VERMONT LEAGUE
OF CITIES & TOWNS

LEGISLATIVE WRAP-UP 2022

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VLCT Public Policy and Advocacy staff represent all 246 cities and towns to the Vermont legislature and administration as well as to the federal government and interest groups. We initiate, track, and promote legislation that provides authority, autonomy, and resources to cities and towns. Member-established policies to implement those priorities can be found in our Municipal Policy. With guidance from the VLCT Board and membership, we ensure that municipal priorities are addressed in the State House, by the executive branch, in studies and rule-making procedures, and in many other policy-making forums. VLCT is already beginning its Municipal Policy development process for the 2023-2024 legislative biennium. We will keep our members informed of its progress. They'll be able to review the draft policy when it is sent in September and then vote in VLCT's annual meeting in Killington on October 6, 2022 as part of Town Fair. We also urge you to read VLCT Policy position papers, which explain VLCT's priority policy issues. We will send them in the fall to all Vermont candidates ahead of the general election.

Karen Horn, VLCT Public Policy & Advocacy Director
Gwynn Zakov, VLCT Municipal Policy Advocate
David Gunn, Legislative Wrap-up Editor
June 28, 2022

Bringing Down the Curtain on the Covid Biennium

The 2021-2022 legislative biennium ended weeks earlier than did recent sessions, doing so "sine die" (without any future date for resumption) on Thursday, May 12. Thus ended the Covid biennium, which was a vastly different experience than anyone could have anticipated. The biennium convened in a fully remote fashion, and, well into 2022, newly elected legislators still hadn't worked in person in the State House, thereby missing the opportunity for face-to-face collaboration with colleagues or chance meetings in the halls to discuss policy initiatives. The result, in our estimation, was that legislative committee work was far more siloed than in previous sessions with predictable results for some bills as committee narratives collided with the sentiments of legislators who had not been immersed in the details of those discussions.

Of the 400 bills introduced in 2022, your Advocacy staff closely followed 161 of them that could affect local governments. The legislature passed more than 215 of the 1,035 bills introduced during the biennium– and 133 this session. Governor Scott has so far vetoed twelve bills in the 2022 session and 30 since he took office in 2017. Because the legislature adjourned sine die, there is no planned date for the body to return to attempt to override a veto. The legislature would only reconvene if the governor called it back into session.

The makeup of the General Assembly will be vastly different in the next biennium as 12 of the 30 senators have announced their retirements: some will pursue higher office. Likewise, at least 40 House members are moving on, including eight House committee chairpersons. Several legislators will be seeking election in newly configured districts due to redistricting, which fortunately has been a far less controversial issue than in other states. We expect the now familiar Zoom video conferencing option – which allows anyone with a computer to participate remotely in committee hearings and watch legislative action – to continue. And while the technology brought a new level of transparency to the State House, it simultaneously – and ironically –made informal conversations less accessible.

As was the case last year, local governments endured many frustrations in 2022. Yet on balance, legislators heard your concerns and responded favorably, especially when you contacted them directly. We address those successes in the coming pages. You can also watch committee action – again and again! – on the legislative website, https://legislature.vermont.gov/. Each committee page conveniently lists testimony by date, subject, or witness.

Because this is the end of the legislative biennium, all bills introduced in 2021 and 2022 that did not pass are dead. In January, when the legislature convenes in a new biennium, any bill will need to be newly introduced, starting with House and Senate bills Number 1.

We say it in every Legislative Wrap-up and it is always true: **Thank you** for all you do for local government – for your prompt response when we call for assistance on bills, and for your always pragmatic explanation of the potential effects of legislation on municipalities. You are truly the best advocates for Vermont local government!

MUNICIPAL FINANCE

Appropriations – the "Big Bill" (H.740, Act 185)
(most policy language is session law)

Passage of the "Big Bill" always signals the last days of the session, and on May 12, the legislature passed, H.740 the budget for FY23, The bill includes $566 million in American Rescue Plan Act (ARPA) State Fiscal Recovery and ARPA Capital Projects funds. With all of the money bills accounted for, including H.740 and other legislation discussed elsewhere in this wrap-up, the total state budget figure is $8.3 billion. The bill was delivered to the governor on June 3.

Economic development initiatives are appropriated $99 million from S.11, the economic development bill, $45 million from H.518, the municipal energy resilience and fuel switching bill, and approximately $36 million from S.210 and S.226, the much scaled-back housing bills.

Appropriations committees generally take recommendations on policy and funding priorities from the committees of jurisdiction. This session, the unprecedented influx of federal funding ironically made the jobs of the appropriators more difficult because of legislators and advocates asking them "why wouldn't you fund my priority?" The pandemic-fueled exhaustion of the last two years is starkly apparent as seven of 11 House Appropriations Committee members – including the chair, vice chair, and ranking member – are retiring, and of the five Senate Appropriations Committee members, one is retiring, another is seeking higher office, and one more is running for office in a new Chittenden County district. Things will look far different next year.

The table below shows those programs of interest to local governments. The list is both longer and more generous than lists in the past– attributes local officials should not count on in the future when ARPA dollars are exhausted.

While the appropriations bill primarily allocates money, it also always includes policy language that dictates how that money is to be spent. The bill frequently includes other policy issues that committees of jurisdiction were not able to get across the finish line before the session ended. This year's end of session felt particularly chaotic, and many provisions ended up in H.740 in the last couple of days that were not expected, including the items of note for local government that follow. We include the section numbers to help you more easily locate the appropriate language in the 248-page-long bill.

Section E.233.3 (a). Language makes clear that, notwithstanding any other provision of law to the contrary, a municipality may accept and finance broadband projects with ARPA funds, including funds received as lost revenue.

Section E. 240.1. H.740 establishes the Cannabis Regulation Fund to be maintained by the Cannabis Control Board. The fund will include all state application, annual license, and renewal fees, as well as civil penalties collected from cannabis establishments, medical cannabis dispensaries, and the medical cannabis registry. The fund also will receive all cannabis excise tax revenue. The fund is to be used only to implement, administer, and enforce the cannabis law. Thirty percent of the revenues raised by the cannabis excise tax – up to $10 million per fiscal year – are to be used to fund substance misuse prevention programming in the following fiscal year. By July 31, 2025, unexpended and unobligated Cannabis Regulation Fund dollars are to be transferred to the General Fund – although we doubt the Cannabis Control Board responsibilities will be completed by then.

Section E. 134. H.740 establishes contribution rates for the Vermont Municipal Employees' Retirement System (VMERS) for fiscal years 2023-2026. In past sessions, these rates were often established in a separate bill.

FY 23	Group A Members	3.5 percent of earnable compensation
	Group B Members	5.875 percent of earnable compensation
	Group C Members	11 percent of earnable compensation
	Group D Members	12.35 percent of earnable compensation
FY 24	Group A Members	3.75 percent of earnable compensation
	Group B Members	6.125 percent of earnable compensation
	Group C Members	11.25 percent of earnable compensation
	Group D Members	12.6 percent of earnable compensation
FY 25	Group A Members	4 percent of earnable compensation
	Group B Members	6.375 percent of earnable compensation
	Group C Members	11.5 percent of earnable compensation
	Group D Members	12.85 percent of earnable compensation
FY26	Group A Members	4.25 percent of earnable compensation
	Group B Members	6.625 percent of earnable compensation
	Group C Members	11.75 percent of earnable compensation
	Group D Members	13.1 percent of earnable compensation

Section E.134.4. The state treasurer and Joint Pension Oversight Committee are directed to determine the cost of transferring certified law enforcement officials employed by county sheriff departments from Group F in the Vermont State Employees Retirement System to Group D in VMERS, and the cost of transferring sheriff department support staff from the state employees' Group F to VMERS Group A, B, or C.

Section E. 139. The bill moves $9,000 from the Tax Department Reappraisal and Listing account to the Attorney General and $70,000 to the Division of Property Valuation and Review (PVR) to help fund final payment of expenses incurred by PVR or towns in defense of grand list appeals of hydroelectric plants and expenses incurred to appraise complex commercial and utility property appraisals to aid town valuations.

Section G.400. The bill appropriates $30 million in ARPA funds to the Vermont Housing & Conservation Board (VHCB) for affordable mixed income rental housing and homeownership units, improvements to manufactured homes, recovery residences, and, if eligible, farm worker and refugee housing. It provides an additional $10 million for housing investments to VHCB contingent upon FY22 revenue. The funds are also to be used for shelter and permanent homes for individuals experiencing homelessness. The bill also notes that S.226 appropriates $40 million for additional housing development programs.

The $129.8 million appropriation of ARPA dollars to climate change mitigation efforts in Section G. 600 includes:

- $45 million Home Weatherization Assistance Program in the Office of Economic Opportunity;
- $35 million to Efficiency Vermont for weatherization incentives to moderate income Vermonters;
- $2 million to the Agency of Transportation for electric vehicle charging infrastructure along highways (an additional $32 million from the General Fund and $550,000 from the Transportation Fund will support electric vehicle charging, electrification incentives and public transit);
- $27 million to the Department of Public Service for upgrades to home electrical systems, heat pump water heaters, and load management systems for low and moderate income homes;

- $15 million to improve landscape resilience and mitigate flood hazards, including $14.75 million to Vermont Emergency Management for buyouts of vulnerable parcels;
- $4.76 million to help farmers implement soil-based practices to improve soil quality, minimize erosion, and reduce agricultural waste discharges;
- $1 million to the Department of Forests, Parks and Recreation for the Urban and Community Forestry Program to plant up to 5000 trees to improve air quality and reduce heat island effects in urban areas.

The act also appropriates $8 million in General Fund dollars under the Climate Mitigation heading to reimburse up to 70 percent to municipal and cooperative electric utilities for implementing systems of advanced metering infrastructure approved by the Public Utility Commission. And H.518 appropriates $45 million from ARPA for the Municipal Energy Resilience Grant Program.

Significant investments totaling $104 million are made in clean water, including:
- $31 million for stormwater retrofit projects;
- $30 million for water and wastewater projects and pretreatment projects;
- $20 million to eliminate or reduce wet weather sewer overflows; and
- $23 million to repair or improve water and wastewater systems in Vermont homes.

Resources
- H.740 as passed
- H.740 Joint Fiscal Office web report spreadsheet
- Vermont FY23 Appropriations Overview

H.740 – Appropriations FY23 (in millions of dollars)

Budget Item	As Passed Act 83 Adjustment	Governor Proposed FY23	As Passed
(GF) Homeowner Rebate (B137)	$18.60	$16.50	16.50
(GF) Renter Rebate (B138)	9.50	9.50	9.50
(GF) Tax Dept. Reappraisal and Listing (B139)[1]	3.31	3.39	3.39
(GF) Municipal Current Use (B140)	17.82	17.80	17.80
(LOT 30%) PILOT State Buildings (B142, E142)	9.75	9.75	10.58
(LOT 30%) PILOT Montpelier (B143, E 143)	0.18	0.18	0.18
(LOT 30%) PILOT Correctional Facilities (B144)	0.04	0.04	0.04
(GF) Special Investigative Units (B206)	2.10	2.16	2.16
(GF One Time, USF) E-911 Board (B235)	4.46	4.59	4.59
(SF) Cannabis Control Board (B240)	0.85	1.56	3.49
(GF, EF, FF, Other) Education Finance & Admin. (B500)	34.23	35.81	35.81
(EF) Special Education Formula Grants (B502)	229.00	208.07	208.07
(EF) State-Placed Students (B503)	17.00	17.50	17.50
(GF, EF) Flexible Pathways (B504.1)	9.14	9.34	9.14
(EF) Adjusted Education Payment (B505)	1,502.05	1,561.66	1,561.66
(EF) Education Transportation (B506)	20.48	21.79	21.79
(EF) Small Schools Grants (B507)	8.10	8.20	8.20
(EF) Essential Early Education Grant (B510)	7.05	7.51	7.51
(EF) Technical Education (B511)	15.51	16.25	16.25
(GF, EF) Teachers' Retirement System (B514, E514)[2]	189.65	198.27	187.27
(GF EF) Retired Teachers' Health/ Medical (B515, E515)[3]	35.09	29.60	50.20
(GF, Inter-Dept. Transfer) ANR Lands PILOT (B701)	2.62	2.66	2.66
(Property Transfer Tax) Municipal Planning Grants (D100)	0.46	0.87	0.87

(TF) Town Highway Structures (B911, E911)	12.67	6.33	7.20
(TF, FF) Better Roads Program (B912)	0.41	0.41	0.41
(TF) Town Highway Class 2 Roadway (B913)	15.30	7.65	7.65
(TF, TIB, FF) Town Highway Bridges (B914)[4]	14.88	28.57	28.57
(TF) Town Highway Aid (B915)	27.11	27.78	27.84
(TF) Town Highway Class 1 Supplemental (B916)	0.13	0.13	0.13
(TF) Town Highway Non-federal Disaster Aid (B917)	1.15	1.15	1.15
(TF, FF) Town Highway Federal Disaster Aid (B918)	0.18	0.18	0.18
(TF, FF, Special) Municipal Mitigation Assistance (B919)	8.29	6.45	6.45
(ARPA) Community Recovery & Grant Revitalization (G300(a)(5) [5]	0	30.0	$30.0
(ARPA) Electric Vehicle Infrastructure Grants (E903 G600(b))[5]		15.0	10.0
(ARPA) CUDs/Broadband Construction Grants (B1105 G 500)[5]	150.00	95.00	96.6
(GF 0ne time) VLCT Fed. Fund Assistance Program (B1100(a)(19)	0	0	0.25
(ARPA) Climate Response Investments[6] (G600)[5]	54.50	161.50	129.76
(ARPA) Water and Sewer (G700)[5]	100.50	72.00	104.0
(GF, one time) IDEAL (B1100(a)(1)[6]	0	0.22	0.25
(GF, one time) Public Safety Transition to Reg. Dispatch Services	0	11.0	11.0

1. Of the reappraisal and listing funds, $9000 goes to the Attorney General and $70,000 to the Division of Property Valuation and Review (PVR) for final payment of expenses incurred in defense of grand list appeals of reappraisals of hydroelectric plants and those PVR incurred to help with complex commercial and utility appraisals.
2. $187,273,782 is the state General Fund contribution and $6,887,869 is due from local school systems or educational entities to the State Teachers' Retirement System. Of the annual contribution, $34,342,965 is the normal contribution and $159,818,686 is the accrued obligation, which equals $194,161,651. Subtract $6,887,869 to arrive at the $187 million state annual contribution.
3. In 2021, the Appropriations Bill transferred responsibility for $14 million of normal health care benefits to the Education Fund, replicating action taken in 2018 to transfer normal obligation for teachers' retirement to the Education Fund. Of the $44.7 million, $151,100,000 is the normal contribution and $35,106,128 is the accrued liability contribution.
4. This amount does not include local match dollars.
5. All section G appropriations are one time, mostly using ARPA dollars
6. IDEAL (Inclusion, Diversity, Equity, Action, Leadership) Program to support municipalities in promoting the named municipalities.

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

Citations in parentheses refer to the section in the budget bill where those items are found.

