

# 2020 SUPPLEMENTARY LEGISLATIVE WRAP-UP



**Vermont League of Cities and Towns**

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# Table of Contents

|   | PAGE |
|---|------|
| <b>INTRODUCTION: Wrapping Up the Session – Just in Time for Elections</b> ..... | 2    |
| <b>MUNICIPAL FINANCE IN THE ERA OF COVID-19</b>                                 |      |
| Appropriations (H.969, Act 154).....  | 3    |
| Housesite Definition (H674, Act 158).....                                       | 4    |
| Miscellaneous Tax (H.954).....  | 4    |
| <b>PUBLIC SAFETY</b>  |      |
| Miscellaneous Public Safety Matters (S.124, Act 166).....                       | 5    |
| Law Enforcement’s Use of Force (S.119, Act 165).....                            | 7    |
| <b>ENVIRONMENT AND QUALITY OF LIFE</b>  |      |
| Global Warming (H.688, Act 153).....  | 8    |
| Zoning and Housing (S.237).....   | 10   |
| Tree Wardens and Management (H673).....   | 10   |
| Act 250 (H926 – vetoed).....  | 12   |
| Retail Cannabis (S.54, Act 164).....  | 12   |
| <b>MUNICIPAL GOVERNANCE AND ADMINISTRATION</b>                                  |      |
| Australian Ballot for Municipal Meetings (S.354, Act 162).....                  | 14   |
| Municipal Charters (H.952).....   | 15   |
| <b>COUNCIL AND COMMITTEE STUDIES</b> .....                                      | 15   |
| <b>Resources</b>  |      |
| Budget Table as Passed (H.969, Act 154).....                                    | 17   |

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 Legislative Policy, which will be revised this summer for the 2021-2022 legislative biennium. With guidance from the VLCT Board and membership, advocacy staff ensure that municipal priorities are addressed in the State House, by the executive branch, in studies and rule-making procedures, and in multiple other policy-making forums.

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## Wrapping Up the Session – Just in Time for Elections

The Vermont Legislature finally adjourned on the evening of Friday, September 25. Never before has a session lasted anywhere near this long.

This time, “adjourned” means finished. In July, when the legislature recessed, any bills that were introduced during the past two years and made it from one chamber to another could still be taken up during the September session. Several such bills were taken up and passed, despite the limitations of an all-virtual session. But any bill that did not pass is now dead.

Furthermore, the legislature adjourned *sine die*, that is, without assigning a date for a future meeting. That means that they cannot return to attempt to override any gubernatorial veto. The governor would need to call them back – and, really, after almost an entire year- long session and especially with the election just weeks away, who wants that?

In the last month, and particularly during the last frantic days of the session, a number of pared-down bills that did pass affect local governments. That is not much of a surprise for Vermont local officials given that this state is one of the strictest Dillon’s Rule states in the country, keeping company with Alabama.

More than ever this session, the different attitudes between the House and Senate in terms of dictating to local governments, was stark. In April of 2019, the Senate passed S.106, a bill that would have provided a pilot program for up to ten cities and towns to develop local solutions to “meet their unique, truly local needs” by establishing a Municipal Self-Governance Commission. This legislation would have started a real discussion outside the State House of where and how local officials might exercise self-governance authority on issues that affect *only* their municipality. Surprisingly, the House Committee on Government Operations Committee – six of whose eleven members have served on local legislative bodies – never even took up the bill.

The budget bill, H.969, extended the deadline to apply for Local Government Emergency Reimbursement Grants (LGER) to October 15, 2020, and included an additional \$7 million in Town Highway aid. The miscellaneous tax bill, H.954, included both a provision for an additional year for seven tax increment financing districts to incur debt, in recognition of the damage the pandemic did to the economy this year, as well as a study of transitioning education tax billing and collection to the Department of Taxes. The legislature also passed bills that address law enforcement’s use of force and emergency services. A trimmed-down bill, S.354, authorized local legislative bodies to decide whether to use Australian ballots at next year’s town meeting, thus providing some time to plan for that event.

During the month that legislators waited for the budget bill to be finished, several committees took up legislation unrelated to COVID-19. They passed, for example, the tree warden bill, H.673, as well as a much-trimmed-down zoning and housing bill, S.237. These and other bills are discussed in our supplemental wrap up.

With no time to catch our collective breaths, we find ourselves in the throes of a campaign season. Last week, VLCT’s membership adopted the 2021-2022 Municipal Legislative Policy. We hope you will use it as a guide when asking your candidates for legislative and state-wide office to weigh in on municipal priorities. Ask them, for example, their views on municipal authority to govern within their jurisdictions. How do they intend to reduce property taxes – an apparently empty promise that pre-dates the COVID-19 pandemic by several decades. How will they include local officials in discussions around the appropriate

role of policing in Vermont? What strategies will they employ to get the economy going again post-pandemic? Where will they find the money to fund water quality, wastewater, and stormwater issues?

Meanwhile, in only three months, we will all be back preparing for a new legislative session, in whatever form that will take in 2021.

Again, we want to thank Vermont's local officials for all they do to provide vital services to all of us before, during, and, eventually, *after* COVID-19.

### **Appropriations (H.969, Act 154)**

The appropriations bill, H.969, passed on Friday September 25, signaling the end of the 2020-2021 legislative biennium. By deciding to retire from the legislature at this time, House Appropriations Committee Chair Kitty Toll is ending a remarkable period in Vermont legislative history when sisters simultaneously chaired the House and Senate Appropriations committees. (Senator Jane Kitchell continues to chair the Senate Appropriations Committee.)

H.969, as it passed and as Governor Scott signed it, allocates a total of \$7,193,088,970, which includes \$1.075 billion of the available \$1.25 billion in Coronavirus Relief Fund (CRF) monies.

Among the allocations are \$450,000 to fund the start-up of work required by the Global Warming Solutions Act, H.688. The governor vetoed that bill on September 19 but the legislature overrode his veto four days later.

