



VLCT LEGISLATIVE PREVIEW

December 19, 2013

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The *Weekly Legislative Report*, a publication of the Vermont League of Cities & Towns, is published each Friday during Vermont's legislative session.

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Introduction

In a few weeks (Tuesday, January 7, to be exact), the legislature will re-convene for the second half of the 2013-2014 biennium. Its members will have to tackle some seemingly intractable problems. Many of those that affect local government we cover in this 2014 *VLCT Legislative Preview*.

- Education property taxes just keep rising – \$64 million more this year than last, if the prognosticators are correct. That's a 6.7 percent increase. And municipal property taxes are concomitantly constrained as a result. On November 26, the Commissioner of Taxes sent the legislature a letter required by statute that projects statewide education property tax rates for the coming year based on the law and forecasts. She recommended that both the homestead and non-residential education property tax rates increase by five cents. In mid-December, the commissioner had to revise those rates up by another two cents to a total of seven cents after discovering an error in the earlier computation.
- The Department of Environmental Conservation (DEC) Commissioner and Environmental Protection Agency (EPA) officials have been touring the state with a proposal to clean up Lake Champlain. That proposal significantly increases requirements to reduce non-point sources of phosphorus pollution and stormwater run-off as an alternative to further reducing phosphorus discharges from high-performing wastewater treatment facilities. The changes will cost a lot to implement but have little effect on reducing the lake's pollution. Municipalities are targeted to shoulder much of these alternative treatment costs.
- Have you been able to sign up for Vermont Health Connect, Vermont's health benefit exchange? For too many, the answer is still "no." The legislature will certainly want to examine that issue. And we are another year closer to the state's single-payer health care system start-up with important questions still unanswered.
- How can Vermont address issues concerning persons with mental illness before they become a safety risk to themselves and the public? The legislature must decide what services are available to them before a situation arises that involves local police and continues to use up resources at the state and local levels.
- What can Vermont do to keep our talented young people in this state where they will want to contribute to a growing economy and vibrant communities? How do we keep our young people safe in the face of increasing illegal drug availability? These are two parts of an issue that the Speaker has expressed an interest in addressing in 2014.

Many legislators have been busy for months working on summer study committees and special commissions. They met both in Montpelier and around the state with

citizens and officials to hear their ideas and opinions. Following is a list of the summer study committees and commissions and the issues that most concern local governments.

Transportation (H.510). What is the condition of town highways that serve state facilities (state parks, fishing accesses, etc.)? Where are they? Are they adequately funded?

Opioid Abuse (H.522). Recommend the most effective way to regulate the precious metal trade so as to decrease its attractiveness to the illegal drug business.

Lake Shoreland Protection Commission (H.530). Take testimony on the regulation of shorelands, provide information regarding current law, and make recommendations for changes to shoreland regulation.

Electric Generation Advisory Committee (H.530). Recommend legislation for the siting of electric generation facilities.

Designated Downtowns and Blighted Properties (H.377). Make recommendations for improving the Growth Center and New Town Center designation processes including additional incentives for and integration of industrial parks and rural development.

Property Tax Exemptions (H.295). What establishments are exempt from property tax, what is the lost revenue due to those exemptions, and are they appropriate?

Total Energy Study (Act 170 of 2012) What measures should Vermont take to ensure that it meets its goal of satisfying 90 percent of its energy needs from renewable sources by 2050?

Expect to see legislation introduced regarding most issues discussed in these study committees. The Agency of Natural Resources may be directed to adopt regulations that establish a threshold setback along lake shores and that provides for municipalities to adopt regulations at the local level protecting lake shores. The Department of Housing and Community Development convened a series of meetings ostensibly around designated downtowns that resulted in the compilation of an extensive list of changes to statutes regulating transportation, Act 250, and riparian and municipal planning and zoning laws that might (or might not) turn into legislation. Clearly, the education funding system, reliant on the property tax, is broken and estimated increases in 2014 are up to seven cents. The Governor has called for a symposium in January to evaluate the education funding system. As it has done in the past, VLCT again urges the legislature to establish a new education funding system in 2014. This time VLCT has lots of company in that call.

We encourage you to read the VLCT Municipal Legislative Priorities Brochure that recently arrived in your mailbox. Among all the legislative policies adopted by the VLCT membership at its annual meeting last October, Advocacy staff will, with your help, focus on those priorities in the second half of the biennium. And the phrase “with your help” is key. Last session, local officials made clear to their legislators the potentially detrimental results that some contemplated legislation would have had on local government. Advocacy is most effective when local officials tell their legislators their stories from the front lines of local government. In particular, we invite you to join us on Wednesday, February 19 for Local Government Day in the Legislature.

All bills that were introduced in 2013 but did not pass are “alive” again in January, although many of them will not be taken up. Generally, if an issue is still in play, a new bill will be introduced. Having said that, the deadline for introduction of 2014 Senate bills was December 13, 2013 (Friday the thirteenth).

With this preview of issues both new and old, we are ready to rock and roll with the new legislative session come January. Please join us!

