



Weekly Legislative Report

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School Construction Loans and the Education Fund

On Wednesday, the House Ways and Means Committee heard from staff from the Joint Fiscal Office about proposals to borrow for school construction funding and how that would affect the Education Fund. In 2007, the state imposed a moratorium on school construction aid in the capital bill. Since then, aid has been available only for projects under \$100,000 that address immediate and unanticipated health and safety threats. As a result, there is pent-up need across the state for school construction and deferred maintenance.

For example, Winooski and Burlington have approved bonds for \$70 and \$58 million, respectively. The South Burlington school board is proposing a \$209 construction bond to upgrade its middle and high schools. Between 2008 and 2019, the Vermont Municipal Bond Bank financed \$211 in school construction loans. In contrast, the estimated cumulative total in school construction bonding in 2020 alone will be \$565 million. Without state school construction aid through the capital bill, the annual principal and interest payments on school construction bonded debt will increase per-pupil spending and homestead tax rates in the district that borrow.

Because the spending on education, including construction, goes through the Education Fund formula, this borrowing also affects taxpayers across the state. How much it would affect overall education spending that must be paid for by the Education Fund is speculative at this time before school budgets have been adopted and school construction bond votes have been approved at the local level. According to the Joint Fiscal Office, when statewide spending grows faster than the non-property tax revenues and transfers to the Education Fund, the difference is made up by increases in the education property tax.

It is worth noting that – also according to the Joint Fiscal Office – the Education Fund currently has an estimated \$8.2 million undesignated surplus in FY20, and Education Fund revenue is projected to grow approximately \$84 million in FY21. The updated Consensus Education Fund Outlook on page 2 includes a six-cent increase in the average homestead property tax rate. And the School Construction Spending summary illustrates the issue with respect to projected school construction debt costs.

We will have much more on this issue as the picture becomes clearer in March and beyond.

Resources

- [Consensus Education Fund Outlook for FY21](#)
- [Summary of Historic and Future School Construction Spending](#)
- [Joint Fiscal Office Fiscal Note on Education Funding and Spending](#)

Clean Water Matters

This week, the Agency of Natural Resources (ANR) released its Vermont Clean Water Initiative 2019 Performance Report, which summarizes clean water investments made by the Clean Water Board and other state agencies over the last four years. The 146-page report notes the progress made in reducing phosphorus in Lake Champlain and details some of the external factors slowing this progress such as land use and climate change. Also this week, the Department of Environmental Conservation and the Agency of Transportation summarized that report along with the Clean Water Project Explorer before the House Transportation Committee. The explorer is an online interactive application that displays clean water project information such as funding, results, and nutrient reductions from the state's clean water tracking database. Clean water project data from six state agencies can be searched and downloaded.

As well, ANR Secretary Julie Moore attended the VLCT Board meeting on Thursday to discuss issues related to clean water mandates, including accomplishments the Clean Water Investment Report highlights and work still to do.

According to the report, the state spent \$138 million to support water quality projects from SFY 2016 through SFY 2019. The report includes:

- investment measures – how the state invests in clean water projects from planning to design and implementation;
- education measures – outreach and technical assistance to support, identify and develop clean water projects;
- project output measures – quantifying the results of state-funded clean water projects; and
- pollutant reduction measures – estimated nutrient load (phosphorus) reductions achieved by clean water projects.

The report details positive outcomes from investments in projects within land use sectors including agriculture (28,000 acres), municipal roads (169 miles), stormwater treatment practices (222 acres of pavement), and conserving and restoring natural resources such as river corridors, lake shoreland, forests and wetlands (~2,000 acres). While Vermont has clearly made progress in addressing stormwater, we have a long way to go. Consider that drainage and erosion control improvements have been completed for only 169 miles of a total of 13,000 municipal road miles in the state.

According to Moore, the administration expects \$34.5 million to be available in the Clean Water Fund in FY21. She also listed the requirements in Act 21 passed last year, for public water supplies to test for a combination of five per- and polyfluoroalkyl substances (PFAS) contaminants. She said that with 80 percent of those test samples returned, six water supplies exceeded the standard of 20 parts per trillion and two were required to issue Do Not Drink orders. There are thousands of PFAS substances. They are ubiquitous and persistent in both the environment and in humans. Wastewater and water supply operators have said that the cost to test for PFAS was between \$450 and \$1,100 per system, for a total of approximately \$400,000 for 590 systems. Under Act 21 of 2019, water systems would not have to retest for three years if the initial test detected no PFAS. The act provided no funding to pay for testing or to help with monitoring or remediation those water supplies that exceeded the standard of 20 parts per trillion.

