A Second Week of (Mostly) Remote Legislative Action

This week, the legislature spent most of their time doing what many people around the world are also doing – adjusting to working remotely via tele- and video-conferencing, a situation that has become the new normal. The one problem the legislature has that most other entities do not have is this darn thing called parliamentary procedure. The legislature is trying hard – albeit temporarily for the duration of the COVID-19 crisis – to operate a legislature while simultaneously abiding by social distancing protocols. If you’ve even been to the State House during the legislative session, you know it is impossible to safely keep your distance between people in committee rooms, the chambers, the cafeteria, in hallways, or practically anywhere else in the building. What everyone is now learning is that turning the ship to allow for the legislature to work remotely – while also allowing for open access to government, dialogue and debate – is easier said than done. The legislature still has bills to pass, budgets to approve, and a state to run during this unprecedented and potentially long-lasting crisis.

Last week, the Senate acted swiftly by passing bills that addressed very immediate needs during the COVID-19 pandemic. The Senate met with just above a quorum in order to pass the bills to the House, which, with 30 members of the whole body rather than all 150, is much easier to accomplish, especially while practicing good hygiene and social distancing protocols. Although House leadership hoped to pass those same bills this week – leaders from all caucuses agreed to allow for it with only a skeleton crew of representatives in attendance – they had to call members back to vote when a representative on the floor questioned whether a quorum of legislators was in attendance. Which, of course, there was not. Legislators scrambled from all corners of the state to return to the State House on only a few hours’ notice to pass several COVID-19-focused bills and resolutions. They were able to do so on a voice vote, with just over a quorum of legislators (at least 76 representatives) in attendance.

This week, the House had to act to pass the COVID-19 bills sent over from the Senate in order to get them to Governor Scott for his signature. The instructions from House and Senate leadership thus far has been to operate in a COVID-19 crisis response mode for the time being. That meant they were to focus only on matters that related to keeping the state functioning and responsive during the crisis, as well as addressing the must-pass “money” bills in order to provide workable budgets for the coming fiscal year in the ever-changing budgetary landscape.
Under these marching orders, several committees in both bodies have met. Both House and Senate Rules committees and Joint Rules committees – that is, the committees that have jurisdiction over parliamentary rules – have met regularly over the past two weeks via tele- or video-conference. You can watch the committees and find their schedules on the General Assembly website, legislature.vermont.gov/committee/meetings/2020.

The House, Senate, and Joint rules committees have put forward – and the different bodies have adopted – several resolutions amending rules to allow the legislature to operate in a remote manner, including:

- **Temporary Joint Rule 22A: Emergency Rule Regarding Committee Meetings.** The Joint Rules Committee is vested with the authority to permit any joint committees of the Vermont Legislature (including itself and conference committees) to meet and vote electronically as the Joint Rules Committee determines appropriate.
- **Temporary House of Representatives Rule 29a:** (a) The standing committees of the House of Representatives shall be permitted to vote remotely while the Legislature’s Declaration of a State of Emergency is in effect. (b) All other rules regarding a quorum and other rules of the committees still remain in effect.”
- **Temporary House of Representatives Rule 9a:** The House of Representatives shall allow remote participation while the House’s Declaration of a State of Emergency is in effect. Remote participation shall consist of members being permitted to vote remotely and engage in debate remotely. Members allowed to participate remotely shall validate they are the person connected remotely. Votes conducted remotely shall be compiled by the Clerk of the House. A quorum will be calculated as those members present in the chamber of the House of Representatives and those members who are connected remotely and voting remotely.

Both Temporary House Rules 29a and 9a will expire at the earlier of the (1) the convening of the 2021 biennial session; or (2) the expiration of the House’s Declaration of the Emergency in response to COVID-19 and any extension of this declaration by a Joint Resolution or a House Resolution.

Although the House adopted resolutions to amend parliamentary rules to allow for remote voting, the Senate has not yet done so.

The focus on must-pass budget bills and COVID-19 crisis response measures will carry forward for the foreseeable future, however it is unclear how long that approach will be. Earlier this week, Senate President Pro Tem Tim Ashe did say that the legislature may not adjourn until late summer, or perhaps even early fall. The likelihood that other bills unrelated to the crisis will move forward therefore only increases.

What a long, strange trip it’s become!

**Vermont’s Fiscal Outlook**

This week, legislators received an update on the fiscal health of the state, which in three short weeks, has changed in breathtaking scope. The figures presented by administration and Joint Fiscal Office staff are estimates and staff cautioned that the numbers will likely change.

