

• The Structure and Authority of Vermont Government

Joint Legislative Environmental Oversight Committee, October 8, 2026

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State Power Within the Federalism System

- Under the U.S. Constitution, the Supremacy Clause set forth in Art. VI, cl. 2 provides that federal law “shall be the supreme Law of the Land[.]”
- However, our federal constitution provides Congress with enumerated powers, and the 10th Amendment provides that all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states or to the people.
- “The dynamics of state government in the federal system are to allow the formation of consensus respecting the way members of a discrete community treat each other in their daily contact and constant interaction with each other.”



State Power Within the Federalism System

- The Vermont Constitution is the core of the State's exercise of its Tenth Amendment Authority.
- The Vermont Constitution controls the operation of Vermont's government.
- "The Vermont Constitution is the fundamental charter of our state and is preeminent in our governmental scheme . . . As such, the constitution stands above legislative and judge-made law, and the rights contained therein speak 'for the entire people as their supreme law.'" See *In re Town Highway No. 20*, 191 Vt. 231, 248 (2012)

Core Principles of Government Authority

Vermont Constitution

Article 7. [Government for the people; they may change it]

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

Vermont Constitution

Article 6. [Officers servants of the people]

That all power being originally inherent in and consequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.

Government Structure— Under Vermont Constitution

Ch. II, § 1. [Governing power]

- The Commonwealth or State of Vermont shall be governed by a Governor (or Lieutenant-Governor), a Senate and a House of Representatives, in manner and form following:

Ch. II, § 2. [Supreme Legislative power]

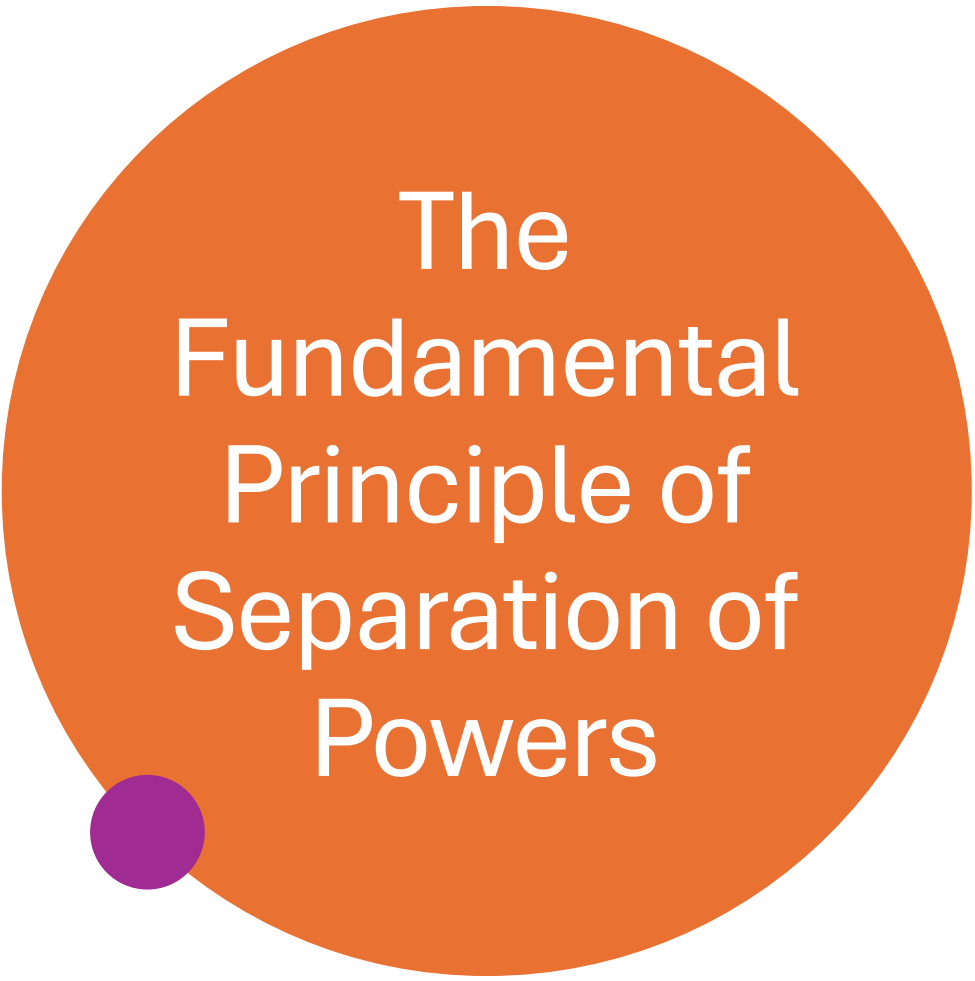
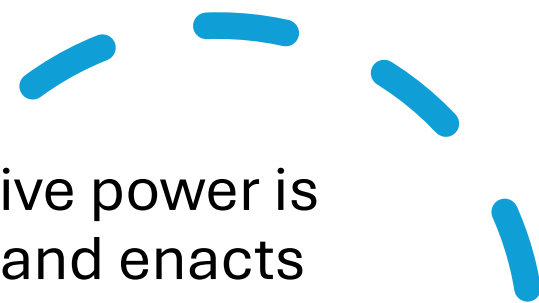
- The Supreme Legislative power shall be exercised by a Senate and a House of Representatives.

