

Bulletin & Legislative Platform

THIS YEAR'S TOP ISSUES

ENERGY ISSUES BRING PARTIES TOGETHER

On environmental issues, energy legislation may break the often partisan mold this legislative session, with a strong tripartisan cadre of legislators pushing renewable and sustainable energy policy. Senator Phil Scott (R-Washington) recently summed up the impending climate on energy issues remarking, "I think you'll see the far right and far left meet in the middle to come up with solutions on energy issues. They may get there for different reasons, but the result will be the same."

Some of the basic reasons that energy issues are gaining momentum stem from the increasing threat of global warming, the need to plan for a more stable and cleaner energy future, and the realization that the United States cannot continue to depend on foreign oil. More and more legislators are also realizing that the threat to a stable economic future, our security and long-term electricity reliability are reason enough.

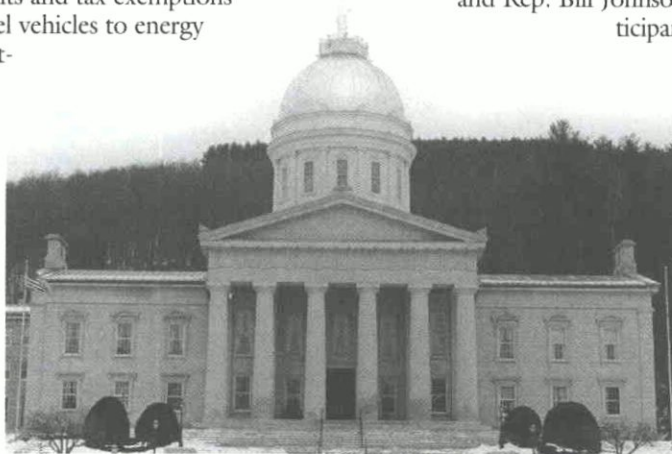
Last year a number of bills were introduced that offered a variety of tax credits and tax exemptions ranging from alternative fuel vehicles to energy efficient appliances to investment in renewable energy systems. All would do wonders to diminish our reliance on fossil fuels, decrease air pollution, bolster conservation efforts, divert resources back into Vermont, and create a more stable economy in the future. Considering projected budget shortfalls in 2002, however,

legislators may have to look toward more creative solutions such as tax shifting that are revenue neutral, or even revenue positive.

Shifting taxes can relieve the burden on cleaner, sustainable uses of energy and make up for the revenue loss with increased taxes on higher energy consuming activities. This makes for revenue-neutral solutions that may be appealing for legislators who are focussed on energy solutions and also concerned about the budget. (See Tax Shifting, page 3)

In October a handful of legislators participated in a conference at the State House sponsored by a coalition of renewable energy businesses and organizations to begin the discourse of where to move next on energy legislation. Lieutenant Governor Doug Racine, Senator Dick McCormack (D-Windsor), Senator Phil Scott, (R-Washington), Senator Sara Kittell (D-Franklin), Rep. Tom Little (R-Shelburne), Rep. Kathy Keenan (D-St. Albans), Rep. Ann Pugh (D-South Burlington), and Rep. Bill Johnson (R-Canaan) were all participants who have sponsored or support legislation that would begin to lay out incentives for investment in renewables and energy efficiency.

In mid December, the administration laid out a set of modest initiatives to promote energy conservation, increase development of combined heat and power projects,



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The Vermont Natural Resources Council, Inc., is a nonprofit environmental organization founded in 1963 to protect Vermont's natural resources and environment through research, education, and advocacy.

VNRC is the Vermont affiliate of the National Wildlife Federation.

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and promote small scale renewable energy projects. These proposals are a step in the right direction in putting Vermont on a more stable energy footing, but continue to rely heavily on existing sources of nuclear and fossil fuels.

Senator Dick McCormack (D-Windsor), chair of the Senate Natural Resources and Energy Committee, has said unequivocally that energy is going to be the main focus in his committee. "Where I hope that my committee will go is towards an approach that avoids mandates by focusing on energy efficiency first, then renewables. Huge savings are possible by making energy conservation a priority."

