Restoration & Protection Grants	1,120,000	1,700,000	1,500,000	1,700,000	1,500,000
	Unregulated Stormwater Management Grants	150,000	200,000	200,000	200,000	200,000
	Wastewater treatment facility phosphorus removal – Proctor	550,000	510,000	510,000	510,000	510,000
Montpelier Flood Study <sup>6</sup>		100,000	142,000	142,000	142,000	142,000
Agency of Agriculture, Clean and Clear	Best Management Practices on Vermont farms and water quality buffer program	1,800,000	1,800,000	1,775,000	1,975,000	1,775,000
Dry Hydrant Program		100,000	100,000	100,000	100,000	100,000
<p>1. FY09 funds used by Vt. Telecommunications Authority to provide grants to municipalities, telecommunication infrastructure developers and service providers.</p> <p>2. Grants awarded on a 50-50 percent basis.</p> <p>3. Dept. of Education original request was \$14,628,805. \$6,983,461 from state capital funds, \$7,345,344 from ARRA funds. Includes \$300,000 for emergency school construction projects and \$43,555 for emergency shelters in schools.</p> <p>4. Grants to municipalities. Source is ARRA funds.</p> <p>5. Combined Sewer Overflows: Proctor \$160,000; Enosburg Falls \$250,000; St. Johnsbury \$240,000.</p> <p>6. Governor's recommend is second year of three-year request; cost shared equally by state and city.</p>						

## **Local Option Sales Tax Holiday (H.442, Act 2)**

VLCT Staff Contact: Steve Jeffrey

During the June special session, the legislature approved two sales tax holidays. On August 22, 2009, and March 6, 2010, no sales tax or local option sales tax shall be imposed or collected for purchases made for personal use of tangible personal property at a sale price of \$2,000 or less. Fortunately, as it did with the first sales tax holiday, the legislature appropriated \$10,000 of General Fund monies to reimburse municipalities for the amount of local option tax revenues lost to the municipality and the payment in lieu of taxes (PILOT) special fund for lost deposits due to the sales tax holiday. Cities and towns that levy the local option taxes authorized under 24 V.S.A. § 138 or local charters retain 70 percent of that collected. The other 30 percent is deposited into the PILOT special fund to reimburse municipalities hosting state buildings. There will be no way to tell how much revenue is actually lost, but at least the legislature recognized the impact on those towns that rely on the sales tax to keep property taxes down.

## **EDUCATION FINANCE**

### **Education Funding and Property Taxes (H.441, H.12)**

VLCT Staff Contact: Steve Jeffrey

The state budget bill that finally became law imposes almost as much in extra state education property taxes to cure the state deficit as the much more ballyhooed \$26.1 million in other state taxes raised.

According to VLCT estimates, the legislative plan implemented when the governor's veto was overridden increases property taxes by \$23.2 million. It does so through three main means: underfunding the statutorily required General Fund support of education by \$18.4 million; shifting paying for the Department of Corrections Department education program and an Agency of Human Services early education initiative from the General Fund to the Education Fund; and eliminating the Medicaid reimbursement for services that school districts provide to eligible recipients.

All told, that's about \$26.1 million in additional costs and reduced revenues shifted to the property tax. That is offset to a small degree by the impact of the changes in the sales tax (e.g., subjecting liquor and digital downloads to the sales tax), one-third of which goes into the Education Fund.

It's not that the alternative offered by the governor was any better than the budget that now has become law. The governor proposed shifting an almost identical amount to extra property taxes by transferring the obligation to pay for the teachers' retirement system to the Education Fund and eliminating income sensitivity for nearly 14,000 Vermont homeowners who earn more than \$75,000 a year. He, too, proposed shifting the corrections and early education programs to the property tax. His \$44.1 million shift is offset by a larger American Recovery and Reinvestment Act (ARRA) contribution in the first year than the legislature's (see below) and a larger General Fund transfer, which bring the property tax increase he proposed to \$23.31 million for FY10. With the governor's proposal, we are assured that it would have only gotten worse in FY11 as the obligations for teachers' retirement and the retiree health insurance paid for by the fund continues to increase.

It is already projected that either the General Fund or the Education Fund will have to come up with \$60 million for teachers' retirement obligations next year compared to the \$41.5 million this year provided in H.441. We can only imagine what measures the legislature will have to resort to in order to balance its version of the FY11 budget, which, by the reckoning of its Joint Fiscal Office is already projected to be \$67.38 million in the hole.

H.12 (a "companion bill" passed the same time the budget was initially passed) sets the state education tax rates at \$1.35 for non-residential property statewide, and a base rate for homestead property at \$.86. These are both a penny less than last year. VLCT believes they are 2.4 cents higher than they should be if the legislature met its obligations under current law and had not shifted additional programs to the Education Fund to obtain revenues. Vermont law (16 V.S.A. § 4025 (a)(2)) requires that "[f]or each fiscal year, the amount of the general funds appropriated or transferred to the education fund shall be \$280,200,000.00 increased by the most recent New England economic project cumulative price index, as of November 15, for state and local government purchases of goods and services from fiscal year 2008 through the fiscal year for which the payment is being determined, plus an additional one-tenth of one percent." That formula should have resulted in General Fund support of \$297.8 million for the coming year. Instead, H.441 (as amended by H.12) states that:

*(a) Notwithstanding 16 V.S.A. § 4025(2), for fiscal year 2010, the general fund transfer to the education fund shall be \$ 240,803,944.*

*(b) Notwithstanding 16 V.S.A. § 4025(2), it is the intent of the general assembly that the fiscal year 2011 transfer shall be funded at \$240,803,945 less any adjustment for changes in the current use program.*

*(c) It is the intent of the general assembly that the fiscal year 2012 general fund transfer shall be as required in 16 V.S.A. § 4025(2) less any continuing offset for federal state fiscal stabilization funds.*

That language appears to short the required transfer by \$57 million by inserting the word "notwithstanding" (through which the legislature can relieve itself of responsibilities it claims to have imposed upon itself). Through means other than the Education Fund, the legislature also has made available \$38.6 million of ARRA funds directly to school districts that they apparently can use in the same manner as other state general support, so the real gap this year shrinks to \$18.4 million.

In FY11, the above language – if not changed again by the 2010 legislature – would level-fund the General Fund support for education, assuming that the \$38.6 million in ARRA funds is available again and that the legislature appropriates it for such. Another figure that the legislative budget freezes for the next school and state fiscal year is the base education payment (now changed in Act 44, passed this year, to be referred to henceforth as "base education amount") per pupil, the amount school districts receive in exchange for levying the "base homestead tax rate." This is the figure used to set the homestead tax rates. For example, if your school district's spending per pupil is determined to be 50 percent above the base education amount per pupil, your homestead tax rate is set at 50 percent above the base homestead tax rate. Given the new base homestead tax rate of \$.86, a district spending 50 percent above the base education amount will be told that its homestead education tax rate will be \$1.29.

