

VPA LEGISLATIVE REPORT #5

EMINENT DOMAIN Issue on the Senate Calendar - Tuesday:

S.246

Second Reading

Favorable with Recommendation of Amendment

An act relating to eminent domain.

Reported favorably with recommendation of amendment by Senator Campbell for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 1040 is added to read:

§ 1040. EMINENT DOMAIN; RESTRICTIONS ON USE; CONFERRING OF PRIVATE BENEFIT; ECONOMIC DEVELOPMENT

(a) Notwithstanding any other provision of law, no governmental or private entity may take private property through the use of eminent domain if the taking is primarily for purposes of economic development, unless the property is taken pursuant to chapter 85 of Title 24 (urban renewal).

(b) This section shall not affect the authority of an entity authorized by law to use eminent domain for purposes of constructing, maintaining, or operating:

(1) transportation projects, including highways, airports, and railroads;

(2) public utilities, including entities engaged in the generation, transmission, or distribution of electric, gas, sewer, or communication services;

(3) public property, buildings, hospitals, and parks; or

(4) water, wastewater, flood control, drainage, or waste disposal projects.

Sec. 2. 24 V.S.A. § 3201(3) is amended to read:

(3) "Blighted area" shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; ~~provided, that if~~ . If such blighted area consists of open land the conditions contained in the proviso in ~~section~~ subsection 3207(d) of this title shall apply; ~~and provided further, that any~~ . Any disaster area referred to in section 3207(g) of this title shall constitute a ~~"blighted area"~~ "blighted area." No area shall be determined to be a blighted area solely or primarily because its condition and value for tax purposes are less than the condition

and value projected as the result of the implementation of any state, municipal, or private redevelopment plan.

Sec. 3. 24 V.S.A. § 3211(f) is amended to read:

(f) In considering the issue of necessity, the superior and assistant judges shall, to the extent constitutionally permitted, give effect to the legislative determinations made in this chapter and to the determinations made by the voters and appropriate municipal authorities under this chapter. The court shall not give weight to a projected increase in economic value of the subject property solely or primarily because its condition and value for tax purposes are less than the condition and value projected as the result of the implementation of any state, municipal, or private redevelopment plan.

(Committee vote: 5-0-1)

Note: A companion Eminent Domain bill has been introduced in the House last week - H. 767 and is in House Judiciary.

Growth Centers -

The Senate Natural Resources Committee Calendar for this week shows Committee discussion of **growth centers** on Tuesday and Wednesday mornings – Thursday and Friday agenda items are to be announced. It is believed that the various interest groups are in discussion on the scope of this legislation and on how there can be more significant incentives incorporated in this proposal. As of this writing I am not aware of any direction given to Al Boright, Legislative Counsel.

Housing – As of this writing, nothing is available for release/circulation from the Agency of Commerce & Community Affairs or DHCA on what Secretary Dorn and Commissioner Hall presented last week to the House General, Housing & Military Affairs Committee.

House Natural Resources & Energy Committee is working this week on **Regional Greenhouse Gas Initiative and VT Energy Security and Reliability Act**. The Committee has scheduled Tuesday 11-1 and 2:30 on the **Regional Greenhouse Gas Initiative**

Ancient Roads H. 701: (Identified and Unidentified Corridors) Scheduled on House Gov't Operations agenda for Tuesday 11 Am and 2:30 Pm, Wednesday 11 Am and 3Pm Tuesday for "**Anyone wishing to testify**". Committee Discussion Friday 1Pm

Also related to Ancient Roads – new bill **H.844** was introduced this past week by the Committee on Commerce:

Subject: Banking and insurance; property and casualty insurance; approval or disapproval of rates

Statement of purpose: This bill proposes to authorize title insurers to **charge a surcharge in towns until unknown public rights-of-way have been mapped or discontinued**. If funds remain after resolution of the problem, the funds will be distributed to the original policyholders.

