

WEEKLY LEGISLATIVE REPORT



VERMONT LEAGUE OF CITIES & TOWNS

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Senate Gov Ops Seeks Testimony from Local Officials

The Senate Government Operations Committee is seeking testimony from local officials across the state interested in increasing authority to address municipal matters at the local level. Officials who have concerns over the paternalistic and restrictive nature of state law as it relates to local governments should join the committee’s discussions.

Over the coming weeks, the committee will hear testimony about the concerns local officials have with general municipal governance and the law. Senate Gov Ops understands the constraints on local governments in this Dillon’s Rule state and is genuinely interested in finding innovative ways for municipalities – and more importantly their voters – to take on the responsibility for decisions that affect only the host municipality. No topic is off the table, so if you have comments on any laws that relate to local government – tax, transportation, economic development, local budgets, ordinance authority, zoning, charter processes, elections – or anything in between, please email gzakov@vlct.org. This is a rare opportunity for local officials to engage the conversation in such a free-wheeling environment!

American Rescue Plan – Week Two

The cascade of information and questions regarding the implementation of the American Rescue Plan (ARP) and disbursement of its funds in Vermont continued unabated this week and is likely to continue for some time as numbers are finalized and we receive guidance from the U.S. Treasury. The Joint Fiscal Office estimates that more than \$3 billion will be sent to Vermont in a variety of categories including tax reductions, aid to restaurants, family leave benefits, paycheck protection, employee retention credits, shuttered venue grants, stimulus checks and unemployment supplements to individuals, money for 3SquaresVT (Vermont’s version of the Supplemental Nutrition Assistance Program known as SNAP) and the Low Income Home Energy Assistance Program, as well as direct aid to the state.

Last week’s Legislative Report included a link to a spreadsheet that showed allocations for Vermont counties, metro cities, and local government/non-entitlement entities in separate categories. (Those numbers are now wrong and have not yet been updated!) The American Rescue Plan also included the Coronavirus Capital Projects Fund, whose categories included:

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Coronavirus Capital Projects Fund	\$112,295,706
Metro City (Burlington)	\$19,080,134
Local Government/Non-Entitlement	\$57,470,276
County Government	\$121,018,827

The sum of the Metro City, Local Government/Non-Entitlement and County Government funds is \$197,569,237.

The Local Government/Non-Entitlement and County Government allocations must be distributed according to population. Additionally, the Local Government/Non-Entitlement Entity category of funds must provide for overlapping jurisdictions. That generally means incorporated villages in Vermont. Vermont’s Census population is 623,989 and the population attributable to non-entitlement entities is 581,170. Thus, at a very rough estimate, the Local Government/Non-Entitlement per capital payment would be approximately \$99 and the County Government per capita payment would be approximately \$194.

Vermont has no functioning county governments. Therefore, we *think* the U.S. Department of Treasury (which makes the ultimate decision) will allocate the county allocation to local governments on a per-capita basis. According to a Federal Funds Information for States (FFIS) budget brief issued on March 11, “for counties that are not units of general local government, funds will go to the state, which will distribute them to the local governments in the county based on relative population.” Assuming that is what happens, the dollars indicated in last week’s spreadsheet will be adjusted significantly upwards. Those decisions are not yet finalized.

According to language in the American Rescue Plan, assistance to a non-entitlement unit of local government may not exceed 75 percent of the most recent budget for that government as of January 27, 2020. Any funds not distributed because they exceeded that percentage must be returned to the federal government. We do not expect that any municipality in Vermont would exceed that threshold.

Money from the American Rescue Plan is designed to help the economic recovery from the COVID-19 pandemic on an individual, local, state, and national level and is available for costs incurred through December 31, 2024. As we noted last week, funds may be used to:

- respond to the COVID-19 public health emergency by paying for costs related to assistance to households, small businesses, non-profits, and affected industries such as tourism, travel and hospitality;
- provide premium pay (up to \$13 per hour in addition to base pay up to \$25,000) to government workers who perform essential work during the public health emergency, or to provide grants to employers with employees who perform essential work;
- provide government services to the extent of lost revenue from the public health emergency, relative to revenues in the fiscal year prior to the pandemic; and
- make investments in water, sewer, or broadband infrastructure.

Funds may not be used to reduce taxes directly or indirectly between March 3, 2021 and the last day of the fiscal year in which all funds received have been spent or returned, or to make payments to pension funds. Periodic reports will be required, the Treasury secretary may specify additional information to be included in the reports, and funds used in violation of the requirements will have to be repaid.

