

Vermont Planners Association (VPA)

Legislative Report - January 18, 2022

This week opens with a Joint Assembly to hear Governor Scott's Budget Message at 1:00 P.M. on Tuesday, January 18, 2022.

Online Resource: [Bill, Act and Resolution search page](#) and past [VPA Legislative Reports](#) and Position Papers.

Legislation - Generally

Reported by Alex Weinhagen, Sharon Murray and Peg Elmer

The Covid-19 Municipal Meeting bills (S.172 and S.222). The Governor signed into law S.172, the bill providing municipalities with flexibility in procedures for holding 2022 annual meetings. This is similar to what was granted to municipalities during the COVID state of emergency with regard to annual meetings – i.e. to hold town meetings via Australian ballot or to delay the in-person meeting to a later date.

Similarly, S.222 that passed both the House and the Senate allows for electronic public meetings, without designating a physical location and having someone present on site, through Jan 15, 2023. Meeting notices and agendas may be posted in two designated electronic locations in lieu of the two required public places in the municipality. In the event of a staffing shortage, it extends the time limit for posting minutes to not more than 10 days. This bill is now in the Governor's hands.

Act 250 Reform – Note that four Act 250 reform bills are active in the House and three will be under discussion in House Natural Resources this week:

H.492 - Replace Natural Resource Board with an Environmental Review Board that would handle Act 250 Appeals.

H.509 - Clarify Act 250 jurisdiction for "one-acre" towns.

H.511 - Changes to Neighborhood Development Areas and New Town Centers, including changes to Act 250 jurisdiction and other Act 250 matters.

H.549 - Expand Act 250 exemptions through Priority Housing Projects and add additional tax exemptions.

Two Act 250 bills are active in the Senate, S.200 - Act 250 Master Plan Permits, and S.234 that was introduced by Senator Bray of S. Natural Resources and Energy last week. (See summary below.)

Climate Caucus and Council - The Council is finalizing its report to the Legislature, due January 15. The fact that the Council is primarily led and staffed by ANR, and that the Administration has discomfort over their lack of control of the Climate Action Plan and legislation that may come to implement it, led the draft report summary to focus on rulemaking ANR is bringing forward to meet the CAP's 2022 goals - which they can more easily control.

Non-Administration Council members noticed and objected. Their legislative report will be delayed slightly to re-word.

The Council is also working on adopting a 2022 Work Plan, which drills down into more technical work on analyses, developing measuring tools and standards. A Municipal Vulnerability Index continues to be included as a key piece, as required by the GWSA (Global Warming Solutions Act). ANR remains the lead on that project. Planners would likely appreciate collaborative involvement from DHCD, VT Emergency Mgt, VTrans, Human Services and the Dept of Health, and expertise outside the Administration, in developing that.

The Caucus hasn't publicly met since December. Its members are introducing bills in their widely-varied committees, to help implement the CAP. It will be difficult to follow them all.

House Bills

Reported by Alex Weinhausen

Bills Introduced

One hundred twenty-seven new bills introduced on the House side this past week (through H.553 - H.679), nine with a planning nexus..

H.569 – Economic Development and Housing – This bill proposes to encourage new workers to relocate to Vermont, to provide flexibility for Economic Recovery grants, to increase the capacity for the Capital Investment Program, to enable project-based tax increment financing districts, and to promote sustainable development and affordable housing. It includes provisions from several other bills previously introduced: project-based TIF, municipal bylaw modernization grants, extending tax credits to NDA designation areas and increasing total amount authorized for tax credits, affordable housing tax credits.

H.581 – Act 250, Rural Economic Development – This bill proposes to make multiple changes to support economic development in the rural areas of the State, including: establishing the Forest Future Program; reducing the requirement to mitigate the reduction of primary agricultural soils for forest-based enterprises and community wastewater systems that will serve a housing development within a designated center; establishing hours of operations conditions in Act 250 permits for forest-based enterprises; clarifying Act 250's jurisdiction over recreational trails; creating an Act 250 master plan permit for municipalities without a designated center; clarifying the definition of an "accessory on-farm business" and how one is regulated; amending the Act 250 jurisdictional trigger for affordable housing in designated centers; increasing the allowable weight for large trucks; requiring the Department of Motor Vehicles centralized online permitting system to be operational by January 1, 2023; supporting municipal buildings to convert thermal fuel systems by establishing the Municipal Fuel Switching Grant Program.

