HOUSE COMMITTEE ON TRANSPORTATION:
OVERVIEW OF KEY LEGAL AND LEGISLATIVE PRINCIPLES, ROLE OF STAFF
Anthea Dexter-Cooper, Legislative Counsel

I. Vermont Statutes Annotated (aka "Green Books"), Session Law, and Acts

- What is an "act," what are the "green books," how do the green books relate to the acts that the General Assembly passes, and how and when are the green books updated through the "codification" of acts?
- What is "session law," and why is it not codified?
- Titles this committee has jurisdiction over:

  Title 5: Aeronautics and Surface Transportation
  Title 19: Highways
  Title 23: Motor Vehicles [but also bicycles, pedestrians on highways, ATVs, motorboats]

  Other titles of law may need to be referenced and reviewed, *e.g.,* Judicial Bureau process for handling traffic tickets, 4 V.S.A. chapter 29.

- Structure of statutes
    Title
      [Part]
        Chapter
          [Subchapter]
            Section
              Subsection ((a), (b), (c), …)
                Subdivision includes everything below a subsection:
                  (1)
                  (A)
                   (i)
                    (I)
                    (aa)

  → *See, e.g.*, 23 V.S.A. § 3106 (available here:
  http://legislature.vermont.gov/statutes/section/23/028/03106)

- Importance of <u>definitions</u>: definitions may apply throughout an entire title, or only within a specific chapter, subchapter, section, etc. *See, e.g.*, definitions of "highway" at 19 V.S.A. § 1(12) and at 23 V.S.A. §§ 4(13) and 1200(7) (incorporates the definition from 23 V.S.A. § 4(13) but excludes driveways in certain instances).

II. Background on Key Legal Principles

Federal law
- Federal law is the supreme law of the land. This means that the U.S. Constitution, a federal statute, or even a federal regulation may control over a Vermont source of law and constrain the General Assembly's ability to legislate effectively in an area. For example, a federal appellate court has held that federal railroad law preempts application of Vermont's Act 250.[1]
- In addition, federal law may not strictly "preempt" state law, but by penalizing states in the form of losing appropriations, it may give states a powerful incentive to conform to federal transportation policy.[2]
- However, in many areas, federal law does not regulate (*e.g.*, most rules of the road) and preemption is not an issue.
- U.S. Supreme Court cases trump contrary decisions of federal appellate courts, and federal appellate court decisions trump contrary federal district court decisions.

State law: sources and key principles
- Sources of law are:
  - the Vermont Constitution;
  - statutory and session law adopted by the General Assembly;
  - rules adopted by all three branches of State government; and
  - municipal law.
- In addition to above-mentioned federal law preemption principles:
  - Vermont Constitution may trump Vermont statutes, rules, and municipal law;
    - Vermont statutes may trump Vermont rules and municipal law (although our Office would argue that statute does NOT trump parliamentary rules);
      - Vermont rules may trump municipal law (difference between charter and ordinance).
- Administrative rules are adopted by Executive Branch agencies and bodies, including DMV and the Traffic Committee. Administrative rules may not be adopted unless the General Assembly has authorized the rule's adoption.
- The Legislative Committee on Administrative Rules (LCAR)[3] and Legislative Committee on Judicial Rules[4] review Executive Branch and Judicial Branch rules, respectively.
- Later enacted law may amend, repeal, or "notwithstand" earlier enacted law. The General Assembly may not constrain subsequent lawmaking by the General Assembly (however, the lawmaking authority of the General Assembly may be constrained under the Vermont or U.S. Constitutions).
  Note: These principles of preemption are not self-enforcing: unconstitutional laws, or laws that are preempted, may be on the books (and may even be enforced) for years. It

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[1] *Green Mountain Railroad Corp. v. State of Vermont*, 404 F.3d 638 (2d Cir. 2004). Similar case regarding the preemption of municipal law is currently pending with the Second Circuit (oral arguments were in November 2018).
[2] *See* 23 U.S.C. § 158 (available here: https://www.law.cornell.edu/uscode/text/23/158) (Possible withholding of 10 percent of certain appropriations if state permits the possession of an alcoholic beverage by someone who is less than 21).
[3] *See* 3 V.S.A. § 842 (available here: http://legislature.vermont.gov/statutes/section/03/025/00842).
[4] *See* 12 V.S.A. Ch. 1 (available here: http://legislature.vermont.gov/statutes/fullchapter/12/001).

> may take a court decision and an injunction to prevent enforcement, although when preemption or unconstitutionality is clear, a law may not be enforced.[5]

- Vermont Superior Courts and the Vermont Supreme Court also interpret the meaning of laws or even create[6] law. Court decisions that interpret or create law often is called "case law" or "common law" as opposed to "statutory law." If it has authority, the General Assembly may react to case law that it does not agree with by passing an act to supersede a court decision, *see* 23 V.S.A. §§ 4(13) and 1200(7), or by codifying the decision in statutory law. *See* 19 V.S.A. Ch. 27 (available here: http://legislature.vermont.gov/statutes/fullchapter/19/027) (references a specific decision in codified law).
- Case annotations are in the green books and the full cases themselves are available on paid subscription legal databases (e.g. Westlaw). More recent Vermont Supreme Court cases are available for free on the Judiciary's website.[7]
  → *Warning*: Cases listed in the green books may relate to an old version of a statute.

III. Legislating in the Transportation Committee; Role of Staff

2018 Transportation Bill: https://legislature.vermont.gov/bill/status/2018/H.917
2018 Miscellaneous Motor Vehicle Bill: https://legislature.vermont.gov/bill/status/2018/S.272

- Structure of the T Bill:
  → Sec. 1 adopts Governor's proposed transportation program, as amended by the Act.
  → Next several sections amend the proposed transportation program.
  → Sections that follow usually represent VTrans' policy proposals, as amended after the committee process, and sections proposed by committee members and other legislators.
- Misc. MV has started in the Senate since at least the 2010 session. Starts with proposals from the Department of Motor Vehicles (DMV), but committees often change or add to DMV's proposals.
- Drafting conventions: underlines and strikethroughs; ellipses.
- Importance of effective dates and transition provisions.
- A central tension in crafting legislation: a more specific statute may better develop and implement legislative intent. However, specificity may cause committees to get bogged down, and may leave situations unaddressed and eliminate needed flexibility.
- Another key issue in some legislation: whether to address an issue fully in statute; to delegate rulemaking authority to an agency;[8] or to authorize an agency to implement a program and "fill in the blanks" without having to go through the rulemaking process.
- Brief overview of the editing process; existence of "Drafting Manual."
- Role of LC and JFO staff: nonpartisan; serve committees and all members in both chambers throughout the lifecycle of a bill.

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[5] *See, e.g.*, "As of August 2, 2016, Attorney General No Longer Enforcing Act 120"(available here: https://ago.vermont.gov/ge-food-labeling-rule/).
[6] Laws created through court decision is often referred to as "common law." Examples include much of tort (civil wrong) law, the law of "unjust enrichment" (contracting theory), etc.
[7] Supreme Court of Vermont published opinions an entry orders available here: https://www.vermontjudiciary.org/supreme-court/published-opinions-and-entry-orders.
[8] *See, e.g.* 2018 T Bill Sec. 42, 2018 Misc. MV Bill Sec. 23.

IV. Finding Resources on the Website

- Vermont Statutes - how to review and search online.
  → What online statutes are missing compared to hard copy green books.
- Finding bills and related material from current biennium.
- Finding bills and related material and prior biennia.
- Finding agency reports.