

# WEEKLY LEGISLATIVE REPORT



VERMONT LEAGUE  
OF CITIES & TOWNS

## Inside This Issue

- 1 Looking Ahead to a Socially Distanced Session
- 2 Town Meeting 2021
- 3 Equity, Inclusion, and Social Justice at the Local Level
- 4 The Vermont Budget – What it Means for Local Governments
- 8 Public Safety
- 10 Cannabis
- 11 Transportation Issues
- 12 Self-Governance in 2021: Thriving Municipalities in Post-COVID Vermont

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## Looking Ahead to a Socially Distanced Session

The pandemic-centered general election is way behind us. In Vermont, there was no controversy surrounding re-election of Governor Scott, who garnered 68.8 percent of the vote, a significant mandate. That is a good thing as he and his administration continue to use science and a calm demeanor to guide us through the COVID-19 crisis. While much will be different in the 2021 legislative session, a lot will mirror the past. Leadership in both the House and Senate will change, but committee chairs – and, therefore, both their priorities and perspective on issues important to local officials – are likely to remain similar to those of the previous biennium.

At least in the first few months, the session will continue to be conducted remotely. One important advantage of this practice is that anyone can watch committee meetings or legislative action from the safety of their home (or public WiFi location, if your personal internet remains inadequate). Committee meetings and House and Senate action are streamed live via Zoom video conferencing and posted on YouTube, where you can watch either live or later. You will find the hyperlink to the meetings on the top of each committee's agenda webpage on the legislature's easy-to-navigate website, <https://legislature.vermont.gov/>. You can also watch House and Senate "floor action," and the links to those meetings are on the respective chamber's home page.

The next biennium does not lack for monumental issues that concern local government. During the pandemic, the administration and legislators have relied heavily on local governments to inform individuals and businesses about the required actions to protect Vermonters, which are driven by scientific data. And local officials continue to deliver a significantly reimagined and broad array of services to all while keeping core municipal functions operating in a remote and changeable environment. These services include managing volunteers, hosting food distribution sites, providing after-school hubs and COVID-19 test sites, distributing masks, and helping downtown businesses adapt to socially distanced business models, as well as road maintenance, water and wastewater facility operation, keeping town clerk offices open, elections and land records, zoning permits, libraries, open meetings and public safety. Truly, local officials are on the front lines, and Vermonters are thankful for that.

Vermont is a Dillon’s Rule state. That means that local governments may only do those things that the legislature –and this year’s emergency executive orders – specifically allow them to do. In 2020 – as Vermont shut down, and then carefully re-opened by innovating in almost every aspect of daily life – it was more evident than ever how constraining legislative authority over local government could be. Yet clearly the state cannot do everything alone. Especially during this pandemic, the state needs to unleash the creativity and innovative energy of local officials to implement reimagined solutions for the many problems the coronavirus continues to deliver. Local democracy has always been important across the country and is consistently touted in Vermont’s narrative of town meeting and local control. However, the ability of local officials to meet the needs of their communities in today’s restrictive climate is insufficient. At the beginning of the 2021 session, a bill to provide options for towns that hold town meetings will be introduced and, presumably, promptly passed.

Budgets and funding concerns will dominate conversations this year. The total Vermont budget for FY21 (current fiscal year) is \$7.19 billion, \$1.25 billion of which is from Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Fund (CRF) dollars and \$4.8 billion in pandemic payments to Vermont overall. In the current fiscal year, fully 42 percent of the state budget is from federal funds – it’s usually 30 percent in an ordinary year. General Fund, Transportation Fund and Education Fund revenues all exceed targeted amounts so far in the current fiscal year. Of particular note, property transfer tax revenues through November are *62 percent above their target*.

Meanwhile, 46 percent of all COVID-19 cases in Vermont were reported in November, there is as yet no further stimulus package from Congress, the estimated increase in education property taxes is **nine percent**, and current fiscal forecasts project unmet budget pressures for FY22 in the range of \$180 to \$200 million. Both towns and school districts will need to tighten their belts for yet another year if Vermont has any hope of remaining affordable to its citizens.

That means that your Advocacy staff will have to work harder than ever to ensure that municipalities have the flexibility to meet the challenges of the pandemic and its aftermath. We will focus our efforts on securing the flexibility you need to make decisions that help your residents navigate and recover from the pandemic, and funding to ensure that you are able to continue providing the services they expect. That said, we will need your help. Please:

- join our bi-weekly Zoom meetings;
- read our Legislative Report each Friday; and
- contact your legislators regularly with your concerns!

