



Weekly Legislative Report

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Remote Voting Provisions

As we wrote in last week's Report, the legislature has been busy figuring out how to operate in a largely remote manner. Last week, the House adopted several temporary rules that allow for remote voting by both the full House and by all of its individual committees.

This week, the Senate Rules Committee, in consultation with senators at-large, worked to finalize rules that would also allow for remote voting by both the full Senate and by Senate committees. The committee was hoping to vote out a set of rules by Friday, allowing the full Senate to vote on the rule change next week. The Senate is hoping to reconvene with at least a quorum of members in attendance on either Tuesday or Wednesday, which would allow them to institute the rule change. The Senate Rules Committee does not have a draft rule for public review yet, but the details of the rule change are scheduled to be made public next week.

Budgets, Property Taxes, and the Ed. Fund

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.

Local officials know all too well that the current pandemic is causing our lives to change, sometimes drastically, on a day-to-day-basis. This new reality is significantly affecting not only municipal budgets but – in a magnified way – Vermont's state budget.

General Fund projections in March totaled \$1.6 billion. As of April 2, that projection was reduced by \$202 million to a total of \$1.4 billion.

Transportation Fund and Transportation Infrastructure Bond projections in March totaled \$300 million. The April 2 projection was reduced by \$45 million to a total of \$255 million.

Education Fund non-property tax revenue projections in March totaled \$558 million, approximately one third of total Education Fund revenues. The April 2 projection reduced the figure by \$142 million to \$416 million.

Municipal and education property taxes are inextricably linked in Vermont, and the COVID-19 crisis exacerbates the entanglement significantly.

The Education Fund outlook mentioned above is grim. In fact, Joint Fiscal Office staff today said the fund at this point is essentially insolvent in the current year. At town meetings last month, nine school budgets were defeated and an additional five budgets are scheduled to be voted on in May. Therefore, the entirety of Education Fund obligations is also unknown at this point. If school budgets are not passed by June, Vermont law provides for the implementation of default budgets totaling 87 percent of the prior year's budget.

Within the Education Fund, stabilization reserves required by statute will be reduced from \$76.5 million to zero once applied to the deficit. In addition, the prior year Education Fund surplus of \$19 million would be applied to the deficit.

This week, Advocacy staff has been meeting with the Senate Finance and House Ways and Means committees regarding the likelihood of reduced education property taxes being collected in both the current and FY21 fiscal years. One question is how those shortfalls should be treated, given the ramifications of the COVID 19 fiscal fallout. More so than in most years, local governments will clearly not be able to reimburse the Education Fund for lost education property tax dollars. While the federal CARES (Coronavirus Aid, Relief, and Economic Security) Act does provide money for education, most of it is not directed through the Education Fund but will instead go to the Agency of Education for disbursement to school districts.

State Treasurer Beth Pearce has also been meeting with legislators. This morning, we learned that the Education Fund deficit may be able to be addressed in this year's Education Fund budget through a combination of borrowing and other measures.

Much more is yet to come in the next few weeks, and your Advocacy staff will report on everything that affects local government. And remember that you can watch the committee hearings by going to a committee page and clicking on the live stream link that appears slightly below the agenda. For instance, while this morning's House Appropriation Committee meeting was anything but uplifting, it did provide a sober picture of the state budget outlook as of this date.

And on Thursday, VLCT Advocacy wrote to the Appropriations Committee listing critical needs of local governments during the COVID -19 crisis and emergency declaration.

Resources

- [House Appropriations Committee YouTube Channel](#)
- [Estimated Revenue Issues for Remainder of FY20](#)
- [Education Fund Outlook for FY20](#) (March 24, 2020)
- [VLCT Advocacy Letter to House Appropriations Committee](#) (April 2, 2020)

EMS Legislation Adjusted to Focus on COVID-19

This week, the Senate Government Operations Committee took up [S.124](#), a bill that addresses a potpourri of public safety issues, though it focuses mostly on law enforcement and emergency medical services (EMS). Prior to the COVID-19 crisis, the legislature was already concentrating on the short-term and long-term needs of EMS. Now, with the legislature only responding to COVID-19 related legislation and the stresses EMS services are acutely feeling, the committee is fine-tuning S.124's EMS provisions to specifically meet the immediate needs of EMS services as they relate to licensure, credentialing, and education.

