Thoughts on Returning to the Golden Dome

In only two weeks, the 2020 legislative session commences and suddenly everything changes in the city of Montpelier, which hosts the annual influx of legislators, lobbyists, interested citizens, protesters, and special interests who crowd the State House and surrounding streets. Despite their sometimes deep-seated differences, most can still share the same restaurants, brew pubs, and coffee houses when the work is finished – or, indeed, as many of the issues are debated. We should be proud of that fact as we survey the far more rancorous political scenes at the federal level and in other states.

It is an election year; therefore, as spring approaches, legislators will want to end the session in a timely manner so they can start focusing on their own campaigns. But there is much work to do before then, and we need your help. We need you to explain to your legislators how the actions they take in the State House unequivocally and profoundly affect your ability to deliver services to your constituents at home.

In this Legislative Preview, we write about Vermont’s rocky path to self-governance, how to pay for stormwater management, ongoing wetland regulation and clean water issues, new efforts to make it easier to build housing in thickly settled areas to support economic growth, the challenge of developing effective cybersecurity measures, and ensuring that towns have sufficient funding to deal with the impact of any new retail marijuana establishments.

In case anyone has forgotten, Vermont is a Dillon’s Rule state. That means that municipalities may only do those things that the legislature specifically allows them to do. In contrast, most other states grant municipalities at least some authority and discretion to be innovative in addressing local issues in a cost-effective, efficient, and timely manner. Forty-six states provide municipalities with some version of legislation or constitutional self-governance authority. They offer it based on population numbers, governmental structure, the size of the budget, or a similar criterion. Last session, the Senate passed S.106, a bill that takes initial steps toward granting municipalities the ability to govern themselves. The bill is currently awaiting action in the House Government Operations Committee. Your Advocacy staff will urge the House to finish the job the Senate started, to adopt self-governance legislation that recalibrates the state-local relationship in light of the ever increasing responsibilities of local government and the challenges they face.
During the summer, numerous study committees and commissions continued to work on legislation. In January, the Tax Structure Commission is due to provide a report to the legislature that assesses the state’s taxation sources and offers recommendations for balancing Vermont’s tax structure – the product of two years of work. A wetlands study committee evaluated grievances from across the spectrum on the administration and regulation of wetlands, though its members ultimately decided to mostly focus on how wetlands and agriculture can successfully coexist. The Agency of Transportation was directed to study the use of master license agreements with municipalities and railroads for work in various affected rights of way. These and other reports that affect local government are posted on the legislative website, https://legislature.vermont.gov/reports-and-research/find/2020.

Remember: You and all Vermonters are welcome in the State House at any time. All committee meetings and the full sessions of both bodies are open to the public. At the beginning of each week, schedules for committees are posted on the legislative website, https://legislature.vermont.gov/, and you can visit individual committee websites for updates. And most (but not all) committees post copies of legislative testimony on their individual webpages.

Remember also that as 2020 is the second half of a biennium, every bill that was introduced last year and was not passed is alive again in January. Thus, while we need to pay attention to newly introduced bills, we must also be prepared for bills introduced in 2019 that spring to life again.

To stay engaged with the progress of legislation that affects your town:

- Read the Weekly Legislative Report, which we publish, post, and email each Friday during the session.
- Watch for our Legislative Alerts, which we will email to you when a vote on a bill that is important to cities, towns, and villages is imminent and needs your attention.
- Invite your legislators to a selectboard or city council meeting. This is especially important early in the session, when senators and representatives are still forming their opinions.
- Attend Local Government Day, which this year is scheduled for February 13 at the Capitol Plaza and State House.
- Call, email, or text your Advocacy staff – Karen, Gwynn, and Milly – when you need information or to give us advice on a bill. We work for you, and the more we hear from you, the more effective we can be!

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The State Budget

Sooner or later, every bill that touches upon the issue of dollars ends up in either the appropriations committees or the taxation (House Ways and Means or Senate Finance) committees. Sometimes in all of them. Despite whatever well placed passion led to its introduction, there is little enacted legislation that doesn’t affect the state budget and Vermonters’ pocketbooks, sometimes significantly.

The state’s FY20 budget (the current fiscal year) equals $6.1 billion, a $600 million increase from FY15. The budget includes $1.7 billion in the Education Fund, $1.6 billion in the General Fund, $2.05 billion in federal funds, $301 million in the Transportation Fund, and $384 million in special funds. Immediately, things get a bit wonky because the federal dollars match a plethora of state dollars all across the spectrum of state programs – from education to clean water, from transportation to community development and human services. While Vermont receives more federal money than would be expected for a state of this size – and the national economic expansion that provides those federal dollars continues – there are concerns about how long such an expansion can continue and what will be the impact of actions far beyond Vermont’s borders, such as the trade war and federal deficit spending. According to the Joint Fiscal Office, federal grants per capita in Vermont approximate $3,000, whereas other states receive approximately $1,999 per capita. The Joint Fiscal Office’s December briefing to legislators helps explain Vermont’s budget.
Municipalities depend upon legislative appropriations much as the state depends upon federal appropriations. In FY20, $1.7 billion was appropriated to municipal programs, of which $1.58 billion went to education related items. An additional $8.97 million appropriated in Payment in Lieu of Taxes (PILOT) payments to towns for state buildings is wholly derived from the 30 percent of local option tax revenues that towns and cities remit to the state. The remaining $108 million tries to address everything else, from transportation and municipal roads permits to broadband, from community grants to outdoor recreation and municipal planning.

In FY20, the total from both the Clean Water Fund and the Capital Bill for all water quality-related uses (agriculture, municipal, transportation, conservation) was $26.9 million. For municipalities, that amounted to $6.62 million in appropriations and $2.5 million in state match for the Clean Water State Revolving Loan Fund.

The Clean Water Board is proposing that $34.5 million be appropriated in FY21 to address water quality issues and expects that anticipated revenue will equal $19 million in Clean Water Funds plus $14 million in capital funds. Of that amount, $13.4 million would be appropriated for municipal programs, as would $1.6 million in state match for the Clean Water State Revolving Loan Fund.