House Ways & Means takes up TIF'S — Wednesday 9:30 Am **TIF Overview**; 10:30 Am **H. 670 Bill to improve TIF Provisions and H.671 TIF's for South Burlington, Milton & Berlin**

VTRANS TRANSPORTATION PROGRAM - House Transportation Committee Public Hearing: 3pm Wednesday Feb 8th Room 11.

And on Thursday 9-10 **Project Prioritization** – VTRANS Secretary and Project Development folks.

House Commerce – Friday 10:30 Am: **H.690 - Identification, Documentation & Development of the Creative Sector of the State's Economy.** Among the witnesses scheduled: Catherine Dimitruk NW RPC

House Fish & Wildlife & Water Resources Committee - has scheduled Wednesday, Thursday and Friday on **H.447 – Municipal Regulation of Firearms and Shooting Ranges**

By Reps. Krawczyk of Bennington and a few other sponsors: Morrissey of Bennington, Adams of Hartland, Allaire of Rutland City, Allard of St. Albans Town, Atkins of Winooski, Audette of S. Burlington, Baker of West Rutland, Bartlett of Dover, Bostic of St. Johnsbury, Branagan of Georgia, Brennan of Colchester, Canfield of Fair Haven, Clark of St. Johnsbury, Clark of Vergennes, Condon of Colchester, Corcoran of Bennington, DePoy of Rutland City, Donaghy of Poultney, Donahue of Northfield, Dunsmore of Georgia, Endres of Milton, Evans of Essex, Fallar of Timmouth, Flory of Pittsford, Gervais of Enosburg, Helm of Castleton, Houston of Ferrisburgh, Howrigan of Fairfield, Hube of Londonderry, Hudson of Lyndon, Hutchinson of Randolph, Johnson of Canaan, Kennedy of Chelsea, Keogh of Burlington, Kilmartin of Newport City, Koch of Barre Town, Komline of Dorset, Larocque of Barnet, Larrabee of Danville, LaVoie of Swanton, Lawrence of Lyndon, Livingston of Manchester, Louras of Rutland City, Malcolm of Pawlet, Marcotte of Coventry, Marron of Stowe, Martin of Springfield, McAllister of Highgate, McFaun of Barre Town, Metzger of Milton, Miller of Elmore, Molloy of Arlington, Monti of Barre City, Morley of Barton, Myers of Essex, Niquette of Colchester, Nitka of Ludlow, O'Donnell of Vernon, Otterman of Topsham, Parent of St. Albans City, Peaslee of Guildhall, Perry of Richford, Pillsbury of Brattleboro, Potter of Clarendon, Randall of Troy, Rodgers of Glover, Schiavone of Shelburne, Shaw of Derby, Smith of New Haven, Valliere of Barre City, Westman of Cambridge, Winters of Swanton, Winters of Williamstown, Wright of Burlington and Young of Orwell,

Scheduled to testify are about 20 representatives of sportsmen's clubs and one representative of municipalities- Karen Horn of VLCT. Good luck, Karen...

House General / Housing and Senate Housing /General Affairs Committees -

Joint meeting – Room 11 Thursday 9:30- 10:30 Am on: **H.277**

Subject: Safety; electrical installations; residences; licensed electrician required

Statement of purpose: This bill proposes to reduce the incidents of death and injury that result from inappropriate design and installation of electrical systems in single family residences by requiring that **any electrical installation in any residence**, including single family owner-occupied residences, be performed **by a licensed electrician**.

Senate Finance Committee has scheduled testimony on this Tuesday afternoon beginning at 1:30 pm on **H. 739** – The bill proposing to establish a process by which the public service board may authorize **intervenor funding**.

