

Vermont Planners Association (VPA) Legislative Report - March 22, 2021

Happy Spring! This week you can read about how our key bills look after the crossover shakedown. Legislative committees are now familiarizing themselves with the bills that arrived from the other chamber and there are a number of committee discussions scheduled that may be of interest to VPA members. Plus more from the Climate Council. Check it all out below.

--Faith Ingulsrud

House Bills

Reported by Alex Weinhagen

Only a few new bills were introduced on the House side last week (reviewed bills through H.435), and only one with a planning nexus. Also, one committee bill with a minor Act 250 reform component is noted in House Natural Resources, Fish and Wildlife:

H.433 – Transportation Bill – Section 24 of the bill changes language related to site plan and subdivision review at the municipal level – changes to Title 24, Chapter 117, Sections 4416(b) and 4463(e). Fairly innocuous changes to require that site plan applications that propose any work in the State highway right of way, include a letter from VTrans indicating that they have reviewed the project and determined if a VTrans 1111 permit is necessary. Also requires evidence of similar consultation with VTrans for any subdivision adjacent to a State highway.

DR 21-0956 - Act 250 VT F&W review reimbursement - portion of House Natural Resources, Fish and Wildlife Committee Bill - Section 11 of this committee bill provides a bill back mechanism to charge Act 250 applicants for time the VT Fish and Wildlife Department spends reviewing Act 250 applications. Of the two comprehensive Act 250 reform bills, this provision is not currently in H.120, but is reflected (with different language) in H.400/S.112. The fact that this has come up in a HNRFW committee bill means this one provision could move ahead more quickly than the comprehensive reform options.

Of the 20 or so House bills we've been following, only one made crossover and has a chance of passage this session. That is H.159, the Better Places Program bill which originally was written to provide new Department of Housing and Community Development funding for a placemaking program in designated areas. Much else was attached to this bill, as it became more of a House economic development omnibus bill. Increasing the cap on the tax credit program for

downtown, village center, and neighborhood development designation areas was borrowed from another bill (H.84) and put into H.159. That was before the money committees got a hold of the bill. I'm still waiting to see if either of these funding increases for worthy community planning programs survive.

A couple other bills on the House side (H.129 & H.256) essentially live on vicariously through companion bills that made crossover on the Senate side – e.g., project-based TIF (S.33); rental registry (S.79).

Neither of the two competing Act 250 reform bills (H.120 vs. H.400/S.112) made crossover. As best we can tell, discussion of H.120 is still likely this session in the House Natural Resources, Fish and Wildlife Committee. Possibly in a couple weeks. We shall see. The VPA Legislative Committee is working diligently to coalesce VPA's prior recommendations on Act 250 reform in the context of the H.120 reform bill – i.e., what looks good, what needs revision, and what is missing.

This week in House Committees

Notable agenda items up for discussion this week (March 22-26):

H.211 – Recovery residences – Testimony and discussion in House General, Housing, and Military Affairs on Tuesday (3/23) at 1pm.

S.79 – Rental registry & code enforcement – Walk through and comparison to H.256 in House General, Housing, and Military Affairs on Tuesday (3/23) at 2:30pm.

S.102 – On-farm composting, etc. – Walk through of amendments on Tuesday (3/23) at 10:30am in Senate Natural Resources and Energy. Discussion in House Agriculture and Forestry on Tuesday (3/23) at 1pm and Wednesday (3/24) at 9:45am.

H.159 – Better places program – Discussion in House Commerce and Economic Development of amendments including those made by House Ways & Means on Tuesday (3/23) at 9am and on Wednesday (3/24) at 9am.

DR 21-0956 - Act 250 VT F&W review reimbursement - Discussion of the overall committee bill (unsure if this provision will be discussed) in House Natural Resources, Fish and Wildlife on Wednesday (3/24) at 9am.

H.167 - Environmental stewardship board - Proposed new board to review ANR & Fish and Wildlife Board rules. Discussion in House Natural Resources, Fish and Wildlife on Thursday (3/25) at 9am.

Senate Bills

Reported by Sharon Murray, with special thanks for input/updates this week from Daniel Jarrard.

S.14 –ADUs. As supported by VPA, this bill prohibiting deed restrictions and covenants on ADUs was signed into law by the Governor on March 13th (Act 4), effective retroactively to January 1, 2021.

