LEGISLATIVE WRAP-UP 2021
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Vermont League of Cities and Towns 1 Legislative Wrap-Up 2021
VLCT Public Policy and Advocacy staff represent all 246 cities and towns to the Vermont legislature and administration as well as to the federal government and interest groups. We initiate, track, and promote legislation that provides authority, autonomy, and resources to cities and towns. Member-established policies to implement those priorities can be found in our Municipal Policy. With guidance from the VLCT Board and membership, we ensure that municipal priorities are addressed in the State House, by the executive branch, in studies and rule-making procedures, and in many other policy-making forums.

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July 30, 2021
All Remote, All the Time: The 2021 Legislative Session

To everyone’s relief, the Vermont Legislature’s 2021 session ended on May 21. That’s because everyone in Vermont who follows State House action is by now exhausted from having spent almost one and a half years attending meetings via Zoom video conferencing and watching live-streamed legislative activity on YouTube. The entirely remote sessions from April through October last year and then all this year allowed anyone from anywhere to watch committee meetings in real time. However, viewers were allowed access to only formal meetings of the House and Senate and their committees. Informal discussions, which drive much of the legislature’s agenda, took place behind the Zoom curtain. This reality was frustrating not only for your advocacy staff and the general public but also for legislators themselves, since the strictures of the virtual State House did not allow for informal hallway chats or for making personal connections among new legislators.

Before the gavel fell to end the session, legislators established a June 23 date to return for a veto session to resolve the future of three bills vetoed by the governor. Two of them are charter changes to allow non-citizen voting in local elections in Montpelier and Winooski. We do not recall another instance of a governor vetoing a charter change – and we have fairly long collective memories. Once in session, legislators can take up any bill – and, incidentally, stay around as long as they like. Although we don’t anticipate anyone wanting to stay around longer than necessary, we will be interested to see the fate of a few bills that were left on the table when they adjourned. They include S.79, the rental housing inspection and registry bill, and S.101, a bill to incentivize updating municipal bylaws so as to remove barriers to housing development or redevelopment in smart growth areas.

In case the U.S. Congress passes a federal infrastructure bill, the legislature also voted to allow themselves the option of returning to meet on October 19 in order to appropriate any federal money that might come to Vermont. Otherwise, they will reconvene on January 4, 2022, and do so in person at the State House. What exactly that will look like remains to be seen, but the return to a more normal legislative experience will be welcome.

For now, however, senators and representatives have turned off their video feeds and moved on to enjoying a well-earned summer respite. And that gives us the opportunity to measure the session through the lens of local government; re-connect with you, our readers; research issues that are priorities for local government; assess implementation of legislation including agency rules, summer studies, and disbursement of American Rescue Plan Act (ARPA) dollars; and, as always, do the work to prepare for the next session.

In 2021, the legislature passed 80 bills, 44 of which affect local governments. H.439, the budget bill, which incorporates the provisions of a number of bills that did not pass, is the largest budget ever. The $7.32 billion total includes $599.2 million in ARPA funds. Altogether, Vermont has received $4.75 billion from the four federal stimulus packages: the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Consolidated Appropriations Act 2021, and the American Rescue Plan Act.

While local government endured many frustrations during the session, we also realized some significant successes, which we’ll address in the coming pages. You can also watch committee action – again and again! – on the legislative website, https://legislature.vermont.gov/. You can locate testimony by date, subject, or witness on all of the committee pages.
Remember: Because this is the first year of the biennium, all of the bills that were introduced in 2021 will be “alive” again when the legislature reconvenes in 2022.

And thank you – for your service to local government and for your willingness to contact your legislators and testify when we asked. The last year and a half have been a wild ride, but please know that your voices made a significant difference to legislative discussions: The House Transportation and Senate Government Operations committees this year were especially attentive to acting on municipal issues you described.

MUNICIPAL FINANCE IN THE ERA OF COVID-19

Appropriations – The “Big” Bill (H.439, Act 74)

This year, the appropriations process followed the trend of legislation unlike any previous session. Thus, comparisons between the adopted budget for FY20, the budget adjustment bill (H.138, signed by the governor on March 2), the COVID-19 aid bill (H.315), and H.439 as it was adopted don’t offer an accurate picture of what really happened. The FY20 and FY21 budgets, with all of the intermediary changes, are simply too different from each other. As federal legislation and guidance evolved at the same time the legislature was developing the budget, decisions made in earlier appropriation bills were amended to address the most recent information. Both appropriations committees worked diligently to craft a budget to serve Vermont. That budget, which the governor called “transformational,” complied with all federal legislative and Treasury requirements. Senator Jane Kitchel, chair of the Senate Appropriations Committee, said that H.439 was the most complicated budget her committee had ever put together.

Act 74 is the largest state budget ever passed in Vermont by a considerable margin, appropriating a whopping $7.316 billion. It includes $2.9 billion in American Rescue Plan Act (ARPA) Coronavirus Relief Fund dollars and $2.3 billion in other federal funds. The bill appropriates another $4.4 billion in state funds. During budget negotiations, Governor Phil Scott emphasized the need to pay for one-time programs and projects only with one-time ARPA funds so as to avoid long-term obligations. For the most part, the legislature agreed with that request.

The act defines encumbrances as a portion of an appropriation reserved for the subsequent payment of existing purchase orders or contracts. It defines grants as subsidies, aid, or payments to local governments, community and quasi-public agencies for providing local services and to persons who are not wards of the state for services or supplies and means cash or other direct assistance, including pension contributions. This year, these definitions are especially important to recipients of the funds, including municipalities.

In FY22, if new federal funds including block grants are made available, or if already appropriated federal funds are converted to block grants and the General Assembly is not in session, the governor may accept, allocate, and spend them with the approval of the Joint Fiscal Committee. If federal legislation such as an infrastructure bill is passed while the legislature is not in session, the secretary of administration may spend up to $5 million – a relatively paltry sum in light of federal government largesse during the pandemic – before needing the Joint Fiscal Committee’s approval.

The legislature appropriated $599.2 million in H.439. That amount includes ARPA dollars and other funds as follows:

- $158.7 million from ARPA to help restart the economy and build communities (out of $250 million total funds);
$190 million for housing investments ($250 million total);
$150 million for broadband investments ($250 million total);
$54.5 million to invest in climate action including home weatherization, renewable energy projects for low income, and workforce development ($250 million total);
$120 million for clean water ($225 million total); and
$24 million for tax conformity and administration.

Act 74 appropriates one-time General Fund dollars to support initiatives in other FY22 bills. Among those appropriations, found in Section B.1106, are $500,000 to the Agency of Education for grants to schools to purchase locally produced foods. Added to an $8 million appropriation in S.100 for school meals, that amount should pay for school breakfasts in the next fiscal year.

By June 30, 2022, the General Assembly and administration, in collaboration with the treasurer and interested parties, are directed to develop a long-term plan to address pension and other post-employment benefits for state employees and teachers. By January 15, 2022, the state treasurer is to submit a report to the legislature regarding the feasibility of moving the cost of pension obligations from the Education Fund to local education agencies.

The bill provides $15 million from the Coronavirus Relief Fund to the Department of Public Service in FY21 (the fiscal year ending June 30, 2021) for establishing a program to mitigate utility rate increases, including for municipal public water supply or wastewater treatment facilities that were subject to the Temporary Moratorium on Disconnections from Public Drinking Water and Wastewater Systems imposed by last year’s Act 92.

Get ready for fee increases. The legislation directs the commissioner of finance and management to identify statutory fees in the areas of public health, natural resources, and transportation that generate receipts in excess of $1 million per fiscal year and have not been changed in two or more years, and then to report what the inflationary change would be. That report, due to the legislature by January 15, 2022, is to include proposals to increase any fee which does not cover the cost of providing the service, product, or regulatory function.

Fifteen thousand dollars from the existing Current Use Administration Special Fund is directed to programming changes to the Computer Assisted Property Tax Administration Program (CAPTAP) software used by municipalities for establishing property values and administering grand lists.

For some unknown reason, the bill amends the authority of the state auditor to conduct performance audits of all tax increment financing (TIF) districts by removing the auditor’s obligation to consult with the Vermont Economic Progress Council (VEPC) regarding a schedule. VEPC is the state body that oversees municipal TIF districts.

Of the $3.3 million appropriated to the Department of Taxes for reappraisal and listing, $70,000 is added to previously appropriated funds to pay expenses incurred by either the department or towns in defending grand list appeals of the hydroelectric plants and property owned by Great River Hydro.

The Agency of Administration is directed to review the funding of the Enhanced 911 Special Fund and recommend changes to ensure long-term stability of the E-911 Board’s operation. A report, due to the legislature by January, is to include recommendations on both the capacity of the Universal Service Fund as a long-term funding mechanism and on the structure of the E-911 program.
Up to $4.5 million is set aside to test for polychlorinated biphenyls (PCBs) in both public and recognized independent schools constructed before 1980. The tests must be completed by July 1, 2024.

The Speaker of the House and President Pro Tempore of the Senate are to launch a community engagement process to solicit Vermonters’ priorities for investing federal funds in the future of Vermont.

Act 74 provides $11 million to the Agency of Commerce and Community Development (ACCD) for brownfield revitalization, of which $1 million is appropriated to regional commissions to undertake brownfield assessments. ACCD also receives $20 million for economic recovery grants and $10.5 million for priority capital projects.

ACCD receives another $2,320,000 for Working Community Challenge Grants and $2.5 million:
• for technical assistance to municipalities on accessory dwelling and small lot development and bylaw modernization ($650,000)
• for grants of $75,000 to each regional commission for increased workload from the pandemic ($850,000); and
• to regional commissions to provide energy planning services to municipalities ($1 million).

Regional commissions will also receive $2,924,471 from the property transfer tax-supported Municipal and Regional Planning Fund and $300,000 from the General Fund to help towns implement ARPA projects. In all, these sections of the budget appropriate $6,074,471 to regional commissions.

VLCT will receive $650,000 from the General Fund to house the ARPA Coordination and Assistance Program.

ARPA appropriates $100 million for clean water and sewer investments, including:
• $10 million for stormwater retrofits, including grants to address stormwater runoff from municipal roads;
• $10 million for wastewater and pre-treatment activities;
• $10 million to reduce wet weather sewer overflows;
• $5 million to improve water and wastewater systems in residences;
• $10 million for allocation by the Clean Water Board for water supply, sewer, and stormwater projects, including dam safety improvements and combined sewer overflow (CSO) abatement;
• $50 million for allocation by the Clean Water Board and Department of Environmental Conservation in FY23 and FY24 for water supply, sewer, stormwater, dam safety, and CSO abatement;
• $5 million to improve landscape resilience and mitigate flood hazards.

Another $5 million from the General Fund is for reducing risks to public safety and the environment from state-owned dams. The bill also sets aside $15 million to offset any needed water and sewer capital projects in FY22 and FY23.

As of mid-June, the U.S. Treasury has still not made a final decision about how $121 million in ARPA county aid will be distributed. Treasury last said that counties in Vermont are units of general local government, and county dollars will be distributed to counties. The budget bill specifies that if Treasury determines that those funds will be distributed to counties, then no county may use any of the ARPA funds until the secretary of administration has reviewed and approved each proposed expenditure as an eligible use in accordance with federal law and related guidance. Also, if a county transfers any of its allocation to the state, those funds are to be held for appropriation by the General Assembly in the FY22 budget adjustment process.
In addition to the ARPA funds, Act 74 establishes the Better Places pilot program, which will use crowdfunding to spark community revitalization through projects that create, activate, or revitalize public spaces. Grants will range from $5,000 to $40,000, and an applicant will have to provide at least a third of the grant award through crowdfunding. The program is funded with $1.5 million from ACCD. Reports on the success of the program will be due to the legislature by April 15 of 2022, 2023, and 2024.

