

# 2023 Weekly Legislative Report

## #4

This week, the Open Meeting Law and Town Meeting Day bill was sent to the governor's desk for his signature, the the governor gave his budget address, and the House Appropriations Committee heard about the Budget Adjustment bill, during which it became clear that more rural and less affluent counties – where municipalities have fewer professional resources – received fewer ARPA project awards.

Additionally, the Senate Economic Development, Housing and General Affairs Committee is focusing first on housing; virtually every legislator campaigned on and about housing which many committees (House Appropriations, House Environment and Energy, House General Affairs, and House Human Services) are hearing as the session commences.

**VLCT recommends that municipalities continue to follow the “normal” Open Meeting Law until the governor signs H.42 into law – hopefully next week – so interested towns and cities can prepare for annual meetings and resume remote meetings when those are necessary.**

### [Annual Town Meeting and Remote Meetings](#)

On Thursday, the Senate expedited passage of H.42, and the bill now heads to the governor’s desk for his signature. One day prior, the Senate Government Operations Committee took testimony and moved swiftly to pass [H.42](#) out of committee on a unanimous 6-0 vote.

As it relates to municipalities, the bill extends certain temporary Open Meeting Law and Town Meeting Day procedures that were implemented during the height of the pandemic. VLCT recommends that municipalities continue to follow the “normal” Open Meeting Law until the governor signs H.42 into law – hopefully next week – so interested towns and cities can prepare for annual meetings and resume remote meetings when those are necessary.

## Town Annual Meeting

The provisions of H.42 are voluntary provisions that legislative bodies may adopt but are certainly not required to implement. H.42 extends the following temporary measures to Annual Town Meetings in 2023 and 2024 only:?

- Allow local legislative bodies to move to Australian ballot voting for those communities traditionally voting from the floor,?
- Allow local legislative bodies to move the date of Annual Town Meeting, and?
- Authorize local legislative bodies to hold informational hearings in preparation for Town Meeting remotely.?

Municipalities that choose to utilize the first provision and switch to Australian ballot voting this or next year must remember this is **temporary authority**. The bill largely mirrors last year's Act 77. The explicit prohibition on warning an article to permanently switch to Australian ballot voting while using this temporary authority was left out. This is because 17 V.S.A. § 2680(e) says a municipality "shall not use the Australian ballot system at the same election at which its voters decide that the system shall be used." Therefore, Vermont law already requires voters to vote from the floor at an annual or special meeting to permanently move to Australian ballot voting for future annual town meetings. This means that legislative bodies and voters need to prepare, plan ahead, and begin community discussions on whether a vote is necessary to permanently move to Australian ballot once this temporary authority expires. VLCT recommends communities begin these discussions as soon as possible.?

## Remote Meetings and the Open Meeting Law

H.42 includes additional temporary provisions that relate to the Open Meeting Law. During the pandemic and up until January 15, 2023, public bodies across the state had the authority to conduct meetings without a designated physical location. H.42 will extend this temporary, voluntary authority to all public bodies until July 1, 2024. A major VLCT legislative priority this legislative session is to amend the Open Meeting Law to make remote meetings a permanent component to the law. Although this bill does not accomplish that, H.42 is a step in the right

direction, and the legislators have indicated there is an interest in exploring this issue later this biennium. This will require robust testimony and legislative review, and VLCT is looking forward to these discussions. It is very important that local officials reach out to their legislators to express their support for allowing remote meetings under the Open Meeting Law and give examples of why the flexibility is valuable to town's municipal boards, committees, and commissions. Committee members have indicated that when this larger discussion is taken up for review, they want direct testimony from town and city officials. VLCT Advocacy staff would love to hear from you directly if you're interested in adding your voice to this discussion at a future date.

Although VLCT cannot predict how Governor Scott will respond, the Secretary of Education testified in opposition to Section 3 of the bill. Section 3 relates to school budgets, and VLCT does not have a position on that section of H.42. It is unclear whether the opposition of Section 3 by the Secretary will put H.42's passage in jeopardy, but there is a possibility the Governor will either veto the bill or let it go into law without his signature. VLCT will notify municipalities of any updates as we receive them.

