



Weekly Legislative Report

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State Revenue Picture Marginally Brighter

On Monday, legislators received a bit of good news when the Joint Fiscal Office gave its revenue update. Deficit estimates have been reduced from May because revenue collections were stronger than anticipated.

FY20 Projected Deficits		
Fund	June	May
General Fund	-\$41 million	-\$46 million
Transportation Fund/TIB	-\$34 million	-\$42 million
Education Fund ¹	-\$31 million	-\$55 million
All Funds	-\$106 million	-\$143 million
1. Revenue figures do not include education property tax revenues.		

FY21 ² Projected Deficits		
Fund	June	May
General Fund	-\$219 million	-\$230.5 million
Transportation Fund/TIB	-\$39 million	-\$46.8 million
Education Fund ¹	-\$75 million	-\$100.3 million
All Funds	-\$332million	-\$377.6 million
1. Revenue figures do not include education property tax revenues.		
2. Begins July 1.		

Clearly the situation remains dire and the job of balancing the budget – especially in FY21 – is enormous, but perhaps we can agree that the degree of “direness” is unexpectedly a bit less.

The Joint Fiscal Office also projected a fiscal picture for FY22. A lot will change in the next year, much of which will be due to actions taken by the legislature and administration now and in August when they reconvene to address current deficits and to appropriate CARES Act Coronavirus Relief Fund (CRF) monies.

The state received \$1.25 billion from the CRF. To date, the supplemental budget adjustment, H.953, has spent \$39,679,300 of that amount. The municipal borrowing bill, H.951, makes available \$2,700,000 in CRF funds to cover costs of interest that cities and towns incur because they have to borrow to cover shortfalls in education property tax payments due to COVID-19.

(Education property tax payments were due to the state June 1.) And the House-passed first quarter FY21 budget bill, [H.961](#), spends \$47,304,000, leaving a balance of \$984,066,700 available in the CRF. The Joint Fiscal Office estimates that an additional \$33,034,157 may be available.

H.961 is in the Senate Appropriations Committee now, having passed the House last week. (See [Weekly Legislative Report No. 22](#).) On Wednesday, the secretary of administration sent a letter to the Senate Appropriations Committee objecting to constraints that the bill would impose on the executive branch's ability to make changes to policies or program structures and the House's decision to increase spending by \$33 million over the administration's proposal. There will be adjustments as the Senate works through H.961 and the state's fiscal situation continues to evolve. The legislature is aiming for two more weeks of work before recessing until August.

Resources

- [June 9 Joint Fiscal Office Update](#)
- [June 10 Letter from Administration Secretary to Senate Appropriations Committee](#)

House Committees Recommend Uses for the CRF

On Tuesday, Speaker of the House Mitzi Johnson sent a memo to committee chairs that recommended uses of the Coronavirus Relief Fund (CRF). Two targets were given to committees of jurisdiction (that is, subject matter committees). The first block of money, \$575 million, is to be used to fund the most critical and time-sensitive needs. Expenditures from that block will be effective upon passage and available to Vermonters most quickly. The second block of money, \$400 million, is for second tier priorities. That money is presently being held in case it is needed to fill holes in August in the Education, General, and Transportation funds if federal rules change by then to allow its use for replacing lost revenues.

Committees began to deliver their recommendations for CRF spending to the House Appropriations Committee on Thursday. Pursuant to federal guidance, all requests need to establish that the funds are being used to pay for expenses due to COVID-19 that were not otherwise budgeted. The committee is working hard to sort through the recommendations, ensure that they are compliant with the Coronavirus Aid, Relief, and Economic Security (CARES) Act federal guidance (which is being updated regularly), and develop a final proposal for the whole House to consider. They include:

House Transportation

- \$2 million to the Agency of Education for delivering meals to children during June, July, and August.

House Education

- Block 1: \$25 million in FY20 and \$20 million in FY21 to assist public schools with costs associated with the pandemic, and \$5 million to support higher education.
- Block 2: \$45 million to help with additional needs attributed to COVID-19, and \$30 million to support higher education.