<table>
<thead>
<tr>
<th>Budget Item</th>
<th>Budget and Adjustments FY21</th>
<th>H.439 As Passed FY22</th>
</tr>
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<tbody>
<tr>
<td>(GF) Homeowner Rebate (B137)</td>
<td>$17.1</td>
<td>$18.6</td>
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<tr>
<td>(GF) Renter Rebate (B138)</td>
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<td>(GF) Tax Dept. Reappraisal and Listing (B139)</td>
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<td>(GF) Municipal Current Use (B140)</td>
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<td>(LOT 30%) PILOT State Buildings (B142)</td>
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<td>(GF) Special Investigative Units (B206)</td>
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<td>(EF) Flexible Pathways (B504.1)</td>
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<td>(EF) Transportation (B506)</td>
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<td>(EF) Small Schools Grants (B507)</td>
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<td>(GF, EF) Teachers’ Retirement System (B514, E514)</td>
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<td>(GF) Retired Teachers’ Health/ Medical (B515, E515)</td>
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<td>(GF, Inter-Dept. Transfer) ANR Lands PILOT (B701)</td>
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<td>(Property Transfer Tax) Municipal Planning Grants (D100)</td>
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<td>(GF ARPA) CUDs/Broadband (B.1105 G500)</td>
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<td>(CRF ARPA) Economic Development (B.1104.A.1 G300)</td>
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<td>(GF, ARPA) Climate Response Investments (G600)</td>
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<td>(ARPA State Fiscal) Water &amp; Sewer (G700)</td>
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</table>

1. $152,045,711 is the state General Fund contribution; $37,600,918 is from the Education Fund.
2. Senate Appropriation transferred responsibility for $14 million of retired teachers’ normal health care benefits to the Education Fund, which the House rejected. The issue will be studied.
3. One-time items funded with other money in FY21 are largely paid with ARPA dollars.

CRF = Coronavirus Relief Fund
GF = General Fund
EF = Education Fund
FF= Federal Funds
LOT = 30% local option tax share remitted to state
PILOT = Payment in lieu of taxes
ARPA = American Rescue Plan Act

Citations in parentheses refer to the section in the budget bills where those items are found. See page 33 for transportation related budget items.

At 275 pages, Act 74 is enormous. The amounts appropriated and the number of moving parts are epic. Local officials should remember that the funding allocated to many programs in the bill might be available to towns at higher rates per project if the town contributes a portion as well. That is far more possible this
year with the infusion of ARPA direct aid. Even at these massive amounts, the legislature has reserved half of the ARPA funds for future appropriations.

**Capital Bill (H.438, Act 50)**

The two-year capital bill, passed on May 26 and signed by the governor on June 1, authorizes $127,378,694 over two years and stipulates that no more than $70,074,988 be spent in FY22. The state treasurer is authorized to issue general obligation bonds totaling $123,180,000. Along with $4,198,694 in reallocations and transfers of previously allocated dollars, that amount will fund appropriations in the capital bill.

<table>
<thead>
<tr>
<th>Item</th>
<th>FY22</th>
<th>FY23</th>
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<td>Building Communities Grants (Sec. 5)</td>
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<td>Historic Preservation Grants</td>
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</tr>
<tr>
<td>Historic Barns and Agriculture Grants</td>
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<td>Cultural Facilities Grants</td>
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<td>Recreational Facilities Grants</td>
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<td>Human Services and Education Facilities AHS</td>
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<td>Human Services and Education Facilities AOE</td>
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<td>Regional Economic Development Grants</td>
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<td>Agency of Natural Resources (Sec. 9)</td>
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<td>Drinking Water Revolving Loan Fund 20% match</td>
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<td>2,213,211</td>
<td>4,428,925</td>
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<td>Dam Safety and Hydrology</td>
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<td>Contaminants of Emerging Concern Special Fund</td>
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<td>Clean Water – Agency of Agriculture</td>
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<td>Water Quality Grants</td>
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<td>Clean Water – Dept. Environmental Conservation</td>
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<td>Clean Water Revolving Loan Fund (CWSRF)</td>
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<td>Municipal Pollution Control Grants</td>
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<td>Housing and Conservation</td>
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<td>Vermont Rural Fire Protection</td>
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<tr>
<td>Dry Hydrant Program</td>
<td>100,000</td>
<td>100,000</td>
<td>200,000</td>
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</table>

The capital bill also directs the commissioner of finance and management to recommend a list of priority projects for federal American Rescue Plan Act (ARPA) funds for the 2022-2023 capital budget report to the legislature. The recommendations are due by December 15, 2021. If the commissioner offsets any capital funds appropriated in the capital budget for water and sewer projects with federal funds, the amount offset must be available for future capital construction projects.

A municipality or group of municipalities that seek a planning advance for a public water supply system or clean water project may use up to 25 percent of the advance to evaluate land use implications of the facilities, including any impact on the state planning goals regarding housing and economic development. Any funds not spent in that regard must be used for engineering and design.
Miscellaneous Tax Bill (H.436, Act 73)

(amends 16 V.S.A. §§ 4001, 4010, 4015, 18 V.S.A. § 4632; 32 V.S.A. §§ 3110, 5258, 5404a(1), 5824, 5874, 6074, 7402(8), 7483, 9202, 9243(A), 9706 (nn) and (oo), 9741, 9776, 3757(F); repeals 32 V.S.A. § 3777)

In most years, the miscellaneous tax bill amends specific provisions of tax law to resolve problems that have arisen with current practice or alignment with federal law or change tax policy on a range of issues. Several of these provisions invariably affect local governments.

Section 3 of Act 73 provides that a claimant who filed a homestead property tax credit claim by October 15 may amend that claim with respect to house-site value, house-site education tax, house-site municipal tax, and ownership percentage, or to correct the amount of household income on the claim for three years following the date of filing the claim. The Department of Taxes assured local officials that the changes made on the claim form would not affect the local property tax process.

Section 9 requires the state to record a notice of contingent lien in the land records of the municipality when an application for use value appraisal has been approved. The landowner bears the cost of the recording. The notice informs all interested parties that the contingent lien against the enrolled land will become an actual lien if the land records indicate that the land has been developed. That lien will be the amount of the land use change tax due. A lien recorded in the land records after April 17, 1978, is considered contingent. It will run with the land and not be a personal debt of the person liable to pay the lien.

Section 12 increases the fee allowed for recording a warrant and levy for delinquent taxes, for making and recording a return, and for a collector’s deed from $10 to $15, payable to the town clerk. This fee was not increased along with town clerk fees last session.

Section 17 establishes the property dollar equivalent yield for Education Fund property taxes in FY22 at $11,317. The income equivalent yield is $13,770. And the non-homestead property tax rate for FY22 is set at $1.612 per $100 of equalized education property tax value. The definition of education spending is amended to exclude spending on eligible school capital project costs for certain projects. In order to address the significant decline in pupil attendance at schools during COVID-19, section 19 provides that a district’s equalized pupil count will not be less than 96.5 percent of the actual number of equalized pupils during the previous year. Section 20 also ensures that a school district that received a Small Schools Grant in FY20 will continue to receive a grant each year until the General Assembly repeals it or an eligible school ceases operations (with a few exceptions for consolidations).

The Department of Taxes, in consultation with VLCT, must submit a proposal to the legislature that recommends ways to help towns appraise high-value or unique commercial properties, including utility properties. The department is directed to consider both the Tax Structure Commission Final Report and establishing a state appraisal and litigation assistance program. The department, in consultation with VLCT and the Vermont Municipal Clerks’ and Treasurers’ Association, is also to submit a report proposing options to collect annual data on the number and grand list value of secondary residences in Vermont. That report is to include a definition for secondary residences and a structure and implementation plan for collecting data on them as part of the grand list. The report will also recommend guidance for municipalities and listers.

Bowing to public outrage earlier in the session when they tried to make forgiven Paycheck Protection Program loans taxable income, the legislature thought better of their action and included a repeal of that requirement in the legislation.
Section 26 of the act amends the authority of the state auditor to conduct performance audits of the Burlington Waterfront Tax Increment Financing District. It extends for one year the period during which tax increment financing districts may incur debt, thanks to the havoc the pandemic wreaked on economic growth plans throughout the world.

The effective dates of the legislation vary according to the various sections.

**Use Value Appraisals (H.88, Act 43)**

(amends 32 V.S.A. §§ 3755, 3756)

H.88 amends the requirements for maintaining eligibility for use value (current use) appraisal. Agricultural and forestry lands and agricultural buildings that are in agriculture or forestry management and enrolled in the program are taxed at their use value for property tax purposes. Essentially, the state pays the towns the difference between use value and fair market value for those properties.

Persons with land or buildings enrolled in the Use Value Appraisal Program must certify each year that their land or buildings continue to meet the requirements of the program. H.88 allows the commissioner of Taxes to waive the certification requirement if he or she can otherwise ascertain that the land or buildings continue to meet the program requirements. An applicant for use value appraisal must be in good standing with the Department of Taxes in order to maintain program eligibility.

H.88 also establishes that the term “development” for the purpose of use value does not include a solar generation facility that in aggregate is on 0.1 acre of land or less, if the land otherwise qualifies as managed forestland according to the commissioner of Forests, Parks and Recreation.

In the future, forms for enrollment in the Use Value Appraisal Program will be provided by the director of Property Valuation and Review and prior approval from the Current Use Advisory Board will not be required.

The legislation, which the governor signed on June 1, takes effect on July 1.

**Vermont Pension Investment Commission (H.449, Act 75)**

(amends 3 V.S.A. § Chapter 17, §§ 471, 472, 16 V.S.A. §§ 1942, 1943; 24 V.S.A. §§ 5062, 5063; adds 24 V.S.A. Chapter 31)

Act 75 establishes a nine-member Vermont Pension Investment Commission to replace the seven-member Vermont Pension Investment Committee. The new commission includes one member and one alternate elected by the employee and retiree members of the Vermont State Employees’ Retirement System, the Vermont State Teachers’ Retirement System, and the Vermont Municipal Employees’ Retirement System. The commission will also include two members and one alternate who are independent financial experts appointed by the governor, the state treasurer, or a designee who would serve in an ex officio capacity; one member representing a municipal employer appointed by VLCT’s executive director; one member representing a school employer appointed by the Vermont School Boards Association; and one member appointed by the other eight commission members to serve as chair. The chair’s term is limited to twenty years. The commission is responsible for investing the assets of the three previously mentioned retirement systems.
The act establishes a Pension Benefits, Design, and Funding Task Force to report on the benefits, design, and funding of retirement and retiree health benefit plans for the state employees’ and teachers’ retirement systems. It also establishes a Joint Public Pension Oversight Committee (comprising three representatives and three senators) to help other legislative committees on retirement system and post-employment benefits matters. The Vermont Pension Investment Commission and boards of trustees of the three retirement systems are to report annually to the Joint Public Pension Oversight Committee.

**School Capital Construction (H.426, Act 72)**
(adds 16 V.S.A. §§ 559, 837, 838; creates session law)

In 2007, the General Assembly suspended state aid for school construction so as to give the secretary of education time to recommend a sustainable plan for state aid for school construction. A lot has happened since then, including school district consolidations, building transfers, and $211 million in bonds issued by school districts for school construction projects between 2008 and 2019. In 2020, staff from the Agency of Education and the Joint Fiscal Office estimated that there was at least $445 million in bonding planned statewide for future school construction projects.

As Joint Fiscal Office staff explained in a [2018 presentation to the Ways and Means Committee](https://example.com), the bonded debt incurred by school districts to pay for construction projects is part of a school’s budget. Annual and principal payments on school construction debt increase per-pupil spending and homestead tax rates in districts that borrow and on other districts as well. All education property tax payers bear a portion of the burden of an individual school district’s capital project.