**FY21 Funds Proposed for the Clean Water Budget**

| Clean Water Fund | $20,568,808 |
| Capital Bill     | $13,900,000 |

Local officials should note that nowhere in the current Clean Water Board’s proposed budget are there funds to help municipalities test for or mitigate the impacts of contamination from per- and polyfluoroalkyl substances (PFAS).

Elsewhere in this preview you will read about initiatives that the administration, legislators and non-governmental organizations (NGOs) would like to see implemented. Many of these initiatives would impose new requirements on local governments, which are already struggling to keep their heads above water. Others will anticipate appropriations to cover their new costs. Given all the requirements of the budget, however, there is very little room for legislators to maneuver. The next most popular legislative solution – and a time-honored tradition – is to pass the cost of legislative priorities on to municipalities. Once again, local officials will need to remain vigilant this session.

**Education Funding**

Readers might wonder why local officials spend so much time determining how education is funded. The simple answer is that to the extent property taxes support preK-12 education, there is little if any flexibility for city and town officials to craft budgets that adequately address the wide range of municipal needs and mandates on which their citizens want action. Think potholes. Think water quality, stormwater, public safety, resiliency in the face of climate change and emergency management. Depending upon the municipality in which a person pays taxes, education property taxes comprise anywhere from 50 to 90 percent of all property taxes paid.

On December 2, as required by law, Secretary of Administration Susanne Young and Acting Commissioner of Taxes Craig Bolio delivered their Education Yield Letter to the Speaker of the House and the President Pro Tempore of the Senate. The letter forecasts a property dollar equivalent yield, an income dollar equivalent yield, as well as an average homestead property tax rate and a non-homestead tax rate for the ensuing fiscal year (FY21). This is a significant concern because there is apparently no end in sight to escalating education property taxes. “The fact that projected education cost increases [wrote Young] continue to exceed the rate of growth in education fund revenues – and the rate of growth in household income – remains a cause for significant concern, particularly as the number of students in Vermont’s schools continue to decline.” On a per pupil basis, expected growth in spending is predicted to average 5.5 percent, which is almost double the expected grand list growth of 3 percent and more than double the expected income growth of 2.5 percent.
In 2013, prior to legislation (Acts 153, 156, 46) that dictated the parameters of school mergers, there were 276 school districts in Vermont. In FY20, following a number of voter-approved and state Board of Education-mandated mergers, there are 120 school districts. The Agency of Education Merger Webpage shows that the number of supervisory unions in the state decreased from 59 in FY16 to 51 in FY19.

The state assigns a different weight to an actual pupil who attends school and who is counted in the fall of the year. The weight depends upon the student’s grade (pre-K students are assigned a fractional rate and high school students are counted as a fraction more than one) and includes adjustments for low-income students and English language learners.

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<th>Average FY2021 Equalized Property Tax Rates</th>
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<tr>
<td>FY 2020</td>
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<td>Homestead Property</td>
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<td>Income Tax Rate</td>
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<td>Non-Homestead Property</td>
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| FY 2010..................94,107 equalized pupils |
| FY 2017..................88,928 equalized pupils |
| FY 2018..................87,745 equalized pupils |
| FY 2019..................87,839 equalized pupils |
| FY 2020..................87,839 equalized pupils (anticipated final count as of December 2019) |
| FY 2021..................87,412 equalized pupils (projected) |

According to the Agency of Education, Education Fund spending totaled $1,132 million in FY10, and will total $1,727 million in FY20 (the current fiscal year), and $1,809 million in FY21. Only in FY11 and FY12 did Education Fund spending decline between FY10 and FY21. The Education Fund total is higher than the General Fund. Together, they comprise 61 percent of the entire $6.1 billion state budget.

Neither school district consolidation nor declining student counts have reduced the upward trend of education costs. The Education Fund is complicated. Over the years, many efforts have been made to simplify it as well as to slow the rate of increase, but they haven’t succeeded. In 2016, an Education Finance Adequacy Report found that, “using data for the school year 2014-15, the Vermont Evidence Based model estimates an adequate funding level of 1.56 billion or some $163.9 million (approximately 10%) less than Vermont school districts spent for PK-12 education that year.” The Tax Structure Commission, created in 2018, is charged with analyzing Vermont’s revenue system and recommending improvements to the state’s tax structure. The commission recently released a report on demographic trends and the impact on tax revenues. and expects to next focus on education taxes because of the outsized impact it has on overall taxation.

Two thirds of total Education Fund revenues ($1.14 billion) comes from property taxes – the homestead and non-homestead property tax. You will hear repeatedly from the administration and the legislature that the voters’ approval of school budgets is what drives the increase in Education Fund spending, year over year.

And while voters do indeed approve increased budgets, the explanation is more complicated. Over the years, a long list of state and federal mandates has been directed to school districts. However, mandates are rarely fully funded; consequently, school boards must find ways to pay for them. A few of the requirements include school construction standards, proficiency-based learning requirements, testing for lead or PFAS in drinking water and their remediation, the ratio of school counselors to students, the number of instructional days, and many more policies covering a vast range of subjects.

The reasoning behind how school budgets work, what they must fund, how Education Fund revenues are allocated to your school, and what will be the impact of your town’s spending decisions on your school property tax or income tax rate is close to incomprehensible … even if you – the voter– make the effort to read it.
Some cost centers have been moved out of the Education Fund. They include adult education, the community high school, renter rebates, lister reappraisals, and, beginning in FY19, listing payments. Others have moved into the Education Fund, such as the normal cost of teachers’ pensions (in FY18). Additionally, the skyrocketing costs of health insurance increase budgets, and school boards must find ways to pay for those costs. In August, a committee of school districts and teacher unions was directed to come up with a statewide health care plan for school employees and their families. They went to mediation, and an independent arbitrator issued his binding decision earlier this month. An estimated 40 percent of this year’s projected increase in education property taxes is tied to the cost of health insurance.

During the 2020 session, local officials will need to follow their legislators’ discussions of how to pay for education, making certain their voters are aware that increasing school budgets directly affects the property taxes they pay.

