

Vermont Planners Association (VPA) Legislative Report - March 15, 2021

While the crossover deadline came and went last week, the “money bills” have until the end of this week - March 19 - to cross-over. In the meantime we offer a summary of a new Act 250 bill that was introduced in both the House and Senate last week, the status of some of the senate bills we are following, and a report on the Climate Caucus. Legislative committees appear to be reserving most of their time this week for discussion but we note a few upcoming agenda items of interest.

For those of you wanting more, Alex Weinhagen recommends the VLCT Weekly Legislative Report (3/12/2021 edition) for a synopsis of several bills likely to make crossover (e.g., S.33, S.79, S.101, H.159): <https://www.vlct.org/news/2021-weekly-legislative-report-no-10>. The VLCT report also provides information on the federal covid relief package (American Rescue Plan) that President Biden signed into law on March 11, including estimates of funding due to Vermont municipalities. First half installment arrives in 90 days (June). Second half installment arrives one year later.

--Faith Ingulsrud

House Bills

Reported by Alex Weinhagen

New Bills

Sixty new bills were introduced in the House since my last summary on 2/27/21. Only one has a planning nexus.

H.400 – Act 250 Reform (alternative version) – This is another Act 250 comprehensive reform bill, and is a companion bill to S.112 that was recently introduced on the Senate side (see below). Essentially H.400/S.112 is an alternative to H.120. H.400/S.112 hews more to the Governor’s wish list for Act 250 reform, including exemptions for designation areas and putting most review in the hands of a professional Natural Resources Board instead of District Commissions. It will be interesting to see the eventual discussion in the House Natural Resources Committee, given the differences between H.400 and H.120, and given that several members of the Committee introduced H.120. Perhaps there will be a mashup. Here’s a list of what H.400 proposes to do from the bill summary:

- Changing the Natural Resources Board (NRB) to a professional board with three full-time members who will hear major permit applications. The NRB will have authority to revoke Act 250 permits and may delegate authority to the District Commissions over determining the type of application and the ability to issue minors and amendments.
- Adding ethical standards for the NRB and District Commissions that bar ex parte communications.
- Changing the path of permit appeals by removing jurisdiction of the Environmental Division of the Superior Court, with appeals of the permit decisions going straight to the Supreme Court.
- Adding a pre-application scoping process for large projects.
- Creating an enhanced designation process for village centers.
- Exempting development and subdivisions located within designated downtowns, enhanced village centers, and neighborhood development areas from Act 250. Municipal panels will transfer Act 250 permit conditions to municipal land use permits.
- Allowing the NRB to release projects from Act 250 jurisdiction if the property would no longer trigger Act 250 jurisdiction.
- Excluding previously disturbed areas from the definition of development if they are transportation facilities.
- Updating the water, transportation, and energy conservation criteria.
- Adding a new criterion for climate adaptation and requiring rules to address how to meet the new criterion.
- Creating a new permit to address impacts on fish and wildlife habitat. The new permit would be required for applicants of an Act 250 permit. The permit would be issued by the Commissioner of Fish and Wildlife. The permit fee would be \$150.00 plus the cost of any Department resources spent on the permit.
- Specifying when permit conditions may be added to permits for forest-based enterprises.
- Exempting from the definition of development accessory on-farm businesses constructed on less than 1 acre.
- Requiring a municipality to respond to a request for information within 90 days.

In Committee

H.167 – Environmental Stewardship Board – Discussion in House Natural Resources, Fish and Wildlife on March 16 (1pm, walkthrough) and March 17 (9am, testimony from witnesses).

Senate Bills

Reported by Sharon Murray, with special thanks for input/updates from Daniel Jarrard and Kate McCarthy.

Still Alive and On the Move!

The following Senate bills were voted out of their committee of origin by Friday's crossover deadline for further consideration this year--assuming they can also make it out of Senate Finance where applicable (and where good bills sometimes go to die).

S.25--Cannabis Bill. Rather than requiring a municipal vote (opt in) within the year, as initially proposed, as voted out this bill would specify that, by March 8, 2023, if not previously voted on locally, both retail cannabis and integrated licenses would be "deemed approved."

