

Legislative Report - February 7, 2022

Legislation - Generally

By Alex Weinhagen and Sharon Murray

H.679 – Budget Adjustment Act for FY22 – The rather large proposed adjustment to the current year’s State budget, which includes 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. This bill passed both the House and Senate in slightly different forms. The two chambers will likely resolve their differences in the coming week, and send this along to the Governor.

FY23 Budget (22-0443) – This week in House Appropriations, testimony is being presented on the Governor’s proposal in regards to planning-related items. See Schedule below for details.

House Bills

Reported by Alex Weinhagen

Bills Introduced

Five new bills introduced on the House side this past week (through H.701 - H.705), two with a planning nexus.

H.701 – Cannabis Licensing Fees – This bill sets licensing fees for cannabis establishments. Set fees for some establishments (e.g., retailers) and sliding-scale fees for others (e.g., growers) based on amount produced/processed. Only a narrow planning nexus for municipal planners contemplating setting up local licensing boards. Fees cannot be charged by the municipal licensing boards. Instead, the State collects a flat (and low) \$100 local license fee, and then passes this along to the municipality.

H.704 – Accessory On-Farm Businesses – This bill proposes to clarify the definition of “accessory on-farm business.” It would prohibit regional and municipal plans from banning accessory on-farm businesses. It would remove the requirement for the business to be subordinate to the farm, provided gross sales from the business do not exceed \$200,000.00 annually. It would exempt water from the calculation used to determine if products are principally produced on the farm. To be exempt from Act 250, it would limit the amount of land used by an accessory on-farm business to one acre and set the maximum size of new buildings to 4,000 square feet. Short-form bill only, so no other details.

House Committee Updates

H.492 - Act 250, Environmental Review Board; Appeals – Testimony and discussion in House Natural Resources, Fish and Wildlife on Wednesday (2/2) and Thursday (2/3). Peg Elmer Hough testified on Wednesday (2/2) on behalf of VPA. Since VPA doesn't yet have consensus on the proposed change to the appeal process (replacing Environmental Court with an Environmental Review Board), Peg discussed the pros and cons of each system, and urged the committee to include an update of the Capability and Development Plan in the future reporting portion of the bill. The committee heard from other witnesses as well, including Judge Durkin from the Environmental Court. On Thursday (2/4), the committee reviewed a new version of the bill (a strike-all version) that removed language on the pre-hearing notifications and the hearing officer option. The chairperson seemed favorably inclined to add language recommended by VPA related to future reporting requirements – language that was in an earlier Act 250 reform bill considered in 2020 (H.926). This bill is a work in progress, but is still expected to be voted out of the HNFW committee favorably, and have a decent chance of passage this year.

H.606 – Community Resilience and Biodiversity Protection – Reminder – This bill proposes a Goal to conserve 30% of Vermont by 2030 and 50% by 2050. Discussed in House Natural Resources, Fish and Wildlife, on Wednesday (2/2). As reported by our intern (Jon Godbout), “The committee heard testimony from several ecologists and environmental organizations such as VNRC and The Nature Conservatory on H.606. All witnesses agreed that the VCD should work as a guide to maintaining forest resilience and biodiversity... There were few questions from the committee due to time constraints but of primary concern to the committee were workforce commitments from agencies, and improved data, to help achieve the goals outlined in this bill.”

Senate Bills

Reported by Sharon Murray and Jonathan Godbout

On the Senate side, no new bills were introduced last week.

Bills on the Move

The following Senate bills are getting attention in committee, and are likely to move forward in some form.

S.33 Project-Based TIF – This was struck from the schedule in S. Economic Development last week, but came up briefly in discussions regarding the committee's omnibus economic development bill, as supported by the Addison RDC. A meeting with VEPC regarding S.33 is back on the committee's schedule for Wednesday.

S.96 State Planning Office - S. Government Ops was scheduled to meet with Chris Campany last week to get his take on the SPO study bill, in response to Climate Council recommendations for the development of a statewide land use planning and implementation plan; and the new Climate Office to be housed under ANR, as included in the Governor's FY23

budget. The committee ran out of time on Wednesday, and punted testimony on S.96 to a date to be determined. To date, the administration has not supported a SPO (or state level land use planning in any form), but the Climate Office, as supported by the Governor, may offer a more timely and relevant alternative? VPA will continue to follow this bill, as previously supported, in consultation with Chris.