That base education amount figure was juggled around several times in the final days of the legislative session. This is another figure that is supposed to be adjusted automatically every year to be "increased by the most recent New England Economic Project cumulative price index, as of November 15, for state and local government purchases of goods and services from fiscal year 2005 through the fiscal year, for which the payment is being determined, plus an additional one-tenth of one percent" (16 V.S.A. § 4011(b)). According to

that statutorily set formula, the figure for FY10 is supposed to be \$8,544. This was the figure set in both the House- and Senate-passed versions of the budget bill, but the conference committee on H.441 set the figure at \$8,485, again “notwithstanding” what it was supposed to do. As with other features included in the H.441 conference report, this figure was amended in H.12 to be restored to \$8,544, but is also frozen at this level for FY11.

With these two figures frozen for FY11, any increase in school expenditures results even more directly in higher property taxes. On the other hand, we believe that if school budgets can actually be decreased for next year, all the savings will be passed on directly to property taxpayers – unless the 2010 legislature reacts as this year’s has and “harvests” some or all of the savings realized from savings in school budgets to lower General Fund support or stick more state programs into the Education Fund for their funding source.

As we mentioned above, the use of “notwithstanding” has caused our concerns about abuse of the Education Fund and state property tax to come to pass. Another instance is the transferring of the funding for the Department of Corrections educational program that is allowed under H.441 with this: “These payments shall be made, *notwithstanding* 16 V.S.A. § 4025(b)(1).” Another tool employed in H.441 to shift costs is to boldly amend the original “promise” to include more things that the Education Fund is required to pay for without triggering the self-destruction of the state property tax. H.441 amends the limiting statute by adding the underlined words:

*To cover the cost of fund auditing, accounting, and of short-term borrowing to meet fund cash flow requirements.*

So now the state can charge off the cost of the Department of Education’s VISION computer accounting system estimated at \$250,000 a year.

Despite the legislative rebuff of the governor’s proposal on the funding of the teachers’ retirement, it could still be visited upon the Education Fund. H.441 contains language that requires a study to:

*review and report on the design and funding of retirement and retiree health benefit plans for the state employees’ and teachers’ retirement systems. **The commission is charged with making recommendations about plan design, benefit provisions, and appropriate funding sources, along with other recommendations it deems appropriate for consideration, consistent with actuarial and governmental accounting standards, as well as demographic and workforce trends and the long-term sustainability of the benefit programs.** (emphasis added)*

For the first time the bill also requires the governor to include in his budget proposed to the legislature whether his proposal for funding the teacher retirement obligations is different from what the teacher retirement “board estimates for current obligations for retiree health care costs.” If so, “the governor shall set forth the long-term financial implications to the state of such shortfall and present a plan to achieve and preserve the fiscal integrity of the retirement funds of the retirement system or systems.” At least these obligations will be accounted for from now on.

H.441 also establishes a study committee to “examine potential improvements to the structure and funding of the Vermont educational system in light of the state’s limited financial resources.” Among other things, the committee is tasked to:

- *Identify and evaluate the long-range sustainability of current and potential funding sources and mechanisms; and*
- *Determine whether and to what extent each identified funding source and mechanism advances the mission of Vermont's educational system, including whether it complies with Brigham v. State.*

The 15-member committee consists of four each from the House and Senate, the commissioner of education and six others from constituencies such as the business community, superintendents, school boards, teachers, parents, and community members to be selected by July 15, 2009 as follows: two by the speaker of the house, two by the committee on committees, and two by the governor.

**State Education Tax Billing and Collection Changes in H.441.** Towns will no longer have to include in their tax bills the “About Your 20XX Taxes “The more you spend the more you pay”” document provided by the state that is designed to help taxpayers understand the education funding system. Also, towns will have fewer changes to make to property tax bills. First, if an unsigned but otherwise completed homestead declaration is filed with the taxpayer’s signed state income tax return, the state tax commissioner may treat such declaration as signed by the taxpayer. The means fewer parcels will be first identified as nonresidential and then changed to homestead when the taxpayer finally returns the signed HS-122. Second, income sensitivity property tax adjustment claim and refund changes made after September 15 will now become the sole responsibility of the tax department. Towns are now obligated to change property tax bills for individuals amending their state income tax returns up through December 31, so that will be a relief.

## **MUNICIPAL AND INTERGOVERNMENTAL ADMINISTRATION**

### **Elections and Miscellaneous Election Bill (S.121, Act 40)**

VLCT Staff Contact: Trevor Lashua

Where past sessions have included roiling discussions between town clerks and legislators over issues such as same-day voter registration and instant runoff voting, 2009 was quiet with regards to changes to election law.

Act 40 (S.121) contains a few technical changes in election law to clarify or improve existing process. The first change allows election officials in towns using vote tabulating machines to print, publicly announce, and post the unofficial results after the polls are closed, provided that any copy of the vote tabulator tape posted clearly denotes that it includes the “unofficial incomplete results.”

The second change gets the Vermont state police out of the business of having to transport ballots when a recount is necessary, such as the one that occurred for the state auditor’s race in 2006. (Ballots are recounted at a county level.) Now, two local election officials who are also not members of the same political party can transport those ballots (still sealed in their bags) to the county clerk for a recount.

The third change involves recounts. It allows the candidate who requested the recount to have it conducted via the vote tabulation machine instead of the default hand count. The fourth change also allows for a machine recount instead of hand recount, while still allowing a candidate and his or her representative(s) to inspect the process.

The miscellaneous election bill also allows for the continuation of the mobile polling pilot project previously enacted that was scheduled to expire in July. The project allows for polling operations to hit the road and travel to places like senior centers to better enable eligible voters who may have mobility issues to participate in the democratic process.

Same-day voter registration and instant runoff voting bills were both introduced but failed to find traction in a session dominated by the state’s money woes. But since 2009 was the first year of a biennium, both bills are still alive and could see action in 2010.

**Executive Fee Bill (H.136, Act 47)**

VLCT Staff Contact: Trevor Lashua

The executive fee bill increases a number of fees that municipal clerks charge, with another clarification to those fees occurring separately during the abbreviated veto override session in early June. The effective date for these fee changes is July 1, 2009. Here is a breakdown of them:

<b>Fee</b>	<b>Previous amount</b>	<b>New amount</b>
Mortgage foreclosure complaint	\$6.00 per page	\$10.00 per page
Public record or certified copy	\$8.00 per page	\$10.00 per page
Property transfer return	\$8.00	\$10.00
Receipt of property transfer return and tax payment	\$7.00	\$10.00
Survey Plats (11"×17")	\$6.00 per sheet	\$15.00 per sheet
Survey Plats (18"×24")	\$8.00 per sheet	\$15.00 per sheet
Survey Plats (24"×36")	\$10.00 per sheet	\$15.00 per sheet

The fee for trust mortgages is clarified to read “\$10.00 per page” to codify what has been practice. S.1, passed during the veto override session, provides further clarification for 32 V.S.A. § 1671 (a)(6) by eliminating a section of the first sentence (“Notwithstanding any other provision of law to the contrary”), which is no longer needed with the adoption of the above changes.

Also, the fees for videotapes or audio tapes of fire investigation reports is increased from \$20 to \$45 for each tape. There is no exemption from the fee for local public safety investigations.