**Self-Governance**

Arguing on behalf of local governments and the passage of S.106 last year, Senate Government Operations Committee Chair Jeanette White said,

“Local officials focus on building civic infrastructure at the local level—strong, resilient communities with vision and active networks of experts, volunteers and citizens who want their cities and towns to thrive. Our laws in the 21st century need to foster the freedom for them to exercise leadership, to develop new, creative and successful solutions to problems particular to themselves. As states are the laboratories of democracy and often lead the federal government, so often are the towns leading the state in innovation—think plastic bags, climate change ballot items, energy and sustainability coordinators and more.”

A municipality’s ability to deliver services that its constituents expect depends upon having the financial resources, flexibility, ingenuity, and perseverance to implement effective solutions to local problems. As we have written many times, financial resources are limited to the municipal property tax and fees, except in twenty towns that have local option taxes. Local officials’ hands are tied by statute in a broad array of never-ending legislation and rules because Vermont is a Dillon’s Rule state. As long as that doctrine remains in effect, municipalities may only do those things that the legislature specifically allows them to do. It is also the case that legislators frequently preempt local initiatives that respond to voter-endorsed local issues. For instance, the legislation adopting a plastic bag ban at the state level prohibits towns from adopting (or continuing) local bans that deviate from the specific requirements of the state law.

When local officials are granted the authority to respond to local issues in a timely and innovative manner, they achieve beneficial results for their constituents and often chart a path forward for statewide policy. The fifty-five climate solution resolutions adopted at Vermont’s last town meeting and the plastic bag bans several communities have adopted in the last five years are but the two most recent examples of that dynamic.

In 2019, the Senate passed S.106, a bill that would establish the beginnings of a path to self-governance. As passed by the Senate, however, the bill is significantly more constrained than the original version, which was modeled on West Virginia’s successful experience. The bill is currently in the House Government Operations Committee, which failed to take it up in the 2019 session.

As introduced, the bill would authorize a self-governance commission to recommend that a town participate in a pilot program following public hearings and approval of a proposal for self-governance authority by a municipality’s voters, after which the city or town would submit the proposal to the commission. The commission could recommend up to ten municipalities for participation. Those ten municipalities might have governance charters in place but would not need one. The pilot program would sunset after ten years and an interim performance review would be conducted after five years.

Local officials intend to pursue passage of S.106 as it was introduced and have proposed that legislation be introduced that would amend the current cumbersome process for legislative approval of charter amendments. At least two towns expect to ask voters to support charter change language which would allow a charter amendment approved by the voters
to be adopted without legislative approval if it has been approved previously in another municipality. Each session, cities and towns pass charter change amendments that increase opportunities for voters to direct intentional self-governance initiatives that are tailored to the particular needs of their communities.

You will read much more about self-governance in future issues of the Weekly Legislative Report.

**Cannabis**

It will come as news to no one that the 2020 legislature may finally take the steps necessary to create a taxed and regulated cannabis marketplace in Vermont. S.54, a bill introduced last session that lays the groundwork for the process, is currently in the House Ways and Means Committee after passing the Senate and getting voted out of the House Government Operations Committee. That committee made several changes to the Senate bill, and Ways and Means will likely modify it further. With S.54 so close to passage, both municipal officials and citizens have become increasingly engaged in the legislation as they recognize the impacts a commercial market will have on their communities. VLCT Advocacy staff has identified the following problems in S.54:

1. **Local Regulations, Licensing and Permitting.** S.54 permits local governments to create cannabis control commissions, which would administer licenses and permits for cannabis establishments. Cannabis control commissions are loosely modeled after local control commissions that administer licenses and permits for establishments that furnish alcohol in municipalities. In S.54, the cannabis control commissions are only permitted to condition local approvals with ordinances regulating signage, nuisances, and 24 V.S.A. § 4414. Twenty-four V.S.A. § 4414 outlines the permissible types of regulations that may be adopted such as zoning districts, conditional uses, parking, performance standards, renewable energy resources, affordable housing, and solar and wireless facilities and plants. Under that law, there are very few provisions that are relevant to potential cannabis establishments, and it is unclear why this one provision of Title 24 Chapter 117 was singled out for conditioning cannabis establishment licenses while more relevant provisions of local planning and zoning criteria were ignored.

Language in S.54 that forbids municipalities from prohibiting “the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. § 2291 [enumeration of regulatory powers] or a bylaw adopted pursuant to 24 V.S.A. § 4414” also requires clarification. If the intent of this language is to prevent municipal zoning bylaws and ordinances from banning cannabis establishments after a community votes to allow them, the language needs to clearly state that. The current language can easily be interpreted as meaning all communities that vote to allow a cannabis establishment must accommodate it within zoning regulations, regardless of whether related operations – such as laboratories, manufacturers, industrial facilities, or retail operations – are permitted. Another way to think about this is to look at current alcohol laws. Towns and cities can vote to allow the sale of alcohol in their community, but that does not therefore mean they have to change zoning to accommodate bars, restaurants, or liquor stores. The current language can be used to challenge a town’s zoning that doesn’t accommodate the types of establishments authorized by an opt-in or opt-out vote (see below) of the voters. Clarification is needed to ensure cannabis establishments are treated the same as similarly situated uses and not given special accommodation within local land use regulations.

A better solution is to authorize municipalities to regulate cannabis establishments under 24 V.S.A. § 2291 (local ordinance authority). This would allow a town whose voters voted to allow a cannabis establishment to adopt an ordinance that includes the time, plan, and manner regulation of a cannabis establishment. The enabling language in section 2291 could further stipulate that cannabis ordinances not conflict with regulations promulgated by the state Cannabis Control Board. Once a municipality adopts a cannabis ordinance, the local cannabis control board would use the ordinance and the rules promulgated by the state Cannabis Control Board as the standards and terms for local permits and licenses. This would alleviate municipalities having to update a variety of local bylaws and ordinances to address cannabis and in communities that lack zoning, a stand-alone ordinance will be the only tool they have to address cannabis establishments locally if voters authorize their permitting within a municipality.
2. Opting in or out, Taxation, and Revenue. The most significant differences between the Senate bill and the amended proposal from House committees are in how taxes are assessed. The Senate version would implement a two-percent local option tax. A proposal that Ways and Means is considering would not permit a local option or cannabis tax. Rather, it would implement a one-percent “share” of the retail sales revenue remitted to the community hosting the retain establishment (minus the cost of administration by the Department of Taxes.)