The Capital Bill (H.739, Act 180)

(makes no changes to statutes)

In the first year of a biennium, the Vermont Legislature adopts a two-year capital bill. In the second year, the Capital Construction and State Bonding Adjustment Bill makes adjustments to that budget. This exercise has been especially tricky during the pandemic as new federal funds have flowed to the states.

Last year's capital bill, H.438 (Act 50), authorized $127,378,694 in expenditures, of which $69,549,988 was to be appropriated in FY22 and $57,828,706 in FY23. This year's capital bill increases the two-year authorization to $143,757,972, which means that $74,207,984 is appropriated in FY23.

The intent of this year's act is to address impacts of the COVID-19 pandemic with American Rescue Plan Act (ARPA) dollars to the extent that those appropriations would comply with federal law and guidance. H.739 authorizes the issuance of general obligation bonds totaling $123,180,000 and also $16,740,163 that was authorized but unissued in 2021.

The table below shows some issues of concern to local governments that Act 180 addresses.

Program	FY23 Amendment
High/Significant Hazard Dam Safety Improvements	$3,115,000
Little Hosmer Dam Rehabilitation	$190,000
IIJA Drinking/Clean Water Revolving State Loan Fund (CWSRF) Match	$2,833,980
Agency of Agriculture, Food & Markets Water Quality Grants	$200,000
Water Pollution Control Fund CWSRF [1]	$1,548,219
Municipal Pollution Control Grants/Planning Advances [1]	$2,715,000
Agriculture Water Quality Projects [2]	$200,000
Land Conservation Water Quality Projects [2]	$2,000,000
1. Department of Environmental Conservation 2. Vermont Housing and Conservation Board	

The total two-year appropriation in the capital adjustment bill for clean water initiatives is $17,163,219.

Act 180 also authorizes expenditures from ARPA for capital projects that include $15.9 million to the Department of Libraries for capital projects at libraries including American with Disabilities Act compliance, space renovations for improved internet access for telehealth appointments and job interviews, and general building renovations. The bill also authorizes $50,000 for a feasibility study at the Pittsford Vermont Police Academy.

The governor signed the legislation on June 7.

Resource
- FY22-FY23 Capital Budget Adjustment

FY22 Budget Adjustment (H.679, Act 83)
(no statutes amended)

At the beginning of every legislative session, both appropriations committees take up a budget adjustment bill that makes amendments to the current fiscal year budget. What does *not* happen every year are significant increases in the budget passed at the end of the previous session. However, H.679 – which passed the legislature on March 8 and was signed by the governor on March 16 – increased appropriations by $367 million, or five percent more than the FY22 budget passed in May 2021. The General Fund accounted for $111 million of that amount.

The conference committee's bill one-time expenditures included:

- $30 million General Fund and $25 million American Rescue Plan Act (ARPA) state fiscal recovery funds for housing and increased shelter capacity;
- a $20 million shift from H.679 to S.210 to fund the Vermont Rental Housing Incentive Program;

- an additional $300,000 to support public, educational, and governmental services;
- an additional $250,000 for Municipal Planning Grants;
- eight additional positions and $200,000 to the Cannabis Control Board; and
- paying off $19.9 million in outstanding transportation infrastructure bonds with Federal Highway Administration and state Transportation Fund dollars.

ARPA money also targeted retention and recruitment efforts for the Department of Corrections, childcare, and Vermont Veterans' Home staff; support for the Vermont Foodbank; workforce training programs; and support for the Working Lands Enterprise Initiative. It reserved $86 million in the General Fund to use as state matches for programs funded through the federal Infrastructure Investment and Jobs Act.

The appropriations committees continued their discussion of funding priorities throughout the rest of the session. Committees of subject matter jurisdiction provided updates on the impact of the pandemic at the same time that federal legislation funded both new and existing programs which needed to be included in H.740, the FY23 appropriations act (a.k.a. the "Big Bill"). Therefore, budget adjustment actions need to be viewed in light of further action in H.740. (See article on page 4.)

Cannabis License Fees (H.701, Act 86)

(amends 7 V.S.A.§§ 846, 861, 863(b), 901(c), 955(b), 977; adds 7 V.S.A. §§ 910, 911)

Act 86 sets the state and local fees for cannabis establishments and makes various amendments to laws regulating the use of medical cannabis. The important provisions of the law that impact local governments relate to fees for local cannabis establishment licenses. Currently, a municipality that hosts a cannabis establishment may establish a cannabis control commission. Act 86 sets the local licensing fees for municipal licenses at $100, an amount that may not be either adjusted or collected at the local level . The state's Cannabis Control Board will collect this fee, subtract the amount to cover the state's cost of administration and collection, and send the remainder to the host municipality on a quarterly basis.

Act 86 also authorizes the Cannabis Control Board to reduce or waive the application and licensing fees for social equity applicants. The $100 licensing fee could be included in the fees that are adjusted for such applicants, but adoption of an applicable rule or policy must precede such a change.

Act 86 took effect on passage, March 25, 2022.

Exempting Native American Tribal Land from Property Taxes (H.556, Act 90)

(amends 32 V.S.A. § 3802; adds 32 V.S.A. § 3800(p))

Act 90 was enacted to "acknowledge the Western Abenaki people and to provide a statewide and municipal property tax exemption for property owned by those people." The law will now also "recognize those peoples as the traditional land caretakers of Vermont and … allow them to dedicate more of their financial resources to furthering their tribe-related activities." Henceforth, real and personal property owned by a state-recognized Native American tribe or a nonprofit organization for the tribe's benefit and controlled by the tribe will be exempt from state and local property taxes. Such land must be used by the tribe and not leased or rented for profit. Currently, four parcels in the state qualify for the exemption, but more may be added in the future.

Act 90 will take effect on July 1, 2022.

Opioid Settlement Advisory Committee and Abatement Special Fund (H.711, Act 118)
(amends 18 V.S.A. Chapter 93, Opioid Use Disorder)

Act 118 establishes an Opioid Settlement Advisory Committee and an Opioid Abatement Special Fund in compliance with any opioid litigation settlements to which the state or municipalities are parties with respect to monies received by the state.

The settlement is between state attorneys general, litigating subdivisions (which in Vermont are Brattleboro, Bennington, Sharon, and St. Albans), and the three largest pharmaceutical distributors (McKesson, Cardinal Health, and Amerisource Bergen) and manufacturer (Janssen Pharmaceuticals and its parent company Johnson & Johnson). *All* Vermont cities, towns, villages and counties (282 jurisdictions in all) are qualified subdivisions.

Each qualified subdivision received notice of the settlement from the Vermont Attorney General's office last year. If a qualified subdivision signed on, it will receive its share of a 15 percent subdivision fund. If a qualified subdivision did *not* sign on, its share remains in Vermont and goes to a 70 percent abatement fund.

The state anticipates receiving $63 million over eighteen years to address the opioid crisis. (See The Opioid Settlement: $65 Million Over 18 Years (*VLCT News*, Nov.-Dec. 2021.) Uses of the fund are specified in the terms of the settlements, and pursuant to the settlement an advisory committee must be established to make recommendations to the designated state agency for spending the money. The advisory committee must comprise an equal number of state and subdivision representatives. The settlement agreement also requires the advisory committee to have written guidelines for the appointment, removal, and terms of service for its members; a meeting schedule; and a process for receiving information from cities and towns regarding their needs and proposals for abatement.

Act 118 establishes an Opioid Settlement Advisory Committee to advise the Department of Health. The committee's membership will reflect the diversity of Vermont in terms of gender, race, age, ethnicity, sexual orientation, gender identity, disability status, and socioeconomic status and include individuals with lived experience of opioid use disorder and their family members, wherever possible. The committee will have sixteen members, seven of whom are local officials appointed by VLCT and one of whom is an assistant judge appointed by the Vermont Association of County Judges. Terms of office on the committee are four-years. The bill also specifies that an appointing entity may remove a member for cause.

Act 118 also establishes an Opioid Abatement Special Fund, which would include all monies received from the Opioid Settlement Fund Administrator. The Department of Health will administer the monies in compliance with the settlement terms and use them to supplement – and not supplant or replace – any existing or future local, state, or federal government funding for infrastructure, programs. The legislation also establishes topics to consider and people with whom they must consult when recommending spending priorities and distribution of funds from the Opioid Abatement Special Fund to the governor, the Department of Health, and the legislature. The committee will need to consider the impact of the opioid crisis on communities and abatement strategies, the perspective from opioid use disorder prevention coalitions and providers, and challenges to marginalized populations.

The committee will meet between four and six times a year, with the first meeting to be held by June 30, 2022. The committee will sunset when the settlement funds are exhausted.

Eligible uses and priorities include:

- treatment of opioid use disorder
  preventing opioid overdose deaths and other harms
- support and treatment for individuals and families
- addressing needs of criminal justice involved persons
- addressing needs of pregnant or parenting individuals and their families
- prevention programs for over prescription and misuse of opioids;
- educating law enforcement and first responders regarding dealing with fentanyl or other drugs and providing wellness and support services for first responders and others
- researching opioid abatement.

Local officials may want to consider serving on the Opioid Settlement Advisory Committee if opioid use is a concern in their community. Please contact Karen Horn (khorn@vlct.org) or Ted Brady (Tbrady@vlct.org) if you are interested.

Act 118 took effect on passage and was signed by the governor on May 16.

Pupil Weights – Improving Student Equity (S.287, Act 127)
(amends 16 V.S.A.§§ 165, 828, 1531, 1546, 4001, 4011, 4010, 4013, 4030, 5401, 5402)

The goal of the pupil weighting bill is to correct current inequities for counting students and allocating additional weight to students based upon their needs, thus fulfilling "Vermont's constitutional mandate to ensure that all students receive substantial equality of education opportunity throughout the state."

Act 127 implements new pupil weights (based upon the 2019 Pupil Weighting Factors Report and subsequent discussions) and establishes the methodology for determining those weights. The legislation states that because the changes will affect homestead property tax rates, the degree to which those rates can increase from FY25-FY29 is limited.

The Secretary of Education will use the new weights to determine the equalized pupil count for the next fiscal year and use average daily membership to list for each school district the number of: pre-kindergarten pupils; pupils in kindergarten- grade 5; pupils in grades 6-8; pupils in grades 9-12; pupils whose families are at or below 185 percent of the federal poverty level (FPL), and English learner (El) pupils.

Additionally, the secretary must identify all school districts with low population densities and all districts with one or more small schools.

The secretary will need to first apply grade-level weights where each pupil in the long-term membership would equal one multiplied by the following amounts:

Pre-Kindergarten	-0.54
Grades 6-8	+ 0.36
Grades 9-12	+0.39
Pupils whose families are at or below 185% of FPL	+1.03
EL pupils	+2.49
Pupils in low density school districts	weight ranges + 0.15 - +0.07 depending upon density
Pupils in small schools	weight ranges +0.21 - +0.07 depending upon size

Long-term membership is the average of the district's average daily membership over the current school year and the previous year. A school district's weighted long-term membership will not be less than 96.5 percent of the previous year, prior to making the above weighting adjustments.

Once a school district's budget is approved by the voters, the secretary is to determine the per pupil education spending for the next fiscal year, based upon the district's education spending divided by its weighted long-term membership.

If, in FY25, a school district's homestead property tax rate increased by five percent or more above the rate in FY24 due to the application of the weighting factors, then the homestead property tax rate will increase by not more than five percent over the prior fiscal year during the fiscal years 2025-2029. If, in FY25, the school district's homestead property tax rate increased over FY24 by ten percent or more, the school district would be subject to an Education Agency Tax Rate Review to determine if the increase was beyond the school district's control or for other good cause. If the review indicated that the increases are within the school district's control and *not* for good cause, then the full homestead property tax increase would be implemented.

Act 127 anticipates the weighting factors will need to be updated at least every five years.

The legislation requires several reports from the Joint Fiscal Office, the Agency of Education, and the Department of Taxes. The Joint Fiscal Office is to contract for an evaluation of Act 127 and deliver a report to the legislature by 2029. By next January, the Department of Taxes, in consultation with the Agency of Education and Joint Fiscal Office, must provide a report recommending ways to implement an income-based education tax system to replace the homestead property tax system. Recommendations are to include restructuring the renter credit for paying fairly into the education income tax system, transitioning to the new income-based system; accurate modeling given the differences between household income for homestead property tax purposes and adjusted gross income for income tax purposes, and administering the new system.

The legislation suspends through FY29 the statute that assesses a penalty for excess spending per pupil (a certain percentage above the statewide average per pupil spending) as well as required language for school budget ballot items.

Finally, the act requires school districts to screen students to determine which are English learners, and then to provide them services and, working with the agency, monitor their progress. The law requires the legislature to pay for EL services in its statewide spending appropriation. These funds are to be paid to districts from the Education Fund by November 1 of each year. Of course, it is a legislative mantra that one legislature may not bind future legislatures, so it remains to be seen how well future legislatures adhere to this directive.

- Legislative Council Act Summary
- FY23 Education Fund Outlook as Passed
- Estimated Impacts of Updated Pupil Weighting, May 12, 2022

Municipal Retention of Property Tax Collections (S.261, Act 163)
(amends 32 V.S.A. §§ 5402, 5412)

Act 163 makes some fairly basic grammatical amendments to the statutes that dictate the time of payment of education property taxes to either the Education Fund or to the school district of which a municipality

is a member. Thirty-two V.S.A. § 5412 is the statute that regulates how and when a municipality may submit a request to the director of Property Valuation and Review (PVR) to recalculate (and reduce) the municipality's education property tax liability because grand list value was lost as a result of a determination, declaratory judgment, or settlement. A reduction is an amount equal to the loss in education grand list value multiplied by the tax rate that applied to the property in question in the year the request is submitted.

Act 163 amends the total amount of reductions that may be made in a year from $100,000 – which it has been for several years – to $1 million.

Act 163 also creates an Appraisal and Litigation Assistance Program within PVR to help municipalities with valuation of complex commercial or other unique properties, and to help with appeals arising from those valuations. PVR may contract with one or more commercial appraisers to provide that assistance.

By January 15, 2023, the Commissioner of Taxes is to submit a cost estimate for the new program, which is to include upfront and ongoing costs for creating, implementing, and maintaining the program.

Miscellaneous Changes in Education Law – Municipal Issues (H.716, Act 175)

(amends 16 V.S.A. § 2961)

We do not generally report on the miscellaneous education bill because it typically focuses on issues central to school boards and school districts. However, Section 5 of H.716 creates an Income-Based Education Tax Study Committee to study and make recommendations regarding the creation and implementation of an income-based education tax system to replace the homestead property tax system, which is a substantial revenue source for the Education Fund.

The committee – composed of six members, three each from the House and Senate – will hold its first meeting by July 15, 2022. It will study (1) how to restructure the renter credit or create a new mechanism to ensure that Vermonters who rent a primary residence participate fairly in the education income tax system; (2) modeling with respect to household income for homestead property tax purposes and adjusted gross income for income tax purposes; (3) whether there should be a limit to the amount of income subject to a new income-based education tax; and (4) the challenges to administering an education income tax on the state's taxing capacity, including on the General Fund.

