

## Vermont Planners Association (VPA)

# Legislative Report - January 24, 2022

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## Legislation - Generally

*Reported by Alex Weinhausen*

**H.679 – Budget Adjustment Act for FY22** – The proposed adjustment to the current year’s State budget is enormous thanks to federal dollars and State revenue surpluses. It proposes \$359 million in additional spending (4.9% increase), and the fiscal year is already half over. Substantial amounts dedicated for housing and shelter capacity. Of particular interest to municipal planners, it proposes an additional \$250,000 for municipal planning grants managed by DHCD. Presumably, if passed, this would allow DHCD to make additional awards to MPG applications that weren’t selected in December. Last fall, DHCD received MPG requests totaling \$851,165, but only had \$443,261 in available funds to make awards. Adding \$250,000 via the budget adjustment act would help fund significantly more MPG projects!

Many thanks to Peter Gregory with the Vermont Association of Planning and Development Agencies (VAPDA) for effectively advocating for this with the House Appropriations committee! This bill passed the House on Friday (1/21), and is now headed for the Senate Appropriations committee. This would be a good time to contact the Senate Appropriations Committee to encourage them to retain the boost to the Municipal Planning Grant program in H.679. See attached VPA position paper on restoring funds for planning, which also advocates for a budget adjustment to support planning, in addition to increasing the base funding for planning in the FY23 budget. Also a good time to say thank you to members of the House Appropriations Committee, and ask them to consider restoring base funding for planning (municipal, regional, and state levels) in the FY23 budget.

**S.222** was signed into law by the Governor. Similar to the allowances during the covid-19 state of emergency, this bill allows municipalities to post agendas in two virtual locations rather than physical locations, and to have fully virtual public meetings through January of 2023, so that no one needs to be physically present in a location. FYI – if you implement this option for your municipal boards, be sure to post meeting agendas in or near the municipal clerk’s office, AND “...provide a copy of each notice or agenda to the newspapers of general circulation for the municipality.”

## House Bills

*Reported by Alex Weinhausen*

### Bills Introduced

Twelve new bills were introduced on the House side this past week (H.680 - H.691), and only one with a planning nexus..

**H.682 – Rent Regulation by Municipalities** – This bill proposes to allow municipalities to adopt ordinances that limit the increase of rental rates.

## House Committee Updates

**H.492 - Act 250, Environmental Review Board; Appeals** – Testimony and discussion took place in House Natural Resources, Fish and Wildlife on Tuesday (1/18). Supporting testimony was provided by VNRC and others. This is the procedural Act 250 reform bill, which among other changes would: 1) shift the Natural Resources Board to a more professional five-member Environmental Review Board (ERB); 2) shift appeals of District Commission Act 250 decisions to the new ERB instead of the Environmental Court; 3) create a pre-application notice process to municipalities and abutters (similar to the PUC pre-application notice process). Without any apparent objections by the Administration, this bill seems likely to progress; however, it's not clear how many committee members are in favor. Given the profusion of Act 250 reform bills introduced this session (H.509, H.511, H.549, H. 581, S.188, S.200, S.226, S.234, S.235), it will be interesting to see if H.492 moves forward on its own, or if it becomes part of another bill.

**H.509 - Act 250, Jurisdiction (one acre towns)** - Testimony and discussion took place in House Natural Resources, Fish and Wildlife on Tuesday (1/18). Supporting testimony was provided by VNRC and others. This is a simple bill to clarify a jurisdictional practice that held for 50 years until the VT Supreme Court created a new interpretation in a decision on an Act 250 appeal last year. For municipalities without zoning and subdivision regulations, the jurisdictional trigger for commercial/industrial projects is one acre of involved land. Past practice tied that one-acre trigger to the overall size of the parcel(s). The Court's recent decision flipped this on its head, and said that instead the one-acre trigger is tied to the actual area being developed. Interestingly, the Court agreed to reopen their deliberations on this, and hear arguments on this question. H.509 would codify the past interpretation regardless of how the Court rules or re-rules.

**H.511, H.549 – Act 250, Designation Areas, Priority Housing** – First walk through of the bills by legislative counsel took place in House Natural Resources, Fish and Wildlife on Thursday (1/20). H.511 is the more substantial bill sponsored by Representative Bongartz with 20 co-sponsors. This bill proposes a variety of reforms for the Neighborhood Development Area designation program that were suggested last year by a group of planning practitioners. It would change the definition of priority housing (for purposes of the Act 250 exemption in certain designated areas). More generally, it would also fund DHCD to hire a consultant to report back on possible reforms to the State's designation program. H.549 is a more targeted bill to broaden the priority housing definition, and interestingly to exempt building supplies from sales/use tax for projects that qualify as priority housing.