S.148 Environmental Justice - S. Natural Resources actively engaged last week with representatives from the Conservation Law Foundation, ANR, and the PUC in negotiating the provisions and specific language to include in a strike-all version of S.148, with the intent of getting a final version out in the next week or so. A draft version of the strike-all (1.1) is now available on the committee's webpage. They'll be working on bill language again on Thursday, while also meeting this week with representatives from DHCD, VTrans, and other agency reps to discuss potential administrative or operational impacts.

S.188 Small Cannabis Cultivation/Farming – Currently under state law, cannabis “establishments” are not regulated as farming under Required Agricultural Practices, and cannabis is not considered an agricultural product. S.188 would regulate “small” cultivation as farming under the RAPs. Much of the discussion in S. Agriculture last week focused on a proposed amendment that would clarify that small cultivator cannabis cultivation and farm buildings used to process cannabis, on land subject to RAPs, would be regulated as farming under the RAPs, as exempted from both Act 250 and municipal regulation under Chapter 117 – and qualify for enrollment in the Use Value Appraisal (Current Use) Program. A lot of the discussion concerned the definition of “small” in this context – as proposed, limited to a cultivation area of up to 1,000 sq.ft. The committee plans to address current use concerns with agency reps on Wednesday, and get the bill onto the floor this week.

S.210 Rental Registry, State Code Enforcement - The second reading of this bill – fast tracked as voted favorably out of three committees (Economic Development, Housing and General Affairs, Finance, and Appropriations) – was postponed last week on a motion from Sen. Sirotkin. It's now scheduled for floor time on Tuesday. S.210 as amended is intended to address several of the Governor's concerns with S.79 as vetoed, but from outside reports it's not clear that he'll go along with this version either, viewing it as an unnecessary expansion of state bureaucracy.

S.234 Act 250/Smart Growth, Forestry, PHPs - What will end up in this bill, now being considered for a strike-all in S. Natural Resources, remains a mystery, but the committee hopes to get a comprehensive Act 250 bill voted out in the next couple of weeks. Two S.234 mark-up sessions, with reps from ANR, the NRB, VHCB, and VNRC, are scheduled this week.

Last week the committee took up forest fragmentation provisions of the bill, to include a side by side comparison of S.234 with forest protection provisions from previous attempts to amend Act 250 (H.233, H.904, S.165). The Dept. of Forest, Parks, and Recreation spoke in favor of proposed anti-fragmentation language under the Act 250 criteria (criterion 8); but did not support extending Act 250 jurisdiction under a reinstated road rule, tied to the total length of existing and proposed roads and driveways, as advocated by VNRC. S.234 as introduced also calls for

rule-making to further define forest blocks and connecting habitat, associated standards, and ANR mapping – all still under discussion. The Commissioner also noted the need for more outreach and education – particularly for new forest landowners – and ramped up local land use planning and conservation. Act 171 was once again credited with improving how forests are addressed in municipal plans, but not necessarily under local bylaws.

The committee on Friday also got a basic intro to Priority Housing Projects under Act 250 from NRB staff, limited to a legal review of statutory definitions and the NRB's jurisdictional PHP Flow Chart. This came with an acknowledgement that, because PHPs are exempted from Act 250, the NRB doesn't address PHPs beyond jurisdiction – e.g., with regard to history, intent, effectiveness, and state designation and housing affordability requirements. They agreed to supply data re PHPs in relation to other housing projects that have undergone Act 250 review in recent years. The smart growth designation process included in S.234 as introduced has received little support, and will likely not make a final cut. That said, it's not clear yet whether PHP provisions included in other bills currently under review in S. Economic Development and Housing (including H.511) will be substituted for this in S.234 (as anticipated), or instead be included in the Senate's omnibus housing bill. Also under discussion – expedited review for ARPA-funded housing projects that would sunset with ARPA funding. S.200, McCormack's Act 250 master plan proposal, is also up for review this week.

House and Senate Schedules (subject to change)

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

Tuesday, 2/8

9:30+ Farm to School – Testimony; S. Agriculture

9:30+ Road Ecology, Staying Connected Initiative – VTrans, VDFW; S. Transportation

10:00 Weatherization – ARPA, IJA Funding; S. Natural Resources, Energy

10:30 Omnibus Economic Development Bill – Walk-through; S. Economic Development, Housing

10:30 S.234 Act 250 Smart Growth, Forestry – Strike-all, walk-through; S. Natural Resources, Energy

