

Legislative Report - February 14, 2022

Legislation - Generally

By Alex Weinhagen and Sharon Murray

22-0029 - Transportation Bill - EVSE & Bike/Pedestrian Planning – This bill, introduced this past week, addresses many different transportation items. Sections 1-8 address funding programs for electrical vehicle supply equipment (EVSE, aka EV chargers). Section 9 proposes a VTrans pilot program to support the continued development and buildout of bicycle and pedestrian infrastructure including, working with Regional Planning Commissions. It would establish a framework for prioritizing bike/ped projects funded through the various VTrans grant programs – e.g., Bike/Ped program, Transportation Alternatives Program, Downtown Transportation Fund.

2022 Environmental Common Agenda – Top Legislative Priorities for the Environment -

The Vermont Conservation Voters, in partnership with a long-standing coalition of statewide environmental groups, released their Environmental Common Agenda last week, calling on lawmakers to enact legislation this year that moves the Climate Action Plan forward, protects public health, creates a more just and affordable clean energy economy, improves communities' climate resilience, and addresses Vermont's housing crisis. VPA is not a coalition member, but the agenda as presented includes several proposed "solutions" that should look pretty familiar to planners:

- Expand funding and eligibility for downtown and village tax credits.
- Increase VHCB funding to build more "smart growth housing."
- Increase investments in water and sewer infrastructure in compact community centers to allow for additional housing development in these locations.
- Update Act 250 to encourage housing in smart growth locations, while improving protections for important natural resources.
- Better protect intact, health forests by updating Act 250 criteria and jurisdiction.
- Develop a plan to conserve, 30% of Vermont's land and waters by 2030.
- Invest at least \$135 million in FY23 clean water initiatives – including village drinking and wastewater systems, and flood hazard mitigation via land acquisition.
- Adopt better protections for riparian areas and river corridors, and a "net gain" policy for wetland conservation and restoration.
- Enact an environmental justice law.
- Adopt the Transportation Innovation Act.

Act 250 – One Acre Towns - In a rare move following reconsideration, the Vermont Supreme Court on Friday decided to fall back on the jurisdictional definition of a "one acre" town, as applicable to commercial development in towns without zoning and subdivision regs, to the historic definition set by more than fifty years of precedent – that "one acre" is defined by the

size of the tract or parcel, and not the footprint of a proposed project. In the court's revised decision regarding the proposed Snowstone Quarry in Cavendish, the court found that it was unnecessary to decide if the doctrine of "involved land" in question applied to one acre towns, since the project was on a tract of land that was less than one acre. This suggests that legislation introduced to clarify and codify the historic interpretation in statute (H.509) may still be in order?

House Bills

Reported by Alex Weinhagen

House Committee Updates

H.492 - Act 250, Environmental Review Board; Appeals – More discussion and markup (aka revisions) took place in House Natural Resources, Fish and Wildlife on Wednesday (2/9) and Thursday (2/10). Additional language added on how the Environmental Review Board members would be nominated and approved – modeled after the Cannabis Control Board nomination process. Markup to the bill continues this week – see below, February 16. VPA's Executive Committee voted 7-3-1 on Friday (2/11) to support the bill, consistent with a recommendation from our Legislative Committee.

H.606 – Community Resilience and Biodiversity Protection – Discussed in House Natural Resources, Fish and Wildlife, on Tuesday (2/8), with more discussion and framing questions offered from committee members. Additional discussion took place on Thursday (2/10) and Friday (2/11). Markup will continue this week - see details below for February 17.

Senate Bills

Reported by Sharon Murray and Jonathan Godbout

No new bills were introduced in the Senate last week, but there's been some progress on bills still in the works:

S.148 Environmental Justice – S. Natural Resources and Energy is in the midst of marking up a strike-all version of the EJ bill, to include additional language received from CLF and ANR last week, working in collaboration. A new draft is expected this week, with a possible vote scheduled for Thursday.

