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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Conflicts of Interest

This week, the House Government Operations Committee continued to discuss S.8, a bill that would establish both a State Ethics Commission as well as standards of governmental ethical conduct. The bill proposes to prohibit certain types of employment for legislators after they leave office as well as certain campaign contributions. It would require disclosures from executive officials and financial disclosures of state official and legislative candidates every other year. A newly created State Ethics Commission would review and track complaints regarding unethical conduct of certain government employees and officers. By July 1, 2018, the commission, in consultation with the Department of Human Resources, would also create and maintain a State Code of Ethics that sets forth principles of governmental ethical conduct.

The bill also mandates that all towns in Vermont adopt conflict of interest policies by July 1, 2020. The Senate Government Operations Committee recognized that municipalities will need time to ensure full compliance with such a mandate, as they will have to draft, review, vote, educate, and train local officials on the new policies or ordinances. Specifically, the bill would amend 24 V.S.A. § 1984 to mandate that towns vote to adopt a conflict of interest prohibition. If a municipality already has a conflict of interest policy or ordinance in place that substantially complies with the provisions of 24 V.S.A. § 1984, it will not run afoul of the law.

Municipalities have taken the lead in Vermont government with regard to adopting conflict of interest policies and regulations. While some sectors of Vermont government have done little to address these prohibitions, nearly a third of Vermont's municipalities already have some form of a conflict of interest or ethics policy or ordinance in place, and more communities are adopting policies every year. Current law already mandates that zoning boards and commissions that conduct quasi-judicial proceedings must have conflict of interest policies in place. It is therefore encouraging to see the legislature imposing similarly robust prohibitions on the other branches of state government and elected officials who currently lack such conflict of interest prohibitions.

Economic Development

On March 31, the Senate passed S.135, a comprehensive economic development bill which is now in the House Commerce and Economic Development Committee. As it passed the Senate, S.135 would amend and update economic growth incentives, including enhanced incentives for businesses to increase jobs in economically disadvantaged regions of the state or to promote growth of environmental technology businesses that provide high quality jobs and improve the natural environment. The bill would also:

- establish a public retirement program that businesses could voluntarily join for their employees or that self-employed people could join;
- create a minimum wage study committee;
- require the Agency of Natural Resources to conduct outreach to cities and towns regarding their ability to be delegated authority to permit a municipal water or wastewater line to be connected to subdivided land, buildings or campgrounds;
- increase income limits for eligibility for affordable housing programs to encourage workforce housing;
- amend – or, for municipalities whose populations are greater than 10,000, eliminate – the Act 250 jurisdictional thresholds for priority housing projects;
- increase Downtown and Affordable Housing tax credits; and
- amend the limit on the number of tax increment financing (TIF) districts to allow for up to two new districts in a single county and not more than 14 new TIF districts.

The House Commerce and Economic Development Committee may add language to the bill to provide for rural economic development infrastructure districts. (See next article.)

REDI Districts

On Tuesday, the House Commerce and Economic Development Committee heard testimony on H.459, a bill that would provide for the establishment of rural economic development infrastructure (REDI) districts that would enable the financing, owning, and maintaining of infrastructure designed to provide economic development opportunities in rural and under-resourced areas. There has been a lot of talk this session about the need for infrastructure in rural areas that would facilitate economic growth, and the House Rural Development Caucus is working hard to develop initiatives to encourage business development and growth in those areas. Two of the most significant needs are wastewater capacity in village centers and broadband deployment. Broadband refers to high-speed internet access that is always on and faster than the traditional dial-up access and which includes several transmission technologies, including fiber.

The bill as proposed would allow a selectboard to establish a REDI district upon petition of at least 20 voters within the proposed district. The application would need to describe the infrastructure, financing plan, anticipated economic benefit, sources of revenues, and plans to retain or disburse excess revenues. A REDI district would not be authorized to levy taxes. A district could encompass two or more municipalities or portions of municipalities.

Act 89, passed last year, provided for regional commissions to establish inter-municipal services agreements among municipalities. The Chittenden County Regional Commission is using that mechanism as it considers creating regional dispatch services. As well, current law allows towns to establish union municipal districts, fire districts, inter-municipal agreements, mass transit authorities,

consolidated water or sewer districts, special assessment districts, property accessed clean energy districts, and inter-local contracts, each of which has a slightly different purpose and serves a different constituency. Some of them have taxing authority and some do not. All of them require a sign-off from the local legislative body or voters of the municipality (and sometimes both) in order to be established.

The current proposal would address the need to provide infrastructure in portions of municipalities that, because of low or dispersed populations, do not attract private investment. Building a broadband network that involves the deployment of fiber is more attractive to a for-profit entity if there is a sizable population base that will use the internet services provided. In today's business environment, broadband is vital to the success of any enterprise – rural or urban, private or public.