McCormack sees a hierarchical approach in addressing energy issues by investigating "voluntary and painless conservation first, then voluntary sacrifices, then mandatory sacrifices." Once energy efficiency has been discussed, McCormack hopes that his committee will then move on to promoting renewables.

The state can also take a more active role in leading the private sector in energy efficiency and conservation by setting an example in the construction of state projects. Senator Vince Illuzzi (R-Essex/Orleans), as chair of the Senate Institutions Committee has taken the lead by incorporating some progressive energy measures in funding state projects through the Capitol Construction and State Bonding Bill (see inset). There is more that can be done, however, to expand on conservation-minded building codes, and VNRC is hopeful that House and Senate Institution Committees will choose to do so.

Senator Dick Mazza (D-Grand Isle) has seen the economic benefits of investing in energy efficiency at his grocery

On April 30 of the 2001 legislative session, Senator Illuzzi delivered a floor speech regarding the importance of conserving energy and investing in renewable resources, especially in school construction. Senator Illuzzi proposed that the state pick up 50% of the costs of renewable energy systems as an incentive for schools to use less fossil fuels. In November, Senator Illuzzi answered questions regarding some of his other work through the Capital Construction Bill. The following are excerpts:

What projects have you funded through the Capital Bill that were energy efficient or otherwise environmentally friendly?

Numerous. We started in 1991 with the state colleges and department of state building, installing computer systems that monitored and regulated heat and air conditioning in buildings. We directed a study of wind energy. We encouraged the use of wood heat in state office buildings, like Newport, courthouses like Addison County, and correctional facilities like Newport and St Johnsbury.

[Last] year, we encouraged the use of renewable energy in school buildings and state office buildings. The Bennington state office building will use geo-thermal heating and cooling. The new rest areas in Sharon will be green buildings [off the grid].

What projects that fit this bill are currently in the works?

District energy heating in downtown Montpelier. Maybe the McNeil generating facility for UVM and downtown Burlington.

store in Colchester, and believes that incentives for energy efficiency could be paired with disincentives that avoid wasting energy. "Below the skylights in one mall, I counted over 400 lightbulbs on in the middle of the day. There should be an all around effort to conserve electricity. It could help businesses save up to 10%," Mazza says.

Over the past 15 years, Mazza has invested in energy efficient lighting, closed cooling units, and energy efficient compressors that not only power refrigerators, but also use waste heat that supply all hot water needs. While most Vermont business have slowly watched electric rates climb, Mazza says his bills have stayed pretty much the same over the last 10 years. "The general increase in rates have been absorbed by my energy

efficiency investments."

With the environmental, economic, and security impacts of making energy a top priority this legislative session such a salutary construct, Vermonters may just see the partisan walls crumble.