Moore expects there to be some funding for PFAS in FY21, and the attorney general is pursuing manufacturers of PFAS to recoup the costs for testing and remediation, so it would be helpful if local governments kept track of those costs.

Once again, municipal officials need to remain vigilant this year to ensure that funding is directed to local governments to help defray the tremendous costs of complying with clean water requirements.

Resources:

- [Vermont Clean Water Initiative Annual Reports](#)
- [State of Vermont Clean Water Projects](#)
- [Report Highlights Positive Impact of Public Investment on Water Quality in Vermont](#) (Governor's January 16, 2020 press release)

Master License Agreements

As both the House and Senate Transportation committees anticipate the governor's budget presentation next week, they have been busy meeting with the Agency of Transportation (VTrans) on a variety of issues. Last week VTrans Secretary Joe Flynn gave each committee a 51-page [2019 Performance & Highlights](#), which summarizes the status of programs, projects, and overall policy implementation. Agency officials also discussed in more detail issues such as highway and work zone safety, [public transit](#), the region's proposed [Transportation and Climate Initiative](#) (TCI), and updates on automated vehicle inspections and [testing](#).

One issue VLCT is closely following and which was also discussed this week is the agency's use of Master License Agreements (MLA) with municipalities. The issue is important because of its significant impact on cities and towns throughout the state. Municipalities are presently forced to sign agreements exactly as they are presented by the state. Failure to agree to any condition results in a denial of access on rights-of-way for towns and cities when they need to do utility work – work that is often mandated by other agencies of state government.

Last year, the legislature directed VTrans to study and then issue a report on the use of MLAs with municipalities and railroads for work in various affected rights-of-ways. The report was to focus on the history behind the use of these agreements, whether municipalities or utilities can secure sufficient insurance coverage to enter into current iterations of such agreements, and what other states do when municipalities, utilities or other persons need to use the right-of-way for any state-owned railroad line.

The report (see below) determined that master license agreements provide a streamlined way of securing agreements with railroad operators, municipalities and utilities that must access state-owned rail rights-of-way. However, it did not detail any of the issues it was intended to explore. It glossed over liability exposure to municipalities, noting that “there are over 50 MLAs [with Vermont municipalities], suggesting it is possible for municipalities or municipal operated utilities to secure sufficient insurance coverage, although this study does not explore the existing agreements.” The report also briefly examined nearby states' MLAs but did not explore what provisions or practices they used might be used to help improve VTrans' agreements.

While VTrans officials *did* consult with VLCT, none of our comments were incorporated in the report. Appendix B contains a letter from VLCT to the agency which states, “The imposition of indemnity agreements at Section V is our most pressing concern with the MLAs. The municipality should not be responsible for negligence on the part of other than its own employees. VLCT's Property Casualty and Liability Fund (PACIF) insures the vast majority of cities and towns in the state. It is not at all clear that a third party would fall under PACIF insurance. Negligence on the part of the state or railroad or their employees would not be covered by PACIF.”

Local officials should urge transportation committee members to use the report as a starting point to address liability exposure, access to utilities, and the use of rights-of-way in general as they are covered by MLAs. Municipalities must be able to work in their own rights-of-way to make necessary infrastructure repairs. They should *not* have to pay VTrans or rail companies to use their own rights-of-way. And they should *not* be responsible for negligence on the part of others. VLCT understands the value of MLAs, but the legislature needs to address the underlying issues to insist on more equitable MLAs between the state, railroads, municipalities, and municipal utilities.

Resource

- [Study on the Agency of Transportation's Use of Master License Agreements And Alternative Options](#)

Medical Monitoring

Readers may recall that last June, Governor Phil Scott vetoed S.37, the Medical Monitoring bill. The bill would provide that, under certain circumstances, a person without a present injury or disease could sue the owner or operator of a large facility for medical monitoring if a toxic substance had been released from that facility. The issue arose as a result of exposure to perfluorooctanoic acid (PFOA), a toxic chemical that has been found in drinking water in the Bennington area. The bill exempted municipal facilities from potential liability because they do not create or profit from toxic substances which they are frequently required by permits to use. In his veto letter, Scott highlighted his administration's efforts to ensure safe drinking water and hold responsible parties accountable as well as concerns from the business community about the legislation.

The bill is back in the Senate Judiciary Committee whose members must now recommend whether or not the legislature should attempt to override the governor's veto.