That said, VLCT thanks Representative Mike McCarthy, Chair of the House Government and Military Affairs Committee, and Senator Ruth Hardy, Chair of the Senate Government Operations Committee, as well as House and Senate leadership, for taking swift action on this important bill. In any conversation local officials have with their legislators, please extend a "thank you" for their work on H.42 and expediting its passage.

### [Governor's Budget Address](#)

Governor Scott gave his budget address to a joint assembly of the House and Senate at 1:00 this afternoon. While we have not yet had time to analyze his proposed budget, you can [read the text and summary of the speech here](#).

The governor said that this is the biggest and most significant budget he has presented, at a total amount of \$8.4 billion, and the biggest infusion of federal dollars since the 1930s. [Find the summary of the budget here](#).

Read next week's Weekly Legislative Report for analysis and updates on the items discussed by the governor that would affect local governments.

### [Housing and Local Government Zoning](#)

Senator Ram Hinsdale, chair of the Senate Economic Development, Housing and General Affairs Committee, said on Wednesday that housing is the first subject the committee will take up. In that regard, the committee is focusing on the issue that virtually every legislator campaigned on and about which many committees (House Appropriations, House Environment and Energy, House General Affairs, and House Human Services) are hearing as the session commences. Senator Ram Hinsdale is interested in her committee hearing the spectrum of proposals for improving opportunities for housing construction and redevelopment. A draft bill was taken up for discussion in the committee on Friday.

On the House side, [H.68](#), a bill introduced by Representative Bongartz and 39 co-sponsors, focuses on zoning ordinance requirements and their administration as the primary solution to the housing crisis. In fact, revamping zoning law seems to be the clarion call and focus of this legislative session. Readers should be aware that H.68 and the Senate Economic Development, Housing and General Affairs bill will by no means be the only housing bills introduced to address this crisis, and the debate that will likely ensue will hopefully result in a more complete product by the close of this session.

While there are measures that local governments can take, and have taken in many instances, to ease zoning requirements for housing, mandating changes to local zoning laws will not by itself solve Vermont's housing crisis. At its December meeting, members of the VLCT Board delivered that clear message to legislators.

Permitting at all levels is cited as a major impediment to housing development. That includes permits not only for zoning but also for Act 250, Agency of Natural Resources, VTrans, and even Fire Safety. And as has been well documented, construction costs, supply chain difficulties, cost of land and infrastructure improvements, and labor all contribute to the difficulty in constructing or renovating housing. While zoning changes will help, we are not going to zone our way out of this crisis.

The Vermont Housing Finance Agency (VHFA) now estimates that between 35,000 and 45,000 additional housing units will be needed by 2030 if we are to meet projected needs. Over the last two years, the legislature has allocated \$250 million from the American Rescue Plan Act (ARPA) and \$212 million in other state and federal funds (itemized in the State's [2022 Vermont Housing Budget and Investment Report](#)) which, combined with private equity, have been dedicated to housing development. Those funds go through numerous programs

to a variety of agencies and non-profit organizations. Commissioner Hanford at the Department of Housing and Community Development (DHCD), anticipates that approximately 4,000 housing units will be created or preserved with these funds.

In addition to zoning prohibitions, local governments call on the legislature to make amendments to Act 250, specifically: exempting designated areas from that duplicative review, considering changes to party status, and eliminating the requirement that establishes jurisdiction over projects of ten or more units developed by a person within five years and five miles of each other. At the local level, the provision that allows any ten people to appeal a zoning permit should likewise be eliminated and is in the Senate draft bill.

