

## **VPA LEGISLATIVE REPORT #4 – 2008**

VPA Legislative Committee Members Assignments: Fred Dunnington (VT Legislative Liaison), Sharon Murray (NNECAPA Legislative Liaison) - - both of us are assigned to particularly follow bills on Housing / 'New Neighborhoods', Chapter 117 Technical Corrections, and Planning Coordination, Sarah Hadd (Prime Ag bills), Scott Gustin (Riparian buffer bill), Greg Brown ('New' Neighborhoods), Brian Shupe and Mike Munson (Growth Centers, 'New' neighborhoods, impact fees), Deb Sachs (Energy and Climate Change), Peg Elmer (Planning Coordination and Chapter 117 Technical Corrections) and Lani Ravin (stormwater legislation).

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### **NEW BILLS OF NOTE**

(since last report)

#### **H.669**

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-669.htm>

Introduced by Representative Kitzmiller of Montpelier

Subject: Municipal and county government; historic downtown program

Statement of purpose: This bill proposes to amend the downtown program to extend the duration of designation from three to five years and add the state historic preservation officer to the downtown development board.

#### **AN ACT RELATING TO THE VERMONT HISTORIC DOWNTOWN**

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

Sec. 1. 24 V.S.A. § 2792(a) is amended to read:

(a) A "Vermont downtown development board," also referred to as the "state board," is created to administer the provisions of this chapter. The state board members shall be the following permanent members, or their designees:

- (1) The secretary of commerce and community development;
- (2) The secretary of transportation;
- (3) The secretary of natural resources;
- (4) The secretary of human services;
- (5) The commissioner of public safety;
- (6) The commissioner of housing and community affairs; ~~and~~
- (7) The state historic preservation officer; and
- (8) Three public members representative of local government, one of whom shall be designated by the Vermont league of cities and towns, and two shall be appointed by the governor.

Sec. 2. 24 V.S.A. § 2793(c) is amended to read:

(c) The state board shall review a community's designation every ~~three~~ five years ~~and may review compliance with the designation requirements at more frequent intervals.~~ If at any time the state board determines that the downtown development district no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

- (1) require corrective action;
- (2) provide technical assistance through the Vermont downtown program; ~~or~~
- (3) limit eligibility for the benefits established in section 2794 of this chapter, with the limitation not affecting any of the district's previously awarded benefits; or
- (4) remove the district's designation, with such removal not affecting any of the district's previously awarded benefits.

Sec. 3. 24 V.S.A. § 2793a(d) is amended to read:

(d) The state board shall review a village center designation every ~~three~~ five years and may review compliance with the designation requirements at more frequent intervals. If, at ~~the any time of the review~~, the state board determines that the village center no longer meets the standards for designation established in subsection (a) of this section, it may take any of the following actions:

- (1) require corrective action;
- (2) provide technical assistance through the Vermont downtown program; ~~or~~
- (3) limit eligibility for the benefits pursuant to subsection (c) of this section, with such limitation not affecting any of the village center's previously awarded benefits; or
- (4) remove the village center's designation, with such removal not affecting any of the village center's previously awarded benefits.

Sec. 4. 24 V.S.A. § 2793b(d) is amended to read:

(d) The state board shall review a new town center designation every ~~three~~ five years and may review compliance with the designation requirements at more frequent intervals. If at any time the state board determines the new town center no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

- (1) require corrective action;
- (2) provide technical assistance through the Vermont downtown program; ~~or~~
- (3) limit eligibility for the benefits pursuant to subsection (c) of this section, with such limitation not affecting any of the new town center's previously awarded benefits; or
- (4) remove the new town center's designation, with such removal not affecting any of the town center's previously awarded benefits.

Sec. 5. EFFECTIVE DATE

This act shall take effect upon passage.

