

2022 Weekly Legislative Report #10

March 11, 2022

Articles in today's legislative report discuss pupil weighting and education funding, housing and Act 250, and qualified immunity. Elsewhere in the State House updates forestland and the Use Value Appraisal Program, the budget adjustment bill, the issuing of marriage licenses, firearms in hospitals, environmental justice, miscellaneous municipal authority, cannabis, the proposed Agency of Public Safety, and a bill that shows support for Ukraine. The report also welcomes new municipal officials and adds four new bills of interest to municipalities.

You can always check our two webpages to track the 2022 bills that especially affect municipalities: [bills introduced in the House](#) and [bills introduced in the Senate](#). We update these cumulative lists every Friday so you can follow bills as they travel through the appropriate State House committees. Scroll to the end to see the newest additions.

As the legislative session progresses, go to our [Legislative Reports page](#) to revisit this issue and find other weekly legislative reports.

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This Week's Articles

Pupil Weighting and Education Funding

On Wednesday, the Senate Finance Committee voted out a bill (DR 22-0593) that would improve student equity by adjusting the school funding formula and pupil weights beginning in FY24 and providing for a five-year transition period. It would create an Education Fund Advisory Committee and add six Agency of Education staff positions to help provide for English Language Learner (ELL) services, school food programs, financial and data support to the agency.

The legislation intends to "fulfill Vermont's constitutional mandate to ensure that all students receive substantial equality of educational opportunity throughout the state," and ensure educational equity by providing sufficient financial resources to local school districts to meet the cost of educating students who have English language learning needs, who live in poverty, who attend small rural schools or live in sparsely populated school districts, or who attend middle and high school.

According to a Joint Fiscal Office fiscal note, the bill would result in a \$602,000 additional cost to the General Fund in FY23. It is unclear how the bill would affect the Education Fund in later years, although if all ELL categorical aid grants (see below) resulted in increased spending, there would be a \$1.5 million cost to the Education Fund. The Joint Fiscal Office did not estimate the effect on property taxes other than saying the homestead and non-resident tax rates would need to be adjusted to pay for the categorical aid grants. Readers should remember that two-thirds of the Education Fund comes from education property taxes. When there are shortfalls in other funding sources (which is *not* the case this year), the property tax picks up the slack.

The bill would require that, by December 1 of each year, the Agency of Education would need to establish the average daily membership of a school district based on specified numeric weights that would include, and which the agency would apply in order:

1. students from pre-kindergarten, grades K-5, 6-8, and 9-12, listed separately;
2. students from economically deprived backgrounds,
3. English Language Learners (ELLs)
4. students in school districts with low populations; and
5. students attending small schools.

The resulting equalized student weights would help determine pupil counts for the district by December 1, and any corrections would need to be made by December 15.

Under current law, a district's equalized pupil weighted membership is not less than 96½ percent of the actual number of equalized pupils in the district in the previous year. The weighed membership number would equal the average of the equalized pupil count for that year and the preceding two fiscal years. However, in FY24, FY25, and FY26, the number of equalized pupils would be determined by averaging the equalized pupil count for the current year with counts for the preceding four fiscal years. In FY27, the average would include the three preceding fiscal years; in FY28, the average would include the preceding two fiscal years.

Every five years, the legislature would need to consider if updating the pupil weighting factors was necessary. If the weighting factors are not revised by July 1, 2027, the pupil weighting system would be repealed.

A new section in the education statutes (Title 16) would be enacted to address ELL and state aid. Each district would be obligated to budget "sufficient resources through a combination of state and federal categorical aid and local education spending to provide ELL services." When state and federal aid is insufficient, local education spending would be obligated to fill the gap, a not unfamiliar circumstance for local property taxpayers when it comes to education funding.

Districts would need to report ELL service expenditures to the Agency of Education. The bill establishes the levels of state categorical aid for ELL students to be paid by November 1 of each year as:

- 1-5 enrolled students..... \$25,000
- 6-10 enrolled students..... \$50,000

Sixteen V.S.A. § 563 (11)(D) dictates the form of the ballot question presenting the school budget to the voters. In FY24-28, that language would be suspended.

The state auditor would be required to complete a performance audit identifying the successes and failures of the legislation by the end of 2029. The bill would establish a seven-member Education Fund Advisory Committee to monitor the education funding system. That committee would make recommendations on updating the weighting factors; changes to categorical aid; changes to income levels

eligible for property tax credits; potential adjusting of the revenue sources for the Education Fund including transitioning to an education income tax; how to improve equity, transparency, and efficiency in education funding statewide; when and how to reinstate an excess spending penalty; and the amount of the Education Fund stabilization reserve.

By January 15, 2023, the committee would need to make recommendations on implementing an education income tax system to replace the homestead education property tax system.