## What does H.68 do?

Substantially, the bill would:

- Prohibit municipalities from requiring more than one parking space per dwelling unit or accessory dwelling unit;
- Allow duplexes and accessory dwelling units in all residential districts (this is already law with respect to accessory dwelling units) and prohibit larger lots for duplexes;
- Allow four or fewer dwelling units in all residential districts served by municipal water and wastewater;
- Allow five or more dwelling units per acre in districts served by municipal water and wastewater;
- Allow mixed use and affordable housing developments in districts served by municipal water and sewer to exceed building height limits by one additional habitable floor, and the additional floor may exceed density requirements by 40 percent as long as the structure complies with Fire and Building Safety Codes;
- Allow emergency shelters in all districts, subject to the Limitations statute (24 VSA section 4413);
- Require the local (volunteer, of course) planning commission to provide a detailed adoption report that confirms that
  - all changes to districts are uploaded to the Vermont Geodata Portal,
  - the complete bylaw is updated to the Municipal Plan and Bylaw data base, demonstrates conformity with zoning requirements of the law, and provides

information on application and administration of the zoning ordinance to the Municipal Planning Data Center and “prospective development of a statewide zoning atlas”;

- Allow a zoning administrator to approve minor subdivision applications;
- Prohibit appeals of residential development decisions granting permits on the basis that there is an undue adverse effect on the “character of the area” if the proposed development is in a designated area;
- Prohibit municipalities from adopting energy codes that are more restrictive than the state Building Residential or Commercial Energy Standards or Stretch Code after July 1, 2023, unless part of a governance charter;
- Require a property owner selling property on a class 4 road or legal trail to disclose to the buyer that the municipality is not required to maintain the highway or trail;
- Allow a municipality to issue authorizations for connections to municipal water and wastewater systems upon approval by the Secretary of the Agency of Natural Resources;
- Require a report from the Executive Director of the Division of Fire Safety recommending changes to the Vermont Fire and Safety Building Code that might reduce costs associated with developing new housing and still maintain safety;
- Authorize the Human Rights Commission to forward a charge of discrimination relating to places of public accommodation or housing to the Attorney General or a State’s Attorney for investigation or enforcement; and
- Require the Agency of Transportation to update the Vermont State Standards for the Design of Transportation Construction by December 31, 2024.

The bill would also appropriate \$500,000 to the Municipal and Regional Planning Fund to help towns update their bylaws.

There is much more discussion to take place in the legislature before any housing bill is passed this year. Watch this space for developments.

## **Resources for this article:**

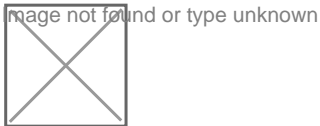
- [Joint Fiscal Office “Housing in Vermont’s Economy”, 1/17/23](#)

- [DHCD “Overview: Housing and Community Development”](#), 1/18/23
- [Housingdata.org Housing Ready Toolbox](#), a resource for cities and towns
- [Housingdata.org Community Profiles](#), Vermont housing data presented by a range of characteristics
- [DHCD “2022 Vermont Housing Budget and Investment Report”](#), 1/15/23
- [Senate Economic Development, Housing and General Affairs draft bill](#), 1/19/23

### Budget Adjustment

All this week, the House Appropriations Committee has been hearing about the Budget Adjustment bill and the administration’s proposal. Section 24 of the proposal reads, “\$3,000,000 to the Secretary of Administration to implement the Rural Infrastructure Assistance Program created in Sec. E.100.4 of this act.” That section of the budget adjustment would direct the Agency of Administration to develop a program that supports rural communities in accessing and managing competitive grant funds available for clean water initiatives, housing development, broadband, community recovery, workforce development and business supports, climate change mitigation, and resiliency infrastructure projects.

As the Agency of Administration assessed where applications for ARPA projects were coming from and where awards were made, it became clear that more rural and less affluent counties – where municipalities have fewer professional resources – received fewer project awards.