House Judiciary

- \$567,000 in projects related to domestic violence and sexual assault;
- \$130,000 for remote operation of domestic violence accountability programs;
- \$197,000 for incarcerated and re-entering victims of domestic and sexual violence;
- \$80,000 for no-cost legal representation for victims of domestic and sexual violence;
- \$160,000 to Vermont's Forensic Nursing Program;
- \$30,000 for the attorney general's Strategic Plan for Equity and Inclusion.

House Energy and Technology

- \$43,268,500 for FY21 broadband appropriations to the COVID-19 Response Connected Community Program, the Line Extension Customer Assistance Program, the Get Vermonters Connected Now Initiative, the Telecommunications Recovery Plan, and the Tele-health and Connectivity Initiative;
- \$466,500 to the state's access media organizations;
- \$20,000 for ratepayer arrearages due to the moratorium on utility disconnections;
- \$3,000,000 to mitigate cyber-security risks due to state employees working from home;
- \$4,000,000 to modernize unemployment claims system;
- \$350,000 to support municipal officials in addressing cyber-security risks;
- \$152,000 to the E-911 Fund;
- \$100,000 to Vermont Public Radio educational programming.

House General Affairs and Housing

- \$550,000 to Vermont Legal Aid;
- \$250,000 grants to organizations assisting landlords;
- \$9,000,000 to the Vermont Housing Conservation Board to provide shelter and assistance to those at risk of homelessness or who suffered economic harm due to COVID-19;
- \$6,000,000 to the Vermont Housing Finance Agency to prevent home foreclosures
- \$30,000,000 for rental assistance and eviction protection;
- \$6,200,000 to implement a re-housing recovery program.

House Health

- \$139 million in grants to the Health Care Provider Stabilization Program;
- \$9,000,000 to sustain population health management programs;
- \$1,000,000 to address health disparities among populations most likely to experience adverse outcomes from COVID-19;
- \$800,000 for suicide prevention initiatives;
- \$200,000 to Pathways Vermont.

House Human Services

- \$18,850,000 to stabilize provider programs (nursing homes, meals on wheels, home health and hospice, etc.);
- \$16,600,000 to mitigate food insecurity;
- \$9,000,000 for grants to child care providers, afterschool programs, and summer camps;
- \$700,000 for New American grants;
- \$3,900,000 to Parent Child Centers;
- \$2,950,000 to other support organizations such as Reach-Up and community action centers.

House Natural Resources, Fish and Wildlife

- \$1,500,000 for grants to administer the newly created Outdoor Recreation Business Assistance Program;
- \$3,500,000 to implement public health precautions on Agency of Natural Resources lands.

House Government Operations is currently considering S.349, the bill passed by the Senate last week that would provide \$16 million in grants to units of local government to reimburse eligible COVID-19 expenses. This week, your Advocacy staff sent a memo to the House Government Operations and Appropriations Committees in support of S.349.

As of today, the House Appropriations Committee had received a total of \$568,460,000 in requests for use of the first block of CRF money. The committee is working fast to develop a bill that incorporates those requests. We will of course keep you apprised of developments in the appropriation process for the CRF.

Resources

- [House Summary of CRF Fund Requests](#)
- [Memo from House Energy and Technology Committee to House Appropriations Committee](#)
- [VLCT Memo to House Appropriations and Government Operations Committees](#)

Law Enforcement Use of Force, Race Data, and Body Cameras

These days, law enforcement issues are receiving lots of attention across the country, and the Vermont Legislature is no exception. In the wake of the killing of George Floyd and subsequent protests, legislative proposals within bills that were stalled just weeks ago have been resuscitated and are garnering further consideration. The bill in the Senate that has received the most attention is S.219. As [introduced](#), the straightforward bill would withhold state grant funding to law enforcement agencies that do not comply with race data reporting requirements set forth in 20 V.S.A. § 2366(e). As the Senate Judiciary Committee took up the bill this week, the committee chair put forth a new proposal that greatly expands the scope of the legislation.

