

# 2022 Weekly Legislative Report #15

**April 15, 2022**

Today's report updates you on legislation concerning equity and inclusion, qualified immunity, idling and speeding, pupil weights, and transportation. Our Elsewhere in the State House section examines municipal charters, community resilience and biodiversity protection, and municipal energy resilience. The legislature introduced no new bills this week.

You can always check our two webpages to 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. Scroll to the end to see the newest additions.

## **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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[Equity and Inclusion](#)

Two bills of note that relate to equity and inclusion measures continue through the legislative process. One of them, [H.546](#), addresses racial equity and racial justice statistics. The bill passed the House in March and is currently in the Senate Judiciary Committee, which took testimony on it on Wednesday. H.546 would create an Office of Racial Equity within state government led by the executive director of the Office of Racial Equity (currently Xusana Davis) in the Agency of Administration. The director would oversee a new Division of Racial Justice Statistics that would collect and analyze data related to systemic racial bias and disparities within the criminal and juvenile justice systems. Further, the new division would “create, promote, and advance a system and structure that provides access to appropriate data and information, ensuring that privacy interests are protected and principles of transparency and accountability are clearly expressed.” The data would help inform policy decisions to ameliorate racial disparities throughout state government. The division would collaborate with all levels of state government and with local agencies, specifically regarding data collection. The division would report annually to the legislature with recommendations based on their work.

The bill creates a seven-member Racial Justice Statistics Advisory Council comprising individuals with diverse backgrounds, including persons with expertise in community-based research on racial equity, refugees or immigrants, and persons in treatment programs addressing mental, health, substance use disorder, and reentry programs. Council members must represent the interests of communities of color and other historically disadvantaged populations throughout the state and, to the extent possible, have experience working to implement racial justice reform and represent geographically diverse areas of Vermont. The council would work with the director of racial equity to implement the requirements of the law, evaluate the data, and make recommendations as a result of the evaluations. If passed, the bill would take effect July 1, 2022.

A second bill, [H.96](#), would create a Truth and Reconciliation Commission in Vermont. The commission would begin the process of documenting and then dismantling past and present institutional, structural, and systemic discrimination in the existing state laws and policies have caused or permitted. It would also identify actions the state can take to repair the damage caused by this discrimination and prevent it from recurring in the future.

The commission would consist of three full-time employees of the state of Vermont. It would also include one or more committees established by the commissioners to examine the discrimination noted above. Committee members would include individuals who identify as

Native American or Indigenous; family members of individuals with physical or mental disabilities; individuals of color or who identify as having French Canadian, French-Indian, or other mixed ethnic or racial heritage; and other populations that have experienced such discrimination policies. As many as 30 members may be on the commission, and they would help the three full-time commissioners fulfill their obligations.

A group comprising the executive director of the Office of Racial Equity, the executive director of the Vermont Human Rights Commission, a member appointed by the Speaker of the House, a member appointed by the Committee on Committees, and an individual appointed by the Chief Justice of the Vermont Supreme Court would recommend seven individuals to a hiring panel, which will then choose and hire the commissioners.

The commission would report its findings to the governor and legislature annually and would cease to exist on July 1, 2026, after fulfilling the obligations set forth in the legislation.

H.96 passed the House in March and is currently in the Senate Government Operations Committee. The committee took testimony this week and will continue to do so next week.

### [Qualified Immunity](#)

On Wednesday, the House Judiciary Committee voted out S.254, a bill that began as legislation to eliminate qualified immunity for law enforcement officers and create private rights of action against law enforcement officer for violating rights established under Vermont laws.

As it was voted [out of the Senate](#), the bill attempted to codify the principles of Vermont Supreme Court case *Gregory W. Zullo v. State of Vermont* (2019 VT 1, No. 2017-284) as they apply to all law enforcement agencies and violations of Article 11 of the Vermont Constitution. It also directed every law enforcement agency to maintain a record of all final judgments, associated complaints, and settlements paid by the law enforcement agency for claims made under this new codified standard. Further, the Office of Legislative Counsel, in consultation with outside entities, was directed to report to the legislature on the impact qualified immunity had on access to civil justice remedies for people wrongfully harmed by bad-faith policing and civil rights violations in Vermont.

The House committee [further narrowed the scope of the bill](#) by removing all language that attempted to codify the court case as well as language related to agencies maintaining records associated with claims that would have been made under a new codified standard. As

the legislation now reads, no adjustment to qualified immunity under state law is proposed.