Early in 2019 when testimony on S.54 was being taken in the Senate, the VLCT Board of Directors supported a local cannabis tax of five percent. Thirty percent of the revenues derived from the local cannabis tax would be pooled and redistributed to municipalities that do not host retail establishments; municipalities hosting retail establishments would retain the remaining 70 percent. This would guarantee that municipalities that carry the burden of hosting retail operations receive the larger portion of the tax. They would also share a portion of revenues with neighboring communities that either do not host establishments or only host an establishment that doesn’t generate tax revenues, such as cultivators, wholesalers, product manufacturers, and testing laboratories.

In light of continuing discussions in the legislature regarding taxing a retail cannabis market, the board recently modified its position by calling for a local cannabis tax to be set at one-third of the state’s taxation amount. If that tax is established, the board will in turn support an opt out provision for towns. The modified proposal would set a local cannabis tax at one-third of the state tax, regardless of what state tax rate the legislature eventually passes.

3. Fees and the Cannabis Control Board. S.54 also addresses the use and assessment of fees. But instead of stating the exact fees, it gives that authority to the Cannabis Control Board. The fees when then be deposited in the state’s new Cannabis Regulation Fund. The bill gives municipalities no representation on the Cannabis Control Board and there is no mandate that municipal fees be included or even considered in the process. Under Title 7, municipalities share some of the fees from licensing establishments that furnish alcohol, and this is appropriate given the role of local commissioners in permitting and licensing. There is no provision in S.54 that either guarantees fee sharing or allows local governments to create fees on their own. This is a glaring oversight by the legislature.

The fact the Cannabis Control Board does not have any municipal representation is deeply troubling. That board will be promulgating rules that will significantly affect how – and if – local governments regulate cannabis establishments and corresponding cannabis matters. For example, the board’s executive director will report to the legislature on issues such as how local land use regulations should address cannabis, whether certain cannabis establishments should be regulated by the secretary of Agriculture as “farming,” what solid waste and water quality requirements should apply to establishments, and even whether the legislature should add cannabis licenses for delivery services and special events. These are huge issues for municipal government, and input from land use planners, zoning officials, wastewater system operators, and local governing bodies in the creation of the rules – and not just in the form of public comment – is crucial. Rules written wholly from the state perspective by officials who have little-to-no local government experience often lead to legislation that is confusing and unworkable.

Get it Right the First Time. Municipalities cannot be left scrambling to find funding because they are not permitted access to local fees or taxes. They should not have to write – and then rewrite – ordinances and zoning bylaws because poorly drafted legislation and rulemaking processes do not provide adequate time or clear direction to communities to prepare for the new retail market. The state must ensure that local governments are properly prepared by furnishing the necessary resources to ensure a smooth roll-out of a taxed and regulated cannabis marketplace. Local officials and residents need to engage with local legislators now to advocate for the needs of their communities.

Investing in Vermont’s Transportation Infrastructure

Funding and Competing Needs. Today’s models for funding transportation are old and broken. There. We said it. Vermont began assessing the state gas tax in 1923, when the rate was one cent per gallon. In 1932, during the Great Depression, the federal government enacted what was meant to be a temporary gas tax, but that tax became permanent in 1941. Fifteen years later, the Highway Trust Fund was created using the gas tax as the revenue generator to fund highway construction and maintenance. This model remains today, except needs and costs have grown exponentially.
Today’s main funding model is stuck. It relies on a tax source that creates less revenue year after year. We drive more electric, hybrid and fuel-efficient vehicles, yet our road usage in this country continues to increase. Vermont relies heavily on federal money, but the federal government continues to have shortfalls in its Highway Trust Fund, federal government’s main source of surface transportation money. For over a decade, Vermont officials have anxiously awaited a comprehensive, major increase in transportation funding, however every year the state lets out a long, somber exhale as funding remains dangerously anemic.

The state has ambitious goals for Vermont’s transportation system (see also the Vermont Long-Range Transportation Plan). They include encouraging the growth in the use of electric vehicles, investing in bicycle and pedestrian facilities, increasing access to public transit and rail services, and cleaning up the waters of the state and complying with other environmental requirements. If Vermont officials are serious about achieving these goals, the state will need to come up with new state revenue sources. They can’t rely on declining gas revenues, unreliable federal aid, limited vehicle registration fees, and especially on the federal government for help. Meanwhile, the state must still fund the other main components of our transportation system – municipal assistance, maintenance, paving, bridges, airports, park and ride facilities, road safety – all of which have increased needs as well. A reading of the tea leaves regarding the 2020 session, however, all but guarantees the status quo– that is, level funding, across the board.

It’s no surprise that VLCT strongly supports increased funding to municipalities for transportation needs. Every day we hear from our members about the challenges they have maintaining and investing in municipal transportation infrastructure. Towns, cities, and villages that rely on the municipal property tax cannot invest in economic development projects due to insufficient transportation funding. They can’t begin state-mandated clean water projects on roads; protect and invest in safe sidewalks, roads, and bridges; implement local climate change initiatives; or provide more mobility choices to help vulnerable citizens. In the 2020 session VLCT will urge the legislature and the administration to really focus on identifying new revenue sources, or at least to increase existing revenue sources to pay for transportation projects at both the state and local levels.

**Collaboration, Flexibility, and Efficiencies.** State and local governments could not operate efficiently without each other’s help. Local officials know the intricacies of the 18,777 miles of local roads better than state officials and are also better suited to finding the most cost-effective ways to manage local roads. But because local governments lack the state’s technical and financial resources, it is essential that both governments share resources and know when to provide flexibility to allow the other to take the lead.

Communication between state agencies and their divisions needs to improve to ensure consistency in policy and regulatory implementation, oversight, and enforcement. The state must eliminate redundant oversight of municipal projects, expedite permitting processes, and tailor project reviews to the size and impact of proposals. Streamlining funding and program administration will help maximize available state and federal dollars and alleviate burdensome processes that are often unnecessary.