On the move

Senate bills of interest that made crossover deadline, have since been making the rounds between committees and floor time. Any bills that include new revenues or appropriations had to be voted out of money committees (Finance, Appropriations) by week's end in order to make the cut. That said, a lot remains up in the air with regard to state budgeting under the federal American Rescue Plan Act (ARPA), as noted in several committees this week, and reflected in proposed committee amendments. Here's where key bills stand in the Senate as of Friday:

S.33—Project-Based TIF Pilot Program. This bill got quite some discussion in S. Finance last week, resulting in proposed amendments to both the TIF project-based (“mini-TIF”) pilot program, as voted out of S. Economic Development, and TIF District statutes, as previously requested by VEPC. S. Finance remains very protective of the Education Fund, and expressed some real concern regarding the administrative capacity needed to administer a TIF project, but in the end agreed to advance the bill to a floor vote, after rejecting a municipal population cap on pilot program eligibility. As amended and voted out of committee:

TIF Districts:

- The municipal and education tax increment is to be calculated based on the assessed, grand list value, and not the stabilized value.
- The number of TIF Districts that VEPC can approve is reduced from six to four.
- If in any year the assessed value of real property in a TIF district decreases in relation to the original taxable value, the municipality must pay the amount equal to the tax calculated based on the original taxable value to the Education Fund.
- For brownfields, VEPC is authorized to adopt rules to clarify a “reasonable improvement” to remediate and stimulate redevelopment in the district.

- “Improvements” also means the funding of debt service interest payments for a period of up to five years, beginning on the date the debt is first incurred (as also allowed under the pilot program).
- Clarifies that bond anticipation notes may be used as a method of financing, and qualify as the first incurrence of debt.
- Clarifies that TIF district boundaries cannot be adjusted after approval of the TIF district plan; and that any parcel within the district must be wholly located within the boundaries of the district.

TIF Pilot Program:

- For the 5-year period beginning 1/1/22 and extending through 12/31/26, VEPC is authorized to approve no more than 10 TIF Projects, including no more than three projects per year, and no more than one per municipality.

S.79—State Rental Registry, Code Enforcement. S. Economic Development reported out their strike-all amendment last Thursday, the same day it was also voted out of S. Finance in concurrence (7-0). It was then voted out of S. Appropriations on Friday (5-2) as further amended for floor consideration on Tuesday. In anticipation that this new program will largely be self-funded through registry fees, proposed S. Appropriation amendments:

- Establish a special “Rental Housing Safety Special Fund” within DHCD, from registration fees collected, to hire DHCD and DPS staff necessary to administer the registry, regulate rentals, and conduct inspections – and potentially to also help fund a rental housing loan program sometime in the future.
- Authorize 5 new DPS positions, and a one-time DPS appropriation of \$200,000 in startup funding.
- Authorize 1 full-time and 1 half-time position within DHCD to administer the registry, and a one-time DHCD appropriation of \$200,000 in start-up funding.
- Strike the proposed “Vermont Rental Housing Investment (loan) Program” (Section 9) and associated \$3 million in funding for this purpose. Instead, this funding request will be included on the committee list for consideration in the budget bill, in relation to available federal funding under ARPA and general fund revenue.

S.101—Bylaw Modernization Grants. S.101 also made the rounds last week, in S. Economic Development, S. Finance, and S. Appropriations, along with another side trip to S. Natural Resources following the proposed amendment allowing for municipal authorization of multiple wastewater hookups. The bill as amended sailed through Senate Finance but, like S.79, didn’t

fare quite so well in S. Appropriations. As voted out of Appropriations (7-0), proposed committee amendments:

- Retain the proposed bylaw modernization grant program language under Chapter 117 (Section 2), but strike the \$500,000 appropriated for this purpose under Section 3. As with S.79, it was decided to instead add this to the committee list for consideration under the budget bill, especially in relation to the amount of federal funding to go to municipalities.
- Strike the one-time \$100,000 appropriation requested by DHCD for developer training and assistance (Section 4)—also for consideration under the budget bill?
- Expand eligibility for tax credits to buildings within designated Neighborhood Development Areas (Section 5), but maintain the current cap of \$3 million on the total amount of tax credits that can be awarded annually.

Proposed municipal authorization of multiple wastewater hookups caused quite a stir in Senate in-boxes, and in S. Natural Resources, especially after the committee heard from both water quality advocates and ANR regarding the current status of NPDES permitting, CSO enforcement, and anti-degradation rulemaking. After considering an amendment to strike those sections of S.101 pertaining to municipal connection authority, they instead agreed to collectively sponsor a floor amendment to clarify related municipal technical qualification, notice and recording requirements. Senator McCormack may also offer an alternative.

Committee discussions last week highlighted issues we've all long been trying to address – in particular the lack of wastewater capacity and funding for infrastructure improvements needed to support higher density, smart growth development. With regard to these larger issues, they've asked ANR to come up with a list of priority wastewater facility/system upgrades in anticipation of federal infrastructure funding under ARPA. The committee has also scheduled time on Thursday (8:45) with representatives from Vermont's federal delegation to more specifically focus on funding for wastewater infrastructure under ARPA. The committee has also scheduled time on Thursday with representatives from Vermont's federal delegation to more specifically focus on funding for wastewater infrastructure under ARPA.