The committee retained the last element of the bill that mandated the Office of Legislative Counsel to further study and report to the legislature on qualified immunity. They further made the study more robust by expanding it beyond the violation of civil rights in Vermont and in the state court system to include qualified immunity at the U.S. Court of Appeals for the Second Circuit – the federal circuit court for Vermont. To the topics initially to be included in the report, the committee added others: the level of specificity required for the statute to be considered clearly established law pursuant to a qualified immunity analysis, and the differences between remedies under state and federal laws. The report would also include a survey of states that maintain a central database of all final judgments and settlements paid by law enforcement agencies for allegations of law enforcement officer misconduct.

The bill is currently on the floor of the House for third reading. Once passed, it will return to the Senate Judiciary Committee for consideration of the House-proposed amendments. If the Senate does not agree with the House's amendments, a conference committee will likely be created to craft compromise language.

#### [House Transportation Discusses Idling and Speeding](#)

[H.689](#) is a bill that would condition the receipt of state aid for town highways, highway bridges, or highway structures on the adoption of a plan for local enforcement of traffic laws, especially speeding on town highways and a prohibition on idling. The bill was introduced in January and immediately assigned to the House Government Operations Committee. The objective of the bill is to ensure the safety of bicyclists and pedestrians who share the traveled way with motor vehicles. And idling motor vehicles contribute to Vermont's carbon footprint and greenhouse gases in not insignificant amounts.

Clearly, H.689 is legislation that local governments would oppose because it conditions the existence of a plan and requirements for enforcement of idling and speeding laws above other law enforcement priorities in a time of severely stressed resources and would severely penalize towns that did not comply. That said, speeding – especially on stretches of road in downtowns or near schools and other congested areas – has long been a major safety concern for municipalities. On Wednesday, the House Transportation Committee took testimony on a broader issue of how to encourage compliance with speed limits and idling laws in the context of S.280, the bill that would make miscellaneous changes to motor vehicle laws.

The new proposal would require the Air Quality and Climate Division of the Department of Environmental Conservation (DEC), and the Department of Motor Vehicles (DMV) to implement a public outreach campaign that addresses idling. The Agency of Natural Resources, DEC, DMV, and the Department of Public Safety would have to maintain webpages dedicated to idling on their sites. Those departments and agencies would also need to update and disseminate materials to municipalities to use in their idling campaigns. Additionally, the bill would establish that if a town adopts an energy element as part of its municipal plan, the plan would have to include public outreach on the harms of idling and speeding.

The Transportation Committee took testimony most of Wednesday. Several people testifying indicated that it would not make much difference in people's behavior to put language in a municipal plan regarding speeding and idling. Measures such as re-activating the state's campaign against idling, providing mini-grants to help towns disseminate information about idling and speeding, and working with the Vermont Climate Council to incorporate idling prevention in their actions would likely be more effective at changing people's behavior.

The committee will finalize its actions on S.280 soon, possibly even today. We will keep you apprised of their decisions.

#### **Resources for this article:**

- [VAPDA List of Towns with Approved Energy Elements in Municipal Plans](#)
- [VLCT Testimony Before House Transportation Regarding Idling](#), April 13, 2022

#### Transportation Bill

This year's transportation bill, H.736, was voted out of the Senate Transportation Committee on Wednesday and is currently being considered by the Senate. Beginning as a [53-page bill](#) as it passed out of the House, the Senate's version of the legislation has grown to [71 pages](#). Although the Senate committee left most of the House provisions in the bill, they did make several major changes to the legislation that affect local governments.

**Carbon Reduction Measures.** The Senate Transportation Committee's version of H.736 expands the intent language related to investments, policies, and program support for greenhouse gas emissions reduction measures and reduction of fossil fuel use. Their

amendments to House-passed carbon reduction measures were significant. The committee removed two incentive programs – eBike and eRecreation – along with their \$2 million appropriations that would have provided financial incentives to buy electric bicycles, all-terrain vehicles, and snowmobiles because they didn't think the programs would be “transformational” or result in taking carbon emitting vehicles off Vermont roads. Instead, the committee believed the money would be better spent supporting the state highway maintenance budget. The House reduced the governor's recommended maintenance budget by \$3 million, and this Senate proposal would put that \$2 million appropriation back into the maintenance budget.

**Public Transit, Mobility.** The committee reduced Transportation Fund appropriations to the public transportation programs by \$1.9 million and shifted \$1.75 million of that amount to one-time appropriations from the state's General Fund, with only \$500,000 coming from the Transportation Fund. They increased from \$500,000 to \$1.5 million funding to the Mobility and Transportation Innovation Grant Program. This program supports projects that improve mobility and access to services for transit-dependent Vermonters, reduces the use of single-occupancy vehicles, and lessens greenhouse gas emissions. The committee also allocated \$1.2 million to public transit providers to – as practicable – provide free transit on routes other than commuter and the Green Mountain Transit Agency's LINK Express and restore service to pre-COVID levels.

