

WEEKLY LEGISLATIVE REPORT



VERMONT LEAGUE OF CITIES & TOWNS

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Congress Passes American Rescue Plan

On Wednesday, the U.S. Congress passed President Joe Biden’s \$1.9 trillion American Rescue Plan and the President signed it on Thursday. The package is an enormous stimulus to the economy by any standard. With this bill, Congress finally recognizes the fiscal distress of local governments as well as a host of other COVID-19-generated crises at governmental, individual, and business levels. We offer our profound thanks to the National League of Cities, whose advocacy was truly epic on the topic of local aid, and to Vermont’s Congressional delegation, which supported local aid throughout the many COVID-19 relief packages that were considered to respond to the pandemic emergency. The legislation provides \$65.1 billion to counties, \$45.6 billion to metro cities (Burlington Vermont is the sole recipient in this state), and \$19.5 billion to non-entitlement jurisdictions with populations of fewer than 50,000 residents.

The bill, H.R.1319, responds to the fiscal needs for local governments, but also comes with significant regulations regarding expenditure of funds. While less restrictive than the Coronavirus Aid, Relief, and Economic (CARES) Act Coronavirus Relief Funds, the money is still federal money, and local governments will need to adhere to U.S. Department of Treasury guidance. Importantly, the Senate tightened the restrictions regarding how state and local governments may use relief funding from the authority that would have been granted if the House version of the bill had passed. Funds may be used to replenish the amount of the revenue lost during the pandemic, and to fund increased expenditures due to the pandemic or mitigating its economic harm. The bill “clarifies” that eligible uses measure revenue loss as “the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year” prior to the emergency. What, exactly, the U.S. Treasury determines that to mean will be key to the use of funds at the local level. The cap on non-entitlement community assistance (that is, all cities and towns in Vermont except for Burlington) is equal to 75 percent of the local governments’ previous annual budget (as of January 27, 2020); thus, the amount a community would be eligible to receive may be less than the amount initially represented for a community in the federal American Rescue Plan spreadsheet. ([See Vermont’s allocations here.](#))

Projected amounts may be distributed to more than one municipality to the extent that eligible governments have “overlapping” populations, such as where both a town and village government exist. Details have yet to be worked out.

Eligible uses include premium pay for eligible workers who perform essential work as determined by the state, providing up to \$13 per hour above regular wages. Eligible uses also include water, sewer, and broadband infrastructure; responding to the COVID-19 emergency; and providing government services affected by a revenue reduction resulting from the pandemic. Offsetting tax cuts and pension funds are not eligible.

Local government allocations are based on the total population eligible for assistance in each state. (There are more than 33,000 local governments with fewer than 50,000 population across the country.) Local governments will receive their allocations in two installments. The first half will be sent to states for distribution to local governments 60 days after the legislation is enacted (upon President Biden’s signing of the bill yesterday); the second half will be sent to the states one year later. The states then have an additional 30 days to distribute funds to each non-entitlement unit of local government. (In Vermont, the only entitlement community is the City of Burlington.) States will have no discretionary authority to change the amount of – or attach additional requirements to – the payments allocated to local governments. Funds not distributed to local governments will be returned to the U.S. Treasury Department.

Funds will need to be spent by the end of 2024. Recipient governments will need to report periodically to the U.S. Treasury Department detailing the use of their funds – and, as is the case with most federal funds, they may be clawed back by the Treasury Department if the recipient does not comply with the eligible uses.

A new \$10 billion Coronavirus Capital Projects Fund would give \$100 million to each state, the District of Columbia, and Puerto Rico to fund critical capital projects that directly enable work, education, and health monitoring in response to the COVID-19 emergency. There is funding for emergency rental assistance, homeowner and housing assistance, health care programs, paycheck protection programs which will be available to non-profits, assistance to veterans and other targeted populations, and the Low Income Home Energy Assistance Program. In addition, more than \$128 billion will be available to schools.

As more details of the legislation emerge, we will provide updates and information to help local governments manage any funds they receive.

