

# WEEKLY LEGISLATIVE REPORT



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## American Rescue Plan: Week 4

On Thursday, the House Appropriations Committee finalized its review of Senate amendments to H.315, one of this session’s COVID-19 relief bills. The committee was initially expected to report their responses on the House floor today, but some differences between the Senate and House proposals regarding the treatment of income taxes caused action on the bill to be delayed to next week.

The House Appropriations Committee would agree with the Senate in allocating \$950,000 from the American Rescue Plan Act (ARPA) to the Agency of Commerce and Community Development to grant:

- \$650,000 for a support program through FY24 for the use of federal funds received under 42 U.S.C. 801 section 603, the Coronavirus Local Fiscal Recovery Fund; and
- \$300,000 to one or more regional planning commissions also to be used through FY24 to help local communities with specific project needs in expending federal funds.

VLCT is eager to move ahead with establishing the new ARPA coordination and assistance program. As soon as H. 315 is passed, your VLCT staff will develop and begin to implement that program.

Last week, we reported that direct aid to municipalities would not arrive in town accounts until around June 9. With respect to that money, the State of Vermont needs to formally request funds from the U.S. Treasury, and is preparing a letter to do so. The Treasury then has 60 days to provide the state funds that include the first half of local direct aid to the state. It seems that there is no similar requirement for the state to request local direct aid funds. So, as of now, the June 9 date is when towns should receive local aid dollars.

There is a lot of discussion in the State House right now about how local governments should spend their direct aid and a fair bit of angst that the legislature does not get to direct how it will be spent. Our partner in Washington D.C., the National League of Cities, is quite clear that aid for municipalities is protected from state interference by “iron clad statutes compelling states to comply, including penalties for states that fail to carry out their responsibilities to small cities and towns.”

The efforts to direct the expenditure of local direct aid – and, thus, this language – are much more extreme in other states than in Vermont, where the practice during the COVID-19 pandemic has been to foster productive partnerships between the state legislature, executive branch and cities, towns, and villages.

Numerous suggestions about using local aid are under discussion in the State House, among them strong encouragement to work with neighboring communities to develop a common list of priorities and initiatives for the larger area; providing state ARPA funds to match local dollars to encourage expenditures in areas that are state priorities such as wastewater facilities, stormwater management, and broadband. Many single-purpose entities such as waste management, recreation, and communications union districts, as well as counties, and regional development corporations are expressing concerns to legislators about the lack of direct aid to assist with their own missions. The multi-town discussions about priorities may inform those conversations. It is worth reiterating the advice from the National League of Cities and VLCT:

1. Use dedicated grants and programs first whenever possible. Save local fiscal recovery funds for gaps and priorities not eligible for other federal and state assistance programs.
2. Assess government operations and community needs and ask staff and stakeholders for help in creating a comprehensive needs assessment.
3. Prioritize fiscal stability and returning to work.
4. Maintain detailed records and document success.
5. Be careful – as the state is being – not to create obligations that extend beyond the availability of ARPA funds.
6. Vermont's Congressional delegation is part of your success. Thank them!

Conversations are ongoing and we will report on them as they evolve.

## The Transportation Bill

This week, the Senate Transportation Committee took possession of H.433, the Transportation Bill, and began their review of the bill's underlying budget. As you may recall, H.433 as proposed by the House strongly supports municipal governments, both now and in the future. (See [Weekly Legislative Report No. 11](#) for a detailed examination of the legislation.)

The Senate Transportation Committee began by taking testimony from Rep. Diane Lanpher, Chair of the House Transportation Committee, and officials from the Agency of Transportation (VTrans). The committee expressed hesitation bordering on alarm on several provisions of the bill that relate to funding to municipalities. The committee was concerned that municipalities will be getting more money than they "need," considering federal money will be coming from the American Rescue Plan Act (ARPA) later this spring. Unfortunately, the committee did not discuss the fact that ARPA money going to municipalities (as far as we understand at this time) cannot be used for transportation needs. The committee also worried that future commitments for transportation aid via proposed increases to caps and funding for Class 2 Highways and Town Highway Structure grants will put undue pressure on VTrans' budget in the future.

VLCT will ask to testify in the committee in support of H.433 as passed by the House. We invite local officials – in particular those who told us of their support raising the caps for Class 2 Town Highway

projects from \$175,000 to \$200,000 – to join us. Please contact [khorn@vlct.org](mailto:khorn@vlct.org) or [gzakov@vlct.org](mailto:gzakov@vlct.org) if you would be willing to testify in support of H.433.