The initiative would focus efforts on helping smaller, rural communities that do not have resources to decipher where the most appropriate American Rescue Plan Act (ARPA) opportunities for their community exist, how to access those grant programs and financing opportunities, or manage grants in compliance with federal and state regulations. An “Underserved Communities Index” currently being finalized at the Agency of Administration (AOA) would be employed to determine initial eligibility for assistance. Communities scoring 75 percent or higher on the Vermont Underserved Communities Index would be initially eligible, and, as proposed, AOA would have the option to expand the program to additional communities after one calendar year from the date of implementation, to the extent funds remain available.

The Budget Adjustment bill proposal would provide assistance in the short term as ARPA dollars are available. A proposal from the Rural Caucus, still in development, would establish similar kinds of program assistance for the longer term and the governor's budget proposes a significant investment in future years to assure stable funding to build capacity in small rural communities.

The House Appropriations Committee will complete its work on the budget adjustment in the next few days. If your community has been unable to apply for ARPA dollars because of lack of capacity to do so, please let the VLCT Federal Funding Assistance Program and your legislators know.

## Resources for this article:

- [Governor's Annual Report on ARPA State Fiscal Recovery Fund](#)
- [Governor Scott's Proposal for Budget Adjustment Act](#)
- [Proposed Underserved Community Index User Guide](#)
- [Proposed Underserved Communities Technical Documentation](#)

[Elsewhere in the State House](#)

## Cannabis

This week, the House Government Operations and Military Affairs and Ways and Means Committees received testimony related to the cannabis marketplace in Vermont. Vermont's recreational cannabis marketplace went "live" in October of 2022, and this week was the first time the legislature heard updates on the status of the marketplace thus far. On Thursday, the Cannabis Control Board (CCB) members testified in the House Government Operations and Military Affairs Committee. Not much time was devoted to the marketplace as it directly relates to municipalities, such as discussions around Local Cannabis Control Commissions, general local input in regulations of establishments, and taxation. Representative Mike McCarthy, chair of the House Government Operations and Military Affairs committee, did



express interest in having officials from municipalities that host a cannabis establishment testify at a future date to give the municipal perspective on how the rollout of the cannabis marketplace has worked in their communities.

The committee and CCB board members focused on time sensitive issues related to cannabis vaping products and how they are currently taxed under law. Currently, cannabis vape products are taxed in the same manner as tobacco vape products, which is a 92% excise tax. This was not the intent of the legislature, and the Budget Adjustment Act will likely include [language](#) that updates statute to correct this error. The CCB highlighted ongoing challenges the legislature may want to weigh in on, including managing the supply chain, banking and insurance issues, whether THC caps on products should remain, how best to support licensees new to the market, quality assurance of products, and how to address hemp products and the medical program. More specific data related to the number of licensees and where they are located were included in the [CCB testimony](#).

The House Ways and Means Committee heard testimony from the Joint Fiscal Office (JFO) on cannabis revenues. From when the first retail cannabis establishment opened in October until the end of 2022, between the excise and sales taxes, [cannabis sales brought just over a million dollars](#) in tax revenue to the state. Vermont currently has 25 open retail establishments, and the state anticipates revenue growth in the coming years. In future years, revenue growth is expected to level off, as has been the experience in all states that legalized recreational cannabis sales before Vermont did.

JFO and the CCB testified that there will be some growing pains as the new marketplace stabilizes, but Vermont has the luxury of looking to states that have more seasoned marketplaces and is planning and adjusting accordingly. The market will determine how many growers, retailers, and other establishments are needed to meet demand, and as demand and supply equalization become more apparent, the entire marketplace will stabilize accordingly.

## Public Safety Introductions

Last week and this, the House Government Operations and Military Affairs and Senate Government Operations Committees both heard testimony from representatives from the public safety sectors of state government to explain the work and statutory duties of these

entities and how the Government Operations Committees have jurisdiction over them. The committees heard from various individuals from these entities including the representative from the EMS Advisory Board, the Commissioner of the Department of Public Safety and her Deputy, the Director of the Vermont State Police, a representative from the E-911 Board, the Vermont Department of State's Attorneys and Sheriffs, and the Chair and Deputy Director of the Vermont Criminal Justice Council. Some of the areas of interest the committees identified for more focus this biennium included addressing the long-term viability of EMS service providers, the future of regional dispatch, oversight and regulation of state sheriffs, and how to accelerate the ongoing work of the Police Academy and the Criminal Justice Council.