## **H.675**

### **AN ACT RELATING TO FACILITATING THE DEVELOPMENT OF ELECTRICITY FROM SMALL HYDROELECTRIC PROJECTS**

Introduced by Representatives Klein of East Montpelier, Ancel of Calais, Errecart of Shelburne, Canfield of Fair Haven, Donahue of Northfield, Johnson of Canaan, Larrabee of Danville, LaVoie of Swanton, Maier of Middlebury, McAllister of Highgate, McFaun

Statement of purpose: This bill proposes to require the public service board to develop recommendations regarding how to simplify and make predictable and timely the process by which small hydroelectric generating facilities may be authorized. It proposes that the report: recommend how to identify small hydroelectric facilities, address permit application requirements, address multiple uses of water bodies that include small hydroelectric projects, and assess the overall advantages of these systems. It proposes to require the secretary of natural resources to adopt by rule conservation flow standards for reviewing the water quality impact of a new, small run of river hydroelectric generation project, including water withdrawals, diversions, existing impoundments, and the construction of appurtenant facilities related to a project. Finally, it provides that for purposes of net metering, a union or district school net metering facility shall be considered in the same group net metering system with buildings of its member municipalities that are located within the service area of the same electric company that serves the facility.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-675.htm>

## **H.685**

### **AN ACT RELATING TO ENFORCEMENT OF ENVIRONMENTAL LAWS**

Introduced by Representative Deen of Westminster

Statement of purpose: This bill proposes to require the secretary of natural resources or the land use panel to 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 increases the maximum amount for administrative penalties and defines what constitutes economic benefit obtained as a result of a violation. 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 allows the agency of natural resources to enter into consent decrees and to issue stop work orders. It allows the simultaneous filing of an administrative order with the attorney general and the environmental court. 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. It authorizes enforcement of minor environmental and natural resources violations as judicial bureau offenses. Finally, it authorizes and funds the creation of two additional environmental enforcement officers.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-685.htm>

## **H.694**

Introduced by Representatives Adams of Hartland and Komline of Dorset

Statement of purpose: This bill proposes to provide that the municipal development decisions by appropriate municipal panels under the planning and zoning chapter shall be made by a majority of those members voting, a quorum of the body being present.

### **AN ACT RELATING TO ALLOWING MUNICIPAL DEVELOPMENT REVIEW DECISIONS TO BE MADE BY MAJORITY VOTE, A QUORUM BEING PRESENT**

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-694.htm>

**H.696**

AN ACT RELATING TO GIVING ACT 250 APPLICANTS THE OPTION OF ON-THE-RECORD REVIEW

Introduced by Representatives Adams of Hartland and Komline of Dorset

Subject: Conservation; Act 250; appeal on the record

Statement of purpose: This bill proposes to give Act 250 applicants the option of requiring that any appeals before the environmental court shall be taken on the record.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-696.htm>

**H.697**

AN ACT RELATING TO REQUIRING THAT JUDICIAL REVIEW OF PLANNING AND ZONING CHAPTER DECISIONS IN TOWNS OF MORE THAN 5,000 PERSONS BE CONDUCTED ON THE RECORD

Introduced by Representatives Adams of Hartland and Komline of Dorset

Statement of purpose: This bill proposes to require that with regard to municipalities with a population of greater than 5,000 persons, judicial review of decisions under the planning and zoning chapter shall be conducted on the record.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-697.htm>

**H.698**

AN ACT RELATING TO ESTABLISHING A UNIFORM FEE-SETTING PROCEDURE FOR DEVELOPMENT REVIEW

Introduced by Representatives Adams of Hartland and Komline of Dorset

Subject: Executive fees; Act 250; planning and zoning; agency of natural resources development review

Statement of purpose: This bill proposes to establish a uniform procedure for the setting of fees for development review, which is intended to assure that fees are set at a level commensurate with the government's cost of development approval. As part of this procedure, the adopting authority would have to relate the fee level to the costs of

administration, list a schedule of fees particular to each category of development subject to a fee, allow for the payment of fees under protest, follow a specified process in the case of unscheduled fees, comply with a public notice process, account for the use of fees, refund unused portions of fees, and annually audit fees collected and the expenses related to each fee. The bill proposes to allow fees to be appealed, it puts the burden upon the government in establishing that the fees are justified, and allows resort to binding or nonbinding arbitration. The bill proposes to apply generally to development review under Title 24, including specifically review under chapters 117 and 59 of that title. With regard to fees assessed by statute for development review by the agency of natural resources or by the natural resources board, if the secretary of the agency or the chair of the natural resources board recommends to the general assembly the revision of the respective fees, the secretary or the chair must provide the analysis established in the bill with regard to the reasonableness of the fees in question. The commissioner of public safety is subject to the same requirements when recommending revision of fire prevention and building code fees.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-698.htm>

