

2022 Weekly Legislative Report #13

April 1, 2022

The topics of today's report are housing development in Vermont, the transportation bill, the new Vermont Housing Assistance Program, and surface water withdrawals and river corridors. Elsewhere in the State House brings you up to date on charter change legislation, miscellaneous changes to municipal laws, cannabis fees, and property owned by Vermont-recognized Native American Tribes. And don't forget the always endearing list of new bills.

You can always check our two webpages to track the 2022 bills that especially affect municipalities: [bills introduced in the House](#) and [bills introduced in the Senate](#). We update these cumulative lists every Friday so you can follow bills as they travel through the appropriate State House committees. Scroll to the end to see the newest additions.

As the legislative session progresses, go to our [Legislative Reports page](#) to revisit this issue and find other weekly legislative reports.

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This Week's Articles

Housing Development in Vermont

Housing is tied to everything in Vermont – the rebuilding of the economy, the welcoming of historically marginalized populations to our communities, the likelihood of finding employees, the health of our school systems, the vibrancy of our downtowns, and meeting the basic needs of every Vermonter. S.226 is a comprehensive effort to address the unprecedented scarcity of housing in the state.

On Thursday, the Senate passed S.226, the comprehensive housing bill, after voting on two final amendments. The bill was messaged to the House and assigned to the House General, Housing and Military Affairs on Friday, which ensures that the focus will be on addressing Vermont's severe housing crisis. The House Natural Resources, Fish and Wildlife Committee had taken testimony on the bill on Tuesday, Wednesday, and Thursday from a variety of interests, including your advocacy staff. And today, House General, Housing and Military Affairs heard from the chair of the Senate Economic Development,

Housing and General Affairs Committee. S.226 and S.234, a bill that would expand Act 250 jurisdiction, are explored in detail in [Weekly Legislative Report No.10](#).

In particular, VLCT strongly supported exempting priority housing projects from Act 250 in state designated areas, which is in the bill, and also encouraged the committee to exempt all development in designated areas from Act 250, which is *not* in the bill. Towns must undertake comprehensive planning and comply with extensive requirements of the Downtown Designation Program in order to secure a designation. They must commit to focusing development in those areas, and to a plan and design that demonstrates the capacity to address land use permitting issues at the local level.

VLCT also discussed the issue of state permits for connecting buildings to municipal water and wastewater facilities. These permits are required in addition to municipal permits for the same action. Last year, the Senate passed language in S.101, which the Agency of Natural Resources supported, that would eliminate that duplication. However, the House declined to address the issue. A permit issued by a municipality must comply with technical standards for sanitary sewer service lines and water service lines in the 161-page-long Wastewater System and Potable Water Supply Rules, and a professional engineer or licensed designer would need to install the system connection and certify in the land records that it was installed correctly.

Several sections of S.226 would provide funding mechanisms, tax credits, and other revenue sources to encourage the construction or improvement of homes and the conversion of underutilized commercial space to housing in designated areas. These funds, currently available due to the infusion of federal dollars from the American Rescue Plan Act and the Infrastructure Investment and Jobs Act, are vital to reducing costs to a point where safe, energy-efficient housing choices in compactly settled and walkable neighborhoods are again within the reach of Vermonters. One of those programs, which was not funded in the House-passed appropriations bill, is the Missing Middle-Income Home Ownership Development Program. S.226 would allocate \$5 million to that program in FY22 and \$10 million in FY23.

The bill would also provide funding to build accessory dwelling units in the Vermont Rental Housing Assistance Program. A property owner could receive up to \$30,000 to rehabilitate an existing unit or \$50,000 to build a new accessory dwelling unit. Under current law, the program has \$20 million. The Department of Housing and Community Affairs would be required to allocate 25 percent of that amount to the new accessory dwelling unit component of the program for financial incentives to homeowners and training to help homeowners design, finance, permit, and construct accessory dwelling units.