Questions raised in committee focused on the definition, and the need for data to document the extent and location of "underserved and overburdened" communities referenced in the bill. The committee also met with state reps (VTrans, DHCD, DOH, Public Safety) to discuss how the populations identified for consideration under S.148 are served under department programs. No witnesses explicitly supported the bill, but it was generally received in a positive light. Concerns focused mainly on the timelines included in the bill, especially in relation to required mapping, and the need for more administrative support to manage proposed grant and funding program requirements.

S.181 Cannabis Cultivation, RAPs – It was clarified by Legislative Counsel and Ag Agency reps last week that as long as cannabis is federally classified as a controlled substance, cannabis cultivation can't be regulated directly under the Ag Agency (e.g., under Required Agricultural Practices) – that this would also have to come under the jurisdiction of the Cannabis Control Board. As a result, the committee asked for more information and draft language on how this might work, with the hope of moving a bill out this week.

S.210 Rental Registry, Enforcement – This year's rental registry bill finally passed the Senate Thursday on a roll call vote (20-9), as amended to address some of the Governor's concerns, but with no guarantees that it can survive another veto, especially on the House side. Given Scott's veto of the contractor registry last week (long supported by consumer advocates and the Homebuilders Association), this one's also clearly still on the legislative bubble.

S.234 Act 250 Reform – A strike-all version of S.234 is now being viewed, at least on the Senate side, as this year's substantive Act 250 reform bill. The intent in S. Natural Resources and Energy is to review and consolidate legislative proposals introduced to date concerning Act 250 jurisdiction (priority housing projects, road rule) and Act 250 criteria (flood hazard areas, river corridors, forest blocks, and ag soil mitigation at state airports). Per Senate rules, this bill will likely not incorporate proposed changes to other areas of statute, including Chapter 117 housing provisions under H.511, that are not specifically germane to Act 250. A new draft is scheduled for group discussion and mark-up this week, leading to a possible committee vote on Friday.

With regard to expanding or eliminating the cap on priority housing projects, a strike-all draft posted on Thursday substituted PHP provisions from H.511 for proposed "smart growth" designations that, as "overly complicated" have received little support. VLCT and VHCB also spoke out last week against the alternative (S.200) that would allow for master plan permitting within designated areas, and treat housing projects as permit amendments. It's expected that any changes to PHP provisions in this round – intended specifically to expedite federally-funded housing projects within designated areas – will come with a reporting requirement, and a 2027 sunset provision. Committee members also expressed some concern regarding proposed changes to housing affordability definitions to match VHFA definitions, and the existing 15-year affordability requirement, as too short to sustain affordability.

Much of the discussion later in the week focused on reinstating a version of the jurisdictional "road rule" as a means to minimize forest fragmentation. VNRC and Legislative Counsel provided a brief legislative history of the rule, and the options for triggering jurisdiction currently on the table – including a total of 2,000 feet of roads and driveways (as introduced), and/or a single road or driveway of 800 feet or more. The committee seems generally supportive of the idea, but has asked for more detail, including side by side comparisons. The administration, represented in committee by ANR staff and the NRB Chair, does not support expanded Act 250 jurisdiction under the road rule, suggesting the threat of a possible veto if this is included.

S.226 Omnibus Housing Bill – Regina Mahoney testified on behalf of VPA in S. Economic Development, Housing, and General Affairs on Friday, to address a variety of statutory housing

provisions in bills proposed to date (S.101, H. 511) that may be included in the committee's housing bill. VPA recommendations included:

- Funding for water and sewer infrastructure in existing settlements and surrounding neighborhoods as necessary for compact settlements, higher density neighborhoods, and affordable housing.
- Updating Neighborhood Development Area and other state designations to more effectively incentivize housing and support compact settlements—to include the proposed evaluation of all state designation programs
- For NDAs, allowing for the inclusion of flood hazard and river corridors within developed areas, as regulated under local bylaws consistent with ANR rules; setting a minimum residential density of 4 DU/A that's not specific to single family, and removing the requirement that an NDA must be served by municipal sewer.
- Removing the caps on PHPs, allowing for a more general Act 250 exemption in designated downtowns, new town centers, and NDAs
- Extending the Downtown and Village tax credit program to NDAs, and increasing the tax credit cap.
- Extending the Bylaw Modernization Grant Program.
- A minimum two-year statutory time limit on site plan and conditional use approvals, before an approval may be considered expired or abandoned.
- A study committee to recommend changes to Chapter 117.
- Continued funding to house the homeless, and supportive housing programs, including first time buyer programs, and support for historically disadvantaged groups.