The bill is currently in the Senate Rules Committee because it was not voted out of Senate Finance in time to meet the deadline for introducing committee bills. Senate Rules needs to release it before it is given a bill number. Then the bill would go to Senate Appropriations because it requires the funding of multiple new initiatives and staffing levels.

Resource for this article:

- [Joint Fiscal Office Fiscal Note](#), March 8, 2022

Housing and Act 250

On Tuesday, S.234, an Act 250 amendment and housing bill voted out of Senate Natural Resources and Energy, was sent to the Senate Finance Committee. On Thursday, S.226 the omnibus housing bill – which includes Act 250 amendments voted out of Senate Economic Development, Housing and General Affairs, was also sent to Senate Finance. The two bills address Act 250 and housing in ways reflective of both the areas of jurisdiction and divergent philosophies of the two committees. S.234 would expand Act 250 jurisdiction in several respects well beyond any effort to facilitate the development of housing. S.226 would implement a number of programs and tax credits to encourage housing development and also incorporate changes to Act 250 that would reduce the permitting hoops that housing projects need to jump through. (See [Weekly Legislative Report No. 9](#) for more on S.226).

The two committee chairs – Senator Sirotkin on Economic Development, Housing and General Affairs and Senator Bray on Natural Resources and Energy – both sit on the Senate Finance Committee, which meets in the afternoon. And while the jurisdiction of the finance committee is revenues of the state, conversations concerning these bills are likely to stray from that focus.

VLCT supports the provisions of S.226 that would direct programming, tax credits, and funding to both housing development subsidized through non-profit housing organizations and to individual private property owners who might need assistance to redevelop or upgrade their properties. A \$15 million appropriation would fund a program to help in the construction, rehabilitation, or acquisition of owner-occupied homes – known as “the missing middle.” The Act 250 provisions in S.226 are specifically directed toward easing the housing crisis, and there is more support around addressing those provisions than addressing a wide range of controversial Act 250 issues. The bill would also provide funding to update municipal bylaws to facilitate housing development. And it would incorporate the provisions of S.79 – which the governor vetoed in January – as well as S.210 a bill that would authorize the Department of Public Safety to regulate rental housing health and safety, removing that obligation from the local health officer.

The bill will also need to go to Senate Appropriations prior to passage in the Senate.

Resource for this article:

- [S.226 Summary Table](#)

Qualified Immunity

On a 3-2 vote, the Senate Judiciary Committee today voted out S.254, the qualified immunity bill. This morning, the committee was presented with a new version of the bill and it looked nothing like prior versions. The first section of the bill attempts to codify the principles of Vermont Supreme Court case *Gregory W. Zullo v. State of Vermont* (2019 VT 1, No. 2017-284) as they apply to all law enforcement agencies and violations of Article 11 of the Vermont Constitution. This provision is one that Committee Chair Senator Dick Sears said was a main goal of his, so it's not a surprise that it was included in the latest re-draft.

The remainder of the bill, however, is all new. The legislation now directs every law enforcement agency in the state to maintain a record of all final judgments, associated complaints, and settlements paid by the law enforcement agency for claims made under this new codified standard, and which are subject to disclosure under the Public Records Act. Further, the Office of Legislative Counsel, in consultation with outside entities, must report to the legislature on the impact of qualified immunity on access to civil justice remedies for people wrongfully harmed by bad-faith policing and civil rights violations in Vermont.

The bill heads to the Senate floor next week.

Elsewhere in the State House

Forestland and the Use Value Appraisal Program. H.697 passed the House on Tuesday on a vote of 99 to 40 and is now in the Senate Natural Resources & Energy Committee. The bill would add to the Use Value Appraisal Program (Current Use) the purpose of preserving Vermont's rural character and protecting its natural ecological systems and forestland resources. Natural ecological systems would include air and water quality, wildlife habitat and wildlife corridors, enhanced biodiversity, and forest health and integrity. Parcels of at least 25 acres exclusive of house sites that are ecologically significant treatment areas or reserve forestland would be eligible for the program.

An ecologically significant treatment area would be managed using protective or conservation management strategies, including old forests; significant natural communities; rare, threatened, and endangered species; riparian areas; forested wetlands; and vernal pools. Reserve forestland would be managed to attain old forest values and functions.

By December 31, 2022, the Commissioner of Forests, Parks and Recreation would need to provide a report to the legislature on the program's reserve forestland including standards for managing those lands and how enrollees in the Use Value Appraisal Program managing lands as productive forestland could shift their management category to reserve forestland, and vice versa. By 2024, the Commissioner of Taxes would need to submit a report on the strategies and rates for valuation of all land in the Use Value Appraisal Program as well as recommendations to ensure consistency among its benefits. The Commissioner of Forests, Parks and Recreation would need to submit a third report by 2026 that summarizes how enrollment of managed forestland had changed as a result of this legislation. The Joint Fiscal Office estimated that, in FY24, Education Fund revenues would be reduced by approximately \$100,000 and General Fund Revenues by \$50,000. Those figures are likely to increase as more lands are enrolled in the program.