Act 72 directs the secretary of education, in consultation with the executive director of the Vermont Superintendents Association and chair of the State Board of Education, to update school construction facilities standards by January 15, 2023. The State Board of Education on its own is to update and adopt the capital outlay financing formula by that same date. That formula would establish square footage requirements by school size and per student or program, as well as an allowable cost per square foot of construction. By September 1, 2021, the secretary of education and commissioner of buildings and general services are to request a school facilities inventory and assessment to establish the need for extra support to school districts as a result of the COVID-19 pandemic, and inform the Agency of Education of statewide school facilities needs and costs. A report is due to the legislature by January 15, 2023, that analyzes funding for school construction project challenges, makes recommendations for a funding source, and analyses how other states are funding school construction projects.

The legislation also mandates that each school district develop and maintain a five-year capital operations and improvement plan to be updated annually. The bill creates an additional position at the Agency of Education to implement the provisions of the legislation and appropriates $127,500 from the Elementary and Secondary School Emergency Relief Fund. It also creates a new program – the Renewable and Efficiency Heating Systems Grant Program, to be administered by Efficiency Vermont – to award grants for renewable and efficient heating systems in schools. By June 30, 2023, every public and approved independent school will need to test for radon if no test has been done in the previous five years.

**Pupil Weighting Factors Report (S.13, Act 59)**
(establishes session law)

Act 59 establishes an eight-member Task Force on the Implementation of the Pupil Weighting Factors Report and charges it to recommend an action plan and legislation to ensure that all public school students have equitable access to education. The task force may hire a consultant (with a $25,000 appropriation) to
help and will need to collaborate with the State Board of Education, the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Council of Special Education Administrators, the Vermont Principals’ Association, the Vermont Independent Schools Association, and the Vermont-National Education Association. The task force needs to report to the legislature by December 15 on a range of education funding and quality issues including:

- how to integrate weighting calculations from the report with Vermont’s current equalized pupil, yield calculations, and excess spending threshold;
- how categorical aid (which includes special education, technical education, transportation aid, small schools support, and flexible pathways) can address cost differentials across districts;
- recommending age ranges and how to define a person from an “economically deprived background”;
- how to make the formula for calculating equalized pupils transparent;
- how to transition to the recommended weights and categorical aid to promote equity and ease the financial impact on school districts during the transition;
- statutory changes in the Agency of Education’s powers and duties to ensure all school districts meet education quality standards and improve student outcomes;
- considering the relationship between the recommended weights and categorical aid and changes to special education funding, including the federally mandated maintenance of effort and financial support for special education;
- recommending ways to mitigate the impacts on residential property tax rates and considering tax equity between districts; and
- recommending whether to modify, retain or reopen the excess spending threshold in current law.

The Joint Fiscal Office and Agency of Education are to create an easy-to-understand weighting factors simulator to allow modeling of the impact of proposed changes in weights. During the second year of the 2021-2022 biennium, committees of jurisdiction are directed to consider recommendations, which will hopefully result in legislation.

The laws addressing excess education spending will be suspended in FY22 and FY23.

**Cannabis Regulations (S.25, Act 62)**

(amends 7 V.S.A. §§ 843, 861, 863, 864, 866(d), 881, 978, Secs. 5 and 8 of Act 164 [2019]; adds 7 V.S.A. chapter 39, 32 V.S.A. § 7909; repeals Secs. 10, 13 and 19 of Act 164 [2019]; creates session law)

Last year, the legislature passed Act 164, which created a taxed and regulated cannabis system in Vermont. Like any new, complicated, and highly regulated industry, it necessitated changes and adjustments to the original enabling legislation. Act 62 fulfills that role and picks up where Act 164 of 2020 left off, and some of the changes will impact municipalities.

**Opt-In Votes and Integrated Licensees.** Language in 7 V.S.A. § 863 is adjusted to clarify what local opt-in votes address. In communities that host integrated licensees, a local vote to opt in applies to the “retail portion” of the operation. Current law implies this outcome, but this slight adjustment clarifies the legislative intent. Integrated licenses are only available to the five medical cannabis dispensaries currently operating in the state.

**Cannabis Control Board Advisory Committee.** The Cannabis Control Board Advisory Committee collaborates with the Cannabis Control Board on cannabis regulations. One member of the committee will have municipal expertise. Act 62 charges the Senate Committee on Committees to appoint this
individual instead of the state treasurer as Act 164 of 2020 had done. The appointment deadline is also pushed back to July 1, 2021.

**Advertising.** The act updates how cannabis products and establishments may be advertised. Advertising, defined as any written or verbal statement calculated to induce sales of cannabis or cannabis products, must be submitted to the Cannabis Control Board in a format prescribed by the board. Advertising does not mean a sign attached to a cannabis establishment that merely identifies its location. Local zoning bylaws regulating signage will still apply so long as they conform with the legislation and any future rules promulgated by the board. Advertising must not be designed to appeal to person under 21 years of age. It cannot be false, misleading, promote overconsumption, express curative effects, offer free samples, awards, discounts or prizes or depict anyone under the age of 21 consuming a cannabis product.

**Social Equity.** The act creates social equity initiatives that Act 164 did not contemplate. The Cannabis Control Board’s first report to the legislature must propose a plan to reduce or eliminate licensing fees for individuals from communities that historically have been disproportionately impacted by cannabis prohibition or individuals directly affected by cannabis prohibition. The act creates a Cannabis Business Development Fund, created with $50,000 seed money, to provide low-interest rate loans and grants to social equity applicants to pay for outreach, attract social equity applicants, and help with job training. The Agency of Commerce and Community Development will administer the fund’s loans and grants.

**Highway Safety.** By October 1, 2021, the Vermont Criminal Justice Council (VCJC) must report to the legislature on the funding required for all law enforcement officers to receive Advanced Roadside Impaired Driving Enforcement (ARIDE) training. Law enforcement officers must receive at least 16 hours of training. VCJC must also recommend if ARIDE is necessary for law enforcement officers who do not make roadside stops or who are not proficient in the standardized field sobriety test that is a prerequisite of ARIDE training.

The act took effect on passage (June 7) except for sections 9 (advertising) and 18 (substance misuse prevention), which will take effect on March 1, 2022.

**FEDERAL STIMULUS FUNDS**

**The American Rescue Plan Act**

Since the pandemic began fifteen-plus months ago, Congress has passed four bills that deliver funds to Vermont as well as to every other state. The Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security (CARES Act), the Consolidated Appropriations Act, and the American Rescue Plan Act (ARPA) provided a combined $4.75 billion to Vermont. But only ARPA provided direct aid to local governments — and only after a protracted battle in Washington.

The most recent allocations of ARPA funds (May 13) directed to Vermont’s local governments include:

- Coronavirus Capital Projects Fund ................................................................. $112,295,706
- Metro City (Burlington) .................................................................................. $18,857,481
- Metro City (South Burlington) ......................................................................... $1,864,421
- Local Government/Non-Entitlement ................................................................ $58,788,245
- County Government ..................................................................................... $121,018,827
Final allocations for non-entitlement units of government have not been released. Nor has the U.S. Treasury made a final decision about how $121 million in ARPA county aid will be distributed. At this time, Treasury continues to maintain that counties in Vermont are units of general local government; therefore, county dollars would be distributed to counties. The Vermont budget bill, H.439, specifies that if Treasury determines that those funds are to be distributed to counties, then no county may use any of the ARPA funds until the secretary of administration has reviewed and approved each proposed expenditure as an eligible use in accordance with federal law and related guidance. Also, if a county transfers any of its allocation to the state, those funds are to be held for appropriation by the General Assembly in the FY22 budget adjustment process.

In early May, Treasury released its Interim Draft Final Rule for comment and stated that comments would be due on July 16. Advocacy staff sent comments on the ARPA Interim Draft Final Rule on June 11. The first comment called on Treasury to allocate county dollars in Vermont to cities, towns, villages because counties are not units of general local government in Vermont.

Thanks to support from the Vermont Legislature and the governor, VLCT received funding from ARPA to establish an ARPA Coordination and Assistance Program, and that program now has a director. Katie Buckley (Kbuckley@vlct.org) will answer your questions about ARPA, including how to certify that you are accepting ARPA local direct aid, which projects are eligible, who to contact, how to use the portal for requesting funds, and much more. We encourage you to frequently visit our ARPA Resources webpage where you can review webinars on how to access the local aid funds when they are available. The National League of Cities’ ARPA webpage is also an excellent source of local allocation information.

**PUBLIC SAFETY**

**Regional Emergency Management (H.122, Act 52)**

(amends 20 V.S.A. §§ 3a, 6, 30-32)

Act 52 is this year’s Boards and Commissions Bill. This annual legislation makes various amendments to – and sometimes wholesale repeals of – boards and commissions that exist in state statute. It gives the legislature an opportunity to review state-sanctioned boards and commissions and decide if they need to be updated, amended, or repealed altogether.

The legislation modifies laws related to local emergency planning committees (LEPCs) and state emergency response commissions to streamline how those bodies handle hazardous materials emergency preparations. The act amends 20 V.S.A. § 6 to better align state statues with federal laws and prevent duplicate functions of Vermont Emergency Management (VEM) and local emergency managers. Newly created regional emergency management committees (REMC) are charged with all of their region’s hazard planning and preparedness to improve their ability to prepare for, respond to, and recover from disasters. A consolidated statewide LEPC with local representation will be responsible for hazardous material response.

Municipalities, local emergency management directors, and regional planning commissions were introduced to REMCs over the past year and, according to VEM, they are broadly supported by local and regional representatives. Committees will develop and maintain a regional plan, consistent with guidance by VEM, which describes regional coordination and available resources. VEM will establish geographic boundaries and guidance for REMCs in coordination with regional planning commissions and mutual aid associations. Committee voting members will consist of the local emergency management director or
designee, plus one representative from the emergency services community from each town and city in a region. An important difference between an REMC and a LEPC is that the former will not have the federal regulatory burden of adhering to Emergency Planning and Community Right-to-Know Act requirements. Instead, these requirements would fall on the consolidated statewide LEPC to ensure a consistency of approach and unity of effort for emergency planning.

Act 52 amends the annual grant awards for LEPCs. Future grants will not exceed $52,000. The commissioner of Public Safety must divide the total annual grant amount equally among the LEPCs. Additional grants may be awarded to LEPCs and REMCs at the commissioner's discretion. Local governments pay a 25 percent match.

Amendments to 20 V.S.A. § 6 took effect on June 3. All other sections relevant to municipalities will take effect on July 1.

**Emergency Service Provider Wellness Commission (S.42, Act 37)**

(adds 18 V.S.A. § 7257b)

Act 37 creates an Emergency Service Provider Wellness Commission whose job will be to convene emergency service providers to discuss issues relevant to their physical and mental health and to identify gaps in services these individuals face. Housed in the Agency of Human Services, the commission comprises a wide variety of emergency service providers from across the state: 24 representatives from state agencies and departments, law enforcement, emergency medical technicians, paramedics, firefighter associations, and similar groups that interact with or represent emergency service providers. VLCT is identified as one member of the commission.

This is the first time such a wide variety of public safety officials and associated groups will work together to address their various physical, mental, and overall wellness health needs, particularly as they relate to traumas experienced while on the job. Goals of the commission include:

- identifying investments to improve the physical and mental health outcomes and overall wellness of emergency service providers;
- identifying how Vermont can increase the number of clinicians qualified to treat emergency service providers;
- compiling information for an electronic emergency service providers wellness resource center on the Department of Health’s website;
- educating the public, emergency service providers, state and local government officials, employee assistance programs, and policymakers about strategies to prevent the effects of trauma experienced by emergency service providers;
- identifying gaps and strengths in Vermont’s system of care for emergency service providers and their family members who have experienced trauma;
- recommending how regional or statewide peer support services and qualified clinician services can be delivered;
- recommending how to support emergency service providers in communities that are resource-challenged, remote, small, or rural; and
- recommending policies and services to increase successful interventions and improve health outcomes, personal well-being, job performance, and reduce health risks, violations of employment, and violence associated with the impact of untreated trauma, including whether to amend Vermont’s employment medical leave laws to help volunteer emergency service providers recover from the effects of trauma they experienced while on duty.
The commission’s first meeting will take place by September 30, 2021. The commission must report any recommendations to the governor and General Assembly as necessary but not less than once a year.