In the intervening time since adjournment, however, the landscape has changed. In December 2019, the case [Sullivan v. Saint-Gobain Performance Plastics Corporation](#) was subject to a ruling by U.S. District Court Chief Judge Jeffrey Crawford. In that case, plaintiffs sought medical monitoring to determine whether those who tested positive to PFOA exposure may have contracted an illness as a result of that exposure. The judge denied summary judgment to both the plaintiffs and defendant, noting that almost every fact in the case before him continues to be in dispute; thus, the plaintiffs need to prove their case at trial.

Judge Crawford wrote that, based on a number of cases around the country, six elements should be considered:

1. Exposure at a rate significantly greater than the general population;
2. To a proven hazardous substance;
3. As a result of the tortious conduct (a wrongful act that is not the result of a crime or which is tried in the civil courts) of the defendant;
4. As a proximate result of the exposure, plaintiffs have suffered an increased risk of contracting a serious disease;
5. The increased risk makes it medically necessary for the plaintiffs to undergo periodic medical examination different from that prescribed for the general population in the absence of the exposure;
6. Monitoring procedures exist which are reasonable in cost and safe for use.

The legislature's options are to attempt to override the veto, send the governor an amended bill, or let the veto stand and understand that the considerations described by Judge Crawford would govern at least the resolution of the case before him. Or, the legislature could send the governor a *new* bill that incorporates Judge Crawford's standards – which have been tested in courts around the country – and which also preserves the protection in S.37 for local governments.

Governor Scott Affirms Vermont’s Commitment to Welcoming Refugees

On September 26, President Trump signed Executive Order 13888, “On Enhancing State and Local Involvement in Resettlement.” The order required states and localities to consent in writing to the resettlement of refugees within their jurisdictions before they would be resettled there. Since then, thirty-nine governors have notified the federal government that they will continue to accept refugees in their state, seventeen of those are states with Republican governors.

On January 6, Governor Phil Scott reaffirmed Vermont’s commitment to be a welcoming state to refugees. “Since 1989,” he wrote in a letter to the president and Secretary of State Mike Pompeo, “Vermont has welcomed almost 8,000 refugees” who have contributed to the economic health of the state, who pay taxes, and who ensure the state will have a healthy sized and diverse student population. He added “that an average of 90-94% of these new Americans are economically self-sufficient within eight months of arrival in Vermont.”

“As Governor, I have made it my top priority to grow our workforce and attract more workers to our state. The Refugee Resettlement program is one tool in our toolbox when it comes to meeting this goal ...” He concluded by stating that he will seek authority from the legislature to “consent to refugee resettlement on behalf of Vermont counties and municipalities for those who indicate interest in initial resettlement, develop strong environments to support resettlement and regard refugee resettlement activity as a vital tool for growing Vermont’s economy and reversing Vermont’s aging demographic.”

Several Vermont cities that host offices of the Refugee Resettlement Program have also committed to continuing to welcome refugees ahead of a January 31 federal deadline for submitting proposals for federal aid. Should the executive order stand, there is no formal mechanism for smaller communities that want to support refugee resettlement to give their consent to the federal government. The governor expects to work with the legislature to put a process in place that would allow him to act on behalf of municipalities that express that willingness.

On January 15, a federal judge in Maryland temporarily blocked the executive order, so it remains to be seen what the eventual impact of 13888 will be.

Resource

- [Executive Order 13888](#)

New Bills

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
H.655	Would require the Department of Health to include privacy precautions in the educational materials it produces for short-term rental operators; prohibit the use of surveillance cameras and audio recording devices inside a short-term rental unit; and prevent a short-term rental operator and renter from publicly posting personal information about the other party on an electronic platform.	House Gen., Housing, and Military Affairs
H.657	Would increase the fuel tax and use those funds for home weatherization and to impose a fee on motor fuel sales and use those funds for electric vehicle incentives and town highway aid.	House Transportation
H.658	Would prohibit the land application of sludge or septage except for exceptional quality biosolids; require municipally-owned wastewater treatment facilities to accept septage for treatment; and establish a Biosolids Conversion Special Fund to provide grants to municipal wastewater facilities for the purpose of converting septage and sludge to exceptional quality biosolids.	House Nat. Resources, Fish, and Wildlife
H.664	Would require pedestrians to wear reflective material or carry a lamp, or both, when walking along a highway without a sidewalk.	House Transportation

