

## 2022 Weekly Legislative Report #7

February 11, 2022

In **today's report**, we review rental housing, the budget adjustment bill, environmental justice for Vermonters, qualified immunity and police accountability, pupil weighting and education funding, and, in our Elsewhere in the State House column, truck weights, cannabis, and another housing bill. You'll not see a single new bill this week. In fact, new legislation is way down this year across the board. At this time in 2020, the House had introduced 921 bills; this year, 707. Go figure.

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

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VLCT Advocacy: [advocacy@vlct.org](mailto:advocacy@vlct.org)  
Legislators: [legislature.vermont.gov](http://legislature.vermont.gov)  
Sergeant-at-Arms: 802-828-2228

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## This Week's Articles

### Rental Housing

On Thursday, the Senate passed **S.210**, the bill that addresses the concerns the governor expressed regarding S.79, a similar rental housing bill that he vetoed last July. Senators passed the bill on a vote of 20 to 9 while acknowledging that negotiations with the governor's office continue. The hope is that all issues will be resolved by the time S.210 is passed by the House.

The bill would establish a rental housing registry, maintained by the Agency of Commerce and Community Development, that would provide more exemptions than those proposed in S.79. By March 1 of each year, the owner of a rental unit must register and pay a fee of \$35 per unit unless the unit is registered with a municipality or other local registration program. Exceptions include mobile homes on certain lots; units not offered to the general public; accessory dwelling units; non-winterized seasonal units; housing provided as

a benefit of farm employment; or units rented for fewer than 90 days. Failure to register would result in a fine of up to \$200.

The bill would transfer primary responsibility for rental housing inspections from the local health officer to the Department of Public Safety. This was the portion of S.79 that VLCT most strongly supported. The Commissioner of the Department of Public Safety would be authorized to adopt rules establishing standards for health, safety, sanitation, and fitness for habitation of rental housing. After adopting the rules, the commissioner would design and implement a complaint-driven system for rental housing inspections. After conducting an inspection, the commissioner (or likely his or her delegate) would issue a report that includes findings of fact requirements and timelines for correcting violations; a notice prohibiting the landlord from renting the unit to a new tenant until the violation is corrected; a notice that the landlord or agents must have access to the rental unit to make required repairs; and copies of the inspection report to the landlord and tenants. Failure to comply could result in fines of up to \$1,000 per violation. The bill provides for five inspector positions at the Department of Public Safety.

The local health officer would have the authority to help the department inspect rental housing and could conduct the inspection without the department. In that event, the local health officer would issue an inspection report. Until rules are adopted, the department and local health officials have concurrent authority to enforce Vermont's Rental Housing Health Code.

S.210 would also create the Vermont Rental Housing Investment Program to incentivize private apartment owners to improve housing quality and invest in weatherization. Units eligible for the program would be non-code compliant units and new accessory dwellings. Grants of up to \$30,000 per unit would be available, and landlords would need to contribute matching funds or in-kind services that equal at least 20 percent of the value of the grant. Any landlords receiving the grant would need to coordinate with nonprofit housing partners and local coordinated entry organizations to identify potential tenants, first offering the unit to households, exiting homelessness or, if there is no such tenant, to a household with an income at 80 percent or less of the area's median income. Appropriation of \$2 million and \$10 million would fund the program in FY22 and FY23, respectively.

The bill would also create the Vermont Homeownership Revolving Loan Fund to provide no-interest loans to increase access to homeownership. The fund will facilitate homeownership for those who might be unable to make improvements to a home they purchase and to increase homeownership rates of households identifying as Black, Indigenous or Persons of Color who are systemically disenfranchised from financing real estate through traditional banking.

The bill now goes to the House, where it likely will be taken up by the General, Housing and Military Affairs Committee.

## Budget Adjustment Bill

On Tuesday, the Senate passed the budget adjustment bill, H.679, with two additional last-minute amendments to what we reported last week. The first **amendment** would require that any contract awarded for a maintenance, construction, or improvement project that receives \$200,000 or more in American Rescue Plan Act (ARPA) funds pay its construction workers at least the mean prevailing wage plus an additional fringe benefit of 42 and one half percent. "Fringe benefits" is defined as benefits – including paid vacations and holidays, sick leave, employer contributions and reimbursements to health insurance and retirement benefits, and similar allowances – that are incidents of employment. The provision would not apply to projects that received ARPA funds prior to the effective date of H.679 or to projects that are required to comply with the **Davis-Bacon Act**, the federal law that requires paying laborers the local prevailing wages on public works projects. As well, the federal American Rescue Plan Act (ARPA) legislation is quite clear that states may not constrain any direct aid from the federal government to local governments. Thus, the prevailing wage requirement would not apply to ARPA direct aid to

municipalities. Readers should understand that if a project used both state ARPA funds totaling \$200,000 or more and ARPA direct municipal aid, the prevailing wage requirements would apply.