Ch. II, § 3. [Supreme Executive power]

- The Supreme Executive power shall be exercised by a Governor, or in the Governor's absence, a Lieutenant-Governor.

Ch. II, § 4. [Judiciary]

- The judicial power of the State shall be vested in a unified judicial system which shall be composed of a Supreme Court, a Superior Court, and such other subordinate courts as the General Assembly may from time to time ordain and establish.



The Fundamental Principle of Separation of Powers

- “Briefly stated, the legislative power is the power that formulates and enacts the laws; the executive power enforces them; and the judicial power interprets and applies them.”
- Separating these three core powers is a “fundamental principle” that serves to create a governmental structure “resistant to the forces of tyranny.” See *In re D.L.*, 164 Vt. 223, 228 (1995).

Separation of Powers— Not Always So Separate

Vt. Const. Ch. II, § 5. [Departments to be distinct]

The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.

In re Opinion of the Justices, 115 Vt. 524, 529 (1949)

Under separation of powers, the power exercised by a branch must be “incidental to the discharge of the functions of the [branch] exercising them[.]”

Hunter v. State, Vermont Supreme Court, 2004 VT 108

[T]here inevitably “**must be a certain amount of overlapping**” of the separate branches’ powers and that “we must construe the constitutional command consistent with efficient and effective governmental structures that are able to respond to the complex challenges and problems faced by today’s state government,” we have referred to “**our separation-of-powers requirement as a relatively forgiving standard, tolerant of such overlapping institutional arrangements short of one branch virtually usurping from another its constitutionally defined function.**”



Vt. Const. Ch. 2, § 6. Legislative Powers

- The Senate and the House of Representatives shall be styled, the General Assembly of the State of Vermont.
- Each shall have and exercise the like powers in all acts of legislation.
- They may prepare bills and enact them into laws, redress grievances, grant charters of incorporation, ... constitute towns, boroughs, cities and counties; and they shall have all other powers necessary for the Legislature of a free and sovereign State; but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution.

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Supreme Legislative Authority

- Vt. Const. Ch. II, § 2 provides the House of Representatives and Senate with “Supreme Legislative power.”
- The Supreme Court of Vermont describes the General Assembly as “the lawmaking branch of government.” *Hartness v. Black*, 95 VT 190 (1921).
- The Vermont Constitution is not a grant of power to the Legislature, but it is a limitation of its general powers. The Legislature’s power is practically absolute, except for constitutional limitations.” *Rufus v. Daley*, 103 VT 426 (1931).

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Legislate for General Welfare and Common Benefit

- The scope of the General Assembly's lawmaking authority is demonstrated by the Vermont Constitution's provision of "police power." See Vt. Const. Ch. I, Art. 5.
- "Subject to constitutional limitations, a state Legislature is authorized to pass measures for the general welfare of the people of the state in the exercise of the police power, and is itself the judge of the necessity or expediency of the means adopted." *Sowna v. Parker*, 112 VT 241 (1941).
- In regard to the police power, "the constitution clearly empowered the legislature to pass such laws as, in its discretion, it might judge would be for the common benefit of the people of the state." *State v. Theriault*, 70 VT 617 (1898).
- This includes legislating to provide for the public's health, safety, convenience, and morals. See *Sabre v. Rutland R. Co.*, 86 VT 347 (1913).