**Revenue Downgrades.** The Joint Fiscal Office reported that reductions in General Fund revenues for the remainder of FY20 (through June 30) could total from $200 to 230 million (or 15-17 percent of total FY20 General Fund revenues). Approximately $145 to 150 million of that estimate is due to moving federal and state income tax filing deadlines from April 15 to July 15. As a result of the delay, that $145-150 million would be deferred from FY20 to FY21.

The Transportation Fund and funding to support Transportation Infrastructure Bonds are projected to decline by $30 to 40 million (or 10-14 percent of total FY20 Transportation Fund revenues), which is a particular issue for municipalities as the season for road work is about to commence.
The Education Fund is projected to be $35 to 40 million (6-8 percent of FY20 non-property tax Education Fund revenues) below estimates this fiscal year due largely to reduced revenues from sales, rooms and meals, and purchase and use taxes. Remember that 100 percent of state sales tax revenues are dedicated to the Education Fund. The loss of revenue for FY20 would eliminate current year surplus funds and reduce statutory reserves, if those reserves are used to make up the difference.

Several reserve funds exist to help in times of economic downturn or shortfalls. Total General Fund reserves in FY19 were $224 million and are $228 million in FY20. The Transportation Fund Budget Stabilization reserve is $13.8 million and the Education Fund Budget Stabilization reserve is $37 million.

Overall, the Joint Fiscal Office and administration anticipate that FY21 impacts to the budget from the COVID 19 crisis will far outweigh impacts for FY20.

In better news, U.S. Senator Patrick Leahy announced on Wednesday that Vermont would receive approximately $2 billion in grant funding from the third emergency spending package, which the U.S. House of Representatives is expected to pass today. The Joint Fiscal Office is discussing what resources from that package should be available to local governments because there is no direct aid to local governments whose population is less than 500,000. The way the federal legislation is written, that decision would be at the Vermont Legislature’s discretion.

On the municipal front, on Wednesday, advocacy staff testified before the House Ways and Means and Senate Finance committees that cities and towns anticipate reduced revenues as a result of:

- requests for abatement of property taxes and fees due to hardship;
- late payment of taxes and fees;
- increased delinquencies with respect to property tax payments and fees for essential services such as wastewater and water supply;
- the possibility that properties will meet qualifications for tax sale and how the town will address that during or after the crisis;
- grievances of property values due to reduced fair market value; and
- reduced revenues from local option taxes.

**Increased Need.** The increased needs of Vermonters at this time run the gamut. The Joint Fiscal Office reported that the House Appropriations Committee and the administration are investigating the need for unemployment insurance, job protection measures, emergency care for the homeless, stressed human services systems including foster care and child care, overburdened hospitals and health care facilities, emergency communications facilities and emergency operations call centers, help to businesses, and much more.

In order to meet constituents’ needs, towns and cities, which are on the front lines of response, may need to borrow extensively in anticipation of taxes, due to late payment, abatement or delinquencies. Municipalities must continue to provide water and wastewater services, regardless of whether the bills are paid. The Public Safety Department is urging law enforcement presence to be highly visible as executive orders are issued and extended. The cost to provide emergency medical services is increasing in order to provide protective equipment, timely call responses, and additional staffing. Highways and other infrastructure still need to be maintained. Local officials have had to pivot to conduct remote meetings and continue working despite their offices being closed. Local officials have been coordinating volunteer groups who are eager to help residents in a variety of ways during the crisis. The day-to-day business of local government must continue albeit with potentially reduced staff. Towns and cities need to meet their obligations for outstanding bond and lease payments, and matching funds for state and federal grants or loans. Election protocols will be amended to protect the public and maintain integrity of the process.
Issues for Municipal Governments. As a result of moving filing deadlines for state and federal income taxes to July 15, the filing deadline for homestead declarations and property tax credit claims have also been moved to July 15. That deferral means that the Tax Department cannot send accurate tax rates to towns in a timely manner, and tax bills, if sent out according to current municipal schedules, would likely need to be based on estimated tax rates. Seventy-four towns have property tax filing deadlines remaining for the current year. Several cities and towns send their property tax bills in July. Tax payment dates are set either by charter or by town meeting.

Municipalities also risk significant penalties for failing to make timely payments of education property taxes to their schools or the state. The figure is eight percent penalty per annum of the amount due, and if a payment is more than 90 days late, any state funds due the municipality are withheld (32 V.S.A. § 5409 (1)). Should towns stabilize or abate taxes, they are obligated to make the Education Fund whole – that is, the town must make up the difference between what is due the Education Fund and the education property taxes received. That would be absolutely impossible for most towns, given the overall reduction of property tax revenues and the fact that education property tax obligations on the whole far exceed municipal property taxes. Finally, the education property tax has always been considered the backstop to the Education Fund. That is to say, state contributions to the Education Fund comprise about one third of the total obligation, and property taxes make up the other two thirds, whatever that may be. There is no statutory limit on the education property tax.