H.601 – Lake Memphremagog in crisis – This bill proposes to declare Lake Memphremagog a lake in crisis, thereby requiring additional pollution controls in addition to the existing TMDL.

H.606 – Community Resilience and Biodiversity Protection – This bill proposes to establish State goals of conserving 30 percent of the land of the State by 2030 and 50 percent by 2050. It charges the Agency of Natural Resources with coming up with a plan based on VT Conservation Design by 2023.

H.633 – Erosion Control Professional Certification – This bill proposes to require a person certified in erosion control measures to be present at the site of an activity that disturbs soil within a protected lake shoreland area or a protected perennial stream area.

H.646 – Transportation & Climate Initiative - This bill proposes to direct the Governor to join the Transportation and Climate Initiative of the Northeast and Mid-Atlantic States' cap-and-invest program. It directs State agencies to adopt rules to administer the cap-and-invest program and how the program's revenues can be spent.

H.647 – Climate Funding, Cap-and-Invest - This bill, related to H.646 above, proposes to create a special fund to administer funds from a cap-and-invest program, and creates the Equity Advisory Body to allocate the program's revenues to greenhouse gas reduction projects.

H.653 – Current Use Program Enrollment Expansion - This bill proposes to create a new category of management plans that would allow forested lands managed to increase carbon sequestration, carbon storage, or enhance wildlife biodiversity to qualify for the Use Value Appraisal program.

H.679 – Budget Adjustment Act FY22 – This bill proposes to make many adjustments to the State's current fiscal year budget. One change includes an additional \$250,000 for DHCD to make grants to municipal planning organizations.

House Committee Updates

H.492 - Act 250 Environmental Review Board. House Natural took testimony from NRB chair, Diane Snelling, to discuss the changes to the composition and function of the Natural Resources Board in the proposed Environmental Review Board, focusing on the administrative aspects of the proposal rather than the appeals.

Senate Bills

Reported by Sharon Murray

Bills Introduced

S.225 – Climate/VT Climate Corps. This bill creates the VT Climate Corps, administered through the VT State Service Commission (SerVermont), to fund state, municipal, or nonprofit partners (Program Hosts) to implement work program projects that provide employment doing climate resilience and adaptation work (e.g., weatherization, environmental restoration). Open to individuals at least 18 years of age who are willing to commit to no more than 12 months of full-, part- or flex-time service. Proposed \$5 million General Fund appropriation to SerVermont in FY23 for program administration. In S. Natural Resources, Energy.

S.226 – Housing. This 33-page omnibus housing bill proposes to increase the supply of affordable housing in the state, promote homeownership, and broaden housing opportunities. In S. Economic Development, Housing, General Affairs. As introduced last week this bill would:

- Authorize municipal and regional landbanks;

- Amend neighborhood planning and development area criteria (location, floodplains, river corridors, water systems), and new town center criteria (minimum density of 4 Dwelling Units/Acre);
- Repeal numeric thresholds for priority housing projects, and exempt priority housing projects from Act 250 within certain designated areas;
- Allow development within an existing settlement (as defined) under Act 250 floodplain criteria, if occupied space is elevated or floodproofed at least 2 ft above the BFE, or otherwise designed to be reasonably safe from flooding;
- Specify that the Act 250 ag soil mitigation ratio for a priority housing project or community wastewater system in a designated area shall be 1:1;
- Specify under Ch.117 (§ 4424) that “in any district that allows residential development, no bylaw shall have the effect of prohibiting multiunit or multifamily dwellings;”
- Establish a “Neighborhood Development Area Task Force” consisting of six planners and housing advocates from communities with NDAs to review the NDA guide and designation criteria, and provide a written report with recommendations
- Require that any public or private entity that receives federal COVID relief fund grants to purchase, renovate or construction housing, to the fullest extent possible must design and implement its program and award funding to applicants consistent with listed smart growth principles;
- Enact the “Homeless Bill of Rights” (Title 1) defining a person’s rights, privileges, or access to public services, including a specific listing of rights, which “shall not be abridged solely because of the person’s housing status;”
- Add “housing status” (as defined) as a protected classification with regard to discrimination in land use decisions and other unfair housing practices (Title 9); as well as unlawful employment practices (Title 21);
- Establish several financial incentive programs at DHCD using federal COVID relief funds– for first generation homebuyers; mobile home park improvements; mobile home relocations, rehabs, and replacements; workforce housing; and new American housing support services
- TIF Districts – for all nine existing districts, extend period for incurring debt by three years.