New language establishes that the Vermont Economic Progress Council may require a third party financial and technical analysis as part of an application for tax increment financing districts (TIF) designation. The real cost of that analysis will be covered by the applicant municipality. Likewise, the Agency of Commerce and Community Development may require a third party credit analysis of an application for a community development grant, and the applicant municipality will cover the actual cost of that analysis.

**TRANSPORTATION**

**Transportation Bill (H.438, Act 50)**

VLCT Staff Contact: Trevor Lashua

Discussion about the state FY2010 transportation bill sounded a lot like either an O’Jays concert in 1973 or the past few legislative sessions because it focused on a single word: **money**.

With very little in the way of policy changes, the 2010 transportation bill (H.438, Act 50) quickly became an exercise in finding ways to meet overwhelming infrastructure needs despite the continued deterioration of transportation revenue sources. At the same time, legislators and administration officials had to remain cognizant of the need to ensure that the state complied with a “maintenance of effort” provision contained in the American Recovery and Reinvestment Act (ARRA, also known as the federal stimulus bill) so that federal stimulus funds would remain available.

The funding discussion was broad to start, but the \$21 million solution eventually agreed upon by the legislature and the administration likely raises just enough in new Transportation Fund revenue to survive the coming state fiscal year without leaving any federal formula (the funds Vermont gets from Washington annually) or stimulus funds unmatched. A two percent tax on gas at the wholesale level has already gone into effect, and a three cent per gallon increase in diesel tax will go into effect October 1. Combined, the two are expected to raise between \$12 and \$13 million annually. A plethora of motor vehicle fees were also increased, generally by inflationary factors, and will garner an estimated \$7 to \$8 million in revenue.

What was left out of the version of the bill that became law was bonding for large construction projects and any increases for town highway aid. Both the House and governor had included bonding as a piece of their respective transportation packages, with the House overwhelmingly approving a transportation bill that included a \$120 million revenue bond aimed at fixing bridges. Language establishing the framework for future bonding – such as the creation of a separate transportation infrastructure bond fund – was included in Act 50, though its use is not envisioned until later fiscal years (when stimulus funds are no longer available). Up to \$10 million in transportation bonds may be authorized for FY10, but only if the legislative Joint Transportation Oversight Committee authorizes it at the Agency of Transportation’s request.

At the same time, the legislature wrestled with finding ways to shore up a shortfall in the Transportation Fund for FY09 first identified last July. An August 2008 proposal by the administration to slash Town Highway Aid by \$1.85 million was delayed throughout the summer and fall, and carried over well into the heart of the legislative session. In fact, the fate of the cuts wasn’t known until the days just after the April payment was scheduled to have been sent out.

In the end, Town Highway Aid payments were cut in the budget adjustment act by \$925,000 (all from the January quarterly payment) in state fiscal year 2009 and not replaced in either the transportation bill or the FY10 appropriations bill – despite the more than \$21 million in new Transportation Fund revenue. Funding for Town Highway Aid for FY10 was approved at \$24.98 million, the same amount approved for the past five or so fiscal years.

Appropriation levels for Class 2 Paving were also reduced by \$700,000 for FY09, and will start FY10 at that reduced level of \$5.75 million. Funding for the Town Highway Structures grant program was reduced by \$339,000 for FY09, but was approved at \$3.83 million for FY10, the same as its original uncut FY09 version. If the structures program funding level remains untouched, it would be the first funding increase for that program in more than seven fiscal years.

For a more complete breakdown, see the Appropriations table on page 3.

Thankfully, the legislature removed an automatic funding adjustment clause that would have redefined how Town Highway Aid amounts would be determined. The automatic adjustment

measure set a baseline appropriation, and the actual payments made by the state would be based on any quarterly adjustments to a baseline revenue forecast that changed in either direction (up or down) by one percent or more.

The constant adjustments would have made budgeting Town Highway Aid figures a logistical nightmare for local officials. In order to create a highway budget with any confidence in revenue estimates, municipalities would have to permanently reduce any expected funding amount from the state and replace it with corresponding budget cuts or property tax increases.

Not included in any of the funding figures for the local highway aid programs is the \$10 million in stimulus funds set aside in the waning days of the session for local non-Class 1 paving and “structures” (bridges, essentially). The funds, split evenly between the two areas (\$5 million each), have proved challenging for local government to access as intended, due to tight timelines imposed by the Agency of Transportation, inflexible federal regulations, a minimum project cost set too high for paving projects, and the limited number of federally eligible roads in municipalities. In total, an estimated 1,000 local road miles were considered federally eligible for the paving grants – that’s less than 10 percent of the total local road miles in Vermont. Local roads comprise more than 80 percent of the state’s 14,000 mile highway system.

The limited nature of eligible projects has been problematic as well, with work confined to 2" cold sealing or pavement overlay. Some municipalities that tried to determine if they should apply for the funds found that the type of work allowed did not meet the \$300,000 project minimum. (The types of projects allowed are generally lower cost because they are less involved – usually preventive maintenance or patchwork treatments). How much of that \$5 million in non-Class 1 paving funding will actually reach the local level has not yet been determined, though any unused funds roll back over into the state’s coffers for work on state road projects.

The \$5 million in stimulus funds for “structures” will generally be targeted towards bridges that have some level of structural deficiency or functional obsolescence. Bridge projects will be selected by the Agency of Transportation based on readiness, priority ranking, and with an eye towards geographic dispersion/regional equity.

Any municipality that receives federal stimulus funding for a project will have to make a match of between 10 and 20 percent, though the federal legislation does not require it. In determining that municipalities had to match stimulus funds, the administration and legislature simultaneously decided to exempt the state from a similar situation. To try and soften that policy decision, cities and towns may apply for and use either a Class 2 or Town Highway Structures grant to make that match.

One local program that actually fared well in the state FY10 transportation bill was the Town Highway Bridge program, thanks to the availability of federal transportation funds from the last federal transportation authorization (known by the acronym SAFETEA-LU) and stimulus funds. The funding total jumped from \$16.53 million approved for FY09 to \$24.68 million in FY10.

An extra transportation enhancements grant round was added, with stimulus funds providing \$3.8 million for the grant pool. The application deadline has already come and gone (it was May 15), and grant awards are scheduled to be made by the end of June. The regular enhancements grant application and award process will occur later in the fiscal year, with \$3.4 million available for eligible projects.

A sense of dread is already building around the coming July revenue forecast, particularly the possibility of yet another revenue downgrade for both the Transportation Fund and the state's General Fund. At the same time, the National Highway Trust Fund, the federal funding pool for transportation infrastructure and programs, is set to go broke for the second straight August unless it receives another funding infusion courtesy of the federal equivalent of the General Fund. In fact, the fund needs \$5 to \$7 billion for construction projects already underway, as well as up to \$10 billion before the end of the next federal fiscal year (September 30, 2010). Vermont's transportation budget is heavily reliant upon federal funds, which typically comprise between 40 and 50 percent of the total.

In other words, this coming summer and fall could be very similar to that of last year if transportation revenues tank and rescissions are proposed. The local highway aid programs, particularly Town Highway Aid, may start to look attractive again in filling budget holes because it is one of the more significant funding pools made up entirely of state dollars that are not tied to matching federal funds.