H.315 – COVID-19 Aid. The Vermont Senate is currently voting on H.315 that includes amendments proposed by the Senate Appropriations Committee. The amendments include an allocation of \$950,000 from the American Rescue Plan Coronavirus State Fiscal Recover Fund to the Agency of Commerce and Community Development to grant:

- \$650,000 to VLCT to be used through state fiscal year 2024 to establish a support program for the use of federal funds, the Coronavirus Local Fiscal Recovery Fund. VLCT is to use the funds to facilitate local communities' efforts to:
 - respond to the public health emergency and its negative economic impacts;
 - assist with fund reporting, accountability, and transparency, and usage technical assistance when necessary;
 - provide for other guidance to ensure that 42 U.S.C. 801 Sec. 603 funds are used in accordance with federal law and regulations; and
 - provide guidance, model templates and policies, and training on ARP compliant finance and program management.
- \$300,000 to one or more regional planning commissions to be used through state fiscal year 2024, to establish and implement a capacity to assist local communities with specific management needs in expending ARP funds. The RPCs are to use these resources to facilitate local communities' project efforts to:
 - identify priorities for designing and building projects that are consistent with state and federal law, implement existing state, regional and local plans, and do not duplicate investments made by other federal recovery funds;
 - respond to inquiries on eligibility and facilitate local discussions among stakeholders on specific projects; and
 - provide other assistance as needed from local communities in coordination with VLCT.

H. 315 will be sent back to the House following passage in the Senate where we expect the House to concur with the Senate amendments. If the amendments pass, expect to hear much more from your VLCT staff as we work to establish the program that will ensure local governments use federal funds so as to comply with evolving guidance, reporting, management, training and transparency regarding their use.

Resources

- [Joint Fiscal Office Summary](#), March 17, 2021
- [FFIS Budget Brief](#), March 11, 2021

The Transportation Bill

After nine weeks of diligent work, the House Transportation Committee unanimously voted out [H.433](#), this year's transportation bill. The committee supported the governor's recommended budget and adopted most of his proposals, adding only a handful of changes. Although the number of changes was small, they are significant. The committee was able to shuffle money between programs with new federal money coming from a one-year extension of the Fixing America's Surface Transportation (FAST) Act, which was passed by Congress on the evening it was set to expire (September 30, 2020). This helped free up state money for programs that rely heavily on less restrictive state funds, such as town highway programs. An increase in federal money for the Agency of Transportation's maintenance budget freed up state funds that can be shifted elsewhere. This federal funding allowed the committee's budget proposal to include a large injection of one-time monies for several initiatives, including for town highway aid.

