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Bulletin & Legislative Update

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THIS YEAR'S TOP ISSUES AT A GLANCE:

HALF EMPTY OR HALF FULL?

As the 2001 Legislature dragged on into June, Vermonters were asking what was accomplished for all the extra weeks of this session at the taxpayers' expense. Sam Hemingway reported in his Burlington Free Press column entitled "Winners, losers emerge in do nothing session", that "Vermont's environmental heyday is history". The 2001 legislative session clearly did not reflect any of the qualities of the environmental movement of the 1970s, but that doesn't mean that Vermont's environmental glory days are over.

One thing is clear. Going into the session, the pro-environmental lobby was playing defense as the majority of legislators were poised to dismantle existing law rather than to create new ones. VNRC, at times outnumbered by business interests eight to one, was the lone voice fighting for Vermont's environment on a daily basis. VNRC held the line on Act 250, on site septic regulations, Agency of Natural Resources funding, better manure management for farmers and rulemaking for stormwater runoff.

Going into the legislative session, rhetoric from many factions suggested that some of Vermont's most important environmental laws were in peril. There was even the suggestion that lawmakers repeal in its entirety Act 250, Vermont's landmark land use law, once and for all. During the session there were efforts to undermine other laws as well, including failed attempts to repeal Act 15 (Vermont's heavy cutting law), to push back efforts to deal with the growing problems of stormwater runoff from urban and suburban areas, and to exempt municipalities from controlling phosphorous discharges into an already polluted Lake Champlain.

If Vermonters were hoping for positive measures, there is little to report. In Hemingway's column, he filed environmentalists in the loser category, "No mercury bill. No septic regulations reform. No meaningful repairs to Act 250." VNRC does not disagree with this assessment. However, there were a handful of hidden treasures this year, with the promise of more to come next year.

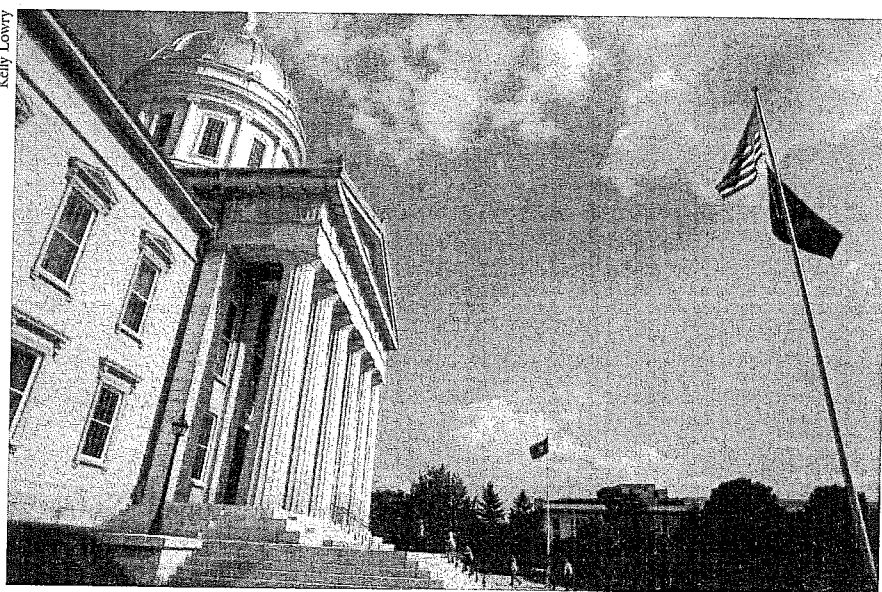
In the final draft of the appropriations bill, lawmakers included priorities from a VNRC funding proposal to help farmers clean up sources of agricultural runoff. Both

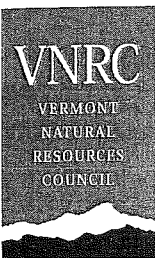
the on-site septic bill, which would close the ten-acre loop-hole, and the mercury bill did make it out of the Senate Natural Resources Committee on a unanimous vote. The perennial effort to legislate for the drawdown of Lake Bomoseen and desiccate acres of wetland were hopefully squelched once and for all. And although the Act 250 bill does not include many meaningful changes, there are more good provisions in it than bad.

Looking ahead to next year we have some incredible opportunities to set a precedent for the nation on the issues of global climate change, mercury deposition,

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Kelly Lowry





2001 LEGISLATIVE UPDATE

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energy efficiency, water quality, wetlands and endangered species protection. Let's challenge the presumption that the environmental glory days are over!