## **H.722**

### **AN ACT RELATING TO REAL PROPERTY**

Introduced by Representatives Smith of Morristown, Flory of Pittsford, Haas of Rochester and Jewett of Ripton

Subject: Property; estates of homestead; execution and acknowledgment of conveyance

Statement of purpose: This bill proposes to allow one spouse to convey his or her homestead interest to the other spouse, to validate certain mortgage discharges where there is a technical break in the chain of title, clarify the circumstances under which the title is marketable by validating conveyancing documents, and subject actions involving “curb cut” and other permits for working within a town highway right-of-way to a 15-year statute of limitations.

Sec. 4. 24 V.S.A. § 4454 is amended to read:

§ 4454. ENFORCEMENT; LIMITATIONS

(a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit, or any permit issued pursuant to section 1111 of Title 19, may be instituted under sections 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-722.htm>

## **H.703**

### **AN ACT RELATING TO AMENDING ACT 250 TO AUTHORIZE AN APPLICANT TO MITIGATE THE LOSS OF CERTAIN NECESSARY WILDLIFE HABITAT**

Introduced by Representative Anderson of Montpelier

Subject: Conservation; Act 250; wildlife habitat mitigation

Statement of purpose: This bill proposes to amend Act 250 to allow off-site mitigation for the loss of necessary wildlife habitat for deer, with the approval of the commissioner of fish and wildlife, as may be approved by a district environmental commission. Off-site mitigation is to take place by paying a fee into a habitat preservation fund, which is established in the bill, the proceeds of which shall be used by the commissioner of fish and wildlife to implement habitat preservation projects that are eligible for federal funding. Fee levels for off-site mitigation are to be established in rules adopted by the secretary of natural resources giving due consideration to the quality of the habitat and other relevant factors, including the recent, per-acre cost to acquire conservation easements for wildlife habitat in the same geographic region.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-703.htm>

## **H.742**

### **AN ACT RELATING TO CURRENT USE PENALTY WAIVER FOR AFFORDABLE HOUSING DEVELOPMENT**

Introduced by Representatives Komline of Dorset and Adams of Hartland

Subject: Taxation; use value; waiver of penalty; affordable housing

Statement of purpose: This bill proposes to waive the current use development penalty if the development will be affordable housing.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-742.htm>

## COMMITTEE AGENDAS – of note –

### HOUSE COMMERCE

Tuesday, January 29, 2008

2:30 p.m.

#### **H.669 - Vermont Historic Downtown**

Paul Bruhn, Ex. Director, Vermont Land Trust

Karen Horn, Vermont League of Cities and Towns

### HOUSE FISH, WILDLIFE & WATER RESOURCES

Tuesday, January 29, 2008

11:00

#### **Small Hydroelectric Power**

Rep. Tony Klein, House Committee on Natural Resources and Energy

Brian Fitzgerald, VT Agency of Natural Resources (11:15AM)

2:30PM

#### **Small Hydroelectric Power**

Brendan Popp, Twinfield High School (3:30PM)

Emlyn Crocker, Twinfield High School (3:30PM)

Ian Young, Twinfield High School (3:30PM)

Lori Barg, Chief Executive, Community Hydro (3:30PM)

David Mears, Associate Professor, VT Law School (4:15PM)

Wednesday, January 30, 2008

9:00AM

#### **Small Hydroelectric Power**

2:00PM

#### **Small Hydroelectric Power**

Clark Amadon (2:30PM)

Dana Baker (2:45PM)

Thursday, January 31, 2008

9:00AM

#### **Small Hydorelectric Power**

John Seebach, Director, Hydropower Reform Campaign, American Rivers (11:00AM)

2:00PM

#### **Small Hydorelectric Power**

Friday, February 1, 2008

9:00AM

#### **Floor**

10:30AM

#### **H.549**

1:00PM

#### **H.549**

### HOUSE GENERAL, HOUSING & MILITARY AFFAIRS

Tuesday, January 29, 2008

10:00 a.m.