VLCT will continue to follow all of these issues closely this session. They all affect and are of interest to municipalities and communities across the state, and many of them are addressed in VLCT's 2023-2024 Legislative Policy.

## Rural Caucus

On Thursday at the weekly meeting of the Rural Caucus – which is always high energy – its members engaged in a Shark Tank like pitch session for ideas to be included in their rural omnibus bill. There were 24 one- minute pitches. Phew! The ideas included measures to: make housing construction easier, create a single application for all grant programs, build and fund local resilient infrastructure projects, create a rural business technical assistance exchange, implement regional animal control, and much more. Legislators in the Rural Caucus are asked to vote on their top five concepts to include in the Omnibus bill. Caucus leaders also urged members to get their ideas drafted as independent bills, which many plan to do. We will watch for the Rural Omnibus bill!

### Resources for this article:

- [Proposed Vape Tax Language](#)
- [Cannabis Control Board Testimony](#)
- [Cannabis Revenue Update](#)

[Bills of Interest to Municipalities](#)

Number	Summary	Current Location
<a href="#">H.54</a>	Would establish a process to support municipalities that administer independent systems and services to replace those provided by the State, such as public safety, emergency, inspection, code enforcement, social services. Would also establish a system of compensation that considers the costs avoided by the state due to municipal administration.	H. Government Operations and Military Affairs
<a href="#">H.58</a>	Would prohibit a zoning administrator from being a member of the legislative body or the local or regional planning commission.	H. Government Operations and Military Affairs
<a href="#">H.68</a>	Would impose new prohibitions on zoning ordinances, require disclosure if a property for sale is on a Class 4 road, exempt connections to municipal water or wastewater from duplicative state permits, require report on amendments to Fire and Building Safety Code that might reduce housing costs, authorize Human Rights Commission to refer violations of the Fair Housing and Public Accommodations Act to the Attorney General or State's Attorney.	H. Environment & Energy
<a href="#">H.69</a>	Would prohibit smoking cigarettes or using electronic cigarettes within 25 feet of any place of public access or of a multi-unit dwelling.	H. Human Services
<a href="#">H.70</a>	Would make changes to law regulating siting of telecommunications facilities including extending the sunset on applications to the Public Utility Commission another 3 years to July 1, 2026.	H. Environment & Energy
<a href="#">H.73</a>	Would prohibit Vermont from using California's Clean Air Act waiver to set motor vehicle emission standards.	H. Environment & Energy
<a href="#">H.74</a>	Would reduce Vermont Greenhouse Gas goals and repeal the Climate Council.	H. Environment & Energy

<a href="#"><u>S.17</u></a>	Would add subcategories of unprofessional conduct for law enforcement officers reviewable by the Vermont Criminal Justice Council, prohibit sheriffs from collecting compensation for administration of contracts or related services, repeal the penalty for refusal to assist a sheriff, and require the Secretary of State and the Department of State’s Attorneys and Sheriffs to review and report on the number of sheriff’s departments.	S. Government Operations
<a href="#"><u>S.20</u></a>	Would establish a Basic Needs Budget Technical Advisory Commission and require the creation of a State and federal assistance calculator.	S. Economic Development, Housing & General Affairs
<a href="#"><u>S.21</u></a>	Would prohibit the discharge of a firearm within 500 feet of any occupied dwelling house, residence, or other building or camp occupied by human beings or any barn, stable, or other building used in connection with an occupied building.	S. Natural Resources & Energy
<a href="#"><u>S.24</u></a>	Would direct the Commissioner of Environmental Conservation to adopt rules to implement the Clean Fuels Program.	S. Natural Resources & Energy

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