The [draft amendment](#) makes several other changes to statute:

Race Data Collection and Fair and Impartial Policing Policy. Current law requires all law enforcement agencies to collect certain roadside stop data: the age, gender, and race of the driver; the reason for the stop; the type of search conducted, if any; the evidence located, if any; and the outcome of the stop. New proposed language would add whether force was employed to accomplish the stop, and if so, the type of force employed and whether the force resulted in bodily injury or death.

It also adds Vermont’s Executive Director of Racial Equity to the administration and review process of the collected data. Currently, the Vermont Criminal Justice Training Council (VCJTC) and a vendor of its choosing gather and retain all stop data.

Statewide Use of Deadly Force Policy. A new section would be added to Title 20 that creates a statewide policy for all of Vermont law enforcement’s use of deadly force. The new section, 20 V.S.A. § 2368, is explicit in when deadly force is permissible, stating law enforcement may use it *“only when necessary in defense of human life.”* Further, *“in determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.”*

Also, the use of force – not specifically deadly force – must be reviewed in a similar manner. The decision by a law enforcement officer to use force “shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by law enforcement officers, in order to ensure that officers use force is consistent with law and agency policies.” The standard of review of force is from a “reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgements about using force.”

The amendment outlines the exact scenarios and situations when certain types of force may be appropriate:

- Physical force. Any law enforcement officer who has reasonable cause to believe that the person to be arrested has committed a crime may use objectively use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.
- Deadly force. A law enforcement officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to:
 - defend against an imminent threat of death or serious bodily injury to the officer or to another person; or
 - apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Prior to using force, a law enforcement officer must make reasonable efforts to identify himself or herself as a law enforcement officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Law enforcement officers would be prohibited from using deadly force against a person based on the danger that person poses to himself or herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.

When making or attempting to make an arrest, an officer “need not retreat or desist from his or her efforts by reason of the resistance or threatened resistance of the person being arrested. A law enforcement officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with the standards outlined above, to arrest or to prevent escape or to overcome resistance.”

Lastly, officers are prohibited from using “improper restraint on a person for any reason” and have a duty to intervene when they observe another officer using an improper restraint on a person. Improper restraint is defined as “the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.”

Improper Restraints and Unprofessional Conduct. Current law notes specific law enforcement officer conduct that qualifies as unprofessional and which is subject to sanctions ranging from written warnings and suspension of certification to revocation of certifications to practice law enforcement, dependent on the severity of the officer’s actions. The acts of “placing a person in an improper restraint” or “failing to intervene when the officer observes another officer placing a person in an improper restraint or using excessive force” are added as acts subject to VCJTC sanctions. The VCJTC must also review and take action on any allegation of improper restraint or failure to intervene when another officer is using improper restraint or excessive force.

The penalty for using improper restraint that causes serious bodily injury or death is imprisonment for up to 20 years, a fine of up to \$50,000, or both.

Body Cameras. The amendment mandates that all state law enforcement officers be immediately equipped with body cameras or other video recording device whenever the officer is engaged in law enforcement activities. There is no such mandate for county or local law enforcement agencies.

Finally, the amendment recognizes the costs of procuring and archiving recorded data., If the Department of Public Safety cannot absorb those costs within its current budget, those costs must be included in the department’s FY21 budget proposal in August when the legislature returns to address the rest of the state’s budget.

The Senate Judiciary Committee made it clear that they would be seeking to get the bill out of committee by June 19 at the latest. The committee will continue to take testimony on the bill today as well as most of next week. Given the time constraints at play, the House cannot begin to review the bill until the legislature returns from its summer recess in August.

Tax Increment Financing Districts

Among other matters that the COVID-19 crisis has upended are plans that Vermont’s cities and towns had to reinvest in tax increment financing (TIF) districts. The legislature has approved thirteen TIF districts around the state – from Bennington to St. Albans. Those districts have the authority to use property taxes that increase as a result of infrastructure investment within their boundaries to support debt incurred from borrowing to build the infrastructure for a period of twenty years from April 1 of the year the district is created. TIF districts have five years from the time they are created to incur a first instance of debt for infrastructure projects that have been approved by the voters. Subsequent to that first incurrence of debt, the districts have ten years to incur all the debt

that would be repaid with increased education and municipal property taxes. Each time the city or town wants to incur debt, it must have the approval of the voters. TIF districts have a proven record of success in leveraging private investment that builds and renovates housing, commercial, and retail space needed to grow jobs and the economy.