It was in 1969 when U.S. Senator Gaylord Nelson made his call to arms to rally the nation behind the awakening of an emerging environmental consciousness. He implored the country to "wake up and do something" about the rapidly deteriorating quality of our water and air and the toxic pollutants which were contaminating whole communities across the continent. The outcome of the ensuing groundswell to action was the Clean Air Act, the Clean Water Act and the creation of the Environmental Protection Agency.

At the same time in Vermont, Governor Deane Davis was making his own call to arms. The problem was rampant speculative real estate development in Southern Vermont. The ski resorts at Mount Snow and Haystack and those in the Stratton area were, for the first time, accessible to out of state visitors because of the creation of the new interstate highway system. This proposed development was threatening water quality, changing land use patterns and the nature of the rural economy in the area. The results of Davis' call to action was the State's Land Use Development Law, Act 250, the creation of our municipal planning laws and septic regulations.

VNRC doesn't like to perpetuate an alarmist attitude, but it is important to point out to Vermonters that the details to date on the threats of global climate change, acid rain, mercury deposition, phosphorous overloading and sprawling growth in Vermont are alarming. They are alarming enough to merit a call to arms not unlike the one we

experienced in the 70s. We need your help! Help us wake up our legislators and get them to do something! Call VNRC to obtain the mailing address, e-mail address, or phone number of your legislators.

2002 APPROPRIATIONS

Sometimes the leaders do follow. Over a year ago, VNRC began drafting a proposal to assist farmers with appropriate funding and technical expertise to help clean up sources of agricultural runoff. This proposal, a needed addition to the existing Accepted Agricultural Practices program, was used as a template by the administration to fund new and existing programs in the Governor's budget. Although funding for agriculture programs was often a political football this year, a good portion of the money made it through the appropriations gauntlet.

Considering the political climate going into the 2001 legislative session, VNRC considers this increase in funding for and attention to water quality both a huge victory and a validation of much hard work. Included in the new funding package is \$600,000 of one-time funding for the Lake Champlain Conservation Reserve Enhancement Program (CREP). This money is used to compensate farmers for taking streamside buffers out of agricultural production. Healthy buffers help filter out nutrients and other pollutants, and also help prevent stream bank erosion.

New base funding in the amount of \$400,000 for water quality programs will be used to hire two new full-time field staff at the Department of Agriculture, Food & Markets, and may also be used to improve existing nutrient

management programs or statewide CREP. VNRC feels strongly that as much of the money as possible should be directed toward nutrient management, which not only prevents over-application of nutrients, but can also save farmers money in the process. Unfortunately, concerned Vermonters will have to keep a close eye on how the bulk of this new base funding is spent. Although the administration had earmarked funding specifically for nutrient management, the Department of Agriculture, Food, and Markets has made no guarantee that the money will be spent on this worthwhile issue.

Other appropriations important to VNRC were directed to the Agency of Natural Resources and the Vermont Housing and Conservation Board. ANR received a \$550,000 increase in the general fund base, \$400,000 of which is new base funding not accounted for by inflation. Included are two new positions, one analyst to be used in the stormwater program, and one scientist to be used either for natural hazard mapping or in the wetland office. Originally ANR had requested six new positions for which VNRC lobbied fervently, but four of these positions were ultimately cut from the budget.

CAPITAL BILL

Inside the halls of the State House, VNRC was the lone voice decrying a legislative attempt by the House to move several anti-environmental policy riders on the capital construction and state bonding bill. Outside of the State House, VNRC successfully orchestrated an outreach campaign to educate Vermonters about these policy pieces. As the Committee of Conference met to decide the fate of these

provisions, VNRC pulled together a coalition of fourteen diverse organizations to sign on to a letter to Speaker of the House Walter Freed, urging him to oppose the riders. An accompanying press conference on the steps of the State House served to put legislators on notice that Vermonters would not tolerate regressive environmental policy pieces attached to a must-pass spending bill.

One of these sections would have prevented ANR from filing its new stormwater rules until July 2003. Fortunately, this attempted two-year delay was ultimately defeated. Another section in the capital bill as passed by the House created a categorical exemption for municipal wastewater treatment facilities (WWTF) discharging 50,000 gallons or less from all requirements to remove phosphorus from their effluent. This proposed exemption was eliminated, but the final version of the bill included a specific exemption regarding the WWTF at Shoreham and Cabot. Although this more limited action is preferable to a new categorical exemption, it nonetheless constitutes legislative interference with ongoing litigation at the Water Resources Board, and as such, is inappropriate. Finally, the bill included a section eliminating the Agency of Natural Resources' oversight of mosquito control activities including the direct application of pesticides to the waters of the State, and deleting all public notice or comment in the Department of Agriculture's issuance of permits for this purpose. The committee of conference reached a compromise requiring ANR to participate in the process, and providing public notice and comment during the permitting process.

