

2022 Weekly Legislative Report

#5

January 28, 2022

Today's articles highlight the water, housing, and economic development portions of Governor Scott's budget; the illusion of local control in Vermont's cannabis legislation; electronic public notice notifications and environmental justice; a primer on how to navigate the State House; a link to the Reapportionment webpage on the legislative website; and the new bills table. Click the link in the bullet list below for a PDF of today's report.

If you haven't yet, consider looking at our two webpages that help you easily track the 2022 bills that especially affect municipalities: [bills introduced in the House](#) and [bills introduced in the Senate](#). We update these cumulative lists every Friday so you can follow bills as they travel through the appropriate State House committees.

To read this report:

- Under "This Week's Articles," simply click on any of the article titles to have the article expand so you can read it.
- As the legislative session progresses, go to our [Legislative Reports page](#) to revisit this issue and find other weekly legislative reports.
- Here is [a PDF of the full report](#).

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Governor's Budget – Water, Housing, and Economic Development

The House Appropriations Committee is deep into its review of Governor Phil Scott's budget for FY23. The proposal includes appropriations of American Rescue Plan Act (ARPA) dollars that were held in reserve last year as well as money from the General Fund and other revenue sources. In his introduction to the ARPA funding proposal, the governor homed in on local governments, writing, "Vermont's municipalities need help to stabilize or expand their tax bases and economic foundations. With continued investments in water and sewer infrastructure, broadband, climate change mitigation, housing and further economic aid, communities in all 14 counties can expand their workforce and economic activity, and the state will be cleaner, more affordable, and competitive for years to come."

Three sets of municipal priorities – improving water quality and building resiliency to climate induced weather events (especially flooding), ensuring housing for Vermonters of all income levels, and spurring economic recovery in the wake of the pandemic – are all intertwined. The proposed budget and last year's appropriations act touch on all three priorities and disburse previously unheard of amounts of money to further these goals as well as many others.

Out of a total \$85,050,000 of ARPA funds, the governor proposes the following amounts for programs of interest to local governments:

Program	FY23	FY22 BAA*
Grand List Enhancement Program (economic development)	\$30,000,000	
Capital Investment Grant Program	50,000,000	
Stormwater Retrofits (3 acre permits)	32,000,000	
Village Wastewater/Water/Pre-treatment	20,000,000	
Combined Sewer Overflow Abatement	10,000,000	
Improvement to Water/Wastewater Systems in Homes	10,000,000	
Healthy Homes	10,000,000	10,000,000

Affordable/Mixed Income Housing	55,000,000	50,000,000
Vermont Housing Investment Program	5,000,000	20,000,000
Missing Middle Homeownership Development	10,000,000	5,000,000

* Budget Adjustment Act

The Grand List Enhancement Program would make funding available to developers, property owners, and non-profits who are redeveloping properties within disadvantaged communities. The Capital Investment Program would provide funding for infrastructure projects that support economic recovery, help attract businesses, and create jobs.

Water. Governor Scott also proposes a capital bill adjustment of \$14,114,757, of which \$11,000,000 would be dedicated to clean water as recommended by the Clean Water Board. Additionally, the capital budget proposal includes \$2.8 million to be used as a match for \$27 million from the federal Infrastructure Investment and Jobs Act (IIJA) available to Vermont state revolving loan funds for water pollution control and clean water. The state Clean Water Fund appropriation is estimated to be \$21 million in FY23.

Following the money when it comes to water and wastewater is a complex business. It is directed by the Clean Water Board, charged with allocating funds from the Clean Water Fund established in 2015. According to the Joint Fiscal Office, between FFY (Federal Fiscal Year) 2017 and FFY 2021, federal funding for clean water programs in Vermont – not including ARPA – has averaged between \$65 and 70 million, which comes to the state through *seventeen* funding streams. No wonder it is confusing!

In state fiscal year 2021, Act 74 appropriated an additional \$100 million in ARPA dollars to water infrastructure through FY24. (ARPA dollars need to be encumbered by the end of 2024 and spent by the end of 2026.) The act also indicates an intention to appropriate an additional \$125 million in FY23. Altogether, state and ARPA dollars for clean water in FY22 and FY23 are expected to be \$114 million.

These appropriations do not include the IIJA money coming to Vermont for water infrastructure, anticipated to be \$82 million for drinking water and wastewater revolving loan funds and supplemental programs such as lead service line replacement. (There is no deadline for spending IIJA money.) (See IIJA Fact Sheet under Resources below.)