The study committee – which will have support from the Agency of Education, the Joint Fiscal Office, and the offices of Legislative Council and Legislative Operations –is directed to consult with the Vermont League of Cities and Towns and any other interested stakeholder. A report that includes proposed language is due to the legislature by December 30, 2022.

The bill takes effect on July 1, 2022.

Education Property Tax Yield and PCB Remediation (H.737) and the Universal School Meals Act (S.100)

(session law)

H.737 establishes the property dollar equivalent yield and the income dollar equivalent yield for education property taxes as well as the non-homestead property tax rate in FY23. The property yield is the amount of spending the Education Fund could support with a uniform homestead tax rate of $1.00 on a homestead's property value. The homestead property tax rate increases in a district that spends more than the yield. The income yield is the per-pupil amount of spending the fund can support with a uniform tax rate on income.

At the start of the session, the Education Fund surplus was $95.7 million. The governor proposed returning half that amount to education property tax payers in rebate checks. The legislature instead decided to use some of the surplus ($20 million by the end of the session) to reduce education property tax and education income tax rates.

Education Fund Outlook as Passed, May 12,2022 (in millions of dollars)			
	FY21 Actual	FY22 Projected	FY23 As Passed
Average Homestead Property Tax Rate	$1.538	$1.523	$1.385
Average Tax Rate on Household Income	2.50%	2.50%	2.32%
Uniform Non-Homestead Property Tax Rate	$1.628	$1.612	$1.466
Property Yield Per Equalized Pupil	$10,998	$11,317	$13,314
Income Yield Per Equalized Pupil	$13,535	$13,770	$15,948

H.737 reserves $22 million within the Education Fund to fund investigation, testing, assessment, remediation and removal of polychlorinated biphenyls (PCBs) in schools, notwithstanding 16 V.S.A. § 4025(d). According to that section of statute, passed as part of Act 60 and "notwithstanding" more times than one can count, "Upon withdrawal of funds from the Education Fund for any purpose other than those authorized by this section [Education Fund], 32 V.S.A. chapter 135 (education property tax) is repealed." After Education Fund reserve requirements have been met at the end of FY22, the first $10 million will remain undesignated and the second $10 million will also be used for PCB remediation. The state may recover monies spent for assessment, investigation, testing and removal of excessive levels of PCBs from PCB manufacturers.

By next January, the agencies of Natural Resources and Education and the Department of Health are directed to issue a plan for disbursing PCB funds.

S.100 requires each public and approved independent school to offer breakfast and lunch to all students at no charge during the 2022-2023 school year. The bill is funded with $29 million of the Education Fund surplus. By next January, the Agency of Education is to report to the legislature on the impact and implementation of the universal school meal program. By February, the Joint Fiscal Office is directed to issue a report examining possible revenue sources, including expansion of the sales tax base, enactment of an excise tax on sugar-sweetened beverages, and other sources that don't contribute to the General Fund. A Joint Fiscal Office Education Fund Outlook table shows as-passed sources, appropriations, and additional reserves.

Both bills take effect upon passage. The governor signed S.100 on May 31.

PUBLIC SAFETY

Criminal Threats to Third Persons (S.265, Act 103)

(amends 13 V.S.A. § 1702)

Act 103 amends the statutes regarding criminal threats and addresses the ever-increasing number of instances of threats to public servants and groups of people. This year, that included many legislators and local officials as well as the Secretary of State's Office. The act prohibits anyone from threatening a group

of persons or individual, stating that "a person who violates [the statute] … by making a threat that places any person in reasonable apprehension that death or serious bodily injury, or sexual assault will occur at a public or private school; postsecondary education institution; place of worship; polling place during election activities; the Vermont State House; or any federal, State, or municipal building …" will be imprisoned for up to two years, fined up to $2,000, or both. Similarly, a person who threatens – with the intent to terrify, intimidate, or unlawfully influence – another to prevent that person from complying with state law would be subject to two years of jail time, a $2,000 fine, or both.

Act 103 specifically calls out threats that influence the conduct of or retaliate against a candidate for public office, a public servant, an election official, or a public employee in any decision, opinion, recommendation, vote, or exercise of discretion for any previous action taken in their role as a public official.

The act took effect when the governor signed the legislation on May 3, 2022.

Secondary Enforcement of Minor Traffic Offenses (H.635, Act 106)

(creates session law)

Act 106 directs the Executive Director of Racial Equity, the Commissioner of Motor Vehicles, and the Commissioner of Public Safety to examine all motor vehicle violations for the purpose of recommending whether or not statutes should be repealed, modified, or limited to secondary enforcement. The group must submit an interim report to the legislature by January 15, 2023, and a final written report by October 1, 2023.

The act took effect on May 9, 2022.

Expungement of Municipal Tickets (H.534)

(Vetoed)

H.534 would have made various amendments to expungement laws and permit the removal of all misdemeanor offenses, *except* for those that are particularly nefarious or that have a violent or sexual nature. A few non-violent and non-sexual felonies would also have been expungable.

Most of the legislation did not impact municipalities, however the last section addressed the deletion of municipal violation records. Under current law, civil ordinances are not expungable, and relatively minor violations that are at or below misdemeanor level stay on the public record forever. H.534 would have expunged these violations after three years – but only if, during this time, no subsequent tickets were issued for related offenses. This provision would not have applied to zoning violations. Vermont's first expungement laws went into effect 12 years ago but that enabling legislation did not include municipal ordinance violations.

Although the governor vetoed H.534, similar legislation will likely be introduced during the next legislative session.

Qualified Immunity (S.254, Act 126)

(adds 20 V.S.A. § 2370; creates session law)

Act 126 began as a bill that would have significantly altered the doctrine of qualified immunity as it applies to law enforcement in Vermont. However, the final version of S.254 does not change the doctrine; rather, it requests a deeper legal analysis of it.

The act directs the Office of Legislative Counsel to conduct a legal analysis of qualified immunity and how it relates to access to civil justice remedies in Vermont and the U.S. Count of Appeals for the Second Circuit. The analysis must consider the origins of the doctrine; any existing constitutional, statutory, and common law causes of action for redressing alleged misconduct of Vermont law enforcement officers under Vermont law; how the doctrine applies to all law enforcement officers; and existing immunities and defenses to liability. The report must also analyze existing statutory and common law limitations on damages concerning allegations against law enforcement officers, the threshold for what constitutes "clearly established law" pursuant to a qualified immunity analysis, and the difference between remedies available under a private right of action under the Vermont Constitution and 42 U.S.C. § 1983. The Office of Legislative Counsel must also conduct a survey of states that maintain a central database of all final judgments and settlements paid by a law enforcement agency for allegations of officer misconduct. The report must be submitted to the legislature by November 15, 2022.

Act 126 does include one change to statutory law that codifies what is currently common practice. Every law enforcement agency must maintain a record of all final judgments and settlements paid by the agency for court claims related to alleged violations of constitutional rights established under the Vermont Constitution. All judgments and settlements and their underlying complaints are subject to public disclosure, unless an exemption applies under the Public Records Act. Any record disclosed must include the name of the agency and the monetary amount paid pursuant to the judgment or settlement.

Act 126 will take effect on July 1, 2022.

Racial Justice Statistics (H.546, Act 142)
(amends 3 V.S.A. chapter 68; creates session law)

Act 142 creates the Office of Racial Equity led by the executive director of the Office of Racial Equity (currently Xusana Davis) in the Agency of Administration. The director will oversee a new Division of Racial Justice Statistics that will collect and analyze data related to systemic racial bias and disparities within the criminal and juvenile justice systems. Further, the new division will "create, promote, and advance a system and structure that provides access to appropriate data and information, ensuring that privacy interests are protected and principles of transparency and accountability are clearly expressed." The data will help inform policy decisions to ameliorate racial disparities throughout state government. The division will collaborate with all levels of state government and with local agencies, specifically regarding data collection. The division will report annually to the legislature with recommendations based on their work.

The bill creates a seven-member Racial Justice Statistics Advisory Council comprising individuals with diverse backgrounds, including persons with expertise in community-based research on racial equity, refugees or immigrants, and persons in treatment programs addressing mental, health, substance use disorder, and reentry programs. Council members must represent the interests of communities of color and other historically disadvantaged populations throughout the state. To the extent possible, they should also have experience in working to implement racial justice reform and represent geographically diverse areas of Vermont. The council will work with the director of racial equity to implement the requirements of the law, evaluate the data, and make recommendations as a result of the evaluations.

Act 142 will take effect on July 1, 2022.

Law Enforcement Data Collection and Interrogation (S.250, Act 161)
(amends 13 V.S.A. § 5585, 20 V.S.A.§§ 2222, 2366; creates session law)

Act 161 addresses law enforcement data collection, electronic recordings of custodial interrogations by law enforcement, and deceptive and coercive methods of law enforcement of interrogations.

The act amends 20 V.S.A. § 2366, the statute that requires law enforcement agencies to collect roadside stop data. This includes the driver's age, gender, and race;, the ground for the stop and subsequent search, if any; any evidence located, and the outcome of the stop. Once this data is collected, it is reported to the executive director of Racial Equity and posted online. Act 161 also requires the House and Senate Government Operations and Judiciary committees to receive that data by December 1 of each year. The report is to explain how the data is collected and used by law enforcement agencies, and if additional criteria are needed to improve data collection and use.

The act requires the Department of Public Safety to submit an additional report by November 1, 2023, that addresses the ability of law enforcement agencies to collect data during law enforcement encounters. (The legislature has said that the definition of "law enforcement encounter" and data criteria suggestions should be considered for codification into law during the 2024 legislative session.)

Act 161 creates a Giglio Database Study Committee to study how to administer a database designed to catalogue potential impeachment information concerning law enforcement agency witnesses and to enable a prosecutor to disclose such information under the obligations of *Giglio v. United States*, 405 U.S. 150 (1972) and its progeny. *Giglio v. United States* is a U.S. Supreme Court case in which the Court held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony failed to fulfill the duty to present all material evidence to the jury, and constituted a violation of due process, requiring a new trial. The committee consists of legislators, law enforcement leadership, the executive director of the Vermont Office of Racial Equity, the attorney general, and the defender general. The committee must submit a report of their findings to the legislature by December 1, 2022.

The act mandates that any custodial interrogation occurring outside a place of detention concerning the investigation of a felony or misdemeanor violation of Title 13 must be electronically recorded in its entirety, unless impracticable.

The Joint Legislative Justice Oversight Committee is charged with studying the use of deceptive and coercive interrogation tactics used by law enforcement in Vermont. The committee will look at instances where false facts are provided to suspects during an interview that later resulted in involuntary confessions or admissions and whether those admissions or confessions should be inadmissible. The committee will study the different types of interrogation and interviewing techniques used by law enforcement and possible legislation, initiatives or programs the legislature may consider to improve current practices. A report of the findings is due to the legislature by December 1, 2022.

Act 161 takes effect on July 1, 2022.

Civil and Criminal Seizure and Forfeiture of Property in Drug-Related Offences (H.533, Act 141)
(amends 18 V.S.A. § 4247; repeals 18 V.S.A. § 4247(b)(1)(B) on July 1, 2024; creates session law)

Act 141 creates the Property Seizure and Forfeiture Working Group to study various topics concerning Vermont's use of state and federal processes from the seizure and forfeiture of property in drug-related offenses since 2015. The group will examine the date, type, quantity, value, and location of seized property;

the number of seizures resulting in federal adoption; whether innocent parties aggrieved by seizure or forfeiture intervened in any forfeiture action; whether property from a forfeiture action was forfeited, returned, or otherwise disposed of; as well as several other topics. The eight-member group will consist of representatives from the law enforcement community and the judiciary, as well as the state treasurer, the defender general, and a designee from the Center for Justice Reform at Vermont Law School. By December 15, 2022, the group is required to submit a report on the study to the Joint Legislative Justice Oversight Committee and the Senate and House Judiciary committees.

Act 141 updates the statutory cross-refence contained in 18 V.S.A. § 4247(a) so that the public sale or forfeiture property is no longer governed by a repealed statute. Eighteen V.S.A. § 4247(b)(1)(B) is also updated to replace the now-defunct Governor's Criminal Justice and Substance Abuse Cabinet with the Agency of Administration as the entity that determines how proceeds from the sale of the forfeited property are allocated to law enforcement. The act prospectively repeals 18 V.S.A. § 4247(b)(1)(B).

Act 141 takes effect on July 1, 2022.

QUALITY OF LIFE, ENVIRONMENT AND HOUSING

Medical Monitoring (S.113, Act 93)

(adds 12 V.S.A. Chapter 219, Medical Monitoring; amends 10 V.S.A. § 6615)

On April 21, the governor signed S.113, the medical monitoring bill. This legislation has been proposed for many years, ever since water-contaminating per- and polyfluoroalkyl substances, commonly called PFAS, were discovered in private wells in Bennington County towns and the Agency of Natural Resources confirmed their existence in 2016. In 2021, residents affected by PFAS linked to two former industrial plants in Bennington and North Bennington reached a $34 million settlement with the owner, Saint-Gobain Performance Plastics Corporation.

Act 93 provides that an individual without a present injury or disease has a cause of action to seek medical monitoring against the owner or operator of a large facility from which a toxic substance was released. The remedy would be a program of tests for early detection of a latent disease resulting from exposure. The legislation defines a large facility as a certain type of business where ten or more full-time equivalent employees work at any one time or all facilities owned by a person or entity employ 500 employees at any one time. The facility includes all contiguous land, structures, and improvements where proven toxic substances are manufactured, processed, used, or stored. A facility is *not* one owned by a municipality.

In order to qualify for the cause of action, a person would need to demonstrate that:

- their exposure to a proven toxic substance was at a rate significantly greater than that of the general population;
- their exposure is the result of tortious conduct of the defendant; and
- as a result of the exposure, the person has an increased risk of contracting a serious disease that requires special medical examinations different from those required by the general population,
- monitoring procedures to detect a latent disease exist, are reasonable in cost and safe to use.

The law also amends 10 V.S.A. § 6615, the statute regarding the release of hazardous materials. It clarifies that the following are liable for abating a release, actual or threatened, of hazardous materials: the current facility owner or operator; anyone who arranged for disposal, treatment or transport of hazardous materials; and any person who manufactured for commercial sale a hazardous material who knew or should

have known the material threatened human health or the natural environment. They are also liable for the costs of investigation, removal, and remediation undertaken by the state that protects public health or the environment.

If a person can demonstrate that they provided adequate warning of the harm posed by the hazardous material at the time it was manufactured, then they would not be liable.

Exempted from the definition of "proven toxic substance" are lawfully applied pesticides, ammunition, firearms and air rifles or their discharge, or hunting or fishing equipment.

Act 93 takes effect July 1, 2022, however it applies to the release of any hazardous material, regardless of when it occurred.

Community Resilience and Biodiversity Protection (H.606)

(Vetoed)

H.606 would have mandated that 30 percent of Vermont's total land area be conserved by 2030 and 50 percent by 2050. For purposes of this legislation, "conserved" meant "protected" and that the land proposed to be conserved meets the definitions of an ecological reserve area (permanent protection from conversion of natural land cover and managed to maintain a natural state), a biodiversity conservation area (permanent protection from conversion of natural land cover for the majority of the area and managed for sustaining species or habitats), or a natural resource management area (permanent protection from conversion of natural land area for the majority of the area but subject to long-term sustainable forest management).

