

2023 Weekly Legislative Report

#6

This week, we cover a breadth of local government topics in the legislature, including possible assistance for small rural municipalities, telecommunications, clean water, elections laws, county sheriffs, and more. Make sure to read the Rural Resilience Assistance Program article and stay tuned in to future *Weekly Legislative Reports* for more about an outreach campaign. Plus, the Bills of Interest to Municipalities table has been updated (as it is every week) so you can see the latest on all the bills that could affect local government.

[Rural Resilience Assistance Program Is In the Works!](#)

The budget adjustment bill ([H.145](#)) passed its second reading in the House on a party line vote Thursday and its third reading on Friday morning. The bill next goes to the Senate Appropriations Committee. Fortunately, the proposed Rural Resilience Assistance Program and \$3 million to implement it were not the reason for the split vote.

The Agency of Administration conceived of a Rural Resilience Assistance Program when it analyzed where grant dollars for federally funded programs through the American Rescue Plan Act (ARPA) were concentrated and which towns seemed unable to apply for funds because they did not have the professional capacity to do so. The proposal is designed to help towns take advantage of ARPA dollars that are available for local projects. At the same time, members of the Rural Caucus were observing the same phenomenon, and a bill ([H.124](#)) recently introduced by Representative Sibilio and 32 co-sponsors would implement a similar program for the longer term.

H.145 would direct the Agency of Administration to design and implement a process to provide expanded technical and administrative assistance to municipalities with high need that may be eligible for state or federal funding; for community needs assessments; for strategic planning; and for identifying potential projects eligible for American Rescue Plan Act (ARPA) funding including water supply and wastewater infrastructure, housing, community recovery, workforce development and business support, climate change mitigation and resilience; and other community economic development projects identified by a municipality and approved by the Agency of Administration.

Funds would be used to undertake opportunity assessments; provide application and permit assistance; and provide ongoing support to grant recipients for project management, implementation, compliance and administrative tasks, regulatory compliance through project completion, and other capacity-building activities. The Agency of Administration would develop criteria, issue a request for proposal, and pre-approve service providers in each region for towns to contract with for the assistance needed. The service providers could be regional planning commissions, regional development corporations, or private for profit or non-profit contractors as long as they meet performance criteria. The agency could award a contract to a service provider or approve two or more towns to create a new position fulfilling those responsibilities or authorize a municipality to directly contract for services. Priority would be given to service providers that demonstrate they are capable of promoting regional collaboration and delivering services efficiently.

The agency would also be charged with developing an index that ranks Vermont municipalities based on administrative capacity to access and maximize the benefits of technical assistance and funding that is available from state, federal, and other sources. For purposes of the index, the Agency is to consider demographic profile, geographic location, economic resources, the current size and administrative capacity of the municipal government, the availability of regional partners and supports, and other factors it determines are indicative of the need. The agency has already developed several iterations of that index with significant input from legislators, regional partners, and VLCT, and will refine it in the next several weeks. Funding would be available on a first come, first served basis, initially to those towns ranking in the top 25th percentile of the index, unless a municipality not in that quadrant demonstrates exceptional circumstances.

The agency and VLCT would develop an outreach campaign to make municipalities aware of the opportunity. **This is your first notice!** Check future *Weekly Legislative Reports* to learn more!

The Agency of Administration, VLCT, regional development corporations, and regional commissions are directed to work collaboratively to assure that every eligible town is aware of the program, to help with identifying projects, and to determine if a municipality is going to pursue this exceptional opportunity. The agency would need to report to the legislature on the program on April 1 and July 1 of 2023 and on January 15, 2024.

This program represents an innovative and immediate opportunity for towns that have historically been unable to apply for funding because of lack of resources. Please watch this space for updates and begin to think about the projects your community would pursue if you had access to the assistance to get through the application, implementation, compliance, and close out processes. And take time to thank your legislators! Support for building capacity in smaller more rural communities was evident on both sides of the aisle.