Housing. This week, the Senate Economic Development, Housing and General Affairs Committee continued to focus on housing, but also took up administration proposals to assist with economic recovery. Much of the housing discussion has dealt with zoning changes and land use development. On January 21, the committee voted out S.210, the revised rental housing bill. That bill is currently in Senate Appropriations. The committee also heard from sponsors of both S.270 and S.253, two bills that take dramatically different approaches to revising Act 250 and municipal planning and zoning. VLCT Advocacy staff offered the committee suggestions to ease the planning and permitting process for housing development and spur redevelopment. The committee is assembling an omnibus housing committee bill to continue their work.

The main story is in no small part the money dedicated to housing for people since the spring of 2020. According to the Joint Fiscal Office, funds already appropriated to help secure safe housing for those in need totaled \$600 million, and funding to build housing exceeds \$200 million with an additional \$70 million proposed in FY23. That figure includes money to help with mortgage and taxes, house the homeless during the pandemic, provide support services, and rehabilitate or build housing, including “missing middle” housing.

The Economy. Act 74, the appropriations act of 2021, dedicated \$250 million in ARPA funds to supporting and growing the state’s economy and workforce. The act actually appropriated only \$159 million to economic programs with the intention that the balance would be appropriated in FY23 and FY24.

Approximately \$52 million was allocated to the Agency of Commerce and Community Development as follows:

- \$11 million for the Brownfields Revitalization Fund (FY22),
- \$10.6 million for the new Capital Investment Grant Program,
- \$1.5 million for the Better Places program, and
- \$20 million for Economic Recovery Grants to help small businesses suffering revenue declines due to the pandemic.

The governor's proposed budget for FY23 further recommends:

- \$6 million for brownfield remediation,
- \$8.4 million to support a regional recruitment and relocation network and provide three years of marketing support for relocation efforts,
- \$5 million to support the New and Remote Worker Grant Programs, and
- \$1 million to provide state match dollars for the federal Good Jobs Challenge and Build to Scale Economic Development Administration applications. The Build to Scale Program is designed to support regional technology based innovation initiatives.

The programs to address clean water, the housing crisis, and the economy will all need to be considered in multiple committees. We will keep local officials apprised of any progress as the session winds on.

Resources for this article:

- [Governor's FY23 Proposal for ARPA Expenditures](#)
- [Clean Water Funding Issue Brief, Joint Fiscal Office](#), Dec. 21, 2021
- [IIJA Fact Sheet, Agency of Natural Resources](#)
- [Affordable Housing Issue Brief, Joint Fiscal Office](#), Jan. 14, 2022
- [Vermont Economy Issue Brief, Joint Fiscal Office](#), Dec. 20, 2021

[Cannabis and the Illusion of Local Control](#)

The legislature and the Cannabis Control Board (CCB) continue to race to get a cannabis marketplace in place as initial applications are due to begin in April. For more than a year

now, local government officials have been waiting – patiently – for guidance and final rules and regulations from both the legislature and the CCB. The CCB issued Guidance for Municipalities, which was meant to help local governments understand the role of municipalities in the marketplace. The guide is helpful in outlining many provisions of the law, but falls short in explaining the “rules” set out in Act 164 of 2020 that local governments were anticipating. It’s become more clear that local governments likely will not see those rules at all. Rather, the CCB will rely on local zoning as the main – if not only – means of local regulation of cannabis establishments.

Several bills currently in the legislature further address and amend cannabis laws, fees, and taxes. But they do not adequately consider the needs of municipalities, leaving them with little to no control over cannabis operations in their jurisdictions and *no* revenue or taxation authority. Unless you are one of Vermont’s 16 municipalities with a local option sales tax, you will receive *no* financial benefit from hosting a cannabis establishment.

Municipalities with a Local Option Sales Tax that Will Receive 1% Tax* Revenue from Retail Cannabis if they Host Retail Establishments

Brandon	Brattleboro	Burlington	Colchester	Dover	Manchester	Middlebury	Rutland Town
St. Albans City	St. Albans Town	South Burlington	Stratton	Williston	Wilmington	Winhall	Winooski

* Municipalities retain 7/10th of the 1% tax; the 3/10th is retained by the state for the PILOT program.

The current proposal before the House related to licensing fees in [H.701](#), a bill introduced today, would cap local licensing fees at at \$100. To put the fee and taxation into perspective, the state will assess the 6 percent sales tax and a 14 percent excise tax on cannabis sales. The state licensing fees range from \$750 for a small outdoor cultivator license to \$100,000 for an integrated license. Meanwhile, towns and cities will receive at best \$100 per license and \$0 from taxes – *unless* you’re one of the lucky towns with a local option sales tax and you host a retail establishment. The numbers speak volumes as to the level of consideration the legislature – in particular the House Ways and Means Committee – has paid to the needs of

local communities that will host cannabis establishments.