The Municipal Roads Grants-in-Aid Pilot Program that the Agency of Natural Resources (ANR) instituted in 2017 is one example of this collaborative, flexible, and efficient approach. The program provided municipalities with money to help implement best management practices on municipal roads that would achieve water quality goals. It was implemented quickly, efficiently, and without any undue administrative or oversight burdens on towns and cities. No grant applications were necessary. Municipalities simply signed a letter of intent that specified the expectations under the pilot program. With the help of regional planning commissions, municipalities only needed to show a minimum 20 percent local match, which could include in-kind contributions such as local labor, staff time, and use of road equipment. Because the state needed to examine the number of hydrologically connected road segments in municipalities that needed treatment to come up to mandated clean water road standards, it was able to get project money to communities very quickly. In the program’s first year, more than 70 percent of Vermont’s towns and cities submitted letters of intent; $2.1 million was subsequently distributed to them. In only a few months, municipalities successfully started and finished projects and used in-kind funding to meet the requisite local match. VLCT urges the state to continue to support this type of program.
Finally, the state must continue to adequately fund both the Agency of Transportation’s (VTrans) Municipal Assistance Bureau and its Better Roads Program, which help municipalities receive needed training and technical assistance. Both the bureau and the program are excellent examples of how the state can provide valuable technical expertise and training. When VTrans and ANR partner with municipalities and other agencies, the asset management/project priority programs are enhanced, ensuring that local officials will participate in the selection process of priority projects.

**Housing**

In some parts of Vermont, housing shortages are severe; in other parts, cities and towns wrestle with how to attract new residents, how to revitalize their neighborhoods, and how to renovate or remove dilapidated structures. We regularly hear stories of people who could not find decent housing close to where they work, or who live in a house too big for their needs after family members have moved away but who cannot afford to downsize. Throughout the state, the costs of construction, permits, sewage, water, and power are becoming prohibitive. Contractors now mainly build either subsidized or high-end housing. In fact, there is a new term for it: the missing middle [income housing]. Not only is the lack of housing options itself a problem, the lack of choice also limits economic growth in areas where shortages are greatest.

The Agency of Commerce and Community Development has been working with numerous interested stakeholders on legislation that would spur housing development in designated downtowns, village centers, growth centers, and new neighborhoods. They unveiled their proposal at a recent meeting. The draft bill (which will have no number until January) will likely start in the Senate Economic Development, Housing and General Affairs Committee, which has been holding meetings to address housing throughout the summer. The agency also funded a study of zoning in six volunteer towns (Middlesex, Ludlow, Vergennes, Fairfax, Castleton, Brattleboro) to find and eliminate regulatory barriers to providing housing close to town and activity centers. The Congress for the New Urbanism, an international non-profit that champions “walkable urbanism,” and the Vermont Department of Housing and Community Development are leading a statewide study called Zoning for Great Neighborhoods. The agency is not waiting for the study’s results, which are not expected until the spring.

The draft legislation would exempt from Act 250 jurisdiction designated downtowns and neighborhood development areas with wastewater. The exemption has been discussed for years as those areas already have robust planning and development processes in place and much of the Act 250 activity there is redundant. Affordable housing providers are, however, not thrilled at the idea that reduced Act 250 jurisdiction might apply to all housing in those areas and not specifically to their projects.

While the bill’s intention to increase the likelihood of more housing construction is supported by local governments, the agency is taking the familiar route of increasing planning mandates on towns and reaching into municipal zoning to dictate its parameters.

There are additional notable elements to the draft legislation:

1. If a municipality adopts a municipal plan, the required utility and facility element of the plan would need to include a map and statement of purpose showing existing and proposed water supply and wastewater disposal lines, facilities, and service areas. Accessory dwelling units would be permitted uses. An accessory dwelling unit could be a complete housing unit and restrictions on its size requiring to be smaller than the main house would be prohibited. The only condition that could be attached to an accessory unit would be availability of sufficient sewage capacity.

2. No bylaw could prohibit the creation of a lot of at least one-quarter acre in any zoning district served by water if the owner secures a wastewater permit. Nor could a bylaw prohibit the creation of residential lots of at least one-eighth acre in any residential zoning district served by municipal water and sewer. Duplexes would be allowed as permitted uses on any residential lot including those designated in bylaws for one single family unit, if served by municipal water and sewer. Multi-unit residential buildings of four or fewer units would be allowed as permitted
uses in any district allowing multi-units, and approval of them could not be conditioned upon a determination regarding character of the neighborhood.

3. Parking provisions in bylaws are also regarded as limitations on the construction of housing and the bill would dictate in significant detail how parking requirements should be reduced.

4. A municipality would be permitted to opt out of new bylaw requirements upon submission of a “Substantial Municipal Constraint Report” to the Department of Housing and Community Affairs, which would post the report and send copies to any agency that provides funding for projects (with predictable results for funding requests) and the regional commission.

5. Compliant municipalities would be authorized to allow land development in that is restricted by covenants, conditions, or restrictions in conflict with the housing generation goals (such as those adopted by home owner associations). It would reduce redundant state permitting for connections to municipal water and wastewater systems. The hope is also that expanded tax credits would be available to rehabilitate income producing buildings within neighborhood development areas.

The agency takes a one-size-fits-all approach to the issue. Insufficient and affordable housing for the workforce we want to attract and retain clearly concerns local and state officials. Its absence also limits economic growth throughout the state, so many towns have begun to revise their zoning bylaws, making it easier to build affordable housing. Dictating more strictures to local planning commissions, and zoning or development review boards is unlikely to solve Vermont’s housing crisis. And finding people willing to serve on local boards and commissions is harder than ever. Taking the time to work with towns to change bylaws, including implementing the Zoning for Great Neighborhoods’ recommendations, will generate far better results.

**Keeping it Clean: Water Issues in Vermont**

Once again there will be no lack of water-related issues or directives to municipalities in the upcoming legislative session, and once again they will cost municipalities and Vermonters dearly.