Thank you for all you do in your cities, towns, and villages!

## Town Meeting 2021

During the last week of the 2020 legislative session, the legislature passed and the governor signed [Act 162](#) with an eye towards Town Meeting Day 2021. The act permits a municipality to apply the Australian ballot system to any municipal meeting held in the year 2021 by vote of its legislative body. It also eliminates requiring a person to collect voter signatures in order to have his or her name placed on the ballot as a candidate for a local election held at a 2021 municipal meeting. These two provisions are

certainly helpful as towns prepare for town meeting, however towns have identified several temporary adjustments to statutory requirements that are also necessary to comply with the governor's COVID-19 Executive Order and social distancing measures.

Over the past two months, several legislative committees, the secretary of state, local officials, and VLCT have participated in discussions of potential legislation to facilitate town meeting 2021. The chairs of the House and Senate Government Operations committees promised to prioritize a bill that will specifically address Vermont's version of "direct democracy practiced in its purest form." In addition to allowing legislative bodies to permit Australian ballot voting if they so choose, the legislature will enable towns to mail out ballots to voters. The state enjoyed great success with a similar measure during the November general elections, and the secretary of state hopes that mailing ballots to all local voters for their annual town meetings will achieve the same success. The governor is working to include funding for mailing of town meeting ballots to registered voters.

The legislature also promises to authorize legislative bodies to move Town Meeting Day to a date later in the 2021 calendar year. Some communities may want to hold their town meeting outdoors when weather is more favorable to accommodate socially distant outdoor gatherings. This may also allow time the COVID-19 vaccine to be distributed within local communities ahead of town meeting.

Neither the secretary of state nor the legislative committees were sympathetic to requests from several towns that wanted authorization to hold town meetings remotely. The secretary of state worried that internet and broadband deficiencies across the state would limit participation from voters. They were also concerned that managing the technology by voters would similarly limit or even prevent participation, and it would be very difficult for town officials to verify voters and votes throughout the meeting. Due to these concerns, the legislature will not pursue this enabling authority for towns. However, the public bodies of towns (such as selectboards) may still hold remote meetings, which will allow pre-town meeting information meetings, because no binding action will occur at them.

The House and Senate Government Operations committees also discussed the option of eliminating the requirement for signatures on items petitioned to be placed on the ballot. They agreed that local legislative bodies already have the authority to waive signature requirements. Committee members also considered allowing electronic signatures on petitioned ballot items, but they ultimately decided that there are enough questions about how that would happen and how signatures would be certified, that putting a system in place before the deadlines for petitioned items would be a very heavy lift.

The legislature promised to prioritize this legislation and a bill will start in the House Government Operations Committee. We expect that a bill will be passed and forwarded to the governor for signature by the third week of January.

## **Equity, Inclusion, and Social Justice at the Local Level**

Following the killing of George Floyd in Minneapolis in May and the nationwide protests that followed, Vermont legislators discussed at length the issues of equity, inclusion, and social justice throughout Vermont's history as well as in the present day. Much (but by no means all) of the legislative work centered around reforms to law enforcement. Bills addressing public safety included Act 41, passed in

2019, as well as Acts 147, 165, and 166 of the 2020 session. Indicative of the breadth of discussion is H.R. 21, passed by the House in June, which called out the killings of African Americans, the higher rate of COVID-19 infections by Vermonters of color, and the 155<sup>th</sup> anniversary of Juneteenth, the holiday that commemorates the end of slavery in the United States. The next legislative session will feature the introduction of many bills that seek to acknowledge and remedy the wrongs of Vermont's collective history.

Last June, the governor established the Racial Equity Taskforce with his Executive Order 02-20. That twelve-member taskforce, chaired by Xusana Davis, Vermont's Executive Director of Racial Equity, issued its first report on September 1. The report highlighted sectors of life and governance in Vermont that can perpetuate or inadequately mitigate racial inequity. The report will inform legislative and administration work in the new year.

As with so many pressing issues, addressing social justice and inclusion plays out both at the local government level and on the town green. Local officials recognize that there is much long-term work to do if we are to effect real systemic change and ensure that cities, towns, and villages are welcoming communities to Black, Indigenous, and People of Color (BIPOC).