**VAST, Burlington Airport, State Road Standards.** New sections were added to the bill that apply to the Vermont Association of Snow Travelers (VAST), the Burlington International Airport governance structure, and the updating of state road standards. The committee added a one-time \$1 million General Fund appropriation to VAST to support the Law Enforcement and Safety Program and the Equipment Grant-in-Aid Program. They also are directing the Agency of Transportation (VTrans) to update applicable roads standards found in the [Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets](#), which has not been wholly revised since 1997. The committee also added a large provision that creates a Burlington International Airport Study Committee to examine the existing governance structure and suggest alternatives to it. Currently, the airport is a municipal department of the City of Burlington and operates as a separately reported enterprise fund. The committee would comprise city, state, and regional members and report its recommendations to the legislature by 2024.

**Municipal Specific Provisions.** Most provisions in the House-passed version of H.736 that impact municipalities remain intact, and our [Weekly Legislative Report No. 11](#) summarizes them. The Senate committee did, however, make a few adjustments to the legislation as they directly apply to local governments.

A section of the bill was amended that would enable municipal, county, and state entities that deploy police, fire, ambulance, rescue, and other services to aid stranded operators of vehicles or to move disabled vehicles. It now specifies that any recovery be by civil action for the cost of providing services from both the operator and the operator's employer, provided the operator was acting during or incidental to their scope of employment. The new language also cites the specific provisions of law related to stranded operators and disabled vehicles.

The section of 23 V.S.A. § 1400b that defines special weight limits on local roads and bridges was amended to remove the date by which municipalities must file the weight limitations with the Department of Motor Vehicles. Currently, this must be done by February 10 of each year. The Senate proposal would simply say that it must be done annually, thereby giving towns and cities more flexibility.

**Funding to Local Governments.** Lastly, and perhaps most importantly, the Senate amended the appropriations to local roads programs and funding. Earlier this year, after the governor's budget was presented to the legislature, VTrans revealed that they had made an error in calculating the aid and grant funding to local programs. That error created a gap between the statutory minimums and what was included in the governor's recommended budget. Last year, the legislature adjusted the statutory minimums for some programs, which could have accounted for this oversight. To correct this miscalculation, the House Transportation Committee used maintenance funds to close those funding gaps to local programs. As we mentioned earlier, the Senate Transportation Committee remains steadfast in maintaining the maintenance budget as recommended by VTrans and the administration and chose not to close the gap with those transportation funds. Instead, the committee directed VTrans to meet the statutory funding levels using carry-forward funds in the FY22 budget and to manage resources in the final quarter of FY22.

The bill is currently in Senate Finance. Once it is passed by the full Senate, it will return to the House Transportation Committee, which will then consider the Senate's amendments. As in years past, the legislature tends to appoint a Committee of Conference comprising transportation committee members from both chambers to meet and negotiate the final



provisions of the bill, rather than to further amend it by the respective chambers. This will likely again happen once the House committee has reviewed the Senate's provisions.

**Resource for this article:**

- [Transportation Appropriations Overview FY23 Budget by Fund – House and Senate Changes](#)

Pupil Weights

This week, the House Ways and Means Committee continued its discussion of pupil weights. Should they enact a revised pupil weighting system or a “cost allocation” system in order to correct current inequities for counting students and allocating additional weight to students based upon their needs – as English language learners, or who are enrolled in middle and secondary grades, who live in poverty, who attend schools that are small due to their geographic location, or who live in areas of low population density.

Along with the Vermont Superintendents Association, the Vermont School Boards Association, and the Agency of Education, VLCT urged the committee to implement corrected weights that address the inequities in the system. However, imposing a new and untried method to correct historic inequities at a time of considerable upheaval in education – including unprecedented staffing shortages and pandemic exhaustion in general – would place another burden on an already tremendously stressed system. Your advocacy staff also expressed concern that there were few controls on increasing costs of education overall for a smaller population, which will result in increased property taxes. Virtually everyone who testified asked the committee to agree with the Senate and establish the seven-member Education Advisory Committee outside the legislature as proposed by the Senate. That committee would analyze the education funding system and make recommendations to update the weights, if necessary, and otherwise improve the funding system. It would also be tasked with making recommendations on moving to an education income tax system to replace the homestead education property tax system by next January.