On the bright side, the bill did include provisions giving

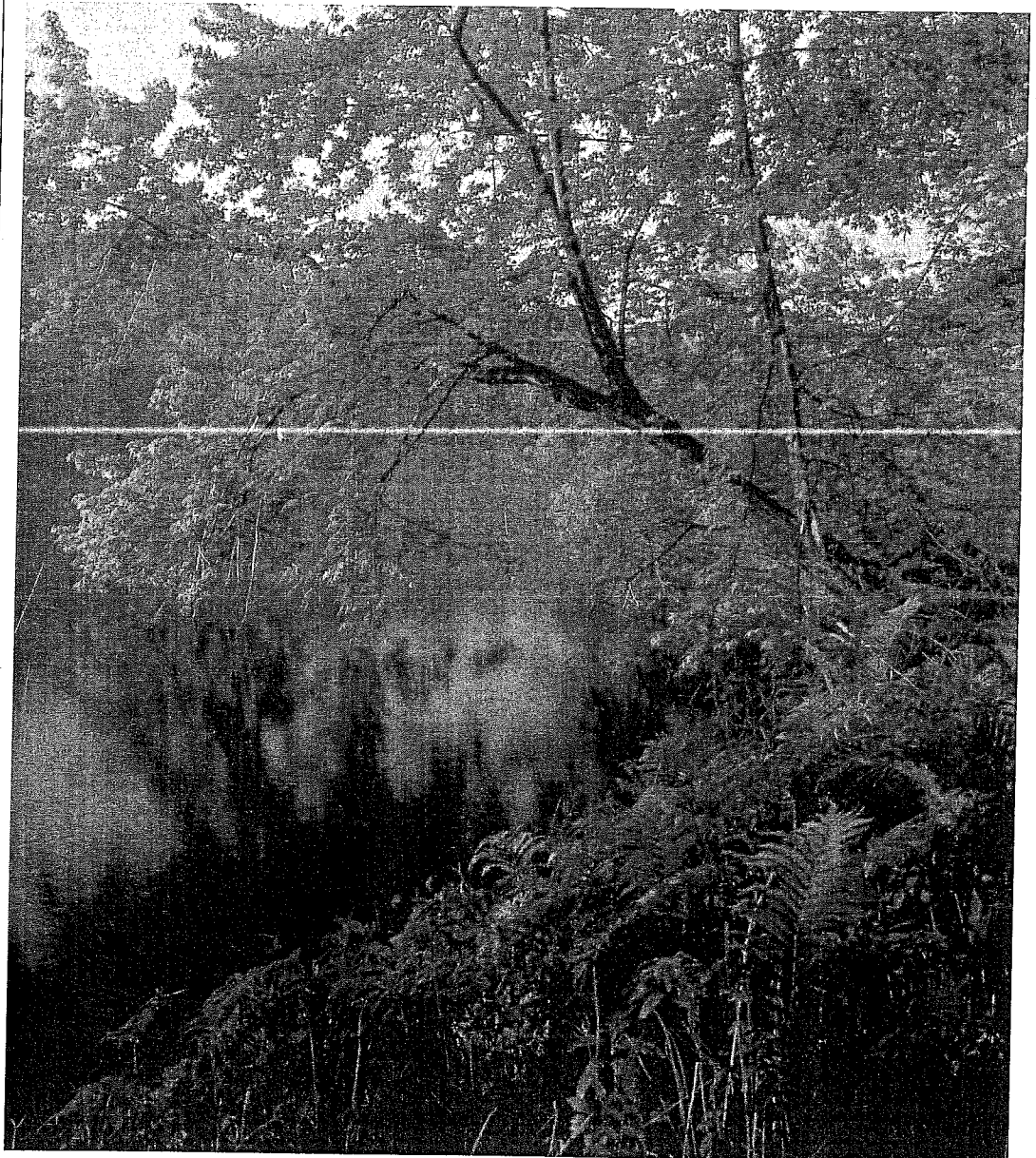
preference in school construction to those projects that incorporate energy efficient heating systems and systems that incorporate renewable energy sources. As chairman of Senate Institutions, Senator Vince Illuzzi (R. Orleans) made these renewable energy provisions a priority in the capital bill.