Encouraging Housing and Economic Recovery

The legislature raced to get bills out of committee this week in order to make Crossover, the deadline for non-money legislation to be out of their last committee of reference. Several of those bills address housing and economic recovery that would affect local governments.

[S.101](#) is a bill that the Senate Economic Development, Housing and General Affairs Committee hopes to vote out today. The bill is designed to encourage housing development in smart growth areas. It would increase Municipal Planning Grant funding by \$500,000 to municipalities that modernize their bylaws to increase housing choices, and extend downtown and village tax credits to neighborhood development

areas and raise the limit on the total amount of tax credits that may be awarded. The bill would also remove the requirement for a state wastewater permit in order to connect to a municipal wastewater system or state permit for connection to a water supply system if a municipality is in compliance with Agency of Natural Resources' technical standards. A municipal permit is currently required to connect to a municipal system, and the bill would eliminate that redundancy as a way to reduce the burden on those who are developing or redeveloping housing, without compromising environmental quality.

[S.79](#) was voted out of Senate Economic Development, Housing and General Affairs this morning and goes next to the Finance and Appropriations committees. The bill would transition the responsibility for rental housing inspections to the Fire Safety Division from the local level, except in towns and cities that choose to retain their authority. The bill would also create a statewide rental housing registry, which would include short-term rentals. The fee to register rental housing would be \$35 per unit unless the owner has registered the unit with a municipality that operates a rental housing inspection program. The bill would also create five inspector positions in the Division of Fire Safety to conduct rental housing inspections.

[S.33](#) is on the Senate Calendar for notice today and will be sent to the Finance Committee. It would establish a project-based tax increment financing (TIF) program, which would be available for one public improvement project with a permitted maximum debt ceiling of \$5 million. The infrastructure project would need to:

- serve new or rehabilitated affordable housing,
- remediate and redevelop a brownfield located in the district,
- result in the development of an entirely new or expanded business operation that is creating new full time jobs that exceed prevailing wages for the region, or
- create improved traffic patterns or public transportation systems.

The Vermont Economic Progress Council would be authorized to approve no more than 15 TIF projects between January 1, 2022, and December 31, 2027.

[H.159](#), a House Commerce and Economic Development Committee bill, would fund several locally based economic recovery and innovation programs. It would appropriate \$1 million to the Department of Tourism and Marketing to seed a tourism and marketing fund, and another \$1 million to establish a Buy Local Program. The bill would expand a Better Places Program at the Agency of Commerce and Community Development (ACCD) to provide grants to municipalities, non-profits, or community group with a fiscal sponsor to create a new public space or revitalize an existing one. A Better Places Fund would provide grants of up to \$50,000 to be matched between 25 and 59 percent with a crowdfunding approach. The bill would also extend the Downtown Tax Credit Program to neighborhood development areas and increase the total amount of available tax credits to \$4,750,000. The expanded tax credit proposal is also in S.101.

The bill would also appropriate \$20.5 million from the General Fund to the Vermont State Colleges for workforce development. Another \$100,000 would be allocated to ACCD to hire a contractor to convene Black, Indigenous and Persons of Color (BIPOC) businesses, organizations, and community leaders and other business and state government representatives to recommend how to launch a state BIPOC business network. Their report would be due to the legislature by next January. ACCD would also create an Economic Advancement Program to cultivate and support BIPOC businesses. And the Vermont

Center for Emerging Technologies' Entrepreneurs Seed Capital Fund would be allocated \$1 million to provide money to businesses that have experienced economic disruption.

[H.336](#) would establish the BIPOC Business Development Program. The program would provide technical assistance – including financial literacy, digital literacy and marketing – to members of the BIPOC community. It would also promote state and federal bid opportunities to BIPOC owned businesses and provide training to business technical assistance providers to reduce bias in service delivery.

The bills that are voted out of committee by Crossover (today) will be on their respective House or Senate calendars next week. If they don't make it, their provisions could still be included in an appropriations bill next week. We'll keep you apprised as to the status of this important legislation.