Thankfully, the legislative counsel informed committee members about the collection of other Act 250 bills under consideration in both the House and the Senate. With all the co-sponsors, it would be odd if H.511 didn't progress on the House side; however, bills on the Senate side are split between those that support Act 250 exemptions in designated areas and those that don't. For example, S.226 (housing bill in Senate Economic Development & Housing) is in favor while S.234 (Act 250 bill in Senate Natural Resources) is opposed.

**H.524 - Municipal zoning pre-emption for residential uses** - First walk through of the bill by legislative counsel took place in House Natural Resources, Fish and Wildlife on Thursday (1/20). No word yet on whether the committee has any interest in furthering this bill. This

pre-emption bill would remove various municipal zoning options for residential development - setbacks, minimum lot size, site plan review, etc. and is yet another example of why VPA has taken the position that we need a more comprehensive review of housing provisions in Title 24, Chapter 117. Picking apart municipal zoning authority piece by piece, as this proposes to do, is not going to address the housing crisis.

## **Senate Bills**

*Reported by Sharon Murray*

### **Bills Introduced**

**S.264 – Renewable Energy Standard.** Like the RES bill introduced earlier this month (S.232), this bill would also require that, by 2030, 100% of retail electricity sales come from renewable energy. It would also require that distributed renewable generation comprise a minimum of 25% of the total by 2032. It expands the definition of distributed renewable energy to include smaller municipal hydro facilities (5 MW or less) in existence as of January 1, 2020, while setting a cap on the amount purchased from larger (200+ MW) hydro plants. In S. Natural Resources, Energy.

**S.268 – Right to Farm.** This bill would expand and extend protections for “farms” and “farm operations” (as redefined) from nuisance lawsuits, to include protections for any farm or farm operation that:

- existed before a change in land use or the occupancy of land in proximity to the farm,
- is in good standing with the Secretary of Agriculture, Food, and Markets,
- has conducted the activity at issue for two or more years prior to the date of a nuisance action, or
- is operating in conformance with state and federal law, regardless of a change in ownership or size; a temporary cessation or interruption; enrollment in government programs; adoption of a new technology, or a change in the type of farm product being produced.

This bill may be of particular interest to those following the current Addison County [court case](#) concerning farming practices, and associated impacts to adjoining properties and water quality. In S. Judiciary.

**S.270 – Act 250/VT Housing Regulation Modernization.** In order to address the housing shortage, and associated regulatory hurdles, particularly under ARPA deadlines, this bill would amend Act 250 to update the definition of affordable rental housing from 80% to 120% of median income, amend the definition of “priority housing project” to include mixed income housing and mixed use projects in designated village centers without neighborhood development areas, and also allow for expedited Act 250 review for housing development in “high-demand counties” – a county in which the median gross rent is 10% above that for the state. It would also set time limits on the Environmental Division for associated appeals – an appeal must be acted upon within 30 days of filing, and a decision must then be issued within 120 days. It includes a one-time appropriation from ARPA \$ in FY23 for an additional environmental judge and law clerk. It would also exempt construction materials used in priority housing projects from the sales and use tax. In S. Natural Resources, Energy.

**S.272 – Renewable Energy Program Compliance.** This bill would expand the list of entities that are required to meet the state’s Renewable Energy Standard and comply with renewable

energy programs to include all “electric utilities” – all companies engaged in the distribution, transmission, or sale of electricity – and not just retail providers who sell electricity directly to the public. In S. Natural Resources, Energy.

**S.278 – Act 250/Ag Soil Mitigation, Airports.** This bill would exempt subdivision, development and expansion of state-owned airports from agricultural soil mitigation studies and fees if the subdivision or development is the result of an authorized land acquisition, improvement, or maintenance (under Title 5), or the subdivision or development was authorized under an FAA approved airport master plan, and the state obtains required permits. In S. Natural Resources, Energy.

### **Senate Committee Updates**

**S.148 – Environmental Justice.** It’s clear that this bill – identified as must pass legislation by Vermont Renews and an active coalition of Vermont environmental organizations – will move in the Senate this year in some form. Introduced last year, the bill got its first real airing in S. Natural Resources and Energy last Friday, with testimony from former state legislator Kiah Morris and other advocates. Committee members discussed drafting a strike-all version, to incorporate additional input from affected groups and coalition members, in consultation with the bill’s sponsor, Senator Ram Hinsdale. Up for discussion again on Thursday.

