

2022 Weekly Legislative Report #4

January 21, 2022

Today's report focuses on Governor Scott's budget address to the legislature, the transportation part of that budget, a bill that would help replace fossil fuel heating systems with renewable and efficient ones in municipal buildings, and law enforcement and qualified immunity. Our Elsewhere in the State House column is back, as is our table of newly introduced bills that, if passed, will affect Vermont municipalities.

Note that vlct.org now has two new webpages to help you easily track the session's bills that especially affect municipalities: [bills introduced in the House](#) and [bills introduced in the Senate](#). These are in addition to the New Bills table in each *Weekly Legislative Report*. We'll update the cumulative lists every Friday to help you follow bills as they wend their ways through the State House committees.

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

Karen Horn, VLCT Public Policy & Advocacy Director
Gwynn Zakov, VLCT Municipal Policy Advocate
David Gunn, Editor

VLCT Advocacy: advocacy@vlct.org
Legislators: legislature.vermont.gov
Sergeant-at-Arms: 802-828-2228

This Week's Articles

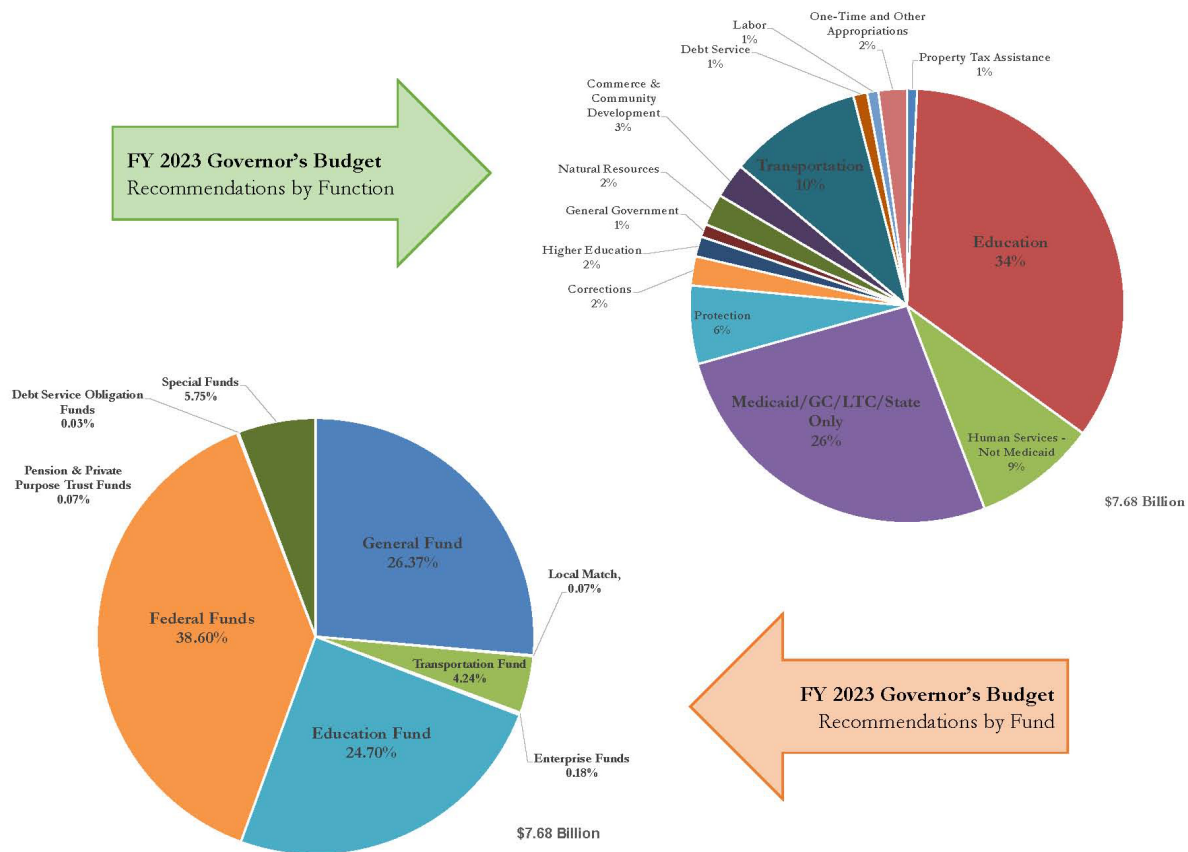
Governor Scott Delivers Budget Address

On Tuesday, Governor Phil Scott delivered his budget address to the legislature – once again remotely via Zoom. He termed his \$7.7 billion budget proposal transformational. It is the largest fiscal year budget proposed in the state's history and it benefits from unprecedented federal dollars plus unanticipated surpluses in the Education and General Funds. All that and yet it does not raise taxes. He cautioned legislators to remember that the federal money constitutes one-time federal funds that need to be used to achieve equity across the state. There is no doubt, however, that the huge infusion of money to all kinds of programs will fuel expectations for increased program funds in the future – expectations that will be hard to manage when the federal dollar fire hose stops.

Every year, as is generally the case, education and higher education obligations and recommendations comprise 36 percent of the total budget, and human services comprises 35 percent of the budget, not including funds from the American Rescue Plan Act (ARPA) or Coronavirus State and Local Fiscal Recovery Funds. The General Fund makes up 26.3 percent of total budget revenues, federal funds 39 percent, and the Education Fund 25 percent.

FY 2023 Governor's Recommended Budget by Function and Fund

(Not Including ARPA-State Coronavirus Fiscal Relief Funds)



Immediately after the governor delivered his address and released the budget figures, agency secretaries and department commissioners headed to committees of jurisdiction to explain the details of the budget as they pertain to their areas of interest. Then begins the long-standing process following the governor's proposal when the legislature takes the rest of the legislative session to understand, review, and add to or amend every line of that recommendation. When the legislature finally finishes its work and passes an appropriations budget for the next fiscal year (starting July 1, 2022), the session is gavelled to a close. Every other piece of legislation needs to be finalized before the budget is passed, which is one reason there is a frenetic, unpredictable, and exhausting end to every legislative session.