Reaching the 2030 and 2050 goals would have required a mix of these three types of areas. By 2023, the Secretary of Natural Resources would have had to develop a plan to implement Vermont Conservation Design goals incorporating the three areas and provide the report to the legislature. The report would have included a review of the three conservation categories, an inventory of permanently conserved land and existing relevant programs, an evaluation of intergenerational land transfer trends, a summary of conservation practices available to reach the goals, and an assessment of staffing and financial goals.

The governor vetoed the legislation on June 2, however we fully expect that the issue will be revisited in the next session.

Establishing a Clean Heat Standard for Vermont (H.715)

(Vetoed)

H.715 passed the legislature on May 3 and the governor vetoed it three days later. On May 10, the legislature's attempt to override his veto failed by one vote in the House.

H.715 would have required the Public Utility Commission to establish a clean heat standard and submit rules regulating the standard to the legislature. Entities that made a first sale of heating fuel in Vermont would need to reduce their greenhouse gas emissions every year. The legislation was a response to the 2021 Vermont Climate Action Plan's call for reducing emissions in the state's thermal sector in accordance with mandates in the 2020 Global Warming Solutions Act. The thermal sector (heating and cooling mostly of buildings) produces the second highest level of greenhouse gas emissions in Vermont. (Transportation is the highest.)

In his veto letter, the governor wrote, "as Governor and as elected officials, we have an obligation to ensure Vermonters know the financial costs ad impacts of this policy on their lives and the state economy. Signing this bill would go against tis obligation because the costs and impacts are unknown… What the legislature has passed is a bill that includes some policy, with absolutely no details on costs and impacts, and a lot of authority and policy making delegated to the Public Utility Commission, an unelected board."

The discussion about a clean heat standard will most certainly be taken up again in the next biennium, although the chair of the House Energy Committee, which introduced the bill, is retiring from the legislature.

Truth and Reconciliation Commission (H.96, Act 128)

(adds 1 V.S.A. chapter 25; creates session law)

Act 128 establishes the Vermont Truth and Reconciliation Commission as an independent body to examine institutional, structural, and systemic discrimination caused or permitted by Vermont laws and policies that has been experienced by individuals who identify as Native American, Indigenous, Black or as a person of color, French Canadian, French-Indian, or other mixed ethnic or racial heritage. The commission's work will also include individuals with a physical, psychiatric, mental condition or disability and their families.

The commission will consist of three full-time commissioners plus staff and members appointed by the board. The commission will report its findings annually to the governor and legislature and produce a report by 2026 that recommends ways to eliminate ongoing instances of institutional, structural, and systemic discrimination and that address the harm caused by historic instances of discrimination. The commission will cease to exist on July 1, 2026.

Act 128 took effect on May 24, 2022.

Surface Water Withdrawals and Interbasin Transfers (H.466, Act 135)

(amends 10 V.S.A. Chapter 41, §§ 1253(h)(1), 8003(a)(4); adds 6 V.S.A. Subchapter 6A)

Act 135 establishes standards for surface water withdrawals. The legislation amends and renames Chapter 41 in Title 10 that regulates stream flow. It also now regulates surface water withdrawals, inter-basin transfers of water, and stream alterations.

The legislation adds a highly technical definition of basin as well as more layperson-friendly definitions:

- berm: earthen material on or next to a watercourse that constrains waters from entering a flood hazard area or river corridor;
- capacity: maximum volume of water capable of being withdrawn by the water withdrawal system);
- inter-basin transfer: the conveyance of surface water withdrawn from one basin for use in another basin); and
- large woody debris: any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew – in other words, a tree.

The first four pages of the act are definitions.

A key definition is for reasonable and feasible: available and capable of being implemented after consideration of cost, existing technology, logistics in light of the overall project purpose, environmental impact, and ability to obtain all necessary approvals for implementation. In the new permitting system, an

applicant will be required to assess any "reasonable and feasible" alternatives to the surface water withdrawals they are proposing that might have less of an impact on surface water quality.

The act's purpose is to:

1. ensure protection, maintenance, and restoration of water quality, including water quantity, necessary to sustain aquatic communities and stream function;
2. enhance viability of sectors that rely on the use of surface waters and are important to Vermont's economy;
3. permit surface water withdrawals and construction of facilities for uses other than snowmaking based on an analysis of the need for water and consideration of alternatives; and
4. recognize that existing users of waters for off-stream uses that may have an adverse effects on water quality should have time to improve water quality.

By January 1, 2023, any person withdrawing 10,000 gallons or more of surface water within a 24-hour period or 150,000 gallons within a 30-day period must register with the Secretary of Natural Resources and indicate the location, frequency, rate, and schedule of each withdrawal; the capacity of the withdrawal system; and a description of how the withdrawn water will be used. Beginning on January 1, 2023, the registrant will need to file an annual report with the secretary that identifies total monthly withdrawals, the location, and the date and amount of daily maximum withdrawal for each month. A person would be exempted from the requirement if the withdrawn water was used for fire suppression or emergency response, snowmaking, approved public water supplies, irrigation for farming or livestock watering, and any other use that already requires the same data to be reported.

By 2026, the ANR secretary must implement a surface water withdrawal permitting program, based on potential impacts to surface waters or other factors, that establishes conditions of operation necessary to protect Vermont's surface waters. The permitting system will require an efficient use of water, establish limitations on withdrawals based on low-flow or drought conditions and alternatives in such cases, ensure that withdrawals comply with the Vermont Water Quality Standards, and require assessment of any reasonable alternatives that may have less of an impact on the quality of surface water. The permitting system will include requirements for water withdrawal applications.

Permits for non-snowmaking withdrawals will not be required until 2030, as long as the withdrawal is registered and annually reported to the agency and no increase in the withdrawal occurs after January 1, 2023.

Additionally, the bill would require the secretary to review any transfer of water from one basin to another or from one watershed to another. Beginning on February 15, 2023, the secretaries of Natural Resources and Agriculture will report annually to the legislature the data submitted as part of a permit application.

The act also adds a chapter to the agriculture statutes that regulates the withdrawals of water for irrigation, livestock watering, or other farming use. It requires a report to the Secretary of Agriculture from farmers who withdraw 10,000 gallons or more of surface water within a 24-hour period or 150,000 gallons or more of surface water during a 30-day period in the preceding year.

The act takes effect July 1, 2022.

Comprehensive Economic and Workforce Development (S.11, Act 183))
(amends 9 V.S.A. § 2464e; session law)

The end-of-session maneuvering to secure economic development and workforce legislation was truly mind-bending. Your Advocacy staff did not dare to write about S.11 until an as-passed version was available. The bill, as introduced, was to prohibit robocalls. In the last week of the session, it was plucked off the wall of the House Commerce Committee as a vehicle to carry all the economic development issues that had a chance of passage over the finish line. Much of the bill's 119 pages do not directly affect local governments. However, various sections are quite important to cities, towns and villages.

According to the Department of Labor, there were 28,000 job openings in the state last December; 9,945 individuals met the federal definition of unemployed in January; 4,500 individuals were receiving unemployment insurance in March; and the workforce shrank by 26,000 individuals from 2019 to 2022. The bill creates a five member Special Oversight Committee on Workforce Expansion to oversee statewide workforce development, training and education, and to provide a forum for employers who want to connect with workers. The committee will provide one of nine reports by next January recommending a statewide workforce development system that names a single government entity to coordinate workforce development.

The first 45 sections of S.11 are designed to expand opportunities for workforce education and training and make investments to support the workforce. The implementing programs are directed to conduct significant outreach, especially to populations that have experienced unequal access to economic benefits due to geography, socioeconomic status, disability, gender identity, age, immigration or refugee status, or race.

Appropriations in those sections include:

- $3.5 million to the University of Vermont Office of Engagement and Vermont Student Assistance Corporation (VSAC) to administer a forgivable loan of $5,000 to recent graduates of Vermont's higher education institutions who commit to work in the state for two years after graduation. Similar forgivable loan programs are authorized specifically for nursing and mental health care students;
- $250,000 to the Agency of Commerce and Community Development for a performance-based contract to provide statewide delivery of business coaching and training to Black, Indigenous, and Persons of Color (BIPOC) business owners;
- $250,000 to the Agency of Administration to support the Special Oversight Committee on Workforce Expansion;
- $1.5 million for a two-year pilot program in three regions of the state to increase local labor participation, decrease the number of open positions, increase wages of workers transitioning to new jobs, and share information regarding local career pathways;
- $1.5 million to the Department of labor to implement a Vermont-Based Learning and Training Program to serve transiting secondary and post-secondary students who seek work-based experience as part of a career experience or change; and
- $15 million to the Education Fund to develop and administer the Continuing Technical Education Construction and Rehabilitation Experiential Learning Program and revolving loan fund.

The departments of Health and Labor and VSAC are to coordinate outreach efforts to emergency service personnel to ensure they can access opportunities for professional development in the legislation. By next January, they must report on a proposal of sustainable funding for educational, financial, and development support to emergency service provider professionals.

H.740, the appropriations bill, allocated $10,580,000 to the Department of Economic Development to design and implement a new Community Recovery and Revitalization Grant Program administered by the Vermont Economic Progress Council. The language establishing the program is in S.11. Investments will be made to retain, expand, and attract existing businesses and non-profit organizations, and to create new jobs with a preference for projects in regions and communities with declining or stagnant grand list values. Municipalities are eligible applicants. A municipality will need to make infrastructure improvements to incentivize community development, which will need to be compatible with confirmed municipal and regional development plans. The project must have clear significance for employment. The project must require substantial public investment beyond normal municipal operating or bonded debt expenditures. It must also include affordable housing, one entirely new business project or expansion, or enhanced transportation. Awards may be made up to $1 million or 20 percent of the total project cost.

The Department of Economic Development and Joint Fiscal Office will develop guidelines and approval processes for the program.

The legislation expands the Agency of Commerce and Community Development Relocating Employee Program – which awards incentive grants of up to $7,500 to employees relocating to Vermont – to all occupations, and not to just those on a Department of Labor list. That will mean that law enforcement officers can take advantage of the program, as can emergency medical service providers and other people coming to Vermont to fill municipal positions that aren't being filled by Vermonters.

The legislation creates a COVID-19 Related Paid Leave Program in the Department of Financial Regulation. Modeled after the Front-Line Employees Hazard Pay Grant Program established in 2020, it will award grants to employers to reimburse the cost of providing COVID-19-related paid leave to employees. The program is seeded with $15.2 million.

The Agency of Digital Services and Department of Labor are to implement a modernized information technology system for the unemployment insurance program by 2025, when changes to the unemployment insurance weekly benefits established in the bill are scheduled to kick in.

Finally, S.11 appropriates $2.5 million to the Vermont Downtown and Village Center Tax Credit Program for use in FY23 and FY24. Up to $2 million may be awarded to qualified projects in designated neighborhood development areas.

The legislation contains a number of effective dates, depending upon the section of the bill, however the default date is July 1, 2022.

The governor signed the bill on June 8.

Rental Housing (S.210, Act 181)

(adds 20 V.S.A. Chapter 172, Rental Housing health and Safety)

The rental housing bill ended up a much shorter piece of legislation than it had been all session. The proposal to establish a rental housing registry was left on the cutting room floor to encourage the governor to approve of the remaining legislation – which he did. The bill transfers the responsibility for inspection of rental housing from the local health officer – frequently a volunteer with no particular expertise in health and safety matters related to housing – to the Department of Public Safety.

Act 181 authorizes, but does not require, the Commissioner of Public Safety to adopt rules that establish standards for the health, safety, sanitation, and fitness for habitation of rental housing. He may bypass the

usual route for rule adoption and immediately adopt a rule incorporating the state Rental Housing Health Code. Once rules are adopted, the commissioner must design and implement a complaint-driven system to conduct rental housing inspections.

When conducting such an inspection, Department of Public Safety staff from the Fire Safety Division must issue a written inspection report that contains findings of fact regarding violations and requirements and timelines for correcting those violations. It must also give notice that the landlord is prohibited from renting the unit in question to a new tenant until the violation is corrected, and notify tenants that the landlord (or those acting on their behalf) must have access to the unit to make repairs. Inspection reports will be given to the landlord and all tenants affected by the violation and will be available as public records. Failure to correct a violation may result in administrative penalties of up to $1,000 per violation.

Act 181 authorizes the creation of five inspector positions in the Department of Public Safety and appropriates $400,000 for that purpose.

When rules for rental housing inspections are adopted, the department will have primary authority to enforce state laws governing rental housing health and safety. Thereafter, the local health officer will have concurrent authority to inspect rental housing. If the inspection is conducted entirely by the local official, they must submit the same inspection report.

The act also establishes the Vermont Rental Housing Improvement Program in the Agency of Commerce and Community Development to incentivize private apartment owners to make significant improvements in housing quality and weatherization. The program is funded with $20 million. Through the program, the agency will award funds to statewide or regional nonprofit housing organizations to provide grants and forgivable loans to private landlords who are rehabilitating non-code compliant units or building new accessory dwellings. A grant would be up to $50,000 and the landlord must contribute matching funds or in-kind services equal to 20 percent of the loan. Units would need to be leased to households exiting homelessness or working with an immigrant or refugee resettlement program – or, if no such household exists, to a household with an income less than 80 percent of median income or another household approved by the granting agency. A landlord could convert the grant to a forgivable loan.

The act takes effect upon passage, and the governor signed it on June 7 at Salisbury Square, a re-developed former blighted abandoned factory complex in Randolph.

Housing and Act 250 (S.226, Act 182)

(amends 9 V.S.A. §§ 4500, 4503; 10 V.S.A Chapter 15, subchapter 5, §§ 6001,6081, 6084, 6086; 24 V.S.A. §§ 2793b, 2793e, 4306, 4307, 4414; 32 V.S.A. §§ 5930aa, 5930u; adds 26 V.S.A. Chapter 106 and 24 V.S.A. § 4449)

S.226 and S.234 were two efforts introduced this session to address land use and housing. Both bills passed. While much of the content of the two bills was the same when they were introduced, S.226 focused on facilitating housing construction and redevelopment, and S.234 focused on Act 250, Vermont's 52-year old statewide land use law. Because legislators anticipated a veto of S.234, segments of the bill that addressed housing landed in S.226 in the last few days of the session. On June 2, as expected, the governor vetoed S.234.

First-Time Homebuyers. Act 182 authorizes the Vermont Housing Finance Agency (VHFA) to reserve funding in the Down Payment Assistance Program for first-time homebuyers who are also first-generation homebuyers and to adopt guidelines for financial assistance. VHFA will work with partners to develop a plan to help Vermonters who have historically suffered housing discrimination. The act allocates $1 million

for that outreach and grants. The act also appropriates $2.5 million for manufactured home community small-scale capital grants, $750,000 for manufactured home repair grants, and $750,000 for new manufactured home foundation grants.