**S.210 – Rental Registry.** This year’s rental housing registry bill (substituting for H.79 as vetoed) was voted out of S. Economic Development, Housing, and General Affairs last week (4-1-0), to include \$12 million in total appropriations from federal COVID relief funds for the Rental Housing Investment Program. As also amended in committee, units rented for fewer than 90 days per calendar year would not have to meet registration and fee requirements. In S. Finance.

**S.234 – Act 250 Reform (Smart Growth Designations, Forest Blocks).** In preparation for work on this and other Act 250 legislation related to housing development (H.511-Designations, S.226-Housing Bill), S. Natural Resources and Energy spent much of last week first trying to define the problem they’ve been asked to address – “How much housing do we need, and how soon do we need it?”--in discussion with a variety of state agency staff. This included summaries of past and present housing trends and projected needs, discussions around the root causes of the current housing shortage – with a focus on state v. local planning and permitting – and the time constraints imposed under ARPA. Witnesses spoke to the need for a timely and predictable review process, especially for housing development funded through ARPA. Bray noted that the enhanced smart growth designation process proposed in S.234 was intended to both enhance and further rely on local planning and permitting – an approach not supported by Sen. McCormack.

The committee will likely focus on S.234 with regard to Act 250 reform this session, though Senator Bray noted their intent to coordinate closely with H. Natural Resources and S. Economic Development, Housing, and General Affairs on related Act 250 legislation. S. Natural Resources is scheduled to take up S.234 again on Wednesday and Thursday, to hear from RPCs, VLCT, VNRC, regional housing providers, and local developers. S.234 is also on the schedule in S. Economic Development, Housing and General Affairs on Wednesday.

## House and Senate Schedules (subject to change)

*Assembled by Sharon Murray, with help from Alex Weinhausen and Charlie Baker*

### Tuesday, 1/25

AM S.258 Climate/RAPs –Intro, walk-through, S. Agriculture

11:30 S.264 RES – Intro, walk-through, S. Natural Resources, Energy

3:00 Comprehensive Energy Plan – House Energy and Technology discussion of the clean heat standard.

**4:00 S.210 Rental Registry, Programs – Intro, S. Finance**

### Wednesday, 1/26

9:00 Climate Action Plan – Climate Council, etc., S. Agriculture

**9:00 Omnibus Housing Bill – Realtors, S. Economic Development, Housing**

9:00 H.606 –Community Resilience and Biodiversity Protection - House Natural Resources, Fish and Wildlife

**10:00 S.234, S.270 Act 250/Housing – Sen. Bray, DHCD, VLCT, S. Economic Development, Housing**

**10:30 S.234 Act 250 Reform – Developers, S. Natural Resources, Energy**

**1:30 S.181 Misc Municipal Regulatory Authority – VLCT, S. Government Operations**

10:30 TIF Report – JFO, H. Ways and Means

10:45 FY23 Budget – Municipal Transportation Programs, Grant Programs, H. Transportation

### Thursday, 1/27

**9:00 H.492 Act 250/ Natural Resources Board – Testimony, H. Natural Resources, Fish, Wildlife**

**9:00 S.234 Act 250 Reform – Committee Discussion, S. Natural Resources, Energy**

9:00 S.188 Regulating small cannabis as farming – Cannabis Control Board, S. Agriculture

9:00 Federal and State Infrastructure Funding – VEC, GMP, S. Transportation

9:30 S.148 Environmental Justice – Bill development, strike-all, S. Natural Resources, Energy

2:15 Downtown Tax Credits – DHCD, DHP, H. Ways and Means

11:00 VTrans Policy, Planning – Budget, VTrans, S. Transportation

11:10 Omnibus Economic Development Bill – DHCD, Intro, S. Economic Development, Housing

### Friday, 1/28

8:30 S.270 Act 250/Housing – Intro, walk-through, S. Natural Resources, Energy

8:45 S.232 RES –Intro, walk-through, S. Natural Resources, Energy

**11:10 Omnibus Housing Bill – ADUs, S. Economic Development, Housing**

9:00 S.19 Climate Response Plan/RPCs – TBD, S. Health and Welfare

9:00 S.278 Act 250/Ag Mitigation, Airports – Intro, walk-through, S. Natural Resources, Energy

9:30 Weatherization Bill –Committee bill, S. Natural Resources, Energy

1:00 S.155 Public Safety Agency –Testimony, S. Government Operations

Online Resources: [Bill, Act and Resolution search page](#) and past [VPA Legislative Reports](#) and Position Papers. The weekly [VLCT legislative report](#) also provides useful summaries.