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The Judiciary

Vt. Const. Ch. II, § 28 **[Courts of justice]**

- The Courts of Justice shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay.

Vt. Const. Ch. II, § 29. **[The Supreme Court; composition]**

- The Supreme Court shall consist of the Chief Justice of the State and four associate justices of the Supreme Court.

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The Judiciary

Vt. Const. Ch. II, § 30. [Supreme Court; jurisdiction]

- The Supreme Court shall exercise appellate jurisdiction in all cases, criminal and civil, under such terms and conditions as it shall specify in rules not inconsistent with law. The Supreme Court shall have original jurisdiction only as provided by law, but it shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction. The Supreme Court shall have administrative control of all the courts of the state, and disciplinary authority concerning all judicial officers and attorneys at law in the State.

Vt. Const. Ch. II, § 31. [Lower courts; jurisdiction]

- All other courts of this State shall have original and appellate jurisdiction as provided by law. All courts except the Supreme Court may be divided into geographical and functional divisions as provided by law or by judicial rules adopted by the Supreme Court not inconsistent with law. The jurisdiction of geographical and functional divisions shall be as provided by law or by judicial rules not inconsistent with law. The courts of this state may exercise equity jurisdiction as well as law jurisdiction in civil proceedings as may be provided by law or by judicial rules not inconsistent with law.

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The Judiciary

4 V.S.A. § 1. Unified court system established

- The Judiciary shall be a unified court system under the administrative control of the Supreme Court. It shall consist of an appellate division, which shall be the Supreme Court, and a trial division, which shall consist of a trial court of general jurisdiction to be known as the Superior Court, and a Judicial Bureau.

Vt. Const. Ch. II, § 37. [Rule-making power]

- The Supreme Court shall make and promulgate rules governing the administration of all courts, and shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. Any rule adopted by the Supreme Court may be revised by the General Assembly.



The Environmental Division

4 V.S.A. § 34. Jurisdiction; Environmental Division

The Environmental Division shall have:

- (1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220 (enforcement and appeals of ANR and LURB authority)
- (2) jurisdiction of matters arising under 24 V.S.A. chapter 61, subchapter 12 (solid waste ordinances) and chapter 117 (municipal and regional planning); and
- (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151 (land use; Act 250 permits).



The Executive



Vt. Const. Ch. II, § 20. [Governor; executive power]

- The Governor, and in the Governor's absence, the Lieutenant-Governor, shall have power to commission all officers, and also to appoint officers, except where provision is, or shall be, otherwise made by law or this Frame of Government.
- The Governor shall supply every vacancy in any office, occasioned by death or otherwise, until the office can be filled **in the manner directed by law** or this Constitution.
- The Governor is to correspond with other States, transact business with officers of government, civil and military, and prepare such business as may appear necessary, to lay before the General Assembly.



The Executive Vt. Const. Ch. II, § 20

- The Governor is also to take care that the laws be faithfully executed.
 - The Governor is to expedite the execution of such measures as may be resolved upon by the General Assembly.
 - And the Governor may draw upon the Treasury for such sums as may be appropriated by the General Assembly.
 - The Governor may grant such licenses as shall be directed by law; and shall have power to call together the General Assembly, when necessary, before the day to which they shall stand adjourned.
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The Constitutional Officers

Vt. Const. Ch. II, § 43. [Biennial elections]

The Governor, Lieutenant-Governor, Treasurer, Secretary of State, Auditor of Accounts, Senators, Town Representatives, Assistant Judges of the County Court, Sheriffs, High Bailiffs, State's Attorneys, Judges of Probate and Justices of the Peace, shall be elected biennially on the first Tuesday next after the first Monday of November, beginning in A.D. 1914.

❖ Fun fact: The House Clerk and the Senate Secretary are also constitutional officers, elected by their respective bodies and not the public.



The Not Constitutional Officers

- State Agencies, Departments, Boards, and Commissions.
- Secretaries of State Agencies.
- Commissioners of State Departments.
- Members of State Boards, such as the Land Use Review Board.
- Staff employed by Agencies, Departments, and Boards.