ENERGY INITIATIVES

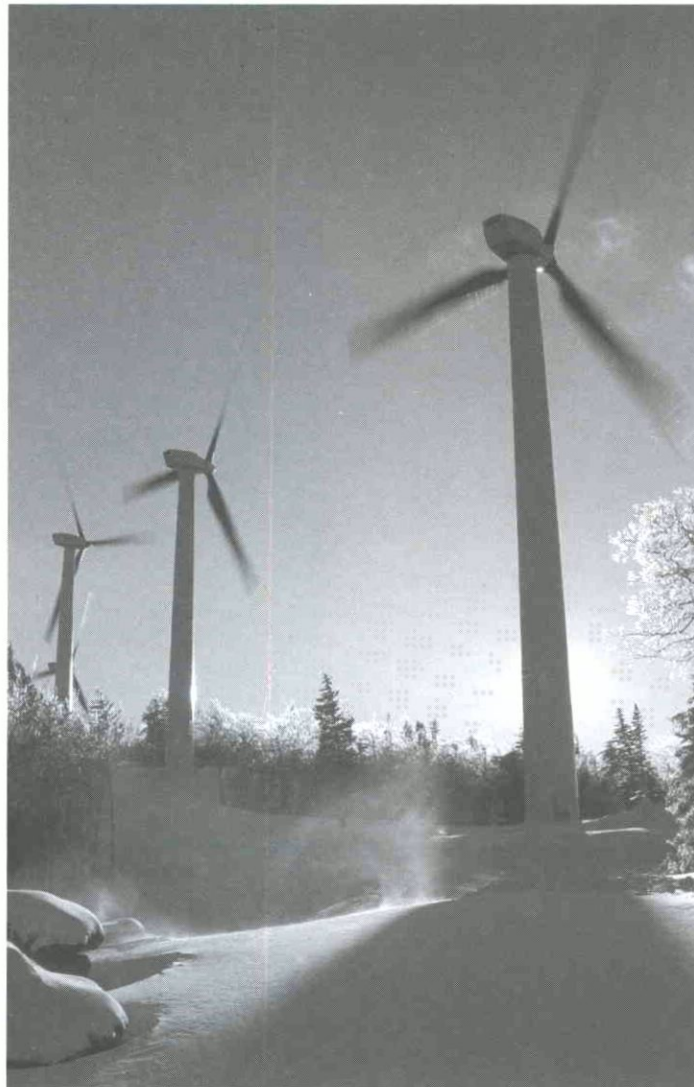
VNRC has been working with a burgeoning coalition of organizations intent on bolstering Vermont's renewable energy and energy efficiency policies. Currently this coalition is looking at pursuing a state renewable energy portfolio for Vermont, making changes to existing net-metering law, and applying "green tags" to power sources so that consumers have the option to choose renewable energy

alternatives.

Several important renewable energy and efficiency proposals are before the legislature. The list includes:

- Renewable energy investment tax credit which provides a tax credit equal to 60 percent of the total investment in renewable energy systems for five years and a smaller percentage for five additional years.
- Renewable energy production tax credit which offers a tax credit of \$0.02 per kilowatt-hour for energy generated by renewable energy sources.
- Renewable energy sales tax exemption which expands the existing sales tax exemption for materials which are purchased for use in developing off-the-grid electric systems or solar hot water heater systems to materials for on the grid system projects as well.
- Comprehensive tax benefits for renewables and efficiency which provides an exemption from the sales tax for certain energy efficient and renewable energy appliances, a tax credit for investment in renewable energy systems used by farmers, and an exemption from the motor vehicle purchase and use tax as well as an exemption from annual registration fees for alternative fuel vehicles.

In order for much of the private sector to begin the process of buying in to energy conservation as a long-term solution to energy issues, VNRC believes that the state can lead by example. A simple, comprehensive paradigm could be employed by mandating that state building projects comply with environmentally sound building



standards such as the LEED (Leaders in Energy and Environmental Design) guidelines, which incorporate energy efficiency and the use of renewable energy sources.

LEED is a self-assessing system designed for rating new and existing commercial, institutional, and high-rise residential buildings. It evaluates environmental performance from a "whole building" perspective over a building's life cycle, providing a definitive standard for what constitutes an environmentally friendly building. LEED is based on accepted energy and environmental principles and strikes a balance between known effective practices and emerging concepts.

VNRC has also been actively supporting the development of combined heat and power projects in Vermont. The McNeil biomass electricity generating station in Burlington, powered by sustainably harvested wood chips, produces a considerable amount of heat during the generation process that goes unused. The Burlington Electric Department (BED) has been working on a project to distribute waste heat to nearby facilities in Burlington such as the University of Vermont campus and the Fletcher Allen Health Care campus. The project would diminish the reliance on fossil fuels used at UVM and FAHC, and stretch the bene-

fits of biomass by using waste heat. At present BED estimates that between some funding will need to be earmarked by the legislature to offset part of the price tag for this project. VNRC will advocate for funding to support combined heat and power project such as the McNeill plant throughout Vermont.