In a related matter, the Senate Agriculture Committee aims to soon vote out [S.188](#), a bill that would regulate small cultivators of commercial cannabis as “farms” under the Required Agricultural Practices, 6 V.S.A. chapter 215. This would prohibit local zoning bylaws from regulating small cannabis cultivators under zoning. The bill’s proponents are concerned that local zoning bylaws don’t regulate agricultural uses currently. Allowing them to be regulated by zoning would therefore hinder the ability of small growers to operate in communities across the state. What is lost in the many discussions is that, for more than a decade, the legislature has prohibited towns and cities from regulating agriculture and farming. As a result, zoning bylaws are often silent on such uses. Now, local governments are being shut out of regulating cannabis cultivation in ways that are consistent with town plans and zoning bylaws as state cannabis laws and regulations take shape.

As it stands now, local governments only have authority over nuisance, signage, and zoning issues as they concern retail cannabis establishments. But these ordinances and bylaws already apply to town or city activities and therefore provide no increased authority beyond what they have had for decades. The local cannabis commissions set-out in Act 164 of 2020 look much like local liquor boards in that their regulatory authority is severely limited. Their authority is restricted to enforcing state laws and regulations, and potentially suspending or revoking licenses for failing to comply with those rules. And it appears that those rules may never even be produced. Therefore, with no rules to work from as the enabling legislation envisioned, it appears that a local cannabis commission lacks any substantive authority at the local level beyond “rubber-stamping” state licenses.

The only good news for local governments is [S.152](#), a bill in Senate Finance that would provide tax revenue to local governments that host retail cannabis establishments. The bill would distribute four percent of the taxable retail sales’ revenue to municipalities that host retail cannabis establishments. The bill may have a fighting chance of passage in the Senate, although the level of revenue may be scaled back. However, if S.152 ever reaches the House, it is almost certainly dead in the water. Over the years, the Ways and Means Committee (the committee of jurisdiction) has always been skeptical about approving local option taxes set forth in municipal charters approved by local voters. Any discussion of creating a local cannabis tax or even sharing state revenues has died on the vine in committee and no such proposal will likely ever make it out of that committee. It’s not uncommon to hear the committee refer to local option taxes as “regressive” without the slightest hint of irony when

those same taxes are levied every day by the state and those monies find their way to state coffers.

H.701 is on the floor of the House for early next week, S. 152 remains on the wall in Senate Finance, and S.188 remain in Senate Agriculture but may move out of committee in the coming weeks. We'll keep you apprised of any developments.

Resources for this article:

- [CCB Guidance for Municipalities](#)
- [H.701 Fiscal Note, Joint Fiscal Office](#), Jan. 27, 2021

[Elsewhere in the State House](#)

Electronic Public Notice Notifications. The Senate Government Operations Committee took testimony this week on [S.174](#), a bill that would allow municipalities and other governmental entities to publish public notices on electronic news media. Current law limits certain public notifications to a newspaper, which has been narrowly interpreted as a physical, paper publication. S.174 would allow newspaper notification to include “electronic news media,” which would be defined as an internet website dedicated to Vermont news that is regularly accessed and used by Vermonters. Further, the majority of the website’s content must be published in English; the website must be accessible to not less than a majority of residents in each county to which it is directed; and the website must regularly publish information that is typically of interest to Vermont residents, property owners, or the general public. For municipal notices, the website must be regularly accessed by a number of persons from that municipality representing at least 50 percent of the population.

Electronic news media must maintain public notices in a database that is searchable by keyword, date, subject, and publishing governmental entity. Municipalities and governmental entities must maintain records of notices published on electronic news media in the same manner as records of notices published in a paper newspaper of record.

Notices that affect property interests may be published in electronic news media but must also continue to be published in a conventional newspaper of record. In VLCT’s testimony in support of the bill, we suggested minor amendments to strengthen and clarify the legislation’s

underlying intent. The committee will continue to hear testimony in the coming weeks.

