



Weekly Legislative Report

The Vermont League of Cities and Towns' **Weekly Legislative Report** is published each Friday during Vermont's legislative session.



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The Road to Self-Governance

On Wednesday, following much debate on and off the Senate floor, an amended self-governance bill, [S.106](#), passed the Senate. Last week, the bill was amended to include sections of the Vermont Constitution lodging authority to grant charters with the legislature, which would ensure that municipalities remain under the “patronage or control of the state.” A second set of amendments would prohibit local cities and towns approved for self-governance from addressing numerous transportation related issues: state highways; state sign laws; standards for classifying, reclassifying, laying out or discontinuing town highways; and motor vehicle requirements except for parking, aviation, or railroads.

Also on Wednesday, the Senate voted to include forestry in the list of areas of law that are off limits, but declined to add housing. As the chair of the Senate Government Operations Committee pointed out, housing issues such as tenant-landlord disputes, habitability and safety, availability and affordability are all issues that towns and cities regularly need to address at the local level.

The bill passed the Senate on a multi-partisan roll call vote, with 21 in favor and 8 opposed. Voting to pass the bill were Senators Balint, Benning, Bray, Campion, Clarkson, Collamore, Cummings, Hooker, Ingram, Kitchel, Lyons, Mazza, McCormack, Nitka, Perchlik, Pollina, Rodgers, Sears, Starr, Westman, and White. Voting against passage were Senators Baruth, Brock, Hardy, MacDonald, McNeil, Parent, Pearson, and Sirotkin. Senator Ashe was absent. Please take time to thank your senators who voted to support S.106.

The bill now goes to the House, where it is likely to be taken up by the Government Operations Committee.

Testing Autonomous Vehicles on Local Roads

Last week, the Senate voted out [S.149](#), a bill addressing miscellaneous changes to the laws related to vehicles and the Department of Motor Vehicles. A section of the bill addresses automated vehicles testing



health and safety. The indemnification includes not only construction or reconstruction periods of time but all time during which the use is present. On Thursday, the City and the Town of Rutland as well as VLCT Advocacy staff testified before the committee in support of H.364.

The City of Rutland is currently in court contesting the authority of VTrans and the railroad to require a master license agreement that would apply to all crossings in the city and in the town.

Many cities and towns have signed such master license agreements in the past. In part, the agreements read,

“The utility [town] hereby agrees to defend, indemnify, and save harmless the state and the railroad and their authorized agents, affiliates, tenants, subtenants, licensees, shareholders, officers, representatives, and employees from and against any and all claims, liability, demands, causes of action, cost, or expense arising directly or indirectly from any injury to or death of persons, or loss or destruction of or damage to property, that results directly or indirectly from the installation, maintenance, presence, or use of any authorized facilities, irrespective of any negligence on the part of the state and/or the railroad, or their agents and employees”... “It is the express intent of the parties hereto that the utility’s duty to indemnify shall include the duty to defend the state and the railroad and their authorized agents, affiliates, tenants, subtenants, licensees, shareholders, officers, representatives, and employees against any and all of the claims ...including but not limited to, attorney’s fees and costs.”

VLCT insures most cities and towns for liability. That insurance would be unlikely to extend to coverage of negligence of a third unrelated party.

VLCT Advocacy staff testified that the practice of requiring towns to assume all liability for not only their own potential negligence but also that of VTrans or the railroad has gone on far too long. The reality is that VTrans requires such an agreement prior to work being done because it can. It is time for this practice to end.

Act 250: Forest Fragmentation

This week, the Senate Natural Resources and Energy Committee took up [S.165](#), a bill proposing to amend [Act 250](#) by addressing forest fragmentation. The committee acknowledged that protecting habitat connectivity from forest fragmentation is a discrete enough issue to address without waiting for the entire rewrite of Act 250, a feat currently being worked on by the House Natural Resources, Fish and Wildlife Committee.

Act 250’s criterion 8(A) covers the protection of natural areas that focuses on necessary wildlife habitat and endangered species. The current law is extensive, and findings based upon it are frequently controversial.

Criterion (8) The District Commission shall find that the project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

8(A) (Necessary Wildlife Habitat)
I. Requirements for Issuance of Permit

Criterion 8(A) provides that:



A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species, and

- (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or
- (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied, or
- (iii) a reasonable acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

S.165 adds two additional sub-criteria to criterion 8 with definitions.

- 8(B) forest blocks: contiguous areas of forest in any stage of succession and not currently developed for non-forest use that is mapped as in interior forest block; and
- 8(C) habitat connectors: land or water that links patches of habitat within a landscape, allowing movement, migration and dispersal of animals and plants and the functioning of ecological processes.

Compliance with the new criteria would require incorporating a systematic strategy to first avoid fragmentation of a forest block or habitat connector, then minimize fragmentation, and finally mitigate if necessary. The bill would add a detailed section on mitigation of forest blocks and habitat connectors requiring the Natural Resources Board, in consultation with the Secretary of Natural Resources, to adopt rules outlining compensation measures for mitigation approval.

The existing criterion 8(A) places the burden of proof to show an unreasonable or adverse effect on any party that opposes the applicant. S.165 would place the burden of proof on the applicant to demonstrate his or her compliance with sub-criterion 8(B) forest fragmentation and 8(C) habitat connectors.

Readers will note that S.165 addresses just one criterion of the ten that regulate development in Act 250 and that S.165 is 13 pages long. The task that House Natural Resources has undertaken to rewrite the entirety of Act 250 is clearly enormous and hugely controversial. As a result, the draft legislation in the House committee will not be voted this session. Picking one criterion out of that pot may not be helpful, however, as no one will be able to say how it fits with the rest of the revisions under consideration.