The act takes effect on July 1.

**Humane Officers (H.421, Act 38)**

(amends 13 V.S.A §§ 351, 356, 365)

Act 38 addresses animal cruelty investigations and the regulation and training of humane officers. It updates the definition of humane officer under 13 V.S.A. § 351 to mandate that certain persons receive animal cruelty response training developed by the Animal Cruelty Investigation Advisory Board (ACIAB) and approved and administered by the Vermont Criminal Justice Council (VCJC). In addition to law enforcement officers and investigators at the Office of the Attorney General or State’s Attorney being designated humane officers, humane society employees and municipal animal control officers may also be humane officers if they received the state mandated training.

Humane officers are tasked with performing animal cruelty investigations that range from minor situations that may simply require education, to investigations that are serious criminal cases and which may lead to prosecution. The new training requirements and the narrower definition of humane officer helps ensure that only appropriate and qualified individuals take on this important role. Before an animal control officer acting in a municipal capacity may act as a humane officer, the selectboard must authorize the animal control officer to perform the functions of a humane officer. This creates a necessary level of accountability at the municipal level between the selectboard and the town officer and is appropriate for this type of “employee-employer” relationship.

Humane officers must complete this training by December 31, 2023. The ACAIB will maintain a list of individuals who have completed the training. Although the ACAIB designs the training, the VCJC administers it. Animal cruelty response training is already a part of law enforcement officer training at the Police Academy, and Level II and III officers will continue to receive this training. The VCJC may only provide training to designated humane society employees, municipal animal control officers appointed by the selectboard, and other humane officers defined in 13 V.S.A. § 351(4).

The act took effect when the governor signed the legislation on May 20.

**Use of Force by Law Enforcement (H.145, Act 27)**

(adds 20 V.S.A. § 2368; amends 13 V.S.A. §§ 1032, 2305; amends 20 V.S.A. §§ 2358(g), 2401, 2407; repeals Sec. 1, 2, and 5(a) of Act 165 of 2020)

In 2020, the governor signed Acts 147 and 165, legislation that addressed the use of force by law enforcement. Act 147 established a criminal offense if a law enforcement officer used a prohibited restraint on a person that caused serious bodily injury or death. Act 165 established a statewide law enforcement use of force standards, including the use of deadly force. This year’s Act 27 further clarifies certain parts of use of force laws in Title 20, particularly language around prohibited restraints – otherwise known as chokeholds. The act replaces the term “prohibited restraint” in statute with “chokehold” to more accurately define the action that the legislature intended to prohibit. It clarifies that an officer may not use a chokehold unless deadly force is justified, and that another law enforcement officer must intervene when an officer is using a chokehold when deadly force is not justified. It also updates the “justifiable homicide”
law to clarify the qualifying mental state and circumstances needed in order for the homicide to be considered a justifiable killing of another under law.

Act 27, which takes effect on October 1, will allow for policy implementation and the adequate statewide training for law enforcement officers. Sections 1, 2 and subsection (a) of section 5 in Act 165 from 2020 will be repealed on July 1. Those sections of law address the standards for law enforcement’s use of force and justifiable homicide.

**Facial Recognition Technology (H.195, Act 17)**
(creates session law)

Act 166, passed last year, prohibited law enforcement officers from using facial recognition technology or information acquired through the such use except for permitted drone use under 20 V.S.A. § 4622. This year’s Act 17 creates another narrow exception for the use of facial recognition technology by police. Law enforcement will be able to use the technology during a criminal investigation into sexual exploitation of children under 13 V.S.A., chapter 64. However, the technology may only be used when law enforcement possesses an image of a person they believe is a victim, potential victim, or identified suspect in an investigation. The search must be solely confined to locating images or video of the person within electronic media seized by law enforcement in relation to a specific investigation.

The act took effect on May 4.

**Signal Lamps (S.86, Act 76)**
(amends 23 V.S.A. § 1252)

Act 76 addresses the use of blue, amber white, and red colored signal lamps on law enforcement, EMS, and fire department vehicles. Previously, law enforcement vehicles were permitted to display blue and white lights while fire and EMS vehicles could display red and white lights. The legislation amends 23 V.S.A. § 1252 to expand the use of blue signal lamps to non-law enforcement rescue vehicles and allows law enforcement to use red and amber signal lamps. Law enforcement vehicles may now use a red signal lamp or an amber signal lamp or a combination of them provided the commissioner of public safety requires the lamps be mounted on the rear of the vehicle. Similarly, fire and EMS vehicles may now use a blue signal lamp or amber signal lamp or both, provided the commissioner of safety requires them to be mounted on the rear of the vehicle.

The act, which the governor signed on June 14, goes into effect on July 1.

**ENVIRONMENT AND QUALITY OF LIFE**

**Accelerated Community Broadband Deployment (H.360, Act 71)**
(amends 30 V.S.A. §§ 202f, 280ee, 280ff, 3084, 7516, 7523(b), 7515b, 32 V.S.A. §§ 3602a, 3620, 3800(n), 3802; adds 30 V.S.A. chapter 91A, 30 V.S.A. § 127; repeals Sec. 10, Act 79 of 2019, Sec. B1105.2 of Act 154 of 2020; creates session law)

Act 71 describes the methodology the state will use to coordinate, support, and accelerate community broadband deployment to unserved and underserved areas of Vermont. The legislation recognizes the statewide need for reliable broadband for economic, educational, public safety, health, social and civic activities. Because there is no competitive broadband market in Vermont, Act 71 recognizes that the state
must help provide that service to many rural areas. Communication union districts (CUDs) are having great success in providing broadband where private industry has failed. Yet CUDs have lacked access to the financial and human capital needed to reach the most underserved areas. Act 71 picks up where Act 79 of 2019 left off. Act 79 encouraged communities to form CUDs and to engineer broadband plans to reach Vermonters in their region.

Vermont Community Broadband Board. Act 71 establishes the Vermont Community Broadband Board (VCBB) within the Department of Public Safety. This new board is responsible for coordinating, facilitating, and accelerating the development and implementation of universal community broadband solutions. The five-member board will include individuals with expertise in fields such as finance; broadband deployment in rural, high-cost areas; communications and electric utility law and policy; and a member appointed by the Vermont Communications Union District Association. An executive director will oversee and manage the VCBB and serve as its chief administrative officer.

The board will provide administrative and technical support to CUDs and facilitate partnerships between CUDs and potential partners. The VCBB will provide centralized resources and technical assistance and administrative support to CUDs with respect to the planning, development, and implementation of broadband projects. Other duties include developing standardized forms, contracts, and network business and design models; identifying and negotiating with potential partners; helping with route identification for fiber-optic infrastructure and with obtaining and negotiation pole surveys and attachments; providing CUDs with loan and grant applications; and applying for grants, loans, permits, licenses, certificates, and other approvals when requested by CUDs.

The VCBB will develop policies or recommend programs to the legislature that promote a strong communications workforce and access to affordable broadband service plans. The board will consult with the Vermont Economic Development Authority and the Vermont Municipal Bond Bank regarding community broadband project financing and other funding opportunities. They will also contract for statewide fiber-optic engineering designs that maximize fiber-optic buildout efficiency and ensure interoperability of all existing fiber-optic networks with public or ratepayer funds and that takes into consideration all proposed publicly funded fiber-optic projects.

The VCBB and the Vermont Community Broadband Fund (see below) will cease to exist on July 1, 2029. By January 15, 2029, the VCBB will develop a plan for transferring its assets, liabilities, and legal and contractual obligations to another appropriate state entity. The board may include a recommendation regarding the continued existence of itself and the fund beyond the statutory sunset date.

Broadband Preconstruction and Construction Grant Programs. Act 71 creates two grant programs administered by the VCBB to assist with preconstruction and construction needs.

1. The Broadband Preconstruction Grant Program provides grants to CUDs for preconstruction broadband project costs that are part of a universal service plan. These costs include expenses for feasibility studies business planning, pole data surveys, engineering and design, and make-ready work associated with the broadband construction such as consultant, legal, and administrative expenses and other costs the VCBB deems appropriate. Grant awards will be commensurate with the size of a project as determined by the service area, road mileage, the number of unserved or underserved locations, and other appropriate measurements. The VCBB may develop standards for the disbursement of grant funds in a manner that both supports the efficient and timely use of funds and ensures accountability.
2. The **Broadband Construction Grant Program** provides grants to finance projects of eligible providers that are part of a universal service plan. Eligible providers include CUDs, small communications carriers, and internet service providers working with CUDs to expand broadband to unserved and underserved locations as part of a plan to achieve universal broadband coverage in a district. The construction grant program has more stringent and specific standards for eligibility. The VCBB will develop policies and standard grant terms and conditions to ensure maximum accountability and adherence to achieving the goal of universal broadband coverage. Priority will be given to projects that leverage existing private resource and assets, especially to partnerships between a CUD and a distribution utility. Projects that support low-income or disadvantaged communities, provide affordable service options, promote geographic diversity of fund allocations, and that demonstrate project readiness and other relevant criteria will also be prioritized. Prior to any grant award, the applicant must possess a viable VCBB-approved business plan. Eligible providers will only receive grants if the VCBB determines that the provider’s universal service plan does not conflict with or undermine the universal service plan of an existing CUD.

**Vermont Community Broadband Fund.** The legislation creates a new fund to implement the policies, purposes, and programs it establishes. The fund will be composed of monies appropriated to it by the legislature ($150 million in FY2022 may be transferred to this fund), transferred from retail telecommunications services charges pursuant to 30 V.S.A. § 7523(b), or received from any other public or private source.

**Broadband Expansion Loan Program.** Act 71 restructures the Broadband Expansion Loan Program to provide start-up loans to CUDs until they are able to refinance the loan through the municipal revenue bond market. Eligible borrowers include CUDs and internet service providers working in conjunction with a CUD or a municipality to expand broadband service to unserved and underserved locations as part of a plan to achieve universal broadband coverage. The program is a revolving loan program to maximize the use of loaned funds.

**Connectivity Initiative.** The state’s Connectivity Initiative – a grant program to fund the buildout of internet service in unserved and underserved areas – will now be administered by the VCBB rather than the Department of Public Service. The legislation updates the program to conform with the act’s priorities. Funded projects from this grant must be capable of speeds of at least 100 megabits per second (Mbps) symmetrical. Priority will be given to projects that are a part of plan to achieve universal broadband coverage in a community or a CUD. Only CUDs and service providers working in conjunction with CUDs will be eligible to apply.

**Property Tax Exemptions.** The act includes property tax exemptions to further incentivize the build-out of broadband. A property tax exemption is created for new broadband infrastructure including structure, machinery, poles, lines, wires, and fixtures. The exemption only applies to infrastructure that is leased to a CUD or to an internet service provider working in conjunction with a CUD. It is primarily to provide broadband service capable of speeds of at least 100 Mbps symmetrical.

The tax exemption only applies to broadband infrastructure constructed on or after July 1, 2021. CUDs themselves are already exempt from paying property taxes because they are municipalities. Title 32 – which addresses the taxation of electric utility fixture, facilities, and infrastructure in municipal grand lists – is amended to reflect this new tax-exempt status.

Act 71 took effect on passage on June 8, except that Sections 12-15 (property tax exemptions) will take effect on July 1. Sections 4 (repeal of the Broadband Innovation Grant Program), 7d (move Connectivity
Initiative to VCBB), and 8 (Telecommunications and Connectivity Advisory Board) will take effect on January 1, 2022.

**Miscellaneous Energy Topics (H.431 Act 54)**

(amends 1 V.S.A. § 317; 30 V.S.A. §§ 201, 203, 207, 209, 231, 248, 8002, 8011; 10 V.S.A. § 6001; 18 V.S.A. §§ 1700-1702; 24 V.S.A. § 4413; 32 V.S.A. §§ 8701, 8002, 3802, 3481(1)(E), 5401(10), 9741)

Act 54 amends statutes relating to utilities. The few sections of concern to local governments include the following:

- Under the Access to Public Records statute, records exempt from public inspection and copying now include those relating to a regulated utility’s cybersecurity program, assessments, and plans, including reports, summaries, compilations, analyses, notes or other information.