	A	B	C	D	E	F	G	H
2	FY22 GOVREC VS PRIOR YEARS (ALL FUNDS)							
3		FY2019	FY2020	FY2021	FY2022	FY2022	CHANGE	
4		AS PASSED	AS PASSED	AS PASSED	GOV REC	HTC Rec.	FY22 HTC REC vs	FY21 AS PASSED
5							\$ INC/(DEC)	%
8	DEPT. OF MOTOR VEHICLES	31,360,732	33,150,701	34,345,533	35,973,988	35,973,988	1,628,455	4.7%
10	FINANCE & ADMINISTRATION	14,655,914	15,497,069	15,979,760	16,211,983	16,211,983	232,223	1.5%
12	PROGRAM DEVELOPMENT							
13	Paving	104,199,583	100,682,429	105,755,261	120,459,399	120,459,399	14,704,138	13.9%
14	Interstate Bridge	24,543,000	30,831,313	22,653,892	22,595,374	22,595,374	(58,518)	-0.3%
15	State Highway Bridge	57,636,326	54,100,006	67,955,839	49,767,020	49,767,020	(18,188,819)	-26.8%
16	Roadway	51,972,218	48,779,614	42,111,213	37,334,563	37,334,563	(4,776,650)	-11.3%
17	Traffic & Safety	21,515,547	20,925,379	34,568,991	33,343,610	33,343,610	(1,225,381)	-3.5%
18	Park & Ride	3,807,556	2,651,588	5,580,568	5,220,233	5,220,233	(360,335)	-6.5%
19	Bike & Pedestrian Facilities	10,866,048	13,040,923	17,000,970	16,789,554	16,789,554	(211,416)	-1.2%
20	Transportation Alternatives	3,600,875	3,268,618	2,763,408	4,454,294	4,454,294	1,690,886	61.2%
21	Multi-Modal Facilities	0	0	0	0	0	0	0
22	Program Development Administration	22,748,320	24,117,481	24,385,131	25,084,554	25,084,554	699,423	2.9%
24	Total Program Development	300,889,473	298,397,351	322,775,273	315,048,601	315,048,601	(7,726,672)	-2.4%
26	AOT COVID-19		0	1,557,438	0	0	(1,557,438)	-100.0%
28	AOT ONE-TIME		0	11,400,000	5,000,000	9,775,000	(1,625,000)	-14.3%
30	REST AREAS	744,802	679,706	1,010,000	1,460,000	1,460,000	450,000	44.6%
32	POLICY & PLANNING	11,086,484	11,192,221	11,551,005	11,458,898	11,458,898	(92,107)	-0.8%
34	MAINTENANCE	87,896,279	94,013,939	99,836,436	103,519,499	103,519,499	3,683,063	3.7%
36	PUBLIC TRANSIT PROGRAM	29,020,229	33,824,399	38,234,820	42,821,522	42,821,522	4,586,702	12.0%
38	AVIATION	13,799,763	9,244,636	9,555,672	10,451,646	10,451,646	895,974	9.4%
40	RAIL	29,599,051	34,935,351	31,494,448	36,380,019	36,380,019	4,885,571	15.5%
42	CENTRAL GARAGE	20,684,524	20,112,038	20,982,875	22,202,720	22,202,720	1,219,845	5.8%
44	TRANSPORTATION BUILDINGS	1,578,050	907,746	307,000	850,000	850,000	543,000	176.9%
46	Total "VTrans" Programs	541,315,301	551,955,157	599,030,260	601,378,876	606,153,876	7,123,616	1.2%
48	TOWN HIGHWAY BRIDGES	13,324,994	13,833,851	13,073,351	14,894,232	14,894,232	1,820,881	13.9%
50	TH STRUCTURES	6,333,500	6,333,500	4,650,000	12,667,000	12,667,000	8,017,000	172.4%
52	TH CLASS 2 ROADWAY PROGRAM	7,648,750	7,648,750	3,250,000	15,297,500	15,297,500	12,047,500	370.7%
54	TH - NONFEDERAL DISASTERS	1,150,000	1,150,000	1,150,000	1,150,000	1,150,000	0	0.0%
56	TH - FEDERAL DISASTERS	180,000	180,000	180,000	180,000	180,000	0	0.0%
58	TH AID PROGRAM	25,982,744	26,663,161	27,105,769	27,105,769	27,105,769	0	0.0%
60	TH CLASS 1 SUPPLEMENTAL GRANTS	128,750	128,750	128,750	128,750	128,750	0	0.0%
62	TH VERMONT LOCAL ROADS	403,714	406,307	408,965	411,689	411,689	2,724	0.7%
64	MUNICIPAL MITIGATION ASSISTANCE PRO	9,082,342	3,098,000	6,055,000	6,110,000	6,110,000	55,000	0.9%
66	TH PUBLIC ASSISTANCE GRANTS	5,059,457	4,140,000	1,250,000	1,250,000	1,250,000	0	0.0%
68	Total "Town Highway" Programs	69,294,251	63,582,319	57,251,835	79,194,940	79,194,940	21,943,105	38.3%
70	TRANSPORTATION BOARD	271,543	282,191	184,774	186,611	186,611	1,837	1.0%
73	TOTAL PROGRAMS	610,881,095	615,819,667	656,466,869	680,760,427	685,535,427	29,068,558	4.4%
74								
75	C.Rupe/JFO							

Town Highway Programs. VLCT wants to thank the House Transportation committee for their support of increased town highway aid and overall support of the transportation infrastructure needs of local

governments. H.433 and the overall transportation budget strongly support local governments by increasing local aid and adjusting grant amount thresholds for town highway programs.

H.433 would appropriate an additional \$3 million in one-time Transportation Fund money for aid to town highways, bringing this year's proposed total to \$30,105,769. The money will be distributed to municipalities in the same proportions and for the same purposes for general state aid to town highways pursuant to 19 V.S.A. § 306(a)(3). The committee made it clear that this money is a one-time appropriation that does not guarantee substantial increased state money in the future.

Town Highway Structures and Class 2 Roadways. H.433 proposes to amend the statutory award thresholds for Town Highway Structures grants and for Class 2 Town Highway Roadway grants. Nineteen V.S.A § 306(e) 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. Individual municipal grant caps would increase from \$175,000 to \$200,000 for Class 2 Town Highway projects under 19 V.S.A. §309b(b). The increased appropriation in combination with funding caps correlates better to the actual costs of projects that have increased significantly in recent years.

