

VPA Legislative Update #4 [1/23/12]

Weekly Update

Shorts. The big news last week – the Vermont Yankee decision and the Administration's health care reform bill (H.559) – are not addressed in this update – but there's plenty of interesting reading in the news and online ... The budget adjustment bill passed the House with requested positions intact– now in Senate appropriations ... FY13 revenue forecast downgraded – projected budget gap an additional \$9.3 million ... Irene property tax abatement bill passes Senate – on its way to the Governor.

Irene Property Task Force. Last week started off with a rare Senate "Committee of the Whole" on Tuesday, called by Senate Pro Tempore John Campbell to present the results of the [Irene Property Law Task Force Report](#). Peg Elmer attended the hearing on behalf of VPA and VLS. The committee report does not call for specific legislation, but raises issues under a broad range of topics – including the storage and recovery of town records, the taxation and buyout of damaged or destroyed properties, emergency road construction across private lands, the need for an inventory and directory of rental housing, the need to replace affordable housing lost in the storm, and updates to laws governing emergency exemptions from local zoning and state environmental permits. The VPA/VLS project report was noted in passing – however the committee report to the Senate focused not on exemptions, but rather the desire for statewide flood insurance coverage.

Flood/Fluvial Bills. Senate Natural Resources & Energy continued to take testimony last week on fluvial and flood bills introduced to date. The environmental community and ANR staff testified in favor of [S.165](#) which would require all municipalities to adopt fluvial erosion hazard bylaws or forego state aid for highways, enhancement grants, revolving loan funds for water and water systems, CDBGs and other capital funding. VLCT testified against a mandatory requirement noting that the "incentives" under the bill were in fact pretty heavy sticks. VPA did not weigh in on these bills last week, but asked for the opportunity to provide written comments at a later date. Senator Lyons noted that the bill – and especially the "incentives" would be further modified in committee. **If you have any thoughts on the fluvial erosion hazard bill (S.165) please forward them!** (frontporch@gmavt.net).

I did present the results of the VPA/VLS project report to the committee on Thursday, and at their request commented briefly on the pros and cons of [S.202](#)– which would establish state jurisdiction over flood hazard areas, with delegation to qualified municipalities – in relation to our report's findings. VANR staff testified against this bill – noting it referenced only minimum NFIP standards, a lack of staff, and that the state's limited resources would be better directed to address fluvial erosion hazards. ANR also suggested that statewide jurisdiction may not be allowed under federal program statutes, but the committee's counsel disagreed – consistent with our report findings. The Ag Agency also testified against the bill, preferring instead to operate under their current MOU with ANR. Everyone agreed that the regulation of exemptions should be clarified in statute, but there is yet no consensus on how this should be done. House Fish, Wildlife and Water Resources is scheduled to consider bills this week – including a bill introduced by Rep. Buxton's last week ([H. 563](#)) which addresses only the exemptions.

Housing Bill /Title 9. I met briefly last week with DEHCD Deputy Commissioner Jennifer Hollar, their General Counsel Julie Kelliher and a representative of the Human Rights Commission to discuss the ramifications that [H.59](#), as drafted, could have for local communities. As noted last week, this bill would include "affordable housing development" as a protected class under Title 9, Chapter 139 (Discrimination in Public Accommodations; Rental and Sale of Real Estate) – affecting both municipal land use decisions in this area (e.g., denials, conditions of approval) and municipal boards. The questions VPA raised in committee and to DEHCD (and also VLCT), for which we're still seeking further clarification:

- Is this legislation needed given the existing protections for affordable housing under Chapter 117 (equal treatment of housing provisions, AG investigation/review of municipal bylaws and

decisions, etc.)? How many complaints have been filed in recent years, since the new laws went into effect? How many court cases?

- Would the process under Title 9 – in which discrimination complaints are filed with the Human Rights Commission and/or court – supplant that established under Title 24 for local decisions, appeals, and complaints?
- Would this also place individual board members ("any person") involved in a decision at risk?

