

Potential Statutory Issues Relating to Title 29

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What's in a name?

The capital bill is referred to in four different ways throughout the Vermont Statutes

“capital construction act” is used in:

- 3 V.S.A. § 2822(e)
- 29 V.S.A. § 44(a)
- 29 V.S.A. § 46(a)
- 29 V.S.A. § 152(a)(16)
- 29 V.S.A. § 161(b)
- 32 V.S.A. § 309(c)
- 32 V.S.A. § 701a
- 32 V.S.A. § 710(b)
- 32 V.S.A. § 954(b)

“capital appropriations act” is used in:

- 29 V.S.A. § 152(b)
- 29 V.S.A. § 155
- 10 V.S.A. § 321

“annual capital appropriation and state bonding act” is used in:

- 10 V.S.A. § 321(e)

“future acts relating to capital construction and State bonding” is used in:

- 29 V.S.A. § 5601(d)

Reallocation of Unexpended Funds

Potential Issues

Under 29 V.S.A. § 152:

- The Commissioner of BGS is permitted to transfer unexpended funds between projects in the same section of a capital bill.
- Transfers of unexpended funds between projects in different capital bills requires approval by either the Secretary of Administration or the Emergency Board (depending on the amount).
- Transfers of unexpended funds from previous capital bills are permitted for emergency purposes if timely written notification is given to the chairs of the House Corrections and Institutions Committee and the Senate Institutions Committee.

Under 32 V.S.A. § 701a:

- Unexpended funds of two or more years must be reported to the General Assembly.
- The General Assembly has the authority to reallocate unexpended funds to future capital bills.
- A reallocation of funds does not require the approval of the Secretary of Administration or the Emergency Board.
- There is no language relating to reallocation for emergency purposes.

Reallocation of Unexpended Funds

Relevant Statutory Provisions

29 V.S.A. § 152 (Duties of Commissioner) provides:

(a) The commissioner of buildings and general services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

--(19) Transfer any unexpended project balances between projects that are authorized within the same section of the act.

--(20) Transfer any unexpended project balances between projects that are authorized within different capital construction acts, with the approval of the secretary of administration when the unexpended project balance does not exceed \$100,000.00, or with the additional approval of the emergency board when such balance exceeds \$100,000.00.

--(25) Transfer any unexpended project balances from previous capital construction acts for the purpose of emergency projects not authorized in a capital construction act in an amount not to exceed \$100,000.00; provided the commissioner shall send timely written notice of such expenditures to the chairs of the house committee on corrections and institutions and the senate committee on institutions.

32 V.S.A. § 701a (Capital Construction Bill) provides:

(c) The spending authority authorized by a capital construction act shall carry forward until expended, unless otherwise provided. All unexpended funds remaining for projects authorized by capital construction acts enacted in a legislative session that was two or more years prior to the current legislative session shall be reported to the General Assembly and may be reallocated in future capital construction acts.

Authority to Cancel Projects

Related Statutory Provision

29 V.S.A. § 152 provides:

(a) The commissioner of buildings and general services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

--(21) Cancel any authorized project if, ***due to financial or economic conditions, the best interests of the State will be served*** by cancellation, ***if approved by the Secretary of Administration***, and postpone any authorized project if, due to financial or economic conditions, the best interests of the State will be served by postponement.

Potential Issue

- Historically, introductory language is included in the “State Buildings” section of the capital bill allowing the Commissioner of BGS to cancel a project ***if the Chairs of the Senate Committee on Institutions and the House Committee on Corrections and Institutions are notified prior to the action being taken.***
- Session law language does not require BGS to obtain Secretary of Administration approval or provide any stated reason for cancelling the project.

(See e.g., 2013 Acts and Resolves, No. 51, Sec. 2; 2011 Acts and Resolves No. 40, Sec. 2; 2009 Acts and Resolves 43, Sec. 1.)

Sale of State Property

Related Statutory Provision

29 V.S.A. § 166(d) provides:

The net proceeds from the sale of any real property owned by the state shall be paid into ***a capital fund account*** to be used for ***future capital construction projects*** as authorized by the general assembly, except that such proceeds may be used as otherwise directed by the general assembly, which legislative direction may be by resolution.

Potential Issues

- The term “capital fund account” is not defined in statute
- Need clarity on whether this type of account has ever been used within the Department of Finance and Management.
- Language is not clear as to whether “future capital construction projects” refers to a future capital bill, projects that would be authorized in a capital bill or any capital construction project (even if not authorized in a capital bill).

Art in State Buildings Program

Statutory Provision

29 V.S.A. § 43(a) (Art Acquisition Fund) provides:

(a) An art acquisition fund is created to finance the ***design, construction and purchase or commissioning of works of art*** to be included as an integral part of the structure of state buildings and facilities. Such works of art may be attached to the structure or may be detached within or outside the structure.