FAIR TAXES AND TAX SHIFTING

VNRC and its partners in the Vermont Fair Tax Coalition are focusing their advocacy and education efforts on changes in state policy which will promote energy efficiency and development of renewable energy resources, help curb urban sprawl, and improve water quality.

The Coalition, which also includes Vermont Businesses for Social Responsibility, Vermont Public Interest Research Group, Friends of the Earth, and over 40 other businesses and organizations, was formed in 1998 to help Vermont design a tax system which strengthens the economy, cleans up the environment, and is fairer for low-income wage earners.

The Coalition believes that tax shifting — reducing taxes on activities that Vermont wants to encourage, like high quality jobs, and placing taxes on activities we want to discourage, like pollution and waste — is a tool that deserves serious consideration in Vermont.

In addition to the energy initiatives mentioned above, a more revenue-neutral energy efficiency proposal called the "clean car incentive" should be seriously considered. It could be structured as a "feebate" where "gas guzzlers" pay a higher fee associated with the motor vehicle purchase and use tax while "fuel-sippers" receive a rebate.

WILL THE LEGISLATURE DIRTY THE WATER?

Budget Cuts at ANR Will Hurt Vermont's Environment and Business

Vehicles in the middle range of fuel efficiency would neither pay the fee nor receive the rebate. Certain vehicles including those for small business and farm use could be exempted. Considering the current global climate, national and state leaders are wise to consider policies that move America toward energy independence and decreasing reliance on fossil fuels.

Other tax shifting initiatives could help in the fight against sprawl and in improving water quality. Use of the land value tax to promote development in our city and town centers is one such initiative (see *Downtown Incentives*). In addition to strengthening downtowns, the potential for sprawl could be reduced by extending the current use program beyond the farm and forest land that the program now covers. The following should be subject to use value (current use) appraisal: land used for preserving threatened or endangered species; recreational land; land with floodplains and wetlands; and riparian buffers.

To help improve water quality, the elimination of the sales tax exemption on non-agricultural pesticides and fertilizers is recommended. In Vermont, no sales tax is paid on fertilizers and agricultural chemicals, including pesticides, herbicides and fungicides. Although originally designed to aid farmers, the exemption is overly broad and extends benefits to commercial lawn applicators, golf courses, ski areas, and industrial interests, as well as to homeowners buying these products off the shelf. Funds generated from closing the exemption should be directed toward improving water quality such as stream and lakeside buffer acquisition and financial and technical assistance to farmers transitioning to organic products.

Vermonters concerned about the environment should pay special attention to legislative tinkering this year, especially when it comes to the budget. With projected tax revenues falling short, and a variety of programs already on the chopping block to help balance the budget, Vermont's environment could get hit hard.

Prior to last year, the Agency of Natural Resources budget had dropped from 2% of the General Fund in the

1980s and 1990s to just over 1% over the last 6 years. Many of the badly needed programs and staffing included in the Governor's budget last year were whittled away in the final appropriations bill. ANR, already short-staffed, has been asked to make drastic cuts for fiscal 2002 and more cuts could be on the way.

With a backlog of stormwater permits nearing 1,000, and dearth of personnel to craft Basin Plans and TMDLs (Total Maximum Daily Loads),

cuts in ANR funding could further complicate the permitting process and make it harder for businesses to develop projects.

VNRC will advocate for adequate funding for ANR, and help legislators understand that cuts could do far more than neglect environmental protections. Businesses rely on a smooth-running, well-staffed ANR to consider permit applications.

STORMWATER AND WATER QUALITY

Earlier this year, the Vermont Water Resources Board issued a ruling in a case involving the addition of pollutants from a proposed bix-box store in to the already-polluted Potash Brook in South Burlington. Interpreting statutes and rules that have been on the books for almost thirty years, the Board properly ruled that the state cannot permit an entity to discharge additional pollutants into a public waterway that is already so polluted is not fit for swimming or fishing. A clean-up plan for the impaired water must already be in place before additional pollutants can be introduced, and, in an embarrassing situation for ANR, no clean-up plans have been finalized for any of the state's 129 impaired waters-- even though it has been required by state and federal law for three decades.