The bill deleted language in Act 108, passed in June, that provided \$2.7 million in CRF funds to the Municipal Emergency Statewide Education Property Tax Borrowing Program to pay interest on short-term borrowing towns would need in order to make timely education fund payments. If costs are incurred for payment from the borrowing program (that is, if a town applies for funding), the Secretary of Administration will send a request to the Joint Fiscal Committee to approve the payment.

H.969 directs the Commissioner of Taxes – who must make his recommendation for statewide education property tax rates for FY22 on December 1 – to disregard the projected deficit in the Education Fund for FY21 and to assume that the fund's stabilization reserve will be maintained at the FY21 level for FY22. That language relieves school boards of any obligation to respond to the COVID-19-induced Education Fund deficit in individual school district FY22 budgets prepared for town meeting. It recognizes both that school districts had no part in creating the COVID-19 Education Fund deficit and that substantial increases in education property tax rates will be absolutely untenable in the next year.

The legislature appropriated an additional \$7 million in one-time state funds for Town Highway Aid in FY21. An additional \$53 million is allocated to pre-K-12 schools from the CRF. The total available to schools is \$103 million; \$13.5 million of that amount is earmarked for improvements to heating, ventilation, and air conditioning. The legislature also extended the deadline for towns and cities to apply for Local Government Expense Reimbursement (LGER) grants to October 15, expecting more towns would apply for those dollars.

Several sections of the bill address the fading possibility of receiving from the federal government additional aid or increased flexibility in the use of CRF dollars. Despite the exhortations of local officials, business community members, and social service providers from around the country for Congress to

provide additional aid to mitigate the effects of COVID-19, legislators in Washington seem incapable of meeting the crying need.

The administration is directed to submit a report to the legislature by February 15, 2021, on all grant programs administered through December 30, 2020, that used CRF dollars.

A table of allocations that affect local governments is on page 17.

### **Housesite Definition for Use Value Appraisals (H.674, Act 158)**

(amends 32 V.S.A. §§ 3752 (8) and 3755 (g))

Act 158 defines a house site for purposes of Vermont's Use Value Appraisal Program (i.e., current use) to mean the two acres of land surrounding a dwelling. More than one dwelling may share the same house site, as long as the dwellings are contained within a two-acre area.

The law also clarifies that any applicant for or any beneficiary of a use value appraisal must be in good standing with the Department of Taxes (that is, taxes are paid or arrangements have been made to pay them, and any appeals have been lodged).

Signed by the governor on October 5, Act 158 takes effect on January 1, 2021.

### **Miscellaneous Tax Provisions (H.954)**

(amends 32 V.S.A. § 4342)

The legislation provides that when real or personal real estate is omitted from the grand list by mistake or an obvious error is found, the listers, with the selectboard's approval, may correct the grand list by December 31. The existing law required those corrections to be made *before* December 31.

Section 4341 of Title 32 allows for extensions of time to complete:

- abstracts of individual lists to be filed in the town clerk's office;
- hearing of grievances, closing of hearings on grievances, and meetings of the board of civil authority to consider grievances;
- completing and depositing the grand list in the town clerk's office;
- inventories of taxpayers lodged with the town clerk; and
- filing of abstracts with the town clerk—extended to 30 days in towns of fewer than 5,000 inhabitants and to 50 days in towns of more than 5,000 inhabitants. Those extensions, which the Director of Property Valuation and Review may further increase by, no longer need to be recorded in writing in the town clerk's office.

According to the law, municipalities must deposit the per-parcel payments from the tax commissioner in a special fund used to help prepare the education property tax grand list. The \$1 per-parcel payment is not new, but the directive to place it in a special fund *is*.

By February 1, 2021, the Department of Taxes is to issue a report studying potential approaches to transitioning the responsibility to bill and collect the statewide education property tax from municipalities to the department.

Seven tax increment financing districts are granted one additional year to incur debt in recognition of the damage the COVID-19 pandemic has done to the economy.

## **Miscellaneous Public Safety Matters (S.124, Act 166)**

(amends 20 V.S.A. chapter 151; amends 20 V.S.A. §§ 2351, 2352, 2355, 2358, 2359; amends 20 V.S.A. §§ 2361, 2362a; adds 20 V.S.A. § 2368; amends 3 V.S.A. § 2311; amends 3 V.S.A. § 2222; amends 20 V.S.A. § 2053; recodifies 24 V.S.A. § 1939 by adding 20 V.S.A. § 1818; amends new section 20 V.S.A. § 1818; amends 20 V.S.A. chapter 113, subchapter 1; amends 24 V.S.A. chapter 71; amends 18 V.S.A. § 9405; amends 18 V.S.A. chapter 17; amends 32 V.S.A. § 8557; creates session law)

S.124 addresses a potpourri of public safety matters, including proposing miscellaneous amendments to law enforcement, dispatch, emergency medical services and public safety planning. The bill makes the following changes to law:

### **Vermont Criminal Justice Training Council and the Vermont Police Academy**

- Membership in the Vermont Criminal Justice Training Council (VCJTC) increases from 12 to 20 members. Among the 13 specified appointees would be an employee of VLCT – this is the first time municipalities have been guaranteed a seat on the VCJTC. Seven new seats on the council will be public members appointed by the governor who are not associated with law enforcement or the criminal justice system and are not currently legislators.
- The VCJTC is required to adopt rules establishing routes to certification other than the current residential Vermont Police Academy program. Further, the VCJTC must offer law enforcement instruction in different areas of the state. They must further offer non-overnight courses whenever possible because the overnight academy creates significant barriers to those who cannot pause their lives to attend an academy for four months. Final rules regarding alternative routes to certification must be adopted by July 1, 2023.
- Law enforcement agencies are prohibited from accessing Vermont Police Academy services, including having officers trained there if the agency fails to comply with requirements for collecting roadside stop data under 20 V.S.A. § 2366, fails to report death or serious bodily injuries to the attorney general under 18 V.S.A. § 7257a(b), or fails to meet the requirements to adopt, follow, or enforce any policy mandated by state law.
- The VCJTC must allow Level II-certified officers to use experiential learning to College Level Examination Program testing to transition to Level III certification.
- The VCJTC must report to the legislature by next January on implementing remote training options and offering the new Level II to Level III certification option. The executive director of the VCJTC must also specify what resources are needed to comply with the new training and certification mandated in S.124.