The committee is narrowing the bill's provisions to the following:

- Eliminating the requirement for credentialing by affiliated agencies because of the duplicative nature of the requisite. EMS personnel must still be licensed under Department of Health rules, which require certification by the National Registry of Emergency Medical Technicians.
- Extending ambulance license terms from one to three years.
- Requiring the Department of Financial Regulations to enforce provisions of current law that oblige health insurers to directly reimburse ambulance service providers.
- Appropriate \$450,000 from the EMS Special Fund and \$400,000 from the General Fund to the Department of Health for EMS personnel training. (The preliminary appropriations will likely change significantly in the Senate Appropriations Committee, particularly in light of the COVID-19 crisis and potential money available under the recently passed federal CARES Act.)

Provisions of the bill that are less immediate – that is, matters that don’t specifically address the current public health crisis – will be dealt with at a later date. The committee hopes to move this bill forward to the Senate for a vote as soon as next week

Open Meeting and Elections during the COVID-19 Pandemic

On Monday, Governor Phil Scott signed H.681 (Act 92) into law, and we are grateful for his prompt action.

Because the bill is session law, you will not find its language in any section of statute. It provides relief only during the COVID-19 crisis and includes provisions for elections, open meetings, the general delay of deadlines in the municipal calendar, and a prohibition on cutting off water supply or wastewater services during the pandemic. So there is a fair amount to review here.

Elections. As we all know, 2020 is an election year. And elections will be immensely complicated as a result of the pandemic. Act 92 excuses candidates from collecting signatures in order to qualify for placement on this year’s ballot. Consequently, a person will not need to file a primary petition as a majority candidate for the primary, a statement of nomination as an independent candidate for the general election, or a petition as a candidate for a local election.

The date to file candidate forms for state primary elections is set as not earlier than the second Thursday after the first Monday in May (May 14). You may not file a form for nomination as an independent candidate for U.S. President or Vice President before Saturday, July 18. Nomination forms for any other independent candidates except justice of the peace may not be filed before July 23.

The secretary of state in consultation with the governor may order or allow appropriate election procedures including:

- requiring mail balloting by directing town clerks to mail ballots to all registered voters;
- creating early or mail ballot collection stations;
- permitting clerks to process and begin counting ballots in a 30-day window preceding Election Day;
- permitting drive-up, car window collection of ballots by election officials;
- extending the time for municipal clerks to process and count ballots; and
- extending voting hours on the day of the election.

A local legislative body may vote to apply the Australian ballot system to any municipal election in 2020. The secretary of state may waive statutory deadlines or other statutory provisions in order for school districts to use Australian ballot for its elections, regardless of the provisions in the district’s articles of agreement or charter.

Open Meeting. During the declared COVID-19 emergency, a public body does not need to designate a physical location for an open meeting or need to have a person physically present. A quorum or more of the members of

a public body may attend a regular, special, or emergency meeting by electronic or other means. The bill establishes that “public bodies should meet electronically and provide the public with electronic access to meetings in lieu of a designated physical location” as a best practice. (Readers should note that H.681 passed last week before the governor’s most recent additions to his Executive Order 01-20, including Addendum 6 [see link below]).

When a public body meets via electronic means, it is to use technology that permits the attendance of the public through electronic or other means. It must also post information about how the public can access the meeting and include that information on the published agenda.

The public body must provide for telephone access whenever feasible. School boards and selectboards (but not other public bodies) will need to record their meetings, unless unusual circumstances make it impossible to do so.

In case of a staffing shortage, a public body may extend the time for posting minutes to ten calendar days.

The act also provides that during the declared COVID-19 state of emergency, the governor may authorize state agencies to extend any deadline applicable to municipal corporations or regional planning commissions for up to 90 days after the emergency ends. Expiring licenses, permits, programs, or plans that are due for renewal with state agencies are valid for 90 days after the declared state of emergency ends.

A municipality is authorized to extend or waive deadlines applicable to its licenses, permits, programs, or plans, but not those of the state. Any expiring license, permit, program, or plan due to the municipality for review or renewal is to remain valid for 90 days after the declared emergency ends.

Public water or wastewater system disconnections are prohibited for the duration of the emergency.

All of these provisions became effective upon the bill’s passage on Monday.