## **PUBLIC SAFETY**

### **Notice of Status Change of a Law Enforcement Officer (H.205, Act 14)**

VLCT Staff Contact: Trevor Lashua

This act requires various levels of local officials to notify the Criminal Justice Training Council when a law enforcement position has been filled or vacated.

The clerk is charged with notifying the council of any election or appointment to fill a vacant constable position, the selectboard, or city council when a constable or police chief has been appointed or removed, and the police chief when a police officer has been appointed or removed. Notification must include the name of the officer or constable, the date of appointment or removal, and any applicable length of term (for a constable). The timeframe for notification is five working days.

The local legislative body or town manager must also notify the council within five working days of the creation or elimination of a police department.

### **Sex Offenders (S.13, Act 1)**

VLCT Staff Contact: Trevor Lashua

One of the first bills passed by the legislature and the first bill signed into law was S.13 (Act 1), the state's omnibus sex offender bill that had been a work in progress since the summer of 2008.

The main change in the act is a 25-year mandatory sentence for those found guilty of committing listed sexual assault and abuse crimes on a child victim (someone under the age of 16). The mandatory minimum sentence comes into effect if at least one of a series of circumstances occurs: the offender, acting in concert with a group, causes bodily injury to a victim; the offender was previously convicted of a sex offense; the offender uses a deadly weapon while committing the crime; the offender threatens injury to a victim's family member; there is a coincidental kidnapping

charge; the offender uses deadly force on the victim; or the offender commits repeated nonconsensual acts on the victim.

A large section of the act is focused on preventive efforts, particularly those that could occur in partnership with schools. In addition to the educational aspects, the act requires schools and day care providers to conduct more rigorous criminal history checks before hiring or allowing access. An exact figure of what the education and enhanced criminal checks will cost schools has not been made available.

There was also substantial discussion in the legislature as to what an appropriate specialized sex offender caseload for Department of Corrections (DOC) staff would look like. The House and Senate versions did not start very far apart (40 sex offenders for every probation and parole officer in the Senate-passed bill compared to 45 per officer in the House-passed version). In the end, the legislature settled on a caseload capacity of no more than 45 sex offenders per probation and parole officer. The state auditor has been charged with auditing the effectiveness of DOC supervisory efforts.

The caseload capacity ratios are part of a larger section outlining what is being called a “systems approach” to the supervision of sex offenders in community settings. That approach starts with specialized training for probation and parole officers supervising sex offenders, and also expands the resources available (such as the use of polygraph tests).

The other major piece of the systems approach calls for the establishment of multi-disciplinary case management teams to work with each sex offender in the community that extends beyond a single probation and parole officer to include a treatment provider, a victim’s advocate, a representative of the state Department for Children and Families, and a forensic polygraph examiner.

VLCT raised the concern of local officials regarding specialized sex offender caseloads – a new supervisory category – in an environment where probation and parole positions were on the table for elimination as part of the state’s layoffs. The concern was exacerbated at the time when DOC officials testified that to comply with the supervisory ratios would require them to also reduce or eliminate the supervision of an unspecified number of other offenders also in the community. That type of reduction would fall directly on the communities where those generally categorized offenders are housed, and would acutely impact local police. As it was, a news report in late May revealed that sex offenders in Bennington and Rutland counties had not received treatment services for “several weeks” (“Sex Offenders Not Getting Treatment,” the *Rutland Herald*, May, 31, 2009) from a licensed provider due to an unresolved contract issue.

At least two municipalities adopted sex offender residency restriction ordinances in 2008, restricting where offenders could live in relation to facilities such as schools, playgrounds, and parks. The legislature strongly disagreed with such ordinances, but did not outlaw their adoption. Instead, the bill “respectfully requests” that VLCT point out that research shows that such ordinances are not effective at achieving the desired public safety goal of keeping sex offenders away from children.

Funding for Special Investigation Units (SIUs) ended up at \$770,000 for grants. SIUs are multi-agency, multi-disciplinary teams established expressly to follow sexual assault and abuse cases from investigation all the way through prosecution. VLCT has a member on the grant award and policy board. Review of grant applications is imminent.

### **Motorized Water Vessels (S.91, Act 30)**

VLCT Staff Contact: Trevor Lashua

This act allows a law enforcement officer to stop and board any motorized water vessel to inspect documents, licenses, and permits, as well as to conduct safety inspections. The officer is then authorized to make arrests if he or she finds the vessel's owner to be in violation.

Any failure of the vessel owner to comply with the officer's request can come with a fine of between no more that \$250 or \$300 (depending on the charge). The judicial bureau is charged with handling these violations.

### **Motor Vehicle Law General Amendments (S.67, Act 39)**

VLCT Staff Contact: Trevor Lashua

Included in this bill dealing with general amendments or additions to motor vehicle law are provisions requiring law enforcement personnel investigating commercial vehicle and general motor vehicle accidents to file a report with the Agency of Transportation within 30 days. The agency then becomes the repository for accident data submitted by law enforcement personnel, and the Department of Motor Vehicles the repository for all operator accident reports.

## **ENVIRONMENT AND QUALITY OF LIFE**

### **Economic Development (H.313, Act 54)**

VLCT Staff Contact: Karen Horn

At 174 pages long, Act 54 broadly touches on an array of programs that impact local government and generally acknowledges the role municipalities can play in effective economic development.

The economic development bill was not finalized until the last moments of the regular legislative session, and then amended in the June special session. Many of the provisions could affect the way local governments conduct business, particularly if they are fortunate enough to secure some American Reinvestment and Recovery Act (ARRA) project funds. The entire rambling bill is designed to help businesses and the Vermont economy dig out of the current recession. It recognizes, particularly with respect to ARRA-funded projects, that local governments can play a role in spurring economic investment. This article reviews only those sections of H.313 that would affect municipalities.

**ARRA Funds.** Recently, the director of the Vermont Office of Economic Recovery said in an interview that “of the \$721 million the state expects to receive over two years, more than \$17 million can be used for local projects, such as library or town hall renovations. But of that, about \$8 million has gone so far to state programs related to public safety, tourism and marketing – not local projects.” Other than water, wastewater, and (we hope) energy projects, ARRA in Vermont could be called “Almost Every Town Left Behind.”

That figure (\$17 million) is two percent of the total stimulus funds available to Vermont. Local governments could see less than half of that amount as the state continues to use stimulus funds to plug budget holes or fund its own initiatives.

In light of the director's cavalier statement, any direction to state agencies to work with local governments or "additional governmental entities" is helpful.

Section 16 of the bill directs the Department of Public Service (DPS) to develop a list of projects eligible for federal loan and grant funding from the Departments of Agriculture and Energy under ARRA, and identify the source of funding and necessary steps for securing grants, some of which could go to local governments.

