

2/12/07

## **VPA LEGISLATIVE REPORT #6**

### **VLCT Local Government Day Wednesday:**

House & Senate Government Operations 10am-12 in Senate Chambers

House & Senate Transportation Committees 10Am-12 in Room 11 and 1pm public hearing in Room 10

House Ways & Means 10:15am Room 10

Senate Finance 1:45pm

### **Other Committee agenda items of note this week:**

#### **Senate Economic Development, Housing & General Affairs Committee**

##### **Wednesday, February 14, 2007**

9:30 a.m. **Brownfields; Redevelopment of Contaminated Properties Program; 2006 Annual Report (title 10, Subsection 6615a)**  
*Proposed Draft Legislation*

Daniel Hecht, VT Environmental Consortium

Jay Kenlan, partner, Kenlan Schweibert & Facey PC

**Becky Basch**, Assistant Director, Southern Windsor County Regional Planning Commission

Susan McMahon, Senior Planner, Windham Regional Planning Commission

Jeff Wennberg, Commissioner, Department of Environmental Conservation

##### **Thursday, February 15, 2007**

9:00 a.m. **S.66 - Requiring a Community and Regional Impact Study of the Projected Effects of Large-Scale Retail Uses**  
*Committee Discussion/Mark-up*

2:00 p.m. **FYI: Home Builders and Remodelers Association: Legislative Day**  
*State House*

### **New Bills of Interest introduced this week:**

- H.248 AN ACT RELATING TO ESTABLISHING THE **VERMONT TELECOMMUNICATIONS AUTHORITY** TO ADVANCE BROADBAND AND WIRELESS COMMUNICATIONS INFRASTRUCTURE THROUGHOUT THE STATE

Introduced by Representatives Kitzmiller of Montpelier, Bissonnette of Winooski, Botzow of Pownal, Clerkin of Hartford, Consejo of Sheldon, Davis of Washington, Kupersmith of S. Burlington, Livingston of Manchester, Marcotte of Coventry, Shand of Weathersfield and Sunderland of Rutland Town

Statement of purpose: This bill would establish a Vermont telecommunications authority to facilitate the establishment and delivery of wireless and broadband infrastructure and services for residents and businesses throughout Vermont.

***Act 250 exemption modified:***

Sec. 13. 10 V.S.A. § 6001(26) is amended to read:

(26) “Telecommunications facility” means a support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, above the highest point of an attached existing structure or 50 feet or more above ground level in the case of a proposed new support structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes.

***Local Ordinances Preempted:***

24 V.S.A. § 2291(19) is amended to read:

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. When the construction or alteration of wireless telecommunications facilities are subject to regulation by the authority granted in this section, the regulatory authority shall determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development. If the regulatory authority determines that the facility will impose no impact or a de minimis impact, then it shall issue a permit. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. No ordinance authorized by this section may have the purpose or effect of limiting or prohibiting a homeowner’s ability to place or allow placement of an antenna used to transmit or receive communications signals on the homeowner’s property if the antenna is not more than eight square feet on its largest face and if the antenna and the mast to which it is attached do not extend greater than 12 feet above the roofline.

***Local Zoning Bylaws affected :***

Sec. 15. 24 V.S.A. § 4446 is amended to read:

§ 4446. BYLAWS; EFFECT OF ADOPTION

Within the jurisdiction of any municipality that has adopted any of the bylaws authorized by this chapter, no land development may be undertaken or effected except in conformance with those bylaws. Bylaws authorized by this chapter may specify for exclusion from review any land development determined to impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development. Notwithstanding any other provision of this chapter, the administrative officer shall determine whether, subject to appeal to the appropriate municipal body, the installation of a facility used for telecommunications, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development and whether such installation may be processed as a minor application under the same procedures provided for any permitted use in the zoning district. Notice of the issuance of such permit shall be provided to all adjoining landowners that may reasonably be affected by the facility, to the appropriate municipal panels, and to the select board. A homeowner may place or allow placement of an antenna used to transmit or receive communications signals on the homeowner's property without the need for a local zoning permit if the antenna is not more than eight square feet on its largest face and if the antenna and the mast to which it is attached do not extend greater than 12 feet above the roofline.