The VLCT Board of Directors adopted an Equity and Racial Justice Statement, updated in November, that commits to "being more visible, vocal and supportive in efforts to ensure equity and racial justice and to directly address systemic and overt racism and implicit bias." The board also established an Equity Committee, and is looking for local officials who are interested in serving on that committee. Similar commitment to addressing equity and social justice are underway in many cities and towns around the state, including in Putney, Brattleboro, Burlington and Winooski.

"We are hoping to include a diverse set of volunteers for the committee to better inform the discussion," wrote VLCT's Executive Director Maura Carroll, "and will be reaching out to a broad audience during the course of the committee's work to assist us in offering resources, lived experience, and tools to VLCT members on issues of equity and inclusion."

There is much to be done at both the state and local levels of government, and this work may only be accomplished in a true partnership and shared goal of realizing an equitable, inclusive and just society for all.

#### Resources

- [House Resolution H.R. 21](#)
- [VLCT Equity and Racial Justice Statement](#)
- [Governor Scott's Executive Order 02-20](#)
- [Racial Equity Taskforce Report](#)

## **The Vermont Budget – What it Means for Local Governments**

**State Budgets in the COVID-19 Era.** Budgets in FY20 and 21 have been completely defined by the COVID-19 pandemic and state government's efforts to manage the fallout on Vermonters. The topics of finances and affordability will shadow every conversation that takes place in the State House (or its virtual counterpart) this year. The governor, legislature, and local officials all agree that Congress must provide additional aid to help the state and its residents survive the pandemic and emerge on the other side with a functioning economy.

The total Vermont budget for FY21, the current fiscal year, is \$7.19 billion. That figure includes \$4.8 billion in federal funds, or 42 percent of the total budget. By way of comparison, the FY19 budget, which exemplifies what revenues look like in an ordinary (non-pandemic) fiscal year, was \$5.86 billion, of which 34.2 percent was from federal funds.

Beyond the infusion of a lot of federal money to Vermont, the FY21 state budget, generally speaking, comprises the following. (Note that total appropriations to education and transportation include more than the dollars in the dedicated Education and Transportation funds.)

General Fund.....	\$1.7 billion
Education Fund.....	\$1.8 billion
(Education property tax = \$1.37 billion of total Ed. Fund)	
(Total education other than higher education = \$2.1 billion)	
Transportation Fund and Transportation Infrastructure Bonds .....	\$0.3 billion
(Total Transportation funding = \$0.6 billion)	

**FY 2021 APPROPRIATIONS AS PASSED (UNDUPLICATED)  
\$7.2 Billion ALL FUNDS**

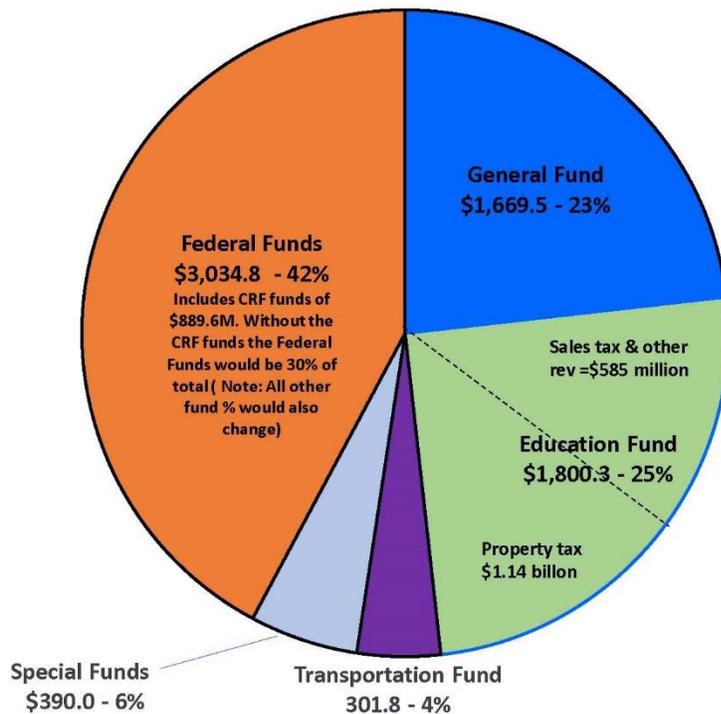


Chart courtesy of the Joint Fiscal Office

In the current fiscal year, which began on July 1, General Fund revenues are \$71 million ahead of projections, although projections are very conservative due to the uncertainty over the long-term effect of the pandemic on tax and fee collections. Transportation Fund revenues are \$7.6 million ahead of projections – which, incidentally, more than covers the extra \$7 million supplemental Town Highway Aid that was appropriated this year. The Education Fund – which includes sales tax, one quarter of meals

and rooms taxes and one third of purchase and use taxes in addition to education property taxes – is \$31.6 million ahead of projections.