The committee will likely continue its discussion into next week.

**Resources for this article:**

- [VLCT Testimony Regarding Pupil Weights](#), April 12, 2022



- [UVM Professor Tammy Kolbe Testimony](#), April 13, 2022

### Elsewhere in the State House

**Charters.** Four charters saw legislative action this week.

- The Senate passed [H.718](#), a charter that approved the dissolution of the Colchester fire District No. 1. That charter heads back to the House and then to the governor for his signature.
- The House passed [H. 741](#), the City of St. Albans charter amendment that converts the city clerk and city treasurer positions from elected to appointed offices.
- The House considered [H.708](#), a City of Burlington charter amendment that provides ordinance authority to the city to protect residential tenants from evictions without “just cause” as defined in the charter. The House will likely vote this charter out today and send it back to the Senate. Once passed there, it will be sent to the governor for his signature.
- The House Government Operations Committee discussed at great length the Town of Springfield’s charter, [H.447](#). The bill makes various amendments to the town’s charter that range from ordinance authority over property maintenance standards to the reorganization and removal of certain town positions. The committee discussed at length the property maintenance ordinance provisions and whether enforcement should be narrowed to “physical” injury to another property or to include language in [the Senate proposal](#) that broadened it to simply injury to another property. They were also concerned with the length of time that a Springfield charter amendment could be reconsidered. The committee voted the bill out with [further proposals of amendments](#) to the Senate that narrowed the ordinance enforcement threshold to “physically” injury to another property and set reconsideration of a charter revision or amendment to one year. The bill will be on the House floor next week.

**Community Resilience and Biodiversity Protection.** On Wednesday, the Senate Natural Resources and Energy Committee took up H.606, a bill that would establish goals for

conserving Vermont's land area. As passed by the House, the bill would mandate that 30 percent of Vermont's total land area be conserved by 2030 and 50 percent be conserved by 2050. "Conserved," for purposes of this legislation, would mean protected and meet the following definitions:

- ecological reserve area: permanent protection from conversion of natural land cover and managed to maintain a natural state),
- biodiversity conservation area: permanent protection from conversion of natural land cover for the majority of the area and managed for sustaining species or habitats or
- natural resource management area: permanent protection from conversion of natural land area for the majority of the area but subject to long-term sustainable forest management.

The committee also took up H.697, a bill that would create a new category of reserve forestland eligible for enrollment in the Use Value Appraisal (Current Use) Program, and heard testimony from sponsors and supporters of the legislation. (See the Elsewhere in the State House section of [Weekly Legislative Report No. 9.](#))

**Municipal Energy Resilience.** On Thursday, your advocacy staff testified before the Senate Natural Resources and Energy Committee regarding H.518, a bill the House passed that would establish a municipal energy resilience program. The program, administered by the Department of Buildings and General Services (BGS), would require the department to issue a request for proposals for a comprehensive energy resilience assessment of municipal buildings and facilities. That assessment would need to be completed by 2024.

A municipality, in coordination with a regional planning commission, would apply to BGS to receive an energy assessment of its buildings and facilities that would include a scope of work, cost, and timeline to complete each building or facility. The assessment would include heating and ventilation system improvements or replacements, the use of a renewable energy source for a heating system, improvement to a building's thermal envelopes, the potential for on-site renewable energy generation, and cost estimates for the most feasible one, and the potential to phase the implementation of proposed projects. The applicant municipality would need to have high-speed internet by 2024 and also commit to creating a space in an

assessed building where members of the public could work, pursue education, or participate in health monitoring or telehealth for a period of five years.

The bill would establish the Municipal Energy Resilience Grant Program, which would be administered by BGS and Efficiency Vermont. The program would award grants of up to \$250,000 for approved projects for weatherization, thermal efficiency, replacing fossil fuel heating systems, and other expenditures to enable the project to be eligible for federal funding, such as outfitting the space for work, telehealth and education, and compliance with the Americans with Disabilities Act. Much of the discussion in the committee on Thursday concerned whether \$250,000 would be enough to complete all of these projects. The bill would appropriate \$48,400,000 from the American Rescue Plan Act Capital Projects Fund and earmark \$40 million for grants.

The bill would also establish a Municipal Energy Loan Program to provide financing to municipalities for equipment replacement, studies, weatherization, and energy efficiency-related improvements. That program would be funded by a Municipal Energy Revolving Fund, which would be seeded with \$2.8 million.

**Resource for this article:**

- [VLCT Testimony to Senate Natural Resources Regarding H.518](#)