Potash Brook is a severely impaired stream that has been hit hard by urban and suburban non-point pollution. In the 2000 list of impaired waters that the state of Vermont submitted to EPA (impaired waters are those that do not meet water quality standards), the Potash Brook problems are listed as urban runoff, erosion, and land development. Sediments, pathogens, nutrients and metals have left the stream "in poor biological condition", which means, of course, no fish and no

bugs. The brook is even considered impaired for "contact recreation," which means no swimming.

Pre-legislative rhetoric suggests that there will be attempts to circumvent the Board's decision by passing legislation that will either change the relevant portions of the statute or regulations underlying the decision, or specifically exempt this project from these standards. Either approach will ultimately fail, and will only lead to further litigation and confusion. The reason for this is simple: the Board's ruling is based on Vermont laws and regulations designed to implement the federal Clean Water Act. If Vermont's law were any less stringent than those on the books, they would conflict with the federal law. In such a situation, the federal law trumps state law. The possible outcomes of weakening laws and regulations at issue include revocation of Vermont's delegated authority to issue water pollution control permits, thereby requiring Vermonters to go to Boston to acquire such permits from EPA instead of ANR, or lawsuits in federal court directed against the permittee. Neither of these possibilities solves the problem. VNRC will be watching very carefully this session to ensure that any such attempts to weaken Vermont's water pollution control laws will not pass.

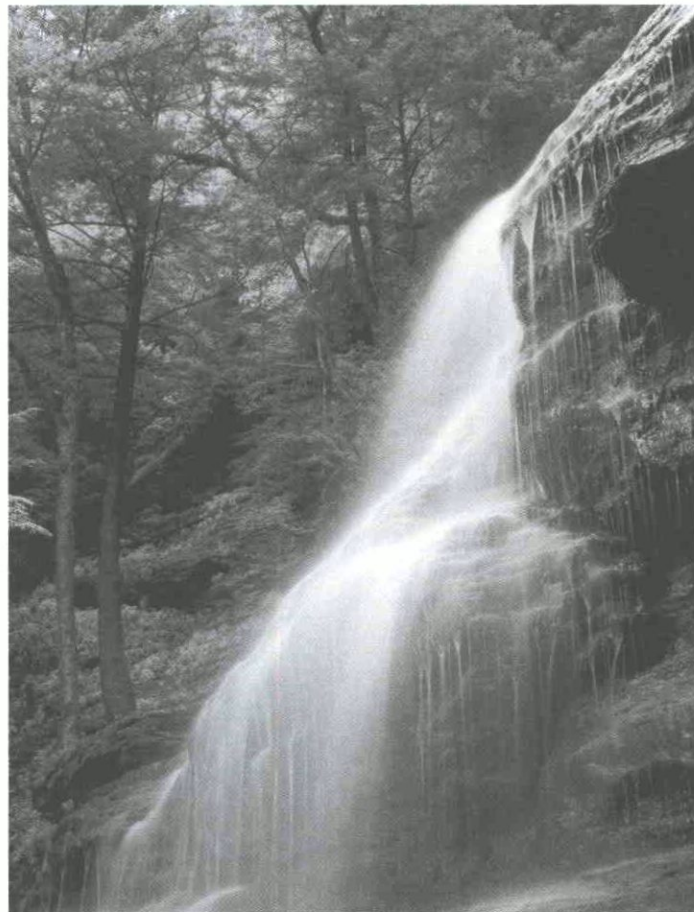
ON-SITE SEPTIC SYSTEMS

The Senate was able to pass a bill in 2001 which would overhaul the state's system for managing on-site sewage disposal. However, S. 27 is stalled in House Natural Resources and Energy Committee at this time. 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.