The REDI district concept will likely be incorporated in S.135, the much larger economic development bill that passed the Senate last week. At least two rural towns are interested in using the REDI district model to enter into public-private partnerships to secure broadband for their residents.

House Natural Resources Takes up Forestry Issues

This week, the House Natural Resources, Fish and Wildlife Committee took up H.233, a bill that would apply Act 250 jurisdiction to some projects within certain forest blocks or habitat connectivity areas. The concern among committee members is how to address the division of land into smaller parcels in situations where large forest parcels are divided for development or sale.

H.233 would amend Act 250 to include in its definition of development the "construction of improvements for commercial, industrial, or residential use if such an improvement at any point is more than 350 feet within a forest block that is classified as a highest priority interior forest block or a habitat connectivity area that is classified as a highest priority connectivity block by the Vermont Conservation Design," as published by the Agency of Natural Resources (ANR) in 2015 or in later documents. The bill would amend the definition of subdivision to include land outside of a designated center if it is partitioned for the purpose of resale within five years into three or more lots in a municipality that does not have both zoning and subdivision, or into six or more lots in a municipality that *has* adopted zoning and subdivision.

An Act 250 permit would not be granted for a development or subdivision on or adjacent to a tract that contains a forest block or habitat connectivity area unless fragmentation of the forest block or a habitat connectivity area is avoided or is unavoidable and the potential fragmentation of the forest block or habitat connectivity area is mitigated (i.e., ameliorated) by some other action on the part of the applicant. The burden of proof would be on the applicant to justify the project's impact on a forest block or habitat connectivity area. The Natural Resources Board would need to provide guidance on the new criteria to affected parties.

Act 171, passed last year, included requirements for municipalities – *if* they plan – and regional commissions to indicate areas that are forest blocks and habitat connectors and to plan for development in those areas to minimize forest fragmentation and promote forest health and ecological function. At the same time, Act 171 exempted forestry operations from municipal land use regulation. It's ironic that this year the legislature is considering a bill to usurp jurisdiction of municipalities, work that it directed those same municipalities to undertake *last* year.

Act 171 also established a Study Committee on Land Use Regulation and Forest Integrity, which met last summer to study potential revisions to Act 250 and local land use regulation. The committee – whose members included representation from VLCT, the forest industry, environmental groups, and ANR, as well as the Natural Resources Board chair – was not able to reach consensus about recommendations for changes to either Act 250 or Title 24 Chapter 117, the municipal and regional planning law.

Last week, the House also passed H.424, a bill that would establish an 11-member commission to review Act 250 on its 50th anniversary in 2020 and recommend changes for the next 50 years. That bill is now in the Senate Natural Resources and Energy Committee.

The committee also took up a report on ANR lands and payment in lieu of taxes (PILOT) payments. According to that report – written last summer in consultation with VLCT staff –ANR owns 1,025 parcels in 205 towns, ranging from zero to 75 percent of total land in those towns. ANR is concerned that the PILOT program should not only be equitable to administer but that it also shouldn't discourage municipalities from working with ANR to preserve additional ecologically valuable parcels in the future. The report recommended a new formula that moves ANR lands PILOT from a value-based model to a payment-based one – that is, each existing ANR parcel would receive a base payment using the fair market value set by the Department of Taxes 2015 Property Valuation and Review valuation. For all new parcels, the base payment would be the same as the municipal property tax payment made by the previous owner. The report also included a four-year phase-in and transition adjustments in moving to the new system. The House Appropriations Committee took the report's recommendations in establishing the ANR PILOT appropriations for FY18.

We'll keep you apprised of any updates to these forestry issues this session.

Workers' Compensation Mental Health Parity and PTSD Claim Presumption for Public Safety Personnel

The House Commerce and Economic Development Committee has spent several weeks considering H.197, a bill that proposes to provide workers' compensation coverage for mental conditions that result from work-related events or stress that are of or peculiar to a particular occupation. This bill would:

- make post-traumatic stress disorder (PTSD) claims from police officers, rescue or ambulance workers, or firefighters presumed to be work related, unless it is shown "by a preponderance of evidence" that the claim was caused by "non-service-connected risk factors or non-service-connected exposure;" and
- include mental condition in the definition of "occupational disease."

A fundamental pillar of workers' compensation is the requirement that the employee demonstrate that the injury is work related. In return, the employer or insurer pays for medical costs and lost work time on a no-fault basis.