Potential issue

It is not clear whether the funds transferred to the art acquisition fund should be used for the costs associated with the installation of the art or other sitework related costs.

Art in State Buildings Program

Statutory Provisions:

29 V.S.A. § 45 (Duties of contracting agency) provides:

Upon selection of an architect for any project, the contracting agency shall:

...

(3) ensure that the architect discusses the form and placement of the artwork with the artist early in the planning and design phase of the building.

29 V.S.A. § 48(a) (Powers and duties of council) provides:

(a) The council shall facilitate a process which will result in a recommendation of an artist or artist team for each project selected for installation of artwork.

The artist or artist team shall collaborate with the project architect or design team during the initial design phase of the project.

Potential issue:

It is possible to identify eligible projects that are already under construction, so collaboration with the project architect or design team during the initial design phase may be difficult.

Enforcement of State House Parking

Authority of BGS

- Place signs and markings in state parking lots
- Presumption that sign is placed at the direction of the Commissioner of BGS
- ***Commissioner or*** enforcement officers may move or remove immobilized motor vehicles or motor vehicles that are being operated against posted signs and markings
- ***Revise, repeal or amend parking rules on State-owned land under Commissioner's jurisdiction***

Authority of the Sgt. at Arms

- Place signs and markings in state parking lots
- Presumption that sign is placed at the direction of the Commissioner of BGS ***or the Sgt. at Arms***
- Enforcement Officers may move or remove immobilized motor vehicles or motor vehicles that are being operated against posted signs and markings
- ***Enforcement officers may issue traffic summons and complaints***

Enforcement of State House Parking

Related Statutory Provisions

29 V.S.A. § 153 (Parking Rules) provides:

The commissioner of buildings and general services may from time to time make, amend, revise or repeal parking rules for the use of land or structures either owned or leased by the state and which are under his or her jurisdiction and control.

29 V.S.A. § 170 (Parking in State Parking Lots) provides:

(a) The commissioner of buildings and general services is authorized to place signs and markings on land or in structures owned or leased by the state, including state parking lots, directing the parking, stopping, standing and operation of motor vehicles. The driver or owner of any motor vehicle in a state-owned or controlled parking lot shall obey the instructions of any applicable posted sign or marking.

(b) Any sign or marking shall be presumed to have been placed at the direction of the commissioner unless the contrary is established by competent evidence.

(c) On land or in structures owned or leased by the state under the jurisdiction of the commissioner, the commissioner or designee, or an enforcement officer, is authorized, pursuant to section 1102 of Title 23, to move, remove or immobilize, or cause to be moved, removed or immobilized, any motor vehicle which is stopped, parked, standing or being operated contrary to applicable posted signs and markings or in the event of an emergency at the expense of the owner of the motor vehicle.

Enforcement of State House Parking

Related Statutory Provisions

2 V.S.A. § 71 (Parking) provides:

(a) Any state-owned or leased parking lot in the capitol complex, as defined in 29 V.S.A. § 182(1), or any state-owned or leased area used for parking outside the capitol complex but within the Montpelier area, shall be considered a "public highway," as defined in 23 V.S.A. § 4(13), for enforcement purposes, whether or not open to the public or general circulation of vehicles. The driver or owner of any motor vehicle in such a state parking lot shall obey the instructions of any applicable posted sign or marking.

(b) On land or in structures owned or leased by the state, including state parking lots described in subsection (a) of this section, an enforcement officer is authorized:

(1) to enforce signs and markings relating to parking, stopping, standing and operation of motor vehicles in a state parking lot;

(2) to issue a Vermont traffic summons and complaint, pursuant to chapter 24 of Title 23, to the driver or owner of a motor vehicle stopped, parked, standing or being operated contrary to the instructions on an applicable posted sign or marking; or

(3) pursuant to 23 V.S.A. § 1102, at the driver's or the owner's expense, to move, remove or immobilize, or cause to be moved, removed or immobilized, any motor vehicle which is stopped, parked, standing or being operated contrary to applicable posted signs and markings.

(c) Any sign or marking shall be presumed to have been placed at the direction of the sergeant at arms or the commissioner of buildings and general services, unless the contrary is established by competent evidence.

Capitol Complex Commission

Related Statutory Provisions

29 V.S.A. § 154(a) (Preservation of State house and historic State buildings) provides:

(a) The commissioner of buildings and general services shall give special consideration to the state house as a building of first historical importance and significance. He or she shall preserve the state house structure and its unique interior and exterior architectural form and design, with particular attention to the detail of form and design, in addition to keeping the buildings, its furnishings, facilities, appurtenances, appendages and grounds surrounding and attached to it in the best possible physical and functional condition. ***No change, alteration, addition or removal in form, design, architectural detail, furnishing, fixed in place or otherwise, interior or exterior, of the state house, may be made without legislative mandate. Emergency and immediately necessary repairs may, however, be made without legislative mandate upon prior approval of the governor.***

29 V.S.A. § 183 (Capitol Complex Commission; Review of plans) provides:

(1) ***No person shall commence construction on any structure on any plot or parcel within the capitol complex prior to approval of plans for such structure by the capitol complex commission.*** For the purposes of this section

"person" shall include the state of Vermont.

