

Vermont Planners Association (VPA)
2021 Legislative Report
January 25, 2021

Greetings!

This week's report spotlights Act 250 - featuring a new bill introduced in the House and a report on the joint hearing on the Executive Order last week. Plus a roundup of new bills in the House, one in the Senate, progress on S.14, and the Climate Caucus gets organized.

Please use the [search function](#) on the website for the [Vermont General Assembly](#) to find the latest language on the bills described here. --Faith Ingulsrud

House Bills

Reported by [Alex Weinhagen](#)

Thirty-five new bills were introduced on the House side this past week. Here are brief summaries of those up to H.123 with a planning nexus.

H.93 – Homeless Persons Bill of Rights – This bill proposes to establish a homeless bill of rights and prohibit discrimination against people without homes. Eleven pages long, this bill lays out a variety of rights for homeless persons, prohibits discrimination based on housing status in a number of venues, and prohibits criminal and civil sanctions for various activities in a public place or place of public accommodation (e.g., soliciting, accepting/offering donations, etc.). Adds discrimination based on “housing status” to the list of what constitutes unfair housing practices.

H.94 – Reducing Transportation Carbon Emissions – This 27-page bill proposes to:

- (1) appropriate money for the New PEV Incentive Program, MileageSmart, the Downtown and Employer Level 2 Charging Stations Grant Programs, fare-free public transit, and the Mobility and Transportation Innovation Grant Program;
- (2) establish and appropriate money for expansions of the New PEV Incentive Program to also include the Replace Your Ride Program and incentives for motor-assisted bicycles;
- (3) require that new buses be plug-in electric vehicles;
- (4) require certain employers to provide level 2 chargers;
- (5) require certain employers to establish a transportation demand management plan;
- (6) update what is required under the Residential Building Standards with respect to electric vehicle supply equipment;
- (7) require that complete streets principles be followed in more instances;
- (8) update the Act 250 criterion addressing transportation;
- (9) require improvements to high-use corridor segments identified in the On-Road Bicycle Plan;
- (10) require updates on the installation of roundabouts in the annual Transportation Program; and
- (11) commission a report on the use of transit authorities in the State

H.108 – VT Standards for a Clean Water Act Section 401 Certification – Don't know what a Section 401 certification is? Don't worry, you're not alone. It's a State certification necessary for some Federal permits (e.g., US Army Corps of Engineers wetland permitting). This bill proposes to amend the Vermont Water Quality Standards (VWQS) to clarify that the standards apply to wetlands and discharges to wetlands. The

bill also would amend the VWQS to require that any federal Clean Water Act (CWA) section 401 certification issued by the State for waters or for wetlands shall include: an evaluation of water quality impacts on waters and wetlands and an evaluation of alternative means of accomplishing the proposed action for which certification is sought. The bill would require that the State conduct a cumulative impacts analysis of the water quality impacts on waters and wetlands of an activity subject to the CWA section 401 certification. A CWA section 401 certification would not be granted unless the Secretary of Natural Resources determines that the proposed activity meets the VWQS.

H.120 – Act 250 Comprehensive Updates/Reform – This is essentially a re-introduction of the comprehensive Act 250 reform bill from the last biennium (H.926)... sort of. It's not the version that passed the House, but instead appears to be a version similar to what was discussed in the House Natural Resources committee... sort of. One difference is that it doesn't include Act 250 exemptions for downtowns and other designated areas. Unlike the Governor's Act 250 Executive Order, this bill retains review by District Commissions.

Thanks to Peg Elmer for offering this quick, initial comparison between the [new bill H.120](#) and the "house-passed" version [H.926 from last year](#). We will share a complete version of the changes when it becomes available.

H.120 compared to H926:

- ~~Removed jurisdiction on dev at or above 2500' in elevation (Corrected 1/26/21)~~
- Removed new road rule provisions in the def. of development
- Removed all the recreational trails section to the def. of development
- Removed exemption for state designated areas
- Added to the def. of development: The construction of improvements for commercial, industrial, or residential purposes within a river corridor.
- Removed revisions to definitions for necessary wildlife habitat and subdivision. The subdivision language was in reference to land outside designated centers and NDA's
- Several pages of H. 926, under section 6081, Permits Required, have been removed, having to do with land previously exempt due to being in a designated center, if that designation were to be removed in the future...and more.
- Removed In the same section 6081, language related to development of improvements providing access across a trail would not require a permit if not related to the trail
- Removed changes to Fees section
- Removed Preapplication Process in H. 926
- Added back the GHG criterion as 6086 (1)(B)
- Added "or rare and irreplaceable natural areas" language back into criterion 8
- Added new pages to the forest block criterion
- Removed language under Permit Conditions, related to forest-based enterprises

- Added new section 6094 related to forest blocks, replacing section 6094 in H. 926 that would have allowed Dept of Fish and Wildlife to recover fees
- Removed sections providing for appeal of Downtown Bd decisions to NRB, as well as "enhanced designation" section
- Removed required new rules re: highest priority river corridors
- Made several language changes and additions to the required report by NRB, ACCD and ANR re: the Capability and Development plan et al -
- Revised Revisions/References section to fit changes between the two bills
- Removed recreational trails report
- Removed required rulemaking on forest blocks

Stay tuned for an official version of this list.

