

**HOUSE COMMITTEE ON TRANSPORTATION:  
OVERVIEW OF KEY LEGAL AND LEGISLATIVE PRINCIPLES**  
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**I. Vermont Statutes Annotated (aka “Green Books”); Session Law; Acts**

- Green books, white books, bills, acts, statutory/codified law, session law, resolutions, replacement volume, supplement, pocket part, statutory revision.
- Legislative history (bottom of online statutes/in the published V.S.A.)
- Biggest difference between session law and statutory/codified law? Harder to find!
  - Also cited differently:  
[YEAR] Acts and Resolves No. [ACT #], Sec. [ACT SEC. #] v.  
[TITLE #] V.S.A. § [STATUTE SEC. #]
- Titles this committee has jurisdiction over:
  - [Title 5: Aeronautics and Surface Transportation](#)
  - [Title 19: Highways](#)
  - [Title 23: Motor Vehicles](#) [also bicycles, pedestrians on highways, ATVs, vessels]
    - **Note:** Other titles may need to be referenced and reviewed.<sup>1</sup>
- Structure of Statutes
  - Title
  - [Part]
  - Chapter
  - [Subchapter]
  - Section
  - Subsection ((a), (b), (c), . . . )
  - Subdivision includes everything below a subsection:
    - (1), (2), (3), . . .<sup>2</sup>
    - (A), (B), (C), . . .
    - (i), (ii), (iii), . . .
    - (I), (II), (III), . . .
    - (aa), (bb), (cc), . . .<sup>3</sup>
- **Importance of Definitions:** Definitions may apply throughout an entire title, or only within a specific chapter, subchapter, section, etc.<sup>4</sup> Can also be included in session law.

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<sup>1</sup> See, e.g., Judicial Bureau process for handling traffic tickets, [4 V.S.A. chapter 29](#), which was amended through the 2020 Misc. MV. Bill ([2020 Acts and Resolves No. 149, Sec. 10](#)) to allow Judicial Bureau hearing officers to waive the license reinstatement fee.

<sup>2</sup> Sometimes a section does not have subsections if there is an undesignated paragraph followed by multiple subdivisions. This is frequently used in definitions sections. See, e.g., [23 V.S.A. § 4](#).

<sup>3</sup> See, e.g., [23 V.S.A. § 3106](#).

<sup>4</sup> See, e.g., definitions of “highway” at [19 V.S.A. § 1\(12\)](#) and at 23 V.S.A. §§ [4\(13\)](#) and [1200\(7\)](#) (latter two are the same, but one excludes certain driveways for purposes of subchapter on driving under the influence).

## 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 (U.S.C.), or even a federal regulation (C.F.R.) may control over a Vermont source of law and constrain the General Assembly's ability to legislate in an area.
- **Preemption:** For example, a federal appellate court has held that federal railroad law preempts (displaces) application of Vermont's Act 250<sup>5</sup> and certain municipal laws.<sup>6</sup>
  - In many areas, federal law does not regulate (*e.g.*, most rules of the road) and preemption is not an issue.
  - **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 may take a court decision and an injunction to prevent enforcement, although when preemption or unconstitutionality is clear, a law may not be enforced.<sup>7</sup>
- **Monetary Consequences:** 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.<sup>8</sup>
- 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 (excluding case/common law):**
  - Vermont Constitution;
  - Enacted statutory (codified) and session law;
  - Rules adopted by all three branches of State government; and
  - Municipal law.
- **Hierarchy:**
  - Vermont Constitution may trump Vermont laws (codified and session), rules, and municipal law;
  - Vermont laws may trump Vermont rules and municipal law (although our Office would argue that statute does NOT trump parliamentary rules); and
  - Vermont rules may trump municipal law (difference between charter (codified, like statute) and ordinance).
- **Rulemaking:**
  - 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.

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<sup>5</sup> [Green Mountain R.R. Corp. v. State of Vt](#), 404 F.3d 638 (2d Cir. 2004).

<sup>6</sup> [Vt. Ry., Inc. v. Town of Shelburne](#) 918 F.2d 82 (2d Cir. 2019).

<sup>7</sup> See, *e.g.*, [As of August 2, 2016, Attorney General No Longer Enforcing Act 120](#).

<sup>8</sup> See [23 U.S.C. § 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 years of age).

- The Legislative Committee on Administrative Rules (LCAR)<sup>9</sup> and Legislative Committee on Judicial Rules<sup>10</sup> review Executive Branch and Judicial Branch rules, respectively.
- **Subsequent Acts:** Later enacted law may amend, repeal, or “notwithstanding” 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:** This also applies to specifying how a future General Assembly appropriates money.