STORMWATER:

House Institutions **Working on the Capital Constuction Bill**, has scheduled **Thursday 11-noon to discuss** “Stormwater – Orphaned Systems”

A related new bill introduced this week: **H.817**

Introduced by Representatives Kupersmith of S. Burlington, Adams of Hartland, Audette of S. Burlington, Deen of Westminster, Head of S. Burlington, Hosford of Waitsfield, Pugh of S. Burlington and Randall of Troy

Subject: Conservation; stormwater; liability; offsets

Statement of purpose: This bill proposes to **require the state to pay the cost incurred by individual household owners for the construction, upgrade, or repair of a stormwater system required by the implementation of a TMDL, water quality remediation plan, or watershed improvement permit**. The bill would also require the secretary of natural resources to review the compliance history of an applicant for a stormwater discharge permit, and the secretary would be authorized to deny a permit after review of the applicant’s compliance history. The bill proposes to **limit the conversion of agricultural soils for use as an offset project in stormwater impaired waters**. In addition, the bill would require the agency of natural resources to identify and **list on its website all subdivisions in the state that lack a valid permit to discharge stormwater to state surface waters**.

New bills since last week - of interest to planners:

A CHAPTER 117 BILL (WITH 3 COMPONENTS) :

H.808

Introduced by Representatives Fallar of Tinmouth and Miller of Shaftsbury

Subject: Municipal planning; state facilities; zoning

Statement of purpose: **(1) This bill proposes to give a municipality greater regulatory power over certain public uses if it makes reasonable provision for the location of those public uses within the municipality. (2) It proposes to make it clear that when a rural town decides to adopt bylaws by Australian ballot, it may adopt, amend, and repeal those bylaws in that manner. (3) It proposes to provide that in the case of a municipal land use decision being appealed to the environmental court, the only interested persons who receive notice of the appeal shall be those who have participated in the municipal regulatory proceeding.**

AN ACT RELATING TO LIMITATIONS ON MUNICIPAL BYLAWS, ADOPTION OF THOSE BYLAWS, AND NOTICE OF APPEAL WITH RESPECT TO THOSE BYLAWS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 24 V.S.A. § 4413(a) is amended to read:

(a) ~~The~~ If a municipality makes reasonable provision for the location within its borders of any of the following uses in a bylaw adopted pursuant to subchapter 7 of this chapter, the municipality may regulate the following uses to the full extent of those bylaws. A municipality that does not make reasonable provision for the location within its borders of the following uses in a duly adopted bylaw may regulate the following uses ~~may be regulated~~ only with respect to ~~location~~ siting on the parcel which is the subject of the application, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, ~~and only to the extent that regulations do not have the effect of interfering with the intended functional use:~~

- (1) State- or community-owned and operated institutions and facilities.
- (2) Public and private schools and other educational institutions certified by the state department of education.
- (3) Churches and other places of worship, convents, and parish houses.
- (4) Public and private hospitals.
- (5) Regional solid waste management facilities certified under 10 V.S.A. chapter 159.
- (6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

Sec. 2. 24 V.S.A. § 4442(c) is amended to read:

(c) Routine adoption.

(1) A bylaw, amendment, or repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption.

(2) However, a rural town, by action of the legislative body or by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that ~~bylaw amendments or repeals~~ a bylaw, amendment, or repeal shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

Sec. 3. 24 V.S.A. § 4471(c) is amended to read:

(c) Notice of the appeal shall be filed by certified mailing, with fees, to the environmental court and by mailing a copy to the municipal clerk or the administrative officer, if so designated, who shall supply to the appellant within five working days a list of interested persons ~~to the appellant within five working days who have participated in the municipal regulatory proceeding from which the appeal is being taken~~. Upon receipt of the list of interested persons who have participated in the municipal regulatory proceeding from which the appeal is being taken, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person, and, if any one or more of those persons who participated in the municipal regulatory proceeding are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

H.786 – IMPACT FEES

Introduced by Representatives Parent of St. Albans City and Howrigan of Fairfield

Subject: Municipal government; impact fees; authorization

Statement of purpose: **This bill proposes to eliminate the authority of municipalities to levy impact fees for school capital projects and require that if a municipality does not spend an impact fee within six years, the municipality shall notify the owner of the property by certified mail that he or she is entitled to a refund of those fees and shall refund those fees at the request of the owner of the property.**

AN ACT RELATING TO MUNICIPAL IMPACT FEES

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 24 V.S.A. § 5200 is amended to read:

§ 5200. PURPOSE

It is the intent of this chapter to enable municipalities to require the beneficiaries of new development to pay their proportionate share of the cost of municipal ~~and school~~ capital projects which benefit them and to require them to pay for or mitigate the negative effects of construction.