Estimates of the total Vermont budget do not include municipal property taxes. On the one hand, that omission is appropriate, as municipalities are separate governmental entities whose voters adopt the municipal budget. However, ignoring municipal property taxes gives an incomplete picture both of the total burden of taxpayers in Vermont and the state's significant over-reliance on the property tax. The property tax is the *sole* tax revenue source for all but those fifteen cities and towns that have adopted local option taxes. In 2019 and 2020, the total budgets for Vermont's 246 cities and towns equaled \$802,311,877.

**Coronavirus Aid, Relief, and Economic Security (CARES) Act and Coronavirus Relief Fund (CRF).** The legislature appropriated \$2 million from CRF dollars to municipalities to digitize their municipal records grants and \$13 million for Local Government Expense Reimbursement (LGER) grants to address COVID-19-related costs. On December 9, the administration reported that \$2.98 million in digitization grants and \$10.4 million in LGER grants had been disbursed. Under current federal requirements, *all* CRF money must be spent by December 30. Any unallocated dollars need to be returned to the federal government.

In addition to many other appropriations, the legislature allocated:

- \$18 million to pre-K-12 education to address air quality in schools;
- \$1.2 million for independent schools;
- \$6.2 million for child nutrition summer food and equipment; and
- \$78 million for Local Education Agency grants.

Another \$31 million was allocated directly from the federal government to K-12 education to address their pivot to remote learning because of COVID-19.

In total, \$1.25 billion was available in federal CRF dollars that must be spent by December 30. The amount of federal money provided to Vermont to address the pandemic (including CRF dollars) equaled \$4.1 billion.

**Funding to Municipal Governments.** Each year, the legislature appropriates money for municipal programs that begins to help meet the mandates and obligations that have been imposed over the years, as well as programs, such as Municipal Planning and Better Places grants, that help cities and towns meet goals established by their voters. Those line items include town highway maintenance, special investigative units and community justice, payments in lieu of taxes for state land and buildings in municipalities, elections, broadband deployment, reappraisals and listing properties, public safety, wastewater and water quality loans, and stormwater management. Yet the obligations imposed on local governments far outweigh the funding from state or federal coffers to pay for them, and the discussion continues year after year.

**Education Fund.** Notwithstanding the considerable infusion of federal dollars to address costs attributable to the pandemic, or the additional \$31.6 million over projections in the Education Fund as of November, Tax Commissioner Craig Bolio issued a statutorily-required letter on December 1 that

projected a nine percent increase in education property taxes in the coming fiscal year. “The Governor and Administration do not believe this is a tenable tax increase for Vermonters who are working hard to recover from the pandemic,” wrote Bolio, “nor for the Vermont economy which continues to struggle due to the pandemic-related disruption.”

In addition to the multitude of systemic issues with the Education Fund’s structure that the commissioner raised in his letter and the projected property tax increase, more potentially disruptive challenges are on the horizon. The 2019 Pupil Weighting Factors Report recommends a revamping of the way pupils are counted for purposes of distributing pre-K-12 education dollars. Further, it faults the current system for being outdated and failing to equalize education costs and decreasing the opportunities to learn for students across the state. Implementing a new pupil weighting system will mean significant shifts in funding for many school districts.

The COVID-19 pandemic is causing significant shifts in property values. For example, residential property values shot up in much of the state this year as people from all over the country bought homes in the relative safety of Vermont. At the same time, small retail, theater, and office space property values tanked. Depending upon the types of real estate in a particular community and the duration of the COVID-19 economy, the grand list is likely to quickly fall out of compliance with the statutory requirement to be within 15 percent of fair market value, based on sales over the prior three years. (The Tax Department’s annual equalization study establishes how far from “fair market value” municipal grand list values are and a Common Level of Appraisal that corrects for the disparity in each town.) Big changes in values in the short term are likely to result in significant and sudden education property tax increases for certain categories of property, and a requirement to re-appraise, even if a re-appraisal was recently completed.

