

2022 Weekly Legislative Report #6

February 4, 2022

Today's report reports on qualified immunity legislation, accessory dwelling units, the budget adjustment act, proposed changes to how public safety dispatching occurs in Vermont, municipal land records, a proposition to the Vermont Constitution, medical monitoring, and more.

If you haven't yet, consider looking at our two webpages that help you easily track the 2022 bills that especially affect municipalities: [bills introduced in the House](#) and [bills introduced in the Senate](#). We update these cumulative lists every Friday so you can follow bills as they travel through the appropriate State House committees. As the legislative session progresses, go to our [Legislative Reports page](#) to revisit this issue and find other weekly legislative reports.

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This Week's Articles

Senate Passes Budget Adjustment Act

On Thursday, the Senate took up and passed H.679, an amended version of the House passed FY22 budget adjustment bill. The bill now returns to the House, where it sounds like there are few actual differences of opinion. The Senate version of the bill would increase appropriations by \$367 million, a five percent increase from the budget passed at the end of the last session. Among the proposed increases would be:

- \$30 million from the General Fund and \$25 million from the American Rescue Plan Act (ARPA) to the Vermont Housing and Conservation Board for additional housing and increased shelter capacity;
- an additional \$250,000 for Municipal Planning Grants;
- eight new positions and \$200,000 to the Cannabis Control Board and the transfer of \$850,000 from the General Fund to the Cannabis Regulation Fund;
- \$81 million in unreserved and undesignated General Fund dollars to be used in FY23 as the state match for the federal Infrastructure Investment and Jobs Act;

- \$1.5 million for a State House expansion Request for Proposal;
- \$300,000 to support public, educational and governmental (PEG) access channels and services;
- an \$2,175,150 increase in Agency of Transportation Municipal Mitigation Assistance programs; and
- \$1.725 million from the Education Fund to the Agency of Education for supplemental grants to Career Technical Education centers (The Education Fund currently has a \$95 million surplus).

The Senate removed \$20 million from H.679 that the House had allocated to the Vermont Rental Housing Incentive Program and instead intends to attach it to S.210, the rental housing bill, which is on the Senate calendar today.

The State Fiscal Relief table linked below shows the total amount of ARPA dollars that is committed to priorities as of February 3. The total amount appropriated in previous budgets (Acts 9 and 74), the Budget Adjustment Act and S.210 is \$635,514,176. A total of \$423,036,043 in ARPA funds remains unallocated.

Resource for this article:

- [Coronavirus State Fiscal Relief](#), Feb. 3, 2022

Major Changes Proposed in Dispatching in Vermont

Although the legislature has yet to directly take up the issue of public safety dispatching this session, any person working in the field knows a proposal is afloat to make major changes in how dispatching occurs in Vermont. Dispatching by public safety agencies has a long and storied history in Vermont. Over the decades, dozens of proposals and reports have aimed to change how dispatching occurs across all public safety agencies. Very few of them have resulted in any measurable changes. However, a proposal from the Department of Public Safety (DPS) seems to have serious legs – enough so that the governor’s budget proposal included an \$11 million appropriation to get the measure off the ground. It’s certainly something all communities need to pay close attention to, as it may affect every EMS, fire and police agency to some degree.

The DPS proposal would transition the entire state to a regional emergency dispatch system. It would end the current practice of the state providing dispatching services to non-state public safety agencies and switch those users to a regional dispatching center. The state currently dispatches approximately 100 nonprofit, municipal and county EMS, fire and law enforcement agencies. Over a 24- to 36-month period, those agencies would have to transition to contracting with regional providers for dispatching services from either an existing dispatch provider or another new one. DPS envisions there would be new regional communication centers in various geographically dispersed areas of the state. Both existing and new centers would vie for funding from the \$11 million proposed in the governor’s budget. This money would fund the initial year of transition and operational costs for agencies moving from state to regional services. DPS would provide technical assistance during this transition.

Local officials have serious concerns with this proposal because it leaves municipalities and agencies they use for public safety services with more questions than answers.

DPS needs to provide a complete inventory of the agencies and departments impacted by the proposal. They also need to disclose the names and total number of agencies that currently receive part-time dispatching services from the state. A complete understanding of the current DPS budget for dispatching would help inform everyone about what the future budget should be for DPS and for regional dispatch centers, as well as how DPS savings would be applied once the state gets out of the business of dispatching for non-state entities. The ongoing costs of running dispatching services will continue beyond this 24-to-36-month period. Yet there is no proposal for the state to provide any funding to help regional centers once the transition is complete. All agencies and municipalities need to know how the \$11 million will facilitate this transition and how that money would be allocated. Most importantly, it isn't clear what entities would need to run these regional centers, or even if they will be operational within this very narrow timeframe. Affected agencies and municipalities have had little input into the proposal and have not been apprised of what the impact on municipal, county, and non-profit budgets – both near term and into the future – will be.