**Hiring Protocol.** Agencies are required to contact a potential officer's current law enforcement agency about performance matters: contents of a disclosure must be kept confidential. Collective bargaining agreements may not prohibit the exchange of information between the employing agency and another agency about an officer's performance at the employing agency. (Binding nondisclosure agreements executed prior to the effective date of S.124 are not affected.)

### **Body Cameras, Facial Recognition Technology, and Military Equipment**

- All law enforcement agencies that use body cameras must adopt, follow, and enforce a model body camera policy established by the VCJTC by January 1, 2022. Before that date, the current Law Enforcement Advisory Board (LEAB) Model Body Worn Camera policy remains in effect.
- The VCJTC, in consultation with other interested parties, must recommend policies for responding to public records requests for body camera footage, including any recommended timelines to respond, how and what footage should be redacted, the length of footage retention, and storage capacity for footage that must be retained.

- The Department of Public Safety (DPS) must investigate the viability of a statewide group purchasing contract for law enforcement body cameras and of central storage locations.
- The VCJTC must recommend a statewide group policy on a law enforcement officer's acquisition of military equipment.
- Law enforcement agencies are prohibited from using facial recognition technology or information acquired through that technology, except for drones used pursuant to 20 V.S.A. § 4622. The VCJTC must recommend a statewide policy on the potential acquisition and use of facial recognition technology.

**Unprofessional Conduct.** Various acts of unprofessional conduct will receive increased scrutiny by the employing law enforcement agency and the VCJTC.

**Data Collection.** The joint legislative Government Accountability Committee, in consultation with Vermont's Crime Research Group and others, must establish a uniform list of definitions to use to enter data into a law enforcement agency's system of records.

### **Reports to the Legislature**

- The VCJTC, in consultation with others, must review cultural sensitivities in and the appropriateness of exams and training requirements.
- The VCJTC must review whether its training appropriately covers cultural awareness, implicit bias, de-escalation, and recognition of individuals with mental conditions, and whether that training is embedded in other policing policies.
- The LEAB, VCJTC, and DPS, in consultation with others including VLCT, must recommend whether the VCJTC should be reestablished within a state agency or other oversight entity and whether experiential learning should satisfy some aspects of basic training.
- The attorney general, in consultation with others including VLCT, must recommend one or more models of civilian oversight of law enforcement and identify a central point to report allegations of officer misconduct.
- A VCJTC advisory committee must review public access to records related to allegations of law enforcement misconduct and substantiations of those allegations in order to recommend any changes to current practice.

### **Law Enforcement Advisory Board (LEAB)**

- Four members— one each from the Department of Fish and Wildlife, the Enforcement and Safety Division of the Department of Motor Vehicles, the Capitol Police Department, and the Vermont State Employees Association – will be added to the board.
- LEAB must report to the legislature in 2021 on ways towns can increase access to law enforcement services.
- LEAB must create statewide standards for interviewing and hiring law enforcement officers.

### **Dispatch**

- DPS is prohibited from charging fees in any contractual arrangements to perform dispatching functions for state, municipal, or other emergency services until the legislature establishes in law a dispatch fee structure for those charges.
- DPS must consult with other interested parties, including VLCT, and hold at least three public hearings on recommendations for an equitable dispatch fee structure for DPS to charge for dispatch emergency medical service, police, and fire services, and potential funding sources for charges that do not rely on the property tax.

### **Emergency Medical Services (EMS)**

- Ambulance service license and renewal applicants must provide services that do not discriminate on the basis of income, funding source, or severity of health needs so as to ensure access to ambulance services within the licensee's service area.
- The Green Mountain Care Board (GMCB) must identify priorities related to EMS resources and needs in the State's Health Resource Allocation Plan. An EMS advisory committee must identify resources and needs and report to the GMCB.
- The Department of Health (DoH) must establish at least two more levels of EMS instruction and the education required for each level. (Currently there is only one license level: the EMS Instructor/Coordinator.)
- The DoH must establish an entry-level certification for Vermont EMS first responders and allow them access to existing EMS funding sources.
- The DoH must conduct a sunset review of continuing competency requirements and amend those that are not necessary for public protection.

### **EMS Advisory Committee and Education Council**

- A report noting the number of mutual aid calls to an EMS area originating from outside that area is added to the annual review.
- An EMS Education Council would have to be established to sponsor EMS training or education programs and to provide advice to the DoH regarding standards for licensure.

### **Town Public Safety Plans**

- By December 31, 2021, each regional planning commission must create one inventory identifying the public safety resources of each town within its boundaries and report that inventory to all towns.
- The public safety resource inventory must identify all mutual aid agreements and all public safety plans towns have in place.

The above provisions of S.124 took effect on October 1, except for the new VCJTC membership, which takes effect on December 1.

### **The Use of Force by Law Enforcement (S.119, Act 165)**

(amends 13 V.S.A. § 2305, 20 V.S.A. § 2368; repeals 13 V.S.A. §§ 1032, 2305 (3); adds 20 V.S.A. §2358 (f))

On October 7, the governor allowed S.119, a bill that addresses the use of force by law enforcement, to become law without his signature. Introduced in February of 2019, S.119 was one of a slew of bills that were passed on the last day of the legislative session. Interestingly, this bill went through the Judiciary committees while S.124, the other law enforcement bill, was taken up by the Government Operations committees.

In his letter to the legislature explaining his decision to not sign the bill, Governor Scott wrote, "I understand the pandemic and remote work made it difficult for the Legislature this year. This may be why the bill was hastily crafted with insufficient opportunity for the full Legislature to understand the concerns and opportunities offered by both historically disadvantaged communities and public safety officials. For example, there are important terms which remain undefined and there are gaps in the legislation that raise questions about the Legislature's intent."