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
H.670	Would allow municipalities to adopt ordinances that limit the increase of rental rates.	House Gen., Housing, and Military Affairs
H.673	Would grant local tree wardens the authority to manage all public trees within a public place or public way and establish notice and hearing procedures related to the cutting of public trees by a tree warden.	House Agriculture and Forestry
H.674	Would clarify that the exclusion from development for farm buildings includes buildings associated with a “farm accessory business” as defined in law.	House Agriculture and Forestry
H.678	Would approve the adoption of the charter of Fair Haven Town concerning the assessment of a 1% sales tax, a 1% meals and alcoholic beverages tax, or a 1% rooms tax.	House Government Operations
H.679	Would require voter approval of water rates set by a separate municipal corporation outside of the municipality where the vote is to be held and are based on the appraised or assessed value of the property to be served.	House Government Operations
H.680	Would establish the fiscal year 2021 rate of contribution for the Workers’ Compensation Administration Fund.	House Commerce and Econ. Development
H.681	Would grant the Department of Labor authority to require electronic business registration for purposes of unemployment insurance.	House Commerce and Econ. Development
H.682	Would repeal the July 1, 2020, sunset on the certificate of public good process for telecommunications facilities under 30 V.S.A. § 248a.	House Energy and Technology
H.688	Would create a legally enforceable system by which Vermont reduces its statewide greenhouse gas emissions and establish strategies to mitigate climate risks and build resiliency to climate change.	House Energy and Technology
H.689	Would allow municipalities to weigh in with concerns about hemp facilities during the licensing process and request that hemp licenses be denied.	House Government Operations
H.690	For the period from July 1, 2021 to June 30, 2028 would require the state to provide to school districts that were required to merge by the “Final Report of the Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10” issued by the State Board of Education on November 28, 2018, state aid in the amount of 75% of the construction costs of a school building if a new school is necessary to ensure equity and quality throughout the newly merged district.	House Corrections and Institutions
H.691	Would authorize tax increment financing districts to use debt proceeds to make debt service payments.	House Ways and Means
H.692	Would require any municipality that has access to add, delete, update, or change data in a state information technology system to participate in cybersecurity awareness training provided by the Agency of Digital Services. Would appropriate \$250,000 in FY21 to that agency to support the cybersecurity awareness training program.	House Energy and Technology
H.693	Would allow a school district to eliminate spending during the year on eligible school construction project costs, as defined in the State Board of Education’s Rule 6134, from the excess spending calculation.	House Education
H.697	Would allow towns with a population of fewer than 2,500 to vote to establish a local option tax. That tax would allow towns to keep 80% of the revenue and remit 20 percent to the state.	House Ways and Means
H.700	Would require employers to provide employee contact information in relation to an effort to organize a collective bargaining unit; provide for the automatic deduction of union dues from members’ paychecks; permit unions to meet with new employees to provide them with information regarding union membership; prohibit recipients of state grant funds from interfering with union organizing efforts; and establish a good cause standard for termination of employment in Vermont.	House Gen., Housing, and Military Affairs
H.702	Would allow municipal voters who vote at an annual or special meeting by using ranked choice voting to elect the officers of the municipality in subsequent elections.	House Government Operations
H.707	Would direct the Agency of Education to provide postsecondary career technical education courses at regional technical centers for Firefighter I and Emergency Medical Responder certifications through the Dual Enrollment Program.	House Education