Budget Adjustment. This week, the House and Senate agreed to a conference committee report on H.679, the budget adjustment bill. That bill now goes to the governor for his signature. H.679 increases appropriations by \$367 million, a five percent increase over the budget passed in May. The General Fund increases by \$111 million and American Rescue Plan Act (ARPA) State Fiscal Recovery Funds by \$94.3 million. (See [Weekly Legislative Report No. 9](#) for details of programs funded that affect municipalities.)

The governor has expressed his concern that the increases won't facilitate the transformative changes he hoped would occur in housing, climate change, water, sewer, infrastructure, broadband, and economic

recovery. Once he has the bill, the governor has five days to decide whether or not to sign it. To date this biennium, the governor has vetoed seven bills, and three are municipal charters.

Issuance of Marriage Licenses. The House Government Operations Committee voted out H.680 before the Town Meeting week break and the House passed the bill on Wednesday. The bill would provide for marriage licenses to be issued by any town clerk in the state. If passed, the bill would take effect this July.

Firearms in Hospitals. Late last month, the governor vetoed S.30, a bill that would have prohibited both firearms in hospitals and the transfer of a firearm to another person, if the transfer required a background check under state or federal law, and the licensed dealer facilitating the transfer had not been provided with a unique identification number by the National Instant Criminal Background Check System (NICS). The bill also would have provided for circumstances under which a health care provider could notify a law enforcement officer when they believe such a disclosure is necessary to prevent or lessen a serious threat to the public.

Instead of trying to override his veto, the Senate decided to address his concerns by rewriting S.4, a bill introduced last year that addressed the waiting period for firearm transfers. That bill, which is on the Senate Calendar for second reading today, would prohibit anyone except a law enforcement officer from knowingly possessing a firearm while within a hospital building.

It would also prohibit the transfer of a firearm if the transfer requires a background check and the licensed dealer making the transfer has not been provided an identification number by the NICS. If that number has not been provided within seven days, the transfer may proceed without it.

Environmental Justice. S.148, the Environmental Justice bill, was voted out of the Senate Natural Resources and Energy Committee before the Town Meeting break. On Tuesday, it was sent to the Senate Appropriations Committee, as it contains an appropriation of \$3 million General Fund to hire ten positions at the Agency of Natural Resources, six positions at the Natural Resources Board, 1.5 positions at the Agency of Commerce and Community Development, and 2.5 positions at the Department of Public Service. Read more about S.148 in the Elsewhere in the State House column in [Weekly Legislative Report No. 9](#).

Education Property Taxes. On Tuesday, the governor again [called on the legislature](#) to return half of the Education Fund surplus (\$45 million) to property tax payers. Should the legislature agree, town clerks will work with the Department of Taxes to facilitate sending the refunds to property tax payers.

Miscellaneous Municipal Authority. This week, [S.181](#), which makes miscellaneous changes to municipal laws, was referred to the Senate Finance Committee because a provision of the bill addresses local options taxes. The committee will review the tax provision next week, after which it will head to the Senate floor for a full vote. VLCT strongly supports the bill, which expands ordinance authority to provide more robust local jurisdiction in specific areas of the law. We reviewed the provisions of the bill in [Weekly Legislature Report No. 9](#).

Cannabis Fees. [H.701](#) is the legislation that will set the licensing fees for cannabis establishments. On Thursday, the Senate voted on an amended version of the bill, which will head to a final Senate vote today. When the Senate approves H.701 – and it will – it will go to the House, which will review the Senate's proposal of amendment.

H.701 sets the fee for all local licenses at \$100, which the Cannabis Control Board will collect. The state will reduce the modest \$100 fee even further to pay for administration and collection and remit the remainder to the host municipality. Local governments can collect school and municipal property taxes, zoning permit, recording, and many other local fees, however the legislature remains determined to insert state control over the collection of local cannabis licenses fees for reasons we can neither ascertain nor support.

Municipalities must enact a local option sales taxes if they want to receive any tax revenue from cannabis sales at retail establishments in their community.

Agency of Public Safety. This week, the Senate Government Operations Committee voted out [S.155](#), a massive bill that proposes to turn the Department of Public Safety into an agency. The bill is currently in the Senate Appropriations Committee for further review because it impacts state revenues. The bill indirectly affects local governments. The agency would consist of various state divisions of public safety. However, it would also oversee certain boards, commissions, and councils that address municipal and other issues such as the Law Enforcement Advisory Board (LEAB), the Enhanced 911 Board, and the Animal Cruelty Investigation Advisory Commission (ACIAC). VLCT supports the independence of the Enhanced 911 Board, but it remains unclear how much autonomy the board will retain in such a transition. Including the LEAB and the ACIAC are positive moves because both organizations need the administrative support of a state agency that they currently lack.