The three-member Tax Structure Commission was created in 2018 to analyze Vermont’s revenue system, recommend improvements, and provide a long-term vision for Vermont’s tax structure. Its goal was to have “a tax system that provides, sustainability, appropriateness and equity.” The commissioners and their Joint Fiscal Office staff have done a tremendous amount of work, and their report is due to the legislature on January 15. Among the recommendations related to education taxes under consideration are:

- to use income to measure taxpayer equity and progressively tax residents for education;
- to establish an ongoing Education Tax Advisory Committee to monitor the system and make annual recommendations to the legislature; and
- to develop a program to appraise large and complicated property and to defend those appraisals.

The Department of Taxes is directed to submit a report by February 1, 2021, on the feasibility of moving billing and collection of education property taxes to the department, a move that the VLCT membership endorses in the 2021-2022 Municipal Policy.

The overall budget picture will become clearer, if not more favorable, in January when the legislature convenes, committees are assigned, and members begin work. Rest assured that we will keep you apprised of their activities.

## Resources

- [Monthly Revenue Target Tracking](#)
- [Commissioner of Taxes Education Property Tax Letter](#)
- [Pupil Weighting Factor Report](#)
- [VLCT Letter to House Appropriations indicating municipal operating budget totals and requesting aid](#)

## Public Safety

Legislation passed in 2020 made major changes to how public safety entities operate and provide services to Vermonters. The biggest changes focused on law enforcement, an issue that will continue to take center stage in 2021. Act 166, passed in October, guarantees this because a large portion of the act focused on a variety of entities reporting to the legislature on progress made and potential recommendations for further legislative action. Many progress reports are due to the legislature by January 15, including the following:

### **Vermont Criminal Justice Council** (formally the Vermont Criminal Justice Training Council).

1. Verbal report on a plan to replace some of its overnight law enforcement training requirements at the Police and Fire Academy with non-overnight training, training in other areas of the state, and training by remote means.
2. Verbal report on changes in the structure of its programs to enable a law enforcement officer to transition from Level II to Level III certification.
3. Specific resources the VCJC needs to operate as set forth in law, including resources to implement the provisions of Act 166. VCJC must specify in detail any additional appropriations or positions it needs to fully operate and provide a narrative to explain the basis for those needs.
4. Report to determine if the VCJC should be reestablished within a state agency or other oversight entity and if there should be more flexibility in the residential and field training requirements, including the potential for experiential learnings to satisfy some aspects of basic training.

### **Law Enforcement Advisory Board.**

- Progress report and recommendations for universal standards for interviewing and hiring new law enforcement officers to identify desirable and undesirable applicant qualities.
- Report on changes it deems necessary to the Model Body Worn Camera Policy established in 2016.
- Recommendations for ways that towns can increase access to law enforcement services.

### **Office of Attorney General.**

- In consultation with various interested parties, recommend one or more models for civilian oversight of law enforcement.
- Identification of a central point for reporting allegations of law enforcement officer misconduct, which may be the VCJC or another entity, and how those allegations should be handled.

### **Department of Public Safety.**

- Report on the possibility of a statewide group purchasing contract for law enforcement body cameras and central storage locations, and its recommended structure and operation.

Several progress reports are due to the legislature by March 15.

### **Department of Public Safety.**

- Recommendation of an equitable dispatch fee structure for DPS to charge for dispatching emergency medical service, police, and fire services, and potential funding mechanisms that do not rely on property taxes. If DPS decides to overrule substantial arguments and considerations raised against these recommended funding mechanisms, the department must include a description of those considerations.

### **Vermont Criminal Justice Council** (after consulting with affected organizations and individuals).

- Verbal report on the review of law enforcement applicants' current written, oral, and psychological examinations for cultural sensitivities and overall appropriateness.
- Verbal report of the review of the current requirement for basic and annual in-service training to determine whether appropriate training is provided in areas of cultural awareness, implicit bias, de-escalation, and recognition of and appropriately responding to individuals with a mental health condition or psychiatric disability, and whether that training is embedded into training on other policing policies such as traffic stops and searches.
- Recommendation of any amendments to statutorily required training that may not be necessary for all officers.
- Review of public access to records related to allegations of law enforcement officer misconduct and substantiations of those allegations in order to recommend any changes to current practice.
- Recommendation of specific policies for responding to public records requests for body camera footage, including timelines to respond, how and what footage should be redacted, length or footage retention, and storage.
- Recommendation of a statewide policy on law enforcement officers' acquisition of military equipment.
- In light of the moratorium enacted in Act 166, recommendation on a statewide policy on law enforcement officers' acquisition and use of facial recognition technology.