Senator Illuzzi also worked with VNRC at every turn to lessen the negative impacts of the House anti-environmental riders. Much of VNRC's success with the capital bill can be traced to the commitment of Senator Illuzzi to these issues.

ACT 250

On the last day of the session, the General Assembly passed an Act 250 bill that will make several positive changes to the law while ensuring that the interests of Vermont citizens will be protected in the Act 250 hearing process. The most controversial issue was a provision calling for "on the record" appeals from the district commission to the environmental board. VNRC had objected to this provision as being so legalistic and expensive that it would drive citizens

out of the Act 250 process. In the end, the House-Senate Conference Committee agreed to a proposal suggested by VNRC to make "on the record" subject to consent of all parties. Although the bill fell short of extending supreme court appeal rights to all parties, the issue is part of the summer study of the permit process. VNRC thanks Senators McCormack (D, Windsor), Snelling (R, Chittenden), and Gossens (D, Addison) for their efforts to design a fair appeals process for all parties. Here are the



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highlights of the bill:

- **"On the record" Pilot Project** – There will be up to 12 cases, with no more than 3 in any one district, in which appeals may be brought before the environmental board "on the record" (E.g. On the record created by the district commission rather than starting anew, the current procedure referred to as "de novo"). In order for a district commission hearing to be heard on the record, all parties must agree. It is important to note that the environmental board can consider evidence presented outside the district commission hearing, so it is not strictly speaking an appeal "on the record". The pilot project will sunset in 2004 and will include reports on the results of the project.
- **Six Lot Trigger for Act 250 Jurisdiction** – Act 250 will now contain language giving the environmental board jurisdiction over subdivision of 6 or more lots in towns with no zoning or subdivision bylaws. This change will allow broader Act 250 jurisdiction over those towns and communities which do not have adequate town planning.
- **Repeal of the 800-foot Road Rule** – The six lot jurisdictional trigger and the elimination of the 800-foot road rule go hand-in-hand. The rule has its genesis in the calculation that an 800-foot road approximates 1 acre in area, another standard for asserting jurisdiction found in Act 250. It has resulted in poor land use characterized by large, sprawling, land consumptive developments in contorted layouts utilizing 799-foot roads to avoid Act 250 jurisdiction.
- **Compliance with Town Plan** – This provision reaffirms the importance of the town plan in Act 250. Where the plan is ambiguous the board or district commission can consider zoning bylaws that implement and are consistent with the plan and need not consider any other evidence.
- **Stay of Permit Processing of Applicant in Violation** – The district commission will be able to stay the issuance of an Act 250 permit for an applicant who is not in compliance with orders related to the pending application or is in violation of other permits.
- **Stay in Construction after Permit Issuance** – Prior to an appeal, an aggrieved party may file a request for a stay of construction. The stay shall be automatically granted for seven days and may extend up to 30 days, during which time an appeal may be filed.
- **Study on the Land Use Permitting Process** – A committee will be appointed with representatives from the executive and legislative branches, interest groups and the general public to examine the land use permitting process. The committee is charged with making recommendations for legislation by January 15, 2002, which will address consistency and consolidation of permit processes while assuring citizen participation and environmental protection. The study will also evaluate the issue of allowing all parties to appeal to the supreme court.
- **Cumulative Growth Study** – The Legislative Council staff, in consultation with the House and senate Committees on Natural Resources and Energy, is to investigate mechanisms to address the issue of cumulative growth.
- **Act 250 Facilitator Pilot Project** – This three-year pilot project creates an Act 250 facilitator who will work to assist small project applicants in preparing their applications and other parties in preparing for their participation in Act 250.
- **Mediator Pilot Project** – Another three-year pilot project will provide mediation services through contract to resolve disputes in Act 250. The mediation services will be provided at no cost to applicants and other parties.
- **Assistance to Applicants** – Language was added to encourage state employees to assist all applicants regardless of the size and value of the projects involved. The intent was to provide more attention to "mom and pop" applicants.
- **Termination of Jurisdiction over Temporary Film Developments** – In the future, when there are temporary physical improvements for producing films, television programs and advertisements, Act 250 jurisdiction will end after the improvements are no longer in place and the permit conditions have been met. The temporary improvements can only remain in place for up to one year and can not cause adverse impacts under the criteria of Act 250 after the project is completed.

