

HOUSE COMMITTEE ON TRANSPORTATION OVERVIEW OF KEY LEGAL AND LEGISLATIVE PRINCIPLES

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TOPICS COVERED

- Vermont Statutes Annotated; Session Law; Acts
- Background on Key Legal Principles
- Overview of the Transportation Bill & Miscellaneous Motor Vehicles Bill
- Drafting & Role of Staff
- Finding Resources on the Website
- 2020 T. Bill and 2020 Miscellaneous Motor Vehicles Bill

VERMONT STATUTES ANNOTATED (“GREEN BOOKS”); SESSION LAW; ACTS

- Lingo: 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. #]

VERMONT STATUTES ANNOTATED (“GREEN BOOKS”); SESSION LAW; ACTS (CONTINUED)

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 of law may need to be referenced and reviewed.

VERMONT STATUTES ANNOTATED (“GREEN BOOKS”); SESSION LAW; ACTS (CONTINUED)

Structure of Statutes

- Title
 - [Part]
 - Chapter
 - [Subchapter]
 - Section
 - Subsection ((a), (b), (c), ...)
 - Subdivision
- Subdivision includes everything below a subsection:
 - (1), (2), (3), ...
 - (A), (B), (C), ...
 - (i), (ii), (iii), ...
 - (I), (II), (III), ...
 - (aa), (bb), (cc), ...

VERMONT STATUTES ANNOTATED (“GREEN BOOKS”); SESSION LAW; ACTS (CONTINUED)

Title 23 : Motor Vehicles

Chapter 001 : General Provisions

(Cite as: 23 V.S.A. § 4)

§ 4. Definitions

Except as may otherwise be provided by law, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and 20 V.S.A. part 5, the following definitions shall apply:

(1) "Authorized emergency vehicle" means a vehicle of a fire department, police vehicle, public and private ambulance, and a vehicle to which a permit has been issued pursuant to subdivision 1252(a)(1) or (2) of this title.

(2) "Button" is a traffic control marking consisting of an object, either permanently attached to the pavement or temporarily placed, and projecting above the surface.

Chapter 028 : Gasoline Tax

Subchapter 001 : General Gasoline Tax

(Cite as: 23 V.S.A. § 3106)

§ 3106. Imposition, rate, and payment of tax

(a)(1) Except for sales of motor fuels between distributors licensed in this State, which sales shall be exempt from the taxes and assessments authorized under this section, unless exempt under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the Commissioner:

(A) a tax of \$0.121 upon each gallon of motor fuel sold by the distributor; and

(B) the following assessments:

(i) a motor fuel transportation infrastructure assessment that is the greater of:

(I) \$0.0396; or

(II) two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor; and

(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:

(I) \$0.134 per gallon; or

VERMONT STATUTES ANNOTATED (“GREEN BOOKS”); SESSION LAW; ACTS (CONTINUED)

Importance of Definitions: Definitions may apply throughout an entire title, or only within a specific chapter, subchapter, section, etc. Can also be included in session law.

- See, e.g., definitions of “highway” at [19 V.S.A. § 1\(12\)](#) and at 23 V.S.A. §§ [4\(13\)](#) and [1200\(7\)](#).

23 V.S.A. § 4(13)	23 V.S.A. § 1200(7)
“Highway,” “road,” “public highway,” or “public road” shall include all parts of any bridge, culvert, roadway, street, square, fairground, or other place open temporarily or permanently to public or general circulation of vehicles, and shall include a way laid out under authority of law.	“Highway” has the same meaning as in subdivision 4(13) of this title, except that for purposes of this subchapter, “highway” does not include the driveway that serves only a single-family or two-family residence of the operator . . .

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 and certain municipal laws.
 - 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.

BACKGROUND ON KEY LEGAL PRINCIPLES - **FEDERAL LAW** (CONTINUED)


- 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.
- U.S. Supreme Court cases trump contrary decisions of federal appellate courts, and federal appellate court decisions trump contrary federal district court decisions.

BACKGROUND ON KEY LEGAL PRINCIPLES – **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).
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BACKGROUND ON KEY LEGAL PRINCIPLES – **STATE LAW** (CONTINUED)

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.
- The Legislative Committee on Administrative Rules (LCAR) and Legislative Committee on Judicial Rules 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.

BACKGROUND ON KEY LEGAL PRINCIPLES – COMMON/CASE LAW

- Vermont Superior Courts and the Vermont Supreme Court also interpret the meaning of laws or even create law. 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 or by codifying the decision in statutory 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.
 - **Warning:** Cases listed in the green books may relate to an old version of a statute.