Environmental Justice. On Thursday, the Senate Natural Resources and Energy Committee took up a redraft of S.148, the environmental justice bill. The redraft would require every Vermont state agency to create and adopt a community engagement plan that describes how the agency will engage with environmental justice populations and overburdened or underserved communities as it evaluates new and existing activities and programs. Further, they must submit summaries of their plans to a new Advisory Council on Environmental Justice which will be supported by the Agency of Natural Resources. The state would be required to spend at least 55 percent of funds for environmental, renewable, energy, climate mitigation, transportation and climate resilience in designated “environmental justice populations” and overburdened or underserved communities. Environmental justice populations would be defined as a census block group whose residents’ annual median household income is not more than 80 percent of the statewide annual median household income; where people of color and Indigenous peoples comprise at least six percent of the population; where at least one percent of households have limited English proficiency; or where a geographic portion of the group is designated as an environmental justice population upon petition to the Secretary of Natural Resources.

The agencies of Transportation and Natural Resources and the departments of Public Safety and Public Service would need to report on funding annually as it related to environmental justice criteria. A new 15-member Environmental Justice Advisory Council would provide independent recommendations to state agencies and the General Assembly. A newly created nine-member Interagency Council on Environmental Justice would guide and coordinate state agency implementation of an Environmental Justice State Policy and advise the legislature. Both councils would incorporate the Guiding Principles for a Just Transition developed by the Just Transitions Subcommittee of the Vermont Climate Council in their work and strive to maintain an equitable dynamic within the culture and operations of the councils.

The committee is likely to revisit S.148 later in the session.

Pupil Weighting and the Education Fund. This week, both the House Ways and Means and Senate Finance committees continued their discussion of the recommendations of the Pupil Weighting Task Force. There currently is no draft bill and Sen. Ann Cummings, Chair of the Senate Finance Committee, voiced some skepticism that a bill could be passed this year, given the scope of the changes to the Education Fund being proposed.

House Ways and Means Receives TIF Report. On Wednesday, the Joint Fiscal Office presented a report on Tax Increment Financing (TIF) districts to the House Ways and Means Committee. The requirement for the Joint Fiscal Office to provide a report was established in 2018, and statute requires that it be updated every four years. This is in addition to other requirements for the Vermont Economic Progress Council (VEPC) to deliver an annual report to the legislature by April 1, and for the State Auditor's Office to conduct audits of TIF districts every four years and bill the municipality for the cost of the audit. Since 2018, the auditor's office has billed municipalities more than \$320,000 for those audits, according to the Joint Fiscal Office Report. The JFO report and State Auditor's audits are also in addition to the annual independent audits of municipalities' finances.

Resources for this article:

- [Guiding Principles for a Just Transition](#), Vermont Climate Council, August 2021
- [Joint Fiscal Office TIF Report to House Ways and Means](#), Jan. 26. 2022
- [Joint Fiscal Office TIF Program Update](#), Jan. 18, 2022
- [VEPC TIF Program Annual Report](#), Apr. 1, 2021

[Navigating the State House – Virtually](#)

We are well into the 2022 legislative session and the physical reconvening of the legislature has been complicated by record-setting COVID-19 cases due to the Omicron variant. Many municipal officials have asked us to help them better understand how to follow pending legislation and how to offer comments to committee members.

For the time being, the House is meeting in a hybrid format – that is, some representatives are present in the State House or in nearby buildings and others join the meetings via Zoom video conferencing. The former meet socially distanced and fully masked in committee rooms or during floor sessions in the House Chamber. The Senate has chosen to continue meeting remotely for both committee and Senate floor work. Municipal officials should expect to

communicate with members via email or phone.

Bills introduced in either the House or Senate are assigned a number and a one-sentence subject line. They are then sent to the committees of jurisdiction. If you have been following our legislative reports this session, you will have noticed a lot of those bills affect local governments. However, many of these bills will never be taken up in committees.

There are a few places to find out if a bill is being discussed in committee. First, identify what committee was sent a particular bill and determine if it is on the committee's schedule that week. Do that by searching for the bill by number or keyword on the landing page of the legislature's website, <https://legislature.vermont.gov/>

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The bill's webpage shows the "as introduced" text, if it has been passed by one or both chambers, and if it's been enacted. When a bill is passed by either the House, the Senate, or both, that version also appears on this page. It also shows what committee currently has possession of the bill, as well as the dates of when it was debated and acted upon in the full House or Senate.

That is not the whole story, of course. Before a bill gets to the floor for "Second Reading" – which is when formal chamber-wide debate first happens – it is discussed in committee, and sometimes by several committees. Therefore, look at the committee in which the bill is located – it's noted on the bill's webpage – and click on that committee. The current week's agenda will pop up. You may also refer to the "[All Scheduled Committee Meetings](#)" webpage to find the committee in which you are interested. Click on the "Agenda" link in the left hand column.