S.232 – Renewable Energy Standard. This bill increases the required percentage of total renewable energy under the RES to 100% by 2030 (from 75% by 2032). It also directs the PUC and Department to analyze the costs and impacts of increasing the amount of distributed renewable generation required to 20 or 30% by 2032. In S. Natural Resources, Energy.

S.233 – Clean Heat Standard. This bill would establish a “Clean Heat Standard” for heating fuel to achieve a 40% reduction in GHG emissions by 2030, and 100% by 2040. It requires fuel suppliers to reduce GHG emissions from heating fuel through tradeable clean heat credits, reductions in fossil fuel sales, and/or clean heat transformation projects. It also gives the PUC rulemaking authority to implement the standard, and creates a technical advisory group assist the Commission in initial program design, and ongoing management. In S. Finance.

S.234 – Act 250 Reform. This reform bill, in S. Natural Resources and Energy, proposes multiple amendments to Act 250, including:

- An enhanced “Smart Growth Designation” process administered through the NRB that would apply only to designated downtowns and neighborhood development areas, and exempt development and subdivisions within these areas from Act 250. NRB acts and decisions would be appealed to the Environmental Division of Superior Court.
- Smart growth designation criteria include:
 - A designated downtown district or neighborhood development Area;
 - An approved municipal plan with a clear implementation strategy for affordable housing;
 - Inclusionary zoning, a restricted housing trust fund, a housing commission; or impact fee reductions for affordable housing;
 - Flood hazard planning, and flood hazard and river corridor bylaws;
 - An adopted (Ch.117) capital budget and program that makes substantial investments in the designated area that are consistent with smart growth principles; and
 - Adequate staff to support comprehensive capital planning, development review, and zoning administration
 - Designated downtowns must also have “urban form bylaws” that further smart growth principles; and historic preservation bylaws for established design review or historic districts, landmarks.
- Adds the VHCB Executive Director to the Downtown Board
- Establishes Smart Growth Designation (Bylaw Modernization) Grants under the municipal portion of the Municipal and Regional Planning Fund, as required to adopt bylaws required for designation.
- Requires municipalities to respond to Act 250 requests within 90 days, or it will be presumed that an application does not have a reasonable burden on educational, municipal, or governmental services.
- Adds Act 250 definitions for “Connecting Habitat”, “Forest Block”, “Fragmentation”, and “Habitat” in association with new criterion 8(C) – that “development will not result in an undue adverse impact of forest blocks and connecting habitat.”
 - Requires NRB rulemaking, in association with a working group, to determine how forest blocks are defined, information available to the public, standards for avoiding impacts, and mitigation standards
- Requires ANR to complete and maintain resource mapping relevant to Act 250 and energy projects based on GIS or other technology, to include forest blocks; and to establish written procedures for updating resource maps.
- Establishes as a jurisdictional trigger, the construction of a road(s) or driveway(s) which in combination are greater than 2,000 feet, to provide access to or within a tract or tracts of land of more than one acre.
 - Exemptions: a road constructed for a municipal, county, or state purpose; a utility transmission or distribution corridor; a road located completely within a designated downtown or NDA, or used for farming or forestry.
- Defines “Wood Products Manufacturer” for purposes of limiting applicable Act 250 permit conditions (hours of operation, wood heat fuel deliveries)
- Clarifies Act 250 jurisdictional threshold in “one acre” towns that lack zoning and subdivision regulations (in response to Supreme Court Snowstone decision, also currently under reconsideration).

S.235 – Act 250, Agricultural Businesses. This bill directs the NRB to study and report on how Act 250 jurisdiction should apply to agricultural businesses, including businesses on operating farms; and to address current land use planning requirements for farms and farms with accessory on-farm businesses. This may include the designation or adoption of agricultural business innovation zones with different levels of review. In S. Natural Resources, Energy.

S.258 – Climate/RAPs. This bill would require Ag, Food, and Markets to determine if current requirements and practices under Required Agricultural Practices are adequate to address climate change-induced increases in precipitation, to protect soil resources and prevent harmful runoff and pollution. In S. Agriculture.