DPS will collaborate with private utilities and other governmental entities and interested persons to design grant applications that help the state capitalize on available energy funds. H.313 also directs the governor, DPS, the Public Service Board, and relevant state and local government entities to implement ARRA measures so Vermont receives the maximum amount of additional state energy grants available from the Department of Energy (DOE) under part D of Title III of the Energy Policy and Conservation Act. DPS has not yet finalized guidelines to apply for those funds available to local governments (about \$7 million), but it has a June 25 deadline to submit its proposal to use the funds to DOE. VLCT and Vermont Energy Investment Corporation staff believe much more detail will be available then.

The legislation also established a list of priorities for ARRA funding that included four projects at the Burlington Airport and three communications projects to assist unserved municipalities in their communications goals: North Link, East Central Vermont Community Fiber, and replacing the Burke Mountain power line owned and operated by Vermont Public Television.

**Small Hydroelectric.** The secretary of the Agency of Natural Resources (ANR) is encouraged to adopt an application process to certify hydroelectric projects in a timely manner that allows for predictable and affordable development of small scale hydroelectric projects (defined as a facility, site, or conduit planned or operated for generation of not more than 1 megawatt of water-powered electricity that does not create a new impoundment). ANR shall adopt a procedure to certify hydroelectric projects under Section 401 of the federal Clean Water Act. The procedure may meet requirements of the Vermont water pollution control permit rules and include expedited certification for certain projects with minimal impacts. A copy of the application process is due to the legislature by January 15, 2010.

**Stormwater.** The stormwater sections of the bill extend interim permitting authority and discharge permits during the transition period for regulated stormwater runoff in stormwater-impaired watersheds from January 15, 2010 to January 15, 2012. The Department of Environmental Conservation (DEC) is also directed to include alternative guidance for stormwater permitting of renewable energy projects located in high-elevation settings (i.e., wind towers). DEC is working on several fronts already with respect to stormwater, and VLCT's water specialist is helping on the technical end to rewrite the stormwater manual to incorporate low impact development methodologies.

**Telecommunications.** Despite the best efforts of House and Senate Natural Resources committee members, Sections 44-48 effectively eliminate local zoning authority over telecommunications

facilities. FairPoint Communications and the Vermont Telecommunications Authority pushed strongly for the expanded exemption from local regulations. A telecommunications facility is now defined as a “communications facility that transmits and receives signals to and from a local, state, national or international network used primarily for two way communications for commercial, industrial, municipal, county or state purposes” and any associated support structure of any height or ancillary improvements proposed for construction or installation and primarily serving the facilities. An applicant may seek approval for any interconnected telecommunications facility from the Public Service Board (PSB) instead of an appropriate municipal panel (development review board or zoning board) and instead of Act 250. Unless there is good cause to find otherwise, substantial deference shall be given to land conservation measures in plans of affected municipalities and to recommendations of the municipal legislative bodies and municipal and regional plans. The PSB shall also give due consideration to existing local permit conditions. The new statute makes clear that those recommendations may be based on their locally adopted telecommunications ordinance or bylaw. It says any telecommunications facility of any size can seek its permit, permit amendment, or other approval from the PSB instead of the local board. The local boards may weigh in, but the PSB is under no real statutory obligation to take their advice. The legislation states that after July 1, 2011, no new applications for certificates of public good may be considered under these sections. VLCT staff is unsure what might be the implication of this sentence although it reads that the statute reverts to local zoning authority.

If an applicant is denied a permit or permit amendment under local zoning or Act 250, he or she may not seek approval for a substantially similar facility from the PSB. The PSB may issue a certificate of public good (permit) with notice to state agencies, local and regional legislative bodies, and planning commissions and adjoining property owners only if it determines an application is minor and no significant issue is raised. The PSB may also decide that good cause exists to waive or modify the notice requirement for adjoining landowners. In such an event, potential parties shall comment to the board within 21 days, challenging the determination that no significant issue has been raised. In developing rules or orders implementing the zoning exemption or minor application process, the PSB may simplify the application process and also waive requirements for facility applications it determines are of limited size or scope.

Section 47 provides the Environmental Court jurisdiction to revoke a municipal land use permit, including a permit for a telecommunications facility, if it determines that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of fact. An administrative officer or appropriate municipal panel may reject an application for a local permit that misrepresents any material fact. The appropriate municipal panel may award reasonable attorney’s fees and costs to anyone who might have been accorded party status but for false or misleading information or who incurred attorney’s fees or costs in connection with the application.

**Act 250.** Several amendments were made to Act 250’s definition of development to address situations in which governments might receive ARRA money to construct improvements to pre-existing municipal, county, or state projects and then be held up by permitting requirements. In Act 250, “substantial change” means any change in a pre-existing development or subdivision that may significantly impact any of the ten Act 250 criteria. Act 250 substantial change amendments or permits will not be required for wastewater treatment facility enhancements that do not expand capacity of the facility by more than 25 percent unless it entails expansion of a service area. Likewise, “substantial change” would not apply to a water supply improvement or school reconstruction that does not expand capacity by more than 25 percent or government buildings that do not expand

floor space by more than 25 percent, or improvements to pre-existing roads and bridges, provided funding is from ARRA. The 25 percent threshold reverts to 10 percent on July 1, 2011.

**Environmental Ticketing.** ANR is authorized to issue civil complaints for violations of ANR's rules or laws in Section 57. Instead of proceeding with the handling of violations through the normal environmental enforcement route, staff could instead issue tickets for up to \$3,000, exclusive of court fees, and seek enforcement of them in the Judicial Bureau. If a waiver penalty is paid, judgment is entered after trial or appeal or a default judgment is entered. No additional monetary penalty may be sought unless the violation is repeated or continued. Appeals of Judicial Bureau hearing officer decisions are to the Environmental Court, considered on the record, and the defendant will have no right to a jury trial.

**Priority Permitting.** Any project that is funded at least partly by ARRA dollars shall receive priority for permitting, certification of approval from ANR, the Agency of Transportation, an appropriate municipal panel or a district environmental commission. The bill reiterates a municipal panel's obligation to adjourn a hearing promptly after all parties have submitted evidence and arguments. A decision then must be issued within 45 days or the project is deemed approved. New language would require that the district commission adjourn its hearing promptly after all parties have submitted evidence and arguments and issue a decision within 90 days (or the permit shall be deemed approved). This section is repealed July 1, 2012.

A permit, certificate or approval that has lapsed or expired due to non-use shall be deemed effective again if any ARRA dollars are used in the project, the permit was issued within the five years preceding enactment of the bill and no change is proposed to the project that was approved.

ANR is also given qualified authorization to expand its use of general permits to apply to a class or category of similar discharges, emissions, disposal, facilities, or activities within a common geographic area, which may be the entire state. The secretary may issue general permits for stationary source construction permits (air pollution control), aquatic nuisance control permits authorizing chemical treatment by the state or an appropriate federal agency, construction permits for public water supply, and solid waste transfer station and recycling certifications.

**Pilot Programs.** A village green renewable program is created to help communities host renewable and efficient energy generation and heat for the benefit of local users. The two demonstration projects are in Montpelier and Randolph. The PSD is to report progress to the legislature by March 1, 2010. The Town of Springfield is authorized to apply to the secretary of Commerce and Community Development to certify a redevelopment area known as the J&L site under a demonstration project for "opportunity zones."