[Update on Town Highway Structures and Class 2 Roadway Funding](#)

As reported in last week's [Weekly Legislative Report](#), VLCT identified significant amounts of money in the Town Highway Structures and the Town Highway Class 2 Roadway programs in FY22 that were unspent and which the Agency of Transportation (VTrans) has proposed should revert back to the state transportation budget. VLCT Advocacy staff was alarmed to see over \$13 million in these programs unspent and was eager to meet with VTrans leadership to better understand why this occurred.

This week, VLCT met with VTrans leadership to learn about the complicated accounting related to the funds in these programs, and better understand how the programs are administered year over year. The conversations helped VLCT better understand the unique way these programs are administered over time compared to other state grant programs, and how statutory language severely limits the agency's ability to move money in and out of the programs more freely.

As we understand the issue, pursuant to [19 V.S.A. § 306](#), VTrans must award grants each year to the maximum statutory funding level. Every year, VTrans commits the full statutory level of funding to municipalities with grant awards on a competitive basis. Once grants are awarded, municipalities must obligate the funds within 30 months. Funds are paid out on a reimbursement basis. This has been the practice and statutory obligation of the VTrans programs for some time, and, as stated in last week's legislative report, it is not uncommon to have some unspent money in these programs from one fiscal year to the next. Unsurprisingly, projects funded by grant awards are at varying levels of completion.

What was startling in the FY22 funding cycle was the sheer amount of money left unspent and proposed for reversion to the transportation budget. In conversations with VTrans, VLCT learned that some municipalities with open grants are taking much longer than usual to complete projects, and grant money is left unspent – which in FY22 was the largest amount

the agency has seen to date. This, combined with the statutory language mandating that VTrans only award grants at the statutory levels in any given fiscal year, prevents the agency from obligating any unspent money in the programs to additional municipalities with more “shovel ready” projects.

This is the unfortunate and frustrating reality that exists. It highlights two important issues. First, unless statutory language is amended, VTrans is prevented from reallocating surplus funds in the programs to new projects – even if other municipalities have “shovel ready” projects and the funds are available in the programs. Second, if some municipalities are having trouble executing projects in a timely manner, we need to help those communities get those projects across the finish line in a timely manner.

VTrans is currently compiling grant award information that will show the recent history of awarded and completed grants, as well as a current list of pending and ongoing grants. VLCT looks forward to having this level of detail for grant awards in both programs moving forward. Access to this information will help everyone outside the agency track each grant throughout its life cycle. Once the information is available, VLCT will disseminate it to municipalities so local officials are better able to track grants statewide and see the general cycle of awards on a continuing basis.

VLCT Advocacy staff looks forward to working with VTrans and the legislature to help build capacity at the local level to execute grant funded projects, and perhaps find efficiencies in the administration and grant award processes in the programs to get money out the door in a timely manner.

[Clean Water Funding in 2023](#)

The Agency of Natural Resources delivered its annual *Vermont Clean Water Initiative 2022 Performance Report* to the legislature on January 13. The report notes “The State of Vermont invested nearly \$337 million in clean water projects through grants, contracts, and loans from SFY 2016 to 2022. Reaching Vermont’s water quality goals requires investments across all land use sectors. Annual clean water investments have increased more than five-fold statewide since SFY 2016.”

There are a lot of cooks in this kitchen. The Clean Water Board is designed to bring most of those parties together to generate a common purpose related to water quality that addresses all contributors to water pollution (that means everyone) and accounts for all concerns.

Funding for water quality includes that for the Clean Water Fund, the capital bill, and, currently, the American Rescue Plan Act. In FY24, the combined investment is recommended to be \$50.6 million.

Local investments have likewise been substantial, although they are not itemized in the annual Clean Water Report. It is worth remembering that federal and state funding for wastewater and water supply is in the form of loans to municipalities and those funds need to be repaid. According to the Vermont Bond Bank, loans from the Drinking Water and Clean Water state revolving loan funds total \$511.43 million since the year 2000.