Meanwhile, the Vermont Agency of Natural Resources (ANR) has gone forward on its own initiative to propose two rules that will control onsite septic wastewater disposal systems in the future. The administration has the authority to promulgate new rules for on-site septic without legislation, and was given the incentive to do so when S.27 stalled in committee. Some of the new administrative changes could have the most far-reaching implications of any land use issue in Vermont.

The first rule, supported by VNRC, closes the 10+ acre lot exemption in state subdivision regulations by September 1, 2002. State subdivision regulations now allow development on lots of 10 acres or larger with no state septic system review. This loophole promotes large-lot, scattered development which eats up land, promotes sprawl, and can create public health hazards when systems fail. These unregulated developments have led to high septic system failure rates and caused ground and surface water pollution.

The second rule (Rule 2) calls for a full rewrite of existing regulations. With the exception of closing the



10-acre loophole, also included in "Rule 2," VNRC opposes the rewrite as drafted. Vermonters could see the face of the Vermont landscape change drastically because the rule effectively increases the amount of developable land in Vermont by 50%.

Vermonters could also see the use of alternative septic systems exploited by unleashing several alternative technologies for either general use or for pilot or experimental use. This use may be based only on the manufacturer's or designer's level of experience with the new product or design. Major concerns include: slimmer margins of error in site condition standards, scarcity of appropriate oversight, and uncertainties about long-term operation and maintenance of the new technologies.

Vermonters could find themselves facing increased

pollution of ground water and surface water as well. Rule 2 proposes to lessen site condition requirements when taking into account geological factors. For example, in certain cases the rule allows as little as 6" of soil above the effluent plume. According to ANR staff, there is very little margin of error in these new standards to ensure safety.

Furthermore, sprawl could creep its way up mountainsides. Maximum ground slopes (currently limited to 20%) could be increased to 30% or even higher. To put these changes in perspective, in 1996 ANR changed the maximum slope requirement from 12% to 20%, and many communities prohibit development on slopes greater than 15%.

Finally, alternative septic standards could become primary planning and zoning tools. Rule 2 proposes to link

certain site condition reductions and use of alternative technologies to local planning and zoning. For example, to build on 30% slopes, a municipality must have a planning process confirmed by the regional planning commission, zoning bylaws, subdivision regulations, sewage ordinance, and other provisions. However, any project could be built on 30% slopes five years after the rule is adopted without planning and zoning provisions in place. To compound matters, there is no requirement for an approved municipal plan, and there is no requirement that the zoning conform with the plan.

VNRC believes that alternative systems and any corresponding changes in site conditions should be allowed only in pilot projects in designated growth centers or be used only to correct a failed septic system or to allow construction on a previously subdivided lot. After 10 years the results of the pilot should be evaluated to see if wider application of alternative technologies is appropriate.

The Legislative Committee on Administrative Rules (LCAR) will be reviewing the rules in January. If the legislature proceeds with S.27, VNRC recommends that the bill track with the previous recommendation and that funds for community planning included in the Senate passed bill are maintained or increased.

RIVER GRAVEL EXTRACTION

Current law allows gravel mining by municipalities in the event of an emergency such as after a large flood event. It also allows streamside landowners to remove up to 50 cubic yards of gravel per year provided that they use the material on their property and

do not use it for construction or for sale.

Each year legislation is introduced to expand the amount of gravel that can be mined from streams. The 2001 version, still in committee, proposes to increase the amount of gravel a landowner can take to 500 cubic yards per year. VNRC opposes this bill. Extracting gravel from rivers has been used as a tool in an effort to help a river maintain its depth. On the contrary, when material is mined from the bottom of a stream, the stream itself becomes unstable. A domino effect of changes takes place, both up and down stream, that leads to loss of fish habitat, erosion, loss of valuable farm soils, and accelerated property loss including infrastructure such as roads.

ACT 250

On the last day of the 2001 session, the General Assembly passed Act 40, an Act 250 bill that will make several changes to the law while ensuring that the interests of Vermont citizens will be protected in the Act 250 hearing process.