- For the purposes of Act 250 (10 V.S.A. Chapter 151), the definition of development does not include any energy storage facility improvement that requires a certificate of public good under Act 248, the Public Utility Commission (PUC) Certificate of Need proceedings, or regulating the installation and operation of energy storage facilities. The PUC may establish a size threshold below which energy storage facilities need not submit applications for certificates of public good.

- Municipal bylaws may not regulate electric generation facilities, energy storage facilities, or transmission facilities.

- An energy storage facility is defined as “a stationary device or system that captures energy produced at one time, stores that energy for a period of time and delivers or may deliver that energy as electricity to the grid for use at a future time.”

- Act 54 establishes a uniform capacity tax of $0.50 per kilowatt hour (kWh) of plant energy rating on any stationary grid-connected energy storage facility in Vermont that has a plant energy rating of 600 kWh or larger and that is not connected to a renewable energy plant. By April 15 of each year, that tax must be paid to the Department of Taxes, which will deposit it into the Education Fund. The existence of an energy storage facility or renewable energy plant does not alter the taxation of underlying property for purposes of the education property tax.

The act also exempts from property taxes real and personal property, except underlying land, of an energy storage facility with a plant energy rating less than 600 kWh. It establishes the appraisal value of such storage facilities as $0.25 per kWh of plant energy rating.

**Water Quality Standards Certification (H.108, Act 32)**

(adds 10 V.S.A. § 1253(h); creates session law)

Act 32 establishes in statute a set of standards or reviewing activities that require a federal license, or permit, in order to ensure that the proposed activity complies with the Vermont Water Quality Standards (VWQS), as well as regulations on wetlands protection, stream flow, lakes and ponds, and water withdrawals for snowmaking. In general, the Agency of Natural Resources (ANR) has been reviewing licenses and permits for compliance with state and federal statutes but will now need to establish a Section 401 Water Quality Certification program to review those requests for permits or licenses.
Pursuant to the bill, the ANR secretary may not issue a Section 401 certification unless an applicant demonstrates:

- there is “no practicable alternative” to the proposed activity that would have a less adverse impact,
- the proposed activity will not result in violation of any applicable VWQS criteria, and
- the proposed activity will not result in a violation of the state’s anti-degradation policy.

A Section 401 certification could be issued to a general permit or authorization issued by a federal agency and that certification would apply to every applicant who qualifies for the general permit coverage. (General permits regulate a class of activities, and applicants are presumed to be in compliance unless some specific activity kicks them out from under the general permit umbrella.)

An alternative will be considered practicable if it is both available and capable of being completed after taking into consideration cost, existing technology, and logistics in light of the overall purpose of the project.

The ANR secretary is also directed to amend the standards to clarify that the protected functions and values of Class 1 and 2 wetlands are those established in the 2020 Vermont Wetlands Rules, section 5 (water storage for storm runoff; water protection; fish, wildlife, natural community, and rare, threatened and endangered species habitat protection; education and research; recreation and economic benefits; open space and aesthetics; and erosion control). The proposed amendment to the VWQS is to be filed within 90 days of the effective date of Act 32, which was signed by the governor on May 18. A report is due to the legislature by January; a final rule must be filed with the secretary of state by next March.

### Deed Restrictions and Housing Density (S.14, Act 4)

(amends 27 V.S.A. § 545)

Act 4 corrects an oversight and responds to the unintended consequences of legislation passed last year. Act 179, passed in 2020, made multiple changes to laws to promote access to affordable housing and to laws related to land use regulations at the local level in Title 24, Chapter 117. A goal for many of these changes was to improve and promote housing density. In the spirit of the changes made to land use regulations at the local level, Act 179 also amended laws that affected private party deed restrictions under 27 V.S.A. § 545. The act invalidated deed restriction or covenants added to deeds after January 1, 2021, that prohibit or had the effect of prohibiting land development that was otherwise valid under any municipal bylaw. The unintended, negative consequences of this very broad language was felt almost immediately after the law went into effect and created major problems in land transactions.

Act 4 amends 27 V.S.A. § 545 again to clearly identify the municipal bylaws that private party deed restrictions are prohibited from addressing. Act 4 states that only those deed restrictions, covenants, or similar binding agreements added after March 1, 2021, that prohibit or have the effect of prohibiting land development allowed under 24 V.S.A. § 4412(1)(E) and (2)(A) are deemed invalid under law. Under 24 V.S.A. § 4412(1)(E), local bylaws must allow accessory dwelling units that meet certain attributes, and 24 V.S.A. § 4412(2)(A) allows bylaws to prohibit development on certain small lots not served by municipal sewer and water services. These two targeted carve-outs address the goal of promoting and encouraging housing density.

Signed by the governor on March 13, the act took effect retroactively on January 1, 2021.
Composting on Farms (S.102, Act 41)
(amends 10 V.S.A.§§ 6001, 6605, 6605h, 6605j; adds 6 V.S.A. chapter 218; creates session law)

Act 41 addresses composting on farms and divides jurisdiction over composting practices between the agencies of Natural Resources (ANR) and Agriculture, Food and Markets (AAFM). ANR will continue to regulate composting more broadly, however AAFM will regulate farms that compost in accordance with the new regulations. AAFM now regulates and adopts rules addressing the importation of food residuals or food processing residuals onto farms. They may adopt rules required by Act 41 as part of the Required Agricultural Practices or as independent rules.

The act amends the statutory definition of “farming” to include “the importation of 2,000 cubic yards or less per year of food residuals or food processing residuals onto a farm for the production of compost” provided that the compost is either principally used on the farm where it is produced, or it is produced on a small farm that raises or manages poultry. Definitions for “farm,” “food residuals,” “food processing residuals,” “small farm,” “compost,” and “principally used” are also added in reference to on-farm composting practices.

Although municipalities cannot use zoning to regulate on-farm composting as it is now defined as farming and an agricultural practice, rules adopted by AAFM must be designed to reduce odor, noise, vectors, and other nuisance conditions on farms and to protect the public health and the environment in a manner that is equal to or better than the Department of Environmental Conservation’s Solid Waste Management Rules for composting facilities. Further, AAFM’s rules prohibit a farm from initiating the production of compost from food residuals or food processing residuals imported onto the farm on or after July 1, 2021, within a downtown, village center, new town center, neighborhood development area, or growth center designated under 24 V.S.A. chapter 76a, unless the municipality expressly allows composting in the designated area under zoning or subdivision bylaws or in an approved municipal plan. AAFM must initiate rulemaking by January 1, 2022.

By January 15, 2022, and annually thereafter, AAFM must submit a report to the legislature regarding the importation of food residuals for composting under 10 V.S.A. § 6001(22)(H). The report must include an inventory of farm composters, the estimated volumes of food residuals imported to farms, the status of rulemaking, any complaints or enforcement actions brought against a farm producing compost, and any other relevant information.

The sections of Act 41 mentioned above all took effect on passage on May 20.

PFAS and Other Chemicals of Concern (S.20, Act 36)
(adds 18 V.S.A. Chapter 33)

Act 36 prohibits the use of Class B firefighting foam, which is designed for flammable liquid fires, for training or testing purposes. Unless otherwise required by federal law, after October 1, 2023, manufacturers may not sell Class B firefighting foam to which per- and polyfluoroalkyl substances (PFAS) have been intentionally added. The use of such foam at a “terminal” (that is, a wholesale distributor of petroleum products) is prohibited after January 1, 2024, unless the distributor applies for an extension of up to one year. Manufacturers of the foam that contains PFAS must notify sellers of the foam in Vermont of the prohibitions by October 1, 2022.

Any seller of firefighting equipment to any person, state agency, or municipality must notify the purchaser in writing if the equipment contains PFAS; that notice must be retained for three years.
Act 36 also prohibits sellers of food packaging that contains intentionally added PFAS or ortho-phthalates (organic chemicals that make plastics flexible and fragrances last longer). If another state has found a safer and readily available alternative to food packages containing bisphenols (chemicals used to harden plastics), then the Department of Health may adopt rules prohibiting their use. The rules may not take effect until two years after they are adopted. Manufacturers may not sell rugs, carpets, or ski wax containing intentionally added PFAS.

The governor signed the bill on May 18.

**Municipal Governance and Administration**

**Town Meeting 2021 (H.48, Act 1)**

*(creates session law)*

Act 1 enabled municipalities to stipulate how and when annual meetings could be conducted in 2021 and gave them the flexibility to adjust to the social distancing strictures caused by the COVID-19 pandemic. The act addressed all municipal entities in the state – not just cities, towns, and villages, but school districts, incorporated schools, fire districts, incorporated villages, and other governmental incorporated units such as solid waste districts. Act 1 picked up where last year’s Act 162 left off. That legislation permitted local legislative bodies to temporarily move to an Australian ballot system of voting for the 2021 annual meeting in towns that voted from the floor and also waived the requirements for voter signature collection for candidates in local elections. Act 1 addressed other issues, including:

**Changing the date of annual meeting.** Act 1 permitted municipalities to move the 2021 annual meeting to a later date determined by the local legislative body.

**Voting by mail.** The act permitted local legislative bodies to require municipal clerks to mail 2021 annual meeting early voter absentee Australian ballots to all active registered municipal voters to encourage absentee voting, thereby reducing possible exposure to COVID-19.

**Brattleboro.** The act authorized the Town of Brattleboro to hold its annual representative town meeting electronically. Brattleboro is the only town in the state with a representative town meeting.

**Extending municipal officer term.** If a local legislative body chose to move the date of the 2021 annual meeting, municipal officers would serve until the annual meeting and until successors were chosen.

**Secretary of State’s supplemental authority.** The act authorized the secretary of state to order or permit supplemental election procedures related to the provisions within the bill. Normally, the secretary of state has no authority over local elections, however directives and assistance from his office proved invaluable to municipalities during the early days of the pandemic in 2020. Temporary authority from the secretary of state helped all municipalities conduct successful annual meetings and protect the health, safety, and welfare of voters, election workers, and candidates. The act also allowed the secretary of state to adopt any necessary procedures to ensure the public could monitor polling places and vote counting.

Municipal charters that had more specific provisions regulating annual meetings could remain in place and were not affected by Act 1. The legislation also stated its intention that municipal officials – including boards of civil authority and municipal clerks – cooperate with school districts and other incorporated...
districts with administering annual district meetings and budget votes. School districts in particular rely heavily on towns and cities to help perform their annual meetings. As much as possible, they were encouraged to work together to align meeting dates and resources. This was meant to both ensure the best use of limited monetary and human resources and to create less confusion and a more streamlined process for voters.

Act 1, which went into effect on January 19, is only effective until December 31, 2021.

**Reapportionment (H.338, Act 11)**  
(creates session law)

As it did with so much this year, the pandemic changed the process for reapportionment in both Vermont and across the country. The U.S. Census Bureau notified the Vermont Legislative Apportionment Board (LAB) that release of redistricting data of the 2020 decennial census was delayed from the federal statutory deadline of March 31, 2021, to September 30, 2021. As a result, our LAB – as well as local boards of civil authority – could not meet the statutory deadlines for reapportionment submissions. Therefore, Act 11 revises the statutory deadlines for this reapportionment obligation.

The LAB must now submit its final proposal for reapportionment of the House of Representatives to the Clerk of the House no more than 90 days after the U.S. Census Bureau releases the Vermont redistricting data of the 2020 U.S. decennial census. Within that timeframe, the LAB is to prepare its tentative proposal for House reapportionment and notify Vermont’s boards of civil authority. On a date specified, but not less than 21 days after the tentative proposal is received, boards of civil authority are to submit their recommendations to the LAB.