The governor's budget for FY23 recommends retiring \$22 million of transportation borrowing bonds and \$20 million of general obligation bonds for capital projects, as well as an additional \$10 million in debt. The budget would invest heavily in training, education, and marketing to support and attract workers to fill an estimated 23,000 open positions across the state. Scott would expand the Worker Relocation Grant Program to additional work categories such as police

officers, nurse practitioners, and electricians. He would also expand tax credits for earned income, child and dependent care, nurses, and child care workers, and commit \$12 million to expand access to affordable and high-quality child care.

Should those efforts be successful and out-of-staters move to or opt to stay in Vermont, they will need housing – which, as we all know, is in extremely short supply. The governor noted that as of December, the median cost of a house was \$369,000, and as of last week – according to the Vermont Association of Realtors – only 136 homes were for sale in Vermont that a middle-income family could afford. The governor would allocate \$15 million to encourage construction of homes for middle-income Vermonters, \$25 million for the Vermont Housing Improvement Program, and \$105 million for affordable mixed-income housing.

He recommended measures to address the cost of living for Vermonters, including tax burdens. One proposal would provide property tax payers rebates on the property taxes they paid, using \$45 million of the \$90 million surplus in the Education Fund. Accomplishing this goal will require the cooperation of town clerks, so more discussion is to come on that front.

Scott acknowledged the immense stresses on mental health that the pandemic imposed on Vermonters, especially on children. The budget would provide \$25 million to support hospitals and providers, \$2 million to expand a mobile mental health response pilot to four additional communities, \$1 million to strengthen the state's suicide prevention program, and \$8 million to strengthen local opioid prevention and recovery efforts and treatment options.

In the public safety sector, the governor's budget would move funding of the E-911 system (another system in crisis) to the General Fund and allocate \$11 million over the course of three years to create "a more rational system of regional dispatch centers." His budget would pay for mental health professionals in all state police barracks and for the Vermont Criminal Justice Council to upgrade training and entrance testing for candidates.

The budget would include \$44 million through the Agency of Natural Resources for a new grant program offering up to \$1 million to municipalities to improve the air quality and ventilation, electric efficiency, broadband access, and solar power in existing public buildings. (See article on energy efficiency and fuel switching.) The Grand List Enhancement Program, another new program, would be funded with \$30 million to encourage revitalization in the most needy regions of the state that are facing declining grand lists.

A \$216 million package would focus on climate change and community resiliency, and an additional \$195 million would go to extending broadband to unserved and underserved areas. The budget would dedicate funds for water, sewer, and stormwater (\$72 million); wetlands mapping (\$250,000); and brownfield cleanup and revitalization (\$6 million).