How were these entities created? And where do their powers originate from?



The General Assembly Creates Executive Agencies

Each Executive Branch Agency has its own enabling authority creating the agency and setting forth its general powers.



[Chapter 43: Governor's Cabinet](#)

Contains: §§ 2101 - 2104

[Chapter 45: Administration](#)

Contains: §§ 2201 - 2321

[Chapter 46: Agriculture](#)

Contains: §§ 2350 - 2350

[Chapter 47: Commerce and Community Development](#)

Contains: §§ 2401 - 2516

[Chapter 49: Education](#)

Contains: §§ 2701 - 2702

[Chapter 51: Natural Resources](#)

Contains: §§ 2801 - 2879

[Chapter 53: Human Services](#)

Contains: §§ 3001 - 3097

[Chapter 55: Transportation](#)

Contains: §§ 3101 - 3117

[Chapter 56: Agency of Digital Services](#)

Contains: §§ 3301 - 3306

[Title 3: Executive](#)

Chapter 51: Natural Resources

Subchapter 1: GENERALLY

[§ 2801. Definitions](#)

[§ 2802. Creation of Agency](#)

[§ 2803. Advisory capacity](#)

[§ 2804. Personnel designation](#)

[§ 2805. Environmental Permit Fund](#)

[§ 2806. Barnwell Potential Liability Fund](#)

[§ 2807. Lands and Facilities Trust Fund](#)

[§ 2808. Agency permits](#)

[§ 2809. Reimbursement of Agency costs](#)

[§ 2810. Interim environmental media standards](#)

Subchapter 2: SECRETARY

[§ 2821. Appointment and salary](#)

[§ 2822. Budget and report; powers](#)



The General Assembly Creates Executive Agencies & Departments



3 V.S.A. § 212. Departments created

The following administrative departments are hereby created, through the instrumentality of which the Governor, under the Constitution, shall exercise such functions as are by law assigned to each department respectively:

(1) The Department of Mental Health

(3) The Department of Financial Regulation

(4) The Department of Corrections

(5) The Department of Housing and Community Development

(8) The Department of Fish and Wildlife

(9) The Department of Forests, Parks and Recreation

(10) The Department of Health

(12) The Department of Labor

(13) The Department of Libraries
(14) The Department of Liquor and Lottery

(16) The Military Department
(17) The Department of Motor Vehicles

(18) The Department of Public Safety

(19) The Department of Public Service

(20) The Department for Children and Families

(21) The Department of Taxes

(22) The Department of Environmental Conservation

(23) The Department of Disabilities, Aging, and Independent Living

(24) The Department of Vermont Health Access.



The Legislature Makes, But Can Also Take



Vt. Const. Ch. I, Article 15. [Legislature only may suspend laws]

- The power of suspending laws, or the execution of laws, ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised in such particular cases, as this constitution, or the Legislature shall provide for.

What Does this Mean?

- The establishment and authority of State Agencies, Departments, and Boards is entirely through acts of the General Assembly.
- Specifically, Title 3 of the Vermont Statutes Annotated establishes and grants the general authority of the Executive Branch, including the Constitutional Officers—i.e. the General Assembly can direct the powers of the Executive provided that authority granted under the Constitution is not usurped.



The Legislature Made The Agency of Natural Resources



3 V.S.A. § 2802. Creation of Agency

(a) An Agency of Natural Resources is created consisting of the following:

- (1) The Department of Fish and Wildlife.
- (2) The Department of Forests, Parks and Recreation.
 - (A) The Division of Forests.
 - (B) The Division of Parks.
 - (C) The Division of Recreation.
- (3) [Repealed.]
- (4) The Board of Forests, Parks and Recreation.
- (5) The Department of Environmental Conservation.
- (6) The State Natural Resources Conservation Council.
- (7) The Division of Geology and Mineral Resources.



As The Legislature Created the LURB



10 V.S.A. § 6021. Board; vacancy; removal

(a) Board established. The Land Use Review Board is created.