The LAB is to submit its final proposal for reapportionment of the Senate to the Secretary of the Senate not later than 90 days after the U.S. Census Bureau releases the Vermont redistricting data of the 2020 U.S. decennial census. All other dates remain the same.

The bill was signed April 21 and took effect on passage.

**Vital Records (H.151, Act 15)**  
(amends 18 V.S.A. §§ 107, 126, 127, 5016, 5073, 5075, 5202a, 5573, 5577; repeals 18 V.S.A. § 5574, 24 V.S.A. § 2654)

Act 15 addresses vital records, mausoleums and columbaria, and emergency health orders. It is a continuation of work done over that last four years to modernize how vital records – such as death and birth certificates – are handled. Legislation over this time has tightened underlying law to narrow access to vital records to only appropriate persons and entities. Act 15 repeals the responsibility of town clerks to replace and dispose of corrected, completed, or amended records. The clerks will continue to receive email updates of changes to those vital records from the state registrar in the Department of Health.

Title 18, chapter 121, is amended to address mausoleums and columbaria. The responsibility for approving the construction and alteration of mausoleums and columbaria in cemeteries is moved from the state Board of Health to the selectboards and the local boards of health. Construction of mausoleums and columbaria must be managed and supervised by a person with experience in modern mausoleum construction and engineering. The Department of Health retains authority over mausoleums that become a hazard to public health.
The legislation also addresses emergency health orders. Eighteen V.S.A. § 107 is amended to authorize local health officers to review records and to take samples, photographs, and other evidence when they conduct inspections to detect violations of “any local health statute, rule, ordinance, or permit, or any public health hazard or public health risk.” The law also allows a health officer to serve (or deliver) a health order without needing law enforcement to provide service. When a health order is issued, service must have been performed in accordance with Rule 4 of the Vermont Rules of Civil Procedure. If a person subject to an emergency health order resides out of state, the order must be served through certified mail.

The Act will take effect on July 1.

**Oaths for Municipal Officers (H.154, Act 16)**

(amends 24 V.S.A. § 961)

Act 16 creates a new circumstance during which a municipal officer vacancy occurs in a municipality. Currently, a vacancy is created when a municipal officer resigns, is removed from office, is unable to perform their duties due to mental or psychiatric disability, or leaves town. Act 16 also creates a vacancy when a municipal officer refuses or neglects to take the oath of office within 30 days of the election or appointment to the position. Further, an office is not deemed vacant until the legislative body of the municipality has warned a regular meeting for the purpose of declaring the vacancy, and affords the officer an opportunity to take the oath of office at the meeting. It narrows the offices affected to clerks, selectboard members, constables, listers, and fence viewers – those offices included in 24 V.S.A. § 831. The act goes into effect on July 1, 2021.

**Liquor Licensing (H.313, Act 70)**

(amends 7 V.S.A. §§ 204, 253, 256; adds 7 V.S.A. § 230; 7 V.S.A. § 230 will repeal on July 1, 2023; creates session law)

Act 70 amends several sections of liquor laws, including those that affect municipalities. A municipality may assess a $50.00 local processing fee for stand-alone third-class liquor licenses, which are for licensees that sell spirits and fortified wines for on-premises consumption, only. Few establishments have such a license in Vermont, but towns and cities that host these establishments have not received any fees or reimbursement for issuing these licenses. The nominal fee will defray the cost of administering these license applications.

Act 70 authorizes the Board of Liquor and Lottery and local control commissioners to allow the sale of alcoholic beverages for off-premises consumption. First- and third-class licensees may sell malt beverages, vinous beverages, and spirits-based prepared drinks for off-premises consumption, but they must be accompanied by a food order. Containers must have a securely affixed, tamper-evident seal and bear a label with serving size and ingredients and which states that the beverage contains alcohol. Second- and fourth-class licensees may provide curbside pickup of unopened containers of alcoholic beverages that the licensee is permitted to sell. Licensees may sell alcoholic beverages for off-premises consumption between 10:00 a.m. and 11:00 p.m. These provisions of law will sunset on July 1, 2023. However, the act mandates that the Department of Liquor and Lottery submit a report to the legislature by January 15, 2023, that analyzes the economic, compliance, and public safety impact of these temporary off-premises consumptions laws.

“Clubs” with first- and third-class licenses have all license renewal fees waived for the 2021 calendar year only. Seven V.S.A. § 2 defines a club as an unincorporated association or certain member type corporation such as an Elks club, American Legion, or VFW.
Finally, the Office of Legislative Counsel and the Joint Fiscal Office must submit a written report to the legislature by October 15, 2021, concerning the state of regulated sports betting in the U.S. The report must analyze other states that allow sports betting and identify how sports betting is taxed and regulated, what revenues result from it, how revenues are shared, and identify any impacts on problem gaming, if any, in those states.

The temporary license renewal fee waiver for clubs took effect on June 8. The remainder of the act takes effect on July 1.

**Technical Corrections (H.366, Act 20)**

(amends numerous sections of statute)

The 236-page Technical Corrections Bill, which is the product of the House Government Operations Committee, amends statutes throughout all thirty-two titles. Many of the amendments would change gender-specific terms to gender-neutral ones, make grammatical and citation corrections, make general language more specific, capitalize words consistent with new guidance, and refine definitions of terms, but not affect the meaning of the statutes. Only a few sections affect local governments.

The first is in Section 74. Eighteen V.S.A. § 4320(a)(2)(A) states that a person shall not consume cannabis in a “public place”. Seven V.S.A. § 831 defines public place as “any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A § 4501, and any place where the use or possession of a lighted tobacco product, tobacco product, or tobacco substitute is prohibited by law, pursuant to V.S.A. chapter 37.” (We apologize for the layers of statutory references, but that is the way legislators, in their wisdom, write the laws.)

As the various sections of the act are read, it becomes apparent that the legislature missed several opportunities to bring laws into the 21st century. An example is Section 191, amending 20 V.S.A. § 3343, which reads, “a person who turns cattle, horses, sheep, goats, or swine into a yard belonging to a townhouse, church, or schoolhouse, which is properly enclosed, or knowingly permits them to run therein in such a yard, shall be fined not more than $10.00 nor less than $3.00.” Should such an occasion arise, it is highly likely that the damage would exceed $10.00.

At Section 195 of the bill, 20 V.S.A. § 3418 is amended so that if the owner or keeper of an impounded animal does not “replevy or redeem” the animal, he or she will be liable to the poundkeeper not only for the one-time payment of $3.00 for each animal that is in current statute, but also for $3.00 for each additional day the animal is left in the pound. In fact, this is not an unusual situation and $3.00 a day does not begin to cover the cost. Nor, as the statute allows, is it likely to be worth the poundkeeper’s time to seek to recover the amount in civil action.

The act takes effect on July 1.

**Elections Procedures (S.15, Act 60)**

(amends 17 V.S.A. §§ 2154, 2361, 2502, 2532, 2536, 2537, 2539, 2540, 2543, 2546, 2546a, 2546b, 2547, 2548, 2565, 2566, 2680; adds 17 V.S.A. §§ 2537a, 2543a; repeals 17 V.S.A. § 2545; creates session law)

The COVID-19 pandemic forced the state to significantly alter how the 2020 primary and general elections were conducted. H.681, the first bill passed last year that affected local government after the state shut down, established protocols for conducting elections during the pandemic. This year’s Act 60 permanently
implements many of H.681’s temporary changes for statewide and local elections. It also makes substantive changes to elections laws – several are mandatory for statewide elections, but the local election law provisions are optional.

Candidate Nicknames. The legislation defines a nickname a candidate may use as a name of one or two words that the candidate has commonly employed for at least three years. A candidate may not use a slogan or words that indicates a “political, economic, social, or religious view or affiliation.”

Outdoor and Drive-up Polling Places. Outdoor polling places are permitted for state and local elections. A board of civil authority (BCA) must designate the outdoor polling place and may restrict campaigning and other activities in the area as it currently does for indoor polling places. An indoor polling place must be available at or near the same location as the outdoor polling place in case of inclement weather. Drive-up voting is also permitted. Polling places that allow drive-up voting must also accommodate walk-in voters and those using other forms of transport.

Ballot Mailing for Local Elections. Act 60 allows early and absentee voting that uses Australian ballots. A legislative body of a town, city, or village may vote to mail Australian ballots to all registered voters in municipalities that conduct Australian ballot voting for annual or special meetings. Australian ballots must be mailed not less than 20 days before an election, or as soon as they are available. The municipality bears the cost of absentee ballot envelopes for local elections. A school board may vote to mail annual meeting ballots to all registered voters in a district if all of the district’s legislative bodies approve. In such a case, each municipality is responsible for mailing ballots and the school district bears the mailing costs.

Ballot Mailing for General Elections and Voter Checklist. For every general election, the secretary of state will mail a ballot to all voters on the statewide voter checklist not later than 43 days before the election but before October 1. Ballots must be returned to the municipal clerk with the pre-addressed, postage-paid envelope provided and paid for by the secretary of state’s office. Act 60 also addresses absentee voting for general elections.

Ballot Curing and Casting. Act 60 creates a means to cure defective ballots and allow voters to have their votes counted. If a ballot is deemed defective, the clerk will record the ballot as received and defective and place the ballot in a separate defective ballot envelope. A clerk must notify the voter that their ballot was defective and rejected and note how the voter can cure the error.

Candidates or their campaign staff may not return a ballot to a clerk or drop box unless they are returning their own ballot, a ballot of an immediate family member, or the ballot of a person they are a caretaker for. No person may return more than 25 ballots to a clerk or drop box unless the individual is a justice of the peace performing official election duties.

Ballot Drop Boxes. A Board of Civil Authority is authorized to install one or more secure outdoor ballot drop boxes for the return of voted ballots. Drop boxes are required to be accessible at any time of day, must be available for the return of ballots no later than 43 days before an election, and must include security measures (must be immovable, under surveillance or in the line of sight of the municipal building it’s placed near, and secure enough to prevent tampering with ballots). Depending on the number of registered voters in a municipality, the secretary of state’s office will make a certain number of drop boxes available free of charge.

Voting Access, Verification and Language Access. The secretary of state must submit a report to the legislature by January 30, 2023, regarding any issues related to implementing universal vote by mail for municipal and primary elections. The report must address the impact expanding vote by mail would have
on access to voting to historically disenfranchised and low-voter turnout populations, public satisfaction with the process, the overall elections administration experience, and a voter verification system that won’t disenfranchise voters but will verify that ballots have been submitted by registered voters.

The Secretary of State’s office must consult with municipalities and interested stakeholders on how to increase access to Vermonters who don’t speak English or have limited English proficiency and provide recommendations to the legislature by next January.

The act addresses many other election issues and amends and clarifies state law relating to ballot processing procedures, the use of vote tabulators, and other early voting procedures. These changes do not deviate largely from current law; rather, they clarify existing law. The secretary of state will be able to hire an assistant director of elections, a need that existed prior to the pandemic. Funds to pay for the position are included in this year’s budget. Other funds will pay for drop boxes, letter openers, training, voter education, software programming, and other election-related expenses related to this act.

The act took effect on passage.

**Municipal Charters**

(amends Title 24 Appendix: Municipal Charters)

“Towns are creatures of the state” is a concept given force of law by the Vermont Constitution. The reference is to an 1872 ruling by Iowa Supreme Court Justice John F. Dillon which said that municipal corporations may exercise only those powers specifically granted to them or that are necessary and essential to the declared purposes of the municipal corporation. As a Dillon’s Rule state, Vermont specifically grants municipalities through statute the authority to carry out certain endeavors, mandates them to carry out an ever-increasing list of responsibilities, and pre-empts them from addressing others.

There are 61 cities and towns with governance charters adopted at the local level that have been approved at the legislative level and subsequently enacted. Forty-five incorporated villages have governance charters. A host of special purpose districts – fire, school, waste management, recreation districts – have legislatively approved governance charters. These charters enable municipalities to deviate from general statute in specific instances, when the voters in a municipality have voted to change or adopt a charter, and when that locally voted amendment has been reviewed, dissected, frequently amended, and finally approved by the legislature. Once legislators receive a voter-adopted charter in the form of a bill, however, they may amend any part of the underlying charter they choose.