**Wetlands legislative study committee status and wetlands proposed legislation.** The Legislative Study Committee on Wetlands convened this summer to continue discussing a bill that attempts to clarify which farming practices are exempt from the Vermont Wetland Rules and when. The committee also sought to determine if the definition of “wetlands” should be amended to more closely align Vermont law with the U.S. Army Corps of Engineers’ permit exemptions and base it on objective criteria such as size and location. Committee members represented both the House and Senate Agricultural committees, the House Natural Resources, Fish and Wildlife Committee, and the Senate Natural Resources and Energy Committee. At their most recent meeting, the summer study committee decided to wait and see what action the committees of jurisdiction take in 2020.

Currently, the Secretary of the Agency of Natural Resources (ANR) determines which wetlands are significant and deemed to be Class I or Class II. Class I wetlands include a buffer zone of at least 100 feet; Class II wetlands require a buffer zone of at least 50 feet. Current Vermont law (10 V.S.A. § 902) excludes from the definition of a wetland “such areas as grow food or crops in connection with farming activities.” The uses exempt from U.S. Army Corps of Engineers Clean Water Act Section 404 (dredge and fill) permit are broader than the exclusions under the ANR Wetland Rules and include farm ponds, roads, and the maintenance of drainage.

Discussions primarily involved agriculture, although the notion of the exclusions from the definition of wetlands versus exclusions from wetlands permitting bring up important issues for cities and towns. The standard that ANR will use to review a permit application for the disturbance of a wetland or wetland buffer and proposed permitting fees for wetland permits is especially pertinent for cities and towns required to implement stormwater control solutions, which, in some cases, must be implemented in areas that include wetland and wetland buffers. Establishing which activities need a permit must include exempting activities that municipalities are authorized – or in many instances mandated – to
implement to control stormwater and encourage development in designated growth centers, neighborhoods, downtowns, and villages.

**New DEC Water Investment Division.** The Department of Environmental Conservation (DEC) has created a new Water Investment Division dedicated to water infrastructure planning, financing, engineering, and reporting. It also manages the State Revolving Loan Funds (SRF) for clean water and drinking water infrastructure and the DEC Clean Water Initiative Program grants funded through DEC’s proportion of annual Clean Water Fund and Capital Fund dollars. As part of its work on the Clean Water Service Delivery Act (Act 76 of 2019), the division will develop pollution accounting methodologies and be responsible for assigning pollution reduction targets to clean water service providers. Additionally, the division will administer new grant programs and refine tracking mechanisms for projects for pollution reduction estimates.

Act 76 also created grant programs that will be effective November 2021: Municipal Stormwater Implementation grants (which will help fund municipal stormwater projects required by regulation, such as the three-acre stormwater permit – see description below), the Municipal Roads General Permit, and the municipal separate storm sewer system (MS4) permit. Municipalities will also be eligible for new non-regulatory clean water projects. The Clean Water Board will determine the funding levels, with administrative costs capped at 15 percent of the total award, contingent on the clean water service provider’s satisfactory progress. (See description below.)

**Clean Water Service Delivery Act.** Act 76 of 2019 requires the ANR secretary to provide a strategy for returning waters of the state declared to be impaired to a state of compliance with the Vermont Water Quality Standards. The act provides a long-term funding source and new priorities to meet the nonpoint phosphorus targets not achieved through the regulatory programs established by Act 64 of 2015, the Vermont Clean Water Act. Act 76 creates a long-term funding source for clean water work and changes how clean water projects are funded, administered, and implemented. The Clean Water Fund, which totals $19 million, is financed through the property transfer tax clean water surcharge, a 6 percent rooms and meals tax, and unclaimed bottle deposits. Adding this to the estimated $13.9 million of FY21 capital funds results in a total FY21 clean water budget of $32.9 million.

ANR must, through rulemaking, establish clean water service providers (CWSPs) and must assign a provider for Lake Champlain and Lake Memphremagog by November 2020. ANR and DEC will assign CWSPs for the other impaired waters six months before establishing phosphorus reduction targets and cost-per-unit reduction for all other impaired waters. The CWSPs will identify, prioritize, develop, and implement non-regulatory projects through developed partnerships and subcontract/subgrant work. Ultimately, CWSPs are responsible for achieving the targeted amounts of phosphorus reduction allocated by ANR. As mentioned above, CWSP costs are capped at 15 percent of the total grant award and are contingent on satisfactory progress.

Questions remain. Who will the clean water providers be and how they will be selected? How will the targeted pounds of phosphorus removal be allocated? By what method will the secretary of Natural Resources determine the credit and cost effectiveness of potential projects, especially since the clean water projects envisioned could be small and be distributed across multiple sectors? Does the “service provider” model recognize and value the need for and necessary expense of sufficient project planning and development? How will the success of a project be determined?

**Three-acre Stormwater Permits.** Requirements for Act 64 (Vermont’s Clean Water Act) and the Lake Champlain Total Maximum Daily Load (TMDL) require DEC to adopt a new rule and general permit for stormwater management from “three-acre sites.” DEC defines three-acre sites as “existing sites with three or more acres of impervious surface that lack a stormwater permit based on the 2002 Stormwater Management Manual.” These parcels will now need a permit, even if they didn’t need one before. Properties that don’t comply may be fined, though monetary credit opportunities exist when stormwater management goals are exceeded. Adopted in February 2019, the permitting rule took effect last March. DEC is now reviewing comments on the draft general permit.

DEC published a [draft list](#) of properties that are required to obtain permit coverage and retrofit their site to improve the level of stormwater treatment. This list includes 685 properties in the watersheds of Lake Champlain and portions of Lake Memphremagog, representing 8,000 owners and an estimated 5,700 acres. Compliance with the requirements
of the three-acre permit include retrofitting existing stormwater systems, maximizing treatment on site, and following standards outlined in the Vermont Stormwater Management Manual, which was revised in 2017. DEC acknowledged that it could cost $50,000 an acre to comply with the permit. The total cost then would be approximately $285 million, wildly out of sync with the $4.9 million proposed in the FY21 budget for “Stormwater Project Delivery, Planning and Implementation.” Even if that amount were appropriated for MS4s, Municipal Roads General Permits, and this permit in each of the years ahead of the deadline, the need dwarfs the funds available from current revenue sources. We suspect the $50,000 figure does not include costs of maintenance and operation of installed systems, which may be considerable, depending upon the system. Cities and towns have two options available to pay the costs of stormwater mitigation: raising the already overburdened municipal property tax or raising stormwater fees.