*The bill includes numerous other features –authority to form corporations, bonding authority for up to \$40 million, local tax exemption, authority to use public property and rights of way, railroad rights of way, special review procedures in 30 VSA 248 for attachment to electric utilities...*

## **HOUSE COMMERCE COMMITTEE Schedules Thursday and Friday testimony on H. 248:**

### **Thursday, February 15, 2007**

8:30 a.m. Committee Discussion

9:15 a.m. Paul Costello, Ex. Director, VT Council on Rural Development

10:00 a.m. Committee Discussion

1:00 p.m. Joe Frank, Licensed Amateur Radio Operators

Karen Horn, VT League of Cities and Towns (1:30 p.m.)

2:00 p.m. Bill Durand, Ex. Vice-President, NE Cable & Telecommunications Association

Lisa Birmingham, Comcast

### **Friday, February 16, 2007**

1:00 p.m. **H.248 - Telecommunication Authority - To Be Announced**

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- H.259 AN ACT RELATING TO ENHANCING PUBLIC AWARENESS AND PARTICIPATION IN **ENFORCEMENT OF ENVIRONMENTAL LAWS**

Introduced by Representatives Klein of East Montpelier, Botzow of Pownal, Canfield of Fair Haven, Edwards of Brattleboro, Fisher of Lincoln, French of Randolph, Haas of Rochester, Kitzmiller of Montpelier, Krawczyk of Bennington, Leriche of Hardwick, Maier of Middlebury, Marek of Newfane, Masland of Thetford, McCullough of Williston, Monti of Barre City, Mrowicki of Putney, Nuovo of Middlebury, Pellett of Chester, Peltz of Woodbury, Sharpe of Bristol, Trombley of Grand Isle and Zuckerman of Burlington

Statement of purpose: This bill proposes to require that the secretary of natural resources or the land use panel provide an opportunity for public input before signing an assurance of discontinuance. It requires that monetary penalties be the primary form of penalty imposed for environmental violations, instead of natural resource enhancements. It allows a member of the public to argue that a proposed assurance of discontinuance is insufficient. It requires the secretary of natural resources to stay the processing of a permit application for any applicant that has payments due on previous penalties that have been assessed, or that is the subject of a pending enforcement action for which penalties have not yet been assessed. It requires public notice of consultations between the attorney general and the secretary of natural resources or the land use panel regarding fines imposed. It requires creation of a publicly available database of enforcement actions. It enables public enforcement of environmental laws by allowing citizens to bring suit to assure enforcement. It endows environmental enforcement officers with full law enforcement status. Finally, it authorizes and funds the creation of two additional environmental enforcement officers.

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- **H.297 AN ACT RELATING TO ESTABLISHING MUNICIPAL WATERFRONT BUFFERS**

Statement of purpose: This bill proposes to require municipalities, beginning July 1, 2012, to establish 15-foot vegetative buffer zones adjacent to the public waters of the state. The bill would also require the water resources panel of the natural resources board to adopt rules regarding the size and use of buffer zones.

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- **H.299 AN ACT RELATING TO NEW NEIGHBORHOOD INITIATIVE FOR HOUSING DEVELOPMENT**

Introduced by Representatives Marcotte of Coventry, Acinapura of Brandon, Baker of West Rutland, Bissonnette of Winooski, Canfield of Fair Haven, Clerkin of Hartford, Condon of Colchester, Consejo of Sheldon, Howrigan of Fairfield, Keenan of St. Albans City, Kitzmiller of Montpelier, Livingston of Manchester, Morley of Barton, Shand of Weathersfield and Wright of Burlington

Statement of purpose: This bill proposes to create a program within the agency of commerce and community development to stimulate the development of affordable and moderately priced housing within or in close proximity to similarly developed areas.