#### **Floor Action**

11:00 a.m.

#### **Housing Preservation**

Duncan Hastings, Administrator, Johnson, VT

Gesualdo Schneider, Fire Chief, Montpelier Fire Department

Dave Bergeron, Winooski Fire Department

1:00 p.m.  
2:30 p.m.

**Caucus**  
**Housing Preservation**  
Rep. Heidi Scheuermann, Stowe, VT  
Richard Williams, Vermont State Housing  
Authority  
Joe Beaudry, Fire Chief, St. Albans Fire  
Department

Wednesday, January 30, 2008

9:00 a.m.

**Housing Preservation**  
Kathleen Butler, Housing Code Administrator,  
Burlington  
Andy Broderick, Housing Vermont  
Sam Burr, Legislative Counsel

1:00 p.m.  
15 min. after adj.

**Floor Action**  
**Housing Creation**  
Charles Lief, The Hartland Group Community  
Developers and Consultants LLC  
Bart Frisbee, Sterling Construction  
John Hausner, Homestead Design  
Erik Hoekstra, Redstone Commercial Group

Thursday, January 31, 2008

9:00 a.m.

**To Be Announced**

1:00 p.m.

**Floor Action**

2:00 p.m.

**To Be Announced**

Friday, February 1, 2008

9:30 a.m.

**Floor Action**

10:30 a.m.

**Housing Creation**  
Jeff Glassberg, Renaissance Development  
Company

1:00 p.m.

**To Be Announced**

**HOUSE NATURAL RESOURCES & ENERGY**

Tuesday, January 29, 2008

10:00AM

**Floor**

11:00AM

**Energy Issues**

Eileen Simollardes, Vermont Gas, Inc

1:00PM

**Caucus**

2:00PM

**Weatherization**

Tim Searles, Executive Director, CVOEO

Elizabeth Chant, Weatherization Director, CVOEO

3:00PM

**S.209**

David Lane, Dep. Sec. of Ag., VT Agency of Ag., Food, and Markets

Wednesday, January 30, 2008

8:45AM

**S.209**

*Affordability Issues*

Jack McCullough, Vermont Legal Aid

1:00PM

**Floor**

2:00PM

**S.209**

Michael Wickenden, Contract Administrator, VEEU

2:30PM

**S.209**

*Loans for All Fuels Efficiency*

Jo Bradley, Chief Executive Officer, VEDA

Thursday, January 31, 2008

9:00AM      **S.209**  
*Affordability Issues*  
John Howat, AARP Vermont  
Michael Sirotkin, Sirotkin & Necrason, PLC on behalf of COVE (9:30AM)  
Brad Talbot, VT Licensed Plumbers Association, Inc. (10:00AM)

1:00PM      **Floor**

2:00PM      **S.209**  
*All Fuels/Wind Energy*  
Jim Volz, Chair, Public Service Board  
Rich Smith, Dep. Commissioner, Dept. of Public Service (3:00PM)

Friday, February 1, 2008

9:00AM      **Floor**

11:00AM     **TBA**

1:00PM      **H.675**  
*Small Hydro*

**SENATE NATURAL RESOURCES & ENERGY**

Tuesday, January 29, 2008

8:00            **S.350/S.339 - Energy Bill 2**  
a.m.  
Al Boright, Leg. Counsel

10:00          **FLOOR**  
a.m.

10:30          **S.350/S.339 - Energy Bill 2**  
a.m.  
Al Boright, Leg. Counsel

Wednesday, January 30, 2008

9:00            **S.350/S.339 - Energy Bill 2**  
a.m.  
Agency of Natural Resources

10:00          **S.350/S.339 - Energy Bill 2**  
a.m.  
Agency of Agriculture

11:00          **S.350/S.339 - Energy Bill 2**  
a.m.  
Dept. of Public Service

Thursday, January 31, 2008

9:00            **S.350/S.339 - Energy Bill 2**  
a.m.  
Al Boright, Leg. Counsel

10:15          **BREAK**  
a.m.

10:30          **S.350/S.339 - Energy Bill 2**  
a.m.  
Al Boright, Leg. Counsel

11:30          **FLOOR**  
a.m.

Friday, February 1, 2008