S.263 – Economic Development/TIFs. Along with development programs and grants tied to Economic Recovery and COVID relief funds, this bill also reintroduces TIF legislation proposed last year, to include a project-based TIF pilot program beginning through Dec 31, 2026 for up to 10 projects. It also reintroduces proposed Municipal Bylaw Modernization Grants under the Municipal and Regional Planning Fund; and allows for tax credits within designated neighborhood development areas. In S. Economic Development, Housing, and General Affairs

Senate Committee Updates

S. Natural Resources, Energy – Anticipated Act 250 and energy bills on the Committee’s priority list were introduced and discussed in committee last week. The committee received overviews of proposed Act 250 master plan (S.200), renewable energy standard (S.232) and clean heat standard (S.233) legislation, and the more extensive Act 250 reform bill (S.234) sponsored by Senator Bray (see above). They also heard from Senator Ram Hinsdale regarding the Environmental Justice bill (S.148) introduced last year. Senator McCormack, in presenting his proposed municipal master plan permit process for designated areas – which would then allow for subsequent development under permit amendments (similar to industrial parks) – repeated his long-standing opposition to proposed exemptions within designated areas as undermining the original intent and reinforcing the negative perception of Act 250 regulation. On Wednesday and Thursday they’re scheduled to focus on Act 250, housing, and the impact of planning and permitting on housing development, in discussion with staff from DHCD, VHFA, VHCB, ANR and the NRB.

House and Senate Schedules (subject to change)

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

Tuesday, 1/18

AM S.255 VT Climate Corps – Intro, S. Natural Resources, Energy

AM S.210 Rental Housing, Registry – DHCD, committee amendments, possible vote.
S. Economic Development, Housing

11:30 EV Chargers in Multi-use Dwellings Pilot Report – VTrans, DHCD. S. Transportation

1:00 Governor’s FY23 Budget Address, Joint Assembly

2:15 Act 250 H.492 Env Bd Appeals, and H.509 Jurisdiction (one acre towns) - H. Natural Resources

3:30 H.93 – Homeless Persons Bill of Rights - House General, Hsing & Military Affairs, testimony

Wednesday, 1/19

8:30 S.234, Impact of Planning, Permitting on Housing Development (Day 1) – DHCD, VHFA, VHCB, S. Natural Resources, Energy

9:00 S.188 Regulating small cannabis cultivation as farming – Intro, S. Agriculture

9:00 S.190 State Highway ROWs, Municipalities, Streetscaping – Intro, S. Transportation

10:30 S.19 Climate Response Planning, Health Care, RPCs – Intro, S. Health, Welfare

11:00 VTrans FY23 Budget – Overview, VTrans staff, S. Transportation

Thursday, 1/20

9:00 S.234, Impact of Planning, Permitting on Housing Development (Day 2) – ANR, NRB. S. Natural Resources, Energy

9:00 Omnibus Housing Bill (S. 226) –Walk-through, Leg Counsel, DHCD.
S. Economic Development, Housing

9:00 H.273 – VT Land Access & Opportunity - House General, Hsing & Military Affairs, testimony

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

1:30 VT Community Broadband Update –VT Community Broadband Board, S. Finance

1:00 **Act 250 Introductions of H.524, 1:10pm H.549, 1:20pm H.511** followed by walk-throughs of all three bills. H. Natural Resources.

1:30 S.155 Agency of Public Safety – Committee discussion, S. Government Operations

2:00 Budget Adjustment, Housing – VHCB, VHFA, S. Appropriations

3:00 H.679 - Budget Adjustment Act for current fiscal year – 2nd reading on the House floor

Friday, 1/21

8:30 S.148 Environmental Justice – DEC, ANR, S. Natural Resources, Energy

9:00 **H.679 - Budget Adjustment Act for current fiscal year** – 3rd reading on the House floor

10:00 Municipal, Grant Programs, Budgets – VTrans staff, S. Transportation

2:00 VHCB Update—VHCB staff, S. Institutions

2:30 S.174 Notices, Electronic News Media –Walk-through, S. Government Operations

Also:

- H.518 – Municipal Fuel Switching Program – House Energy and Technology, discussion and testimony every day this week