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Property Taxes

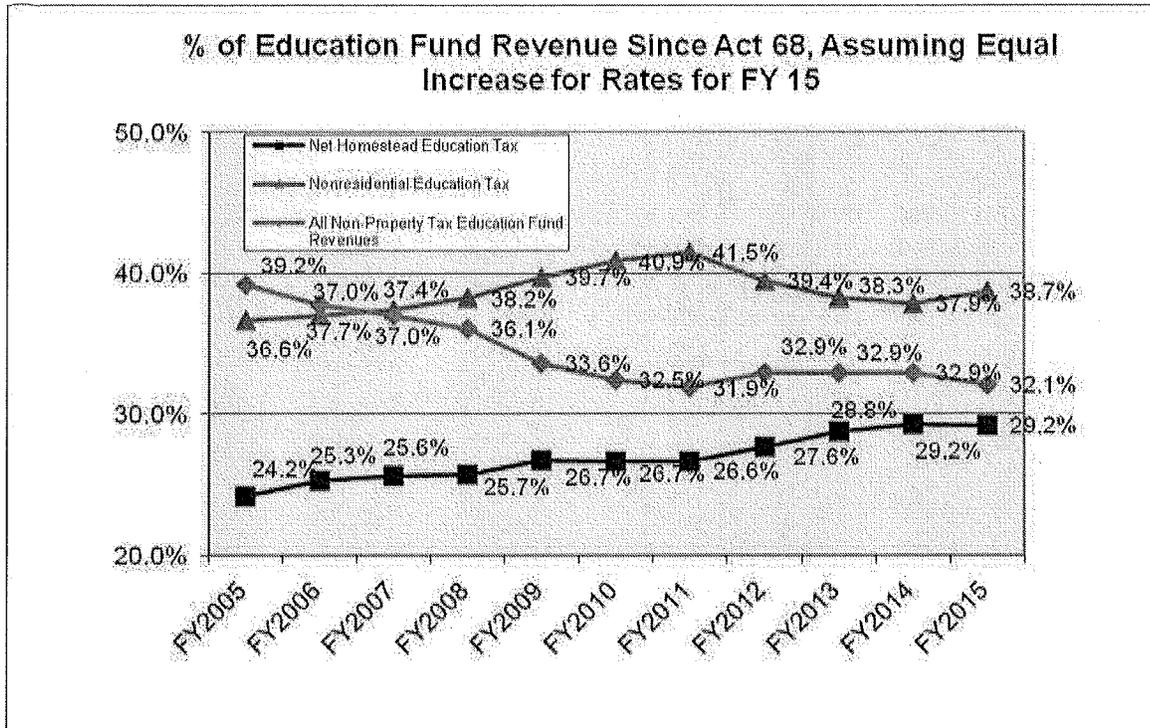
As mentioned above, state education property taxes are projected to rise dramatically – by \$64.4 million for FY15, based on projected school budget spending, student enrollment, grand list growth (or lack thereof), and changes within other sources of revenue in the state’s Education Fund. That \$64.4 million figure could be higher or lower, and how that increase is distributed among property taxpayers will be based on what the legislature, local school boards, and school district voters do in the coming months. It could be higher if the legislature mandates that more costs be paid for by schools or from the Education Fund. Examples of that are topics left over from last legislative session including paying for education programs for children earlier than kindergarten age or paying for college courses. One new initiative that could add to the state education property tax burden is to find a source to pay for retired teachers’ health insurance, something that has been made available to them by action of the Vermont State Teachers Retirement System Board of Trustees and the legislature, but for which neither body identified a revenue source to pay for \$20 million of annual costs this coming year. This is jeopardizing not only the health insurance but also the actual soundness of retirement benefits the state provides teachers. Not surprisingly, there seems to be unanimity among state officials that the Education Fund – and, hence, the property taxpayers – should shoulder this expense, even though they had no hand in creating the obligation.

The huge increase in state school property taxes described above could be reduced as well. That could happen if voters approve something less than the anticipated 3.8 percent increase in spending projected for school budgets to be considered at Town Meeting in March despite the decline in the number of students in the state. This may entail the voters voting down more school budget proposals made by school boards than in years past, unless boards scale down anticipated increases themselves. Property taxes could also rise to a lesser amount, or even go down, if the state finds other revenue to pay for education. It seems that we hear our state leaders speaking with one voice that “there will be no increase in broad-based taxes from the 2014 legislature” while the legislative bill raising the state property tax rates is being readied for action.

This war on property taxpayers will unfold next session in a series of campaigns and battles set in several theaters. How the additional \$64.4 million bill will be paid and by whom will be one battle. Besides the non-property tax revenues the state provides the Education Fund (which, since the passage of Act 68, have declined fairly steadily from a high of 39.2 percent of total revenue to a near-record low of 32.1 percent projected for next year), there are three groups of property taxpayers being forced to play high-stakes game of musical chairs. There is a good chance that all three could end up losing by paying more, but how much pain each will suffer relative to the other will be determined this session.

The three groups are the non-residential property taxpayers (businesses, open land, and second homes); residential property taxpayers with annual household incomes over \$90,000 ineligible for income sensitivity assistance; and those households under that income figure that pay based on income. Each group pays its share of the state education property based on rates set by the legislature every year. State law requires that each year by December 1 the Commissioner of Taxes must recommend what the state property tax rates should be for the coming year. This year, Commissioner Mary Peterson was forced to recommend that rates increase for all three of the musical chairs players. (See www.leg.state.vt.us/jfo/education/11-26-13%20Education%20Tax%20Rate%20Letter.pdf for the first version of her letter. As mentioned above after determining that that letter was based on erroneous data, she had to issue a correction on December 13, raising the property tax rates another two cents and the household income base for the first time ever. That second letter is posted at www.vlct.org/assets/News/Current/12-13_education_tax_rate_letter.pdf.) She recommended that the rate imposed on non-residential property taxpayers increase from \$1.44 to \$1.51, a 4.9 percent increase. She also recommended that the legislature

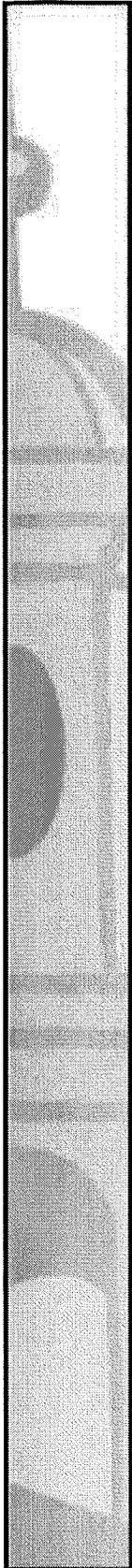
raise the base rate charged to residents ineligible for income sensitivity for residential property from \$.94 to \$1.01. She recommended that the legislature change the base rate charged to income eligible households from 1.8 percent of income to 1.84 percent. Because the actual rates charged both resident groups are adjusted upwards based on the spending decisions made at Town Meeting in each school district, given the projected growth in school spending actual, residents paying on property value will see their average actual rate increase from \$1.41 to \$1.54 – a 9 percent increase. Income sensitized residents will see their average actual rate increase from 2.7 percent of household income to 2.81 percent, a 4.1 percent increase. If the legislature approves the rates and the budgets are approved as projected, the graph below shows the breakdown of who is supporting education funding.



The battle of the rates will be fought mostly in the House Ways and Means and Senate Finance committees. The ongoing battles of new state-mandated expenditures from the Education Fund that could add to these rates will be fought in other committees scattered throughout the State House.