Community Partnership Pilot Program. The Department of Housing and Community Development (DHCD) is directed to develop a Community Partnership for Neighborhood Development Program to develop a pilot neighborhood and demonstrate new models to support development of homes in inclusive, smart growth neighborhoods. The program will be steered by a new Housing Equity Council that includes representatives from several agencies, VLCT, regional planning commissions, and regional development corporations. The council will recommend a pilot demonstration neighborhood development project using a competitive process to select a municipality that demonstrates need, collaboration, bylaw modernization, and financial commitments to support smart growth and housing near an area of compact settlement. The program is funded with $1 million from the American Rescue Plan Act (ARPA). A project report is due to the legislature by 2026.

Downtown Tax Credits. Act 182 expands eligibility for the Downtown and Village Center Tax Credit Program to neighborhood development areas until 2025. It also provides for approval of a flood mitigation tax credit to be approved by the Downtown Development Board if someone undertakes a flood mitigation project to reduce or eliminate flood damage to buildings or contents that are in Federal Emergency Management Agency-mapped flood hazard areas.

Missing Middle Housing. The act establishes the Missing Middle Income Home Ownership Development Program with appropriations of $5 million in FY22 and $10 million in FY23. The program would provide subsidies for new construction, rehabilitation, or acquisition of affordable owner-occupied housing by income eligible homebuyers. "Missing middle" housing in this program means affordable owner-occupied housing available for purchase by income-eligible homebuyers. An "income-eligible homebuyer" is a Vermont household whose annual income does not exceed 120 percent of area median income.

Residential Contractor Registration. An element of another bill added to S.226 as it passed is the requirement for residential contractors who do more than $10,000 of work for a homeowner to register with the Secretary of State's Office of Professional Regulation.

Discrimination in Housing. The section of law prohibiting discrimination in housing practices clarifies that the prohibitions apply to dwellings and other real estate. The term "harass" is amended to specify that harassing conduct need not be severe or pervasive to be unlawful.

Tax Sales for Non-Payment of Property Tax or Utility Fees. If a town intends to proceed with a tax sale on a residential property, a notice must be sent to the delinquent taxpayer's last known address 60 days before proceeding with the sale. The notice must state that the delinquent taxpayer may be eligible for assistance through the Vermont Homeowner Assistance Program (VHAP). VHAP is a VHFA program to help homeowners with payment of past due taxes and water and sewer charges. If an applicant's application is successful, payment of delinquent taxes, charge, interest and penalties will be made on the applicant's behalf.

The same notice will need to be sent if a delinquent taxpayer's property was sold before June 7, 2022, the effective date of Act 182, but the deed conveying the property had not been executed. In this latter event, the notice needs to be sent no more than 30 days after the bill's effective date (July 1). The redemption period will be extended until the applicant is deemed ineligible, the application is closed due to inaction by the applicant, or payment is issued.

The notice will need to apprise the delinquent taxpayer of the help that VHAP offers.

Once notified that a VHAP application is pending, a municipality may not proceed with a tax sale until the homeowner is deemed ineligible, the application is closed due to inaction by the applicant, or payment is issued to the municipality on a qualifying application. The VHAP language will be repealed on September 30, 2025, and notices will no longer be necessary when funding is exhausted.

Vermont Land Access and Opportunity Board. The legislation establishes an 11-member Vermont Land Access and Opportunity Board, which the Vermont Housing Conservation Board will administer. Its FY23 allocation is $200,000. The board's purpose is to promote improved access to woodlands, farmland, and land and home ownership for Vermonters from historically marginalized or disadvantaged communities who face barriers to ownership.

Municipal Zoning and Designation Programs. Several sections of the act are designed to facilitate the development of housing through amendments to planning and zoning statutes and to Act 250. It expands a municipality's ability to adopt bylaws that allow for building infill housing in suitable parts of a designated neighborhood development area containing pre-existing development that might be in a flood hazard area or river corridor. If a neighborhood development area includes flood hazard areas or river corridors, local bylaws will need to ensure that the development will not contribute to fluvial erosion hazards within the river corridor and also protect river corridors outside the development area. The legislation eliminates the requirement that a neighborhood development area be served by municipal or community wastewater. Applications for designation of new town centers will be approved if regulations enable densities not less than four units per acre and at least as many units per acre as are allowed in any other part of the municipality.

Municipal land use permits for a site plan or conditional use must remain in effect for at least two years from the date of issuance.

DHCD will receive $150,000 to hire a consultant to evaluate the state designation programs and conduct statewide stakeholder outreach. The consultant is to recommend how to map and define existing compact settlements; make regional plans more consistent; modernize the designation programs and make them more accessible to municipalities; and strengthen incentives to encourage place-based economic development, climate action, complete streets, and equity and efficiency of public investment and service delivery. The consultant's report is due by July 1, 2023.

Municipal Planning Grants. The act allocates $870,000 to Municipal Planning Grants in FY23, up from the $460,000 figure that was the annual appropriation for more than a decade. DHCD is authorized to use up to six percent of that amount to administer the grants. The new funding is to be used for Municipal Bylaw Modernization Grants, which are designed to help municipalities update their land use bylaws to increase housing choice, affordability, and opportunity, and support patterns of development that are pedestrian-oriented in places planned for smart growth. The legislation is quite specific in dictating what a municipality must have in place in order to secure such a grant. DHCD is also to adopt guidelines to help municipalities apply for the grants by September 1, 2022. In fact, the legislations says that to the extent increased funding is provided to the Municipal and Regional Planning Fund, $650,000 must be used for Municipal Bylaw Modernization Grants.

Accessory Dwelling Units. A municipality may not require an accessory dwelling unit to have more than one parking space per bedroom.

Act 250. Priority housing developments in municipalities of fewer than 3,000 residents may include up to 50 units without triggering Act 250. Priority housing projects consist of mixed income housing or mixed use located entirely within a designated downtown, new town center, growth center, or neighborhood development area – but *not* in a designated village.

The definition of mixed-income housing for purposes of Act 250 is revised to mean that for owner-occupied or rental housing, at least 20 percent of the housing units must now meet the requirements of affordable owner-occupied housing adjusted for the number of bedrooms, a number that VHFA publishes annually. In the case of rental housing, those units need to meet the definition for at least 15 years.

The act also specifies that if a person applies for an Act 250 permit and a municipality fails to respond to the request within 90 days regarding impacts related to educational, municipal or governmental services, the project will be presumed to have no adverse impact on those services.

Manufacturers of wood products and those who aggregate value-added wood products from forestry operations will receive special consideration regarding seasonal, weather, and land-dependent conditions affecting operations in any Act 250 permit that is issued.

Act 250 jurisdiction is extended to the construction of improvements on tracts of land owned by a person that involves more than one acre of land "within a radius of five miles of any point on any involved land" in a municipality that has not adopted permanent zoning and subdivision bylaws. Current law states that development "on more than one acre of land" in a municipality without permanent zoning and subdivision is subject to Act 250 review. The bill also states that the intent of the change is to clarify how jurisdiction over commercial and industrial development in towns without zoning and subdivision bylaws has been interpreted since the passage of Act 250 in 1970.

By next January, the Natural Resources Board is to report to the legislature how Act 250 should be applied to agricultural businesses, including those already operating as farms. The report should define what is or is not an accessory on-farm business, and whether different levels of review should be applied to different businesses.

The entire act takes effect on July 1, 2022, except for the Missing Middle Housing Program and VHAP requirements, which take effect on passage. The governor signed the legislation on June 7.

Municipal Energy Resilience Program (H.518, Act 172)

(adds 29 V.S.A. §§ 168a, 168b)

Municipal governments own and operate more than 2,000 buildings around the state. Used to provide services to their citizens, they include libraries, garages, town halls and offices, recreation facilities, and more. Act 172 establishes a new Municipal Energy Resilience Grant Program to "covered municipalities" – that is cities, towns, fire districts, or incorporated villages and all other governmental incorporated units, except for school districts.

Act 172 directs the Department of Buildings and General Services (BGS) to issue a request for proposals for a comprehensive energy resilience assessment of municipal buildings and facilities by September of this year. The consultant that BGS hires must complete that assessment by 2024. Municipalities – in coordination with regional planning commissions that will help them develop plans or on their own if they so choose – may apply to BGS for an assessment of their buildings and facilities.

The assessment will include a scope of work for the cost and timeline of the projects and recommendations to reduce operation and maintenance costs; enhance comfort; reduce energy use by improving heating, cooling, and ventilation systems; renewable energy opportunities; improvements to thermal envelopes; and the potential for on-site renewable energy generation, battery storage, and electric vehicle charging options. The scope of work needs to include the costs for these recommendations in each assessment.

To qualify for an assessment, a municipality must have access to high-speed internet or at least a plan to have access by 2024. As well, any assessed building must comply with the Americans with Disabilities Act by the time the project is completed.

The new program will provide up to $500,000 to complete approved projects in municipal buildings for weatherization and thermal efficiency improvements, and to replace fossil fuel heating systems with more efficient renewable or electrical systems. The program will also provide up to $4,000 to facilitate community meetings and communication on municipal energy resilience. The primary design of replacement heating systems is to prioritize renewable or electric heating systems. A recommendation may include an upgraded fossil fuel heating system as a primary heating sources if nothing else is technically feasible.

BGS, Efficiency Vermont, regional planning commissions, experts in the field, and VLCT are to cooperatively design the program. The group is directed to establish a streamlined application process; an outreach and education plan by regional commissions; an equitable system for distributing grants that gives priority to municipalities with the highest energy burdens and lowest resources and to those that lack administrative support to apply for grants; guidelines for renewable and energy efficiency buildings systems; and eligibility criteria. The municipality must include a written commitment to conduct community workshops and a self-assessment.

The act includes a $45 million appropriation from the American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Fund; $36.6 million of that amount will be available for grants to municipalities. Hiring a contractor to conduct assessments may cost up to $5 million. An additional $2.4 million is allocated for regional commissions to assist with grant applications and provide programming and technical assistance to municipalities.

Act 172 also creates a Municipal Energy Loan Program at BGS to make energy and efficiency improvements, replace outmoded equipment, and improve energy efficiency and the conservation and use of renewable resources. The act creates a Municipal Energy Revolving Fund to finance the program. The revolving fund would be initially capitalized with $2.8 million allocated in the federal Infrastructure Investment and Jobs Act. Each year, the BGS commissioner is to report to the legislature on expenditures from the fund. That report must summarize each project receiving funding and the municipality's expected savings. By January 15, 2023, the Department of Public Service is to report to the legislature on total grant amounts approved by the state and transferred to the Municipal Energy Revolving Fund.

The legislation provides for two positions at BGS lasting three fiscal years to administer the municipal energy resilience assessments of covered municipal buildings and facilities and also provides technical assistance to municipalities implementing projects. An additional two positions will administer the program.

The act takes effect on July 1, 2022.

Restrictive Covenants in Deeds (H.551, Act 143)
(adds 27 V.S.A. § 546)

A new section of statute prohibits – after July 1, 2022 – a deed, mortgage, plat, or other recorded device from containing a covenant, easement, or any other restrictive requirement that would restrict ownership of real property on the basis of race or religion. Likewise, any such covenant or restriction that was previously executed is declared contrary to the policy of Vermont and is both void and unenforceable. The bill was signed by the governor on May 27 and takes effect on July 1, 2022.

Natural Resources and Development (H.446, Act 170)
(amends 3 V.S.A. §2822(j); 10 V.S.A. §§ 1264(k), 1386, 6007(a), 6047(b), 6081(h), 6086(f), 6084, 6086b(2), 6615 (d)(3), 6646, 7702(2), 7713, 7715; 24 V.S.A. § 2249; 29 V.S.A. § 405)

Act 170 makes a number of very technical amendments to environmental laws, including water quality statutes that the Agency of Natural Resources (ANR) administers. The following changes affect local governments.

The act amends the Secretary of Natural Resources' responsibilities for annual reporting on plan milestones in each of Vermont's watershed basins. Each September, the Secretary of Administration is to include in the Clean Water Investment Report a summary of federal funding that is available to undertake water quality efforts in the state.

The act revises the statute regarding municipal liability for properties they own from which hazardous materials were released. Now, a municipality is not liable if the municipality did not cause, contribute to, or worsen the release of a hazardous material. The municipality will no longer need to demonstrate that the property was acquired through bankruptcy, tax delinquency, abandonment, or a similar circumstance.

The act also repeals the statutory requirement for the owner or operator of a salvage yard to attend annual trainings sponsored by ANR.

According to Act 250 – Vermont's statewide land use and development law –before a piece of land may be divided or partitioned, the person taking that action must prepare an Act 250 disclosure statement. If the land is not being sold, the owner must file a copy of the statement with the town clerk in the town's land records. If the land is being sold, the buyer must receive a copy of the Act 250 disclosure statement within 14 days (it was previously 10) of entering a purchase and sale agreement, and file that with the town clerk in the town's land records. The disclosure statement might establish that the transfer is subject to Act 250. Likewise, the act extends other notice requirements and timelines for action in Act 250 beyond current statutory requirements.

As of May 1, 2022, new solid waste facility certifications for food de-packaging facilities may no longer be issued, and existing solid waste de-packaging facility certificates that would result in an increase of capacity may no longer be amended. The ANR secretary is to meet with stakeholders to recommend how to properly manage packaged organic materials by July 1, 2022, and submit a report to the legislature by January 15, 2023. By 2024, the secretary, in consultation with the Agriculture secretary, is directed to submit a report regarding microplastics and per-and polyfluoroalkyl substances (PFAS) in food waste and food packaging in Vermont. The ANR secretary is also charged with adopting rules to regulate the operation of food waste management facilities, including management standards to operate the facility, and standards for hand-source separation instead of mechanical de-packaging; restrict types of food waste that may be managed at such a facility; and adopting standards to eliminate microplastics from food waste management facilities.

The food waste residuals sections of the bill took effect when the governor signed the bill on June 2. The balance of the bill will take effect on July 1.

Environmental Justice (S.148, Act 154)
(adds 3 V.S.A. Chapter 72)

Act 154, the environmental justice bill, was introduced in 2021. According to the purpose section, "It is the State of Vermont's responsibility to pursue environmental justice for its residents and to ensure that its agencies do not contribute to unfair distribution of environmental benefits to or environmental burdens on low-income, limited English proficient and BIPOC communities." The purpose of the new chapter is "to identify, reduce, and eliminate environmental health disparities to improve the health and well-being of all Vermont residents."

By 2025, the "covered agencies" – that is, the impacted boards, agencies and departments of the state – need to adopt community engagement plans for working with environmental justice focus populations as they evaluate new and existing programs. The community engagement plans are to align with core principles developed by the new Interagency Environmental Justice Committee and take into account recommendations of a new Environmental Justice Advisory Council. Agencies will submit annual summaries – including all complaints alleging environmental justice issues and agency responses – to the council. After receiving recommendations concerning the reports from the council, the impacted agency will need to respond in writing within 90 days if it chooses not to implement those recommendations. By 2024, agencies, departments, and boards will need to review the past three years of spending and provide reports indicating where investments were made and quantify any environmental benefits. Annual spending reports provided after January 15 of each year will note where investments were made and the percentage of benefits provided to environmental focus populations.