The bill would also appropriate \$650,000 for Bylaw Modernization Grants, which will facilitate revisions to municipal bylaws to provide for those housing choices.

There will be much discussion of S.226 in both House General, Housing and Military Affairs and House Natural Resources in the next few weeks, and we will keep you updated as to its progress.

Resource for this article:

- [Testimony before House Natural Resources Regarding S.226](#), March 31, 2022

The 2022 Transportation Bill

The Senate Transportation Committee spent the week reviewing [H.736](#), this year's transportation bill, by asking Legislative Counsel and the Joint Fiscal Office to describe the House version of the bill and identify its changes as they relate to the governor's recommended budget and underlying policy proposals. The committee seems keen to honor the mantra of spending one-time federal money on "transformational changes" and ensure that all available federal money is paired with state matches.

The committee was initially dubious about several House proposals that they thought were either not transformational enough, or were not aligned with the state's climate action plan or the state's transportation program. The committee would like to restore the maintenance budget of the Agency of Transportation to the governor's recommend, which the House reduced by \$3 million and reappropriated to other transportation programs. They also expressed skepticism over \$1.4 million in additional funding for the Zero-Fare Public Transit initiative to extend zero-fare public transit rides to FY23. There was robust discussion around \$1 million funding for electric bicycle (EBike) rebates of up to \$200 per bike purchase. The committee generally agreed that the incentive program would not change driving habits or transition carbon-emitting vehicle use to EBike use in any significant manner, and therefore would not be a good use of limited federal and state funding.

While discussing municipal programs and funding, the committee expressed some doubt that it was necessary to provide increased funding to local transportation aid programs. The committee also stated that municipalities will continue to receive direct funding from the American Rescue Plan Act, and that the Infrastructure Investment and Jobs Act infused robust funding for off-system municipal bridge projects. The sentiment among committee members is that given the state program's pressing needs, municipal programs should be either level-funded or funded at levels the statute requires for increases to local programs.

The committee will spend the next several weeks working almost exclusively on H.736 as the session wends its way through the final six or so weeks before adjournment.

Resources for this article:

- [FY23 House Appropriations Transportation Overview](#)
- [FY23 House Transportation Recommendation v. Governor's Recommend](#)
- [FY23 Appropriations Changes to Governor Recommend](#)

Vermont Housing Assistance Program

The Vermont Housing Assistance Program (VHAP) is a new program administered by the Vermont Housing Finance Agency (VHFA). Funded with \$50 million in American Rescue Plan Act (ARPA) dollars, the program will provide grants of up to \$30,000 per household toward overdue mortgage payments, utility bills, property taxes and property association charges. It is decidedly in a municipality's interest to participate in the program as delinquent property taxes and utility would be paid to the town. VLCT's ARPA Assistance and Coordination Program is preparing a webinar that will discuss in detail how to sign up for VHAP to receive notice of applications in your community and to verify payment amounts. Information about registering for the webinar will soon be posted on our ARPA website, vlct.org/arpa.

H.625 is a bill that would place a moratorium on "no cause" evictions until June 30, 2023, with a few exceptions. The bill would also require that before a residential foreclosure or tax sale can proceed, the property owner must be notified of the availability of VHAP. The program would be repealed on September 30, 2025, or when the \$50 million is exhausted.

If a residential property is scheduled to go to tax sale, the town would need to send the delinquent taxpayer – at least sixty days prior to serving notice of the sale – a notice stating that the taxpayer may be able to get help with delinquent property tax and utility payments through VHAP and include contact information for both VHAP and Vermont Legal Aid.

If a municipality sold a property at tax sale prior to the effective date of the bill but the deed conveying the title had not yet been executed, the notice above would need to be mailed to the property owner within 30 days of the bill's effective date. Upon notice that a delinquent property taxpayer has applied for VHAP, a

municipality would be prohibited from conducting a tax sale until VHFA makes a final decision is made on the application. If a tax sale occurred before the delinquent taxpayer applied for VHAP, the redemption period would be extended until a final decision is made on the application. Legal Aid and VHFA generally agreed that the term "final decision" should be better defined in the legislation so as not be left wide open.