At the same time, more special interest groups feel that property taxes are too high on businesses and they will lobby for tax exemptions and tax reductions for the people they represent. Two exemption proposals that will be before the legislature will come from the solar energy proponents and the affordable housing advocates. The former will try to reduce municipal property taxes on their facilities; the latter will be trying to overturn a Vermont Supreme Court decision (in which VLCT presented a successful *amicus curia* brief in support of the two towns that were parties to the cases) that stated that certain affordable housing units are not automatically entitled to a lower assessment due just to their affordability mechanism. Every time the legislature exempts a group of properties from the tax, it leaves more to be picked up by those without advocates in the halls of the State House.

As bleak as the immediate future is, things may be getting ready to change in a big way. The House Ways and Means Committee is reviewing at least one plan (included in [H.160](#)) to dramatically overhaul the way that education is paid for, converting much of the residential property tax to a local income tax. Gov. Shumlin is “partnering with the Legislature to convene a symposium in early January with national and local finance experts to explore the complex issues raised by our funding system, in order to find ways to



make it more sustainable and accountable while balancing equity, quality and local control.” Also, a legislative study committee has recommended that the legislature revisit the law exempting many non-profit entities from having to pay municipal property taxes.

VLCT expects to be an active participant in the discussions and deliberations concerning the property tax and local decision making. Watch for much more on this important topic in the weeks to come. For more information on the Education Fund and its financing, visit www.leg.state.vt.us/jfo/education/EF%20Outlook%20FY2015.pdf.

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Water Quality

Last January, in response to the passage in 2012 of Act 138, a comprehensive law addressing water related issues, the Department of Environmental Conservation (DEC) provided the legislature with its Act 138 report. The report addressed how to remediate and improve the water quality of the state’s surface waters; how to fund that remediation, including whether or not to establish a statewide stormwater management utility; and where among point or non-point source discharges to focus the state’s attention. The department presented a number of remediation options but, in the year since, has not identified a preferred revenue mechanism. By the end of the 2013 legislative session, despite the introduction of 22 bills related to water quality, the General Assembly did not pass any legislation addressing the cleanup of Lake Champlain. Information about the Lake Champlain TMDL is at www.watershedmanagement.vt.gov/erp/champlain/

According to Agency of Natural Resources (ANR) staff when they wrote the Act 138 report, cleaning up phosphorus in the Lake Champlain Basin to comply with the Total Maximum Daily Load (TMDL) could cost between \$400 and \$800 million. Lake Champlain is one of three major water bodies in Vermont for which TMDLs are required by the U.S. Environmental Protection Agency (EPA). (The others are Lake Memphramagog and the Connecticut River, which drains from Vermont and New Hampshire through Connecticut and Massachusetts to Long Island Sound, where nitrogen is the major issue.) EPA must approve whatever plan Vermont develops to clean up Lake Champlain. The EPA has been working with ANR to develop a new TMDL and will acknowledge and give credit for all measures it approves that are undertaken to implement the TMDL goal. Vermont’s draft plan, which will be the TMDL for the lake, needs to include and credit every program that affects the lake, including any lakeshore zoning or development setbacks, and municipal efforts to implement the new planning goal of encouraging flood resilient communities.

Instead of passing a bill last spring, the House Fish, Wildlife and Water Resources Committee and the Senate Natural Resources and Energy Committee called on DEC to (1) continue working toward adoption of a new Lake Champlain TMDL with EPA; (2) staff the Lakeshore Protection Commission that travelled the state last summer; and (3) refine recommendations for implementing water quality remediation programs. Much of that work has already been completed. DEC has been taking its draft plan for a new TMDL, titled “Proposal for a Clean Lake Champlain,” to hearings around the state since December 2nd. Not waiting to hear the feedback to the report received from these hearings, the House Fish, Wildlife and Water Resources Committee met on November 4 to discuss a draft of a bill that would change the way municipalities discharge statutory responsibilities. The Agency of Agriculture, Food and Markets worked on a number of the bill’s agricultural provisions for water protection and clean-up that would affect farmers. This is a bill to watch very closely. As drafted in November, it would:

- address the contributions of agriculture to non-point sources of phosphorus laden runoff to the lakes by certifying small farms and conducting inspections at least once in five years and requiring annual

- training of farmers (medium and large farms are already regulated);
- require exclusion of livestock from waters of the state;
 - allow for manure spreading between December 15 and April 1 in certain circumstances;
 - prohibit the application of pesticides within 50 feet of any surface water, culvert, or at the base of any signage post or in any roadside ditches;
 - prohibit all extraction of gravel from watercourses except to protect dams, highways, and bridges;
 - direct the Secretary of ANR to create and make available a model stormwater bylaw or ordinance;
 - require stormwater permits for development of impervious surfaces greater than one half acre (current law says one acre) by January 1, 2015;
 - establish a Water Resources Preservation Program to provide technical support and grants or loans to projects that improve water quality, address past or prospective flood damage to river corridors and infrastructure; and
 - provide education, and implement TMDL plans through best management practices.

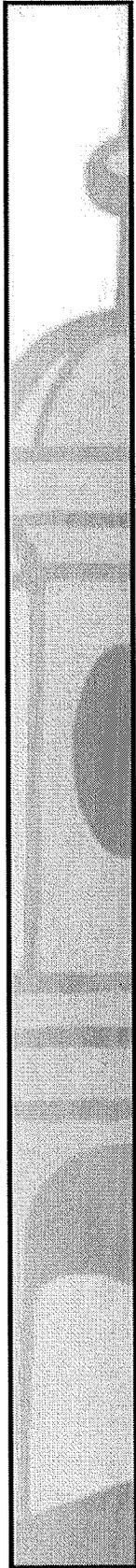
According to the bill, all of this would be funded with a “Water Resources Preservation Fee” imposed on every parcel of land in Vermont. The fee would be assessed in proportion to the property’s area of impervious surface, except that a default fee of up to \$50 could be assessed against each residential property. Fees could be reduced if stormwater best management practices were implemented on a parcel or for a farm if it is subject to a federal Natural Resources Conservation Service (NRCS) conservation plan. The secretary of ANR would have authority to exempt properties from the fee although the bill does not provide criteria for making such a decision.