Because these are largely progress reports, the agencies and organizations will have time to flesh out their final recommendations. It is likely, however, that information in the reports will cause the legislature to adjust some of the work and reporting requirements. That information may lead to the introduction of additional legislation and, given the wide array of topics, it is hard to know now what they may be. That said, the magnitude of work these reports require is staggering, in addition to the fact that the individuals who worked on them have had to perform their regular duties. How will legislators respond when they begin to understand the Herculean tasks they've assigned to these parties, all of which are under-resourced, stretched thin, and given too little time to perform thoughtful, inclusive and informed work?

Although the VCJC and DPS will report to the legislature on resources they need to perform the functions set forth in legislation, other agencies, organizations, and entities were also included in these resource assessments. Hopefully, the legislature will quickly see that it takes time and resources to deliver a quality product, and that it will largely depend on how appropriately the legislature funds the mandates.

It is important to note that many of the objectives the legislature addresses align closely with both VLCT's Legislative Policy and with our Board of Directors' perspectives on police reform. As you may recall, the board's adopted perspective addresses an array of measures that reflect the values of diversity, equity, and inclusion designed to inspire public confidence in municipal police departments. In short, the board urges VLCT members to adopt the principles and practice of 21<sup>st</sup> Century Policing and that state and local governments accomplish the following:

1. Hire the right person for each community.
2. Foster resident involvement and preserve direct selectboard or city council oversight of local police departments.
3. Transform training and certification requirements and opportunities for police officers.
4. Create a Vermont-based law enforcement accreditation process and encourage voluntary accreditation of law enforcement agencies.
5. Increase reporting, data sharing, and experience sharing.
6. Invest in transparency and accountability.
7. Hold officers accountable and preserve qualified immunity.

Details of the board's Perspectives on Police Reform can be found on [VLCT's website](#).

## Cannabis

Last session, the legislature passed a taxed and regulated cannabis system after years of exploring the option. Act 164 (S.54) outlined the ins and outs of getting the structure of a system up and running, but like any new, highly regulated industry, it is only in the beginning stages of implementation. Other states have also shown that legislative and rule changes related to a cannabis system are necessary in the years that proceed the initial enabling legislation. The Vermont Legislature will certainly continue to address cannabis this year, both to implement provisions of the act, and to address potential changes to the legislation.

The Cannabis Control Board Nominating Committee, comprising legislators and members of the executive branch, is in the process of selecting candidates for the three-person Cannabis Control Board. The governor must appoint members to that board by January 8, 2021, and the Senate must confirm those appointments by January 15. The board, once formed, has a relatively tight timeline to adhering to implementing the act and making any recommendations to the legislature.

By April 1, 2021, the board's executive director must recommend to the legislature any resources the board will need for the years 2022 and 2023 to implement the act, which will include salaries for the board members. The director will also recommend the amounts of all state and local fees and whether monies expected are sufficient to support the board's statutory duties. In coordination with certain state agencies, the director will also recommend exemptions, specific criteria, or additional requirements under state and local environmental or land use laws, energy or efficiency requirements and cannabis advertising for cannabis establishments. These issues directly affect municipalities, and, unless a municipal official is on the board, there is no guarantee local governments will have any input on these recommendations. An advisory committee will have one municipal official appointed by the state treasurer, however that committee may not be created because appointments must be made by May 1, 2021 – one month *after* these recommendations are due to the legislature.

VLCT is aware that the 2021 session will see a bill introduced to establish a local cannabis tax. Under current law, local governments will receive no revenue from sales *unless* they have a local option sales tax. The fees proposed in Act 164 are not meant to create revenue for local governments – except to “help defray the costs incurred by municipalities” – while the state pockets any excess revenue and deposits it into the General Fund. VLCT strongly supports proposals that implement a local cannabis tax – not just the state established fees. We also support proposals that provide more input from municipal officials in the implementation of the legislation as it affects local governments.