H.625 did not make crossover, so it would need to be added to a related bill that did make the deadline. A likely candidate is S.210, the rental housing bill, which House General, Housing and Military Affairs took up on Tuesday.

Surface Water Withdrawals, River Corridors, and More

We have not written about water-related issues in some time because the legislature has focused on a host of other topics. However, still waters run deep, and ignoring the subject is never a good idea, as I was reminded this week by several local officials. (Thank you!) That is why we need your eyes on and ears in the State House!

Funding for clean water programs in the state has been substantial, particularly since 2011 when the Environmental Protection Agency (EPA) disapproved Vermont's Total Maximum Daily Load (TMDL) plan for Lake Champlain. Equally substantial have been the mandates that followed that EPA disapproval. The influx of federal money from the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act presents many opportunities for municipalities to address wastewater, water supply, and water quality restoration or protection needs.

The Department of Environmental Conservation's Clean Water Fund along with the capital bill, which includes state dollars to match for federal dollars, have been the main sources of funding for water-related projects. Revenues flowing to the Clean Water Fund include a 0.2 percent surcharge from the Property Transfer Tax (due to exploding real estate sales during the pandemic), six percent of Meals and Rooms tax revenues, and unclaimed beverage bottle deposits.

In FY21, the legislature appropriated \$100 million from ARPA to spend on addressing water infrastructure through FY24. The House appropriations bill – H.740, now in Senate Appropriations – directs an additional \$107 million from ARPA to clean water initiatives. The capital adjustment bill – H.739, in Senate Institutions – appropriates \$10.5 million in the current fiscal year and an additional \$6.7 million in FY23. (See [Weekly Legislative Report No. 12](#) for our reviews of the two money bills.) Even with all the dollars being invested from federal and state sources, the amount of money needed to address all the water related priorities of the state is still higher. (See Water Infrastructure Universe of Need chart below.)

According to the Agency of Natural Resources (ANR), paying for stormwater mitigation alone, which is mandated in many separate pieces of legislation that have been debated for years, exceeds \$390 million.

The Vermont Climate Action Plan expressly names water in the form of heavier rainstorms, flooding, and other extreme precipitation events as a major challenge facing Vermont. Epic mud seasons as we are currently experiencing may be a new reality. The state and its municipalities will need to build resiliency in the face of these and other climatic changes.

H.466 is a bill that would establish standards for surface water withdrawals, the newest iteration of a longstanding discussion in the State House. It passed the House on January 28 and since then has been in Senate Natural Resources, as committee members worked to get Senate bills finalized ahead of the crossover deadline. The bill would amend and rename Chapter 41 in Title 10 that regulates stream flow. It would also now regulate surface water withdrawals, inter-basin transfers of water, and stream alterations.

You can generally tell a full-on bureaucratic bill if its list of definitions comprises more than a third of the entire document. And the language in H.466 commences by adding a highly technical definition of "basin" and more layperson-friendly definitions – including "berm" (earthen material on or next to a watercourse

that constrains waters from entering a flood hazard area or river corridor), "capacity" (maximum volume of water capable of being withdrawn by the water withdrawal system), "inter-basin transfer" (the conveyance of surface water withdrawn from one basin for use in another basin), and "large woody debris" (any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew – which sounds like a "tree" to this writer).

A key definition in H.466 is "reasonable and feasible" (available and capable of being implemented after consideration of cost, existing technology, logistics in light of the overall project purpose, environmental impact, and ability to obtain all necessary approvals for implementation).