Act 40 made significant changes to Act 250, several of which will require time to implement. It is recommended that this new law be given time to work before further changes to Act 250 are sought.



AFFORDABLE HOUSING (CHAPTER 117) STUDY COMMITTEE

This 2001 General Assembly 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 charge of the Chapter 117 Study Committee will be to reconcile Act 250 with municipal planning law.

The committee is to make recommendations to the legislature by January 15, 2002. VNRC has urged the committee to ensure robust citizen participation and rights of appeal as it seeks ways to achieve consistency in the local and state permitting processes.

DOWNTOWN INCENTIVES

A bill to encourage development in downtowns (H.208) should be taken up next year by House Commerce Committee. VNRC worked with the Coalition for Vital Downtowns in developing the bill, particularly the element which enables communities to implement land value taxation in their downtowns.

The land value tax could help spur downtown development by reducing or eliminating taxes on downtown build-

ings and/or improvements while increasing taxes on vacant downtown land. Thus, it represents a revenue neutral tax shift.

Other downtown bills have components that merit consideration. One involves the land gains tax which was enacted several years ago to discourage speculative land development, primarily in the countryside. Exempting downtown development from the tax could act as a catalyst for development where it is more desirable.

HOUSING AND CONSERVATION TRUST FUND

VNRC recommends that the legislature maintain substantial annual funding for the Housing and Conservation Trust Fund. Since its beginning in 1987, the Fund has helped create almost 6,000 affordable housing units and protect over 300,000 acres of farmland, forest land, natural and recreational areas.

MUNICIPAL AND REGIONAL PLANNING FUND

VNRC recommends that the legislature fully support the Municipal and Regional Planning Fund. This fund provides financial and technical support to Vermont communities and regional planning commissions through the Department of Community Affairs.

TRANSPORTATION

Mindful of the shortage of state transportation funds, the legislature should ensure that the Vermont Agency of Transportation (VTRANS) focuses on implementing the priorities contained in the Vermont Long Range Transportation Plan. Specifically the legislature should:

- Require VTRANS to stick to its "fix it first" policy, that is, to maintain and repair the existing roads and bridges in Vermont before investing in new highway projects like the Chittenden County Circumferential (CIRC) Highway;
- Support revenue-neutral approaches to solving our transportation, energy and air quality problems such as the "clean car incentive" feebate concept.
- Help reduce dependence on fossil fuels and secure a more sustainable future by increasing support for low or no emission alternative fuel vehicles, rail, public transportation, and other non-highway modes of transportation.
- Consider increasing motor fuel tax and using the revenues to support public transportation.

STATE LAND MANAGEMENT AND WEST MOUNTAIN

Over the past year, a process has been underway to draft a management plan for the West Mountain Wildlife Management Area in the Northeast Kingdom. ANR issued its draft plan this past October, and the final plan was to be released and presented to the legislature on January 1, 2002. VNRC believes that the draft plan fell far short in appropriately protecting the natural resources on WMWMA as mandated by both the enabling legislation from 1999 as well as the easements attached to the property.

Some have contended that the plan goes too far by actually protecting these identified natural heritage sites and could possibly threaten tradi-

tional interests on WMWMA in the future. Various legislators already have bills in the pipeline to show opposition to the West Mountain Wildlife Management Area project as well as the broader issue of state lands management.

VNRC supports the existing protection of natural resources in the WMWMA plan, and does not believe that traditional uses, also supported by VNRC, are threatened by the easements or the plan itself. In fact, the easements were changed in early December to allay fears from the hunting and fishing community that their activities could be phased out.

Furthermore, VNRC supports the concept of ecological reserves and/or special treatment areas on state lands, and will oppose any legislation to prohibit the creation of such areas. VNRC believes that protection of ecologically

sensitive areas on state lands should be considered closely and incorporated into a mixed use paradigm similar to that of the former Champion Lands. On the former Champion lands, a holistic approach was taken whereby sustainable timber harvest, public access for recreational use, and protection of natural resources were designated according to appropriate areas.