## Pupil Weighting

S.13, the legislation that would implement the Pupil Weighting Factors Report of 2019, passed the Senate last week and is now in the House Education Committee. In Vermont's byzantine Education Funding system, pupils (that is, real people) are given weights based upon (1) their grade level, (2) whether they are English language learners, and (3) if they are economically disadvantaged. The number of pupils in each category is multiplied by the applicable factors to arrive at a student count for a school and Education Fund budgeting purposes.

The bill notes that the findings from the report “were stark, stating that ‘neither the factors considered by the current formula nor the value of the weights reflect contemporary educations circumstances and costs.’” As the COVID-19 pandemic shut down the state last year, the less critical matter of addressing the report was set aside. The report recommended overhauling the weights attributed to various educational factors, which would have significant implications for school districts all over the state and potentially create new sets of winners and losers in the education funding process.

S.13 would create a six-member task force – made up of legislators, the secretary of Education, and the chair of the State Board of Education –charged with recommending an action plan and proposed legislation to “ensure that all public school students have equitable access to educational opportunities and consider whether any of the weights should be eliminated in favor of categorical aid.” The task force would also consider education property tax rates and the taxing capacity of school districts and how their recommendations would mesh with those of the [Tax Structure Commission Report](#). A major issue will be how to transition to a new system and ease the impact on school districts.

The bill would appropriate \$10,800 in per diem expenses to the task force and \$150,000 for a consultant hired through the Joint Fiscal Office to work with the task force. A report would be due to the legislature by next January with the expectation that legislation implementing a new system would be passed in 2022.

There will be considerable pressure on the Education Committee to pass S.13 this year so that another year is not lost while the currently inequitable pupil weighting system remains in place.

## HNR Miscellaneous Environmental Topics

The House Natural Resources, Fish and Wildlife Committee has been taking testimony on a draft “technical amendments” bill (DR 2100956) that would amend sections of the law pertaining to, among other things, Act 250, brownfields, Vermont's Environmental Contingency Fund, and waste management. Having been present for discussions regarding most of the programs mentioned, we can attest that the items called out by the legislation generally represented compromises necessary to secure support for programs at the time, and many (but not all) of those requirements are no longer necessary. The COVID-

19 pandemic shut-down also highlighted the inconvenience and irrelevance of some of the measures (not just those addressed here) required by statutes that address environmental subjects.

The requirement for the secretary of the Agency of Natural Resources to consult with the secretaries of Agriculture, Food and Markets and Transportation regarding any progress of water quality ecosystem restoration programs would be replaced with a more specific requirement to report on Lake Champlain Total Maximum Daily Load (TMDL) implementation plan milestones for each basin in accordance with the TMDL accountability framework schedule. The requirement for the Clean Water Investment Report to include a summary of potential additional funding sources and available federal funding for water quality improvement efforts would be deleted. That responsibility would shift to the Secretary of Administration, who is also chair of the Clean Water Board and who submits to the legislature a Clean Water Initiative Performance Report which incorporates requirements of the Clean Water Investment Report, the most recent one covering fiscal years 2016-2019. The report states that during that time period, state agencies awarded \$138 million to clean water projects.

The draft bill would eliminate the requirement for the Department of Environmental Conservation to provide annual training to permitted salvage yard owners. While annual training may be excessive, this requirement should not be altogether eliminated.

The law regulating dam safety orders and dam removal projects would be amended to require notification of adjoining landowners before a project was started.

The categorization of wetland determinations undertaken by the Agency of Natural Resources (ANR) in statute would be changed so that determinations could be noticed for 14 days instead of 30.

The limit on disbursements from the Environmental Contingency Fund to address a release of hazardous materials would increase from \$100,000 to \$350,000.

The required allocation of Solid Waste Management Assistance Account dollars (funded by the franchise tax on waste facilities and legislative appropriations) to implementing the state waste management plan and district or regional waste management plans would increase from 17 to 20 percent. Several changes would be made to statutes regulating commercial solid waste haulers. A commercial hauler would be defined as a person who transports regulated quantities of hazardous waste or solid waste for compensation in a motor vehicle of any size. (The minimum size is currently more than one ton).

The draft bill would amend the brownfields statute to allow a municipality to acquire a brownfield property through purchase, gift, or other means not related to its sovereign authority, and enter into an agreement with ANR to remediate the property without becoming subject to liability for the pollution.

Technical amendments would be made to application processes at Act 250 so as to accommodate a new online application and database. The responsibility to notify statutory parties of an Act 250 application would shift from the applicant to the district commission and would be provided via electronic means.

All of the changes in the draft bill would take effect July 1, 2021.