Municipal funding for municipal stormwater mitigation infrastructure projects, and to comply with the Municipal Roads General Permit (MRGP) in particular, is raised via municipally created stormwater utilities in some communities and property taxes for all costs not covered by grants, well more than half the costs overall. Investments range as high as \$3 million annually in cities close to Lake Champlain. One draft bill (with no number yet) that is currently in the Senate Agriculture Committee would exempt farms from paying stormwater utility fees that contribute to support of those municipal infrastructure investments.

The request from the Agency of Natural Resources (ANR) for clean water in the FY24-25 Capital bill includes, according to Governor Scott's capital budget request:

- \$24.6 million for state match to supplemental federal Environmental Protection Agency (EPA)
- Clean Water and Drinking Water state revolving fund capitalization grants
These provide low interest loans for planning and construction of wastewater, stormwater and drinking water system improvements.
- \$2.4 million for state 20% match to EPA Drinking Water state revolving fund capitalization grants
Used for low interest loans for public water system improvements to meet drinking water standards
- \$0.3 million to Clean Water state revolving loan fund (CWSRF)
CWSRF loans support water-quality projects that include combined sewer overflow abatement (CSO), plant refurbishment, plant upgrades, sludge and septage

improvements, sewer line replacement and extension, pump station upgrades, plant enlargements, stormwater improvements, and municipally sponsored private wastewater disposal systems.

- **\$8.2 million to Municipal Pollution Control Grants**

Grants provide financial assistance to Vermont municipalities to fund combined sewer overflow abatement, dry weather flow treatment, and sludge and septage treatment facilities. These grants generally supplement loans that are funded through the Clean Water State Revolving Fund (CWSRF). Municipalities will need to make significant investments in clean water to meet requirements of the EPA total maximum daily limits for phosphorous in Lake Champlain and the 2015 Vermont Clean Water Act (Act 64). Statewide, the total anticipated cost for water quality improvements for municipal wastewater is estimated at over \$1 billion over the next 20 years.

- **\$12.8 million to the Vermont Housing and Conservation Board grants and projects for conservation and water quality fee lands.**

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As discussions progress in the House and Senate Institutions committees around investments in clean water, your advocacy staff will keep you informed of progress.

Resources for this article:

- [Clean Water Board FY 24 Clean Water Budget Overview](#)
- [Agency of Natural Resources 2022 Clean Water Initiative Performance Report](#)
- [ANR Annual Clean Water Report 2023 Executive Summary](#)
- [Governor Scott Capital Bill Request](#)

- [Vermont Bond Bank Loan Infrastructure Database](#)
- [Vermont Bond Bank Infrastructure Loans from Public Lenders](#)
- [Clean Water Board](#)

Statewide and Local Elections

The House Government Operations and Military Affairs Committee took testimony on legislation addressing elections on Thursday. The first bill they considered is a [committee bill](#) that does not have a bill number yet. It would make miscellaneous amendments to election laws at the state and local level. The bill proposes the following:

- **“Sore Loser Law”**. Prohibit a major party candidate who loses a primary from appearing on the general election ballot for a different major party. A candidate would not be allowed to run for the same office as an independent either, if that person loses the primary as a major party candidate. This prohibition would apply to state and federal elections.
- **Campaign Finance**. Amend campaign finance law to permit political parties to accept unlimited contributions from a candidate.
- **Party Identification and Cross Nominations**. A candidate could only list a single party on a general election ballot.
- **Candidate Demographic Information**. Consent forms for candidates running for state and local elections must include options for the candidate to provide demographic information such as gender, age, race, or ethnicity. . The Secretary of State would collect statewide office demographic data, and town clerks would be required to collect local election demographic data and forward the data to the Secretary of State. Town clerks would not need to follow up on collection of such data. Local elections that the demographic data collection would apply to would include selectboard, city council, village trustee, and mayoral candidates.
- **Write-In Candidates**. In order to have votes recorded for write-in candidates for primary, presidential primary, general, and local elections, a write-in candidate could file

with the Secretary of State (for state and federal elections) and the town clerk (for local elections), a form consenting to candidacy for office. For local elections this would apply to Australian ballot elections.