Sec. 1. 10 V.S.A. chapter 18A is added to read:

CHAPTER 18A. NEW NEIGHBORHOOD INITIATIVE

#### § 401. PURPOSE AND CREATION OF THE NEW NEIGHBORHOOD INITIATIVE

(a) The new neighborhood initiative is created to meet better the state's housing needs with a thoughtful, planned approach, and to promote new housing development that is proximate to existing housing with comparable density and affordability and to ease the pressure on the rental housing market in order to make more lower-priced housing available for ownership.

(b) The new neighborhood initiative is created and shall be administered by the secretary of commerce and community development. The secretary shall facilitate residential housing development in new neighborhoods within or adjacent to a community core within a municipality that has permanent zoning and subdivision regulations in place.

#### § 402. DESIGNATION OF NEW NEIGHBORHOODS

A municipality shall make an application for a new neighborhood designation to the Vermont downtown development board, established in chapter 76A of Title 24. The board shall grant the designation based on the applicant's compliance with the following requirements:

(1) The land proposed for the residential housing development shall be located in an area designated for dense housing growth pursuant to regional and town plans and local zoning ordinances.

(2) The land proposed to be designated a new neighborhood has been recommended by the applicable regional planning commission and approved by the zoning board ? following a public process consistent with a change in the zoning ordinances.

(3) The density of the proposed housing development is comparable to or greater than adjacent housing development.

(4) The proposed housing development meets the definition of "neighborhood" as defined by rule by the secretary and is in compliance with key features, including affordability, location, and density.

(5) The number of housing units in a new neighborhood project shall not exceed the lesser of 100 or the number calculated based on two residential housing units per 100 residents of the municipality at the time of designation.

#### § 403. INCENTIVES FOR NEW NEIGHBORHOODS

Designation as a new neighborhood pursuant to section 402 of this title shall provide the following benefits:

(1) The residential housing development shall be exempt from Act 250 review provided the municipality has a municipal plan, zoning ordinances, and subdivision regulations that permit or require higher density housing growth and the proposed housing development is adjacent to established housing or other development that is within or contiguous to a growth center, designated downtown, designated village center, or the core developed area of the municipality.

(2) A rebuttable presumption is created in regard to all state and local regulatory proceedings that the proposed housing in the new neighborhood project is the highest and best use for the area that is designated for dense housing development by the regional and town plans.

(3) The sale of the land to a buyer who will develop affordable and moderately priced housing on the land shall be exempt from state land gains tax, provided the seller receives written certification from the

secretary that the sale and development of the land are consistent with the requirements of the new neighborhood initiative.

(4) The municipality in which a new neighborhood project is authorized may retain and reallocate for three years the state education tax portion of the property tax on the increased grand list value of the home and lot for housing units constructed as part of the new neighborhood project, provided that it does not exceed the maximum price considered affordable by the Vermont housing finance agency. The municipality may use those reallocated tax revenues for any municipal purpose directly or indirectly related to the project.

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- **H.301 AN ACT RELATING TO A SMALL HOMEBUILDER EXEMPTION FROM ACT 250**

Statement of purpose: This bill proposes to exempt from the Act 250 definition of “development” the construction of up to five residential units per year by a person who did not subdivide the land and who is not otherwise subject to Act 250 jurisdiction.

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**H.303 AN ACT RELATING TO POTABLE WATER SUPPLY AND ON-SITE WASTEWATER PERMITTING**

Statement of purpose: This bill proposes to make amendments to the potable water supply and on-site wastewater systems permitting requirements prior to implementation of universal state permitting on July 1, 2007. The bill would amend the definitions of failed potable water supply and failed wastewater system. The bill would also replace the majority of exemptions for single-family residences with one exemption for all buildings, structures, and campgrounds and associated water supplies and wastewater systems substantially completed prior to July 1, 2007. In addition, the bill would authorize the agency of natural resources to pursue enforcement against designers of improperly designed or installed potable water supply or wastewater systems. The bill would also provide the agency of natural resources with emergency rulemaking authority in order to make necessary revisions to the wastewater systems and potable water supply rules prior to implementation of universal jurisdiction on July 1, 2007.

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Fred S. Dunnington  
[fdunnington@town.middlebury.vt.us](mailto:fdunnington@town.middlebury.vt.us)  
VPA Legislative Liaison  
(802) 388-8106