11:15 S.188 Regulating Small Cannabis as Farming – Testimony, S. Agriculture

11:30 S.200 Act 250, Master Plans – VHCB, VLCT; S. Natural Resources, Energy

1:00 Current Use/Forestland – Testimony, H. Agriculture, Forestry

1:00 FY23 Budget – Natural Resources Board, H; Appropriations

1:00 H.606 Community Resilience, Biodiversity – Markup and discussion; H. Natural Resources, Fish, Wildlife

1:15 VT Housing and Conservation Coalition – H. General, Housing, Military

1:30 Water Supply Wastewater Disposal TAC – TAC, DEC; S. Institutions

2:00 Farm to School – H. Agriculture, Forestry

2:00 Transportation Bill – VTrans Policy and Planning; H. Transportation

3:00 S.233 Clean Heat Standard –Walk-through; S. Finance

6:00 FY23 Budget – Joint Public Hearing; H. and S. Appropriations

Wednesday, 2/9

8:30 S.234 Act 250/ Smart Growth, Forestry – Mark-up w/ VNRC, ANR, VHCB; S. Natural Resources, Energy

9:00 VT Housing and Conservation Coalition – H. Natural Resources, Fish, Wildlife

9:00 VT Housing and Conservation Coalition – Update; S. Agriculture

9:00 Omnibus Housing Bill – VHFA, DHCD, CHT; S. Economic Development, Housing

9:45 H.492 Act 250/NRB, ERB – Markup, discussion; H. Natural Resources, Fish, Wildlife

9:45 **S.188 Regulating Small Cannabis as Farming – Possible vote; S. Agriculture**

10:30 VT Housing and Conservation Coalition – H. Agriculture, Forestry

11:00 5-YR Infrastructure Funding Plan – VTrans; S. Transportation

11:10 S.33 Project Based TIFs – VEPC; S. Economic Development, Housing

11:15 H.704 Regulating Accessory On-Farm Businesses – Intro; H. Agriculture, Forestry

11:15 Transportation Bill – VTrans Policy and Planning; H. Transportation

1:00 Transportation Bill – EV Infrastructure, DHCD, VTrans; H. Transportation

1:15 H.697 UVA/Forest Reserve/Current Use Program Enrollment Expansion 2 – JFO; H. Ways and Means

1:30 Building Communities Grant Program – Updates, BGS, DHCD, AAFM, DHP; S. Institutions

2:15 S.181 Municipal Regulatory Authority – Possible vote; S. Government Operations

3:00 FY23 Budget – Joint Public Hearing; H. and S. Appropriations

Thursday, 2/10

9:00 Working Lands Enterprise Initiative – Joint Hearing, H. and S. Agriculture

9:00 Transportation Bill –Vehicle Incentive Programs; H. Transportation

9:00 VT Housing and Conservation Coalition – S. Economic Development, Housing

9:00 S.148 Environmental Justice – Markup w/DEC, CLF; S. Natural Resources, Energy

9:30 Omnibus Economic Development Bill – JFO, DFR, DED; S. Economic Development, Housing

9:45 Rail Updates – NECR, VT Rail System, VT Railway; S. Transportation

10:30 S.148 Environmental Justice – Operational impacts, DHCD, AAFM, VTrans; S. Natural Resources, Energy

1:00 FY23 Budget – ACCD, H. Appropriations

1:30 FY23 Budget – AAFM Planning; S. Institutions

2:00 FY23 Budget – AAFM Water Quality Grants; S. Institutions

2:30 FY23 Budget – DEC Clean Water, Municipal Pollution Control RLFs; S. Institutions

3:00 FY23 Budget – VHCB, H. Appropriations

5:30 Public Hearing on S.129, S.201, S.281; S. Natural Resources, Energy

Friday, 2/11

8:30 S.234 Act 250/ Smart Growth, Forestry – Mark-ups w/ANR, DEC, NRB, VNRC; S. Natural Resources, Energy

9:00 I-89 Study, TDM Modeling – CCRPC, RSG; S. Transportation

10:00 Omnibus Housing Bill – DHCD, VPA; S. Economic Development, Housing

- 10:30 S.148 Environmental Justice – Operational impacts, Education, VDH, DPS; S. Natural Resources, Energy
- 1:00 VT Housing and Conservation Coalition – Joint Hearing, H. and S. Institutions
- 1:00 S.155 Agency of Public Safety – Testimony; S. Governmental Operations
- 2:00 Dam Safety Update – DEC; S. Institutions

Online Resources: [Bill, Act and Resolution search page](#), past [VPA Legislative Reports](#), and the weekly [VLCT legislative report](#).