DEHCD wants to further eliminate local barriers to affordable housing development. Apparently they believe that current Chapter 117 protections, which apply generally to exclusionary zoning, do not adequately address income discrimination associated with affordable housing development – that communities may still deny or unnecessarily condition or delay housing projects specifically because they are intended to serve lower income residents (intentional discrimination) or because a decision could have a "disproportional impact" on a protected class (currently: race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, handicap, having minor children, or recipients of public assistance). They also noted that municipalities often require more extensive review or may unnecessarily delay affordable housing projects.

By including affordable housing development as a protected class under Title 9, municipalities would be put on notice that they cannot discriminate against this type of housing, or they may be brought before the Human Rights Commission – or sued in court. ***Under Title 9, aggrieved persons may file charges with the Human Rights Commission, or may bring an action for injunctive relief and compensatory and punitive damage and any other appropriate relief in superior court.*** This is much different than having a local decision or exclusionary bylaw provision overturned by the court. It's still not clear how a Title 9 complaint would be considered in relation to complaints or appeals filed under Chapter 117 – but the HRC rep indicated that if there's another process in place, they would defer to it. He also noted that "person" in this context includes public boards – though "person" is not specifically defined under Chapter 139. To date, only one other state that I'm aware of – North Carolina – has taken this approach, though they also include some added protections for municipalities that limit concentrations of affordable housing.

Working Lands. More than 100 people turned out for the Wednesday public hearing on VCRD's "Working Lands Enterprise Investment Bill" with more than 40 people testifying, mostly in support. Several legislators attended the hearing, including members of House and Senate Agriculture, Senate Economic Development, House Commerce, House Ways and Means and Appropriations. The portion of the bill that would re-institute a state office of planning coordination has not discussed, and has not received much air time in committee to date. Paul Costello and Rep. Will Stevens also discussed the bill on WCAX-TV Sunday morning – including the planning component. Paul has again asked VPA to weigh in on the bill, especially with regard to working lands designations and state planning. ***VPA's Legislative Committee will be working on brief position paper – if your interested in helping out, please contact me (frontporch@qmavt.net) and/or Kate McCarthy (kmccarthy@vnrc.org).***

Energy. House Natural Resources & Energy passed out their version of the net-metering bill (H.475) on Friday, and will be taking up the renewable portfolio bill (H.468) this week. As expected, H.475 will allow solar installations up to 10 kW to forego the CPG review process in favor of the registration process enacted last year that now applies to 5 kW systems – with no municipal notification or input. They are aware of the issues around flood hazard area review – as one of the exempted types of development under Chapter 117 – but, according to legislative counsel, felt that this would be better addressed, along with other exemptions, under proposed flood hazard bills. **As noted last week, House and Senate Natural Resources & Energy have scheduled a joint public hearing for Thursday, February 2nd, 6–8 pm, Rm 11, State House, specifically to hear from local communities.** The [Biomass Working Group's Final Report](#) was also released last week.

Permitting/OTR Act 250 Hearings. The focus of recent committee discussion has been the proposal – supported by the Administration (as noted in the Governor's address) – to hold District Environmental

Commission hearings on the record in an effort to limit the scope of any subsequent appeals. A "modified" on the record review was also suggested in the [Natural Resources Board Report](#) – along with pro se assistance or a public advocate position to assist participants. Environmental attorneys testified against this proposal last week, suggesting that it would complicate and extend the local DEC hearing process for all applicants (to establish a complete record) – for the benefit of a few on appeal. VPA's Executive Committee also discussed this on Friday, expressing concerns that it could make the DEC Act 250 process more formal, legal, lengthy, costly, unfriendly and inaccessible – e.g., that it would require everyone to lawyer up and hire expert witnesses, as is now generally the case before the Public Service Board. The discussion continues this week in Senate Natural Resources & Energy –VPA is scheduled to appear on Thursday.