Municipal Charters

Montpelier. On Wednesday, the House Government Operations Committee voted out [H.177](#), a bill to amend the Montpelier City Charter. The amendment was approved by Montpelier voters in 2018 but failed to pass the legislature during the last biennium. Therefore, it was reintroduced this year. The charter amendment would allow noncitizens to vote in local elections. A noncitizen voter would be defined as any voter who is not a citizen of the United States but who otherwise meets state qualifications for eligibility under 17 V.S.A. Chapter 43, including being 18 years of age, a resident of Vermont, and who has taken the voter's oath. The constitutionality of the proposed amendment was a central question in the committee. Testimony supported its constitutionality because the requirement that voters be United States citizens in the state and federal constitutions extends to state and federal elections, but not to local elections. The legislature is not prohibited from amending or adopting a charter for noncitizen voting at the local level.

The bill was passed out of the House on Thursday and is now in the Senate for consideration.

Winooski. Earlier this week, House Gov. Ops voted out [H.227](#), which would approve several amendments to the Winooski City Charter. The bill is on the House Calendar for March 16. Like the Montpelier charter amendment, H.227 would allow noncitizen voters to participate in local elections. As they did with H.177, the committee viewed this provision of the amendment favorably and determined it passed constitutional muster.

The rest of the voter-adopted amendments make minor adjustments to municipal governance provisions, except for one provision that was viewed unfavorably by the committee and deemed unconstitutional by the legislature's legal counsel. The proposal had included a provision that would allow Winooski to use other provisions of other duly adopted municipal charters in state statute after approval from the Winooski City Council and city voters. Legislative counsel determined that the provision was unconstitutional because it would allow city council and voters to amend state law that applied to the city, which is a power reserved solely to the legislature and, in the legislative counsel's estimation, may not be delegated. Here, state law is Winooski's charter. Allowing the city council and voters to amend their charter would be an unconstitutional delegation of the legislature's supreme lawmaking authority – although Winooski's legal counsel disagrees. It is unclear why the original proposed charter language alone wouldn't suffice as the necessary grant of authority by the legislature to adopt provisions of other charters, but the committee

felt strongly enough that their legal counsel's opinion was correct. Hence, this provision of the charter proposal was removed.

The bill was up for second reading yesterday. If passed, it will head to the Senate Government Operations Committee for consideration.

Barre Town. On Wednesday, the House passed [H.127](#), a bill that proposes to amend the Barre Town Charter. The bulk of the proposed changes to the town's charter would separate the currently joined office of the town clerk and treasurer. The newly separated treasurer position would become an appointed position with specific fiduciary duties assigned to the treasurer's office.

The amendment proposes to allow the selectboard to adopt a comprehensive personnel policy – currently that authority is under the selectboard's ordinance authority – which is a less appropriate means to implement a personnel policy for town employees and personnel.

The House passed the bill on Wednesday. It will next go to the Senate Government Operations Committee.

Oaths for Municipal Officers

The House Government Operations Committee continues to review [H.154](#) – a bill that would create a vacancy in a municipal office if an officer fails to take the oath of office – and expects to vote it out of committee today. VLCT and the Vermont Bar Association (VBA) testified about concerns with provisions of the bill as introduced. H.154 proposed that a municipal office is considered vacant when – within one week of an election or appointment – a municipal officer fails to take the oath of office pursuant to 17 V.S.A. § 831. We testified that the failure to take an oath within one week of an election or appointment was too short a period of time, and that a simple failure, rather than a refusal to take the oath, would potentially have widespread unintended consequences. In response to these and other concerns from the VBA, the committee reviewed a new draft of the bill on Wednesday.

The committee's proposal of amendments now states that an office becomes vacant when a municipal officer refuses or neglects to take an oath of office within 30 days of an election or appointment. Further, an office is not deemed vacant until the municipality's legislative body has warned a regular meeting for that purpose and offered the officer an opportunity to take the oath of office at the meeting. The language narrows the offices the bill would affect clerks, selectboard members, constables, listers, and fence viewers – those offices included in 24 V.S.A. § 831.