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
H.711	Would require energy audits for all state buildings and all buildings owned or operated by organizations that receive state funding.	House Energy and Technology
H.712	Would have the Department of Public Service issue a report with recommendations concerning solar development, the grid, and increasing the distributed renewable generation requirement under the Renewable Energy Standard.	House Energy and Technology
H.715	Would change the penalties and point assessments for violating laws governing speeding in work and school zones and for using a portable electronic device, including for texting, while operating a moving motor vehicle on a highway.	House Transportation
H.719	Would improve compliance with the Residential Building Energy Standards and allow the Fire Safety Division to inspect newly constructed single-family homes for compliance with those standards.	House Energy and Technology
H.721	Would impose restrictions on the use, manufacturer, sale, and distribution of class B firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances.	House Human Services
H.730	Would require the Secretary of Natural Resources to establish a Salt Application Program to train commercial applicators of salt and salt alternatives in best management practices to most efficiently apply salt and prevent it from entering the waters of the State.	House Nat. Resources, Fish, and Wildlife
H.733	Would create a study committee to research tax incentives that would encourage conservation efforts in Vermont through private donations of forestland.	House Agriculture and Forestry
H.737	Would allow municipalities to provide a local property tax exemption for emergency medical personnel, first responders, and active volunteer firefighters.	House Ways and Means
H.739	Would vest authority for rental housing health and safety in the Department of Public Service' Division of Fire Safety, establish a rental housing unit registry, and increase funding for the Housing Opportunity Grant Program to provide rent assistance.	House Gen., Housing, and Military Affairs
H.742	Would appropriate \$750,000 to the Health Department in FY2021 to provide grants to emergency medical technician and paramedic training programs and authorize the department to use up to \$750,000 annually for these grants from the funds appropriated to the department for emergency medical personnel training. Would generate the revenue needed for the grants by increasing the amount of the assessment on insurance companies for the Fire Safety Special Fund.	House Appropriations
H.744	Would require the Joint Fiscal Committee to retain a consultant to evaluate options for financing public, educational, and government access channels and services throughout Vermont.	House Energy and Technology
H.747	Would establish the Council of Regional Commissions to mediate disputes between municipalities and regional planning commissions.	House Government Operations
H.748	Would amend the law requiring motor vehicles to move over when approaching stationary law enforcement and emergency vehicles to apply in more instances and require the operator of the approaching vehicle to slow down if it is not possible to change lanes.	House Transportation
H.753	Would permit law enforcement to issue a parking ticket to the registered owner of an illegally parked motor vehicle when the owner or operator is not present.	House Transportation
H.757	Would create a Disaster Contingency Special Fund in recognition that natural disasters caused by climate change are increasing in frequency. The Fund would be used to foster resilience to the impacts of climate change in Vermont, in part by financing tax relief for property damage caused by natural disasters that would otherwise erode the property tax base and increase the education property tax burden on Vermonters.	House Energy and Technology
H.758	Would create a Vermont Drinking Water Protection Fund to fund monitoring of drinking water supplies for evidence of contamination from PFAS substances and other chemicals of concern. Would also fund treatment and remediation of contaminated drinking water supplies and fund alternative water supplies.	House Human Services
S.264	Would require employers to provide employees with a minimum of two weeks of paid vacation leave per year.	Senate Economic Development, Housing and General Affairs

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
S.265	Would require the Agency of Agriculture, Food and Markets to regulate compost foraging as farming and amend the definition of “farming” under Act 250 and the Required Agricultural Practices to include compost foraging.	Senate Agriculture
S.267	Would make various amendments to the Renewable Energy Standard, including requiring that total renewable energy increase to 100% by 2030, and distributed renewable generation to 20% by 2032.	Senate Natural Resources and Energy
S.278	Would expand the type of projects that can be undertaken by the State Energy Management Program. Senate InstitutionsS.280 Would require the Commissioner of Forests, Parks and Recreation to create resources for the public on forest carbon sequestration, require the Secretary of Natural Resources to evaluate the feasibility of enrolling state land into a carbon market and to do so if feasible, and require the secretary to develop a plan to create a public-private partnership to facilitate forest carbon sequestration projects.	Senate Natural Resources and Energy
S.280	Would require the Commissioner of Forests, Parks and Recreation to create resources for the public on forest carbon sequestration and create a new analyst position at the Department of Forests, Parks and Recreation to complete this work. Would also require the Secretary of Natural Resources to evaluate the feasibility of enrolling state land into a carbon market and to do so, if feasible.	Senate Natural Resources and Energy
S.283	Would extend the time period that the Town of Hartford can incur indebtedness for its tax increment financing district.	Senate Finance
S.292	Would authorize the Commissioner of Motor Vehicles to issue permits for the use of blue, amber, red, and purple signal lamps on law enforcement, fire department, EMS, and funeral procession lead vehicles.	Senate Transportation
S.295	Would impose restrictions on the use, manufacture, sale, and distribution of class B firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances; and include perfluoroalkyl and polyfluoroalkyl substances on the list of chemicals of high concern to children.	Senate Health and Welfare
S.298	Would create a Cemetery Vandalism Fund to fund the repair of cemeteries that have been vandalized and support the fund by imposing a \$5.00 fee on every burial or cremation.	Senate Economic Development, Housing and General Affairs
S.299	Would provide a minimum salary that an individual must earn to qualify as an executive, administrative, or professional employee in order to be exempt from the provisions of the minimum wage law.	Senate Economic Development, Housing and General Affairs
S.301	Would repeal the sunset on the certificate of public good process for telecommunications facilities under 30 V.S.A. § 248a.	Senate Finance
S.308	Would allow a tax increment financing district to use debt proceeds to fund a debt reserve fund for a maximum period of 10 years, permit the use of bond anticipation notes for that period, and clarify the process for adjusting the boundaries of a district.	Senate Economic Development, Housing and General Affairs

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