Emissions and Electric Vehicles. The transportation bill focuses heavily on emissions reduction investments. A one-time appropriation of \$3,250,000 would fund a grant program to incentivize Vermonters to purchase or lease new plug-in electric vehicles. Six hundred thousand dollars in one-time money would help fund Capstone's MileageSmart program that provides grants of up to \$5,000 to Vermonters to help pay for a used, high-efficiency vehicle. 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 Replace Your Ride Program is created with a one-time \$1,500,000 appropriation to provide additional incentives for Vermonters with low income to replace certain vehicles with more efficient ones. A small one-time appropriation of \$50,000 helps fund incentives to help Vermonters purchase new motor-assisted bicycles. One million dollars of one-time funding is appropriated to fund a pilot program to support the continued buildout of charging stations – electric vehicle supply equipment (EVSE) – at multi-unit dwellings and build upon the existing Volkswagen EVSE grant program.

Lamoille Valley Rail Trail (LVRT) and ROW Permits. H.433 would amend statute to clarify that the Agency of Transportation (VTrans) is to be the state agency responsible for the ongoing maintenance of the LVRT. This proposed clarification in law is based on a recent study by the Department of Forests, Parks and Recreation (FPR) that analyzed the maintenance needs of the 93-mile trail and who should be responsible for its maintenance. It was determined that VTrans was the most appropriate agency, however the agency would be authorized to enter into a lease and maintenance agreement with the FPR for certain maintenance needs.

The bill would amend Section of Title 24, Chapter 117, that relates to site plans, subdivisions, and right-of-way permitting. During a site plan review by a municipal zoning or development review board that involves access to a state highway, the current dual-approval process would be streamlined by combining the local zoning approval with VTrans, 19 V.S.A. § 1111 permitting. The same combined approval would also apply to subdivisions adjacent to a state highway.

The transportation bill is currently in the House Appropriations Committee and set to hit the House floor for consideration next week. It should be in the Senate's hands by the end of next week

Resources

- [House Recommend Budget](#)
- [House Recommend Year-Over-Year](#)

Cannabis

The Senate continues to work on [S.25](#), a bill that makes miscellaneous changes to cannabis laws. First the Senate Judiciary Committee and later the Senate Appropriations Committee voted out the bill favorably. As the bill relates to municipalities, voters would need to vote on whether to opt-in to hosting retail establishments by March 8, 2023. The timing of the appointments and formation of the Cannabis Control Board Advisory Committee – the advisory committee to the Cannabis Control Board – would be accelerated to April 1, 2021. There is one seat on the board for a municipal officer or employee, appointed by the state treasurer, who will provide perspective and expertise on municipal matters.

Unfortunately, the bill currently has no amendments addressing the taxation and fee allocation structure as it relates to municipalities. A bill that would have provided two percent of the existing excise tax revenues to towns and authorize local cannabis control commissions to assess a fee of up to \$140 for local control licenses issued to retailers or integrated license holders is on the wall in the Senate Finance Committee.

Municipalities are not authorized to set local license fees and will get no tax revenue from the sale of cannabis, except for those few towns and cities with a local option sales tax. A small portion of local license fees will be pooled and distributed to communities with cannabis establishments, but only in amounts that “help defray the costs incurred by municipalities” in hosting establishments. Not only is there no guarantee that communities will get fees to cover the cost of hosting establishments, municipalities will be completely shut out of sharing revenues generated from the very establishments that are hosted in their communities.

S.25 will be on the Senate calendar for action next week.

Elsewhere in the State House

Elections. On Thursday, the Senate voted out S.15, a bill that makes various amendments to statewide and local elections procedures. (The bill is summarized in the [Weekly Legislative Report No 9](#).) Several amendments to the bill were offered and accepted on the Senate floor however a new version of the bill with those amendments is not yet available. Those amendments would require that any municipality that votes to apply an Australian ballot system – but did not vote to mail its annual or special meeting ballot to all active registered voters – must mail an absentee ballot request form to all active registered voters. (See [page 509](#) of the March 18 Senate Calendar.) VLCT was not given an opportunity to testify to this amendment, which is significant and will affect any municipality that chooses to allow early or absentee voting in local elections done by Australian ballot.

The bill next heads to the House Government Operations Committee and VLCT and municipal officials expect to have an opportunity to testify again to the bill.

Crossover Bills. Last week we reported on several bills that made it out of the last committee of reference ahead of Crossover. [H.159](#) is the House Economic Development bill that includes increased Downtown tax credits and expanded eligibility to neighborhood areas and for the Better Places Program. It would also include technical assistance for Black Indigenous, and People of Color (BIPOC) businesses, language that was in H.336. That bill is in House Appropriations and will not be taken up until the budget bill is out of committee.