As voters begin to weigh in on hosting retail establishments, and as all types of cannabis operations go live in the next one to two years in towns and cities across the state, local government input and access to tax revenue will be a high priority for municipalities.

## Transportation Issues

Next session, the overarching theme of budgetary constraints and fiscal uncertainty in the state will expand to transportation funding for municipalities. Local governments will continue to vie for increased funding, resources, and support from the state to support municipal transportation needs, but the pandemic has created such financial upheaval that, despite a current uptick in Transportation Fund revenues, where the Agency of Transportation (VTrans), the administration and the legislature land on a final budget is anyone's guess. That said, we can look to both state and federal actions as well as financial outlooks to shed some light on the current and near-future status of transportation funding.

On October 1, President Trump signed a continuing resolution that funds all federal government programs through December 11, 2021, including a one-year extension of the FAST (Fixing America's Surface Transportation) Act. The extension includes an additional \$13.6 billion to maintain the federal Highway Trust Fund's solvency at its current funding levels through FY21: \$47.1 billion for highway programs and \$12.3 billion for transit programs. Congress was unable to pass a comprehensive FAST Act reauthorization, and with the act set to expire on September 30, 2020, a one-year extension of the act was the best option. We won't know until the Vermont Legislature convenes and VTrans presents its budget in January how that extension will affect state FY21 or FY22 funding levels to the state from the federal government, and what that may mean for local governments.

You may remember that last June, the legislature anticipated shortfalls in the state Transportation Fund to be \$40 million in FY20 and \$43 million in FY21. Since then, transportation revenues have been unpredictable and have fluctuated month-to-month, making forecast projections difficult for state fiscal analysts. In June, Transportation Fund revenues were \$1,893,517, or 6.3 percent below January's forecast. FY20 ended with a \$20,389,542 shortfall (7.2 percent below the January forecast), which is half of the estimated \$40 million shortfall that was anticipated in the COVID-19 "worst-case" estimate. The twelve-month rolling sum of Transportation Infrastructure Bond (TIB) revenues was 11.8 percent below the year prior, and the final FY20 TIB revenues were down \$1,042,919.

As of November, state Transportation Fund revenues continue to track down when compared to previous years' trends, but they have performed better than August forecasts that took into account the impacts from the pandemic. November Transportation Fund revenues were \$.2.3 million (12.3 percent) about the August forecast, putting the Transportation Fund \$7.55 million (7.1 percent) above the cumulative forecast targets. Most of this strength is attributed to increased Purchase and Use tax receipts of \$1.3 million (27.9 percent) above their November target, as well as Motor Vehicle fees that were \$737,838 (13.2 percent) above their November target. The Purchase and Use tax is currently running \$5.9 million (20.7 percent) above the cumulative forecast target. Gas and diesel tax revenues were a combined \$333,000 above target for the month and are \$775,000 above target for the year. November TIB revenues were down \$80,176, which was 7.6 percent below the August forecast. Currently, the TIB Fund is down \$337,780, or 6 percent below the cumulative forecast target.

The one-year extension of the federal FAST Act coupled with the downward trending state revenues paint a relatively gloomy picture for FY21 transportation finances, however it looks like it won't be the worst case scenario. Municipalities may be level-funded in FY21, however there is a likelihood that VTrans' recommended funding levels for municipal town highway programs will go down. Readers should recall that VTrans recommended an additional \$7 million in Town Highway Aid in the current year, a recommendation that the legislature agreed with and adopted in the state budget. The rationale included the expectation that additional funding through Town Highway Aid would help towns keep people employed through the pandemic. VLCT Advocacy staff will work with VTrans and the legislature to advocate that as much FY21 funding as possible be shifted towards the Town Highway Aid Program because it is the most direct and unencumbered funding that towns receive. With towns, cities, and

villages across the state buckling down on local budgets, this aid will be the most valuable funding most municipalities can get.

During this upcoming session, Please contact [gzakov@vlct.org](mailto:gzakov@vlct.org) if you have specific questions related to transportation policy and funding.