A presumption, however, turns this concept on its head by making the employer prove that the injury is *not* work related. In Vermont workers' compensation statutes, public safety personnel are the only group to receive this special presumptive status for a variety of heath conditions, including heart disease and cancer.

VLCT twice testified to the committee, expressing concerns about using a workers' compensation presumption to address this important issue. We suggested that using the workers' compensation system to address PTSD issues might not be the best way to address this challenge, in part because workers' compensation only becomes involved *after* the claim is filed. In the case of PTSD, regular and ongoing assistance to public safety personnel to address their on-the-job stress issues would prevent many stress situations from ever rising to the level of a PTSD diagnosis. An alternative approach would be to develop a comprehensive "hire through retire" plan and provide funding necessary to provide this kind of proactive approach to address workplace stress issues for public safety personnel.

The National Council on Compensation Insurance, a leading provider of workers' compensation information, estimates that the *minimum* financial impact on rates (expected rate increases) for public safety workers' compensation class codes would be five percent.

The bill also addresses mental health parity in workers' compensation more generally, and the committee is currently considering an amendment that would define a "mental condition resulting from a work-related event of work-related stress" as a personal injury to be compensable as a workers' compensation claim. The claimant would have to demonstrate "by the preponderance of evidence that (I) the work-related event was extraordinary in comparison to pressures and tensions experienced by the average employee across all occupations, and (II) the work-related event or work-related stress, and not some other event or source of stress, was the predominant cause of the mental condition."

The bill further states that "a mental condition shall not be considered a personal injury by accident arising out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer." For purposes of employers, this proposed language significantly changes the current standard applied for mental condition workers' compensation claims. The current measure of work-related stress or event is that it extraordinary and unusual compared to pressures and tensions experienced by the average employee *in that profession.*

If this change in the bill is made, there would be no need to have a separate PTSD presumption for public safety employees. The current measure to allow a PTSD claim to be covered by workers' compensation is based on a comparison of the stress that led to the PTSD diagnosis that is shown to be extraordinary and unusual in comparison to pressures and tensions experienced by public safety employees in comparable positions. This is a higher threshold because it is widely acknowledged that public safety officers are in much higher stress positions than average employees across all occupations.

On Thursday, H.197 was voted out of the Commerce and Economic Development Committee and sent to the House Appropriations Committee for consideration.

Investment of Cemetery Funds

The Senate Government Operations Committee continued discussion on H.5, a bill relating to the investment of cemetery funds that has passed the House. The bill proposes to update current law (18 V.S.A. § 5384) to allow elected trustees of public funds to invest cemetery funds in securities or investments that are "prudent under the standards established by the Uniform Prudent Management of Institutional Funds Act" (UPMIFA). This investment approach is used widely by charitable organizations and nonprofits for investing in endowment expenditures. H.5 would make it applicable to

municipal public funds. The bill would also provide for delegating the management and investment of cemetery funds.

UPMIFA requires prudent investment of funds in "good faith and with the care an ordinary prudent person in a like position would exercise under similar circumstances." According to the act, an "institution" may appropriate for "expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes and duration for which the endowment fund is established." Seven criteria guide the institution in its yearly expenditure decisions:

1. duration and preservation of the endowment fund;
2. the purposes of the institution and the endowment fund;
3. general economic conditions;
4. effect of inflation or deflation;
5. the expected total return from income and the appreciation of investments;
6. other resources of the institution; and
7. the investment policy of the institution."

Again, these "institutional" standards would apply to local government public nonprofit fund investments and operate like investment of endowments by nonprofits and charitable institutions.

The Senate Government Operations Committee is generally supportive of H.5 and is exploring whether to extend the approach of applying the UPMIFA investment model to other public funds when trustees of public funds are responsible for their investment.

The Senate Government Operations Committee has asked for feedback from municipalities on this proposal, and VLCT Advocacy staff forwarded the inquiry to local officials on Thursday. The committee will likely take up the bill again in the next week or two.

VLCT Legislative Testimony

Testimony by VLCT Advocacy staff in the State House this week included:

Committee	Issues
House Commerce and Econ. Development	rural economic development (H.459)
Senate Natural Resources and Energy	municipal energy planning (Act 174)
Senate Government Operations	investing cemetery funds (H.5); law enforcement issues

Upcoming Public Hearing

The House Education Committee will hold a public hearing on S.122 (increased flexibility for school district mergers) on Tuesday, April 4, 2017, from 5:30 to 7:30 p.m. in room 11 in the State House. Witnesses may sign up to speak beginning at 5 o'clock. Testimony will be limited to three minutes per person. The committee will also accept written testimony. For more information, contact House Education Committee Assistant Marjorie Zunder at mzunder@leg.state.vt.us or 802-828-2258.