Data Privacy

On Thursday, the House Commerce and Economic Development Committee took up [S.110](#), a bill that addresses data privacy and consumer protection. The bill is an outgrowth of legislative requests (in Act 66 of 2017 and Act 161 of 2018) for a report from the attorney general and Public Service Department to make recommendations on regulations concerning telecommunications privacy (whether Vermont should designate a chief privacy officer and what that person’s responsibilities would be, and whether to regulate businesses that handle the data of consumers with which they have a direct relationship) and any other reasonable privacy recommendations.

The report focused on data collection by businesses, organizations, and governments and the privacy concerns that arise from them. It stated that “Privacy ... concerns the information that businesses and others collect about individuals, how they collect that information, how much control individuals have over the collection, with whom data is shared, and to what purposes the data is used.” Recommendations from the report included:

- the creation of a chief privacy officer at the highest level of government so that office could compel adherence to data security standards across government;



- the requirement for a privacy audit to ensure that the government is handling citizen data securely and determine which laws need adjusting;
- updating the law regulating security breaches, which was last updated in 2012; and
- adopting legislation that parallels California’s Student Online Personal Information Protection Act (SOPIPA), which protects private data of K-12 students. (At least seven states have similar laws in place today.)

S.110 as it passed the Senate did not include provisions for a chief privacy officer, but it does include language similar to the SOPIPA. It also calls on the chief data officer (at the Agency of Digital Services) and chief records officer (at the Secretary of State’s office) to conduct a privacy audit concerning the three branches of government and managing personally identifiable information. That audit would include an assessment of laws, rules, regulations, arrangements or agreements requiring personally identifiable information to be shared between the branches of state government as well as with non-state entities, including municipalities. The bill also requests recommendations concerning the collection and management of personally identifiable information such as street and email addresses, telephone numbers, and demographic data.

Of course, municipalities collect and maintain such data, and its security – be it individual, municipal, or state information – is an enormous concern at all levels of government as well as to businesses and individuals. Local government advocates asked that local officials be included in the discussions about how personal data should be handled and what protections should apply to it.

The House committee will continue to discuss S.110. In an increasingly fraught cyber world, the need to constantly update security and privacy protection measures cannot be understated.

Education Funding

[H.536](#), the education funding bill, was passed by the House on March 27. Then it was sent to the Senate, where it was relegated to the Committee on Rules.

The bill incorporates the change in the term “nonresidential property” to “non-homestead property,” which better differentiates from homestead property and hopefully clarifies that the category includes every property that is not a homestead under the education funding law, 32 § V.S.A. 5401.

The bill would define a marketplace facilitator or seller to be a vendor whose sales to Vermont destinations that total at least \$100,000 – or 200 individual sales – during any 12-month period and would require marketplace facilitators who make retail sales on behalf of a marketplace seller (generally online) to pay sales tax. Under current law, which was passed last session, 100 percent of the sales tax is dedicated to the Education Fund.

The bill also establishes the property dollar equivalent yield, income dollar equivalent yield, and nonresidential education property tax rate for FY20. As well, the average homestead property tax rate was established.

Education Fund Outlook	FY2019	FY2020
Property dollar equivalent yield (per equalized pupil)	\$10,220	\$10,705
Income dollar equivalent yield (per equalized pupil)	\$12,380	\$13,164
Nonresidential rate (per \$100 equalized education property tax)	\$1.580	\$1.582
Average Homestead Rate(per \$100 equalized education property tax)	\$1.499	\$1.501

The most recent [Education Fund outlook](#) is posted on the House Ways and Means Committee Works Groups webpage.

Elsewhere in the State House

Elections Bill Update. During Week Six of the legislative session, the Senate Government Operations Committee took up what was at that point a draft version of a miscellaneous elections bill. Since then, the Senate passed [S.107](#), a bill that would make corrections to election laws. S.107 is now in the House Government Operations Committee, where it was introduced this week.

In [Weekly Legislative Report No. 7](#), we wrote about the draft version of S.107 and highlighted several aspects of the bill that would be of interest to local municipalities – such as the timeframe for which town clerks must have local ballots printed if a local election falls on the same day as a primary or general election, and clarifying language added to 24 V.S.A. chapter 37 to regulate the process of a municipality voting on the town manager form of government.

The bill, as passed by the Senate, does not change anything we said earlier. Accompanying the Senate bill to the House Government Operations Committee was an [Overview of S.107](#) that provides a digestible, section-by-section summary, of an otherwise lengthy bill. The overview further highlights the changes in each section and whether the edits were made for clarification reasons or for substantive reasons.

New Bills

BILL NUMBER	SUMMARY OF NEW BILLS	CURRENT LOCATION
S.174	Would require the use of ranked choice voting in all primary elections for U.S. Senator and U.S. Representative, and state office and in general elections for U.S. Senator and U.S. Representative.	Senate Government Operations
S.175	Would approve the dissolution of Rutland Fire District No. 10. (District members approved its dissolution on February 16, 2019.)	Senate Government Operations

Upcoming Testimony on H.542 (FY20 Budget)

On Tuesday, April 16, 2019, from 1:30-4:30 p.m., the Senate Appropriations Committee will take testimony from advocates regarding the Fiscal Year 2020 Budget ([H.542](#)) in Room 10 of the State House. To schedule time before the committee, contact Becky Buck at the Legislative Joint Fiscal Office at 802-828-5969 or rbuck@leg.state.vt.us.

Please see the appropriations table in [Weekly Legislative Report No. 12](#) for the funding items that would affect local governments, including the additional money for Town Highway Aid.