**Tax Increment Financing (TIF).** Once again, for about the fifth year running, municipalities sought changes to the tax increment financing statute to make it workable for cities and towns that seek to use the tool to spur development in downtowns and neglected areas. After seemingly endless discussion by the conference committee, changes were made to the statute to help both Milton and Burlington use the TIF statute more effectively. Milton was approved for a new TIF this year and Burlington has a TIF in its downtown and waterfront area that needed additional investment to reach full development potential. The chair of the Ways and Means Committee also agreed to take up the subject of TIFs in 2010. Until then, Milton was accorded additional options for financing infrastructure improvements in its TIF, as well as more flexibility with respect to when debt is first

incurred and the newly generated education tax incremental revenues first become available for reinvestment.

Section 37 authorizes municipalities to issue both general obligation bonds and revenue bonds, and revenue bonds backed by the municipality's full faith and credit for improvements located in tax incremental finance districts.

This bill tries to provide a wide array of incentives to development and project implementation to both the private and public sectors as they access ARRA dollars. There is much more in the bill than that which is described here. For a full accounting, you can download the entire bill at [www.leg.state.vt.us](http://www.leg.state.vt.us). The most significant question for local governments now is not whether or not the permitting and project readiness pieces fall into place, but if they will have access to any ARRA dollars outside of the water and wastewater areas.

### **Renewable Energy and Energy Efficiency (H.446, Act 45)**

VLCT Staff Contact: Karen Horn

Although the governor strongly objected to several provisions of H.446, the big energy bill, he let it become law without his signature rather than vetoing it. In a letter to the legislature, he wrote, "I believe this bill ... fails to recognize the current viability of renewable energy in a competitive setting and will needlessly increase costs to Vermont consumers so as to subsidize this one favored business sector." A majority of legislators did not agree and passed the bill by a vote of 91 to 49 in the House and 16 to 10 in the Senate. So as not to lose the entire bill if it was vetoed, several sections of the energy bill were added at the end of the session to H.313, the economic development bill and H.441, the appropriations bill. Then, as the governor agreed to let it become law, legislation was drafted for the special session on June 2 and 3 to delete the duplicative sections of H.313 and H.441.

H.446 provides for a "standard offer," that is, a price to be paid for renewable energy generation to retail electricity providers with a plant capacity of 2.2 MW or less until a total of 50 MW in renewable energy generation is achieved statewide. The energy systems would be set up after September 30, 2009. The standard offers established in statute are:

- \$0.12 per kWh for a plant using methane from a landfill or agricultural operation;
- \$0.20 per kWh for a wind power plant with a capacity of 15 kW or less;
- \$0.30 per kWh for a solar power plant; and
- a price derived by a complex calculation established in the statute for a hydropower, wind power with a plant capacity greater than 15 kWh, or biomass power plant not using landfill or agricultural methane.

According to the U.S. Energy Information Administration, in March 2009, Vermont residential customers paid an average of \$0.1474 per kWh for electricity and commercial customers paid \$0.1285 per kWh.

By January 15, 2010, the Public Service Board (PSB) shall set the price to be paid to a plant owner under a standard offer, using criteria established in the statute. The PSB is also directed to encourage retail electricity provider and third-party developer sponsorship and partnerships to develop renewable energy projects. A municipality could develop such a renewable energy project and be paid not only the standard offer but also reimbursed reasonable costs of project development.

The Clean Energy Development Fund (CEDF) was created with payments to the state from the Vermont Yankee nuclear facility. The fund supports developing and implementing cost-effective and environmentally sustainable electric power or thermal energy or geothermal resources, particularly renewable energy and combined heat and power technologies. H.446 directs that all ARRA funds received in Vermont for the state energy program (approximately \$31.6 million) be rolled into the CEDF. Municipalities are eligible to apply for CEDF money.

The Department of Public Service (DPS) commissioner is directed to adopt updated residential and commercial building energy standards by January 1, 2011 and, by September 1, 2011, issue a plan to comply with the energy standards no later than February 1, 2017. DPS must also establish training and enforcement programs and measures of rates of compliance for the energy standards program by June 30, 2012. As written in the bill, these standards are independent of any local bylaws.

The Vermont Village Green pilot program of renewable energy projects for Montpelier and Randolph are in this bill as well as the Economic Development bill (H.313). H.446 establishes a prohibition on municipal ordinances or bylaws, homeowner association bylaws or covenants, or other binding agreements on land that would forbid the solar collectors, clotheslines, or other renewable energy resources. Bylaws and ordinances could, however, prohibit such installations on patio railings in condos, coop housing, and apartments.

In what promised to be a significant new option for municipalities but was eventually scaled back, municipalities acting individually or together may create Clean Energy Assessment Districts through a vote of the municipality. Within the district, individuals who choose to participate would enter into a written agreement with the municipality to be assessed for the administrative costs of running the district and be eligible to secure funds to make approved “energy fitness” improvements to their properties. Upon a favorable cost-benefit analysis, certain approved improvements could be made to the property. Repayments of funds would be through an assessment on the property tax bill that could run for up to 20 years, depending on the cost and life expectancy of the improvement. A participating municipality must follow underwriting criteria established by the Department of Banking, Insurance, Securities, and Health Care Administration and establish other criteria to assure that property owners can meet assessment payment obligations.

A municipality may establish a reserve fund for use in case of foreclosure. If that happens, the reserve fund must be capitalized at a level sufficient to provide for payment of any past due balances on assessments and remaining principal balances in the event of foreclosure.

Similar legislation is state law in California, Colorado, and Virginia and is pending in other states as well as the U.S. Congress. However, other states’ legislation gives municipalities far more credit for being able to construct a workable program. In fact, the banking issues that plagued this bill’s progress did not even arise in other states we contacted. That legislation does not establish maximum loan amounts, reserve funds, analysis and disclosure requirements, or underwriting criteria and provides flexible statutory language. Nevertheless, several municipalities around Vermont are eager to make Clean Energy Assessment Districts work, and their residents are eager for the opportunity to actually make improvements that will reduce their reliance on generated electricity.

**Composting (H.145, Act 41)**  
VLCT Staff Contact: Karen Horn

H.145 defines “compost” in the solid waste statutes as “a stable humus-like material produced by the controlled biological decomposition of organic matter through active management,” but not sewage or septage or materials derived from them. Composting operations take organic waste out of the solid waste stream and turn it into beneficial materials. Yet there are issues that arise, particularly when neighbors are close by and the composting process produces runoff, flies or even traffic as people visit to purchase the compost or when the kind of permits that must be obtained is unclear. The size of a composting operation and whether or not it is part of a larger agricultural enterprise have been issues around the state in the past few years.

Small scale composting won’t need to obtain a discharge permit, air emissions permit, or solid waste permit from the Agency of Natural Resources (ANR) if the operations register with the agency. The secretaries of Agriculture and ANR are to develop accepted composting practices by rule, including definitions of small-scale, medium scale, and de minimus-exempt from regulation composting facilities. Prior to rules being filed they would need to be approved by the House Fish Wildlife and Water, Senate Natural Resources and both Agriculture committees. The composting committee (created by the legislature several years ago) is also to reconvene in July and determine in which circumstances an Act 250 permit will be necessary.