- **Agency of Natural Resources Permits** – Language was added to say that technical determinations with respect to permits and approvals of the ANR shall be given substantial deference by the environmental board and district commissions.

- **Act 250 Penalties** – A person who completely transfers ownership and control of property subject to an Act 250 permit will not be liable for later violations of the permit by another person.

AFFORDABLE HOUSING PERMIT STUDY

This year the legislature passed a bill (H. 483) to stimulate the development of affordable housing in Vermont. One part of the bill creates a study commission to review the regional planning and development act with an eye toward recommending changes that would encourage development of affordable housing. Part of the commission's charge will be to reconcile Act 250 with municipal planning law. VNRC was instrumental in getting two additional seats on the commission to represent Act 250 and natural resources interests.

DOWNTOWN BILL

A bill to encourage development in downtowns received some attention from the legislature, and some money for downtowns was included in the state budget. The bill (H.208) will be taken up next year by House Commerce Committee. VNRC worked with the Coalition for Vital Downtowns in developing the bill, particularly the element

that enables communities to implement land value taxation in their downtowns.

ON-SITE SEPTIC SYSTEMS

The Senate was able to pass a bill that would overhaul the state's system for managing on-site sewage disposal. However, S.27 stalled in House Natural Resources and Energy Committee until next year. The bill would direct the state Agency of Natural Resources to move forward with rules allowing alternative wastewater disposal systems, close the ten-acre exemption in state subdivision regulations, and provide funding for local planning to prepare for changes in the ANR rules.

House Natural Resources and Energy Committee remains skeptical that the ANR will stay within the bounds of the proposed legislation, if the Agency does proceed with rule making. The committee plans to work with the Agency this summer to ensure that this happens.

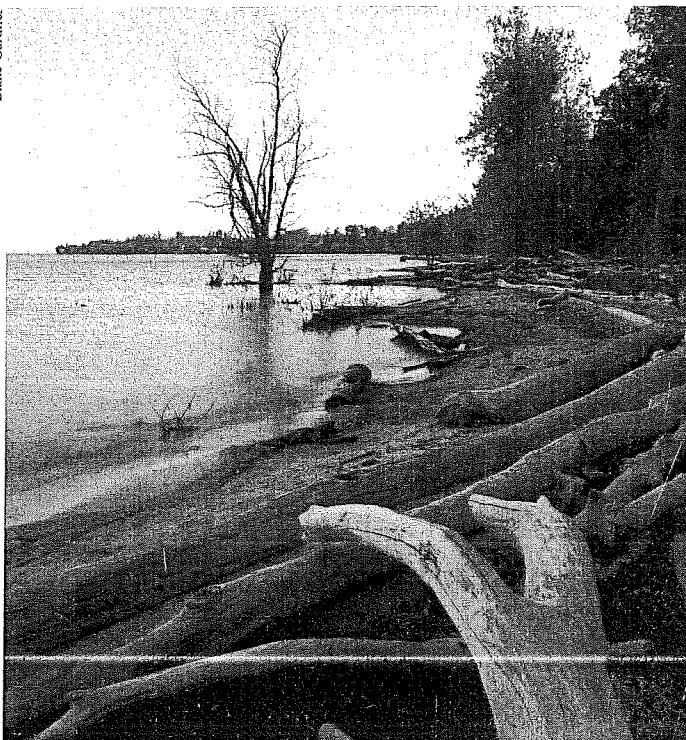
HOUSING AND CONSERVATION TRUST FUND

Funding for the HCTF, through a portion of the property transfer tax, was maintained at a reasonable level, \$11.6 million, slightly higher than last year's allocation. This was a significant win for the conservation community.

MUNICIPAL AND REGIONAL PLANNING FUND

In the coming year, municipalities will receive about \$695,000 for planning grants, while the twelve regional planning commissions will share

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about \$2.59 million to support their activities. These monies represent a proportionate share of the property transfer tax receipts and show a slight decline from last year due to recisions made last year when the actual receipts did not reach the amount originally appropriated in the FY01 budget.

MERCURY

Sponsored by Senator Dick McCormack, S.91, the mercury products bill, languished in Senate Appropriations after being passed out of Senate Natural Resources and Energy Committee with bipartisan support.

Mercury is a potent neurotoxin. Even at low levels, it can cause subtle but permanent harm to the brain in humans and reproductive harm in wildlife; if ingested or inhaled at high levels, it can cripple or kill. A recent report by the National Academy of Sciences estimates 60,000 newborns each year may suffer developmental harm due to

their mothers' consumption of mercury contaminated fish. Another report released in March of 2001 by the Centers for Disease Control, said that an estimated one in ten women are at risk of having newborns with neurological problems due to in utero mercury exposure.