**Common/Case Law:** Vermont Superior Courts and the Vermont Supreme Court also interpret the meaning of laws or even create law.<sup>11</sup> A court decision that interprets or creates 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<sup>12</sup> or by codifying the decision in statutory law.<sup>13</sup>
- 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.<sup>14</sup>
- **Warning:** Cases listed in the green books may relate to an old version of a statute.

### III. Transportation Bill and Miscellaneous Motor Vehicles Bill

#### Transportation Bill

- **Process:** Starts in House Transportation (always a committee bill) and the first draft includes proposals from the Agency of Transportation as drafted/modified by Leg. Counsel. Sometimes also contains technical corrections from Leg. Counsel. House Transportation modifies and adds to the proposals and makes any changes to the Agency’s proposed Transportation Program (released on the same day that the Governor gives the Budget Address) prior to introduction.
  - **Note:** In a typical year, the T. Bill gets the extra week for cross-over.

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<sup>9</sup> See [3 V.S.A. § 842](#).

<sup>10</sup> See [12 V.S.A. Ch. 1](#).

<sup>11</sup> Examples include much of tort (civil wrong) law, the law of “unjust enrichment” (contracting theory), etc.

<sup>12</sup> In 1996 the Supreme Court of Vermont held that a driveway fell under the definition of highway in 23 V.S.A. § 4(13). See [State v. Eckhardt](#), 165 Vt. 606, 607 (Vt. 1996) (mem.) (“Here, we are asked to decide whether a private driveway to a single residence, with no markings or barriers that restrict access, is a public highway. . . . Defendant’s driveway, like most driveways in Vermont, is open to the general circulation of vehicles, and, in keeping with the objective of protecting the public from injury, thus constitutes a public highway under 23 V.S.A. § 4(13) for the purposes of Vermont’s DUI statute.”). In 1998 a definition of highway, which has not been amended since, was added to 23 V.S.A. § 1200 to apply to the subchapter on driving under the influence. See [1998 Acts and Resolves No. 117, Sec. 12](#).

<sup>13</sup> See, e.g., [19 V.S.A. ch. 27](#) (references a specific decision).

<sup>14</sup> See [Database of Supreme Court Published Opinions and Entry Orders](#).

- **Structure:**
  - Sec. 1 adopts Governor’s proposed transportation program, as amended by the Act.<sup>15</sup>
  - Next several sections amend the proposed transportation program.<sup>16,17</sup>
  - Sections that follow usually represent the Agency of Transportation’s policy proposals, as amended after the committee process, and sections proposed by committee members and other legislators.

**Miscellaneous Motor Vehicles Bill**

- **Process:** Has started in the Senate since at least the 2010 session and the first draft includes proposals from the Department of Motor Vehicles as drafted/modified by Leg. Counsel.<sup>18</sup> Sometimes also contains technical corrections from Leg. Counsel. Senate Transportation modifies and adds to the proposals prior to introduction/passage by the Senate.
  - Many of the bills that are introduced in the House and referred to House Transportation are appropriate for inclusion in the Miscellaneous Motor Vehicle Bill, but that does not mean that is where they end up if the language moves forward. *See, e.g.,* primary enforcement of the adult seat belt law.<sup>19</sup>

	<b>2019</b>	<b>2020</b>
<b>Transportation Bill (“T. Bill”)</b>	<ul style="list-style-type: none"> <li>- <a href="#">H.529 Bill Page</a></li> <li>- <a href="#">2019 Acts and Resolves No. 59</a></li> <li>- <a href="#">Act Summary (with one-page fiscal summary)</a></li> <li>- <a href="#">Fiscal Year 2020 Transportation Program (as passed)</a></li> <li>- December 2019 Legislative Briefing: <a href="#">Slide Deck</a>; <a href="#">Video</a> (starts at ~18 minutes)</li> </ul>	<ul style="list-style-type: none"> <li>- <a href="#">H.942 Bill Page</a></li> <li>- <a href="#">2020 Acts and Resolves No. 121</a></li> <li>- <a href="#">2020 Acts and Resolves No. 154, Secs. G.100–G.113</a> (“Budget Bill”)</li> <li>- <a href="#">2020 Acts and Resolves No. 154, Sec. B.1100.1</a> (one-time appropriations)</li> <li>- <a href="#">One-Time Appropriations Summary Chart</a></li> </ul>

<sup>15</sup> The last T. Bill also included intent language in Sec. 1(b) and required certain additional reports in Sec. 1(c) due to COVID-19. *See* [2020 Acts and Resolves No. 121, Sec. 1](#).

<sup>16</sup> The last two T. Bills included as the second section in the bill a summary of transportation investments intended to reduce transportation-related greenhouse gas emission, reduce fossil fuel use, and save Vermont households money. *See* [2019 Acts and Resolves No. 59, Sec. 2](#), [2020 Acts and Resolves No. 121, Sec. 1a](#). This section was added by the Senate in both years.