House Natural Resources may vote to approve the draft bill today, at which time it would receive a bill number.

### Resource

- [Vermont Clean Water Initiative 2019 Performance Report](#)

## **Emergency Service Provider Wellness Commission**

This week, the House Health Care Committee walked through [S.42](#), a bill that would create an Emergency Service Provider Wellness Commission. The commission would bring emergency service providers together to discuss issues relevant to the physical and mental health of emergency service providers and to identify gaps in services these individuals face. The commission would be housed in the Agency of Human Services and comprise a wide variety of emergency service providers from across the state: 24 representatives from state agencies and departments, law enforcement, EMT, paramedic and firefighter associations and similar groups that interact with or represent emergency service providers. VLCT is identified as a member.

The commission would:

- identify investments to improve the physical and mental health outcomes and overall wellness of emergency service providers;
- identify how Vermont can increase capacity of qualified clinicians in the treatment of emergency service providers ;
- create information for an electronic emergency service providers wellness resources center on the Department of Health's website;
- educate the public, emergency service providers, governments, employee assistance programs, and policymakers about strategies to prevent the effects of trauma experienced by emergency service providers;
- identify gaps and strengths in Vermont's system of care for emergency service providers and their family members who have experienced trauma;
- recommend how regional or statewide peer support services and qualified clinician services can be delivered;
- recommend how to support emergency service providers in communities that are resource-challenged, remote, small or rural; and
- recommend policies and services that will 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 assist volunteer emergency service providers recover from the effects of trauma they experienced while on duty.

The commission's first meeting would take place by September 30, 2021. The commission would report any recommendations to the governor and General Assembly as necessary but not less than once a year.

VLCT strongly supports this legislation and will submit testimony in support of it. S.42 would have a positive impact on emergency service providers and the communities they serve. The commission is the first time such a wide variety of public safety officials and associated groups will work together to address and problem-solve their various physical, mental, and overall wellness health needs, particularly as they relate to traumas experienced while on the job.

## **S.100 – School Meals and the Education Property Tax**

Last week, S.100 appeared on the Senate Calendar for second reading, where it still resides. As recommended by the Senate Agriculture, Appropriations and Education committees last week, the bill would require school districts to provide breakfasts and lunches to every student free of charge every day, regardless of the student's need for assistance. School districts currently secure reimbursement from the federal government for the cost of those meals for students who meet their definitions of need. During the pandemic, Vermont schools did an epic job of ensuring that every child had access to healthy meals and no student went hungry simply because their school was shut down.

Under the provisions of S.100 as it appears on the calendar this week, the cost of meals provided to students who do not qualify for assistance because they don't need it would be borne by the individual school district. According to data from the Vermont School Boards Association and the Vermont Superintendents Association, the program to feed students who do not qualify based on need would cost between \$24 and \$40 million each year. Thus, the hold-up on the Senate floor while the Agriculture Committee tries to figure out an answer to the funding question.

As currently written, the cost of S.100 would be borne, one way or the other, by an increase in the education property tax. If an individual school district is responsible for providing breakfast and lunch to students whose families can afford to pay for the meals, the cost will be borne by the property tax payers in that district. If the new mandate is paid for out of the Education Fund, education property taxes will increase to cover that obligation. That is because the education property tax, even with all the tinkering in the last several years, still funds two thirds of the Education Fund. Either way, the cost of meals would be an expense that property tax payers at the local level would not be able to approve or disapprove through a school budget vote.

In allocating the large sums of COVID-19 aid coming into the state (K-12 education is receiving almost \$600 million from the three federal COVID aid bills), legislators have been wary of creating long-term obligations that will remain in place long after the federal dollars are spent. Yet, S.100 would do precisely that.

Ensuring that every needy student has access to healthy meals is a goal that everyone supports. Imposing the resulting cost, which is really a human services cost, on already stressed school budgets and the property tax – which legislators regularly promise to reduce during campaign season – is simply inappropriate. We join the School Boards and Superintendents associations in opposing the requirement in S.100 that the education property tax cover the cost of meals for students not in need and urge your senators to fund that new initiative out of the General Fund.

## Elsewhere in the State House

**Oaths of Municipal Officers.** Last week, the Senate Government Operations Committee took testimony on [H.154](#), a bill that would create a municipal office vacancy if an officer failed to take the oath of office. The bill passed the House on March 18. VLCT testified in support of the bill and the committee voiced general support of it. However, the committee did not vote on the bill and indicated they may leave it in committee to be attached to another bill dealing with municipal issues, such as how vacancies on unified union school district boards are filled between elections. The committee did not indicate when they will next take up the bill.