**Wetlands Protection (H.447, Act 31)**  
VLCT Staff Contact: Karen Horn

Act 31 is the result of five years of negotiation among a group of interested parties and legislators, including local officials. Most construction projects – particularly municipal highway, bridge, and culvert projects in areas that wetland maps indicate may be in or near wetlands – must obtain a determination that they are not impacting the significant wetlands of the state before being allowed to proceed. The bill redefines Class I, Class II, and Class III wetlands as well as buffer zones. It also amends the process for designating different classifications of wetland. Class I wetlands are those designated on the Vermont Significant Wetlands Inventory Maps, or designated by the former Water Resources Board or those the current Water Resources Panel determines are exceptional in their contribution to Vermont’s natural heritage. Current wetlands maps are notoriously inaccurate, yet difficult and frequently expensive to refute. Class II wetlands are those designated on the Vermont Significant Wetlands Inventory Map or that the secretary of the Agency of Natural Resources determines merit special protection. Class III wetlands are all the others. Default buffer zones extend 100 feet from a Class I wetland or 50 feet from a Class II wetland.

**Encouraging Use of Local Foods (H.192, Act 51)**  
VLCT Staff Contact: Karen Horn

This bill encourages the use of local foods, particularly by schools and 3Squares VT (the former food stamp program), and contains at least one provision relevant to municipalities: Newly exempt from the state sign law are directional signs smaller than six feet in diameter to farmers’ markets that are members of the Vermont Farmers’ Markets Association and that sell Vermont agricultural products, or municipal signs that point to these farmers’ markets.

## **Use of Chloramines in Public Water Supplies (H.80, Act 27)**

VLCT Staff Contact: Karen Horn

Recently, the use of chloramines as disinfectants in public water supplies has been challenged by some who argue it adversely affects their health. In the last two years, that controversy found its way to the legislature. The Champlain Water District is the only water supply in Vermont that presently uses chloramines as a disinfectant, although water systems around the country have been using it for decades.

Several Vermont water supplies will be required to modify their disinfection practices to comply with the U.S. Environmental Protection Agency's (EPA) Stage 2 Disinfectant and Disinfection Byproducts Rule, and that will likely require moving to chloramines. The version of H.80 that was introduced would have banned the use of chloramines between July 1, 2009 and December 31, 2011. The far less drastic version that became law provides for an engineering study of the disinfection treatment options in public water supplies that will be required to make modifications. EPA is expected to fund the study.

## **Salvage Yards (S.47, Act 56)**

VLCT Staff Contact: Karen Horn

This bill reassigns primary authority to regulate junkyards from the Agency of Transportation (AOT) to the Agency of Natural Resources (ANR), although it does not entirely eliminate AOT oversight. Local governments have advocated for official ANR jurisdiction for years (because AOT regulations are inadequate to address all the issues and AOT does not enforce the regulations that are on the books). The bill eliminates the term "junkyard" in statute and replaces it with "salvage yard." A salvage yard is defined as any place of outdoor storage or deposit for storing, keeping, processing, buying or selling junk, or as a scrap metal processing facility. It is also a place of outdoor storage or deposit used to store or keep four or more junk vehicles visible from any portion of a public highway or navigable water. The bill establishes that municipal ordinances referring to junkyards are still in effect. However, municipalities whose bylaws or ordinances refer to junkyards will need to amend those documents to call them salvage yards at the next revision of the town plan.

A person establishing, operating, or maintaining a salvage yard must hold a certificate of approval for its location from the selectboard and a certificate of registration issued by the ANR secretary. A certificate of application must include proof of compliance with any applicable local bylaws. Local legislative bodies may inspect a salvage yard to see if it complies with these certificates and other requirements of the statute. If they do not appear to be, the officials may *request* that the secretary of ANR commence enforcement action – but, of course, the agency has discretion about whether to act or not.

## **Working Farm Dogs S.89, Act 48)**

VLCT Staff Contact: Karen Horn

Local officials testified in the House Agriculture Committee against any special dispensation for "working farm dogs" because such provisions would be impossible to enforce. The committee and then the full House passed the bill anyway. In the Senate Agriculture Committee, the bill sat on the wall for the balance of the session – no testimony was taken and VLCT staff agreed to meet with representatives of the agricultural community and Agency of Agriculture, Food and Markets to discuss how to handle farm dogs. Then in a twist entirely typical of the end-of-session frenzy, a

working farm dog exemption from local ordinances turned up in the dairy price stabilization bill and was passed. So ...

In Title 20, a “working farm dog” is defined as a dog that is bred or trained to herd or protect livestock or poultry or to protect crops and is used for those purposes and that is registered as a working farm dog. Anyone who owns such a dog and intends to use it on a farm shall register it with the town and pay an additional \$5.00 for a working farm dog license. The animal is exempted from municipal regulation of barking or running at large when it is on the property being farmed by the person who registered it if the dog is barking or running at large in order to herd or protect livestock, poultry, or crops.

### **Unemployment (H.442, Act 2)**

VLCT Staff Contact: Dave Sichel

The state Unemployment Fund is facing a large deficit due to high unemployment claims. To begin to address this problem, this bill increases the base wage for calculating unemployment insurance premiums paid to the state from \$8,000 to \$10,000. The base wage was last adjusted in 1982. For those employees who purchase unemployment insurance from the state, this is the equivalent of a 25 percent premium increase. When combined with the coming increase in the underlying premium rates, the total increase will be much more. The maximum weekly benefit to claimants is also being capped at \$425. Based on current projections, these changes will not be adequate to eliminate the looming deficit. The bill also sets up a study committee to comprehensively examine all issues that affect the solvency of the Vermont unemployment trust fund and make recommendations for reforms to assure its long-term solvency, including negative balance, seasonal and reimbursable employers, taxable wage base and the rates that are applied to those bases, benefit levels, and any other relevant issues.

The impact on VLCT Unemployment Trust members will be much different. Because members of the Trust are “reimbursable,” they are not subject to the state-set rates. UI Trust rates are set based on claims history. Therefore, an increase in the base wage amount does not impact premiums. If the base wages go up, then the premium rate goes down to compensate. Claims are what impact UI Trust rates. The Trust is experiencing an increase in claim costs, as is the state.

## **HEALTH CARE**

### **Containing Health Care Costs (S.129, Act 49)**

VLCT Staff Contact: Dave Sichel

This bill initiates a study of health care utilization. The purpose of the study is to identify treatments or procedures for which the utilization rate varies significantly among geographic regions and to recommend solutions to contain health care costs by appropriately reducing variation in costs. The bill also requires the BISHCA commissioner to provide a health plan administrative cost report to the health care reform commission, the House Committee on Health Care, and the Senate Committee on Health and Welfare.

The bill also includes a shared decision-making demonstration project. The purpose of shared decision-making is to improve communication between patients and health care professionals about

equally or more effective treatment options where the determining factor in choosing a treatment is the patient's preference. This approach to medical decision-making has been successful in improving patient satisfaction and reducing costs in other parts of the country.