Local law enforcement departments share many of these concerns about what the new standards will mean for training and implementation in the field when a situation unfolds quickly that requires a split-second



decision. Certainly, legislative intent must be absolutely clear if law enforcement officers are to understand the actions they may or may not take in the moment.

The bill defines several terms:

- deadly force: any use of force that creates a substantial risk of causing death or serious bodily injury;
- force: physical coercion employed by a law enforcement officer to compel a persons' compliance with the officer's instructions;
- imminent threat of death or serious bodily injury: when based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the law enforcement officer or another person; and
- prohibited restraint: the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain. The bill's language makes clear that a law enforcement officer has a duty to intervene when he or she observes another officer using a prohibited restraint on a person.

S.119 provides standards for when and where a law enforcement officer may use force, states that the decision "shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by law enforcement officers." When a law enforcement officer knows that a subject's conduct is the result of a medical condition or other impairment, the officer must take that into account in determining the appropriate amount of force to use.

The use of deadly force is justified when, based on all of the circumstances, it could prevent death or serious bodily injury to the officer or another, or is necessary to apprehend a fleeing person for a felony that resulted in death or serious bodily injury if the officer reasonably believes that the fleeing person will cause death or serious bodily injury to another unless immediately apprehended. Whether a use of force or deadly force is justified will be evaluated from the perspective of a reasonable officer in the same situation based upon "the totality of the circumstances."

By February 2, 2021, the Department of Public Safety and the executive director of Racial Equity are to report to the legislature regarding the development of a statewide model policy on the use of force for all law enforcement agencies and officers as directed by the governor's Executive Order 03-20 known as the [Governor's Public Safety Reform Initiative](#).

The bill further does not allow training on prohibited restraints unless the purpose of the training is to identify and prevent the use of prohibited restraints.

The sections of the bill establishing standards for law enforcement use of force and justifiable homicide will take effect next July in order to give the Criminal Justice Training Council time to develop training that includes the new standards.

### **Global Warming (H.688, Act 153)**

(amends 10 V.S.A. § 578; 30 V.S.A. §§ 202a, 202b; adds 10 V.S.A. Chapter 24)

On September 9, the Global Warming Solutions Act passed the legislature. One week later, the governor vetoed the bill. Since the legislature was still in session, the legislature overrode the veto on September 22.

Act 153 establishes greenhouse gas emission reduction requirements from within the geographic boundaries of the state as well as emissions outside Vermont that are caused by the use of energy in Vermont. Reduction requirements are:

- 26 percent from 2005 greenhouse gas emissions by January 1, 2025;
- 40 percent from 1990 greenhouse gas emissions by January 1, 2030;
- 80 percent from 1990 greenhouse gas emissions by January 1, 2050.

The legislation creates a Vermont Climate Council whose members include eight members appointed by the Speaker of the House including a representative of rural communities and one representing municipal governments. The council must be appointed within 60 days of the effective date of the act – that is by November 22 – and the first meeting must be held 30 days after the council’s appointment. The act directs the council to evaluate strategies to reduce greenhouse gases, inventory all programs that impact greenhouse gas emissions, and build resilience to prepare the state to adapt to current and anticipated effects of climate change. The bill defines resilience as “the capacity of individuals, communities and natural and built systems to withstand and recover from climatic events, trends and disruptions.” The council is directed to adopt a Vermont Climate Action Plan by December 1, 2021.

The council is also authorized to create a number of subcommittees, among them the Rural Resilience and Adaptation Subcommittee. That committee will “focus on the pressures that climate change adaptation will impose on rural transportation, electricity, housing, emergency services, and communications infrastructure, and the difficulty of rural communities in meeting the needs of its citizens.” The council will have the support of the Agency of Natural Resources (ANR), which is directed to adopt rules consistent with Vermont’s Climate Action Plan by December 1, 2022. If the Council has not adopted a plan, the ANR secretary is directed to adopt rules that implement the greenhouse gas emissions requirements, particularly the 2025 greenhouse gas reduction requirement.

Act 153 would also create a cause of action if the state failed to adopt Vermont’s Climate Action Plan or failed to update rules to implement that plan in accordance with the schedule established in the legislation. Legal action must be filed within one year after the date that rules were required to be adopted or updated expires (that is, December 1, 2022) and at least 60 days after providing notice to the ANR secretary of the intent to sue.

In his veto message, Governor Scott noted three areas of concern:

- creating a cause of action which could lead to costly litigation and delay, instead of putting forward tangible solutions and actions we can take now;
- the structure and charge of the Vermont Climate Action Council presents an unconstitutional separation of powers issue; and
- the absence of a process ensuring the legislature would formally vote on the Vermont Climate Action Plan promulgated by an unelected, unaccountable Council.

While Act 153 is now the law, it certainly is not the end of the discussion of climate change, greenhouse gas emissions, the separation of powers, or what strategies can best respond to global warming at the state, local, and individual level. There will be much more to write about this topic, including both how and when – but not whether – to achieve greenhouse gas reductions and implement climate adaptation measures.

## **Zoning and Housing (S.237)**

(amends 10 V.S.A. § 10; 24 V.S.A. §§ 2291, 4412, 4414; 27 V.S.A. § 545)

[S.237](#), the zoning and housing bill, passed on September 24, the day before the legislature adjourned. The version that passed did not contain language dictating inclusive zoning regulations to municipal governments because many local officials contacted their representatives to explain the detrimental impact the Senate-passed bill would have had on local planning and zoning efforts, and that the bill would not necessarily have increased the availability of affordable housing.