In response to committee interest in ADUs, Regina also noted that previous statutory changes have been very helpful in promoting ADUs by right in association with single family dwellings. Further improvements, however, are needed with regard to state permitting, which treat ADUs separately from single family dwellings, as required for wastewater system permitting. A separate permit for an ADU should not be required if the single family dwelling has sufficient system capacity. Municipal planners cite wastewater permitting as one of the biggest stumbling blocks to creating more ADUs – far more limiting than lot owner/occupancy requirements.

House and Senate Schedules (subject to change)

Assembled by Sharon Murray, with help from Alex Weinhagen

Tuesday, 2/15

10:15 S.148 Environmental Justice – Mark-up, discussion; S. Natural Resources, Energy

1:00 Clean Heat Standard – Committee mark-up, discussion; H. Energy, Technology

1:00 FY23 Capital Budget – VHCB Updates; S. Institutions

1:45 FY23 T-Bill – Bike and Ped Planning Integration Pilot Program, VTrans, Windham RC; H. Transportation

2:30 FY23 Budget –NRB; S. Appropriations

2:45 FY23 Budget – VTrans; H. Appropriations

3:30 H.518 Municipal Fuel Switching Program—Mark-up, possible vote; H. Energy, Technology

Wednesday, 2/16

9:00 H.697 Current Use Program Enrollment Expansion 2 – Testimony; H. Agriculture and Forestry

10:15 S.148 Environmental Justice – Mark-up, discussion; S. Natural Resources, Energy

11:15 H.492 Act 250, Environmental Review Board – Mark up and discussion; H. Natural Resources, Fish, Wildlife

1:00 Clean Heat Standard – Committee mark-up, discussion; H. Energy, Technology

1:00 FY23 Capital Budget – VHCB Updates; S. Institutions

1:15 H.601 Lake Memphremagog in crisis – Introduction and walk through; H. Natural Resources, Fish, Wildlife

1:45 FY23 T-Bill – Bike and Ped Planning Integration Pilot Program, VTrans, Windham RC; H. Transportation

2:30 FY23 Budget –NRB; S. Appropriations

2:45 FY23 Budget – VTrans; H. Appropriations

3:30 H.518 Municipal Fuel Switching Program—Mark-up, possible vote; H. Energy, Technology

Thursday, 2/17

8:30 S.148 Environmental Justice – Mark-up, possible vote; S. Natural Resources, Energy

9:00 FY23 Capital Budget— VHCB Projects (Clean Water, Ag, Land Conservation, Housing); H. Corrections, Institutions

9:00 H.606 Community Resilience, Biodiversity—Mark-up, discussion; H. Natural Resources, Fish, Wildlife

9:00 S.263 Economic Development – Testimony (DEC); S. Economic Development, Housing

1:00 H.566 VT Forest Future Program – Committee; H. Agriculture, Forestry

1:00 Clean Heat Standard – Committee mark-up, discussion; H. Energy, Technology

1:00 River Corridors – ANR, TNC, Windham RC; H. Natural Resources, Fish, Wildlife

1:00 FY23 Budget – ACCD (DHCD); S. Appropriations

3:30 FY23 Budget – VHCB; S. Appropriations

Friday, 2/18

8:45 S.234 Act 250 – Mark-up, discussion, vote; S. Natural Resources, Energy

9:00 S.268 Right to Farm – Joint Hearing; S. Agriculture, S. Judiciary

2:00 FY23 Budget – ANR (DFW, DFPR); S. Appropriations

2:30 FY23 Capital Budget – VCGL, Digital Ortho Mapping; S. Institutions

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