S.102—On-farm Composting. S.102 wasn't really on our radar until VPA received a surprise request last week from S.NRE for input. As proposed, the bill would transfer the authority to regulate on-farm composting of residual food waste from ANR to the Ag Agency under new rulemaking authority. After hearing from Chris Cochran, the committee decided to draft proposed floor amendments that, under new AAFM rules, would exclude these operations from

all state designated areas under Ch.76A, including downtowns, village centers and growth centers. Proposed amendments would also require the rules to address related nuisances (noise, odor, scavengers, etc.) in addition to water quality protections. The floor vote on this bill has been postponed.

Other Senate Bills

This week will include a lot of floor time in the Senate, as they clear the deck for budget bills coming over from the House. In the meantime, Senate committees are taking up other House bills, as well as some Senate bills that didn't make crossover, for potential consideration under bills that did, under pending budget bills, or in preparation for next year's session.

S.44—Green New Deal. S. Natural Resources got an overview of this bill from Senator Pollina, the bill's lead sponsor, last Wednesday.

S.109—Enhanced Energy Savings (Weatherization) Bill. S.NRE voted out their weatherization bill in time for crossover, and it made the requisite committee rounds last week, but they're continuing to take testimony with regard to program financing for potential consideration under the FY22 budget bill.

S.112—Act 250 (Admin) Bill. This bill got an initial walk-through in S.NRE last week from Commissioner Porter and Legislative Counsel. Senator Bray noted in committee that they will be taking this up, as agreed to in rejecting the Governor's Act 250 EO earlier this session. In response to a VPA inquiry regarding their schedule, he also suggested that there isn't enough time remaining to do much with it this year, so it may stay on the wall for now.

S.119—Community Energy Program. Another bill that got a walk-through in S.NRE last week.

This week in Senate Committees

Notable agenda items up for discussion this week (March 22-26):

S.33--Project-Based TIF. S.EDHGA is scheduled to vote on Finance Committee amendments on Tuesday(3/23) at 8:45am.

S.79--Rental Registry. S.EDHGA has scheduled time for a possible committee amendment on Tuesday (3/23) at 9:15am, continued at 11am.

S.96--State Planning Office Study. Scheduled for a walk-through in S. Government Operations on Tuesday (3/23) at 2:30 pm.

S.101--Bylaw Modernization Grants. S.EDHGA is scheduled to vote on S.NRE amendments on Tuesday (3/23) at 9:05am.

S.102--Onfarm Composting. S.NRE is scheduled to review their draft amendments on Tuesday (3/23) at 10:30 am.

ARPA/Wastewater. S.NRE to meet with federal delegation reps on Thursday (3/25) at 8:45 am.

Climate Caucus and Council

Reported by Peg Elmer Hough

The Climate Council met on March 22. The Subcommittees are actively at work, between the Steering Committee and Council meetings. At this meeting they finalized the description of [Subcommittee Charges](#) and the [Roadmap](#) (description of the Council, charge, structure, decision-making process, as they are agreed upon -- basically, the draft plan being written as it happens), both of which can be found at:

<https://aoa.vermont.gov/content/supporting-documents>.

They discussed overlap, particularly land use planning, which is viewed as integral to at least three of the subcommittees. To save time the Steering Committee may assign “leads.” With the short time-line to create the Climate Action Plan, focus is suggested to be primarily on the next 4 years, to meet 2025 goals, rather than long-term and to use existing material. The statute requires updating the plan every 4 yrs. The statute included challenging requirements for them to meet, which they may not be able to complete thoroughly in the current effort. Intent is to get a good foundation document, with gaps filled and strategies adjusted in subsequent years. A suggestion that some pieces, like active public engagement or cross-pollination between committees, may need to be short-changed in order to meet the deadline, was acknowledged but quashed via consensus.

June Tierney, and DPS staff, presented background, followed by discussion re: overlap and confluence with the state energy plan process and this work. They’ll overlap in substance on GHG reduction, energy analysis, public engagement and equity concerns. The statute states that the Climate Action Plan be informed by the Energy Plan. Both are due this year, but have varying update requirements which won’t overlap again until 2033. DPS has their energy

modeling underway. It will remain open and active, with training for DPS employees, do examine changing scenarios and track results moving forward. DPS is using “key stakeholders” for public input. They discussed the need to reduce confusion for broader public engagement, so they will coordinate and maybe combine, outreach as much as possible.