According to the legislation:

- An accessory dwelling unit located in or near a single-family dwelling on an owner-occupied lot is classified as a permitted use. It must have sufficient wastewater capacity and may not exceed 30 percent of the total habitable floor area of the single-family dwelling or 900 square feet – whichever is greater – unless a municipal bylaw is more permissive. A bylaw may require the accessory dwelling to be subject to the same review, dimensional or other controls that are required for a single family dwelling without an accessory dwelling unit.
- A municipality may prohibit development of lots not served by or able to connect to municipal sewer and water service if the lot is less than one-eighth acre in area or the width or depth is less than 40 feet.
- A municipal bylaw may not deny a multiunit dwelling of four or fewer units in a district allowing multiunit dwellings solely because it has an undue adverse effect on the character of the area.
- A municipality may regulate short-term rentals distinctly from residential rental units. A municipality may also regulate the *operation* of short-term rentals (such as Airbnb and VRBO) provided that the ordinance or bylaw does not adversely affect the availability of long-term rental housing. A short-term rental is defined as a furnished house, condominium, or dwelling rented for 14 to 30 consecutive days.
- Deed restrictions or covenants added after January 1, 2021, prohibiting land development allowed under municipal bylaws would not be allowed unless the covenants relate to historic or conservation easements held by a qualified organization.

The Department of Environmental Conservation (DEC) is directed to help the Town of Brattleboro and the Tri-Park Cooperative mobile home park secure improvements to the park's drinking water, wastewater, and stormwater infrastructure. DEC must help other mobile home parks by identifying needed improvements to water infrastructure programs so as to improve access by mobile home parks.

The legislation took effect upon passage.

## **Tree Wardens and Tree Management (H.673)**

(amends 24 V.S.A. § 871; amends 24 V.S.A. chapter 67; amends 19 V.S.A. chapter 9, subchapter 1)

Vermont's tree warden law dates from 1904, with only minor changes made to it in the 1960s. Thus, H.673 is the first major revamp of tree management and tree warden legislation in Vermont in more than a century. H.673 makes many positive and substantive changes to tree warden laws and laws related to tree management on both public and private land, including the following.

**Residency status and deputy wardens.** Tree wardens now need not reside in the municipality, allowing local legislative bodies to cast a wider net to find someone who meets the requirements of the position. Legislative bodies may also appoint more than one deputy tree warden if they deem it appropriate.

**Notice of appointments.** After the legislative body appoints the tree warden, it must provide the name and contact information of the tree warden to the commissioner of Forest, Parks and Recreation.

**Cooperation.** With the consent of the legislative body, a tree warden may enter into agreements with other municipal entities to provide tree warden services or training and accept funds, equipment, supplies, or services for use in his or her duties.

**Definition of shade trees.** Shade trees – or ornamental trees – are now defined as trees located on municipal property or along municipal rights-of-way that are either planted by the municipality or are designated as such pursuant to a municipal shade tree preservation plan. That plan would be voluntarily adopted by each municipality. A legislative body and tree warden, working in coordination, would establish a plan that, at a minimum:

1. describes any program for planting new trees and shrubs;
2. provides for the trees' feeding and pruning and protection from noxious insect and disease pests;
3. determines the apportionment of costs for tree warden services provided to other municipalities;
4. determines if other municipal officials must also approve tree maintenance or removal; and
5. determines the process to remove diseased, dead, or dying shade trees that is consistent with the state tree warden law.

The Municipal Shade Tree Preservation Plan may also designate individual trees as shade trees and map location where all trees are designated as shade trees. The tree warden and legislative body must hold at least one public hearing concerning the shade tree preservation plan for the purpose of soliciting public input.

**Removal of Trees and Roadside Growth.** Tree wardens will continue to have control over public shade trees, including having the authority to remove trees that are infected by pests or that are public hazards. When a shade tree is proposed to be removed, public notice is required. This includes notifying abutting landowners who have property rights over the tree in the municipal right-of-way. Any appeal of the cutting or removal will prompt a public hearing before the legislative body. A public hearing is not required for shade tree removals when the Agency of Agriculture, Food & Markets and Department of Forests, Parks and Recreation designate them as infected, are a hazard to public safety, or when removal is necessary for the municipality to comply with state or federal laws or permitting requirements.

Except for work performed by the Vermont Agency of Transportation (VTTrans), no person may remove a shade tree without prior approval of the tree warden. A person other than VTTrans-designated staff or an abutting landowner is not authorized to cut, trim, remove, or otherwise damage any grasses, shrubs, vines, or trees growing within the limits of lands subject to any ownership interest held by VTTrans without first obtaining the agency's written consent.

**Penalties.** The penalty for a person willfully and critically injuring or cutting down a shade tree without the permission of the tree warden or the legislative body will move to the timber trespass law, 13 V.S.A. § 3602, which assesses the value of a tree based on its diameter at four and one half feet from the ground. The timber trespass penalties will also apply under Title 19 for the willful or malicious removal of or damage to trees in municipal and state highway rights-of-way without prior consent from the state, the municipality, or the tree warden. The previous penalties were from \$10 to \$100 for each offense.

The bill was signed by the governor on October 5 and goes into effect on November 1, 2020.

## Updates to Act 250 (H.926 – Vetoed by Governor)

On the last day of the session, the legislature passed H.926, a truncated Act 250 bill. This was the result of three years of efforts to update Vermont’s fifty-year-old land use and development law and to both simplify the byzantine law and target it to the areas and natural resources that Vermonters want to protect. The bill was marked by controversy throughout the legislative process. In late February, an already shortened version of the bill (61 pages, down from the 91-page version that the House Natural Resources, Fish and Wildlife Committee introduced in early February before COVID-19 descended) passed the House on a vote of 88 to 52. A subsequent version pared down to nine pages that came back from the Senate on September 17 eventually passed the House on a vote of 93 to 56.

As passed, the bill defined recreational trails, and exempts any trail in existence before October 1, 2020, from Act 250 until January 1, 2022. It defined connecting habitat as “land or water, or both, that links patches of habitat within a landscape, allowing the movement, migration, and dispersal of wildlife and plants and the functioning of ecological processes.” It further defined forest blocks as a “contiguous area of forest in any stage of succession and not currently developed for non-forest use.”