MERCURY

The mercury products bill, S.91, is a major first step towards removing mercury from our environment. Mercury is a potent neurotoxin that causes permanent harm to the brain of humans and reproductive systems of wildlife. If ingested at high levels, it can cripple or kill. Mercury bioaccumulates in the tissue of fish and other

organisms in our environment, and passes from there to people and wildlife in high concentrations.

The goal of S.91 is to begin to remove mercury from the waste stream, thereby eliminating the risk of airborne mercury from trash incineration. The mechanisms provided in the bill to achieve this goal include phase outs, labeling, and bans of mercury and mercury containing products through time. Unfortunately, S.91 remains stagnated in the Senate Appropriations Committee, mainly at the request of Energizer Company, despite the fact that the mercury-containing products Energizer manufactures are specifically exempted from the statute. VNRC will continue to work towards passage of this important legislation this session.

HEADS UP!



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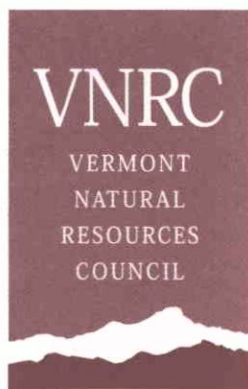
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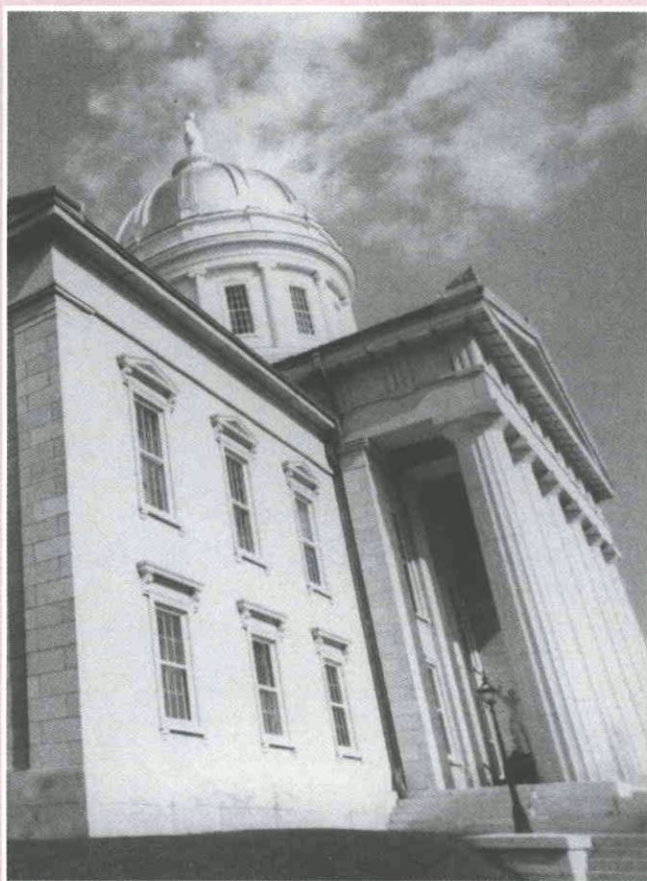
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YOUR INPUT IS CRITICAL

The upcoming Legislative Session may prove to be tough on the environment. If you find that decisions are being made which are not consistent with your values, please remember one very important thing: the State House is your house too!

Vermont's legislative body is comprised of citizen legislators. They are not full-time politicians. They are teachers, nurses, carpenters, etc. Legislators were elected to represent their constituents — and that's you. They want and need to hear from you. If you feel strongly about an issue, please, let them know. Your input is critical.

The pre-legislative rhetoric is pointing towards a difficult upcoming session on issues such as water quality and land management. Many of these issues affect not only the environment, but the quality of our health and the economy. VNRC will be at the State House every day the legislature is in session, but we can't do it alone.

Call us for your legislator's address or phone number. Drop him/her a line about how you feel. Testify about an issue important to you.