The second amendment, a product of the Senate Appropriations Committee, readjusted allocations and reaffirmed the commitment to provide funds to meet any match that might be required by Infrastructure Investment and Jobs Act programs.

The amended bill is on the House Calendar today. We expect the House to concur with those amendments.

## Environmental Justice

The Senate Natural Resources and Energy Committee is discussing a redraft of [S.148](#), the environmental justice bill, which states, "It is the responsibility of the State of Vermont 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." (Last year, the VLCT Board of Directors endorsed the concept of environmental justice legislation.) By July 25, 2025, every agency would need to adopt a community engagement plan for working with environmental justice populations and overburdened or underserved communities and submit annual updates – including all complaints alleging environmental justice issues and agency responses – to a new Advisory Council on Environmental Justice. After receiving recommendations from the council, the agency would need to respond in writing if it chose not to implement those recommendations.

By December 15, 2022, the agencies of Natural Resources and Transportation and the departments of Public Safety and Public Service would need to report to the legislature the percentage of funding for the last three years that was spent in a municipality in which some portion was either overburdened or underserved. Annually, beginning on December 15, 2023, those departments and agencies would submit reports that detail how environmental justice criteria were used to award grants and prioritize program funding for the prior fiscal year. The state would be required to spend at least 55 percent of environmental, renewable energy, climate mitigation, transportation and climate resilience funds in those communities. By July 1, 2024, the Agency of Natural Resources – in consultation with the Advisory Council on Environmental Justice and a new Interagency Environmental Justice Committee – would adopt rules that require cumulative environmental burdens to be considered. Agencies adopting rules to implement the environmental justice policies and rules must provide their proposed rules to the council for their approval 45 days before submitting them to the Interagency Committee on Administrative Rules (ICAR). ICAR is the committee of state government that approves rules before they're submitted to the Legislative Committee on Administrative Rules.

S.148 would create a 17-member Environmental Justice Advisory Council, including one representative of municipal government, and an 11-member Interagency Environmental Justice Committee. Both committees would need to incorporate the Vermont Climate Council's [Guiding Principles for a Just Transition](#).

The Agency of Natural Resources would also be charged with developing and maintaining a mapping tool by January 1, 2024 that depicts environmental justice populations and measures environmental burdens "at the smallest geographic level practicable."

The committee will continue to discuss S.148 next week. We will keep you apprised of the bill's progress.

## Qualified Immunity and Law Enforcement Regulations

**Qualified and other Immunities.** Last week, [we wrote about a bill](#) in the Senate Judiciary Committee that would end qualified immunity to law enforcement officers in Vermont. Qualified immunity is a legal doctrine whereby a government official cannot be sued if (1) the constitutional or statutory right the official is accused of violating under Section 1983 of the Civil Rights Act of 1871, or (2) federal statute was not “clearly established” at the time of the alleged violation. The bill, [S.254](#), would also expose law enforcement officers to all matters of civil suit for violations of the Vermont State Constitution or any statutory or common law provision. The legislation would essentially strip from law enforcement officers all immunities that protect governmental personnel ([including common law municipal immunity](#)).

VLCT has serious concerns with the bill and we testified for a second time this week before the committee. After delving deeply into the bill, the committee now seems to better understand how complicated, confusing, and misunderstood qualified immunity is and, likewise, how broadly written S 254 is. For the first time since testimony began several weeks ago, committee members engaged in discussions about the bill and voiced their individual concerns and positions of support or opposition. The committee chair suggested taking a week off from reviewing the bill and then returning with a new draft that addresses committee member concerns before it heads to the full Senate. Exactly what those changes will look like is unknown, but it's fair to say a narrowing of the scope of immunities that would be denied law enforcement officers is likely.

**Police Accountability.** Three weeks ago, the Senate Government Operations Committee had an initial walk-through of [S.250](#), a wide-ranging bill that would make changes to laws related to the professional regulation of law enforcement officers and agencies. One section of the bill that's almost identical to the qualified immunity bill, S. 254, currently in Senate Judiciary will not be reviewed by Senate Gov. Ops.

The bill would authorize the attorney general to investigate any allegations of patterns or practices of discriminatory conduct by a sheriff or municipal law enforcement agency. The attorney general would be authorized to file a civil action in superior court against the agency on behalf of the State of Vermont to cure, change, or eliminate that pattern or practice.

S.250 would increase the minimum number of anti-bias and fair and impartial policing training hours at the police academy from four to ten during initial training and require a ten-hour refresher course every two years thereafter.

The bill would amend current law related to race-data collection by law enforcement officers and adjust the scope of data collected to include roadside stops and law enforcement encounters resulting in officer-involved death or serious bodily injury. Greater detail and the scope of data collected are also expanded.