Projects subject to Act 250 would need to demonstrate that they would not have an undue adverse impact on forest blocks and connecting habitat. The bill did not include language long supported by local governments that would exempt projects in designated downtowns.

On October 5, Governor Scott vetoed H.926 and signed [Executive Order 04-20](#) that would provide regulatory certainty for recreational trails. In his veto letter to the legislature he wrote, “H.926 ignores all the work and collaboration put into Act 250 reform and is counter to the important outcomes we collectively sought. ... The forest fragmentation regulation also adds a new, complex criteria to Act 250 and offers no other process improvements. **Nothing** [his emphasis] in this bill modernizes or improves the Act 250 process – something that is widely agreed to be necessary after fifty years of existence.

The complaints about Act 250 have not changed. Getting through the complex process with sizable projects when economic recovery and affordable housing continue to be paramount issues to Vermonters was not made any simpler with H. 926. The veto guarantees that some form of the legislation will be back on the table next session. Local officials may want to ask their candidates for the legislature how they plan to update Act 250 or make it more user friendly.

### **Retail Cannabis (S.54, Act 164)**

(Adds 7 V.S.A. chapters 31, 33, 35, 37, 207; repeals 7 V.S.A. §§ 841 – 843; amends 32 V.S.A. § 3102(d)(3); amends 32 V.S.A. § 9701(31); adds 32 V.S.A. § 9741(53); adds 32 V.S.A. § 9706(mm); amends 32 V.S.A. § 9202(10); adds 32 V.S.A. § 9201(n); amends 32 V.S.A. § 5811; adds 20 V.S.A. § 2358(f); amends 23 V.S.A. § 2100; amends 23 V.S.A. §§ 1201 – 1204; amends 6 V.S.A. §567; amends 18 V.S.A. §§ 43030, 4230a; creates session law)

With the passage of S.54, Vermont became the eleventh state in the United States to permit the retail sale of cannabis. The bill, which was allowed to become law on October 7 without the governor’s signature, is a 108-page piece of legislation that outlines how Vermont will implement a retail cannabis marketplace. Following are those aspects of the legislation that impact our towns, cities and villages.

**Consumption of cannabis in public places.** The current prohibition against consuming cannabis in public places remains.

**Cannabis Control Board.** The new Cannabis Control Board consists of seven members: three from the Executive Branch, two members from the House of Representatives and two members from the Senate, meaning there is no municipal representation. The board is responsible for safely and equitably implementing and administering the laws enabling access to cannabis by adults in Vermont. The board will promulgate rules to implement S.54; administer the state licensure programs for cannabis establishments, including compliance and enforcement; administer the state medical cannabis program; and submit an annual budget to the governor. It will also appoint a full-time executive director who must be an attorney with experience in legislative or regulatory matters. The executive director will assist the board and supervise and administer the operation and implementation of S.54.

**Cannabis Control Board Advisory Committee.** S.54 creates an advisory board that has no set job description but appears to be a resource for the Cannabis Control Board. The advisory board comprises a wide variety of members from various backgrounds and interest groups. The state treasurer is responsible for appointing “one member with an expertise in municipal issues.” This individual is the only voice for municipal government within the Cannabis Control Board structure and his or her role is purely advisory, which provides no guarantee that the concerns of municipalities will be adequately addressed.

**State administration of local fees.** The State Cannabis Control Board will set state and local license fees, which will be adopted by the legislature. Municipalities that host a cannabis establishment will receive a fee paid to the state by applicants when an applicant applies for a yearly license. When the Cannabis Control Board establishes local fees, its recommendations “shall be accompanied by information justifying the recommended rate.” Local fees are designed “to help defray the costs incurred by municipalities in which cannabis establishments are located.” Given the disparate municipal needs across the state, it is unclear how the board will quantify costs incurred by municipalities to determine local license fees.

As far as VLCT can ascertain, S.54 is the first time the state has assumed the responsibility of collecting local license fees, distributing those fees back to municipalities, and then charging municipalities for this “service.” Municipalities generally set, collect, and administer their own license fees, and when the state *does* administer a local license fee – such as a local liquor license – it does not bill the municipalities. Municipalities will not know what the local license fees will be or what the state will charge for its “service” until the board presents the fees to the legislature by, no fooling, April 1, 2021.

**Local licensing and regulatory authority.** Municipalities that host cannabis establishments may create a local cannabis control commission. This commission (for example, a selectboard or city council) must administer the rules furnished to them by the Cannabis Control Board. No additional local standards will be allowed beyond signage and nuisance ordinances and very specific zoning provisions of 24 V.S.A. § 4414. It should be noted that local governments may already regulate signage, nuisances, and 24 V.S.A. § 4414. Therefore this provision is meaningless and adds no new authority to towns. Rather, it restricts the local regulatory authority a town may use that currently exists under state and local laws. Local governments are forbidden from adopting local ordinances to regulate the time, place, and manner of cannabis operations as part of local licenses and permits. These licenses will be perfunctory, and cannabis control commissions are designed to be the “rubber-stamping” approval entity of local licenses from municipalities.

Prohibiting municipalities from regulating cannabis establishments via municipal ordinance is a departure from the authority municipalities were given to regulate medical cannabis dispensaries pursuant to 18 V.S.A. § 4471l. Municipalities will have to wait for the Cannabis Control Board to present the rules for cannabis establishments to the legislature by next April. These rules – which would address licensing criteria, land use and environmental laws and advertising regulations at the state and local level – will affect current zoning bylaws. How will those locally adopted bylaws be affected by state regulations? What

adjustments to zoning bylaws will municipalities need to consider to align with state cannabis regulations and community needs, adherence to the town plans, and local economic development goals?

**Voter approval of cannabis operations.** Local voters will only have a little say about whether to allow a retail establishment in their communities. To allow retail sales in their community, they must opt in, however they have no voice in whether growers, manufacturers, laboratories, or processors are allowed. Some communities that currently have medical cannabis dispensaries will also be able to vote on integrated licenses in addition to retail establishments. An integrated license allows a licensee to engage in cultivation, wholesale, manufacturing, retail, and testing and are only available to applicants that hold a dispensary registration. Only five integrated licenses are permitted in the state and each one is for a registered dispensary already established here.