The bill proposes to mandate that municipalities bill and collect the fee and remit it to the state treasurer, minus 0.225 of one percent of total fees collected for the city’s or town’s trouble. A municipality could retain 0.450 percent of the fee if it was a member of a stormwater utility² or had zoning bylaws or an ordinance that were equivalent to a utility or system. Proceeds from the Water Resources Preservation Fee would be set aside in a Water Resource Preservation Fund along with the proceeds of excise taxes to be imposed on “flushable products” and bottled water. Grants and loans would be awarded to watersheds in proportion to the amount of fees collected from each watershed for projects such as remediating significant contributors to water quality problems, addressing riparian conditions that pose increased risk of flooding, and contributing sediment to waters of the state.

In addition, the bill would require certification in erosion control expertise of “shoreland contractors” who would be on site supervising any project that disturbs more than 500 square feet of soil or vegetation in a shoreland area.

Towns would be mandated to adopt Agency of Transportation (VTTrans) road and bridge standards, themselves not without controversy due to the significant costs imposed on municipalities and the questionable effectiveness of some required practices in reducing stormwater flow. Failure to adopt and adhere to the standards would constitute a civil violation with a \$5,000 per day penalty up to a total of \$25,000. Towns not adopting the standards would forfeit five percent of their state highway aid allocation, with those funds being re-allocated to the towns that *did* adopt the standards.

Not all of these provisions are in the DEC’s Proposal for a Clean Lake Champlain, which admittedly is a document directed at complying with EPA requirements for reducing phosphorus contributions from all sources to Lake Champlain. It would not, for instance, require compliance with the road and bridge standards or sanction those municipalities that do not meet the standards. On the other hand, the proposal would require towns to obtain from DEC permits for all 11,000 miles of municipal roads through a general permit (with reporting requirements as currently written) and get permits for any



stormwater runoff from developed land. All non-Municipal Separate Storm Sewer Systems (MS4³) municipalities would also be required to develop a Green Stormwater Infrastructure program that encourages use of available tools, such as the VLCT model stormwater ordinance.

Lakeshore regulation was a subject of much debate last session. H.526, the lakeshore zoning bill, ground to a halt in the Senate Natural Resources and Energy Committee in the last days of the 2013 session, though it awaits possible action during 2014. A legislative Lakeshore Protection Commission toured the state last summer to explain to attendees about lakeshore protection strategies and the stress that Vermont lakes experience because there is no state law addressing lakeshores. The commission received at least 320 comments and issued a draft report in November that declined to speculate about how the Senate Natural Resources and Energy Committee might address the issue. On January 8, the commission will convene a public hearing in the State House (Room 11 at 6:00 p.m.). The commission's draft report, along with the comments it received are posted at <https://leg2.vermont.gov/sites/legislature/LSP/default.aspx>.

Another bill, H. 401, which *did* pass last year, added a fourteenth goal to the Title 24 Chapter 117 planning statutes, "to encourage flood resilient communities" and requiring a flood resiliency element in all municipal and regional plans. Both H.526 – when it eventually passes – and H.401 would, over time, reduce flows of sediment and phosphorus into the lake because land adjacent to rivers, streams and lakes would be managed to reduce the likelihood of those discharges.

Section 4 of VLCT's 2014 Municipal Policy reflects our concern with water quality issues:

- 4.05 A. The state should provide financial and technical support to municipalities in order to implement the Clean Water Act through locally appropriate watershed plans and stormwater management provisions that promote the health of the economy and the environment.
- 4.05 F. Success in restoring and improving clean water for future generations depends on controlling non-point sources; avoiding water quality degradation; and continuing to provide wastewater treatment in a cost effective manner. The enforcement and implementation of the TMDL for phosphorus in Lake Champlain should ensure that all public dollars are spent to improve the water quality of the lake in the most effective and efficient manner, recognizing that expensive improvements to wastewater treatment processes for phosphorus treatment often make minimal impact on the water quality of the lake.

Clearly 2014 will be yet another session full of water issues – pollution, protection, property rights, entitlements, management, allocation of responsibility between town and state, and of course money. *Lots* of money.

Contact Karen Horn at 1-800-649-7915 or khorn@vlct.org.

Footnotes

1. A regulatory term in the U.S. Clean Water Act that describes a value of the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards.
- 2.. A geographic area within which stormwater management rules are established and fees are paid to implement, operate and maintain stormwater infrastructure.
3. MS4 communities (12 municipalities plus the University of Vermont and VTrans) are subject to a permit from DEC regulating stormwater discharges and requiring flow restoration plans to implement stormwater TMDLs in their jurisdictions.

Transportation Issues

More than 80 percent of all roadway mileage in Vermont is town highways. Vermont cities and towns are responsible for 11,944 of the 14,147 total highway miles in the state. (The State of Vermont maintains the

remaining 2,203 miles.) Because of this remarkable municipal responsibility, VLCT's first transportation priority for the 2014 legislative session is to prevent any cuts to and increase funding for Town Highway Aid payments, Class 2 Paving and Town Highway Structures grant programs, and the Town Highway Bridge program. Advocating for increases to Town Highway Aid funds is especially important this year, as new mandates – including road and bridge standards and permits that will dictate stormwater management and erosion control on town highways – will impose significantly higher costs on municipalities. Many of these mandates are tied to the new Lake Champlain Total Maximum Daily Load (TMDL) requirement imposed by the U.S. Environmental Protection Agency, which will cap the amount of phosphorus allowed to enter the lake. VLCT also urges the state to provide sufficient funding to maintain, repair, or replace Vermont's structurally deficient bridges, many of which are at the end of their operational lifespan. Such funding is also needed to bring such structures up to federally and state mandated requirements.

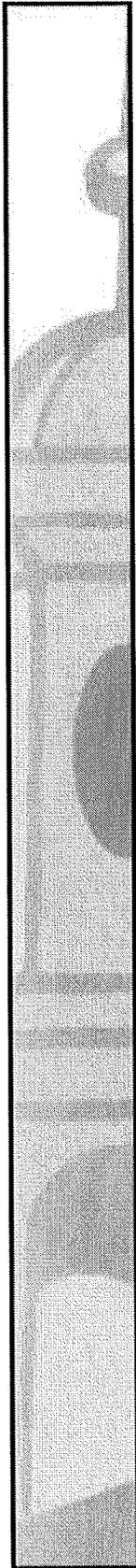
Last summer, VLCT participated in the Act 12 Section 30 Study Committee to review town highways serving state facilities and whether they warranted additional state highway aid. The committee listed, reviewed, and determined the condition of class 3 and class 4 town highways that serve as the primary access to state parks and other state facilities to determine whether the state was adequately supporting these roadways with payment in lieu of taxes (PILOT) payments and other funding resources. The study concluded that most of these roadways are in good condition, though a few were not supported sufficiently by the state. To address the funding gap, the committee recommended alternative funding mechanisms such as supplemental state aid for the specific highways, or making those class 3 and class 4 town highways eligible for the Town Highway Class 2 Roadway Grant Program. Those recommendations are included in the committee's final report to the House and Senate Transportation committees, which is posted on our website at www.vlct.org/advocacy/weekly-legislative-reports/related-documents/. It is naturally up to the legislature to act on the committee's findings.