As with most of the economy, all bets are off for development in TIF districts for the remainder of this year – and likely next year as well. The legislature recently passed S.283, a bill that grants three extra years to the Town of Hartford to incur debt for infrastructure improvements, recognizing that not only the current COVID-19 crisis but also the last recession severely hampered their ability to use TIF financing to spur economic investment in the district. But the Hartford TIF is clearly not the only one whose schedule for development has been thrown completely off by the pandemic. Local governments asked the House Ways and Means Committee to extend the timeline for incurring debt by one year for all TIFs that are still within the ten-year timeframe for incurring debt to build infrastructure. The need to spur growth in the wake of this devastating downturn is enormous. Infrastructure projects inject funds into the local economy when very little else is doing so right now.

Cities and towns hope to hear that Ways and Means will take up the issue of a one-year extension. Local officials in TIF communities need to contact their representatives and senators and urge them to support that extension.

House Natural Resources Proposes CRF Assistance

This week, the House Natural Resources, Fish and Wildlife Committee recommended appropriations from the federal Coronavirus Relief Fund (CRF) for needs that are within its area of jurisdiction. The committee's proposal focuses on financial assistance to the outdoor recreation industry and COVID-19 public health precautions on lands owned or controlled by the Vermont Agency of Natural Resources (ANR).

Under the proposal, ANR would receive \$1.5 million to administer the Outdoor Recreation Business Assistance Program to provide grants to outdoor businesses to cover the costs associated with COVID-19 public health precautions. These include:

- cleaning and disinfecting equipment;
- personal protective equipment for staff and visitors;
- signage and informational materials that advise staff and visitors of necessary public health precautions;
- temporary staff housing to maintain necessary public health precautions;
- maintenance or repair of trails damaged by increased use during the COVID-19 emergency; and
- other improvements necessary to address public safety due to the pandemic.

To be eligible for a grant, an outdoor recreation business must demonstrate that the expenses were incurred between March 1 and December 20, 2020. (According to Legislative Council, CRF allocations not expended by then will revert to the Vermont Unemployment Insurance Trust Fund so that the state won't have to return any money to the federal government.)

The committee also recommended that in addition to any other funds appropriated to ANR in FY21, \$3.5 million be appropriated to implement COVID-19 public health precautions on state lands, including:

- updating signage at entry and access areas where COVID-19 information would be available to users;
- temporary campsites and structures, including parking and additional access points to allow for proper social distancing; and
- the costs of services and equipment to clean and sanitize public spaces.

Other House committees besides Natural Resources are also proposing uses for the CRF money for a variety of pressing needs within their jurisdictions. The House Appropriations Committee is reviewing the proposals this week. (See article on page 2.)

Housing and Act 250 Reform

This week the Senate Natural Resources and Energy Committee continued to take testimony on [S.237](#), the housing and Act 250 reform bill. (See [Weekly Legislative Report No. 22](#).) Although interested parties generally support the housing objectives outlined in the bill, differences in opinions concerning balancing affordable housing needs and the pre-emptions of local land use regulation with no regard for finding local solutions still exist.

Vermont Planners Association Legislative Liaison and Hinesburg Director of Planning and Zoning Alex Weinhagen testified that some affordable housing solutions may be necessary and effective to implement uniformly across the state, while other solutions need to be tailored by local and regional planners and implemented at the community-level. He suggested, as did your Advocacy staff, that there should be an opportunity to vet policies based on the Agency of Commerce and Community Development's progress on the [Zoning for Great Neighborhoods](#) program.

According to Section 15 of S.237, a municipality may issue water and wastewater connection permits if the municipality owns a public water/wastewater system. The section would also do away with the state permitting those connections. The elimination of redundant state and municipal regulations (and fees) for water and wastewater connections is a welcome proposal.

Reference

- [VLCT Proposal of Amendment to S.237 Draft 9.1](#) (June 11, 2020)