S.33—Project Based TIF. After additional discussion last week in S. Economic Development, this bill was voted out of committee as a strike-all (5-0) on Thursday, landing in S. Finance on Friday, for consideration on Tuesday. As reported out by Senator Ram:

- The number of TIF districts allowed statewide would be reduced from six to four with a limit of two per county, except in Bennington and Washington, which are limited to one.
- The bill defines and allows for a "coordinating agency" to assist with TIF management.
- "Improvements" include installation, construction or reconstruction of infrastructure that will serve a public purpose – including utilities, transportation, public facilities and amenities, land and property acquisition and demolition and site preparation.
- "Nexus" is defined as the causal relationship that must exist between improvements and expected development or outcomes within the TIF Project Zone.
- "Project" is a public improvement with a total debt ceiling of not more than **\$5 million** – that must "clearly require substantial public investment over and above normal municipal operating or bonded debt expenditures." It also may only include public improvements that are integral to private development, and which meet one of four criteria (affordable housing, brownfield redevelopment, business expansion/development, transportation enhancement). A proposed project, to be eligible, must also be compatible with confirmed (regionally approved) municipal and regional plans, and have "clear local and regional significance for employment, housing or transportation improvements."

- “TIF Project Zone” is limited to parcels that have a project nexus within one or more active, state designated areas (76A). It does not include industrial parks as voted out of committee—they decided to leave this up for further discussion in the House.
- The pilot program is increased from three to **five years** (1/2/22 – 12/31/27).
- The number of potential TIF projects VEPC is authorized to approve was increased from 6 up to a maximum of **15 TIF projects** (but no more than one per municipality).
- Allows for 70% of education tax increment to be retained for up to 20 years.
- Associated voting, application, administration, and annual reporting requirements are listed in some detail.

S.66—E-Bikes. Voted out of S. Transportation (5-0-0) on Friday, following testimony provided by Paul Conner, South Burlington Planning Director. House Notice Calendar for Tuesday.

S.79—State Rental Registry, Code Enforcement. S. Economic Development took a final round of testimony on this bill last week, largely around privacy concerns regarding the availability and use of collected rental registry information. It was finally voted out of Committee as a [strike-all](#) on Friday, with the understanding that this issue could get more time in the House, if needed. Given it remains on the committee’s agenda this week, they may now also be considering a floor amendment? As voted out, the registry and state code enforcement would apply to rental space, dwelling units (including ADUs), and short-term rentals. This bill would also establish a grant and forgivable loan program for private landlords to rehab and weatherize rental units for affordable housing, and to house the homeless. House Notice Calendar for Tuesday; expected to go to Senate Finance.

S.101—Smart Growth “Bylaw Modernization” Grants. Following discussions in both S. Economic Development and S. Natural Resources (re wastewater connections and CSOs), this was the last bill to get voted out of S. Economic Development (4-1-0), at the end of a very long week. The committee on Friday discussed adding suggested housing “affordability” language to the bill consistent with Chapter 117 definitions — but decided, given the need to get the bill out, to leave this for a possible floor amendment, or amendment in the House. In the end they voted only to amend the bill, as requested by VLCT, to allow for municipal authorization for multiple water and wastewater connections. It now appears that S. Natural Resources will be taking additional testimony on the connection sections of the bill from water quality advocates this Tuesday. As scheduled to be reported out by Senator Balint, the bill:

- Amends Chapter 117 (Municipal Regional Planning Fund section) to create in statute a special purpose “Municipal Bylaw Modernization Grant Program” in support of smart growth bylaw updates and adoption, effective through July 1, 2023.
- Appropriates \$500,000 for this purpose; any unused funds are to go back to the General Fund (and not to RPCs – ended up not being supported in committee).
- Specifies for eligibility that a municipality must adopt bylaws that support a pedestrian-oriented neighborhood development pattern that is consistent with smart growth principles, and commit to adopting bylaws that increase housing choices within unconstrained water and sewer service areas.
- Appropriates \$100,000 to DHCD in 2022 to provide training and assistance in developing ADUs and small scale infill housing.
- Extends tax credits to qualified buildings within designated Neighborhood Development Areas, and increases the total amount that may be awarded annually from \$3 million to \$4.75 million.
- Allows municipalities registered with ANR to authorize water and wastewater lines serving multiple connections.