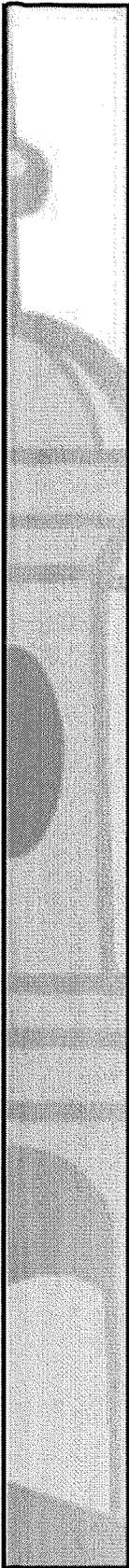
Last winter, the agencies of Transportation (VTrans) and Natural Resources (ANR) provided updated Town Road and Bridge Standards to Vermont municipalities. The standards allow the Federal Emergency Management Agency (FEMA) to determine eligible repair work under the FEMA Public Assistance Program if a federally declared natural disaster occurs. The standards also address water quality associated with roadway run-off and pollution. Beginning in October 2014, municipalities that adopt these standards will be eligible to receive a 12.5 percent (instead of 7.5 percent) state share of the FEMA-approved total project cost. To date, however, only 34 municipalities have adopted the standards.

Municipal officials should keep track of transportation-related funding priorities that affect their towns. Approved municipal transportation programs in the FY14 budget include:

Town Highway Bridges	\$16,566,597
Town Highway Structures.....	6,333,500
Town Highway Vermont Local Roads	400,000
Town Highway Class 2 Roadway.....	7,248,750
Town Highway Aid Program	25,982,744
Town Highway Class 1 Supplemental Grants	128,750
Town Highway Emergency Fund.....	4,750,000
Municipal Mitigation Grant Program.....	1,551,000
Public Assistance Grant Program.....	<u>29,235,250</u>
Total.....	\$92,196,591

Twenty-thirteen was a banner year for Vermont transportation legislation. Act 12 will increase state taxes and assessments on gasoline by six and half cents per gallon by the year 2016. The act also raised the diesel tax by three cents per gallon over two years and cuts approximately \$4 million in planned FY 14





state expenditures, including from VTrans' paving, rail, aviation, and maintenance budget items. There were no cuts to Town Highway programs. The agency may now also – without legislative approval – relinquish to municipalities sections of the state highway rights of way that have been replaced by new construction and are no longer necessary, though it must enter into an agreement with the affected municipality before relinquishing those sections.

VLCT will continue to urge the legislature to keep municipal transportation needs in mind when crafting bills during the 2014 legislative session.

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Public Safety

The Burgeoning Drug Culture. VLCT's first priority issue in the Public Safety section of its 2014 Municipal Policy urges the state to provide municipal officials the tools and funding to combat the growing drug culture in Vermont. Increases in illicit drug sales, usage, and trafficking – in particular, in abuse of prescription drugs and heroin – are a danger to our towns and cities. Studies show that increases in illegal drug use beget increases in crimes such as burglary, assault, and driving under the influence, along with other related types of crimes. Between 2010 and 2011 (the last year for which figures are available), the number of burglaries in Vermont increased by almost 18 percent. Local law enforcement will need increased funding and authority to combat an escalating level of drug-related crimes. The solution *cannot* be to shift costs to municipalities or to impose new mandates.

Precious Metal Dealers. Last summer, the Interim Study Committee on the Regulation of Precious Metal Dealers developed a recommended bill that increases oversight and regulation of precious metal dealers in an attempt to reduce the number of robberies in Vermont, particularly of jewelry and other valuables, by reducing the opportunities to fence the “swag.” The bill requires the Office of Professional Regulation to certify anyone who deals in precious metals by first collecting and reviewing any criminal records. The bill also prescribes how these dealers record their sales, requires a holding period of no less than 10 days before the dealer may offer an item for sale or scrap, and details the fines and penalties that can be assessed if they violate any of the bill's conditions. Language in the bill creates a statewide stolen property notification system to facilitate “timely electronic communication concerning the reported theft of precious metal among precious metal dealers and law enforcement agencies throughout the state.”

Whether the legislature will act on the committee's findings is yet to be determined. VLCT will of course keep you apprised of any developments.

Municipal Police Injuries at the Police Academy. Recently, some towns raised the issue of having to pay for injuries municipal police sustained while training at the Vermont Police Academy. The Academy currently is not liable for injuries sustained at their training center. These injuries have led to as much as a 40 percent increase in municipalities' workers' compensation premiums and, especially with smaller law enforcement departments, unfilled employment shifts and increased overtime pressures. In the past 10 years, VLCT has processed 157 training injury claims from municipal law enforcement officials at the police academy totaling approximately \$414,000 in payments. We hope to work with legislators to address this issue in the upcoming months.

Designated Populations. After meeting numerous times last summer and fall, the Act 33 Study Committee on Providing Community Support for Persons with Serious Functional Impairments issued a report detailing recommendations for the 2014 legislative session that include (1) passing legislation that stops the use of the “serious functional impairment” (SFI) designation outside of corrections facilities due to the stigma it carries, and (2) directing resources towards early intervention efforts to divert

designated population members from the criminal justice system (the “sequential intercept model”), among other proposals.

Many municipal officials find that local law enforcement often bears the brunt of responding to and resolving emergency situations when state supervision of “designated population” members fails. Municipal law enforcement, already overtaxed in terms of both time and resources, is not trained in the management skills needed to resolve situations that arise from the special needs of designated populations. These officers should not be the default intervenors in such situations.

VLCT Advocacy staff will closely follow and report on these and other public safety issues in our *Weekly Legislative Reports* and YouTube Channel postings at www.vlct.org/advocacy/weekly-legislative-reports/ as the 2014 legislative session unfolds.