It is unclear when the legislature will take up this proposal as no bill has been introduced that addresses it. Right now, it is only in the budget process that the \$11 million would be reviewed, and only by the Appropriations committees. This proposal is not merely a line-item in a department's overall budget, but rather a significant shift in how emergency dispatch services would be provided across the state. At the very least, an in-depth review by the Government Operations committees is warranted.

Allowing Private Rights of Action Against Law Enforcement Officers

For the past two weeks, the Senate Judiciary Committee has discussed and taken testimony on a bill that could have the most negative impact on policing in Vermont in recent history. (See article in [Weekly Legislative Report No. 4](#).) The bill, S.254, would end the application of qualified immunity to law enforcement personnel in Vermont as well as eliminate *all* immunities applied to law enforcement officers – that is, it opens them to suits for any action or lack of action. The bill specifically singles out law enforcement officers. All other governmental officials covered by qualified immunity would retain that protection. VLCT is concerned that the committee members misunderstand the doctrine of qualified immunity and how it works. Advocacy staff testified about our concerns with the scope of S.254 and its potentially devastating impact on community policing, access to law enforcement services, recruitment and retention of law enforcement officers, and fiscal impacts on taxpayers and property taxes due to higher insurance premiums that result from additional prolonged and protracted litigation.

What is Qualified Immunity? Qualified immunity is a legal doctrine that applies to almost all public servants, not just law enforcement. Qualified immunity limits *civil* liability, not criminal liability, when government officials make a good faith effort to follow laws, regulations, policies, and training while doing their job. Typically, a government official cannot be sued if the constitutional or statutory right the official is accused of violating under Section 1983 of the Civil Rights Act of 1871 or federal statute was not “clearly established” at the time of the alleged violation. The Vermont Supreme Court has adopted a similar standard.

A municipal employee or officer is protected by the immunities this bill seeks to end for law enforcement personnel. City councilors, selectboard members, firefighters, road crews, teachers, town office personnel, elected and appointed municipal officers, and many others are protected

from private rights of action when they – in good faith – exercise judgment as they properly follow laws, rules, policies, procedures, and training related to their jobs. Qualified immunity does not apply to criminal charges or protect government officials who act in bad faith. Egregious conduct outside the scope of training, applicable rules, policies, laws, or regulations is *not* protected. Qualified immunity allows government officials and employees to discharge their duties without worrying about being sued for actions that a court has not yet determined violate the constitution. It balances the desire to compensate individuals for harm caused by constitutional violations with the need to protect government officials from the harassment and distraction of lawsuits that are costly for taxpayers to defend, that deter people from taking public service jobs, and that inhibit governmental officials from effectively carrying out their duties.

S.254 Goes Beyond Eliminating Qualified Immunity. As currently written, the bill will eliminate all immunities and create a new private right of action (authorization to sue) against only law enforcement officers for violations under the Vermont Constitution, Vermont statutes, or Vermont common law. Because the Vermont Legislature cannot amend or supersede federal laws or the U.S. Constitution, the bill cannot end qualified immunity in Section 1983 actions in federal court. S.254 eliminates *all* limitations on liability and damages, and additionally allows plaintiffs to recover attorneys' fees and litigation costs if they prevail. It requires law enforcement agencies to indemnify officers unless the agency finds that the officer did not act in good faith, in which case the officer is held personally liable for up to \$25,000. However, if the officer is unable to pay the penalty, the agency is responsible for the full amount – which ultimately comes from taxpayers.

The bill also appears to potentially expand municipal exposure to include liability for criminal acts of officers. As written, S.254 makes municipalities financially responsible for injury or damages caused "by the commission or omission of any act of a law enforcement officer acting under authority of the State, or within the scope of authority of a law enforcement agency..." This means there is potential municipal liability for a failure to supervise or train, or to partake in negligent hiring. There is no automatic municipal financial responsibility for an officer's intentional (i.e., bad faith) misconduct. Yet, S.254 would require the employing government to pay a judgment against a law enforcement officer unless they acted "in bad faith," and even in that circumstance if the judgment exceeded the personal liability of \$25,000.

What Problems Are Not Solved by S.254? As written, S.254 would make it much easier to sue police officers and agencies for monetary damages, but it would not increase police accountability or advance meaningful and already enacted reform measures to discipline or otherwise regulate law enforcement officers. While both good and bad officers would be brought to court to fight allegations of constitutional violations and any violation of statutory or common law, those officers could remain on forces performing their duties, potential review of their certification would not be affected, and lengthy court proceedings would take center stage.