Resources

- [H.681 as passed](#)
- [VLCT Guidance on Act 92](#)
- [Addendum 6 to Executive Order 01-20](#)

Connectivity and COVID-19

It was impossible to listen to committee meetings this week and not hear how the COVID-19 crisis is highlighting the deficiencies and inequities in Vermont’s broadband network, internet connectivity and access to telecommunications in general. Vermonters are working, studying, holding open meetings, accessing banking and telemedicine, and staying connected to friends and family from home. Access to internet and cellular services has become an absolute necessity for almost all of us. Not only has this crisis highlighted the issue of “last-mile” connectivity (that is, delivery to the most remote location) , but also the capacity for service providers to accommodate internet speeds fast enough for parents to work from home and students to attend school. These issues are not new to Vermont. Inequities and even a complete lack of cellular or internet access has existed for decades. That said, the sheer magnitude of the disruption in our daily lives caused by the lack of connectivity has put this issue in the forefront like never before.

Vermont’s congressional delegation along with the administration and legislators are eyeing COVID-19 federal legislation as perhaps the best source of funds to tackle this persistent problem. This opportunity is becoming apparent as the state receives a fiscal stimulus from the federal CARES (Coronavirus Aid, Relief, and Economic Security) Act, the first two COVID-19 federal relief packages, and potential future COVID-19 federal legislation. There are federal funds earmarked for increasing access to broadband in the CARES Act. For example, it provides \$100 million to the U.S. Department of Agriculture’s ReConnect Loan and Grant program to help ensure rural

Americans have broadband access. The program offers federal financing and funding options in the form of loans, grants, and a combination of both loans and grants to facilitate broadband deployment in areas of rural America that do not currently have sufficient access to broadband. The act also provides \$25 million to support USDA's Distance Learning and Telemedicine Program to help improve distance learning and telemedicine in rural communities. Hundreds of millions of dollars may also be available to expand broadband access, however it's less clear how much latitude states have to utilize those funds specifically for broadband deployment projects.

The issue of connectivity will continue to take center stage as Vermont and the rest of the country traverses this public health crisis. In the coming weeks, the legislature will continue to learn how federal stimulus money can help Vermont solve this problem.

Environmental Enforcement Flexibility

On March 26, the U.S. Environmental Protection Agency (EPA) announced a temporary enforcement discretion policy addressing civil violations of environmental laws resulting from the COVID-19 pandemic. The policy retroactively began on March 13. States may take different approaches pursuant to their own authority over state programs. The EPA's discretion is conditioned on the requirement that regulated entities make every effort to comply with their environmental compliance obligations. If compliance is not reasonably possible, regulated entities must take actions to minimize the effects and duration of the noncompliance; identify the specific nature and dates of the noncompliance; identify how COVID-19 was the cause of the noncompliance; and return to compliance as soon as possible. All of these actions and conditions must be documented.

On March 31, the Vermont Agency of Natural Resources (ANR) followed suit by issuing a COVID-19 State of Emergency Enforcement and Compliance Guidance Document. According to ANR Secretary Julie Moore, only a handful of enforcement cases are handled by the EPA, and none is handled in lieu of state involvement. Unlike the EPA's policy, ANR's guidance is not a blanket exercise of enforcement discretion; decisions are instead made on a case-by-case basis. The agency has issued specific regulated entity temporary waivers, including allowing solid waste management facilities to limit operating hours and not pursuing enforcement actions against retailers and redemption centers for failing to redeem beverage containers subject to Vermont's bottle bill. ANR is also extending the expiration date for certified water system operator continuing education requirements and allowing temporary medical centers to be erected specifically for COVID-19 use without first obtaining a potable water or wastewater system permit.

The agency may reserve the option to address permit violations without initiating an enforcement action as long as:

- the permittee can document how the noncompliance is attributable to COVID-19;
- the violation does not present a significant threat to human health or the environment;
- the permittee takes all reasonable steps to prevent or mitigate the noncompliance and notifies ANR of the noncompliance as soon as possible following the incident; and
- the permittee comes into compliance as soon as possible or enters into a compliance schedule with ANR.

The guidance does not apply to activities regulated by the Department of Fish and Wildlife, to criminal violations, or to the responsibility to prevent, respond to, or report oil and hazardous waste spills.

ANR's COVID-19 Emergency Guidance will expire at the end of the governor's emergency declaration.