**Use of Force.** Also last week, the Senate Judiciary Committee began review of [H.145](#), a bill that amends the standard for law enforcement use of force. The bill is meant to further clarify legislation passed last year in Act 147 and Act 165 that dealt with the use of force and prohibited restraints by law enforcement. H.145 would clarify certain use of force laws, particularly the language around prohibited restraints, otherwise known as chokeholds. The bill would also clarify that an officer is prohibited from using a chokehold unless deadly force is justified. The committee will continue taking testimony over the coming weeks.

## Barre City Condemns Racial Violence

On Tuesday, the Barre City Council adopted the following resolution condemning hate crimes against Asian Americans and Pacific Islanders:

*Whereas*, Asian Americans and Pacific Islanders have reported nearly 3800 incidents perpetrated against them nationwide since the start of the pandemic and have been the target of verbal and physical unprovoked attacks based solely on their ethnicity; and

*Whereas*, Recent shootings in Georgia targeting Asian-owned businesses resulted in the murder of eight people, including six women of Asian backgrounds; and

*Whereas*, Barre City has at least 20 residents who are Asian and at least five businesses that are Asian-owned or co-owned; and

*Whereas*, Congress passed H.Res. 908 on September 17, 2020, condemning all forms of anti-Asian sentiment as related to the COVID-19 pandemic; and

*Whereas*, President Joseph R. Biden released a Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States on January 26, 2021;

*Be Resolved, that:*

1. The Barre City Council condemns and denounces any and all anti-Asian sentiment in any form and will not tolerate acts of aggression against Asian community members by any Barre City employee or agent thereof; and

2. The Barre City Council condemns all manifestations of expressions of racism, xenophobia, discrimination, scapegoating, and ethnic or religious intolerance against any of its residents by any Barre City employee or agent thereof.

By order of the City Council of the City of Barre, Vermont, this 30<sup>th</sup> day of March, 2021.

In the past few months, several other towns – including Pittsford, Brandon, Franklin, Moretown, Waterbury and Middlebury – have adopted a Declaration of Inclusion or similar statement, recognizing that statements are just the beginning of a commitment to addressing racial injustice, equity, and inclusion. VLCT will soon post on our website a guidebook to help with the conversation around a declaration of inclusion. If your town has adopted such a resolution, please let us know!

Several more towns – among them Putney, Hartford, and Burlington – have created equity committees or the position of equity director to address those same issues. As the VLCT Equity Committee continues its work on behalf of local governments, we will keep you informed of our progress.

## New Bills That Affect Municipalities

BILL NUMBER	BILL SUMMARY	CURRENT LOCATION
<a href="#">H.440</a>	Would create a program establishing “Green Justice Zones.” A Green Justice Zone designation would provide pilot funding for at least two communities to establish a community-led, participatory planning, budgeting, and referendum process. This process would implement projects to address social and environmental vulnerabilities in that community. Any program created under this bill would equip workers with the skills they need for any job created. The unionized workforce would be prioritized for conducting related workforce development programs and recruitment for these jobs will prioritize local workers with low income and workers who are Black, Indigenous, and Persons of Color.	House Nat. Resources, Fish, and Wildlife
<a href="#">H.441</a>	Would eliminate penalties on underpayments of estimated tax on retirement income that is not subject to withholding. Would also expand the existing safe harbor for retirement income that is not subject to withholding by reducing the amount of the required annual payment from 90 percent of the current year’s tax liability to 75% of the current year’s tax liability.	House Ways and Means
<a href="#">H.443</a>	Would approve the merger of the Wilmington Water District with the Town of Wilmington.	House Government Operations
<a href="#">S.128</a>	Would amend the taxation of renewable energy plants, energy storage facilities, and energy transformation projects in Vermont under the uniform capacity tax and the property tax. Would impose an annual uniform capacity tax on grid-connected renewable energy plants in Vermont constructed on or after January 1, 2022 to generate solar power with a plant capacity of 50 kW or larger at a rate of \$6.00 per kW of plant capacity, and grid-connected energy storage facilities or energy transformation projects in Vermont with a capacity of 600 kWh or larger at a rate of \$0.50 per kWh of plant energy output. Would also exempt from the uniform capacity tax any renewable energy plants, energy storage facilities, or energy transformation projects with plant capacities or plant energy outputs below the taxable thresholds.	Senate Finance
<a href="#">S.130</a>	Would prohibit employers from discriminating or retaliating against employees who are absent from work while performing duties as volunteer emergency responders.	Senate Economic Development, Housing and General Affairs