VLCT appreciates the narrowing and clarity of language these changes provide. The committee has not set a date for final vote and we will continue to monitor the progress of the bill.

Budget Adjustment Act; COVID Relief Bill

H.138. Governor Phil Scott signed the budget adjustment bill (H.138, Act 3) on Town Meeting Day. The legislature is holding back on spending or reallocating Coronavirus Relief Fund (CRF) dollars pending

guidance about how they may use it through the end of 2021. At the same time, of course, Congress was working on the American Rescue Plan, whose fate remained unclear up until last week. Nonetheless, the budget adjustment bill reallocates CRF dollars where federal guidance is clear. They may be used to match FEMA funds for emergency food, hotel leases for the homeless, security and general COVID-19 response.

The bill continues to fund “Everyone Eats” through June 2021. It also authorizes the Secretary of Administration to allocate up to \$3 million for emergency response to issues affecting public health, safety, or welfare.

H.315. The COVID-19 relief bill, H.315, is currently in the Senate Appropriations Committee, which is taking it up again this afternoon. It includes:

- \$10 million for gap economic recovery grants to small businesses;
- \$10 million to assist those who are homeless or at risk of homelessness to comply with COVID-19 public health precautions;
- \$300,000 to the Department of Mental Health for emergency outreach mental health services;
- \$150,000 for training and wellness support for frontline health care workers to help them meet mental health needs;
- \$1.3 million to the Vermont Foodbank to pay for its Vermont Farmers to Families Food Box Program during January and February;
- \$2.2 million to further support broadband lines extensions and community resiliency;
- \$5 million to fund projects through the Vermont Outdoor Recreation Economic Collaborative; and
- \$5 million to pay for access to public spaces.

Readers may wonder why the money is needed for these programs when the American Rescue Plan will pay for similar ones. Upon the President’s signature, the U.S. Treasury generally has 60 days to provide funding to the states, and it will also need to issue guidance that details how those dollars may be spent. Then the states have a further 30 days to disburse the monies. Thus, American Rescue Plan dollars will not be available overnight. At this point, funding from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and most of the permission as to how it may be spent are fairly well known. Vermont is on the cusp of its construction season. Getting projects started, hiring people, and completing long overdue infrastructure improvements – particularly related to broadband – is vital as the weather improves.

The Senate Appropriations Committee is considering a proposal from VLCT to provide assistance to towns as they navigate the requirements of expending funds from the American Rescue Plan. The regional commissions have also offered to act as counties to assist in project administration. We will keep you apprised of the bill’s status.

Elsewhere in the State House

Cannabis. On Wednesday, VLCT testified in support of [S.94](#) in the Senate Finance Committee. The bill would distribute an amount of the cannabis excise tax revenues equal to two percent of the taxable retail sales to municipalities that host a cannabis establishment, repeal the Cannabis Control Board’s authority

to charge and collect local fees, and authorize local cannabis control commissions to assess a fee for a local control license issued to a cannabis retailer or integrated licensee. VLCT continues to advocate for local cannabis taxing authority at the local level and for local communities to set their local licenses fees. We hope the Senate will address S.94 in combination with [S.25](#), the other cannabis bill that is being considered, to ensure both regulatory and financial concerns of municipalities are addressed. The Senate Judiciary Committee continued consideration of S.25 this morning.

Local Option Tax. On Thursday, VLCT Advocacy staff testified in support of S.111, a short (two-page) bill that would authorize all towns and cities to adopt a one-percent sales tax, a one-percent meals and alcoholic beverages tax, or a one-percent rooms tax without going through the charter amendment process. Although the Senate passed this legislation in several previous sessions, it always ran aground in the House. However, in this new session with new legislators who may be more familiar with local government and new Ways and Means Committee members, the fate of such a provision may be different. Currently, 17 municipalities have adopted a one-percent sales tax and another 23 have adopted a one-percent meals and rooms or alcoholic beverage tax. In the wake of the [South Dakota vs. Wayfair](#) U.S. Supreme Court decision that held that online sales are subject to sales taxes in the jurisdictions in which they are received, many more cities and towns may benefit from a one-percent sales tax. Additionally, it is clear that local option taxes assessed at the local level have in no way detrimentally affected the revenues of the state.