Covered state entities are the agencies of Natural Resources (ANR); Transportation; Commerce and Community Development; Agriculture, Food and Markets; and Education as well as the Public Utility Commission; the Natural Resources Board; and the departments of Health, Public Safety, and Public Service.

By 2023, ANR must consult with the Interagency Environmental Justice Committee and the Environmental Justice Advisory Council to develop, release for public comment, and issue guidance on how agencies should determine which investments provide environmental benefits to environmental justice focus populations. ANR will have to adopt rules implementing the act by 2025, after which the agencies, departments and boards must align their plans, policies, and procedures with those rules.

The 11-member Environmental Justice Advisory Council includes one representative of municipal government appointed by the Senate Committee on Committees. The 11-member Interagency Environmental Justice Committee comprises members of state agencies, departments, and boards. Both groups will have to incorporate the Vermont Climate Council's Guiding Principles for a Just Transition.

By 2025, ANR must develop and maintain a mapping tool that depicts environmental justice populations and measures environmental burdens "at the smallest geographic level practicable."

Also by 2025, ANR must submit a report to the legislature that indicates if any municipalities are underserved regarding environmental benefits, and recommend whether or not a statutory definition of "underserved community" is necessary.

The legislation includes $500,000 to develop the mapping tool and conduct outreach and $250,000 for three new positions at ANR.

Act 154 took effect on May 31 when it was signed by the governor.

Reserve Forest Land and the Use Value Appraisal Program (H.697, Act 146)

(amends 32 V.S.A. Chapter 124)

Vermont's Use Value Appraisal Program (Current Use) is designed to preserve the working landscape. Act 146 expands the purpose of the program to include preserving the rural character of Vermont and protecting the natural ecological systems and natural resources of its forestlands.

The act creates a new category of forestlands eligible for the program. An "ecologically significant treatment area" is defined as land that is subject to protective conservation management practices, including old forests; significant natural communities; rare, threatened, and endangered species; riparian areas; forested wetlands; and vernal pools. Such an area would be within a larger managed forestland parcel.

"Reserve forestland" means land managed to attain old forest values and functions that has been approved by the Commissioner of Forests, Parks and Recreation. At least half of enrolled parcels of up to 100 acres will need to comprise significant and sensitive conditions; at least 30 percent of parcels of 100 acres or more must meet those criteria. Enrollment as reserve forestland may begin on July 1, 2023.

The act requires three reports:

- By December 31, 2022, the Commissioner of Forests, Parks, and Recreation – after consulting with Property Valuation and Review and the Current Use Advisory Board – must submit a report regarding the enrollment of reserve forestland in the Use Value Appraisal Program. That report is to include the standards for management of reserve forestland, how a land owner would enroll land as reserve forestland, and how reserve forestland would revert to productive forestland.

- By December 31, 2024, the Commissioner of Taxes –after consulting with the Commissioner of Forests, Parks and Recreation, the Secretary of Agriculture, and the Current Use Advisory Board – is to submit a report on the strategies and rates for valuation of all lands in the program and how to maintain consistency among the values and uses of enrolled land.

- By January 15, 2026, the Commissioner of FPR – after consulting with the usual suspects – is to report on enrollment of managed forestland in the program, including the number of parcels enrolled as reserve forestland, and a summary of how enrollments have changed since passage of the act.

The legislation took effect on passage, May 27, except for the new enrollment opportunity, which takes effect July 1, 2023.

Miscellaneous Agricultural Topics (H.709, Act 174)

(amends 6 V.S.A. §§ 1, 22, 851, 852, 1085, 4858(c)(1), 4871; 6 V.S.A. chapter 34; 10 V.S.A. § 6001(42); 24 V.S.A. § 4412)

Act 174 amends various provisions in laws that relate to agriculture, three of which are important to municipalities. The act amends the portion of 24 V.S.A. § 4412 that relates to on-farm businesses and zoning regulations. It deletes the provision of that section that mandates products be "principally" produced on a farm to qualify as an accessory on-farm business and therefore be exempt from most zoning

provisions. Now, the products won't have to be "principally" produced on the farm but simply *produced* there. Additionally, a business can qualify as an accessory on-farm business under Act 250 if more than 50 percent of the total sales from that business are from qualifying products produced on the farm where the business is located. The act also clarifies that the type of small farms that qualify for the Act 250 small farm food residual exemption includes certified small farms or other small farms subject to Vermont's Required Agricultural Practices.

Act 174 will take effect on July 1, 2022.

Small Cannabis Cultivation and Farming (S.188, Act 158)
(amends 7 V.S.A. §§ 861, 868, 869, 881, 881(a), 883, 884, 885, 901(d)(3), 904, 905, 907, 910((8); 18 V.S.A. §§ 4230e, 4230h; amends 2019 Act 164, Sec. 8(a)(1); adds 7 V.S.A. §§ 862a, 909(c); repeals 6 V.S.A. § 567; creates session law)

Act 158 amends various provisions of cannabis laws. The legislation mostly relates to the state regulations and standards that apply to small cannabis cultivators. One large provision in the bill does affect local governments in terms of how they regulate small cannabis cultivators on farms. A small cultivator who wants to grow cannabis outdoors on land subject to the Required Agricultural Practices (RAPs) prior to licensed cultivation of cannabis is exempt from municipal zoning regulations under 24 V.S.A. chapter 117, just as RAPs are also exempt under 24 V.S.A. § 4413(d)(1)(A). Outdoor small cultivators must already be an agricultural enterprise subjects to the RAPs in order to be exempt from municipal zoning. Otherwise, outdoor small cultivators and other cannabis establishments must still comply with local zoning regulations as does any other business or use.

Act 158 took effect on May 31, 2022.

MUNICIPAL GOVERNANCE AND ADMINISTRATION

Temporary Procedures for 2022 Annual Meetings (S.172, Act 77)
(session law)

The very first bill the legislature addressed this year was S.172. Passed on January 7 and signed by the governor one week later, the bill provided local legislative bodies the authority to vote to use Australian ballot for town meetings – even if they ordinarily employ floor meetings – and to move town meeting to a date later in the year when safer health conditions prevail. These emergency provisions were in place for meetings in 2021 but that authority expired at the end of the year. Act 77 makes clear that the authority applies *only* to town meeting 2022 and to meetings that result from it, such as a petition for a re-vote.

Act 77 allows for a pre-town meeting informational meeting to be held by electronic means without designating a physical location. In that case, the municipality must use technology that permits the public to attend through electronic or other means and by telephone, when feasible. The municipality must also record the meeting (unless impossible to do so), and post access information electronically and include that information in the published agenda.

Brattleboro, which holds the state's only representative town meeting, was granted authority to hold its meeting electronically, which the town successfully did in 2021.

A town may *not* use the temporary authority for Australian ballot voting to put an item on a ballot that asks voters to approve moving to Australian ballot for all future meetings.

Temporary Open Meeting Law Procedures (S.222, Act 78)

(session law)

On June 15, 2021, Governor Phil Scott lifted his State of Emergency and all temporary Open Meeting Law provisions that allowed public bodies to meet entirely remotely ended. Most local governments had chosen to continue with a hybrid model of meeting, which allowed participation both in person and remotely. The Open Meeting Law requires an in-person option – that is, a physical location where at least one member of the board or commission or a staff person is present – for all meetings. In response to increases in COVID-19 cases and the continued unpredictability of the virus, the legislature passed S.222.

The law implements several provisions familiar to local officials that mirror temporary stipulations put in place when the pandemic began. A meeting of a public body may be held fully remotely without needing to designate a physical meeting location. If a public body does so, it must use technology that permits public attendance through electronic or other means and allows public access by telephone. The public body must also post information that instructs participants how to access the meeting and include it in the meeting's agenda.

Municipal legislative bodies and school boards that meet remotely under these provisions must record their meetings, unless circumstances make it impossible to do so. Minutes of the meeting must be posted not more than 10 calendar days from the date of the meeting. Meeting agendas or notices of a special meeting may be posted in in two designated electronic locations in lieu of the physical designated public places in the municipality, or in a combination of a designated electronic location and a public place. Notices and agendas must be posted in or near the municipal clerk's office and must be provided to the newspapers of general circulation for the municipality.

All of these temporary authorities will expire on January 15, 2023. Since the legislature won't meet during the summer and fall and the cycle of COVID-19 cases typically rises during the colder months, the expiration date extends until a date when a new legislature can reassess the need for fully remote meetings.

Temporary Election Procedures for 2022 Annual Meeting (S.223, Act 79)

(session law)

Act 79 addresses temporary election procedures for 2022 town meetings. It provides that no person will be required to collect voter signatures in order to have that person's name placed on the ballot as a candidate for a local election held at a 2022 annual municipal meeting. It also allows the legislative body of a school district to prohibit ballots from different towns from being commingled before counting for the 2022 annual district meeting. The ballots, however, *may* be counted by each member town, and the results reported to the school district clerk to determine the official district-wide results.

Act 79 is only in effect for annual meetings during 2022.

Marriage Licenses (H.680, Act 92)

(amends 18 V.S.A. §§ 5131, 5139)

Act 92 makes one small amendment to Vermont law that will make it easier for Vermont residents to secure marriage licenses. Under current law, marriage licenses for Vermont residents may only be issued by the town clerk in the town in which either party resides. People from out-of-state, on the other hand,

can obtain a marriage license from any Vermont town clerk. Act 92 simply states that a marriage license can be issued by any town clerk – regardless of where either party resides.

Act 92 goes into effect on July 1, 2022.

State Code of Ethics (S.171, Act 102)
(amends 3 V.S.A. chapter 21, subchapter 1; 3 V.S.A. § 1226)

Act 102 creates a State Code of Ethics that applies to the state's public servants, including all elected or appointed officers of the state, elected or appointed members of the legislature, state employees, individuals authorized to act or speak on behalf of the state, and anyone appointed to serve on a state board or commission. Although the act does not name local government officials as covered "public servants," the code will also cover municipal officials who serve on state boards and commissions. Twenty-four V.S.A. § 1984 already requires every municipality in Vermont to have adopted a conflict of interest prohibition by July 1, 2019.

The Vermont State Ethics Commission is already responsible for accepting, reviewing, referring, and tracking complaints of governmental conduct. If a complaint alleges a violation of governmental conduct regulated by law – for instance, the Department of Human Resources' Personnel Policy and Procedure Manual – or a violation of the state's campaign finance law set forth in 17 V.S.A. Chapter 61, the commission is to refer the complaint to the appropriate state agency. Because the regulatory and enforcement authority of the commission has been limited, Act 102 implements more robust ethical standards and procedures.

The Code of Ethics covers a wide range of policies and standards for certain public servants that relate to conflicts of interest; unethical conduct; preferential treatment; misuse of position, information, or government resources; gifts; unauthorized commitments; and employment restrictions. A public servant is mandated to comply with the code along with all anti-discrimination and equal opportunity laws, any applicable governmental code of conduct, and any other applicable rule, policy, or executive order. There are whistleblower protections for public servants who disclose waste, fraud, abuse of authority, or violations of law or of other applicable codes regarding ethical conduct to the commission.

Act 102 mandates training for the State Ethics Commission, the Department of Human Resources, the ethics panels of the House and Senate, the Vermont Supreme Court, the Court Administrator's Office, and any other approved education providers. A public servant must receive initial training in person or online within 120 days of the beginning of public service and must also participate in continuing education at least once every three years thereafter.

Members of the General Assembly are required to comply with legislative branch rules and policies regarding conflicts of interest, or the appearance of a conflict of interest that is related to core legislative functions or duties, rather than the State Code of Ethics. Judicial officers must comply with the Vermont Code of Judicial Conduct, and government attorneys must comply with the Vermont Rules of Professional Conduct.

Act 102 takes effect on July 1, 2022.

Boards and Commissions (H.465, Act 134)
(amends 18 V.S.A. § 7257b, 20 V.S.A. § 2410, 21 V.S.A. chapter 14, 21 V.S.A. § 1306, 32 V.S.A. § 1010; repeals 2017 Act 85, Sec. H.7, 20 Act 143, Sec. 53, 2012 Act 143, Sec. 53a, 2017 Act 69, Sec. E.1; creates session law)

Act 134 is this year's boards and commissions legislation. Every year since 2018, when the Sunset Advisory Commission was created, the legislature has passed a bill that implements the commission's suggestions to revise, revamp, or eliminate state boards and commissions that are in statute. Although none of the boards and commissions in Act 134 concerns local government, the legislation does include language that addresses the per diem compensations these board members receive. Many local officials who serve on permanent or temporary state boards and commissions are entitled to receive per diem compensation for their time. The current $50 per diem, which has not increased in many years, doesn't take into account the wide variety of work demands or the time commitments required to review materials and remain current on relevant issues. Due to that modest per diem, many people whose perspectives on a board or commission would be immensely valuable cannot afford to serve.

Act 134 mandates that future governor-recommended budgets include a per diem compensation rate schedule for each board and commission. In the annual budget documentation, all agencies and departments that administer funds for board and commissions must provide a list of entities and the current and projected per diem rate and expense reimbursement for each entity. The governor may also authorize per diem compensation and expense reimbursement for boards and commissions by executive order.

Additionally, the Sunset Advisory Commission must report to the legislature by December 1, 2023, on recommendations on whether to establish a maximum per diem and any legislative action necessary to increase uniformity and equality of per diem rates across state government.

Act 134 took effect on May 24, 2022, except for Section 8, which is related to the governor's budget including per diem rates and which will take effect on July 1, 2023.

Miscellaneous Local Government Law Amendments (S.181, Act 157)
(amends 1 V.S.A. §§ 312a, 316; 18 V.S.A. § 5361; 20 V.S.A. § 47; 24 V.S.A. §§ 2291, 4322, 4460, 5152; 32 V.S.A. §§ 4404, 4467; adds 17 V.S.A. §§ 2645a, 2646a, 2561a; repeals 19 V.S.A. § 312)

Act 157 makes numerous amendments to general statutory law and expands ordinance authority to provide more robust local jurisdiction in specific areas of the law. The different measures are generally grouped into three categories: ordinance authority under 24 V.S.A. § 2291, voter-approved authority, and legislative body authority without voter approval. VLCT advocated for these commonsense adjustments to state law to give greater control over local matters to local officials and voters without having to adopt or amend a charter. We feel strongly that local governments and their residents need to have the authority to work directly on issues that truly are local in nature.

Ordinance authority. Twenty-four V.S.A. § 2291 inventories most of the ordinance authority of local governments. The act adds to statute the following powers, most of which are amendments to underlying law to align with the practices of municipalities:

- amends § 2291(1) to authorize the installation of sidewalks and bike paths;
- amends § 2291(4) to authorize the implementation of traffic-calming devices;
- amends § 2291(6) to authorize the regulation of storm drains; and

- amends § 2291(13) to authorize establishing health and safety standards for municipal premises to protect the public or prevent physical injury to other properties in the vicinity.

Cemeteries. Although not an ordinance power, 18 V.S.A. § 312a is amended to align with current municipal practices. The authority to vote the necessary funds to "improve" cemeteries is added to a municipality's authority. The power had been assumed but not directly authorized until now.

Public Records Act. The act amends the Public Records Act to allow an agency to provide copies or public records in a nonstandard format, create a public record, or convert paper public records to an electronic format "if requested by the party requesting the records." Previously, this request by the person seeking the documents did not require the agency to make such a determination.