<sup>17</sup> The last T. Bill included sections providing the Agency of Transportation with additional spending flexibility if there was “federal COVID-19 legislation” (defined in the act). *See* [2020 Acts and Resolves No. 121, Secs. 2–3](#).

<sup>18</sup> Historically this has been a committee bill in the first year of the biennium and introduced in skeletal form by Sen. Mazza and another member of Sen. Transportation in the second year of the biennium, but due to a Senate Rules change last year this was a committee bill in 2020 (second year of last biennium). I expect that it will be a committee bill next year (second year of this biennium).

<sup>19</sup> In 2018, [H.103 \(2017\)](#) was proposed to be added to both the T. Bill ([House’s fourth instance of amendment](#)) and the Misc. MV Bill ([Sec. 20 in the House’s strike-all amendment](#)) by the House (and subsequently removed from both bills in conference committee).

		<ul style="list-style-type: none"> <li>- <a href="#">Act Summary (with one-page fiscal summary)</a></li> <li>- <a href="#">Fiscal Year 2021 Transportation Program (as passed)</a></li> </ul>
<b>Miscellaneous Motor Vehicles Bill (“Misc. MV Bill”)</b>	<ul style="list-style-type: none"> <li>- <a href="#">S.149 Bill Page</a></li> <li>- <a href="#">2019 Acts and Resolves No. 60</a></li> <li>- <a href="#">Act Summary</a></li> </ul>	<ul style="list-style-type: none"> <li>- <a href="#">S.339 Bill Page</a></li> <li>- <a href="#">2020 Acts and Resolves No. 149</a></li> <li>- <a href="#">Act Summary</a></li> </ul>

#### IV. Drafting; Role of Staff

- **Drafting Conventions:** Underlines and strikethroughs; ellipses (\* \* \*).
- **Effective Dates and Transition Language:** Super important (makes language not be effective until a point in the future)/explains how something should be implemented.
  - **Note:** Can be retroactive.<sup>20</sup> Expect to see more retroactive effective dates this year to address DMV modifications to operations due to COVID-19.
- **Sunsets:** A shorthand phrasing for prospective repeals, which go into effect in the future and (usually) force the General Assembly to address an issue (again) down the line.
  - Expect to address the repeal of the automated license plate recognition (ALPR) systems statutes<sup>21</sup> and the savings clause for the City of Burlington to continue regulating transportation network companies (TNCs) like Uber and Lyft in a way that is inconsistent with State law this biennium.<sup>22</sup> Both are set to sunset on July 1, 2022, which is a two-year extension that was included in the 2020 Misc. MV Bill.<sup>23</sup>
- **Reports:** Annual/single requests; codified/session law.
- **Details:**
  - 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;<sup>24</sup> or to authorize an agency to implement a program and “fill in the blanks” without having to go through the rulemaking process.<sup>25</sup>

<sup>20</sup> See, e.g., [2020 Acts and Resolves No. 149, Secs. 43 and 44](#) (not requiring photographs on learner’s permits, retroactively effective to when the DMV started issuing them).

<sup>21</sup> See 23 V.S.A. §§ [1607–1608](#).

<sup>22</sup> See [23 V.S.A. § 754\(b\)](#).

<sup>23</sup> See [2020 Acts and Resolves No. 149, Secs. 39 and 41](#).

<sup>24</sup> See, e.g., [2018 Acts and Resolves No. 158, Sec. 42](#) (T. Bill), [2018 Acts and Resolves No. 206, Sec. 23](#) (Misc. MV Bill) (Directs the DMV to update the [Periodic Inspection Manual](#) consistent with amendments to statutory law limiting the safety portion of the inspection to the safe operation of the motor vehicle.).

<sup>25</sup> See, e.g., [2019 Acts and Resolves No. 59, Sec. 34](#), as amended by [2020 Acts and Resolves No. 121, Sec. 14](#) and [2020 Acts and Resolves No. 154, Sec. G.112](#) (establishes multiple vehicle incentive programs: New PEV Incentive Program, MileageSmart, and an emissions repair program).

- Role of Legislative Counsel and Joint Fiscal Office staff: Nonpartisan; serve committees and all members in both chambers throughout the lifecycle of a bill.
- Drafting Style; Editors/Drafting Ops.: There is a Drafting Manual, which strives for uniformity in the statutes since so many different people draft language, and a truly wonderful team of editors and drafting technicians.
  - *Note*: Editing takes longer in the virtual world. I can no longer just “run downstairs” and get an editor to look at something quickly.

## **V. Finding Resources on the Website**