(2) Within 60 days after submission of tentative plans relating to the construction of any structure on any plot or parcel within the capitol complex the capitol complex commission shall approve such plans or suggest alterations or modifications relating to overall bulk, size, height, setback, ***parking requirements***, landscaping, design continuity with other structures in the capitol complex, both private and public, and maintenance of the character of the capitol complex as a unique and historic district.

* * *

Capitol Complex Commission

Potential Issues

- Conflicting standards for changes or alterations to the State House (capitol complex commission vs. legislative mandate)
- The scope of the capitol complex commission's authority is unclear
- The authority given to the capitol complex commission to change parking requirements may potentially conflict with the same authority given to BGS (*See 29 V.S.A. § 170 and 2 V.S.A. § 71*)

Leasing State Property

Statutory Provisions

29 V.S.A. § 164 (Leases) provides:

The governor may *lease any land* he or she deems can be used to advantage by the state in connection with any state institution or department.

* * *

29 V.S.A. § 165(d) (Space allocation, inventory, and use; leasing property; Commissioner's preapproval) required provides:

(d) The Commissioner of Buildings and General Services shall by rule establish procedures which all agencies shall follow in *the leasing of real property*.

29 V.S.A. § 166(a) provides:

(a) As agent of the state, with the advice and consent of the governor unless otherwise provided, the commissioner of buildings and general services *may lease for a term not exceeding 10 years any real property* owned by the state and not used for state purposes.

Potential Issue

Does the Governor lease real property for the State?

Leasing State Property

Statutory Provision

29 V.S.A. § 166(e) provides:

(e) Notwithstanding the provisions of subsection (a) of this section, specific approval is hereby granted by the general assembly for the execution of new leases by an authorized state agent with the present lessees of individual camp lots on state lands on Groton, Marshfield and Ricker ponds for a period exceeding 10 years.

(g)(1) Any person who on April 8, 1975, is a lessee of state lands on Groton, Marshfield and Ricker ponds may by letter petition the department of forests, parks and recreation in order to obtain a lease which runs to both the lessee and the lessee's spouse upon application and accompanying payment of \$10.00. The department of forests, parks and recreation shall, within 30 days, prepare, execute and deliver to the lessee a new lease which runs to both lessee and lessee's spouse. All terms of the new lease shall be identical to the terms of the old lease. Upon execution of the new lease by lessee and lessee's spouse, the old lease shall be void.

Potential Issue

- Specific, temporary language typically included in session law
- Need clarity on whether lease language is still necessary and whether there are any implications if removed

Revolving Funds

29 V.S.A. § 903(e) (Requisition for Supplies and Materials) provides:

(e)(1) Notwithstanding the provisions of subsection (a) of this section and subsection 906(d) of this chapter, the Commissioner of Buildings and General Services will administer an **Equipment Revolving Fund** to be used for internal lease purchase of equipment for State agencies. The Secretary of Administration will establish criteria for equipment to be purchased through this Fund, including limiting amounts for specific equipment and the useful life of the equipment.

29 V.S.A. § 906 (Stationary and Office Supplies) provides:

(a) The commissioner of buildings and general services shall manage a supply program in order to ensure the disbursement of equipment for use by state government, including but not limited to fleet vehicles, office supplies, stationery, record books, and forms purchased by the state.

* * *

(e) All operating expenses and services of the central supply section and central duplicating section shall be paid out of a **revolving fund** insofar as possible. The commissioner of buildings and general services, with the approval of the commissioner of finance and management, may assess charges for supplies, equipment and services, which the commissioner of finance and management shall charge back to appropriations for the various departments all items mentioned under this section, and credit like amounts to the revolving fund.

29 V.S.A. § 905 (Centralized purchasing of school equipment and supplies) provides:

(a) The commissioner of buildings and general services and the commissioner of education, or their designees, shall develop and promote a program of centralized purchasing of equipment and supplies for public schools in Vermont, by which purchases may be combined in order to obtain volume purchasing discounts and other purchasing benefits.

(b) Establishment of a **revolving fund** is authorized for the purposes of this section to be administered by the commissioner of buildings and general services. All expenses of the program shall be paid out of the revolving fund. Costs shall be prorated according to rules established by the commissioner of buildings and general services, and charged to users of the program. At his or her discretion the commissioner of finance and management may anticipate receipts to be paid into the fund based upon assurances from participants in the program and may issue warrants thereon for the purposes of this section.

Potential Issues

- ***Need clarity on whether these funds are used***
- ***Statutory language inconsistent with language typically used to establish a fund.***