Highway Funds. The act finally eliminates a very old provision of law that requires municipalities to keep locally raised transportation funds separate from other general funds and aligns with what is current practice. Most town budgets show transportation funds as separate line items or department budgets. Highway funds are more complex and harder to identify clearly and delineate from other municipal monies, and separating these funds is sometimes close to impossible. For example, are salaries and benefits of highway employees under the general fund or highway? Are public works employees in sewer or engineering in the highway budget? Are capital projects and equipment that span two departments or types of work (sewer, water, roads, engineering) considered highway or general fund?

Nineteen V.S.A. § 312 has made audits very difficult because municipalities have to manually strip highway money for an audit to comply with this section of statue that has no value-add reason. It is a perfunctory step taken merely to comply with the law. Act 157 repeals 19 V.S.A. § 312; thus, a town will no longer have to separate transportation funds within its overall budget unless it chooses to do so.

Abbreviated Charter Change Procedures. Municipalities with charters have been locked into certain provisions that pre-date general statutory authority the legislature passes later. Because municipal charters are more specific, they are an alternative to general statutory authority for those municipalities. From time to time, the legislature does change general law that provides alternative powers that those communities cannot adopt until they change their charter. Act 157 add a new provision that allows a municipality with a charter provision "frozen in time" to adopt a general provision of law adopted after the provision in question.

Voters at an annual or special meeting warned for that purpose may vote to suspend a specific authority in the municipality's charter and instead use general municipal authority granted to all Vermont municipalities enacted later by the legislature. The suspension is technically for no more than three years with the intent that the legislature amend those charters accordingly. Once a municipality votes for the charter change, the town clerk must certify the results to the House and Senate Government Operations committees. Each November 15, the Office of Legislative Counsel is to prepare a list of charter provisions that are subject to a repeal review pursuant to this new statutory authority.

Nonresident Officers. Various Vermont statutes mandate certain town offices to be filled by town residents or voters. Some communities report having difficulty finding residents to fill these offices, while others have expressed a desire for a more regional perspective on certain boards and commissions. A new provision of law added to Title 17 enables a municipality to allow Vermonters who reside outside of a town or city to be elected or appointed town officers. This authority does not apply for local legislative bodies or justices of the peace. Additionally, the majority of statutory board or commission members must be residents of the municipality. The proposal must be approved by the voters at any annual or special

meeting warned for that purpose, and each board, commission, or officer position must be clearly identified in the underlying vote.

Constables. Many municipalities have also had a difficult time filling the role of town constable, and some have removed that position from town via a legislatively approved charter. Act 157 now enables a municipality to vote to eliminate the office of constable. If a town votes to eliminate the office, the selectboard will appoint a different town officer to discharge any constable duties, subject to 24 V.S.A. § 1936a. None of the duties that may be assumed by another town officer are to be law enforcement in nature, and only those enumerated under 24 V.S.A. § 1936a – such as assisting the town health officer and removing disorderly people from town meeting may be assumed by the town officer. A vote to eliminate the constable position remains in effect until rescinded by voters at an annual meeting warned for that purpose.

Members of Appropriate Municipal Panels. Act 157 enables municipalities to adjust the number of seats on the local board of adjustment, development review board, and planning commission at a special and annual meeting. If the number of members is reduced, the member with the nearest expiration of their terms of office is to serve until the term expires, after which the office terminates.

Emergency Authority. During the COVID-19 pandemic, state and local governments had to make huge adjustments to governmental operations, and there was no statutory authority to handle many of the problems that occurred. Act 157 codifies many of the helpful temporary provisions added to law during the pandemic. In the future, whenever the governor declares a state of emergency during an "all-hazard" emergency – such as a natural disaster, health or disease-related emergency, terrorist radiological incident – the following provisions will be "activated" to help communities conduct business during the state of emergency. (Each provision should be familiar to municipalities as they were adopted during the COVID-19 pandemic.)

Open Meeting Law. During a declared state of emergency, public bodies will be able to meet electronically and not have to designate a physical location. Posting locations for agendas and notices may be done electronically and must also be posted in or near the town clerk's office. Public bodies must record any meeting held in this manner and provide a copy of each notice or agenda to the newspaper of general circulation for the municipality.

Property Inspections. During a declared state of emergency, a board of civil authority is not required to physically inspect a property that is subject to an appeal. If an appellant requests in writing that a property be inspected, a member of the board must conduct the inspection electronically. If the appellant does not facilitate the inspection electronically, the appeal is deemed to be withdrawn. Similarly, a hearing stemming from an appeal does not require an officer to physically inspect a property, but must do so electronically, if requested by the appellant.

Utility Disconnections. A municipality that runs a public water or sewer system is prohibited from disconnecting any person from those services during a declared state of emergency, if the all-hazard event or declared emergency will cause financial hardship on any ratepayer who is unable to pay for those services.

Municipal Deadlines. A municipality may extend statutory deadlines for municipal licenses, permits, programs or plans and extend or waive deadlines for non-statutory municipal licenses, permits, programs or plans. Any expiring license, permit, program, or plan issued by a municipality that is due for renewal or review will remain valid for 90-days after the declared state of emergency ends.

Land Records and Notarial Acts (H.512, Act 171)

(amends 26 V.S.A. chapter 103; adds 27 V.S.A. chapter 5, subchapter 8; creates session law)

Act 171 addresses laws related to notary publics and certain land records. It adopts two laws supported by the National Conference on Commissioners on Uniform State Laws: the Uniform Real Property Electronic Recording Act (URPERA) and the most recent version of the Revised Uniform Law on Notarial Acts (RULONA). URPERA provides an electronic recording option for town clerks using standards issued by the Vermont State Archives and Records Administration (VSARA), and RULONA allows for notarial acts on electronic records and for remotely located individuals. Enacting both URPERA and the latest version of RULONA brings Vermont in line with the rest of the country, as the other 49 states have already enacted either these uniform laws or similar legislation.

Act 171 includes a new position at VSARA to help town clerks and others who handle land records or engage in notarial acts. It also charges VSARA to work with VLCT; the Vermont Municipal Clerks' and Treasurers' Association; the Joint Fiscal Office; representatives from the banking, bar, title insurance, and real estate industries; as well as other interested parties. Collectively, they must report to the legislature by 2024 on the fiscal, governance, and operational sustainability of uniform approaches to the modernization of the acceptance, recording, and availability of deeds and other property records, regardless of format. An interim report is mandated by January 15, 2023.

The section of the bill authorizing VSARA to hire a new position took effect on passage on June 2, and the remainder of the bill takes effect on July 1, 2022.

Municipal Charters

(amends Title 24 Appendix: Municipal Charters)

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

There are 62 cities and towns with governance charters adopted at the local level that have been approved by the legislature and subsequently enacted. Currently, 45 incorporated villages have governance charters, although on July 1, the Village of Essex Junction will cease to exist (see M-10). A host of special purpose districts – fire, school, waste management, and recreation districts – have legislatively approved governance charters. These charters enable municipalities to deviate from general statute in specific instances, when their voters have voted to change or adopt a charter, and when that locally voted amendment has been reviewed, dissected, frequently amended, and finally approved by the legislature. Once legislators receive a voter-adopted charter in the form of a bill, however, they may amend any part of the underlying charter they choose.

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

In 2019, five charters were approved, two were partially approved with significant changes made to the original, and four were not approved. In 2020, three charters were approved and four were not. In 2021, two charters – from Montpelier and Winooski – passed the legislature but were subsequently vetoed, the first time we can recall a governor taking such an action. During the 2021 veto session, the legislature overrode both vetoes and both charter amendments became law.

The following table lists the charters proposed to the legislature during the 2022 session.

Municipal Charters Approved by the Legislature				
Municipality	**Bill/ Act No.**	**Major Provisions**	**Provisions Passed**	**Provisions Failed**
City of Burlington	H.454 M-7	Increases the membership of Board of Airport Commissioners by adding one Burlington seat and one Winooski seat.	All	None
City of Burlington	H.448 M-9	Grants ordinance authority to the city council to regulate thermal energy systems in residential and commercial buildings. Grants city authority to require carbon impact or alternative compliance payments if approved by voters.	One	Establishes rank choice voting (see M-14); prohibits residential tenant evictions without just cause (see H.708); adds members to Board of Airport Commissioners (see M-7)
City of Essex	H.491 M-10	Creates the City of Essex Junction; repeals Village of Essex Junction charter; enacts City charter; establishes the form of municipal government, elected and appointed offices, duties and powers of boards and officers and procedures for city meetings; establishes the city's fiscal and budget procedures, tax-related authority, and requirements for the preparation and adoption of capital improvement programs; provides temporary provisions for the establishment of its separation from the Town of Essex during a one-year transitional period; provides a transitional provision for the appointment of the city's justices of the peace	All	None
City of St. Albans	H.741 M-12	Amends the city clerk position to be appointed by the city council (was previously elected by the voters)	All	None
Town of Springfield	H.447 M-13	Authorizes ordinance to clean and repair properties and remove rubbish; enables town to adopt any legislature-approved charter provisions for any other municipality with voter approval and without final approval from the legislature; limits reconsideration or rescission of repealed ordinances; reorganizes ordinance adoption	All with technical amendments	None

		procedures and composition of the ordinance subcommittee; aligns charter with the state Public Records Act and Open Meeting Law; requires selectboard to adopt an emergency preparedness plan; reorganizes and removes certain town offices including town manager, lister, library trustee, constable, grand juror, fence viewer, and weigher of coal; amends financial procedures for annual budget and the budget advisory committee; establishes the position of finance director; technical corrections.		
City of Burlington	H.744 M-14	Establishes a ranked choice voting system for city councilor elections without a separate runoff election.	All	None
City of Barre	H.444 M-15	Permits the city to acquire and convey easement interests in property, subject to the approval of the city council; specifies the flags that the city may fly on city property; authorizes the city council to adopt an ordinance establishing speed limits of less than 25 miles per hour on city streets; eliminates references to the city offices of first constable, grand juror, and inspector of plumbing; establishes procedures to prepare and submit a five-year capital improvement plan; authorize city to impose 1% local option tax on sales	All	None
Town of Hardwick	H.743 M-17	Merges the offices of town clerk and town treasurer; renames the zoning board of adjustment the development review board; requires digital notice of all regular and special town meetings; brings the zoning administrator under the direction of the town manager; eliminates position of pound keeper; makes various financial reporting amendments; other technical amendments	All with technical amendments	None
Town of Montgomery	H.745 M-18	creates first charter for the town; authorizes selectboard to impose a one1% sales tax, meals and alcoholic beverage tax and rooms tax (revenues go towards the Sewer Reserve Fund to construct a municipal wastewater system in Montgomery Center and Village)	All with amendment to rescind the local option tax once debt obligations are satisfied	None
City of Burlington	H.746 M-19	Repeals ordinance authority over "houses of ill fame and disorderly houses and to punish common prostitutes and person consorting therewith"	All	None
Municipal Charters Vetoed by Governor				
Town of Brattleboro	H.361	Authorizes 16-to 18-year old residents to vote in local elections (legislative veto override failed)	None	All
City of Burlington	H.708	Provides ordinance authority to the city to protect residential tenants from evictions without "just cause" as defined in the charter (legislative veto override failed)	None	All

EMPLOYMENT AND EMPLOYEE BENEFITS

Technical Changes to Vermont Tax Laws (H.738, Act 179)
(adds 27 V.S.A. § 654 (d), 32 V.S.A. § 5866a; amends 24 V.S.A. §§ 832, 833,855, 1306, 2433; 32 V.S.A. chapter 231, §§ 5825a(b), 5862b, 5866a, 5866 (c), 8701 (d), 9706, 9741; 10 V.S.A. § 4255(c) (7), 32 V.S.A. § 1052(b); repeals 33 V.S.A. § 3306, 3307)

H.738 makes technical and clarifying amendments to the statutes regulating taxation. A similar bill is passed every year. There are always a few amendments that affect local governments, including the following for 2022.

Section 14 amends 32 V.S.A. § 8701(d) to conform an additional section of statute to the language that provides that the existence of a renewable energy plant (solar panel) or energy storage facility (battery), subject to the renewable energy tax, does not "alter the exempt status of any underlying property under 32 V.S.A. section 3802 or subdivision 5401(10) (F), or alter the taxation of the underlying property under chapters 121-135 of Title 32." This section takes effect retroactively on July 1, 2021.

Section 20 requires the Vermont Community Broadband Board (VCBB) to conduct a study and submit it to the legislature by next January regarding current law that ownership of grant-funded network assets be transferred to the state if a grantee fails to comply with the terms and conditions of the grant. As well, the board must review all agreements and contracts since May 11, 2022, to which a communications union district is party. The board must then determine if publicly funded network assets are at risk of privatization due to financial insolvency of default and whether legislation needs to be enacted to protect the state's broadband investments, which are considerable. Districts that become aware of a risk of insolvency or default must notify the VCBB, which in turn will notify the governor, state treasurer, and Joint Fiscal Committee. In the event of a default, assets may not be transferred for 180 days. The legislature's intent is for publicly owned assets to remain publicly owned. This section takes effect July 1, 2022.

Section 21 amends the statute that requires municipal officials who are authorized to receive or disburse town funds to be bonded for faithful performance of their duties before they are allowed to enter service. The law now specifies that local officials may have crime insurance coverage instead of a bond. The amendment recognizes that crime insurance coverage is now an industry. This section takes effect July 1, 2022.

Section 26 allows the City of Montpelier, upon approval of the Vermont Economic Progress Council, to reset its original taxable value to the grand list values as of April 1, 2023, in their tax increment financing district (TIF). The original taxable value of a TIF is the grand list value in the district when it is approved. Montpelier's TIF was approved in 2018, and the city has not yet incurred any debt that would be repaid with tax revenues from the increased grand list value due to infrastructure improvements and private reinvestment. Yet the city is undergoing a reappraisal which will likely increase property values, city-wide. The 2018 original taxable value will be less than the reappraised taxable value, but not due to any activity in the TIF district. This section takes effect July 1, 2022.

TRANSPORTATION

The Transportation Bill (H.736)

(amends 5 V.S.A. chapter 3; 5 V.S.A. §§ 37, 40, 43, 44, 207(d), 652, 3639, 3788; 9 V.S.A. §§ 5, 4100b; 10 V.S.A. § 493; 19 V.S.A. §§ 10c(m), 10m, 11a(b), 38, 313, 315, 996(a), 1112; 23 V.S.A. §§ 754, 1006b, 1112, 1396, 1397, 1397a, 1398, 1399(b), 1400b, 1400d, 1434, 1492; 24 V.S.A. §§ 2296a, 4416(b); 32 V.S.A. § 604; repeals 5 V.S.A. Chapter 5; amends previous session law; creates session law)

This year's transportation bill – which the governor signed the bill on June 9 – makes significant investments that are intended to reduce transportation-related greenhouse gas emissions, reduce the use of fossil fuels, invest in Vermont's transportation infrastructure, and generally save Vermonters money. If this sounds familiar, that is because last year's transportation bill took a very similar path, and H.736 picks up where last year's Act 55 left off. Additionally, this year the legislature received record levels of federal funding – over $460 million. FY22's as-passed budget, including Budget Adjustment Act (BAA) reconciliations, was $716,760,577, and this year's funding increased to $837,716,275 – a $120,955,698 increase. Despite this year's massive increases to funding levels mostly attributable to federal money, the short- and long-term outlook for the health of transportation funding remains grim. The Agency of Transportation (VTrans) estimates that the FY24 "gap" to fund programs at base levels – that is, the difference between what they think the state will have in revenue and what they think Vermont will need – will be approximately $31 million. This is due to anemic Transportation Fund revenue projections that reflect growing cost pressures due to inflation, Investments Infrastructure and Jobs Act (IIJA) matches, and reduced revenues from the gas tax.