After the bill is reviewed by the Senate Appropriations Committee, it will head to the Senate floor, and then to the House.

Ukrainian Support. Although [H.717](#) does not relate to local governments, it is a bill worthy of mention. Introduced on Tuesday, the bill had received full House and Senate approval by yesterday. H.717 appropriates \$644,826 from the General Fund for humanitarian assistance to Ukraine. That specific monetary appropriation is hugely symbolic as \$643,077 equals one dollar for each Vermont resident, according to the 2020 census, and \$1,749 equals the amount of funds the Department of Liquor and Lottery collected from sales of Russian-sourced products from February 24, 2022 to March 2, 2022. An amendment to appropriate an equal amount of money to fund Afghans who are settling in Vermont was briefly offered on the Senate floor but withdrawn so as not to complicate speedy passage of the bill.

The bill now heads to Governor Scott for signature, and he has indicated both his full support of the legislation and that he will sign it on Tuesday, March 15, during a "Freedom and Unity Vigil" at the State House.

On Wednesday, the House also adopted Joint Resolution J.R.H.18, which condemns Russia's invasion of Ukraine and expresses strong support for "Ukraine's fight for independence, the heroic leadership of Ukrainian President Volodymyr Zelensky, the resoluteness of the Ukrainian people, the courage of the Russian antiwar protesters, and the actions of Governor Philip B. Scott in response to Russian aggression."

Welcome, New Local Officials

Congratulations on your election to municipal office! There is much to do and to learn in your position, and we hope that you turn to the Vermont League of Cities and Towns (VLCT) to assist you with your new responsibilities. Please visit our website, www.vlct.org, to learn of the many services we provide to your municipality and to you. Our mission is "to serve and strengthen Vermont local government."

Most immediately, we urge you to sign up for the VLCT webinars for new selectpersons and to seek the counsel of colleagues in municipal government as you start your service. You can do so at vlct.org/training-events.

One thing you will learn quickly is that your town or city does not operate as an island. The Vermont Constitution establishes local government as "creatures of the state." State government has much to say about what your municipality can and cannot do (and, with state mandates, what it *must* do), and determining the resources with which you will be able to meet the service demands of your residents, businesses, visitors, and taxpayers. VLCT represents the interests of all 246 cities and towns, but you are really the advocates who hold sway with your legislators. You will need to represent the interests of your town or city outside the municipal office – with your school district, neighboring local governments, county, regional commissions, state administration, and, yes, the legislature.

The **Weekly Legislative Report** is VLCT's publication primarily designed to communicate with municipal officials, but also to keep legislators, the governor's office, state agency heads, and the media informed about municipal legislative priorities. Each Friday during the legislative session, it is posted at vlct.org/wlr. The report generally contains:

- analyses of key legislative developments during the past week;
- updates on any action on VLCT Municipal Policy priority bills;
- brief descriptions of bills introduced during the past week that affect municipal government and the committee to which the bill has been referred;
- calls for action on critical scheduled hearings and votes when municipal input is necessary; and
- periodic updates of federal issues of interest to municipal officials.

As well, your advocacy staff – Karen Horn and Gwynn Zakov – host biweekly Advocacy Chats using the Zoom video conference platform to update local officials on legislative activities. Our next chat is scheduled for Monday, March 21. We look forward to meeting you there!

Resources for this article:

- [Register for the next Biweekly Chat with Advocacy Staff](#)
- [View recordings of this session's previous Advocacy Chats](#)

New Bills

Number	Summary	Current Location
H.717	Would appropriate \$644,826 from the General Fund to the Agency of Administration to provide humanitarian assistance to the people of Ukraine.	Passed House and Senate; sent to Governor
H.718	Would approve the dissolution of Colchester Fire District No. 1 and transfer of the Fire District's assets and liabilities to the Champlain Water District.	House Government Operations
H.719	Would establish a process to support municipalities that have established independent systems and services to replace those had traditionally provided to towns by State agencies and departments. Systems and services may include public safety, emergency, inspection, code enforcement, social services, and managing and implementing State regulatory regimes. Would also establish a fair and equitable system of compensation for the municipalities that considers the costs avoided by the State as a result of not having to deliver a specific service to a particular Vermont town.	House Government Operations
S.286	Would make various amendments to pension and other post-employment benefits for members of the Vermont State Employees' Retirement System and the Vermont State Teachers' Retirement System. Would also change the reporting dates for certain actuarial studies for the state employees' and teachers' retirement systems and the Vermont Municipal Employees' Retirement System.	Senate Appropriations