New Bills

<http://www.leg.state.vt.us/docs/serviceMain.cfm>

- H.560 Requires training, state certification of equipment operators doing stream alteration work
- H.563 Flood statutes – provides for state regulation only of development exempted under Chapter 117
- H.566 Residential housing registration
- H.577 RLF allocation for combined sewer overflow projects, ANR permitting of public water systems
- H.584 Green burials (natural burial grounds)
- H.586 PSB/CPGs– requires econometric modeling that considers all economic and environmental costs of a proposed project, including multiplier effects, for electrical and natural gas facilities

Committee Schedules (subject to change)

<http://www.leg.state.vt.us/CommitteeMain.cfm>

H. Agriculture	H.496 Working Landscape (T,W,F); Water Quality (T); Biomass (Th)
H. Appropriations	FY13 Budget (T-F) –VCGI (T), DPS (W), ANR (Th), FEMA (F)
H. Commerce, Economic Dev	Irene Recovery (Th)
H. Corrections, Institutions	FY12 Budget Adjustments
H. Fish, Wildlife, Water Resources	General Permits (T); Fee Bill (T); Flood/Fluvial bills (W,Th) – VPA, ANR (Th) ; L. Champlain (W); H.464 Fracking (Th, F)
H. General, Housing, Military	Federal Housing Programs (T); VHCB (F)
H. Government Operations	Reapportionment (T-F)
H. Judiciary	H.553 Amendments conservation easements (Th)–VLT
H. Natural Resources, Energy	H.468 Renewable Portfolio (T, Th); H.485 Solid Waste (W, Th)
H. Transportation	Transportation Budget (T-F); Circ Hwy Alternatives (Th); Mapping (F)
H. Ways & Means	Fee Bill– NRB (T); Misc Tax Bill (W, Th)
S. Agriculture	S.246 Working Landscape (W, F) ; Biomass Report (Th)
S. Appropriations	FY12 Budget Adjustments – markup, vote (T, W)
S. Economic Dev, Housing, General	Irene – options for improving mobile home parks (F)
S. Government Operations	Public Records Study Committee (W)
S. Finance	S.214 Smart Meters (Th)
S. Institutions	Act 40 status (T); District heating (W); Waterbury Complex (Th)
S. Judiciary	Post-Irene Property Study Committee (Th)
S. Natural Resources, Energy	Environmental permitting (T-F)–VPA (Th); Flood/Fluvial Bills (F)
S. Transportation	Transportation Budget (T-F); Circ Hwy Alternatives (Th); Mapping (F)

Scheduled Public Hearings, Events

Thursday, Feb 2nd **Energy Committees** (H.468, H.475), 6:00-8:00 pm, Room 11 State House

Legislative Reports (Selected)

[Valuation of Renewable Energy Property, Report on the \(Sec. 12 of Act 45 of 2011\)](#)

[Respectful Language Study by Respectful Language Working Group \(Sec. 1\(b\) of Act 24 of 2011 \) \(Version of 1/17/2012\)](#)

[Act 250 Exemptions for Commercial Composting \(Act 141 of 2010\)](#)

[Fire and Building Code Safety Report Building Code Study Committee Report \(Sec. 46 of Act 52 of 2011\)](#)

[Post Irene Property Law Task Force Final Report, January 3, 2012](#)

[Lands and Facilities Trust Fund Fiscal Year 2011 Annual Report \(Sec. 53 of Act 61 of 2001, codified as 3 V.S.A. § 2807\)](#)

[Property Valuation and Review \(PVR\) 2012 Annual Report \(32 VSA § 3412\)](#)

[State Highway Condemnation Law Study Committee, Report of the \(Sec. 28 of Act 62 of 2011\)](#)

[Transportation; Consolidation; Excess Property Report: How Unused and Underutilized](#)

[Transportation Agency Buildings May be Consolidated for Efficiency of Operations and Energy Usage \(Sec. 44 of Act 40 of 2011\)](#)

[Study of Whether and to What Extent Employees Could Telecommute and the Impact on the Inventory of State Buildings \(Sec. 46 of Act 40 of 2011\)](#)

[Public Records Requests and Electronic Documents Management System, Reports on \(Sec. 3 of Act 132 of the 2005 Adj. Sess. \(2006\)\)](#)

[Biomass Working Group's Final Report](#)

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