VLCT urges the legislature to focus on policy decisions that build on the work of previous sessions and that help to strengthen and professionalize law enforcement in Vermont. The legislature would serve all Vermonters and law enforcement best by working to improve Act 56 of 2017 – the Professional Regulation of Law Enforcement Officers – and by supporting and funding the Vermont Criminal Justice Council to modernize, train and professionally, regulate law enforcement.

Resource for this article:

- [VLCT Testimony on S.254 Before Senate Judiciary](#), Jan. 20, 2022

Accessory Dwelling Units. . .

As the Senate Economic Development, Housing and General Affairs Committee continues its work on affordable housing, its members have been impressed with other states' actions to make it easier to build accessory dwelling units (ADUs) in places where housing development has lagged for years. On Wednesday, committee members watched a White House webinar on how to facilitate and encourage the construction of accessory dwelling units (known as ohanas, mother-in-law apartments, bunkies, carriage or coach houses, and granny flats to name a few terms).

In Vermont, pursuant to statute, ADUs "within or appurtenant to" a single family dwelling on an owner occupied lot are permitted uses in all zoning districts. According to the statute, an ADU is a distinct unit that is clearly subordinate to a single-family dwelling. It has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided it complies with wastewater regulations and does not exceed 30 percent of the total habitable floor area of the single-family dwelling or 900 square feet, whichever is greater (24 V.S.A. § 4412 (1)(E)). A municipality's zoning ordinance may be more permissive than the statute.

The committee heard from national experts that legalizing ADUs is just the first step in increasing the supply of such housing choices. Regulators need to understand who builds an ADU and what kinds of technical and financial help are needed to both demystify its construction and make it financially feasible to build. Unlike traditional housing, an ADU is likely to be built by amateur homeowners who convert their garages, outbuildings, walk-out basements, or building adjacent new buildings. These do-it-yourselfers may need help in understanding and navigating regulations, designing a unit, and knowing how to work with contractors and where to access affordable financing.

This week, Sen. Michael Sirotkin, the committee chair, indicated that he expects a draft omnibus housing bill to be completed soon, and that incentives to encourage ADUs – including potentially financing assistance and navigators or ADU gurus – will be a part of that bill.

Resources for this article:

- [White House Webinar on Accessory Dwelling Units](#)
- [Vermont State Economic Development Committee Presentation on ADUs](#), Jan. 28, 2022

Municipal Land Records

On Thursday, the House Commerce and Economic Development Committee took testimony on [H.512](#), a bill that would overhaul the laws related to notary publics and the management of land records. The goal of the legislation is valuable and worthwhile, however it simply cannot be achieved without significant restructuring and investment within the Secretary of State's Office and at the municipal level. The bill proposes that the state create a Land Records Management Office within the Secretary of State's Office to oversee and implement the standardizing and modernization of municipal land records by using modern methods, equipment, documentation, and training. The office would also provide advice and technical assistance on all aspects of land records management, including centralizing and computerizing recording systems and land records.

The Secretary of State, in coordination with the Vermont State Archives and Records Administration (which is in the Secretary of State's Office), has an alternative proposal, one that is a more measured and realistic approach to modernizing how these important documents are managed in the state and from town to town. The proposal would enact two uniform laws by the nationally recognized Uniform Law Commission: the Uniform Real Property Electronic Recording Act and the newest Revised Uniform Law on Notarial Acts. The Secretary of State also recommends adding one full-time position within the administration to assist municipalities and others that manage state land records.

The committee asked Legislative Council to draft the Secretary of State's proposal into bill form, which is encouraging. The committee will take up the bill again in the next week or so.

Elsewhere in the State House

Proposition 2. At VLCT's Annual Meeting in 2019, the membership adopted the following resolution upon the recommendation of Plainfield selectperson Sasha Thayer:

Resolved: that the Vermont League of Cities and Towns calls on the legislature to amend Chapter 1, Article 1, of the Vermont Constitution to read "That all persons are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining happiness and safety. Slavery and involuntary servitude in all forms are prohibited."

VLCT was certainly not alone in calling for this amendment to the Vermont Constitution. The following year, an amendment to the Vermont Constitution was introduced in the Senate. Proposal 2 reads:

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore ~~no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like slavery and indentured servitude in any form are prohibited.~~ (The struck-through language is proposed to be deleted and the underlined language is proposed to be added.)

The Senate must initially propose amendments to the Constitution by a two-thirds vote of its members and a majority of House members. Upon approval of the amendment in one biennium, the amendment must be referred to the next biennium. In the second biennium (the current one for Proposal 2), a majority of both the House and Senate must again approve the same proposal. After that, the proposal to amend the Constitution is submitted to the voters. Proposal 2 was passed by the House for the second time today on a vote of 139 to 3.