10 V.S.A. § 6022. Personnel

(a) Regular personnel. The Board may appoint legal counsel, scientists, engineers, experts, investigators, temporary employees, and administrative personnel as it finds necessary in carrying out its duties in providing personnel to assist the District Commissions and in investigating matters within its jurisdiction.

(b) Executive Director. The Board shall appoint an Executive Director. The Director shall be a full-time State employee, shall be exempt from the State classified system, and shall serve at the pleasure of the Board.

10 V.S.A. § 6027. Powers

(a) The Board and District Commissions shall have supervisory authority in environmental matters respecting projects within their jurisdiction and shall apply their independent judgment in determining facts and interpreting law.



And Granted LURB Quasi- Judicial Authority



3 V.S.A. § 2803. Advisory capacity

(a) All boards, committees, councils, activities, and departments that under this chapter are a part of the Agency shall be advisory only, except as hereinafter provided, and the powers and duties of such boards, committees, councils, activities, and departments, including administrative, policy making, rulemaking, and regulatory functions, shall vest in and be exercised by the Secretary of the Agency.

(b) Notwithstanding subsection (a) of this section or any other provision of this chapter, the Fish and Wildlife Board **and the Land Use Review Board shall retain and exercise all powers and functions given to them by law that are of regulatory or quasi-judicial nature**, including the power to adopt, amend, and repeal rules; to conduct hearings; to adjudicate controversies; and to issue and enforce orders, in the manner and to the extent to which those powers are given to those respective boards by law.



The Power of Oversight

10 V.S.A. § 1031. Creation of Oversight Committee

(a) Creation. There is created the Joint Legislative Environmental Oversight Committee whose membership shall be appointed each biennial session of the General Assembly. The Committee shall exercise oversight over the Land Use Review Board and Agency of Natural Resources permitting processes.



The Power of Oversight

- The Committee shall meet with the Land Use Review Board to ensure strong communication and coordination regarding the interpretation and implementation of the statutes amended as part of 2024 Acts and Resolves No. 181, how the permitting process under 10 V.S.A. chapter 151 is working, and how the new Board structure is working.
- The Committee shall also meet with the Agency of Natural Resources to learn about Agency efforts to improve and better coordinate its permitting processes and to coordinate efforts for further improvements to the process for applicants and outcomes for Vermonters.

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The Power of Oversight

- There is no express constitutional provision in Vermont authorizing legislative oversight or investigations of the Executive Branch.
- However, at the federal level, the U.S. Supreme Court has firmly established that oversight power is so essential to the legislative function as to be implied from the general vesting of legislative powers in Congress in Article I of the Constitution. See Congressional Research Service, Congressional Oversight and Investigations (Dec. 3, 2024)

Oversight is Essential to Legislative Function

- ***Watkins v. United States***: The “power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.”
- ***Barenblatt v. United States***: The “scope of the power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”
- ***Trump v. Mazars USA, LLP***: “Without information, Congress would be shooting in the dark, unable to legislate ‘wisely or effectively.’”
- See Congressional Research Service, Congressional Oversight and Investigations (Dec. 3, 2024), citing 354 U.S. 178 (1957), 360 U.S. 109 (1959), and 140 S. Ct. 2019 (2020).

+ • ◦ What Purpose Does Oversight Serve?

- **Programmatic purposes** include making sure agencies and programs are working in a cost-effective and efficient manner and fulfilling their statutory mission; ensuring executive compliance with legislative intent; evaluating program performance; investigating waste, fraud, and abuse; reviewing the agency rulemaking process; and acquiring information useful in future policymaking.
- **Institutional purposes** include checking the power of the executive branch, investigating how a law is being administered, and informing Congress and the public. These purposes may merit special mention because they serve to protect congressional prerogatives and strengthen the American public's ability to evaluate executive activities and actions
- See Congressional Research Service, Congressional Oversight and Investigations (Dec. 3, 2024),

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Oversight = Supervision, Accountability, and Checks and Balances

- Recall that Executive Agency authority is authority created and delegated by the Legislature.
- Reviewing exercise of the delegated authority and ensuring consistency with legislative intent is also legislative in nature and does not “usurp” authority of the Executive.
- The Executive retains the authority to execute the law under the take care clause and the exercise and administration of the delegated authority.
- The Judiciary retains authority to rule on the constitutionality or legality of the enactment and administration of law.