### Resources

- [Monthly Revenue Tracking Transportation Fund](#)

## Self-Governance in 2021: Thriving Municipalities in Post-COVID Vermont

*“In a society in which people are becoming increasingly alienated from the political process, local government remains the most realistic opportunity for participation, but you can’t create that if a city has no power” – Hon. Bernie Sanders, Mayor of Burlington, Vt., New York Times, November 1, 1987.*

In Vermont, there has long been an often contentious relationship between the state and local governments. As has been amply demonstrated during the COVID-19 pandemic, we rely on the customs of the past to carry us into the future at our peril. The pandemic has also shown the ability of local governments to quickly adapt so as to provide new services to residents and businesses in need and, further, to provide those services in a just and inclusive manner that addresses the inequities of the past.

As 2021 dawns and more than half of Vermont’s population resides in cities and towns where voters have approved charters governing themselves and the legislature has agreed to their provisions, it is high time to accord municipalities – and, more importantly, the voters – a measure of self-governance.

**Dillon’s Rule –A Bit of History.** John Forrest Dillon was a justice of the Iowa Supreme Court from 1864 to 1869. He served a scant two years as Iowa Supreme Court Chief Justice before President Ulysses S. Grant appointed him to the U.S. Circuit Court (the Eighth Circuit) in 1869. In 1868, this obscure justice from a state nowhere near Vermont, authored Dillon’s Rule, which states “municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. ... As it creates so may it destroy. If it may destroy, it may abridge and control.” That flowery language boils down to the concept that towns are creatures of the state, and are enabled to do only those things they are given permission to do. All these years later, that is still the case in Vermont.

Between 1749 and 1764 – well before the first Vermont Constitution was enacted in 1777 – New Hampshire Colonial Governor Benning Wentworth created most of the towns in Vermont. The 1793 Vermont Constitution, which largely continues in effect today, was enacted two years after Vermont was admitted to the union. That’s 55 years before the state of Iowa was admitted to the Union and 75 years before Justice Dillon penned his infamous rule.

**Power in Vermont.** Power in Vermont is held not by town selectboards or city councils but by the state legislature, which is the body that grants authority to local governments, mandates action on their part, and also preempts local governments from acting. Even when the voters in a locality adopt a governance charter provision to address the issues specific to their community, that provision lives or dies at the hand of the legislature. Vermont does not have initiative, referendum, or home rule provisions. It has neither a regular schedule for re-visiting the state Constitution nor a robust tradition of considering constitutional amendments. Essentially, all governance power is lodged in the 180-member legislature and the governor. In most recent elections, many legislators face no opposition, as was the case this year. Thus,

despite its tradition and reputation of direct democracy and robust local control, Vermont has one of the most centralized governments in the country.

**Moving Beyond The Pandemic.** There are effective ways for municipalities to incorporate voter-approved governance changes that solely affect their community and that do not require local officials to request permission from the legislature – permission that may or may not be granted. Those measures have been enacted in many states. In 2019, the Vermont Legislature began that evolution when the Senate passed S.106. The bill would have authorized a self-governance commission to evaluate applications for limited self-governance authority and recommended that a town participate in a state pilot program following both public hearings and approval of a proposal for self-governance authority by a municipality’s voters. The pilot program would have sunset after ten years and an interim performance review would have been conducted after five years.

Arguing on behalf of local governments and the passage of S.106 on the Senate floor in 2019, Senate Government Operations Committee Chair Jeanette White said,

“Local officials focus on building civic infrastructure at the local level—strong, resilient communities with vision and active networks of experts, volunteers and citizens who want their cities and towns to thrive. Our laws in the 21<sup>st</sup> century need to foster the freedom for them to exercise leadership, to develop new, creative and successful solutions to problems particular to themselves. As states are the laboratories of democracy and often lead the federal government, so often are the towns leading the state in innovation—think plastic bags, climate change ballot items, energy and sustainability coordinators and more.”

Regrettably, the House Government Operations Committee did not take the bill up for consideration in either 2019 or in 2020, and it died when the biennium ended. Therefore, an *entirely new bill* will have to be introduced during the 2021-2022 biennium. The House Government Operations Committee did not recognize the importance of the legislation. The committee’s reluctance to prioritize self-governance, even while members ruled on multiple charter amendments and specific provisions to help local governments deal with the fallout from the pandemic, speaks volumes to the House’s lack of support for increased local self-governance and commitment to guarding their power over cities and towns.

In the wake of the COVID-19 pandemic, as municipalities rebuild their economies and support residents in moving past the multiple traumas of 2020, it is time to allow local governments the authority to apply the innovation and resourcefulness that will effect positive change into the future.

- [S.106 as it passed the Senate in 2019](#)

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