The bill also includes a number of other studies designed to identify and evaluate health system best practices, and to integrate mental health and substance abuse services with overall medical care. The bill modifies Certificate of Need rules, and makes health care quality and price information easily available on the state's website.

### **Health Care Reform (H.444, Act 61)**

VLCT Staff Contact: Dave Sichel

H.444 combined pieces of several bills into one omnibus bill. Included are changes in the administration and development of a statewide electronic medical record system, changes to qualify for federal stimulus money for health system-related initiatives, changes and adjustments to Catamount Health and other state health insurance programs, standards for payment of workers' compensation medical bills, new standards for health insurer payment to medical providers and network contracts, development of a state-wide vaccination purchasing pool pilot program, and a variety of studies.

### **Colorectal Cancer Screening (H.24, Act 34)**

VLCT Staff Contact: Dave Sichel

This bill mandates that health insurance policies cover colorectal cancer screening. The copayment cost is to be "no greater than the co-payment applicable to care or services provided by a primary care physician under the insured's policy, provided that no co-payment shall exceed \$100.00 for services performed under contract with the insurer. Colorectal cancer screening services performed under contract with the insurer also shall not be subject to deductible or coinsurance requirements." This mandate will have a minimal cost impact on health insurance plans offered by Vermont municipalities because these plans typically offer a high level of benefits. Some plans include colorectal cancer screening as a preventative health benefit with no co-pay.

## **LEGISLATIVE STUDY COMMITTEES**

Summer study committees were created by numerous bills this legislative session. Summer studies are a time honored way to deal with knotty issues when there is not time to sort them out or money to apply to hoped for solutions, when parties involved need time and space outside the State House to cool off, or when the legislature wants to jump-start discussion of a new issue. Study committees can eat up a lot of time and resources. Most of them conclude with reports to the legislature at the beginning of the next session that sometimes receive scant readership. And most of the summer study committees don't actually get rolling until September.

Those study committees that might have an impact on local governments are listed below. We also indicate whether or not local representation is required on the committee. If you have an interest in one of these committees, you may ask the VLCT Board to recommend you to the appointing authority. If it is a legislative summer study committee, you may view agendas and sometimes materials at the legislative website, [www.leg.state.vt.us](http://www.leg.state.vt.us).

### **Chloramines (H.80)**

An independent third party shall conduct an engineering evaluation of disinfection alternatives available to water supplies that will be required to comply with EPA Stage 2 Disinfectant and Disinfection Byproducts Rule.

### **Composting (H.145)**

By July 1, 2009, the Agency of Natural Resources secretary is to reconvene the composting study committee established in 2007 to recommend when Act 250 should apply to composting facilities and whether there are areas of the state in which composting facilities should not be located, regardless of their exempt status.

### **Appropriations (H.441)**

The Vermont Office of Economic Stimulus and Recovery shall report on applications that state agencies submit for ARRA funds, including how interested parties may provide input. The office shall also report on grants received by budget area. The reports are to be posted on the Office of Economic Stimulus and Recovery website and emailed to interested parties. The Senate and House will each have a representative designated to serve as a communication link, provide legislative oversight, and support to the joint fiscal committee in its consideration of grants received.

The Governor's Productivity Taskforce and the Joint Legislative Accountability Committee will collaborate on developing initiatives to increase efficiencies and promote innovation across state government. Local governments – frequently the beneficiaries of long, drawn out, unproductive and redundant permitting processes – may have much to offer here.

The commissioner of the Department of Information and Innovation shall convene a work group to explore ways to use health information technology to reform health care payment. Eleven members of the group are designated in H.441, but there is a provision to include other interested stakeholders, which may include health care professionals, hospitals, and academic institutions.

A commission is created to review and report on the design and funding of retirement and retiree health benefit plans for the state employees' and teachers' retirement systems. The seven-member commission shall recommend plan design, benefit provisions, appropriate funding sources, and others. The commission shall seek input from parties it believes are affected, including VLCT.

The Departments of Public Safety (DPS), Information and Innovation and the Vermont E-911 Board shall analyze the state of DPS's dispatch and E-911 answering services and recommend the most efficient and cost effective means of integrating those systems and technologies. The report shall also include recommendations for a process to assess statewide dispatch services in 2011 and be delivered to the committees on Appropriations and Government Operations by January 15, 2010. No agreement between a municipality and DPS shall change before the report is completed and its findings implemented.

A committee is created to recommend restructuring the Agency of Commerce and Community Development and the Department of Labor. The committee will consider collaboration and efficiency, funding sources, recommendations for re-organization, staffing issues, and other areas of state government. VLCT is included in the list of parties the committee shall consult with. Recommendations shall be submitted to the legislature by January 15, 2010.

A committee is created to develop a proposal to administer community development grants previously awarded to municipalities and currently inactive to maximize availability of CDBG funds to municipalities. The committee will be chaired by VLCT and include the executive directors of the Vermont Housing Finance Agency, Vermont Economic Development Authority and the secretary of the Agency of Commerce, Vermont Housing Conservation Board, Vermont Bankers' Association, municipalities, regional development corporations and other appropriate entities. The proposal is to include criteria and processes for standardizing administration and oversight of CDBG funds while preserving a municipality's ability to access funds. A report is due to the legislature by January 15, 2010.

The Commission on the Future of Economic Development is directed to continue its benchmarking process and develop strategies to implement four principal goals it recommended for economic development in 2009.

A Blue Ribbon Tax Structure Commission is created to analyze the state's revenue system and offer recommendations to improve, modernize, and provide a long-term vision for the structure. The tax system shall provide sustainability, appropriateness, and equity. The commission shall examine the income tax structure in the first year and consider tax expenditures, fees, consumption taxes, and business taxes in the second.

In light of the state's limited financial resources, a 15-member committee is created to examine potential improvements to the structure and funding of Vermont's educational system. The committee is to consider policy making, management, and administrative structure that creates and implements education policy, decision-making structures, long-range sustainability of current and potential funding sources. It will also determine the extent to which each funding source advances the educational system mission and complies with the *Brigham v. State* 1997 Supreme Court decision. Six at-large members are to be appointed from affected constituencies, although municipalities are not included.

#### **Miscellaneous Tax Provisions (H.442)**

A committee is created to study all issues that affect the solvency of the Vermont unemployment trust fund. It is to make recommendations for reforming the fund to assure its long-term solvency, including negative balance, seasonal and reimbursable employers, taxable wage base, and rates applied to those bases, benefit levels and any other relevant issues. A report is due to the legislature by January 15, 2010.

#### **Capital Bill (H.445)**

The commissioner of the Department of Corrections is to consult with the US Marshal to identify opportunities to collaborate to provide secure facilities that meet the needs of federal, state, county and municipal law enforcement officials regarding space for housing inmates and detainees. The commissioner shall report to the legislative Corrections Oversight Committee by October 15, 2009.

#### **Economic Development (H.313)**

A special committee is created to examine all aspects of mobile home rent-to-own agreements, their use, and documentation. The eight-member committee includes a representative of town clerks issues appointed collaboratively by the Clerks' and Treasurers' Association and VLCT.