Carbon Reduction. H.736 includes transportation investments that further the policies set forth in 19 V.S.A § 10b (the goals of the Comprehensive Energy Plan and the Climate Action Plan), and satisfy the commitments of the executive and legislative branches to the Paris Agreement's climate change goals. The legislation expends:

- just under $30 million in one-time investments on carbon reduction measures;
- $12 million on the Plug-in Electric Vehicle (PEV) Purchase Incentives Program to help Vermonters lease and purchase PEVs (an $8.75 million increase over FY22);
- $6.25 million in level 3 electric vehicle charging infrastructure along the state highway network, including capped administrative costs;
- $3 million on the Replace Your Ride program, which helps Vermonters remove older low-efficiency vehicles from operation and switch to vehicles that produce fewer greenhouse gas emissions (double its previous appropriation);
- $3 million on the MileageSmart Program to incentivize the purchase of high-fuel-efficiency vehicles (more than double the FY22 appropriation); and
- $2 million to fund Drive Electric Vermont to continue and expand its public-partnership to support the expansion of Vermont's PEV market.

The Mobility and Transportation Innovation (MTI) Grant Program receives $1.5 million to support projects that improve mobility and access to services for transit-dependent Vermonters, reduce the use of single-occupancy vehicles, and reduce greenhouse gas emissions - $1.25 of this appropriation must go towards microtransit projects. Another $1.2 million will allow public transit providers to provide zero-fare public transit on routes other than commuter and the Montpelier-Burlington LINK Express and restore service to pre-COVID-19 levels. Overall, H.736 authorizes over $50 million in funding for public transit uses – a 9.6 percent increase over FY22 and a 21.8 percent increase over FY21.

Other investments include a modest $50,000 for the E-Bike Incentives program, $19.79 million of which will fund 29 bike and pedestrian construction projects and 18 future bike and pedestrian design and right-of-way projects.

The legislation requires the agency to to update the Vermont State Standards for Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads, and Streets – implemented in 1997 – to create context-sensitive, multimodal projects that support smart growth. VTrans must also consult with the Vermont Climate Council to ensure that the FY24, FY25, and FY26 federal monies proposed to be used under the Carbon Reduction Program are spent on projects that align with the recommendations of the Climate Action Plan under 10 V.S.A. § 592.

The **Town Highway Program** furnishes the most equitable and flexible transportation funding to municipalities every year. Based on the mileage of local class 1, 2 and 3 roads, each municipality gets a quarterly payment for road, sidewalk, and bicycle route construction, improvements, maintenance, or as a non-federal share to apply to public transit assistance. Funds are distributed to municipalities according to 19 V.S.A. § 306(a)(3). In FY21, municipalities received an additional $7 million because of a shift from Class 2 and Structure Programs grant funding that was suspended due to the COVID-19 pandemic . In FY22, municipalities received an additional $3 million in one-time state Transportation Fund money for general town highway aid, bringing the FY22 total to $30,105,769. This year, H.736 recalibrates funding back to statutory levels; thus, the FY23 allocation is $27,837,624.

Town Highway Structures and Class 2 Roadways. Last year, the legislature increased the threshold for individual grant awards for the Town Highway Structures Program and the competitive grants for the Class 2 Town Highway Roadway Program. This was the first time the minimum grant award had increased in over a decade. Structure grants help build and maintain bridges, culverts, retaining walls, causeways, and other transportation structures and pay for associated expenses on class 1, 2 and 3 highways. Class 2 grants pay to resurface, rehabilitate, and reconstruct class 2 and 3 town highways. Additionally, FY22's budget more than doubled to compensate municipalities for halting funding in FY21 due to the pandemic. Unfortunately, this means that the recalibration to statutory funding levels will take place in FY23, when both programs will see a significant drop in funding levels. The Town Highway Structures Programs is allocated $7,200,000 and the Town Highway Class 2 Program will receive $8,600,000.

Town Bridges. The biggest winner in this year's transportation bill for municipalities is the Town Bridge Program as the federal IIJA provides Vermont with $225 million in Bridge Formula Program funding for federal FY22 to FY26. The program requires states to allocate a minimum of 15 percent of the funding to address the needs of off-system bridges (those located along roadways off the federal aid system),which are primarily owned and maintained by Vermont municipalities. The IIJA funding requires the construction phase of a municipally owned off-system bridge project to be at 100 percent . The legislation directs VTrans to fund at 100 percent the federal share of the construction phase of all local bridges that were not authorized for federal funds for pending projects prior to FY23 and are either listed as a priority project or development and evaluation project in FY23. For FY23 through FY29, the agency must also prioritize local covered bridges and historic truss bridges. Funding to the Town Bridge Program is $30.3 million, almost double last year's allocation of $15.29 million.

Burlington Airport. The legislation creates the Burlington International Airport Working Group to examine the existing governance structure of the airport, which currently is owned and operated by the City of Burlington, and examine alternative governance structures. They must review prior reports and studies on the governance structure of the airport and discuss current issues of regional concern regarding the airport. The working group will consist of the mayor of Burlington; one designee each from Burlington, South Burlington, and Winooski; a member representing the BIPOC, immigrant, low income, and

disadvantaged community; a representative of the airport's general aviation organization designated by the South Burlington City Council; the Secretary of Transportation; and a designee from the Lake Champlain Chamber of Commerce. The airport's director of aviation and the director of the Chittenden County Regional Planning Commission will each have a seat as a non-voting member.

The working group must report their initial findings to the legislature next February, and submit a final written report the following January. Any recommendations must address how to ensure that there are not negative financial impacts on the City of Burlington.

Right-of-Way and Access Permits; Municipal Site Plan Review. H.736 clarifies language in 19 V.S.A. § 1112(b) related to access permits for direct connections to state highway subsurface stormwater systems. The new language more accurately describes when permits are required and refers to connections to catch basins, pipes, drop-ins, and other structural stormwater systems. This is a technical correction because VTrans currently only charges for connections to subsurface stormwater systems and not for each individual connection under a permit application. The change aligns statutory language with current practices.

An amendment to 24 V.S.A. § 4416(b) clarifies certain site plan approval processes. The purpose of 24 V.S.A. § 4416 is to ensure VTrans' early involvement in the site plan approval process when a development project needs access to a state highway. The agency must review the proposal and provide a letter stating whether a permit is required, and, if it is, to identify the applicable conditions. The statute's intent is to make sure that significant issues that affect the design of the site – such as the location of a driveway – are captured before a project is approved at the local level. The legislation amends section 4416 to clarify the agency's letter may not enumerate all conditions included in the final access permit. Examples include standard boiler plate conditions attached to all permits related to liability, safety, managing traffic during construction, and leaving the site in good condition. It is also possible that a development project's design may evolve over time, prompting the need for other conditions.

Covered Bridges, Weights and Recovery for Expenses for Emergency Services. H.736 updates statutory language related to covered bridges and moves their regulation from Title 19 to Title 23. Minor technical and clarifying language updates require any weight, height, or width requirement to be permanently posted with signs that conform to the Manual on Uniform Traffic Control Devices. Weight limit restriction exclusions are expanded to include law enforcement vehicles and agricultural service vehicles. Penalties for violating covered bridge regulations increase to $1,000, or $2,000 if the violation substantially impedes the flow of traffic. For a second or subsequent conviction within a three-year period, the penalty doubles. Current violations are $200 for a first violation and $300 for a second or subsequent violation and these increases are welcome and long overdue.

A new section is added to Title 24 that enables a municipality that deploys rescue services to aid a stranded operator or move a disabled vehicle to recover the cost of those services from the operator or operator's employer. If the service is due to a violation of 23 V.S.A. §§ 1006b, 1112, or 1434(c), the municipality may recover in civil action the cost of the service from the operator or the operator's employer, provided the operator was acting during or incidental to the operator's scope of employment.

Twenty-three V.S.A. § 1400b is amended to remove the requirement that municipalities file special weight limits for local roads "not later than February 10" of each year. Now, they must simply inform the Department of Motor Vehicles once a year, with no stated cut-off date.

Transportation Network Companies. H.736 commissions a report to examine the regulation of transportation network companies (TNCs), which use digital networks to connect riders to drivers who

provide pre-arranged rides, such as Lyft and Uber. The report will assess current regulations, ridership and consumer practices, market penetration across the state, results of any audits, analyses of the regulatory schemes by both the state and the City of Burlington, and any significant regulatory changes on a national level. The report is due to the legislature by 2024.

Town Program	FY20 As Passed	FY21 As Passed	FY22 As Passed	FY23 As Passed	FY22 vs. FY21
TH Aid Program (statutory formula)	26,663,161	27,105,769	27,105,769	27,837,624	+731,855
(one-time additional TH Aid)		7,000,000[2]	3,000,000	0	-3,000,000
Town Bridges[1]	13,833,851	13,073,351	15,408,394	30,314,187	+14,905,793
TH Class 2	7,648,750	3,250,000	15,297,500[2]	8,600,000	-6,697,500
TH Structures	6,333,500	4,650,000	12,667,000[2]	7,200,00	-5,467,000
TH Class 1 Supplemental Grants	128,750	128,750	128,750	128,750	0
Alternatives/Enhancements	3,268,618	2,763,408	4,454,294	5,665,880	+1,211,586
TH State aid nonfederal disasters	1,150,000	1,150,000	1,150,000	1,150,000	0
TH State aid to federal disasters	180,000	180,000	180,000	180,000	0
FEMA/Public Assistance Grants	4,140,000	1,250,000	1,250,000	1,250,000	0
TH VT Local Roads	406,307	408,965	411,689	414,481	+2,792
Municipal Mitigation Grants	2,898,000	6,705,715	8,785,150	8,785,150	-2,334,652
Subtotal	66,650,937	67,665,958	89,838,546	89,191,420	-647,126

1. Includes federal funds
2. Grant awards from TH Structures and Class 2 Programs were suspended in FY21 due to the COVID-19 pandemic and added to the FY22 budget. In FY21 $7 million was transferred from those two programs into the TH Aid Program on a one-time basis.

LEGISLATIVE SUMMER STUDIES AND REPORTS

According to VTDigger.org, the 133 bills that were passed this session called for 100 reports and 31 fact-finding panels. "Calling for reports" instead of making tough decisions is a common legislative practice, one that ends up requiring substantial investments of time and financial resources from all those involved, and particularly the state agencies and legislative offices that are directed to staff them. While some reports serve to inform the next legislature and are acted upon – such as this session's Pupil Weighting Task Force Report – many end up on a shelf or replicate studies on the same issue that were conducted previously. Your Advocacy staff have been involved in many such efforts in the past.

Below are a few summer studies and reports of concern to local governments.

S. 11. By February 15, 2023, the Agency of Commerce and Community Development (ACCD) is to submit a report on implementing the Community Recovery and Revitalization Grant Program, its promotion and marketing, and an analysis of its use, including projected revenue impacts and other returns on investment.

S. 226. The Department of Housing and Community Development is instructed to lead a Community Partnership for Neighborhood Development Program, which will be a collaborative among municipalities, nonprofit and for-profit developers, state agencies, employers, and other relevant stakeholders to develop a pilot neighborhood and demonstrate how new partnership models for targeted and coordinated investments can support the development of at least 300 homes in inclusive, smart growth neighborhoods.

By December 31, 2023, the chair of the Natural Resources Board is to report on necessary updates to the Act 250 program, including how to transition to a system in which Act 250 jurisdiction is based on location to encourage development in designated areas, the maintenance of intact rural working lands, and the protection of natural resources of statewide significance, including biodiversity. The report must consider whether to develop thresholds and tiers of jurisdiction as recommended in the Commission on Act 250: the Next 50 Years Report; how to use the Capability and Development Plan to meet the statewide planning goals; assess current staffing levels; determine if the permit fees are sufficient to cover the costs of the program; and whether the board should be able to assess its costs on applicants.

DHCD will receive a $150,000 appropriation to hire a consultant to evaluate the state designation programs and conduct stakeholder outreach. The consultant is to recommend how to map and define existing compact settlements, improve regional plan consistency, modernize the designation programs and make them more accessible to municipalities, strengthen incentives to encourage place-based economic development, climate action, complete streets, and equity and efficiency of public investment and service delivery. The report is due by July 1, 2023.

H.518. The Department of Buildings and General Services – in consultation with Efficiency Vermont, VLCT, regional planning commissions, and experts in the field of thermal enclosure, energy efficiency, and renewable building space systems – is to design the Municipal Energy Resiliency Program that includes a streamlined application process for a municipality to apply to the Department of Buildings and General Services or with the assistance of a regional planning commission.

H.740. The Commissioner of Public Safety is to convene a working group on the new regional dispatch model and report to the governor and the General Assembly by December 1, 2022. The report must include recommendations for a long-term funding model for regional dispatch that fairly assesses costs statewide, does not unduly affect property taxes, and identifies the potential impact on property taxes. It also must include an estimated timeline and transition funding needed as new regional dispatch centers open and local dispatch services transition away from state-operated facilities. The group is to include two representatives of local legislative bodies selected by VLCT, one which uses a state-dispatch center and one which uses an existing regional or local dispatch center, plus a representative of an existing local or regional dispatch center selected by VLCT.

By January 15, 2023, the Secretary of Natural Resources must submit a report regarding the indoor air quality testing of buildings for releases of polychlorinated biphenyls (PCBs) from building materials. The report is to include a proposal for the best method to regulate releases of PCBs from PCB-containing building materials in non-school buildings; a proposal of who will be required to test for a release of PCBs from building materials; a summary of when during a corrective action or property transaction testing would be required; the standards to determine if a release occurred; action or remediation that would be required if PCBs are identified in excess of the proposed standard; how responsive action or remediation would be funded, including potential federal or state sources; and how testing may affect investment in the redevelopment of historic downtowns.

By October 1, 2022, the state treasurer, in consultation with the Joint Pension Oversight Committee, will determine the costs associated with transferring the membership of: (1) certified law enforcement officials employed by county sheriff departments from Group F in the Vermont State Employees' Retirement System (VSERS) to a Group D membership in the Vermont Municipal Employees' Retirement System (VMERS); and (2) support staff employed by county sheriff departments from Group F in VSERS to Group A, B, or C in VMERS.

S.210. By February 15, 2023, the Department of Housing and Community Development must report to the General Assembly concerning the design, implementation, and outcomes of the Vermont Rental Housing Improvement Program, including any findings and recommendations related to the amount of grant awards.