TRANSPORTATION BILL & MISCELLANEOUS MOTOR VEHICLES 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.

Structure:

- Sec. I adopts Governor's proposed transportation program, as amended by the Act.
- Next several sections amend the proposed transportation program.
- 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.

TRANSPORTATION BILL & 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. 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.

TRANSPORTATION BILL & MISCELLANEOUS MOTOR VEHICLES BILL

	2019	2020
Transportation Bill ("T. Bill")	<ul style="list-style-type: none"> - H.529 Bill Page - 2019 Acts and Resolves No. 59 - Act Summary (with one-page fiscal summary) - Fiscal Year 2020 Transportation Program (as passed) - December 2019 Legislative Briefing: Slide Deck; Video (starts at ~18 minutes) 	<ul style="list-style-type: none"> - H.942 Bill Page - 2020 Acts and Resolves No. 121 - 2020 Acts and Resolves No. 154, Secs. G.100–G.113 ("Budget Bill") - 2020 Acts and Resolves No. 154, Sec. B.1100.1 (one-time appropriations) - One-Time Appropriations Summary Chart - Act Summary (with one-page fiscal summary) - Fiscal Year 2021 Transportation Program (as passed)
Miscellaneous Motor Vehicles Bill ("Misc. MV Bill")	<ul style="list-style-type: none"> - S.149 Bill Page - 2019 Acts and Resolves No. 60 - Act Summary 	<ul style="list-style-type: none"> - S.339 Bill Page - 2020 Acts and Resolves No. 149 - Act Summary

DRAFTING & ROLE OF STAFF

Drafting Conventions: Reader assistance headings; underlines/strikethroughs; ellipses (***)

No. 60
2019

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*** Commercial Driver License for Qualified Military Personnel ***

Sec. 5. 23 V.S.A. § 4108(d) is amended to read:

(d) At the discretion of the Commissioner, the knowledge test and the skills test required under 49 C.F.R. § 383.113 49 C.F.R. §§ 383.113 and 383.133, as amended, and the tests required for a passenger endorsement or a tank vehicle endorsement or a hazardous materials endorsement under 49 CFR §§ 383.117,

383.119, or 383.121, as amended, may be waived for a commercial motor vehicle driver with military commercial motor vehicle experience who is currently licensed at the time of his or her application for a commercial driver license, if the test is substituted with an applicant's driving record in combination with the driving experience specified in this subsection. The Commissioner shall impose conditions and limitations to restrict the applicants from whom alternative requirements for the skills test may be accepted. Such conditions shall include the following:

DRAFTING & ROLE OF STAFF (CONTINUED)

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. 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 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. Both are set to sunset on July 1, 2022, which is a two-year extension that was included in the 2020 Misc. MV Bill.

DRAFTING & ROLE OF STAFF (CONTINUED)

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; or to authorize an agency to implement a program and “fill in the blanks” without having to go through the rulemaking process.

DRAFTING & **ROLE OF STAFF** (CONTINUED)

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.

FINDING RESOURCES ON THE WEBSITE

The screenshot shows the homepage of the Vermont General Assembly website. At the top left is the Vermont State Capitol dome icon and the text "VERMONT GENERAL ASSEMBLY". To the right is the Vermont state seal. Below this is a dark blue navigation bar with white text for "BILLS & RESOLUTIONS", "COMMITTEES", "VERMONT LAWS", "HOUSE", "SENATE", "JOINT FISCAL OFFICE", "REPORTS & RESEARCH", "THE STATE HOUSE", and "STAFF & OFFICES". The main content area features a green search bar with the text "Welcome to the website of the Legislature of the State of Vermont." and "SEARCH FOR: Bill or Resolution, Legislator, Committee, How to use this search". Below the search bar are two images: "THE House of Representatives" and "THE Senate". To the right of these images is a green box for "Scheduled Committee Meetings" with a "View Full List" link, and a white box for "Announcements" with a "SENATE" link.

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BILLS & RESOLUTIONS COMMITTEES VERMONT LAWS HOUSE SENATE JOINT FISCAL OFFICE REPORTS & RESEARCH THE STATE HOUSE STAFF & OFFICES

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Enter bill number, title or keyword [SEARCH](#)

THE House of Representatives

THE Senate

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Announcements

Senate Session
There will be a Senate Session on Friday, January 8, 2021 at 11:30 A.M. | [SENATE](#)

House Afternoon Session