Sec. 2. 24 V.S.A. § 5203(e) is amended to read:

(e) The municipality shall provide an annual accounting for each impact fee showing the source, amount of each fee collected, and project that was funded with the fee. The municipality ~~must~~ shall spend the fee on the capital project, for which the fee was intended, within six years of when the fee was paid. If it fails to do this, the owner of the property at the expiration of the six-year period may apply for and receive a refund of his or her proportionate share of that fee during the year following the date on which the right to claim the refund began. If a municipality does not spend the fee within this time period, the municipality shall notify the owner of the property by certified mail that he or she is entitled to a refund of the fee and shall refund the fee at the request of the owner of the property.

H.793 – HOME INSPECTORS

Introduced by Representative LaVoie of Swanton

Subject: Professions and occupations; home inspectors; sunrise review

Statement of purpose: This bill proposes to direct the office of professional regulation to make a preliminary assessment of whether and at what level home inspectors should be regulated.

AN ACT RELATING TO THE REGULATION OF HOME INSPECTORS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. OFFICE OF PROFESSIONAL REGULATION; SUNRISE REVIEW;
HOME INSPECTORS

The office of professional regulation shall make a preliminary assessment, pursuant to 26 V.S.A. § 3105(d), of whether and at what level home inspectors should be regulated. The office shall file a report of this assessment with the general assembly by January 1, 2007.

H.812 – HOW MANY (MORE) CHILDREN CAN QUALIFY AS A “FAMILY” CHILD CARE CENTER...

Introduced by Representatives Keenan of St. Albans City and Pugh of S. Burlington

Subject: Human services; family day care center; school-aged children; limitation increase

Statement of purpose: This bill proposes to increase the number of school aged children, including preschoolers, that may be cared for in a family day care center.

Wind Energy Regulation (3 new bills):

H.807

Introduced by Representatives Peaslee of Guildhall, Hube of Londonderry, Obuchowski of Rockingham and Rodgers of Glover

Subject: Conservation; Act 250; public service; wind turbine

Statement of purpose: This bill proposes to require that **industrial wind turbine construction be subject to regulation under Act 250, as well as regulation by the public service board** under Title 30. An industrial wind turbine is defined as a turbine that has a capacity of greater than 15 kilowatts (AC) and is not a farm system.

H.822

Introduced by Representatives Hube of Londonderry, Peaslee of Guildhall and Rodgers of Glover

Subject: Public service; wind moratorium

Statement of purpose: This bill proposes to **authorize expenditures from the municipal and regional planning fund to finance the costs of representing a municipality in response to a proposal to site a wind turbine.** It establishes a **moratorium** on the authorization of wind turbine construction to run until 12 months elapse after the commencement of the operation of wind facilities in East Haven.

H.823

Introduced by Representative Hube of Londonderry

Subject: Public service; Act 250

Statement of purpose: This bill proposes to address the situation in which the holder of an Act 250 permit would like to construct **a wind turbine that will generate electricity as part of a development that already is subject to a land use permit** and jurisdiction under Act 250. In this situation, the bill proposes that wind turbine construction will be regulated under Act 250 and not regulated by the public service board under 30 V.S.A. § 248.