In a state where we need and encourage a vibrant economy that grows in a sustainable manner, the cost to comply with stormwater permits will pour cold water over the success of any such efforts, and that alone is a major concern to cities and towns. The agency should devise a method to provide credit for municipalities that have taken action to improve water quality through adoption of river corridor standards and buffer protection, conservation of land that provides for infiltration of stormwater, the overall size of a parcel relative to its impervious surface, protection of wetlands and shorelands, or similar projects that improve water quality and reduce the flow of stormwater to the waters of the state. As we have said many times in many forums, ANR needs to find a way to balance its many environmental priorities.

**PFAS regulation and WWT sludge land application.** Per- and polyfluoroalkyl substances (PFAS) are a large group of man-made chemicals that have been used in consumer products and industrial processes since the 1940s. They are resistant to heat, oils, stains, grease, and water—properties that contribute to their persistence in the environment. – and they accumulate over time. PFAS are commonly found in every household, in products as diverse as non-stick cookware, stain resistant furniture and carpets, wrinkle-free and water-repellant clothing, cosmetics, lubricants, paint, pizza boxes, and popcorn bags. PFAS easily migrate into the environment and spread through water, air, and soil. In short, they are everywhere, including in our own bodies. Even at very low contamination levels, PFAS have been linked to health problems.

As a result of Act 55, passed in 2017, ANR adopted a Groundwater Enforcement Standard for certain PFAS compounds of 20 parts per trillion (ppt). Act 21, passed in 2019, calls for the adoption of PFAS drinking water and surface water quality standards as well. The act requires public water systems to monitor PFAS by December 1, 2019. If the water system detects PFAS above 20 ppt, it must issue a “do not drink” warning and implement treatment to reduce contamination levels below the 20 ppt standard. ANR plans to regulate PFAS in surface waters and will develop and implement water quality standards by 2024.

ANR has also begun a statewide investigation of potential sources of PFAS, including sludge and biosolids generated in wastewater treatment facilities and leachate generated at landfills. Solid waste landfills send leachate containing PFAS (as well as other contaminants of emerging concern) to wastewater treatment facilities for remedy. PFAS ultimately concentrate in the biosolids. Act 21 requires municipal wastewater treatment facilities certified for land application of biosolids and stabilized septage to sample for PFAS in soils and groundwater by December 31, 2019. Results must be submitted to DEC by February 29, 2020.

The issues of PFAS in public drinking water supplies are huge. Who pays to remediate and monitor these chemicals? What remedies will be effective? Act 21 is aimed squarely at municipal water supply and wastewater treatment facilities and imposes substantial new obligations on municipalities while providing no funding to cover these new mandates. Scientific investigations of the effects of PFAS on the environment, wastewater, and water supply systems, humans, and animals is fairly recent. According to the [North East Biosolids and Residuals Association](https://www.northeastbiosolids.com), no feasible technology is currently available to remove PFAS from wastewater. Currently, incineration and carbon adsorption, the only technologies available, are not are practicable to the millions of gallons of sewage that are treated at wastewater treatment facilities.

Municipalities did not create the PFAS problem and their presence permeating the environment cannot be resolved solely by cleaning up water supplies or wastewater treatment facility discharges or even landfills. Nor should municipalities be saddled with paying for the clean-up of contaminants that are ubiquitous in and damaging to the...
environment. We believe a far more effective and timely approach is to eliminate these chemicals from the products sold to consumers and from commercial and industrial uses. Allowing their continued presence in consumer products simply perpetuates the burden on municipal water supplies and wastewater treatment facilities.

**Public Safety**

Although the last session failed to pass much legislation that affects public safety in a meaningful way, we believe these are issues that will receive greater attention in 2020.

Across the state, public safety agencies and first responder personnel are struggling. Service providers are tasked with delivering more and faster assistance with fewer resources. Recruiting and retaining personnel for fire, EMS, and law enforcement departments is increasingly difficult. Different public safety sectors receive disparate access to state resources and funding for training. Public safety personnel respond to situations that are increasing more challenging in scope and complexity and that push the boundaries of what training and responding agency resources can provide. Nevertheless, these first responders continue to risk their mental and physical well-being every day to help keep us safe. Although it provides little solace, the fact is that these issues don’t apply only to Vermont—they exist in every region of the country.

We cannot ignore the problems that our public safety agencies and personnel face any longer. Vermonters expect fire protection, emergency management, and first responders will be available to them and often take those services for granted. The legislature needs to address the long-term viability of the entire public safety community, as the demands put on them become more complicated and expensive every year. Comprehensive support for all law enforcement, fire safety, and emergency services must be written into law.

**Training Resources.** Law enforcement, EMS and fire service providers all need training that is up-to-date, affordable, effective, and comprehensive. All agencies want to recruit, hire, and retain well trained and effective personnel.

In Vermont, the Vermont Fire Academy and the Criminal Justice Training Academy use state funds to train prospective firefighter and law enforcement recruits. Unfortunately, Vermont has no equivalent “EMS Training Academy.” Instead, Vermont’s Office of Emergency Medical Services in the Department of Health awards annual grants to EMS districts to support education, but that total is approximately $117,000 **statewide**. In comparison, fire service receives more than $1.2 million in annual state support for education. Because this small amount of funding cannot cover the training needs in the state, agencies and individuals must pay for training themselves. In Vermont, an entry-level EMT class costs approximately $1,000 and requires a six-month commitment. The only paramedic program in the state costs around $25,000, twice as much as what it costs in New Hampshire and triple the cost in Massachusetts. At a minimum, the state needs to increase its funding for EMS training and figure out how it can either reduce the cost of paramedic education or offer grants that cover the cost.

The Vermont Fire Academy, Vermont Police Academy, and the Department of Health’s EMS Office all need increased funding to better support necessary and mandated training curriculum, activates, and programs. As the years pass, more training is mandated for our law enforcement, fire, and EMS personnel, yet funding and support from the state remains stagnant. The state needs to reassess the level of education mandates on public safety professions and better align its funding to support those mandates. In reviewing training standards and criteria, the legislature must also decide which mandates are necessary in the ever-changing public safety environment.