Resources

- [ANR COVID-19 guidance](#)
- [COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program Memo](#)
- [EPA COVID 19 Memo on Enforcement and Compliance Implications](#)

Solid Waste, Septage, and PFAS

The Solid Waste Disposal Ban. This week, the Senate Natural Resource and Energy Committee heard testimony from solid waste experts on how the COVID-19 crisis was affecting Vermont's solid waste system. Kim Crosby, Casella Waste System's Environmental Compliance Manager, requested that the committee support his company's position to indefinitely delay the implementation of Act 148's July 1, 2020 statewide disposal ban on food scraps, or at least delay the ban until July 1, 2021. (Act 148 is Vermont's universal recycling and composting law passed in 2012.)

Crosby also stated that the state's two recycling processing facilities are constrained by staff shortages resulting from the COVID-19 pandemic, which means that selling recyclable materials will be limited. She requested that the legislature suspend the landfill ban for all mandated recyclables until December 31, 2020, or until the current state of emergency ends. Due to the temporary suspension on the landfill ban of recyclables, she also requested support for the use of recycled glass as road base at the Coventry landfill.

Both Jennifer Holliday, Director of Public Policy at the Chittenden Solid Waste District, and Program Manager Cathy Jamieson of Vermont's Department of Environmental Conservation (DEC) said they preferred that the food scrap ban deadline stay intact, with the caveat that the Agency of Natural Resources (ANR) could employ enforcement discretion until the emergency has passed. Several businesses have recently sprung up devoted to collecting and composting food waste, and many restaurants already divert food scraps. Lifting the disposal ban would, we think, be a step backward from progress already made on enacting Act 148.

Another prominent solid waste issue affected by the COVID-19 emergency is the ban on single-use plastic, which is scheduled to go into effect this July. A law passed last year prohibits retailers from providing customers with single-use plastic grocery bags at checkout beginning July 1, 2020. Erin Sigrist, President of the Vermont Retail & Grocers Association, asked Governor Scott to postpone the ban until January 1, 2021, to protect grocery employees from possible exposure to the coronavirus on customers' reusable shopping bags. Whether or not the virus can remain active on reusable bag surfaces is debatable, but for the foreseeable future, many grocery stores and outlets are not allowing employees to pack them.

According to testimony to the House Committee on Natural Resources, Fish, and Wildlife from the Vermont Department of Health, "many surfaces – doorknobs, countertops, handrails – can be a disease vector so long as the virus or bacteria survives on it. Neither single-use nor reusable bags nor cardboard present a particular hazard. The answer for any surface is: be careful, wash your hands, don't touch you face."

Septage and PFAS. Per- and polyfluoroalkyl substances (PFAS) are a family of human-made chemicals widely present in both in wastewater treatment sludge and septage. Even at very low contamination levels, PFAS have been linked to health problems. According to a 2016 report to the legislature on wastewater treatment sludge and septage management, there are currently four strategies in Vermont for the management of these wastes:

- Dewatered sludge and septage can be disposed in a landfill.
- Sludge and septage can be disposed at an out-of-state incineration facility.
- Sludge and septage, or products derived from them following advance treatment, can be applied to the land as an agronomic supplement.
- Septage can be disposed at municipal wastewater treatment facilities (which produces additional sludge that must be managed via one of the three other general alternatives).

DEC is tracking concerns about how COVID-19 is affecting the ability of municipal wastewater treatment facilities to accept septage. Tom Dipietro, President of the Green Mountain Water Environment Association, says that municipal wastewater treatment facilities statewide are operating with rotating schedules and reduced staffing due

to the governor’s “stay safe, stay home” order. Some facilities are unable to accept septage right now; some are accepting septage by appointment only. This demand on capacity is causing problems for septage haulers.

Late last year, ANR began a statewide investigation of PFAS contamination on sludge and septage land application sites. Matt Chapman, ANR General Counsel, testified before the Senate Natural Resources and Energy Committee that the test results have been mixed. ANR is currently evaluating policy options, but is not prepared to suggest any options at this time.

The long and short of it is that due to the COVID-19 emergency, some municipal wastewater treatment facilities may be declining to accept septage, and some areas used for land application may have to cease taking septage due to PFAS contamination. Your Advocacy team will continue to provide information to legislative committees so they will fully understand the economic hardships confronting municipalities, businesses, and haulers faced with solid waste mandates.

Resource

- [Report on Managing Wastewater Treatment of Sludge and Septage in Vermont](#)



Still vacant.