The current circumstance demonstrates once again how broken Vermont’s education funding system is and how it constrains city and town officials’ ability to address pressing needs on the municipal side of the ledger. In the short term, the calendar for billing, collecting, and receiving property tax revenues needs to be clarified for all concerned, and that will require legislative action soon. Several proposals have been floated and the committees are expected to take them up next week.

Resources
• Education Finance Issues Raised by COVID-19
• Federal Funding Formula for Vermont (as of March 24, 2020)

The Open Meeting Law and Elections

On Wednesday, the Senate passed an amendment to H.681, a bill that addresses government operations in response to the COVID-19 outbreak. The amendment would authorize public bodies, including local boards and commissions, to hold meetings remotely during the crisis. It would also amend elections law, allowing for Australian ballot elections even if that is not the form of ballot the municipality generally utilized. The House passed the bill on Thursday and sent it to the governor, who we expect will sign it today.

During the declared COVID 19 emergency, a public body would not need to provide a physical location for an open meeting or need to have a person physically present.

The public body may hold the meeting by electronic means and must provide for telephone access whenever feasible. School boards and selectboards will need to record their meetings, unless unusual circumstances make it impossible to do so. In the event of a staffing shortage, a public body may extend the time for posting minutes to ten calendar days, a provision that even in the current circumstance was opposed by the Vermont Press Association.

The amendment also provides that during the declared state of emergency relative to COVID 19, the governor could authorize state agencies to extend any deadline applicable to municipal corporations or regional planning commissions for up to 90 days after the emergency ends. A municipality would be authorized to extend or waive deadlines applicable to its licenses, permits, programs, or plans, but not those of the state.
The secretary of state, in consultation with the governor, may require mail balloting. This means that clerks would have to:

- mail ballots to all registered voters;
- create ballot collection stations;
- allow the counting of ballots to begin thirty days preceding an election day;
- allow drive-up collection of ballots; and
- extend the time for counting ballots and voting hours on an election day.

Upon a vote of the local legislative body, any municipality may apply the Australian ballot system to any or all of its municipal elections in 2020. The secretary of state could make that decision for school districts.

Disconnections from public water or wastewater systems would be prohibited for the duration of the emergency.

**Resource**
- [Amendment to H.681](#) (See page 5, section 5.)

## Landlord-Tenant Issues in the Age of COVID-19

This week, both the House General, Housing and Military Affairs and the Senate Economic Development, Housing and General Affairs committees discussed temporary, housing-related protections for tenants during the COVID-19 emergency period. New legislation under discussion could lead to a stay on evictions until the crisis is over.

On March 16, the Vermont Supreme Court issued Administrative Order 49, which postponed all non-emergency and civil cases until at least April 15 due to the COVID-19 pandemic. Under the order, if a tenant-landlord case is deemed an emergency that requires a hearing, it must take place remotely. The decision on whether a case moves forward or not rests upon the discretion of the superior court judge, of which there are 34 statewide. Emergency relief for tenants is granted on a case-by-case basis.

Proponents wanting a more consistent approach are advocating for legislation that would stay all evictions until after the emergency passes. For instance, Vermont Legal Aid offered a proposal currently in the House committee that defines “emergency period” as beginning with the governor’s declaration of a state emergency on March 13 and ending 30 days after he terminates the declaration. Vermont Legal Aid attorney Jean Murray testified in the Senate committee that once the state of emergency is lifted, the extra 30 days would be a time to work things out financially with anticipated federal aid money. Angela Zaikowski, Director of the Vermont Landlord Association, also testified that Vermont needs a statewide rule for consistency. She said Vermont Legal Aid’s proposed language does not relieve tenants from payment and does not prevent landlords from filing cases that would be acted upon after the emergency period is over, thereby providing assurances for landlords.

The Senate committee also discussed the potential for evicting commercial tenants from rental properties if or when they are no longer able to pay their rent. Such tenants include the many small businesses that make our downtowns and villages vibrant and interesting places to spend time. And those businesses are incredibly stressed right now. Committee members are definitely sympathetic to the issue and will likely take it up again if a bill comes over from the House or if they decide to write their own legislation.

**Resource**
- [House General Housing and Military Affairs Committee bill](#) (dr req 20-0939 – draft 2.2)