The Vermont Criminal Justice Council (VCJC) would be mandated to convene an independent panel to investigate all uses of physical force by an officer that results in death or serious bodily injury. The investigations would be independently conducted by three-person panels partially made up of non-law enforcement investigators. Similarly, internal investigations currently conducted by law enforcement agencies would be conducted by a three-member investigative team convened by VCJC and partially made up of non-law enforcement investigators.

S.250 also proposes a law enforcement officer information database that would catalogue potential impeachment information concerning law enforcement agency witnesses or affiants (that is, people swearing to an affidavit).

These are the most relevant provisions of the bill as they apply to law enforcement professional regulation and training. VLCT supports the bill's intent to further professionalize law enforcement. However, amendments to focus on improving the existing structures of professional regulation, training and education by the VCJC and within law enforcement agencies are still needed.

The committee will take up the bill again next week and do a more in-depth, section-by-section review.

## Pupil Weighting and Education Funding

This week, the Senate Finance Committee began consideration of a draft bill that would adjust and add pupil weights beginning in FY24 over a five-year transition period; create an Education Fund Advisory Committee to monitor the state's education financing system; add six Agency of Education staff positions; and require performance audits from the state auditor. In enacting what is currently **Draft Request 22-0593**, the legislature would intend to "fulfill Vermont's constitutional mandate to ensure that all students receive substantial equality of educational opportunity throughout the state." The bill would increase educational equity by ensuring that the financial resources available to local school districts for educating students living in poverty, those with English language learning needs, those in small rural schools and sparsely populated school districts, and students in middle and high schools are sufficient to cover the costs of their education.

The bill would require that by December 1, the Agency of Education would need to (in order):

1. determine a school district's average daily membership;
2. list separately pre-kindergarten, grades K-5, 6-8, and 9-12; students from economically deprived backgrounds, students in low population school districts; and small schools;
3. ensure that every student would start with a weight of 1;
4. provide that the weight of 1 would be multiplied by specific numeric weights for each category of student, which then would result in an equalized student weight; and
5. add equalized student weights together to arrive at an equalized student count for each district.

A district's equalized pupils would in no case be less than 96½ percent of the actual number of equalized pupils in the district in the previous year. It would be equal to the average of the equalized pupil count for that year and the equalized pupil counts for the preceding two fiscal years. The equalized pupil count would be finalized by December 15 of each year.

In FY 24, 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.

If the weighting factors are not revised by July 1, 2027, the pupil weighting system would be repealed.

The bill would also address merger grants for merged schools, and suspend the excess spending penalty and hold harmless provisions for school districts in FY24-FY28.

The bill would require the Education Fund Advisory Committee – and not the Commissioner of Taxes – to recommend a property dollar equivalent yield, income dollar equivalent yield, and non-homestead property tax rate for the following fiscal year. This is the education tax letter due to the legislature each December 1. Likewise, the Education Fund Advisory Committee and Joint Fiscal Office would publish an official annotated copy of the Education Fund Outlook.

There will be far more discussion of this proposal before any legislation is passed. Your Advocacy staff will keep you apprised of developments.

## Elsewhere in the State House

**Truck Weights.** A proposal in H. 581 supported by the House Rural Caucus would adjust truck weight laws to allow for longer and heavier truck trailer combinations, truck trailers, or semi-trailers on Vermont roads – up to 117,000 pounds on seven axles (This proposal may also be included in the miscellaneous transportation bill currently in House Transportation.) It appears the intent of the proposal was to include all

Class 1, 2, 3, and 4 state and local highways, both dirt and paved. VLCT has serious concerns with the proposal, particularly as it relates to the impact these longer and heavier trucks would have on local roads and through downtowns. We are also concerned about the safety issues involved for all modes of transportation sharing the road. We are asking for both VLCT and local officials to be granted an opportunity to testify on the proposal. Information from the Agency of Transportation and Department of Motor Vehicles engineers and road weight experts would be greatly beneficial as well. Please contact your representatives with your concerns.

**Cannabis.** The Senate Agriculture Committee is very close to voting out [S.188](#), a bill that would exempt small cannabis cultivators from zoning regulations. Under the bill, small cultivators would be exempt from all land use regulation under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A). Because state law has prohibited municipalities from regulating agricultural and farming activities, most zoning regulations don't account for such activities in zoning bylaws. Securing permits from local zoning administrators and zoning boards is very difficult – sometimes even impossible – because such cultivation and farming-type activities are not recognized uses in most zoning regulations. The bill is still in committee and will likely be on the Senate floor next week.

**Housing.** On February 8, Director of Public Policy & Advocacy Karen Horn wrote [this letter](#) to Rep. Amy Sheldon, Chair of House Natural Resources, regarding H.511, a bill that would, among other provisions, eliminate Act 250 jurisdiction in designated centers. The committee received the bill on January 7 but has yet to take it up.