There is a lot to digest in this budget proposal and details will be available as the committees of jurisdiction and the appropriations committees sift through the many recommendations.

Resource for this article:

- [FY23 Executive Budget Summary](#), Jan. 18, 2022

The Proposed Transportation Budget

Always an important source of funding to Vermont local governments is the Transportation Fund. While the requirements to comply with the Municipal Roads General Permit, general stormwater management that affects roads, and regular construction and maintenance needs increase significantly every year, revenues from the Transportation Fund that help pay for those obligations do not always keep pace.

For years, local governments lamented the fact that state funding levels for town highway programs remained anemic. That was not the case last year, however, when local governments benefitted from strong financial commitments from both state and federal governments to municipal transportation programs. Governor Scott's proposed FY23 budget suggests that commitment to investing in local roads and grant programs will continue, and VLCT is optimistic as the legislature begins to review the Administration's proposals.

The governor's proposed FY23 transportation budget is \$829,936,754 – a \$143,351,327 (21 percent) increase over FY22. This increase is largely due to federal money from the Infrastructure Improvement and Jobs Act (IIJA), which supersedes the previous Fixing America's Surface Transportation (FAST) Act of 2015. Over the next five years, IIJA will bring \$570 million to Vermont. The proposed FY23 transportation budget includes an additional \$94.7 million of projects and programs funded by IIJA.

The following table breaks down some of the municipal funding:

| | |
|---|--|
| Town Highways Bridge Program | increase of \$14.9M, from \$15.40M in FY22 to \$30.30M in FY23 |
| Town Highway Structures¹ | decrease of \$6.33M, from \$12.66M in FY22 to \$6.33M in FY23 |
| Class 2 Program¹ | decrease of \$7.65M, from \$15.3M in FY22 to \$7.65M in FY23. |
| Transportation Alternatives Program | increase of \$1.1M, from \$4.5M in FY22 to \$5.6M in FY23 |
| FEMA's Public Assistance Program | level-funded (\$1.25M) |
| Town Highway non-federal disaster | level-funded (\$1.15M) |
| Town Highway Class 1 Supplemental | level-funded (\$128.75K) |
| Municipal Mitigation Assistance² | increase of \$340,498, from \$6.11M in FY22 to \$6.45M in FY23 |
| Town Highway Aid³ | increase \$677,644, from \$27.1M in FY22 to \$27.7M in FY23 |
| Town Highways federal disasters | level funded (\$180K) |
| Vermont Local Roads Program | increase of \$2,792, from \$411,689 in FY22 to \$414,481 in FY23 |
| <p>1. This decrease simply recalibrates funding levels after FY22 levels were doubled due to a pause in funding in FY21. Reflects statutory formula funding.</p> <p>2. Increase is a carry-forward in Clean Water Fund money.</p> <p>3. Reflects the statutory formula level.</p> | |

The huge 97 percent increase in funding to the Town Highway Bridge Program is wholly due to the IIJA. That legislation includes a new program in which \$225 million comes to Vermont for bridges over five years; at least 15 percent of that funding must go to local bridges, funded at 100 percent. Decreases to both the Class 2 and Highway Structures programs reflect a recalibration of funding levels back to those in statute. Overall, traditional town highways programs (not including the Transportation Alternatives Program) are proposed to increase to \$81.65 million in FY23, a \$1.94 million (2.4 percent) increase from FY22.

Other points of interests to municipalities in the proposed budget fall outside of the town highway programs. The state's proposed paving budget increased 32 percent, from \$120.5 million in FY22

to \$158.8 million in FY23. Sixty-four paving projects covering approximately 590 miles are planned. The state's Roadway Program – which funds projects that include drainage and stormwater improvements, corridor reconstructions and shoulder widening – is proposed to receive \$51.3 million, a 38 percent increase from FY22. Bicycle and Pedestrian Facilities funding would increase to \$19.8 million from \$16.7M in FY22. Also proposed are projects in Arlington, Bennington, Chester, Hartland, Royalton, Rutland City, Moretown, Vergennes, Winooski, and along the Missisquoi and Lamoille Valley Rail Trails.