H.831

Introduced by Representative Deen of Westminster

Subject: Conservation; climate change

Statement of purpose: This bill proposes to establish a 12 person **legislative commission on global climate change**. The commission shall be charged with examining issues related to climate change; the science on the subject; actions taken by other states and the federal government; the effect of local emissions; an evaluation of economic opportunities that may result from state action on climate change and the emerging carbon market; the potential impacts on the citizens, the natural resources, and the economy of the state; and the costs to be incurred because of state action on climate change. If the commission determines it appropriate, it may develop a recommended global warming pollutant reduction goal for the state. The commission may work with other organizations to organize a forum on climate change. The commission shall be entitled to the services of the agency of natural resources and the assistance of legislative staff and shall issue a report to the general assembly before November 1 of each year.

S.303

Introduced by Senator Lyons of Chittenden District, Senator Dunne of Windsor District, Senator Illuzzi of Essex-Orleans District, Senator MacDonald of Orange District and Senator Miller of Chittenden District

Subject: Housing; commerce and trade; mobile home parks; resident ownership; housing cooperatives and condominiums

Statement of purpose: This bill proposes to make changes in Titles 10, 11, and 27 to facilitate resident ownership of mobile home parks through cooperatives and condominiums.

Lastly, from There oughtta be a law Dept:

H.806 - Right to dry; Clotheslines

Introduced by Representatives Donovan of Burlington and McLaughlin of Royalton

Subject: Conservation; right to dry; clotheslines

Statement of purpose: This bill proposes to prohibit state or local laws or regulations or private contracts from limiting the ability of dwellers to erect and use clotheslines for the drying of clothes. The bill proposes to void existing regulations and contracts that conflict with its terms, but not to limit the reasonable regulation of clotheslines as necessary to allow access to buildings, to allow rapid evacuation in case of fire, and to protect aesthetic values.

AN ACT RELATING TO LIMITING THE ABILITY TO PROHIBIT THE USE OF CLOTHESLINES FOR THE DRYING OF CLOTHES

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE FINDINGS AND PURPOSE

The general assembly finds that prohibiting or limiting the ability of people to sun-dry their laundry has the effect of discouraging people from conserving energy. It is the purpose of this act to encourage energy conservation by prohibiting governmental regulations and private contracts which restrict the use of clotheslines.

Sec. 2. 9 V.S.A. chapter 86 is added to read:

CHAPTER 86. RIGHT TO USE OF CLOTHESLINES

§ 3231. RIGHT TO USE OF CLOTHESLINES

(a) Definitions. For purposes of this chapter:

(1) “Building, housing, and health regulations” means any law, ordinance, or governmental regulation concerning health, safety, sanitation, or fitness for habitation or concerning the construction, maintenance, operation, occupancy, use, or appearance of any premises or dwelling unit.

(2) “Dwelling unit” means a building or the **part of a building that is used as a home,** residence, or **sleeping place** by one or more persons who maintain a household.

(3) “Landlord” means the owner, lessor, or where applicable, the sublessor of a residential dwelling unit or the building of which it is a part.

(4) “Premises” means a dwelling unit, its appurtenances, and the building, and its grounds, areas, and facilities.

(5) “Tenant” means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.

(b) Right to dry. Notwithstanding other provisions of law to the contrary, no building, housing, or health regulations of any government entity, and **no contract of any manner whatsoever,** including those between landlord and tenant, those between members of cooperatives, and those between joint owners, may prohibit one or more persons from erecting and using clotheslines on the premises for the purpose of drying clothes. Any such regulations or contracts in existence on enactment of this chapter are void as of the effective date of this chapter. **This prohibition shall not limit the reasonable regulation** of the location of clotheslines on the premises in order to protect access to buildings, to protect the ability to evacuate buildings in case of fire or other emergency, **and to protect aesthetic values.**

Editorial comments related to highlighted parts:

“part of a building that is used as a ...sleeping place” So, apparently no mediation agreement or contract with your spouse /partner will be effective if they want to string their laundry over your bed...

“shall not limit reasonable regulation...to protect aesthetic values.” Whew, for a minute there I thought this was pretty tightly written...

‘till next week...

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