In addition to testimony related to this committee bill, the House Government Operations and Military Affairs Committee considered [H.149](#). That bill proposes to require write-in candidates to file consent of candidate forms with the Secretary of State for primary and general elections as well. If amendments to election law related to write-in candidates move forward, the committee will consider the proposed language in both bills.

Given the depth of consideration and testimony on the topic this week, it appears the committee will continue working on an election bill in the coming weeks.

[Telecommunications and “248a”](#)

248a is the section of Vermont Statutes Title 30 that offers telecommunications businesses the opportunity to seek a certificate of public good (permit) from the Public Utility Commission (PUC) in lieu of seeking a permit from the municipality in which the telecommunications facility is proposed to be built or Act 250. Virtually all telecommunications businesses use the 248a process for permitting their facilities. The law provides for a truncated process for “de minimus” applications – those that add, modify, or replace telecommunications equipment, antennae, or other improvements on a telecommunications facility or other structure if the size of the facility is not increased and the total impervious surface is not increased by more than 300 square feet.

For larger facility applications, the PUC must make a series of findings. This series includes that the facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, public health and safety, or enjoyment of highway scenic corridors. Moreover, unless there is good cause to find otherwise, “substantial deference” must have been given to municipal and regional plans and to recommendations of local legislative bodies and planning commissions as well as regional planning commissions. The law also requires that at least 60 days prior to filing a full application an applicant shall notify the PUC, the municipal legislative bodies and planning commissions, regional planning commissions, and relevant state agencies.

The law was enacted in 2007 with a sunset date that has been extended several times and is currently July 1, 2023. Should the law lapse, permitting authority would revert to the municipality and Act 250. VLCT advocacy staff testified on Wednesday on [H.110](#), that the sunset should be extended again versus the statute being made permanent. The recurring sunset date forces a discussion between the legislature and the telecommunications industry about technology changes, financing, and practices in locating facilities around the state.

An additional bill, [H.70](#), would impose additional requirements on telecommunications applicants for certificates of public good.

[Sheriffs in Vermont](#)

Both the Senate and House Government Operations Committees are taking testimony relating to Vermont county sheriffs. On Wednesday, the House Judiciary Committee joined the conversation during a joint hearing with the House Government Operations and Military Affairs Committee. It appears the Senate Government Operations Committee will take the lead in moving legislation in [S.17](#) and a constitutional amendment in [Prop 1](#) relating to sheriffs' duties and conduct. The legislature has prioritized legislation related to sheriffs in response to recent instances of unprofessional conduct and illegal acts of certain county sheriffs in Vermont. As the public has learned more about these unprofessional or illegal acts, Vermonters have been reminded of the constitutional and statutory restraints in addressing the varying levels of misconduct.

The office of a county sheriff is a constitutional office under Section 50 of Chapter II of the Vermont constitution. Under Section 50, a sheriff is elected by voters in each county every four years with their term commencing on the first day of February after the election. If voters and the legislature want to deviate from this model, the state constitution must be amended, which is a four-year long process. State statute also dictates the more specific roles and responsibilities of county sheriffs, and S.17 includes several potential amendments that aim to create greater accountability and oversight over sheriffs. Proposition 1 would allow the legislature to establish laws specifying the qualifications a person must hold to run and serve as sheriff. S.17 then goes into the details of the roles, responsibilities, compensation and professional regulation of sheriffs.

VLCT has not taken a position on either Proposition 1 or S.17. VLCT Advocacy staff testified before the Senate Government Operations Committee this week to explain the roles that

sheriffs play in towns and cities. Staff explained that the number of municipal law enforcement departments in Vermont is shrinking, and new departments are unlikely to be created in the future considering the expense of running an agency and the difficulty of finding officers and leaders to staff a new agency in light of the current labor shortages in law enforcement. Additionally, the state police are experiencing staffing shortages, making it more difficult for the state to fill the gaps in law enforcement coverage across the state. Reliance on sheriff's departments to provide some level of law enforcement services to local governments will only grow in years to come. Therefore, the goal of creating greater accountability and professionalization of sheriffs will grow in importance to municipalities that contract with sheriff's departments for services, and to the community members that the sheriffs and their departments serve.