Weekly committee schedules do tend to change during the week, especially in these chaotic times, so visit the webpage frequently. The agenda will include not only the bill discussions scheduled for the week but also the members of the committee, the YouTube link to watch the committee meeting, and, at the bottom of the agenda, contact information for the committee staff person. If you click the link to watch the session, please note you are only watching and are not an active part of the discussion.

Here, for instance, is the [agenda](#) for the House Government Operations Committee for the week of January 18-21, 2022.

If you want to provide testimony on a bill as the committee is discussing it, you must first email the committee staff person, a legislator who is a member of the committee, your own legislator, or, as a last resort, your VLCT Advocacy staff. You can search for a legislator by name or town on the landing page of the legislative website, <https://legislature.vermont.gov/>.

The legislature's landing page also features tabs for Bills & Resolutions, Senate and House Committees, the Vermont Statutes, the [Joint Fiscal Office](#) (which takes you away from the General Assembly website and offers lots of information on fiscal matters), lists of reports and research that have been submitted to the General Assembly (hundreds of them), information about the physical State House structure and history, and legislative staff and offices.

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Please note that legislative staff are not at liberty to answer questions from the public or provide draft copies of legislation to the public unless a legislator has given them permission to do so. They work for the legislature and this website is a work-flow management tool.

After a committee finishes its discussion of a bill and amends it as its members see fit, they vote it out of committee and send it to the House or Senate floor. The bill appears on that chamber's calendar in amended form and, generally, any proposals for amendment from individual legislators are written there as well. The discussion on the floor sometimes takes several days. This is when – suddenly – all members of the chamber are paying attention to the subject matter and any recommendations you offer to legislators will be most likely to be heard, absorbed, and possibly even acted upon.

Links to the Senate and House Calendar links are near the bottom of the legislative landing page, where you will also find Journals, which are the reports of proceedings on the floor of the House and Senate that took place on previous days. Also there are links to listen to or watch the House and Senate proceedings.

Once a bill passes one chamber, it repeats the entire process in the other one.

Remember that you can keep up with legislative action by reading our [Weekly Legislative Reports](#) – which we publish each Friday afternoon – by joining our biweekly [Advocacy chats](#), and by reading our recently updated [Advocacy Guide for Local Officials](#).

[Reapportionment](#)

The [Reapportionment \(Redistricting\) webpage](#) on the [legislative website](#) is your one-stop destination for information about the reapportionment process in Vermont. The site contains links to:

- related legislation;
- maps of proposed House districts listed by town, district, region, and metropolitan areas; and
- the webpage of the Senate Reapportionment Committee.

[New Bills of Municipal Interest](#)

Number	Summary of New Bills	Current Location
H.694	Would establish multiple restrictions on the use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in the state including prohibiting the intentional use of PFAS in products to be sold in Vermont and prohibiting landfills, refineries, and other industries from bringing industrial leachate to wastewater treatment plants.	House Nat. Resources, Fish, and Wildlife
H.695	Would impose a moratorium on the taxation of trailer coaches as real property that would remain in effect until June 30, 2023. Would require a report to the legislature by January 15, 2023 from the Division of Property Valuation and Review in consultation with VLCT and listers in rural communities with large campgrounds. The report would contain data on the value and stability of property tax revenue collected from trailer coaches that qualify as real property and recommendations for any legislative changes.	House Ways and Means
H.696	Would add to the definition of accessory on-farm business “on-farm restaurants” as an option for farms looking to add an accessory on-farm business to the property if the restaurant featured products produced on the farm. Would also prohibit municipal bylaws from banning on-farm restaurants.	House Agriculture and Forestry

Number	Summary of New Bills	Current Location
<u>H.697</u>	Would authorize enrollment of reserve forestland in the Use Value Appraisal Program as a new category of managed forestland where active growing and harvesting of forest crops would not be required.	House Ways and Means
<u>H.701</u>	Would set fees for cannabis establishments regulated by the Cannabis Control Board and patients, caregivers, and dispensaries that participate in the Vermont Medical Cannabis Registry.	House Ways and Means
<u>S.280</u>	Would make miscellaneous changes to laws related to vehicles that include new vehicle arbitration, Vermont's Lemon Law, overweight permits, and purchase and use taxes.	Senate Transportation
<u>S.283</u>	Would make miscellaneous changes to education laws, including residency requirements and a statewide uniform school calendar.	Senate Education
<u>S.284</u>	Would accelerate the weatherization of homes in Vermont by providing funding for weatherization projects, increasing the workforce for energy coaching and counseling, creating a system to certify weatherization contractors, creating a registry of certified weatherization contractors, and ensuring that the weatherization program does not burden the sale or transfer of properties weatherized through the program.	Senate Natural Resources and Energy