It is clear from the governor's budget proposal that his administration is focused on helping Vermont communities recover from the negative impacts of the pandemic as they maximize the federal funding available to them. The proposal also recognizes that cities and towns will have to work hard on projects that have been delayed for years to spur development in their communities. VLCT is pleased to see the legislature discuss the proposed budget, and we thank the agency and the administration for producing a thoughtful budget that invests in our local communities.

Resource for this article:

- [VTrans FY23 Budget](#) (as presented to the House Transportation Committee on Jan. 19, 2022)

Municipal Energy Efficiency and Fuel Switching

This week, the House Energy and Technology Committee turned its attention to H.518, a bill that would provide \$48 million to help towns conduct energy audits of town buildings, prioritizing work items and completing weatherization and fuel switching projects. On Tuesday morning, your Advocacy staff testified in support of the bill, which prioritizes Efficiency Vermont and regional commissions contacting local officials to develop plans for replacing fossil fuel heating systems with renewable and efficient ones in municipal buildings. We provided a list of buildings, which includes all insured municipal buildings that require heating except for those in two municipalities that VLCT doesn't insure. The funding source anticipated for implementing the legislation is the state General Fund.

On Tuesday afternoon, as part of his budget address, the governor proposed a new Resilient Community Centers Program grant program through the Agency of Natural Resources that would implement a similar program on buildings the community uses as public spaces and would be funded through the federal Capital Investment Grants Program. According to the proposal in the Capital Budget, "These funds will create a grant program for investment in infrastructure improvements to community public facilities. The grants will give communities an opportunity to improve existing space to allow for safe public gatherings including but not limited to community public health needs, emergency management, and community engagement for vulnerable populations. Building investments would focus on improvements such as HVAC, air quality, weatherization, electric efficiency, EV infrastructure, broadband access, solar power, etc. Maximum grant of \$1M for approximately 44 grant awards."

Projects funded through the new Resilient Community Centers Program would need to invest in multi-purpose capital assets designed to directly enable work, education, and health monitoring; address a critical need that resulted from COVID 19; and address critical needs of the community to be served. Projects could include weatherization, replacing fossil fuel systems with renewable

efficient fuel systems, providing emergency shelter, rooftop solar systems, battery storage, broadband, and electric vehicle charging stations.

The committee is working today to meld the two recommendations into a single, cohesive program that will provide the assistance and funding needed to complete energy efficiency and fuel switching projects.

Law Enforcement and Qualified Immunity

On Thursday, the Senate Judiciary Committee took up [S.254](#), a bill that would create a private right of action against a law enforcement officer who "by commission or omission" of any act, violates an individual's constitutional, common law, or statutory right. The bill would also eliminate qualified immunity for law enforcement officers. The language is brief but the issue is complex, as demonstrated by the sometimes surprising testimony from witnesses across the political spectrum, representing local, state, and national organizations.

VLCT Advocacy and Risk Management staff were among those who testified. VLCT signed onto a position paper with 12 other organizations opposing S.254. In August 2020, the VLCT Board of Directors offered its perspectives on police reform, which calls for both holding officers accountable and preserving qualified immunity.

All public officials – from plow drivers to school and selectboard members, listers, teachers, health officers, police officers and fire fighters – rely on qualified immunity to protect them from individual liability unless the official violated a clearly established constitutional right. Qualified immunity, according to the U.S. Supreme Court, is a safeguard available to all government officials "except those who are plainly incompetent or those who knowingly violate the law." One of VLCT's concerns with S.254 is that it would single out one group of public officials – police – and eliminate qualified immunity for them.

In our testimony, we reminded the committee that there have been numerous bills passed in recent years that address the need for training, accountability, transparency, and consequences for both bad and illegal behavior. Law enforcement communities collaborated with the legislature to develop language that would address the many serious concerns around policing in Vermont while recognizing the good and necessary work that police do to keep communities safe. Those bills continue to be implemented, and the programs they require are still young. In 2017, Act 56 established new provisions for the professional regulation of law enforcement officers. In 2020, Act 147 defined prohibited restraints, Act 165 established a use of force standard, and Act 166, which addresses the collection of roadside stop data and use of body cameras, substantially restructured and expanded the Criminal Justice Council, and required law enforcement agencies to report credible complaints of professional misconduct to the council. In 2021, Act 27 revisited the use of force standard, establishing both an officer's duty to intervene and new statewide training requirements.

The Senate Judiciary Committee will take up the bill again in the next few weeks. We will report on any developments on the progress of the bill in future legislative reports.