Local voters must vote by Australian ballot at an annual or special meeting to permit the operation of a retail establishment. This provision of S.54 took effect upon passage, and municipalities may now hold local votes if they wish. Municipalities that vote to allow retail operations or permit integrated licenses may rescind that vote at a subsequent annual or special meeting, but all licensed cannabis retailers or integrated licenses that are operating at the time of the subsequent vote will be grandfathered in.

**Taxing authority.** S.54 does not provide any cannabis-specific taxing authority to municipalities. The state will keep and control all tax revenue which includes a stand-alone 14-percent cannabis excise tax and the six-percent sales and use tax. No tax revenue will go to municipalities except for the 16 towns and cities that have a one-percent local sales tax. Those municipalities will receive tax revenue *if* they host retail establishments and the customary 70/30 split of local option tax revenues applies. A municipality may vote to enact a local option sales tax on all sales in the municipality – and may want to if it is hosting retail cannabis establishments and has constituents who shop online. Online shopping local option sales tax is applied in the community in which the item is delivered. Of course, once the voters adopt a local option sales tax, that option needs to be approved first by the House Ways and Means Committee, followed by then the entire legislature.

The timeline for fully implementing the retail market is ambitious, as shown in the [Government Operations Committee Conference Report from September 15](#).

### **Australian Ballot for Municipal Meetings in 2021 (S.354, Act 162)**

(creates session law)

The legislature passed S.354 to allow for Australian ballot voting for all any or all municipal meetings in 2021 by vote of a legislative body. The legislation allows municipalities that normally vote from the floor on Town Meeting Day to instead use the Australian ballot during the COVID-19 public health emergency. Under current law, only a vote of a municipality's voters may allow the switch to an Australian ballot system. S.354 will temporarily allow the legislative body to make that decision. Municipalities whose meeting locations don't allow for social distancing may find the switch to an Australian ballot system helpful during the ongoing pandemic. Although the legislation mainly addresses next year's town meeting, it allows all annual or special meetings to be conducted via Australian ballot for all of 2021.

S.354 also lifts the requirement that a person needs to collect voter signatures to have his or her name placed on a ballot as a candidate for a local election held at a 2021 municipal meeting.

The legislation took effect when the governor signed it on October 5.

### Municipal Charters Approved in 2020

| Municipality                                      | Bill No.<br>Act No. | Major Provisions  | Provisions Passed | Provisions Failed |
|---|---------------------|---|-------------------|-------------------|
| Village of Perkinsville and Town of Weathersfield | H.554<br>Act M9     | Dissolved the Village of Perkinsville and merged it with the Town of Weathersfield (July 1, 2020).  | All               | None              |
| St. Albans City                                   | H.943<br>Act M10    | Implements a one-percent local option tax on sales, rooms and meals, and alcoholic beverages under 24 V.S.A. § 138.   | All               | None              |
| Town of Elmore                                    | H.946<br>Act M11    | Authorizes the selectboard to ask the voters to approve a one-percent local option tax on rooms under 24 V.S.A. § 138.  | All               | None              |
| City of Burlington*                               | H.952               | Authorizes the assessment of a tax on the grand list for the Burlington Housing Trust Fund. Establishes timelines for petitions, warnings, and ballot availability for certain city elections.  | All               | None              |
| City of Barre*                                    | H.952               | Prohibits city employees and officials from contracting with the city, furnishing any material, or performing any labor for the city outside the official's or employee's official duties or as allowed under the city's Procurement Policy or Conflict of Interest Policy. | All               | None              |

### Municipal Charters Not Approved in 2020

|                    |       |   |      |     |
|--------------------|-------|---|------|-----|
| Town of Fair Haven | H.678 | Implements a one-percent local option tax on sales, rooms and meals, and alcoholic beverages under 24 V.S.A. § 138.   | None | All |
| Town of Essex      | H.944 | Authorizes the expansion of the town's selectboard to six members, requiring three members be elected from outside the Village of Essex Junction and three members be elected from within the Village.  | None | All |
| Town of Williston  | H.949 | Authorizes Williston to adopt any charter provision approved for any other municipality, without seeking approval from the General Assembly. Authorizes the town manager to appoint and remove the town library director with advice and consent of the library board of trustees. Authorizes a town-specific procedure to resolve collective bargaining contract impasses. | None | All |

\* Passed during the August-September legislative session.

### Councils, Committees and Studies

The 2020 legislative session produced a number of new councils, committees and subcommittees, and study groups, as is the case every year. If you are interested in serving on one of these groups, please let us know. The legislature occasionally asks us for recommendations, and we are happy to offer them even if not asked. Six are listed below.

**H.954, Miscellaneous Tax.** The Department of Taxes is directed to issue a report by February 1, 2021, that studies potential approaches to transitioning responsibility for billing and collecting the statewide education property tax from municipalities to the Department of Taxes in consultation with VLCT and the Vermont Municipal Clerks' and Treasurers' Association.



**S.124, Vermont Criminal Justice Training Council (VCJTC).** The Law Enforcement Advisory Board, VCJTC, and the Department of Public Safety (DPS), in consultation with others including VLCT, must recommend whether the VCJTC should be reestablished within a state agency or other oversight entity and whether experiential learning should satisfy some aspects of basic training. The attorney general, in consultation with others including VLCT, must recommend one or more models of civilian oversight of law enforcement and identify a central point to report allegations of officer misconduct.

**Dispatch is also addressed in S.124.** DPS runs two of at least six public safety answering points/multi-agency dispatch facilities in the state. It dispatches for more than 100 public services agencies, accounting for approximately half of the total public service answering point (PSAP) calls. DPS will host three virtual public comment forums on October 19, 21 and 22. Links to each forum as well as information that relates to this initiative are posted at <https://dps.vermont.gov/modernization>.