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Downtown and Growth Center Designation; Protection of Natural Resources

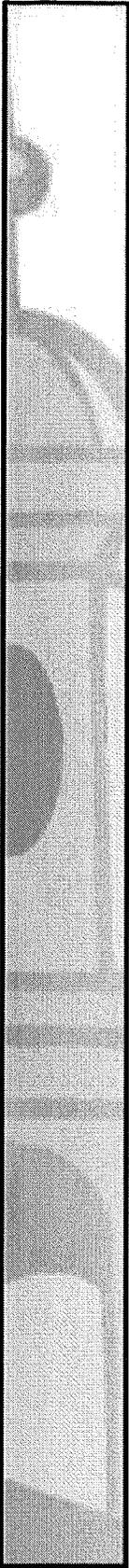
Since the establishment of the Growth Center and Downtown Designation Programs in 2006, 23 downtowns and more than 100 villages have received designation, six growth centers have secured approval, and two new town centers have been created. Apart from the village designation program, this suite of programs designed to encourage compact growth has been underutilized. Why?

Last session, the legislature passed H.377 to revamp the state’s process to designate downtowns and called on the commissioner of the Department of Housing and Community Development (DHCD) to examine ways to strengthen the growth center and new town center designation approval processes. The legislation directed DHCD to (1) consider modifying the designation process, (2) address unique circumstances of different municipalities and how to include municipalities of all sizes and growth pressures in the designation programs, (3) provide additional incentives for all the designation programs, and (4) integrate industrial parks and rural development and protection of natural resources into the programs. Those directives don’t leave out much!

During the summer, the commissioner convened a number of stakeholder group meetings on land use topics that included agriculture, natural resources, industrial parks, municipalities, hosting growth centers, and a whole lot more. Participants offered proposals to increase use of the programs and to direct development to compact settlement areas away from waters that flood, steep slopes and upland areas covered a myriad of land use-related issues, such as:

- mapping habitat connectivity and making those maps available to local planning commissions;
- protecting large blocks of forest;
- re-establishing a “road rule” in the Act 250 process that allows district commissions to address cumulative development in rural areas;
- eliminating agricultural lands mitigation costs in designated areas;
- re-establishing some municipal zoning jurisdiction over agricultural structures;
- prioritizing energy efficiency investments in compact growth areas;
- establishing differential state permit fees to make development cost more in rural areas and less in designated areas;
- prohibiting new state investments in flood prone areas;
- implementing a tiered system of permitting for flood plains, floodways and, river corridors; and
- providing funding to purchase land in flood prone areas.

The Agency of Natural Resources has jurisdiction over a number of these priorities for action. Thus incorporating them into the practice of land use planning and regulation would be up to that agency



and not necessarily the Department of Housing and Community Development.

Over the years, the VLCT membership has developed policies on many of these subjects and proposed changes that strengthen the ability of local governments to engage in planning and implementation of plans which to this day, remain the statutory basis of much of Vermont's land use law.

The state must provide local governments both the authority and resources to manage growth and land use in their municipalities, and quite a few of the proposals noted above would give municipalities the tools to more effectively manage their development. Certainly high quality and accurate maps of habitat corridors, fragile uplands and steep slopes, flood ways, and energy mineral and agricultural soil resources will help town planners formulate policies about which places are best suited to development.

Local officials recommend revising Act 250 so that projects with local impacts would be reviewed by the municipal board, and projects with regional or statewide impacts would go to Act 250 district commissions. Municipal planning commissions, particularly in small towns, spend most of their time adopting and then rewriting and re-adopting municipal plans, which expire after five years according to the law (24 V.S.A. § 4387). For some time now, local officials have advocated extending the life span of adopted municipal plans to ten years. The extra time would give them time to concentrate on particular issues, secure relevant training, evaluate the degree to which vision matches reality over time, and investigate how to incorporate new technical assistance resources into their responsible planning arsenals. Planning commissions already have authority to amend plans "from time to time" in light of new development and changed conditions affecting the municipality.

Local officials further supported restoring authority to regulate siting and location of agricultural and silvicultural facilities as well as clarifying what is an agricultural or silvicultural structure. They support enabling municipalities to establish incentives and requirements to develop housing, provide funding for and make the investments in infrastructure necessary for robust economic development, and encourage development that allows people to stay in Vermont. They also want the legislature to provide incentives to spur development in locally planned growth centers as well as designated downtowns, new town centers, or village centers. New policies and incentives should facilitate development that revitalizes traditional downtowns, promotes smart growth, and mitigates damage caused by natural or manmade disasters.

A significant issue is paying for all the mapping initiatives, water protection, and development incentives that would encourage people and businesses to locate in downtown areas and compact settlements. The stakeholder meeting attendees were clearly aware of the resource constraints at all levels of government. And that, of course, is the rub this year as always: the State of Vermont simply does not have the resources to accomplish all that it wants to. The designation programs lack incentives, other than the severely constrained Tax Increment Financing (TIF) program, because there is no way to fund them. (A TIF program is a method of dedicating a portion of property tax revenues within a designated geographic district to spur development and redevelopment, infrastructure investment, and other improvement projects.)

DHCD has not yet sorted out which proposals it will pursue in the 2014 session or which ones it will leave to the agencies of jurisdiction. Watch for much more on this discussion in January as legislators return to work under the Golden Dome.

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Energy Generation and Transmission

Last summer, the legislature established a four-member joint House and Senate study committee to study electric generation issues. The committee met four times, most recently in October, when it met with members of the House and Senate committees on Natural Resources and Energy. VLCT testified at that meeting.