Resources for this article

- [Qualified Immunity Position Statement, FAQs, and Court Cases](#)

- [VLCT Perspectives on Police Reform](#)

Elsewhere in the (Virtual) State House

Charters. This week, both the House and Senate Government Operations committees took up municipal charters. The House committee discussed charters from Burlington (H.448) and Springfield (H.447) and also had an initial walk-through of a charter seeking to create the City of Essex Junction (H.491). The Senate committee took up the charters of Brattleboro (H.361), and Burlington (H.454).

Expungement of Municipal Tickets. On Wednesday, VLCT Advocacy staff testified on H.534 before the House Judiciary Committee. The bill concerns the sealing of criminal history records, and a small section of it would expunge records of violations of municipal ordinances (except for zoning ordinance violations) after a certain period of time. Currently, municipal civil ordinance violations are not expungable, and these minor violations that are at or below a misdemeanor level stay on an individual's record. The bill would expunge such tickets after two years. We testified that a more reasonable route would extend the time to three years, with the stipulation that no subsequent municipal tickets would be issued for related offenses during this time period. The committee appeared to be open to considering such an amendment.

Cemetery Fencing. VLCT Advocacy staff also testified in the House Government Operations Committee on H.460, a bill that addresses municipal cemetery fencing. The apparent intent of the bill is to clarify statutory language in 18 V.S.A. Ch. 121. However, it actually would change the underlying law. We testified against the bill as written as it would require local governments to fence all cemeteries that abut pastures and lands on which livestock graze. The committee seemed to agree that the onerous task of agriculture fencing for livestock should not shift to municipalities, and that if the intent of the bill is to clarify current law, further amendments are necessary. VLCT would support language clarifying that a municipality maintain any of its existing fencing, or removing the fencing language entirely. We will not, however, support a new mandate that municipalities are responsible for fencing the boundaries of cemeteries that abut grazing lands.

Rental Housing. The Senate Economic Development Housing and General Affairs Committee voted out a new bill to address the concerns the governor expressed about S.79, the rental housing bill he vetoed last July. S.210, which is on the calendar for second reading today, would authorize the Commissioner of Public Safety to adopt rules to establish standards for health, safety, sanitation, and fitness for habitation of rental housing. The bill would also direct the commissioner to develop a complaint-driven system to conduct rental housing inspections. It would establish a rental housing registry supported by an annual per-unit fee of \$35 payable to the Department of Housing and Community Development (DHCD). Several exemptions to the requirement to register with DHCD including units registered pursuant to a municipal program, certain mobile homes in mobile home parks, units not offered to the general public, non-winterized seasonal units, three or fewer accessory dwelling units if the primary residence is owner occupied, or housing provide as a benefit of farm employment. Local health officers would be authorized to assist the Department of Public Safety in inspections. Until rules were adopted, the department and local health officers would have concurrent jurisdiction; thereafter, the department would have primary jurisdiction. S.210 would also establish the Rental Housing

Investment Program to help people upgrade rental housing, and the Vermont Homeownership Revolving Loan Fund to provide no-interest loans to increase access to homeownership, particularly for those identifying as Black, Indigenous, or persons of color.

Budget Adjustment. The budget adjustment bill, H.679, was taken up on the floor of the House on Thursday and passed overwhelmingly on Friday. The bill increases spending for FY22, the current budget year, by \$359 million, which is 4.9 percent more than the budget passed last May. That is an historically unheard of increase for a budget adjustment bill, due to the influx of federal dollars. Among other issues, the bill would increase municipal planning grants by \$250,000, support the Vermont Foodbank with \$6 million in ARPA funds to address food insecurity, and appropriate an additional \$25 million ARPA funds and \$30 million from the General Fund to the Vermont Housing Conservation Board for housing and increased shelter capacity.

Resource for this article

- [H.679 FY22 Budget Adjustment Bill as Proposed by House Appropriations](#)

Firefighters and EMS Providers Virtual Town Meeting

Join U.S. Senator Bernie Sanders and U.S. Fire Administrator Dr. Lori Moore-Merrell for a virtual Town Meeting at 10:30 a.m. on Saturday, January 29, 2022. They will discuss the challenges career and volunteer firefighters and EMS providers face and how the federal government can support them and their service to Vermont communities. To participate, please contact the Senator at sanders.senate.gov/events or 800-339-9834.