Every year, voters approve charter amendments that have been passed in other municipalities and that fall squarely within the realm of municipal government best practices but are not authorized in general statute. And, every year, those charter amendments need to be submitted to the legislature for their review, possible amendment, and approval. Only after a charter amendment has been approved by the legislature does it take effect at the local level.

Recent action in the legislature has been a sad commentary on the respect for democracy at the municipal level and local voters’ rights to amend the way they govern themselves within the boundaries of their communities. Charter amendments that make it to the legislature have been subject to public hearings, placed on the ballot, and approved by the registered voters in the town. Yet in a May 5 interview with *Seven Days*, Rep. Sarah Copeland Hanzas, chair of the House Government Operations Committee, verbalized the misinformed notion that “you can’t just have a group of five members of a legislative body in a town making decisions about changing how the town is going to govern itself. That’s not really democracy.”
In 2019, five charters were approved, two were partially approved with significant changes made to the original, and four were not approved. In 2020, three charters were approved and four were not. This year, two charters were approved, one was partially approved with significant changes made to the original, and six were not approved. Also this session, two charters – from Montpelier and Winooski – passed the legislature but were subsequently vetoed, the first time we can recall the governor taking such an action. During the veto session on June 23 or 24, the legislature will address the two vetoed charter bills and may vote to override them.

The following table lists the charters proposed to the legislature during the 2021 session.

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<tr>
<td>Town of Barre</td>
<td>H.127 M-1</td>
<td>Allows an acting or appointed presiding officers for town elections in the absence of the town clerk or assistant town clerk; provides for separate offices of town clerk and town treasurer and enumerates the duties of the treasurer; allows the selectboard to adopt a personnel policy; authorizes the selectboard to appoint a town assessor and removes reference to the office of lister.</td>
<td>All</td>
<td>None</td>
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<td>Town of Williston</td>
<td>H.140 M-2</td>
<td>Enables the town manager to appoint or remove the library director with the advice and consent of the library board of trustees; enables the town to adopt any legislature-approved charter provisions for any other municipality with voter approval and without final approval from the legislature; authorizes procedures for contract impasse resolution.</td>
<td>Manager-library director provision</td>
<td>Use any charter provision approved for any other town; contract impasse resolution procedures</td>
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<tr>
<td>Town of Underhill</td>
<td>H.445 M-3</td>
<td>Authorizes procedures for recall of elected officials.</td>
<td>All</td>
<td>None</td>
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<td>City of Montpelier</td>
<td>H.177</td>
<td>Authorizes noncitizen Montpelier residents to vote in local elections; establishes ballot and voter checklist administration and maintenance procedures.</td>
<td>None</td>
<td>All</td>
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<tr>
<td>City of Winooski</td>
<td>H.227</td>
<td>Authorizes noncitizen Winooski residents to vote in local elections; establishes voter checklist procedures; aligns petition signature requirements with state law and amends oath of office language; removes references to volunteer firefighters and personnel director; enables the town manager to appoint a human resource director; enables the town to adopt any legislature-approved charter provisions for any other municipality with voter approval and without final approval from the legislature.</td>
<td>None</td>
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<td>Town of Essex</td>
<td>H.95</td>
<td>Expands the selectboard to six members; changes selectboard membership to three members elected from outside the Village of Essex Junction and three members from within the village. (in House Government Operations)</td>
<td>None</td>
<td>All</td>
</tr>
<tr>
<td>Town of Brattleboro</td>
<td>H.361</td>
<td>Authorizes 16-to 18-year old Brattleboro residents to vote in local elections. (in Senate Rules)</td>
<td>None</td>
<td>All</td>
</tr>
<tr>
<td>City of Barre</td>
<td>H.444</td>
<td>Specifies the flags the city may fly; authorizes the city to adopt an ordinance that establishes a speed limit of less than 25 miles per hour on city streets; eliminates certain references to the office of first constable. (in Senate Rules)</td>
<td>None</td>
<td>All</td>
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Town of Springfield  H.447  Authorizes ordinance authority to clean and repair properties and remove rubbish; enables the town to adopt any legislature-approved charter provisions for any other municipality with voter approval and without final approval from the legislature; limits reconsideration or rescission of repealed ordinances; reorganizes ordinance adoption procedures and composition of the ordinance subcommittee; aligns charter with the state Public Records Act and Open Meeting Law; requires the selectboard to adopt an emergency preparedness plan; reorganizes and removes certain town offices including town manager, lister, library trustee, constable, grand juror, fence viewer and weigher of coal; amends financial procedures for annual budget and the budget advisory committee; establishes the position of finance director; technical corrections. *(in House Government Operations)*

City of Burlington  H.448  Establishes ranked choice voting for the election of city councilors; enables the city to adopt ordinances prohibiting the eviction of tenants without just cause and regulating thermal energy systems in residential and commercial buildings; adds two members to the board of airport commissioners including one Winooski voter. *(in House Government Operations)*

City of Burlington  H.454  Adds two members to the board of airport commissioners including one Winooski voter [provision also in H.448]. *(in Senate Rules)*

### EMPLOYMENT AND EMPLOYEE BENEFITS

#### Extending Workers’ Compensation Amendments (S.9, Act 2)
*(creates session law)*

S.9 was signed by the governor on February 3. When legislation addressing the pandemic was first passed in 2020 to address urgent needs on so many fronts, who could predict that the coronavirus would still be with us sixteen months later?

Act 2 extended until 30 days after the termination of Executive Order 01-02 – the State of Emergency the governor declared in response to COVID-19 – the commissioner of labor's authority to temporarily extend deadlines and amend or waive specific requirements of workers' compensation laws. The law established a rebuttable presumption that a worker who is diagnosed with COVID-19 is entitled to workers' compensation benefits.

The act took effect on passage.

#### Eligibility for Pandemic Emergency Unemployment Compensation (S.110, Act 5)
*(establishes session law)*

The governor signed Act 5 on March 17. At the time, it was emergency legislation requested by the Vermont Department of Labor (VDOL) because both the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and ACT 91 from last year were set to expire at the end of the month. The federal American Rescue Plan Act (ARPA) had not yet been signed into law, and VDOL wasn’t sure when it
might be, so they wanted to ensure they had the means to allow those with expiring pandemic-related benefits to renew their claims.

Act 5 continues the eligibility for Pandemic Emergency Unemployment Compensation benefits in lieu of regular unemployment benefits if:

- an individual is eligible for that benefit during a year that expired after December 27, 2020;
- an individual is still entitled to that benefit for the expired year; and
- the weekly benefit amount for regular unemployment insurance would be at least $25 less than the amount payable on the individual’s Pandemic Emergency Unemployment Compensation claim in the prior benefit year.

The new benefit year will not start until pandemic claim benefits are exhausted. Finally, a claimant’s weekly benefit amount for the new benefit year will be based on the wages that would have been in their base period if the beginning of the new benefit year had not been deferred.

Act 5 was signed by the governor on March 17 but took effect retroactively on January 1, 2021.

**School Employee Health Benefits (H.81, Act 7)**

(amends 16 V.S.A. § 2101)

Act 7 expands the list of school employees who are eligible for school employee health benefits to include school district supervisors, certain confidential employees, a certified employee of a school employer, and any permanent employee of a school employer, but not superintendents.

The act also amends the composition of the Commission on Public School Employee Health Benefits to provide that the entity which appoints a member to the commission may remove that person without cause. School districts or supervisory unions must give appointees time off to attend commission meetings. Up to four alternate members may be appointed to the commission. The commission is also authorized to negotiate a statewide grievance procedure for disputes concerning public school employee health benefits, and prescribes much of the allowable conduct of those negotiations.

Except for the language regarding negotiations and pertinent dispute resolutions, which take effect on January 1, 2022, the bill took effect on passage, April 9.

**Employee Incentives, Technical Education, Unemployment Insurance (S.62, Act 51)**

(amends 10 V.S.A. § 4, 21 V.S.A. §§ 1325, 1326, 1338; establishes session law)

In an effort to expand Vermont’s workforce, Act 51 establishes a New Worker Relocation Incentive Program and a New Remote Worker Grant Program for employees who relocate to Vermont or who work remotely here for an out-of-state company. Grants from $5,000 to $7,500 will be issued on a first come, first served basis.

In addition, Act 51 removes 2020 from the unemployment insurance tax rate calculation for all future taxable employers. It also maintains the current maximum weekly benefit amount of $531 for unemployment benefits and adds a supplemental weekly unemployment benefit of $25 for all unemployment claimants. This amount will begin 30 days after the current American Rescue Plan Act (ARPA) additional unemployment benefit of $300 a week expires on September 6. This new supplemental benefit will be funded from increased unemployment insurance tax rates in the amount of $100 million.
The benefit will continue until this $100 million amount is exhausted, which is estimated to take from 13 to 18 years.

The act also extends COVID-19-related unemployment provisions set forth under Act 91 of 2020 through the first of the month of the quarter following the end of the State of Emergency. In addition, it directs the state auditor to work with an outside consultant to evaluate unemployment fraud detection and prevention at the state level as well as overpayments, system processes, and overall procedures and practices and report any recommendations to the legislature by December 15.

The legislation also establishes an Unemployment Insurance Study Committee to examine the solvency of the Unemployment Insurance Trust Fund, fraud, overpayments and potential statutory changes to mitigate the impact of benefit charges to reimbursable employers who paid wages to a claimant during the claimant’s base period but did not cause the claimant to become unemployed. A report is due to the legislature by December 15.

The governor signed the bill on June 1.

TRANSPORTATION

Transportation Bill (H.433, Act 55)

This year’s transportation bill makes significant and targeted investments that are intended to reduce transportation-related greenhouse gas emissions, reduce fossil fuel use and save Vermonters money. The Department of Motor Vehicles will receive $24.5 million to invest in a new IT system to replace the antiquated 40-year old mainframe they currently use. Increased federal money is directed to Amtrak services and public transit programs and investments. The legislation strongly supports local governments by increasing local aid and adjusting grant amount thresholds for certain town highway programs, which received increased support in both the short and the long term. The total FY22 budget is $714,585,427, of which $389,546,034 is federal money and $282,190,668 comes from the state’s Transportation Fund (T-Fund). The remaining $40 million comes from various other sources including interdepartmental transfers and the Transportation Infrastructure Bond (TIB). The FY22 budget is $61.5 million more than the one adopted in FY21.

Greenhouse Gas Emissions Reduction Measures. The transportation budget focuses heavily on emissions reduction investments. A one-time appropriation of $3,250,000 will fund a grant program to incentivize Vermonters to purchase or lease new plug-in electric vehicles. Seven hundred and fifty thousand dollars in one-time T-Fund money and $500,000 in one-time General Fund money will help fund Capstone’s MileageSmart program, which provides grants to Vermonters to help pay for used, high-efficiency vehicles. A new Emissions Repair Program is created with a one-time $375,000 appropriation to help Vermonters repair certain vehicles that fail the on-board diagnostic system inspections. A one-time $1,500,000 appropriation creates a Replace Your Ride Program to help low-income Vermonters acquire more efficient vehicles. A one-time $50,000 appropriation helps Vermonters purchase new electric motor-assisted bicycles. Another one-time appropriation of $1 million will pay for a pilot program to support the continued expansion of charging stations at multi-unit dwellings and build upon the existing VW Electric Vehicle Supply Equipment (EVSE) Grant Program.
Certain urban and rural public transit services that receive federal funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), and the American Rescue Plan Act (ARPA) must operate on a zero-fare (that is, free) basis for FY22, when practicable. The Agency of Transportation (VTrans), in consultation with public transit providers, must prepare a long-range plan that outlines the costs, timeline, training, maintenance and operational actions required to move to a fully electrified public transportation fleet. This plan must be submitted to the legislature by January 31, 2022.