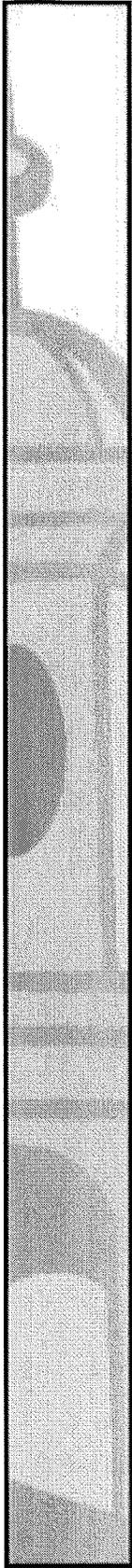
Chapter 117 of Title 24, the planning statutes, requires regional and municipal plans to include:

- “an energy [element/plan], which may include an analysis of energy resources, needs, scarcities, costs, and problems within the [region/municipality], a statement of policy on the conservation of energy and the development of renewable energy resources, and a statement of policy on patterns and densities of land use and control devices likely to result in conservation of energy.” (24 V.S.A. § 4348a (a)(3) for regions and § 4382 (a)(9) for municipalities);
- “a utility and facility plan, consisting of a map and statement of present and prospective local and regional community facilities and public utilities, whether publicly or privately owned, showing existing and proposed educational, recreational and other public sites, buildings and facilities, including ... power generating plants and transmission lines ... and recommendations to meet future needs for those facilities, with indications of priority of need” (24 V.S.A. § 4348a(a)5 for regions and § 4382 (a) (4) for municipalities);
- “an economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth” (24 V.S.A. § 4348a (a) (10) for regions and 4382 (a) (11) for municipalities).

Despite municipalities that undertake planning being obligated to address generation and transmission matters in their plans, the statute goes on to require that a “bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.” (24 V.S.A. § 4413 (b)).

This is a problem. On one hand, municipalities are called on to plan for transmission and generation projects, yet on the other hand they have no meaningful role in permitting or regulating such facilities. The Public Service Board (PSB) – which *does* have the authority to permit and regulate such facilities – is required only to give “due consideration” to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. (30 V.S.A. § 248 (b) (1)). This has been shown to be clearly inadequate in a number of recent cases (mostly for wind towers) where municipal recommendations and plan elements were given scant attention.

Governor Shumlin created a five-member Energy Siting Commission in October 2012. Its report, issued last April after many meetings and hearings around the state, explained that the number and type of generation projects that are proposed are far different from those proposed as recently as 2005. Those recent changes in the nature of project proposals have created tremendous controversy. The combination of outdated language dictating what conditions the PSB may apply to new types of projects and the number of projects has created a controversy playing out in towns across the state. The PSB Certificate of Public Good permitting process was designed to address a small number of large generating



facilities, whereas the current scenario is multiple companies, some with no connection to Vermont, proposing a plethora of renewable energy facilities to be constructed across the state. These facilities have impacts in not only the host community but also neighboring communities, particularly when they are located on ridgelines near town borders.

At VLCT's annual meeting in October, the membership spent an hour and half discussing municipal policy on the siting of electric generation and transmission facilities. The policy that was adopted states:

4.06 D. *In the Certificate of Public Good process, the PSB should give "substantial consideration" to municipal concerns and determinations by holding hearings in any municipality potentially affected by a proposed project. The PSB should include all local decisions concerning the project within the PSB docket, formulate areas of inquiry based on concerns raised in the local hearing process, and require any decision to address local concerns raised in local determinations and adopted municipal plans. (Substantial consideration would include all of the items identified in this paragraph).*

This same position was adopted by the VLCT Board of Directors last year and staff presented it to the Energy Siting Commission as well as the legislative Natural Resources and Energy Committees during their initial consideration of S. 30, which was eventually passed as Act 38.

The Commission, with the sole exception of Commissioner Louise McCarren, supported applying this recommendation to regional commissions, if those commissions devised plans that repeat Public Service Department's (PSD) energy goals and conform to its Comprehensive Energy Plan (CEP). In her minority report, Commissioner McCarren wrote,

"A fair interpretation of the proposal is that the PSD will have the authority, if it determines that in aggregate there has been insufficient land designated for the siting of electric generation, to specify regional and municipal land use obligations and locations for generation siting. ... This centralization of decision making regarding electric generation site selection reduces the role of municipalities, may relieve developers from working closely with municipalities and enshrines the non-statutory CEP as the controlling land use document. As the majority report indicates, current electric generation siting and land use law would need to be amended to transfer local authority to the PSD.

"A simpler solution, and one that preserves the Public Service Board's role in determining the overall state "public good" but increases the weight to be given to duly adopted municipal plans, is to amend 30 V.S.A. § 248 to delete 'due consideration' and replace it with 'substantial consideration' for municipal and regional plans."

If the Commission's recommendation were enacted, municipal plans that are compatible with the regional plans would be given "substantial consideration;" otherwise, municipal plans would be given "due consideration" but recommendations of the planning commission and local legislative body would no longer have even that standing. Taken together, the PSD, regional commission, and municipal plans that were accorded "substantial consideration" would create a cascade of consensus before the PSB that might – but more likely wouldn't – reflect discussions about the appropriateness of a project.

Vermonters tend to agree on state energy goals but disagree significantly on how to achieve them and on whom the burden of proof should fall – the applicant or other interested parties. The conversation changes significantly when a project is proposed and both location and facts of the application move from general to specific. A municipality must have standing

in the PSB process to take its concerns to the PSB and have them attended to, regardless of whether or not its plan parrots that of the state. It also must have enough money to pay to defend its plans and decisions in the PSB process.

There will likely be a number of energy-related bills again in 2014, even if the legislative Joint Electric Generation Siting Committee does not make any recommendations. The Public Service Board constantly receives controversial generation and transmission project proposals to review. Municipal officials have given a lot of thought to developing plans that address renewable energy within their town boundaries and have much to say about the applications for projects there. So the issue of the weight given to municipal determinations will not soon go away.

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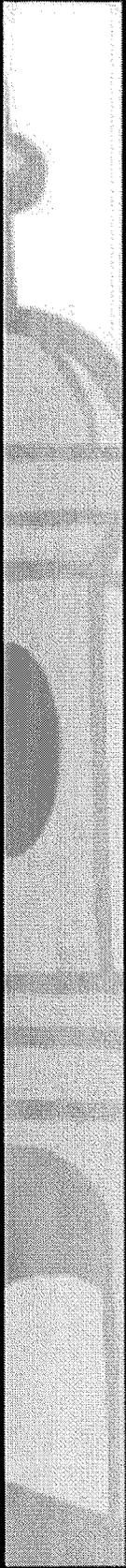
Health System Issues

Health system reform issues will again be front and center this legislative session. The rocky launch on October 1, 2013, of Vermont Health Connect (VHC), Vermont's health benefit exchange, required by the federal health system reform law, will generate much discussion about what happened and how it can be improved.

Health Insurance Exchange Implementation. The federal health reform law requires states to establish health insurance exchanges that begin offering health insurance on January 1, 2014. The idea behind these exchanges is to create a marketplace where individuals and small employers can purchase health insurance at competitive prices with the ability to compare plans and health insurer plan offerings on an apples-to-apples basis.