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- **H.123 – Electric Vehicles Tax - Vehicle Miles Traveled** - This bill proposes to create a vehicle miles traveled tax applicable to plug-in electric vehicles.

Senate Bills

Reported by [Sharon Murray](#)

44 bills introduced to date on the Senate side with one new bill of interest:

S.44 –VT Green New Deal. This bill, reintroduced from last session, would create a “Vermont Green New Deal” to invest in a variety of programs intended to curb climate change (energy conservation, weatherization, renewables, EVs), to be funded through a new income tax surcharge on high incomes deposited into a “Green New Deal Fund.” In S. Natural Resources and Energy. Fewer sponsors this round suggest that it won’t have legs, though SNRE has made climate change legislation its priority.

On the move:

S.14–ADU Deed Restrictions. This bill prohibiting deed restrictions on ADUs, as supported by VPA in committee, was reported out of S. Economic Development, Housing and General Affairs on Thursday, reviewed in S. Natural Resources and Energy on Friday, and is now scheduled for a 3rd reading and Senate floor vote on Tuesday 1/26. Expected to pass.

Executive Order

02-21 – Act 250, Natural Resources Board & District Commission Reorganization. See details: <https://governor.vermont.gov/content/executive-order-no-02-21>.

Reported by Sharon Murray with assistance from [Daniel Jarrad](#)

S. Natural Resources, in a joint committee meeting with H. Natural Resources, took extensive testimony on Thursday regarding the Governor’s Executive Order ([02-21](#)) to reorganize the Natural Resources Board. Some noted highlights:

- Questions have been raised on several fronts whether the Administration has the constitutional authority under statute to reorganize the Natural Resources Board to the extent proposed under the EO, and whether one or both chambers must veto the order to reject it. At least one lawsuit has been filed in response. Concerns regarding “misstatements” in the EO, and whether these were binding, were also raised in H. Natural Resources.
- The main reason for the proposed reorganization from the Administration’s standpoint is to provide greater consistency in permit rulings through a more centralized, professional approach, given that Act 250 review has become increasingly technical and complicated. According to Secretary Moore, the intent is to ensure that Act 250 is well positioned to grow, evolve and remain relevant in the modern world.
- They also anticipate that proposed restructuring would result in significant cost savings by reducing the amount of staff time required to train and support district commissions, noting that the current system represents a major drain on staff time. They have not, however done a comparative analysis of what a professional board would cost. It’s estimated that the transition to a new board would require between \$500k and \$600k – a one-time cost that may show up in a larger Act 250 modernization bill (see above). Legislators asked for more information and a comparative cost analyses in relation to current and proposed District Commission and NRB workloads.
- Concerns were raised by several legislators and others in attendance regarding the need to balance consistency with the need for local accessibility, participation and input, as provided through District Commissions, given that Act 250 was originally established as a citizen-based review process. The Administration’s proposal to have two District Commissioners sit with the NRB to hear and decide major applications within their region was viewed by many as insufficient.
- Concerns were also raised regarding the appointment process, the relationship between the NRB and the Environmental Court, and more generally with regard to major policy issues implicit or underlying the proposed reorganization.

Based on Thursday’s proceedings there clearly seems to be much more concern than support for the EO – and a preference to instead handle any NRB reorganization through more comprehensive Act 250 legislation. While both committees intend to hear from additional witnesses in the coming weeks before taking a formal position, legislators' who voiced reactions to this bill made mostly negative comments.

Climate Caucus and Council

Reported by [Peg Elmer Hough](#)

The [Climate Caucus](#) met on Thursday, for a quick go-round on their priorities for the session and decided who will be the point person or persons on various issues. The caucus will meet every two weeks.

Priorities:

1. Weatherization: Sen. Chris Bray
2. Environmental Justice: Sen. Kesha Ram
3. Transportation Modernization: Rep. Becca White (Hartford) (VTDigger covered the introduction of this bill, in their summary of last week, which has about half the House signed on as sponsors
4. Building Registration: Rep. Scott Campbell (St Johnsbury)

Other updates:

- Rep Kari Dolan spoke about a Resiliency Working Group which met last year but hasn't met yet this session (this is a legislative group and not the subset planned for the Climate Council).
- Rep Campbell spoke about progress on Green Banks, to help with energy transition, coming from both federal and state legislators
- Rep Avram Patt noted the Administration has requested \$1 million for the Climate Council, evidently much of it needed for background data collection and analysis