New Bills of Municipal Interest

| Number | Summary | Current Location |
|-----------------------|---|--|
| H.651 | Would establish an environmental justice policy for the State of Vermont and require state agencies to incorporate environmental justice into their work. Would establish the Advisory Council on Environmental Justice within the Agency of Natural Resources to advise the State on environmental justice issues. | House Nat. Resources, Fish, and Wildlife |
| H.653 | Would create a new category of management plans that would allow forested lands managed to increase carbon sequestration, carbon storage, or enhance wildlife biodiversity to qualify for the Use Value Appraisal program. | House Agriculture and Forestry |
| H.654 | Would express legislative intent to extend certain provisions of law offering regulatory flexibility to health care providers and relevant State agencies during the COVID-19 pandemic. | House Health Care |

| Number | Summary | Current Location |
|-----------------------|---|--|
| H.656 | Would allow the State and its political subdivisions to publish public notices on electronic news media. | House Government Operations |
| H.657 | Would strike as a requirement for the designation of a lake in crisis that the lake is located in a municipality in which the lake or a portion of it is located has reduced the valuation of real property due to the condition of the lake. | House Nat. Resources, Fish, and Wildlife |
| H.660 | Would create municipal and regional civilian oversight bodies to investigate and address complaints against a law enforcement agency or officer within its jurisdiction. The investigation would be in addition to the investigations that may be conducted by a law enforcement agency and the Vermont Criminal Justice Council. | House Government Operations |
| H.673 | Would create a special annual permit for a truck trailer or semi-trailer combination transporting cargo of legal dimensions that can be separated into units of legal weight without affecting the physical integrity of the load at a maximum of 107,000 pounds on 6 axles or 117,000 pounds on 7 axles. Would require that the centralized online permitting system, whose design and development were noted in Act 149 of 2021, be operational by January 1, 2023. | House Transportation |
| H.679 | Would make adjustments in the fiscal year 2022 omnibus appropriations act. | House Appropriations |
| H.680 | Would eliminate the restriction on which town clerks in the state can issue a marriage license to a Vermont resident. | House Government Operations |
| H.682 | Would allow municipalities to adopt ordinances that limit the increase of rental rates. | House Government Operations |
| H.683 | Would allow the costs of municipal fire and rescue services to be deducted from the tax monies transmitted to the Commissioner of Finance and Management by the supervisors of unorganized towns and gores. | House Government Operations |
| H.689 | Would require municipalities to adopt a local enforcement plan prior to receiving State aid for town highways and related structures. | House Government Operations |
| H.690 | Would allow a municipal tax collector to send an initial notice to a delinquent taxpayer by other means, in addition to certified mail, including by first-class mail and personal service, without | House Ways and Means |

| Number | Summary | Current Location |
|--------------|---|-------------------------------------|
| | requiring the collector to first wait for a notice by certified mail to be returned unclaimed. | |
| S.264 | Would make multiple changes to the Renewable Energy Standard, including increasing the total renewable energy requirement to 100% by 2030. | Senate Natural Resources and Energy |
| S.267 | Would prohibit the manufacture, sale, and distribution in Vermont of cosmetic products containing certain chemicals, and prohibit the installation of any new athletic turf field containing perfluoroalkyl and polyfluoroalkyl substances. | Senate Health and Welfare |
| S.268 | Would amend the right-to-farm law to provide that a farm or farm operation would not be found to be a public or private nuisance under one or more of the following: the farm/farm operation existed before a change in the land use or occupancy in proximity to the farm; the farm/farm operation alleged to be a nuisance conforms to state and federal law; or the farm/farm operation has been conducting the agricultural activity at issue for two or more years prior to the date a nuisance action is commenced. | Senate Judiciary |
| S269 | Would extend the Energy Savings Account Partnership Pilot Program with Efficiency Vermont for an additional three years. | Senate Finance |
| S.272 | Would expand the list of entities that are bound to comply with the renewable energy programs. | Senate Natural Resources and Energy |
| S.274 | Would authorize joint meetings of town and village legislative bodies for the purpose of coordinating duties and actions of town and village government. | Senate Government Operations |
| S.279 | Would prohibit the admissibility of a statement made by a person during a custodial interrogation if the statement was made in response to law enforcement's knowing use of deception during the interrogation. | Senate Judiciary |