One of the contributors to elevated mercury levels is incineration of mercury into the environment. The purpose of this bill is to begin to remove mercury products from the waste stream through various methods, including phaseouts, labeling and bans.

Even with the help of the Governor's office, NWF and sportsmen groups, VNRC was unable to move S.91 out of Senate Appropriations. This is partially due to the threat from the Energizer Company, which has two plants in Vermont which make button cell batteries, that they would lose 250 - 500 jobs if the bill were to pass. The environmental community agreed to exempt button cell batteries from the entire bill, but this

still was not enough to satisfy Energizer or the Democratic leadership in the Senate. We will be continuing this effort in the next legislative session.

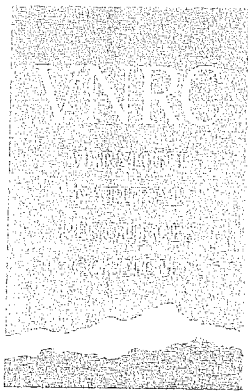
CURRENT USE

Current use went through a number of extrapolations, (beginning with S.172, "An act relating to the Vermont Working Landscape") though in the end remained unchanged. However, the House amended H.196, an environment-neutral change in the current use law, to include a reduction in the land use change tax, from 20% to 10%. The land use change tax provision was initially a stand alone bill, which received scant testimony in House Agriculture Committee. While there was much discussion about process on the House floor, the amendment passed and the House voted to reduce the land use change tax. This provision was not taken up by the Senate.

ENERGY AND RENEWABLES

A variety of bills focused on energy in the first half of the biennium. S.138, "An Act Relating to Standards for Labeling of Electricity for Resale," called for electricity for retail sale to be labeled so that consumers know its source and environmental impacts. VNRC testified in support of this bill, which passed the Senate and now rests in House Commerce. H.458, "An Act Relating to Tax Benefits for Renewable Energy and Energy Efficiency" is a bi-partisan proposal designed to provide tax credits to taxpayers engaging in renewable resource generation.

VNRC, along with the Vermont Fair Tax Coalition, worked on gaining bipartisan support for the bill through



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sponsorship by House Appropriations member, Representative Bob Helm, (R, Castleton). ' Finally, H. 376, Renewable Energy Tax Credit, would establish an incentive for Vermonters and Vermont alternative energy industry to create and use renewable energy by providing an income tax credit for certain equipment used to harness alternative energy sources such as wind and solar power.

Both the House and Senate took testimony regarding Vermont's energy future, and all the bills were mentioned during committee discussion. Unfortunately, none of the bills moved, but the Chair of House Commerce Committee, Representative Jim Colvin (D, Bennington), has committed to taking on energy issues, including renewable energy, next session.

STEWARDSHIP TRUST FUND

Initially, VNRC supported the department of Forests Parks and Recreation's proposal to create a Stewardship Trust Fund, which was intended to support maintenance of our chronically underfunded State Park system, improve the Department's efforts with state lands management and water quality protection, and support ecological and natural community inventories. In its testimony, VNRC supported the trust fund initiative, provided that the fund not be supported by receipts generated from timber sales off of state land. This provision arose out of concern for maintaining objectivity among the state foresters and land managers making decisions about forestry on our public lands.

(historically, timber receipts from state land harvests were passed back into the General Fund). The Stewardship Trust Fund was altered outside of the open door committee process, becoming "The Land and Facilities Trust Fund," which limited eligible activities for expenditures from the fund (e.g., no expenditures for water quality improvements, no expenditures for acquisition of land), and included redirection of timber receipt revenues from the general fund to the Trust fund. Throughout the legislative session, VNRC worked with Forest and Parks and the Agency of Natural Resources to share information on independent third party certification of state lands. We remain optimistic that the Secretary will move toward certification of all state lands likely to fall into timber management, concurrent with

creating and adopting management plans for the ~66% of state lands which currently do not have plans.

GLOBAL WARMING RESOLUTION

Finally, an important resolution on climate change and Kyoto protocol (JRS. 73) passed the Senate on a voice vote. While it did not have enough time to proceed through the House, the resolution asks Vermonters to do what they can over the summer to reduce energy demand, tells the Administration to implement its Greenhouse Gas Action Plan and Comprehensive Energy Plan, and tells the President of the United States that Vermont believes that we can meet the Kyoto 7% reduction below 1990 levels by 2012.