**Town Highway Aid Program.** This program furnishes the most equitable and flexible transportation funding to municipalities every year. Based on the road mileage of local class 1, 2 and 3 roads, each town and city gets a quarterly payment of aid for road, sidewalk, and bicycle route construction, improvements, maintenance, or as a non-federal share to be applied to public transit assistance. In FY22, municipalities will receive an additional $3 million in one-time state Transportation Fund money for general town highway aid, bringing this year’s total to $30,105,769. The money will be distributed to municipalities in the same proportion and for the same purpose stated in 19 V.S.A. § 306(a)(3), the state aid for town highways statute. In FY21, a shift from Class 2 and Structure Programs grant funding that was suspended due to the COVID-19 pandemic resulted in an additional $7 million for municipalities.

**Town Highway Structures and Class 2 Roadways.** The statutory grant award thresholds for Town Highway Structures and Class 2 Town Highway Roadway Programs competitive grants have been increased. Structure grants help build and maintain bridges, culverts, retaining walls, causeways, and other transportation structures and pay for associated expenses on class 1, 2 and 3 highways. Class 2 grants are for resurfacing, rehabilitatings, or reconstructing class 2 and 3 town highways. Nineteen V.S.A. § 306(c) is amended to increase the minimum grant amounts for Town Highway Structures from $5,833,500 to $7,200,000; 19 V.S.A § 306(h) is amended to increase the minimum amounts for Class 2 Town Highway Roadway grants from $7,648,750 to $8,600,000, the first time the minimum grant award has increased in over a decade. Fortunately for municipalities, the legislature also added millions of dollars in this year’s budget to both programs, which were temporarily halted in FY21 due to the pandemic. Over the past few years, both programs were funded at or slightly above the statutory minimums of $6 million to $8 million. This year, the Class 2 Roadways Program is set at $15,297,500 and the Structure Program is set at $12,667,000.

Nineteen V.S.A. §309b(b) also increases individual municipal grant award caps for Class 2 Town Highway projects from $175,000 to $200,000, the first increase in maximum grant award levels in more than a decade. According to VTrans, the cap for the Town Highway Structures Program has also been set at $175,000, even though this limit is not noted in statute. VTrans sets these program caps, therefore the agency may increase the maximum grant award to align with the $200,000 level set for the Class 2 program. The increased appropriations to both programs combined with increases to grant award caps correlate better to the actual costs of projects and do not decrease the number of overall grants approved from year to year.

**Lamoille Valley Rail Trail (LVRT).** Act 55 designates VTrans as the agency responsible for LVRT maintenance. This clarification is based on a recent study by the Department of Forests, Parks and Recreation that analyzed the ongoing needs of the 93-mile-long trail and who should be responsible for its maintenance. VTrans is also authorized to enter into a lease and maintenance agreement with other entities for certain LVRT needs.

**ROW Permits.** The act amends sections of Title 24, Chapter 117, that relates to site plans, subdivisions, and rights-of-way permitting. The legislation streamlines the approval process during a site plan review by a municipal zoning board that involves access to a state highway, or other work in the right-of-way such
as excavation, grading, paving or utility installation, by combining the local zoning approval with VTrans permitting. Whenever a proposed site plan involves such access, the applicant must get a letter from VTrans confirming whether a 19 V.S.A. § 1111 permit is required and, if so, enumerating the required conditions. The same combined approval process also applies to subdivisions adjacent to a state highway and is reflected in amended language in 24 V.S.A. § 4463(e).

**Banners over Roads.** Act 55 amends 10 V.S.A § 494, which regulates signage visible to the travelling public. Banners that are securely fastened with breakaway fasteners and erected over a highway right-of-way for fewer than 21 days and which are at least 16'6" above the highway will now need approval from the local legislative body. These types of banners were previously allowed under state law, however explicit approval from the municipality was not required.

**Equity and Traffic Safety Reports.** The agency will work with the Public Safety Department and the Associated General Contractors of Vermont to study the feasibility of implementing automated traffic law enforcement systems in work zones to improve work crew safety and reduce traffic crashes. The system is not intended to replace traditional law enforcement personnel but rather to act as deterrence and enforcement when traditional enforcement cannot be utilized. A second report by VTrans and the state’s 11 regional planning commissions will study Vermont’s existing transportation systems and recommend a framework to advance mobility equity. Mobility equity is a system that increases access to mobility options, reduces air pollution, and enhances economic opportunity for Vermonters in communities that have been underserved by the state’s transportation system. Regional meetings will be held to solicit input from local communities. VTrans will report to the legislature by January 15, 2022, on both matters.

The following table outlines Act 55 funding for municipal transportation projects and infrastructure.

<table>
<thead>
<tr>
<th>Town Program</th>
<th>FY20 As Passed</th>
<th>FY21 As Passed</th>
<th>FY22 As Passed</th>
<th>FY22 vs. FY21</th>
</tr>
</thead>
<tbody>
<tr>
<td>TH Aid Program (statutory formula)</td>
<td>26,663,161</td>
<td>27,105,769</td>
<td>27,105,769</td>
<td>0</td>
</tr>
<tr>
<td>(one-time additional TH Aid)</td>
<td></td>
<td>7,000,000^1</td>
<td>3,000,000</td>
<td></td>
</tr>
<tr>
<td>Town Bridges¹</td>
<td>13,833,851</td>
<td>13,073,351</td>
<td>15,408,394</td>
<td>+2,335,043</td>
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<tr>
<td>TH Class 2</td>
<td>7,648,750</td>
<td>3,250,000</td>
<td>15,297,500</td>
<td>+12,047,500</td>
</tr>
<tr>
<td>TH Structures</td>
<td>6,333,500</td>
<td>4,650,000</td>
<td>12,667,000</td>
<td>+8,017,000</td>
</tr>
<tr>
<td>TH Class 1 Supplemental Grants</td>
<td>128,750</td>
<td>128,750</td>
<td>128,750</td>
<td>0</td>
</tr>
<tr>
<td>Alternatives/Enhancements</td>
<td>3,268,618</td>
<td>2,763,408</td>
<td>4,454,294</td>
<td>+1,690,886</td>
</tr>
<tr>
<td>TH State aid nonfederal disasters</td>
<td>1,150,000</td>
<td>1,150,000</td>
<td>1,150,000</td>
<td>0</td>
</tr>
<tr>
<td>TH State aid to federal disasters</td>
<td>180,000</td>
<td>180,000</td>
<td>180,000</td>
<td>0</td>
</tr>
<tr>
<td>FEMA/Public Assistance Grants program</td>
<td>4,140,000</td>
<td>1,250,000</td>
<td>1,250,000</td>
<td>0</td>
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<tr>
<td>TH VT Local Roads</td>
<td>406,307</td>
<td>408,965</td>
<td>411,689</td>
<td>+2,724</td>
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<tr>
<td>Municipal Mitigation Grants²</td>
<td>2,898,000</td>
<td>6,705,715</td>
<td>6,610,000</td>
<td>-95,715</td>
</tr>
<tr>
<td>Subtotal</td>
<td>66,650,937</td>
<td>67,665,958</td>
<td>87,663,396</td>
<td>+19,997,438</td>
</tr>
</tbody>
</table>

1. Includes federal funds
2. The $6,610,000 total is broken down as follows: T. Fund, $705,000; Clean Water Fund, $3,977,000; federal funds, $1,428,000; ARPA funds, $500,000.
3. Grant awards from TH Structures and Class 2 Programs were suspended in FY21 due to the COVID-19 pandemic. $7 million was transferred from those two programs into the TH Aid Program on a one-time basis.
Electric Bicycles (S.66, Act 40)

(amends 23 V.S.A. §§ 4(18)(A), 4(21), 4(45), 4(81), 3501(1); adds 23 V.S.A. §§ 4(46), 1136a)

Over time, technology changes and amendments to laws are necessary, and Act 40 updated highway and motor vehicle laws to address electric bicycles. Because electric bicycles are growing in popularity among Vermonters on roads, sidewalks, trails and the like, state and local officials need to address their use and operations within Vermont.

The act defines electric bicycles for the first time in Title 23. Generally, an electric bicycle is a bike with pedals, a saddle or seat, and an electric motor of less than 750 watts that meets the requirements of one of three classes. These three classes are distinguished mainly by a bike’s maximum speed and how much human pedaling is necessary for propulsion. Persons under the age of 16 are prohibited from operating class 3 bicycles – bikes that reach a maximum speed of 28 mph. The existing definition of motor-assisted bicycles is amended to exclude electric bicycles in these three classes.

The act explicitly excludes electric bicycles and motor-assisted bicycles from the definition of motorcycle, motor vehicle, motor-driven cycle, and all-terrain vehicle. Electric bicycles are therefore regulated under distinct and separate laws. Unless otherwise noted in statute, electric bicycles will be governed as bicycles under Vermont law. Electric bikes and their operators are exempt from motor vehicle registration, inspection, certificate of title, operator’s license, and insurance requirements. They may be ridden where bicycles are allowed, including highways, bicycle lanes and bicycle or multiuse paths.

A municipality or the state may restrict or prohibit the operation of certain electric bicycles on multiuse paths if the restriction is necessary for safety reasons or to comply with other laws or legal obligations. This does not apply to trails that are specifically designated as non-motorized, however. The state and municipalities have discretion to regulate or completely ban electric bicycles from those types of trails.

The act takes effect on July 1. Electric bicycle manufacturer and distributor labelling requirements take effect on January 1, 2022.

Legislative Summer Studies and Reports

As she was finalizing the budget this session, Sen. Jane Kitchel, chair of the Senate Appropriations Committee, commented that the legislature required more study committees this year than she had ever seen before, and it would take a lot of time to read all of their reports. Although many of the reports could affect local governments if the legislature acted on their conclusions, not many of them actually call for the involvement of local officials. That is a telling commentary on this remote session – because affected parties were not in the room physically with legislators following various the bills, decisions were often made without anyone consulting them. Frequently, summer studies are requested in order to avoid resolving thorny issues at the end of the session or if there is simply not enough information to resolve a problem. A few of the more notable reports are summarized below.

Equity and Traffic Safety Reports (H.433). The Agency of Transportation will work with the Public Safety Department and the Associated General Contractors of Vermont to study the feasibility of implementing automated traffic law enforcement systems in work zones to improve work crew safety and reduce traffic crashes. A second report by the agency and the state’s 11 regional planning commissions will study Vermont’s existing transportation system and recommend a transportation equity framework to
advance mobility equity. Regional meetings will be held to solicit input from local communities. VTrans will report to the legislature by January 15, 2022, on both matters.

Miscellaneous Tax (H.436). The Department of Taxes, in consultation with VLCT, is to report on ways to help towns appraise high-value or unique commercial properties, including utility properties. Also in consultation with VLCT and the Vermont Municipal Clerks’ and Treasurers’ Association, the department is to submit a report proposing options to collect annual data on the number and grand list value of secondary residences in Vermont. That report is to include a definition for secondary residences and a structure and implementation plan for collecting and reporting data on secondary residences as part of the grand list including the state entity or state and municipal entity that would collect and report the data. The report will also recommend guidance for municipalities and listers.

Budget (H.439). The Speaker of the House and President Pro Tempore of the Senate are to launch a community engagement process to solicit Vermonters’ priorities for investing federal funds in the future of Vermont. A schedule is not yet posted.

The commissioner of finance and management is to identify statutory fees in the areas of public health, natural resources, and transportation that generate receipts in excess of $1 million per fiscal year and have not been changed in two or more years, and then to report what the inflationary change would be. That report, due to the legislature next January, is to include proposals to increase any fee which does not cover the cost of providing the service, product, or regulatory function.

The Agency of Administration is to review the funding of the Enhanced 911 Special Fund and recommend changes to ensure long-term stability of the E-911 Board’s operation. A report, due to the legislature by January, is to include recommendations on both the capacity of the Universal Service Fund as a long-term funding mechanism and on the structure of the E-911 program.