Medical Monitoring. On Thursday, the Senate passed S.113, a bill that creates a right to sue to cover the costs of medical monitoring. The Senate has passed this bill in three previous sessions. S.113 is a response to releases of perfluorooctanoic acid (PFOA) in Bennington and surrounding

areas that resulted in contamination of groundwater, extensive remediation on the part of the affected areas, and deleterious health effects to residents.

The bill would permit a person “without a present injury or disease” to sue for medical monitoring against the owner or operator of a large facility (such as Saint-Gobain Performance Plastics, the company that released the PFOA in Bennington) from which a proven toxic substance was released if the person's exposure:

- was significantly greater than that to the general population;
- was the result of tortious conduct (trespass, negligence, nuisance, product or common law liability for ultra hazardous or abnormally dangerous activity); or
- caused an increased risk of contracting a serious disease.

A municipality is not included in the definition of a facility.

Pupil Weighting. Since the very beginning of the session, the Senate Finance Committee, the House Ways and Means Committee, and both Education committees have been discussing the report from the Task Force on the Implementation of the Pupil Weighting Factors and education funding generally. Early this week, Senate Finance Committee members agreed that the legislature needs to address the inequities in the current pupil weighting system this year. They also conceded that they would likely not have the time necessary to properly evaluate the Task Force's proposed cost equity model. Consequently, on Wednesday afternoon, the sentiment seemed to be that the committee should move ahead with implementing the corrected pupil weights – at least for this year.

As Senator Ruth Hardy, task force co-chair and Finance Committee member, explained, the task force did not recommend implementing either a cost equity model or the revised weighting system as the preferred solution to correcting the wrongs imposed by the current weighting system. The committee plans to take up the issue again later today.

Readers may recall that last December, VLCT testified before the Pupil Weighting Task Force and urged them to enact the corrected weights recommended in their final report.

- [VLCT Comment on Pupil Weighting Task Force Draft Report](#), Dec. 10, 2021

Cannabis Fees. On Wednesday, the House took up H.701, the bill that would establish state and local fees for cannabis establishments. One question raised on the floor asked if the House Ways and Means Committee had considered balancing of fees or tax revenues between state and local governments. Other legislators expressed surprise that the hefty state fees set in the bill would not be expected to cover the costs of the Cannabis Control Board regulating the marketplace. The bill was passed by the House on Thursday and will now go to the Senate Finance Committee.

Forestlands and Use Value. H.653, a bill in the House Agriculture and Forestry Committee, would create a new category of forest lands eligible for the Use Value Appraisal Program. An “ecologically significant treatment area” would be passively managed to increase carbon sequestration and carbon storage, and enhance wildlife biodiversity. The focus of the designation would be on old forests. On January 20, Michael Snyder, Commissioner of Forests, Parks and Recreation, testified to the committee in support of the legislation. According to Snyder, two million acres of forestland were in the Use Value Appraisal (Current Use) Program in 2021, and approximately 2.77 million forestland acres are currently eligible to be enrolled. H.653's new

category of use value would apply to 630,000 acres of currently enrolled land and 230,000 newly eligible acres.

- [Use Value Appraisal, Dept. of Forests, Parks, and Recreation](#), Jan. 20, 2022

Crossover. All Senate and House bills must be reported out of the last committee of reference by Friday, March 11, 2022. Committee bills must be voted out of committee by the same date. Bills containing appropriations that are in the House and Senate Appropriations, Senate Finance, or House Ways and Means committees must be reported out by March 18. Exceptions to these deadlines include the major money bills: the General Appropriations Bill (the Big Bill), the Transportation Capital Bill, the Capital Construction Bill, and the various fee and revenue bills.

New Bills of Municipal Interest

NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
H.704	Would clarify the definition of "accessory on-farm business" and prohibit regional and municipal plans from banning accessory on-farm businesses. Would exempt water from the calculation used to determine if products are principally produced on the farm. To be exempt from Act 250, the bill would limit the amount of land used by an accessory on-farm business to one acre and set the maximum size of new buildings to 4,000 square feet.	House Agriculture and Forestry
H.705	Would prohibit livestock owners from allowing their livestock to run at large. Would authorize a municipality through municipal law enforcement or a public health official to enforce the requirements to enclose livestock and prevent their running at large.	House Agriculture and Forestry

Public Hearings on the Governor's Recommended FY23 Budget

The Vermont House and Senate Appropriations committees will hold two public hearings via video conference from 6-8 p.m. on Tuesday, Feb. 8, and from 3-5 p.m. on Wednesday, Feb. 9, 2022. Registration for both hearings is already full, however written testimony is encouraged and may be emailed to cgilhuly@leg.state.vt.us or tutton@leg.state.vt.us. You can watch either hearing on the legislature's Joint Fiscal YouTube channel or on your local access community cable channel via the links below.

Resources:

- [Joint Fiscal YouTube channel](#)
- [Vermont Access Network channels](#)