The bill's stated policy and purpose is to:

1. ensure protection, maintenance, and restoration of water quality, including water quantity, necessary to sustain aquatic communities and stream function;
2. enhance viability of sectors that rely on the use of surface waters and are important to Vermont's economy;
3. permit surface water withdrawals and construction of facilities for uses other than snowmaking based on an analysis of the need for water and consideration of alternatives; and
4. recognize that existing users of waters for off-stream uses that may have an adverse effect on water quality should have time to improve water quality.

By January 1, 2023, any person withdrawing 5,000 gallons or more of surface water within a 24-hour period would need to register with the Secretary of Natural Resources and indicate the location, frequency, rate and schedule of each withdrawal; the capacity of the withdrawal system; and a description of the uses of the withdrawn water. The registrant would need to file an annual report with the secretary that identifies total monthly withdrawals, the location, and the date and amount of daily maximum withdrawal for each month. A person would be exempted from the requirement if water was being withdrawn for fire suppression or emergency response, snowmaking, approved public water supplies, and any other use that already requires the same data to be reported.

By July 1, 2026, the ANR secretary would implement a surface water withdrawal permitting program, based on potential impacts to surface waters or other factors, that would establish conditions of operation necessary to protect Vermont's surface waters. The permitting system would require an efficient use of water, establish limitations on withdrawals based on low-flow or drought conditions and alternatives in such cases, and require assessment of any reasonable alternatives that may have less of an impact on surface water quality.

Additionally, the bill would require the ANR secretary to review any transfer of water from one basin to another, or from one watershed to another.

River Corridors

According to [Flood Ready Vermont](#), river corridors identify the area that a river or stream needs to maintain physical or geomorphic equilibrium. They include the meander belt of a river or stream and a buffer of 50 feet, including both the channel and the land, and they frequently extend across a wide swath of valley between ridges in the Vermont landscape. Inasmuch as Vermont's downtowns and village centers almost all grew up along the state's rivers, river corridors encompass most of those economic and residential centers.

In February, advocates – including representatives of the Nature Conservancy – presented a policy brief to the House Natural Resources, Fish and Wildlife Committee that called for statewide jurisdiction and permitting authority for river corridors, and that would expand jurisdiction of the Vermont Flood Hazard Area and River Corridor Rule to all development along streams that have a mapped river corridor. They also cited a recommendation in the Vermont Climate Action Plan that called for communities to prepare for

deleterious climate impacts and to increase resiliency of key infrastructure investments. ANR Secretary Julie Moore outlined those work items in her presentation to Senate Natural Resources in January.

Vital Communities

- Prioritize planning practices and investments that help Vermont communities prepare for climate impacts
 - Develop a climate toolkit
 - Update land-use policies to better support adaptive, resilient, compact settlement
- Increase resilience of key infrastructure (transportation, energy, communications, water/wastewater)
- Support the reduction of municipal, school district, residential, university, and hospital fossil fuel use
- Ensure all have access to safe, accessible, energy efficient, and affordable housing

Climate Action Plan Work to Help Municipalities Build Resiliency (excerpted from ANR presentation to Senate Natural Resources)

Two bills currently under discussion, S.226 and S.234, contain provisions that would allow for limited infill development in a neighborhood development area outside of the flood hazard area so as to not cause or contribute to fluvial erosion hazards within the river corridor. If the neighborhood development area includes flood hazard areas or river corridors, local bylaws would need to protect river corridors outside the neighborhood development area.

While there has not been a lot of discussion in committees about water-related policy issues, more are certain to follow, and we will apprise local officials of them as the legislation continues to develop during the end of the session.

Resources for this article

- [Water Infrastructure Universe of Need](#)
- [Funding Clean Water Initiatives in Vermont, JFO Issue Brief](#), Dec. 21, 2021
- [Creating a Flood Resilient Vermont, The Nature Conservancy](#)

Elsewhere in the State House

Miscellaneous Municipal Authority. On Thursday, the Senate passed [S.181](#), a bill that makes miscellaneous changes to municipal laws. VLCT strongly supports this bill as its commonsense adjustments will give voters and officials greater control over ordinances, roads, governance, and other local matters. [Minor amendments](#) made on the Senate floor addressed increasing and decreasing the number of seats on zoning boards of adjustments, development review boards, and planning commissions.