**Recruitment and Retention.** The most challenging issues facing public safety agencies are recruiting, hiring, equipping, training, and retaining their personnel. No sector of public safety is immune from the problem. Fire and EMS squads as well as police departments across the state routinely have vacancies, which creates extra stress on existing personnel who have to pick up the slack. Currently in the U.S., there are over 32,000 vacancies for EMS positions **alone**. Volunteer fire departments struggle to recruit and retain community members as conflicting family lives and work requirements make the demands of volunteering a challenge. Police departments toil to attract personnel amid competition for limited recruits from other agencies and increasingly poor public perception of the profession. EMS providers struggle to keep
ambulances on the road and to provide basic services, and these constraints prevent them from offering competitive salaries. Other factors that contribute to retention problems are the high call volume, late nights and long shifts and the day-to-day strain of providing these services, all of which tax public safety personnel and their families.

It will take a concerted effort to address these problems. The state needs to provide funding to municipalities that may want to consolidate, integrate or regionalize public safety services. This would simplify and modernize operations while creating a more affordable and efficient delivery model that better serves Vermonters. The pooling of resources, talent, and administrative work will attract talent while simultaneously providing better training and resources and more competitive wages. Municipalities simply cannot do all of this on their own. For example, in Chittenden County over the last two years municipalities have spent more than $250,000, and municipal officials have worked thousands of volunteer hours just to create a governance structure for a regional public safety dispatch service. Access to adequate funding, with very limited local budgets, increasingly prevents towns and cities from even taking the first step in this endeavor.

Vermont can look to other states for possible solutions. Pending legislation in Pennsylvania would provide indebted college graduates who pledge to volunteer with fire or EMS providers with up to $16,000 in student loan forgiveness (the First Responder Loan Forgiveness Program). Similar legislation signed into law in Texas would provide up to $20,000 in loan repayment assistance to police officers. Legislation pending in Wisconsin would provide new volunteers with refundable tax credits when they join a service. To encourage retention, the credit would increase after five years. Another tax credit would reimburse volunteers for minor expenses such as equipment and travel and training expenses.

There is no easy answer to these complex problems, but changes to the system must be explored to start addressing this growing problem that is nearing the point of crisis and they must be explored in 2020.

**Public Records**

This summer, the Vermont Supreme Court ruled that Vermont’s Public Records Act (PRA) prohibits government agencies from charging for staff time when responding to requests to inspect public records. Municipalities therefore cannot charge for staff time when a person only asks to look at records, even if it takes more than 30 minutes, even if the municipality must first copy and redact exempt records to comply with the request. In the underlying case (*Reed Doyle v. Burlington Police Department*), an individual made a public records request to inspect police body camera footage. The police department asserted that portions of the video and other documents were exempt from inspection and copying under the PRA and needed to be redacted. The department told the requestor it would take more than 30 minutes to perform the work and therefore would charge certain fees to comply with the request. The requestor maintained the charge was inappropriate because the request was to inspect a record, not obtain a copy of it.

The language in the PRA provides that government agencies may “charge and collect the cost of staff time associated with complying with a request for a copy of a public record.” 1 V.S.A. § 316(c) The Court focused on this language in its analysis and, in a 3-2 decision, ruled that “by its plain language, this provision authorizes charges only for the requests for copies of public records, not for inspection,” and because the requestor in this case asked only to inspect the body camera footage, the provision in law allowing for staff time costs did not apply. The two dissenting justices read both provisions of law together and found that the PRA does allow government agencies to charge for staff time when producing a redacted copy of a record.

The majority opinion stated in no uncertain terms that it is the responsibility of the Vermont General Assembly to address the issue of whether an unfair burden is placed on municipalities and other government agencies when complying with a PRA request for inspection, and it is the job of the Court to interpret the law as written.

VLCT has long held that municipalities should be able to charge for the cost of staff time associated with complying with a request to inspect or copy public records. We hope the legislature re-examines the language of the PRA in light of the Court decision and updates the law to align the cost-recovery for staff time associated with inspection with a local government’s current ability to pay for staff time to copy public records.
Cybersecurity

These days, everyone – businesses, government, individuals – needs to be constantly vigilant to protect their digital information. Local governments are increasingly attractive targets for cybercrime. December alone featured four attacks on municipalities: Pensacola and St. Lucie, Florida; New Orleans, Louisiana; and Galt, California. Cities and towns archive significant amounts of sensitive and personal information that cyber criminals want, and many municipalities are ill prepared to fend off attacks.

Equipment can be outdated or minimally maintained. Any staff member might click on an innocent looking email that turns out to be infected with ransomware. Passwords may be infrequently changed or easily decipherable. At the local level, towns may not even have their own domain but rather just a laptop and password.

Local officials are clearly concerned about the evolving nature of threats to the safety of their data. But it can be overwhelming to figure out what one needs to do to keep staff alert to assaults and proprietary information safe.

Cybersecurity must be made a priority for administration, education, testing, and budgeting, and fortunately the legislative Joint Information Technology Oversight Committee is doing just that. The committee met several times during the summer and developed a set of recommendations for committees of jurisdiction to take up when they return in January.

Their recommendations call for legislation to:
• address information technology workforce development initiatives;
• review statutory provisions on cybercrime and request an opinion from the attorney general about whether statutes need to be modernized;
• develop an IT risk assessment process in state government to ensure information technology risks are prioritized and responses are effective;
• propose legislation to create an annual report on cybersecurity incidents and require the development of data backup protocols;
• fund an assessment of cybersecurity risks posed by local governments to the state system and develop parameters with VLCT, the Secretary of State’s office, and the Agency of Digital Services; and
• consider an innovation fund within the Agency of Digital Services to address one-time cybersecurity upgrades or fixes.

VLCT provides cyber security training and makes resources available to member cities and towns:
• VLCT’s cyber security webpage includes contacts for vendors who can conduct security audits.
• VLCT Property and Casualty Insurance Fund (PACIF) members may access the PACIF On Line University, which trains local officials on loss control topics that include cyber security.
• The National League of Cities’ Protecting Our Data: What Cities Should Know about Cybersecurity tells how a municipality can attain cyber security and includes practicable security measures.

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