**Act 153 (H. 688), Global Warming.** The new Vermont Climate Council includes, among others, eight members appointed by the Speaker of the House including a representative of rural communities and one representing municipal governments. The council must be appointed within 60 days of the effective date of the act – that is, by November 22. A Rural Resilience Subcommittee will focus on pressures that climate change adaptation will impose on rural transportation, electricity, housing, emergency services, and communications infrastructure, and difficulty of rural communities in meeting the needs of its citizens. The Climate Council must submit a report on activities every January 15 starting in 2021 and adopt a Climate Action Plan by December 1, 2021.

**S. 54 Cannabis.** The legislation creates an advisory board that has no set job description but appears to be a resource for the Cannabis Control Board. The advisory board comprises a wide variety of members from various backgrounds and interest groups. The state treasurer is responsible for appointing “one member with an expertise in municipal issues.” This individual is the only voice for municipal government within the Cannabis Control Board structure and his or her role is purely advisory, which provides no guarantee that the concerns of municipalities will be adequately addressed.

**S. 119, Use of Force.** By February 2, 2021, the Department of Public Safety and the executive director of Racial Equity are to report to the legislature regarding the development of a statewide model policy on the use of force for all law enforcement agencies and officers as directed by the governor’s Executive Order 03-20 known as the [Governor’s Public Safety Reform Initiative](#).



| <b>H.969 – Appropriations FY21 (in millions of dollars)</b>  |                   |                                |                         |
|--|-------------------|--------------------------------|-------------------------|
| <b>Budget Item</b>   | <b>FY20 Final</b> | <b>H.969 Governor Proposed</b> | <b>H.969 As Enacted</b> |
| (GF) Homeowner Rebate (B137)   | \$16.6            | \$17.1                         | \$17.1                  |
| (GF) Renter Rebate (B138)  | 8.1               | 9.5                            | 9.5                     |
| (GF) Tax Dept. Reappraisal and Listing (B139)  | 3.3               | 3.3                            | 3.3                     |
| (GF) Municipal Current Use (B140)  | 17                | 17                             | 17                      |
| (LOT 30%) PILOT State Buildings (B142)   | 8.8               | 9.2                            | 9.2                     |
| (LOT 30%) PILOT Montpelier (B143)  | 0.2               | 0.2                            | 0.2                     |
| (LOT 30%) PILOT Correctional Facilities (B144)   | 0.04              | 0.04                           | 0.04                    |
| (GF) Special Investigative Units (B206)  | 2.0               | 2.1                            | 2.1                     |
| (GF, EF, Other) Education Finance & Admin (B500) <sup>1</sup>  | 25.2              | 34                             | 34                      |
| (EF) Special Education Formula Grants (B502)   | 213.0             | 223.7                          | 223.7                   |
| (EF) State-Placed Students (B503)  | 18                | 18                             | 18                      |
| (GF, EF) Flexible Pathways (B504.1)  | 9.0               | 9.2                            | 9.2                     |
| (EF) Adjusted Education Payment (B505)   | 1,428.8           | 1,489.5                        | 1,489.5                 |
| (EF) Transportation (B506)   | 19.8              | 20.5                           | 20.5                    |
| (GF, EF) Teachers' Retirement System (B514, E514) <sup>2</sup>   | 120.2             | 126                            | 126                     |
| (GF) Retired Teachers' Health and Medical (B515, E515)   | 31.1              | 31.8                           | 31.8                    |
| (GF, Inter-Dept. Transfer) ANR Lands PILOT (B701)  | 2.6               | 2.6                            | 2.6                     |
| (Property Transfer Tax) Municipal Planning Grants (D100)   | 0.46              | 0.46                           | 0.46                    |
| (TF) Town Highway Structures (B911, E911)  | 6.3               | 4.7                            | 4.7                     |
| (TF, Federal) Better Roads Program (B912)  | 0.4               | 0.4                            | 0.4                     |
| (TF) Town Highway Class 2 Roadway (B913)   | 7.6               | 3.3                            | 3.3                     |
| (TF, TIB, Federal) Town Highway Bridges (B914) <sup>3</sup>  | 13.1              | 12.7                           | 12.7                    |
| (TF) Town Highway Aid (B915)   | 26                | 27.1                           | 27.1                    |
| (TF) Town Highway Class 1 Supplemental (B916)  | 0.1               | 0.1                            | 0.1                     |
| (TF) Town Highway Non-federal Disaster Aid (B917)  | 1.2               | 1.2                            | 1.2                     |
| (TF, Federal) Town Highway Federal Disaster Aid (B918)   | 0.2               | 0.2                            | 0.2                     |
| (TF, Federal, Special) Municipal Mitigation Assistance (B919)  | 2.8               | 6.1                            | 6.1                     |
| (TF, GF) Town Highway Aid Supplement (B1100.a.5) <sup>4</sup>  | 0                 | 7.0                            | 7.0                     |
| (GF) Communication Union Districts/Broadband (B1100.a.15)  | 0                 | 2.0                            | 1.5                     |
| (CRF) Economic Development Grant Programs (B.1104.a.1)   | 0                 | 133.0                          | 102.5                   |
| (CRF) Agency of Education COVID Costs (B1104.a.14)   | 50.0              | 32.4                           | 53.0                    |
| <p>1. Includes \$3.38 million in Education Fund dollars to support Agency of Education data management.<br/> 2. \$125,894,201 is the state contribution and \$6,247,500 is due from local school systems or educational entities.<br/> 3 This amount does not include local match dollars.<br/> 4. Additional \$7 million in Town Highway Aid is funded with one-time dollars.</p> <p>CRF = Coronavirus Relief Fund<br/> GF = General Fund<br/> EF = Education Fund<br/> LOT = 30% Local Option Tax share remitted to the state<br/> PILOT = Payment in lieu of taxes<br/> TF = Transportation Fund<br/> TIB = Transportation Infrastructure Bond<br/> Citations in parentheses refer to the section in the budget bill where those items are found.</p> |                   |                                |                         |