The bill now heads to the House Government Operations Committee for consideration. We anticipate the committee will want to hear from local officials directly on the bill's merits and provisions. If you want to help us support the bill and its provisions, please email Gwynn Zakov (gzakov@vlct.org) or Karen Horn (khorn@vlct.org).

Redistricting. On Wednesday, the legislature passed H.722, a bill that would reapportion the members of the House of Representatives, and sent it to the governor on Thursday. Details of the final district maps can be found on the reapportionment pages of the House ([House Reapportionment](#)) and Senate ([Senate Reapportionment](#)).

Charters. This week, the House Government Operations Committee passed out [H.444](#), the Barre City Charter bill. The as-passed committee version included additional amendments to those approved by Barre City voters on Town Meeting Day, such as a one-percent local option tax on sales. The House also agreed to language in the charter they had removed but which the Senate reinstated that addressed what flags may be flown on Barre City property and flagpoles. The bill now heads to the House floor, and then back to the Senate for consideration of the new amendments.

Two other charters are up for consideration this week by the Senate: [H.448](#), a charter amendment for the City of Burlington, and [H.491](#), which would create a City of Essex Junction. The Senate Government Operations Committee agreed to the charters as they came from the House. If passed out of the Senate with no further amendments, they will head to the governor for his signature.

Also on Thursday, the Senate voted to override the governor's veto of H.361, a bill that would amend the Brattleboro Town Charter by allowing youths who are at least 16 years old on Town Meeting Day to vote in local elections. The override failed on a vote of 15 to 12. A veto override requires a two-thirds vote to pass.

Cannabis. This week, the governor signed into law [H.701](#), a bill that sets the cannabis fees for licensing cannabis establishments. The local licensing fee is set at \$100, less the cost of the state collecting and administering the fee, which means towns and cities will only receive a *portion* of this fee. To put the fee and tax into perspective, the state will assess a six percent sales tax and a 14 percent excise tax on cannabis sales. State licensing fees range from \$750 for a small outdoor cultivator license to \$100,000 for an integrated license. Not only will municipalities receive less than \$100 per license, they will get \$0 from taxes – *unless* they're one of the 16 municipalities with a local option sales tax and also opting in to host retail cannabis establishments.

Property Owned by Vermont-Recognized Native American Tribes. [H.556](#) would exempt real and personal property that is owned by a Vermont-recognized Native American tribe or by a non-profit organization organized for the tribe's benefit and controlled by the tribe, provided the property is used for purposes of the tribe and not leased or rented for profit. The purpose is to identify members of Vermont-recognized Native American tribes as Vermont's traditional land caretakers and allow them to dedicate more of their financial resources to furthering tribe-related activities. Currently, there are four parcels in the state that qualify for the exemption. The bill passed second reading in the Senate today.

New Bills

Number	Summary	Current Location
H.742	Would approve amendments to the charter of the Town of Milton to clarify language and titles of miscellaneous Town governing bodies and offices; authorize the Town to establish an independent police force; require Town notices of meetings to be distributed electronically as well as through	House Government Operations

Number	Summary	Current Location
	traditional means; create the office of Town Manager; and clarify the process of redistricting and reapportionment for the Town.	
H.743	Would approve amendments to the charter of the Town of Hardwick to merge the town offices of Town Clerk and Town Treasurer into the Town Clerk and Treasurer; rename the Zoning Board of Adjustment the Development Review Board; require digital notice of all regular and special town meetings; eliminate some town offices; and make clerical edits.	House Government Operations
H.801a	Would designate the Emerald Ash Borer as the official Vermont State Pest, supplanting the Deer Tick. Would create two committees, one to study the insect and one to study the committee studying the insect.	House Pestilence, Calamities & Mishaps