Extended Session. Yesterday, House and Senate leadership said they may need to extend the legislative session past May in order to appropriate revenues coming to the state from the American Rescue Plan. Alternatively, they may reconvene the legislature later in the year to address those same revenue issues.

Upcoming Survey

Next Tuesday, VLCT will send local officials a brief survey that asks questions about the state of your finances in light of the pandemic. Please take a moment to answer: Your responses will inform Advocacy's efforts to continue to garner support for cities and towns in the legislature.

New Bills That Affect Municipalities

BILL NUMBER	BILL SUMMARY	CURRENT LOCATION
H.361	Would approve amendments to the charter of the Town of Brattleboro to allow youth voters to vote in certain town elections.	House Government Operations
H.373	Would exempt military retirement pay from Vermont's personal income tax and recruit retiring military veterans to this state.	House Ways and Means
H.378	Would add law enforcement officers employed by the Department of Veterans Affairs to the definition of "certified federal law enforcement officer."	House Judiciary
H.382	Would create a working group to study alternative wastewater treatment systems.	House Nat. Resources, Fish, and Wildlife
H.383	Would allow school districts to recall their elected school district board members.	House Education
H.384	Would codify a state code of ethics in 3 V.S.A. chapter 31.	House Government Operations

BILL NUMBER	BILL SUMMARY	CURRENT LOCATION
H.387	Would establish the Task Force to Study and Develop Reparation Proposals for the Institution of Chattel Slavery to study and consider a state apology and proposal for reparations for the institution of slavery; and make recommendations to the General Assembly on appropriate remedies.	House Gen., Housing, and Military Affairs
H.388	Would simplify the Vermont education funding model and transition from a property-based tax to an income-based tax. Would also create a resident education tax based on the income of all Vermont residents with a rate determined by locally voted budgets.	House Ways and Means
H.400	Would make revisions to Act 250, including changing the Natural Resources Board to a professional board with 3 full-time members who will hear major permit applications; changing the permit appeals path by sending appeals straight to the Supreme Court; adding a pre-application scoping process for large projects; creating an enhanced designation process for village centers; exempting development and subdivisions located within designated downtowns, enhanced village centers, and neighborhood development areas from Act 250; and allowing the NRB to release projects from Act 250 jurisdiction if the property would no longer trigger Act 250 jurisdiction.	House Nat. Resources, Fish, and Wildlife
H.401	Would promote racial and social equity in Vermont through multiple provisions relating to education, employment, housing, law enforcement, and judicial practice and procedure.	House Gen., Housing, and Military Affairs
H.404	Would allow an early or absentee voter to correct certain defects in the voter's early voter absentee ballot.	House Government Operations
H.405	Would authorize and fund three positions within the Human Rights Commission and require that all state agencies and departments collect certain data and adopt strategies to address disparities.	House Gen., Housing, and Military Affairs
H.406	Would promote racial and social equity in economic opportunity and cultural empowerment.	House Gen., Housing, and Military Affairs
H.408	Would require every meeting of a public body to be viewable by electronic means from the time the first member arrives for the meeting, and any executive session held by a public body to be recorded, preserved, and subject to Vermont's Public Records Act.	House Government Operations
H.413	Would require the secretary of Education to update the school facilities standards, direct the secretary to conduct a school facilities conditions analysis, create a new - school construction spending program, and amend the excess spending calculation in relation to school construction spending.	House Education
H.414	Would require reduced cannabis establishment license fees for social equity applicants; establish the Cannabis Business Development Fund to provide low-interest rate loans and grants to social equity applicants to pay for necessary expenses to start and operate a licensed cannabis establishment; establish the Community Social Equity Program; and permit existing licensed cannabis dispensaries to begin selling cannabis and cannabis products in the fall of 2021 after paying social equity program support fees.	House Government Operations
H.424	Would clarify the requirements for a property to be eligible for the public, pious, or charitable use exemption from property tax; provide for a uniform, statewide process to determine eligibility as a public, pious, or charitable use property and appeal those determinations at the state level.	House Ways and Means
H.425	Would create a local revenue distribution working group including a representative from VLCT, to study and propose a new structure for the state to distribute revenues to municipalities, taking into account the abilities of towns and cities to raise funds locally, any existing local option taxes, the municipal grand list, and the local tax rates.	House Ways and Means
H.427	Would add two new positions – one policy and research analyst and one outreach and education coordinator – to 3 V.S.A. chapter 68 to support the work of the Executive Director of Racial Equity to mitigate systemic racism in all branches of state government, and appropriate \$1,250,000 to fund the positions and establish the technology infrastructure to support the statewide collection and management of racially disaggregated data. Would also establish the State Racial Equity.	House Government Operations