S.109—Enhanced Energy Savings (Weatherization) Bill. This bill, introduced last Tuesday, and voted out of S. Natural Resources on Thursday, is essentially the priority weatherization bill that’s taken up most of the committee’s time this session. This legislation sets the goal to weatherize 120,000 homes within the next 10 years; establishes a thermal energy efficiency charge through the PUC to help finance this, and creates a study committee to examine how to best expand the state’s building weatherization and efficiency programs and workforce in these sectors. Now in S. Appropriations.

Next Up?

S.112—Act 250 Changes. This 64-page bill, introduced by Senate Republicans last Tuesday, is the companion to H.400, described in more detail above. It now resides in S. Natural Resources and Energy, which is scheduled to get an introduction to the bill on Wednesday. The Senate, in rejecting the Governor’s Act 250 EO earlier this session, agreed to work with the Administration on Act 250 reform; but it’s not yet clear whether Senate Natural Resources will take up S.112 in full this year, in advance of Act 250 bills introduced in the House—including H.120, which has yet to get a hearing. It does suggest that Act 250 discussions in committee will be teeing up for more serious consideration next year.

Other bills of potential (future) interest introduced in the Senate last week include:

S.111—Local Options Tax. This bill would allow any municipality to assess a 1% sales tax, 1% meals and beverage tax, and 1% rooms tax, as supported by VLCT. In S. Finance.

S.118 –VT Telecom Authority. This bill would reconstitute the Vermont Telecommunications Authority to plan for, coordinate, oversee and implement strategies to expand mobile communications and broadband deployment statewide. In S. Finance.

S.119 –Community Energy Program. This bill would establish a new “community energy program” through the PUC authorizing net-metered community renewable energy facilities that have a plant capacity of greater than 500 kW but less than 5 MW, and are commissioned on or after July 1, 2022. In S. Natural Resources and Energy.

S.121—EV, Hybrid Registration Fees. This bill would require the DMV, under rulemaking, to establish additional annual registration fees for EVs and hybrid vehicles, linked to average VMTs, and gasoline and diesel tax revenues, that are designed to collect comparable contributions to the Transportation Fund from EV and hybrid vehicle operators.

Climate Caucus and Council

Reported by Peg Elmer Hough

Formed two years ago to improve communication and coordination between the House and Senate to gain passage of the climate solutions bill, the caucus is continuing to help legislation move to implement that act. All the federal COVID stimulus funding is probably helping.

H.94, the smart transportation bill will be in the Appropriations Committee next week. There’s broad support to add funding to Mileage Smart (incentives on used and new EVs for lower income purchasers) and supporting new EV purchases. Fare free transit will be supported thru 2022, as well as E-bikes and more charging stations. Items dropped were those needing more thought, which they will do over the summer and bring back next year.

There is a separate E-bike registration bill (S.66) coming from the Senate, which will fit with H.94. The big transportation bill is also adding \$3 million statewide for towns to use for anything. VPA members would be gratified to hear a house member ask if the Senate side is making sure charging stations are installed where people can spend time at a café, and hearing an emphatic “yes”.

They spoke about the state planning legislation (H.306 and S.96) - named the Office of Strategic Prioritization - that it unfortunately remains on the wall. Their elevator pitch for the OSP mission: to coordinate data and dollars across state agencies to meet Vermont priorities. This group is enthused about it. They said they will move forward with further study this summer, even if the bill is still sitting on the wall at the end of the session.

H. 157 re: contractor registration is moving. Rep Chip Troiano clarified that this is not a licensing bill. (Complaints about fraud will be handled within the Office of Professional Regulation via hearings. Contractor fraud complaints in Vermont are generally small, with complaints about jobs costing an average \$5000.) The legislation currently allows for unregistered work on jobs costing less than \$2500. Over that amount will require a contract with a registered contractor. There will be a fee to register, with a certificate issued, not a license. Automatic certifications, via other existing certifications the office has vetted, will be possible.