VHC now offers health insurance plans to individuals and small employers (up to 50 employees). Unlike in other states, the Vermont law prohibits the purchase of health insurance plans for these groups outside of the exchange. The launch of VHC was difficult at best as the web portal was rife with problems. As a result, in mid-November, the state gave small group employers the option of purchasing VHC plans directly from the participating health insurers, thus bypassing the problem-plagued website. Small employers were also given the option of extending their current health insurance policies for three months.

By December 1, it was evident that the VHC website would not be able to service small employer groups in time for their January 1 renewal date. The state-established deadline for going directly through the insurers had passed a week prior. Thus the groups that had stayed with VHC faced a problem. The state's remedy was to announce that these groups' current plans would be extended into 2014 until the VHC website was fully functional. This created a variety of problems for many of these groups and their employees, especially if they were moving from a high deductible plan to a richer, higher premium health plan. In some cases, this put the employer and or its employees at financial risk due to the difference in plan designs and cost sharing structures. It is interesting to note that last August, the Vermont Department of Financial Regulation issued a bulletin warning that "replacement of existing health coverage on a mid-term basis will subject covered persons to additional out of pocket health costs ...", and that "The Department will consider a mid-term replacement sale ... to be the sale of an unsuitable policy and a violation of the Unfair Trade Practices Act unless the Insurer and Producer can document that the policy holder was informed of the potential adverse affects of a mid-term policy change."



This series of missteps by the state and its contractors created much hardship and uncertainty for Vermont municipalities and many other small business and individuals. The legislature will try to solve these problems during the upcoming session. We hope that legislative committees will look into not only the software design and implementation failures, but also the transparency of state officials in communicating the extent of these problems to impacted health insurance buyers in time to actually make alternative plans. The committees should also consider the management decisions and timeline for the implementation of a series of “Plan Bs” that arose out of the problems that precluded the exchange functioning as promised on the timeline established. Finally, there should be discussion of the lack of true customer service focus by VHC, though its staff was as accommodating and friendly as it could be during all the trials. Many decisions seemed to be driven by internal, bureaucratic, and political needs rather than a customer needs and service focus.

With the plan designs approved by the Green Mountain Care Board, most Vermont municipalities had to change the health insurance plan(s) that they offered when they entered VHC. About 70 percent of municipal employees in Vermont are currently in High Deductible Health Plans (HDHP) compatible with Health Savings Accounts (HSAs). The HDHP plans offered through Vermont Health Connect do not match plans currently being offered by Vermont municipalities. The deductibles in these plans are reduced due to federal law; however, the co-insurance and out-of-pocket maximums are generally higher. This has been a challenge, especially for municipalities with collective bargaining agreements.

As we predicted, many municipal employers changed their funding model and funded richer plan designs with lower out-of-pocket maximums. This resulted in more premium dollars being sent to the health insurance companies and less money for employee HSA accounts or employer health reimbursement accounts. The result was higher costs for both the employer and most employees that in most cases could result in lower employer premiums, if used through some exchange plans. For municipalities, higher health insurance costs translates into higher property taxes.

Health System Financing. As Vermont moves towards a single payer/universal health care system called Green Mountain Care, which is slated to begin just three years from now in 2017, the legislature must begin to consider how such a system will be financed. We expect there will be in-depth discussion of different financing structures in order to begin a process to decide which ones will work best. It is important to note that it is estimated that \$1.6 *billion* in new tax revenue will be needed to replace the employer and individual premiums now being paid in the current system. For a perspective on the size of this cost, a one-percent increase in the state income tax would raise approximately \$109 million in tax revenue. A one-percent payroll tax would raise about \$119 million. It is an immense challenge to build a funding system that is both adequate and fair. In addition, the tax sources must be able to support increases in health care costs, which are, it appears, inevitable.

Reform. The Green Mountain Care Board is in full operation and the legislature will continue to receive reports on its progress towards controlling health system costs. The Board’s scope of work includes developing and managing medical payment reform; overseeing the state’s IT plan implementation; maintaining a robust health system workforce; setting payment rates for providers; approving health insurance rates, hospital budgets, and Certificates of Need; reviewing and approving health insurance exchange decisions; developing a performance evaluations system; and developing and approving the single payer system benefits package, budgets, and financing.

Mandates. What legislative session would be complete without health insurance coverage mandate legislation being put forth? Mandates are an inefficient way of creating the illusion that all Vermonters receive a benefit that the legislature has determined to be in the public interest. In fact, health

insurance mandates only address issues for those Vermonters who have commercial health insurance regulated by the state. Self-insured employers (many of Vermont's largest employers, including the state employees) and Medicare are not subject to these mandates. Often participants in state programs such as Medicaid, VHAP, and Catamount Health are also not provided the coverage the state requires other providers by these mandates. All state health insurance mandates should be treated as public health issues. If these needs are truly public health needs for all Vermonters, then they should be publically funded and available to all Vermonters, not just to those with state-regulated health insurance. This will allow these services to be managed for quality and cost. What better opportunity is there to develop a small scale demonstration program that shows that efficient, high-quality, and cost-effective health care delivery can come from a coordinated universal/single payer health system?

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Getting Your *Weekly Legislative Report* Online

Last session, 2,521 local officials were emailed a link to the *Weekly Legislative Report* soon after it was written each Friday morning. Another 740 received paper copies in their mailboxes the following Saturday. We also deliver paper copies to the Vermont legislators at the State House on Tuesday mornings. We harp on this every year, but we *do* believe that reading the *Weekly Legislative Report* online is a grand idea. You'll get the news quickly and conveniently, and be able to instantly access related online information via hyperlinks embedded in the articles. Plus it'll reduce our printing and mailing costs. That address again is www.vlct.org/advocacy/weekly-legislative-reports/, where you can also watch VLCT Advocacy's weekly Policy Highlights that we post to You Tube. We also link to the *Weekly Legislative Report* via Facebook and Twitter at VLCT Advocacy.

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But please consider, again, going green this year. (If it helps, envision a world without paper cuts.) Read your *Report* online.

Upcoming Public Policy Events

Lake Shoreland Protection Commission.....	Wednesday, Jan. 8, 6 p.m., Room 11, State House
Governor's Symposium on Education Finance.....	Tuesday, Jan. 14, St. Michael's College