BILL NUMBER	BILL SUMMARY	CURRENT LOCATION
S.96	Would create a study committee to propose an entity that would coordinate state, regional, and local planning.	Senate Government Operations
S.101	Would promote housing opportunity in smart growth areas, including updating and increasing funding to the Municipal and Regional Planning Fund program to allow grants for municipalities modernizing bylaws to increase housing choice; extending the Downtown and Village Center Tax Credit Program to neighborhood development areas and raising the cap on the amount of tax credits available; training developers to navigate the permitting process; and removing the requirement for state water or wastewater permits where the municipality has issued a permit.	Senate Economic Development, Housing and General Affairs
S.102	Would require the Agency of Agriculture, Food and Markets to regulate compost foraging as farming; amend definitions of “farming” under Act 250 and the Required Agricultural Practices to include compost foraging; and require the distributor of animal health products, feed supplements, biostimulants, soil amendments, and plant amendments sold or distributed in the state to register the products with the agency.	Senate Natural Resources and Energy
S.108	Would establish the Bureau of Racial Justice Statistics and the Bureau of Racial Justice Statistics Advisory Panel to collect and analyze criminal justice data in order to identify and address racial bias in the criminal justice system.	Senate Judiciary
S.110	Would permit individuals to continue receiving Pandemic Emergency Unemployment Compensation benefits if they are otherwise eligible to establish a new unemployment insurance benefit year, but doing so would result in a reduction of at least \$25 in the amount of weekly benefits.	Senate Economic Development, Housing and General Affairs
S.111	Would allow any Vermont municipality to assess any of the following: a 1% sales tax, a 1% meals and alcoholic beverages tax, a 1%t rooms tax.	Senate Finance
S.112	Would make revisions to Act 250, including changing the Natural Resources Board to a professional board with three full-time members who will hear major permit applications; send permit appeals straight to the Supreme Court; creating an enhanced designation process for village centers; and exempting development and subdivisions located within designated downtowns, enhanced village centers, and neighborhood development.	Senate Natural Resources and Energy
S.113	Would establish a cause of action for the remedy of medical monitoring for a person who is exposed to a proven toxic substance; would provide that a person is liable for abating a release or threatened release of hazardous material and the costs of investigation, removal, and remedial actions incurred by the state if the person manufactured a hazardous material for commercial sale and should have known that the material presented a threat of harm to human health or the natural environment.	Senate Judiciary
S.115	Would make miscellaneous changes in education laws, establish a Working Group on the Status of Libraries in Vermont.	Senate Appropriations
S.117	Would extend until March 31, 2022, provisions of Acts 91 and 140 of 2020 allowing for health care-related regulatory flexibility during and after the COVID-19 pandemic.	Senate Health and Welfare
S.118	Would reconstitute the Vermont Telecommunications Authority to coordinate and implement a new approach to innovative strategies address challenges to maintaining a robust, modern telecommunications network in Vermont accessible by all.	Senate Finance
S.119	Would create a community energy program to encourage renewable electric generation.	Senate Natural Resources and Energy
S.120	Would establish the Joint Legislative Health Care Affordability Study Committee to explore opportunities to make health care more affordable.	Senate Health and Welfare