The Senate Government Operations Committee is eager to pass Prop. 1 and S.17 soon but recognizes the legislature can only do so much over the next four years given the time it takes to amend the Vermont state constitution.

VLCT will continue to track this legislation and provide testimony if and when new language is proposed that would affect municipal relations with county sheriffs.

[VLCT's American Rescue Plan Act \(ARPA\) and Federal Funding Assistance \(FFA\) Programs](#)

The VLCT Federal Funding Assistance Program, which includes VLCT's initial ARPA assistance program, will very soon provide a written update to the Vermont General Assembly and Governor Scott about the work done by staff members Katie Buckley and Bonnie Waninger to assure that local governments have the information they need to access federal funding and make the most effective use of the local ARPA direct aid they received. There is a comprehensive body of work. See the [full update here](#).

[Bills of Interest to Municipalities](#)

Number	Summary	Current Location
H.126	Would establish State goals of conserving 30 percent of the land in the State by 2030 and 50 percent by 2050. To include state, federal, municipal and private lands.	H. Environment & Energy

<u>H.129</u>	Would increase the maximum amount of grant awards from the Brownfield Revitalization Fund; require the Secretary of Commerce and Community Development to issue annual grants to regional planning commissions in the State to conduct characterization and assessment of potential Brownfield sites; and require a report to the legislature.	H. Environment & Energy
<u>H.130</u>	Would require the Secretary of Natural Resources (ANR) to manage all biosolids and domestic septage as Class B biosolids. The ANR Secretary would be prohibited from managing biosolids and domestic septage as exceptional quality biosolids or Class A biosolids.	H. Environment & Energy
<u>H.134</u>	Would set a default statutory maximum speed limit of 35 miles per hour for all unposted and unpaved town highways, as defined in 19 V.S.A. § 301(7), appearing on town highway maps, as required pursuant to 19 V.S.A. § 305.	H. Transportation
<u>H.140</u>	Would require the Secretary of Administration to make changes to the State's Policy for Grant Issuance and Monitoring; require the Secretary of Digital Services to develop a statewide database that is required to list all State-funded grants available to municipalities.	H. Government Operations & Military Affairs
<u>H.143</u>	Would establish standards and consumer protections for towing companies and storage of vehicles.	H. Transportation
<u>H.145</u>	Budget Adjustment Act	House Floor
<u>H.150</u>	Would approve an amendment to the charter of the Village of Alburgh to allow the Village to appoint a Village Clerk and Village Treasurer.	H. Government Operations

<u>H.157</u>	Would create a technical advisory committee to update the methodology used to calculate the Vermont livable wage and to recommend changes to the statute governing the calculation of the Vermont basic needs budget.	H. General & Housing
<u>H.161</u>	Would clarify that the Commissioner of Forests, Parks and Recreation may notify fire wardens that during specified periods, burning permits shall not be issued.	
<u>H.162</u>	Would prohibit, with exceptions, operation of vehicles equipped with studded snow tires on Vermont highways other than from November 1 to May 15.	H. Transportation
<u>H.163</u>	Would create a Ecologically Sustainable Sanitation Working Group to study alternative ecologically sustainable sanitation systems (eco-sanitation) and develop best management practices for low-flow greywater and eco-sanitation systems. Would require the Secretary of Natural Resources to adopt the best management practices developed by the Working Group.	H. Environment & Energy
<u>H.164</u>	Would authorize use of low-impact wastewater systems designed to manage and treat wastewater from plumbing fixtures supplied by hand-carried or hand-pumped water.	H. Environment & Energy
<u>H.165</u>	Would require all public schools in Vermont to make school breakfast and lunch available to all students at no charge.	
<u>S.55</u>	Would amend the Open Meeting Law to authorize public bodies to meet through electronic means without designating a physical meeting location.	S. Government Operations
<u>S.57</u>	Would authorize municipalities to adopt ordinances to limit or reduce, but not prohibit, discharge of firearms at a sport shooting range.	S. Government Operations

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