[S.101](#) would encourage housing in smart growth areas. It would increase Municipal Planning Grant funds by \$500,000 that will be available to towns that update their bylaws in order to increase housing choices. It also includes the expanded Downtown Tax Credits and would eliminate permits from the Agency of Natural Resources that duplicate municipal permits for connecting to municipal water or wastewater systems. Whether or not that provision remains in the bill is in question, despite the fact that requiring two permits from two entities to connect to a municipal system does nothing more than increase the cost of building or redeveloping housing – already an enormous problem in Vermont. That bill was moved from Senate Finance to Senate Appropriations on Thursday.

[S.79](#) would move rental housing inspections to the state Fire Safety Division from the local health officer and establish a rental housing registry that would include short-term rentals. That bill is also in Senate Appropriations as of this writing.

Use of Force by Law Enforcement. You may recall legislation from last year – Act 147 and Act 165 – that addressed police use of force –. Act 147 established a criminal offense if a law enforcement officer used a prohibited restraint on a person and caused serious bodily injury or death. Act 165 established statewide law enforcement use of force standards, including the use of deadly force. [H.145](#), introduced this year, is a bill that is meant to clarify certain parts of the use of force laws, particularly the language around prohibited restraints, otherwise known as chokeholds. H.145 would replace the language “prohibited restraint” with the term “chokehold” to more accurately and clearly define the acts that the legislature intends to prohibit. The bill would also make clear that a law enforcement officer must intervene when another officer uses a chokehold and deadly force is not justified. The bill would clarify that an officer is prohibited from using a chokehold unless deadly force is justified. The date of implementation would be pushed out to September to allow for policy implementation and adequate statewide training for law enforcement officers.

The bill passed the House this week and now heads to the Senate Judiciary Committee for consideration.

Vital Records. Last month, the Senate Government Operations Committee had an initial walk-through of [H.151](#), a bill that addresses vital records, mausoleums and columbaria, and emergency health orders.

The bill 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. These updates would repeal the responsibility of town clerks to replace and dispose of corrected, completed or amended records. Town

clerks, who requested this amendment, will continue to receive email updates of changes to those vital records by the state registrar in the Department of Health.

Title 18, chapter 121, would be amended to address mausoleums and columbaria. According to current law, the State Board of Health is the governmental entity responsible for approving the construction and alteration of mausoleums and columbaria in cemeteries. The Department of Health requested this law be amended to shift the responsibility to the legislative body of the municipality and the local board 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 will retain authority over mausoleums that become a hazard to public health.

The bill also addresses emergency health orders: 18 V.S.A. § 107 would be amended to authorize local health officers to review records and 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.” Current law also requires that when a health order is issued, service must be done in accordance with the Vermont Rules of Civil Procedure.

The bill would also allow a health officer to serve (or deliver) a health order without needing law enforcement to provide service. And, if a person subject to an emergency health order resides out of state, the order would be served through certified mail.

Protocols for Restaurants. At his Friday press conference Governor Scott announced that, beginning next Wednesday, March 24, bars and social clubs may re-open in accordance with the [protocols for restaurants](#).

Individual municipalities may want to regulate gatherings at bars and social clubs beyond what is permitted by the state guidance in order to address circumstances within their community.

Vermont Afterschool Survey. As part of Vermont’s education recovery work from the pandemic, the Governor’s Office is working on setting up enhanced summer enrichment opportunities and programs for our children. While there are many benefits to participating in extended learning opportunities year-round, we know that there are academic, social, and emotional needs of our children coming out of the COVID-19 pandemic that are making this summer and the coming year especially crucial.

Governor Scott wants to get as many kids in to summer programs/camps as possible. We know a big part of feeling better is reengaging in activities. We currently are building a searchable resource page for families, which the Governor’s Office and other state and local partners will eventually launch and promote.

Please take this [Vermont Afterschool Summer 2021 Programs](#) survey to help the Governor’s Office identify the best ways to create supportive and safe summer spaces. Thank you!

Municipal Survey

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

New Bills That Affect Municipalities

BILL NUMBER	BILL SUMMARY	CURRENT LOCATION
H.428	Would amend the hate-motivated crimes statute to eliminate the element that the conduct be “maliciously” motivated.	House Judiciary
H.431	Would amend statutes concerning utilities and the reporting and investigation of accidents, the Public Records Act and cybersecurity, and energy storage; to authorize the adoption of rules by the Public Utility Commission; and to amend the Nuclear Decommissioning Citizens Advisory Panel.	House Ways and Means
H.433	Would adopt the state’s annual Transportation Program and make miscellaneous changes to laws related to transportation.	House Appropriations
S.124	Would make multiple changes related to subjects within the Public Utility Commission’s jurisdiction.	Senate Natural Resources and Energy