

2022 Weekly Legislative Report #14

April 8, 2022

If you look far enough down the road, you can see what appears to be the end of the legislative session – though that might easily be a mid-May mirage. But look at today's legislative report and you'll see articles on pensions, tax increment financing, Act 250 and housing, and pupil weights. Elsewhere in the State House brings you up to date on criminally threatening behavior legislation, boards and commissions, rental housing, and municipal charters. And New Bills, all affecting municipal charters, adds up to three.

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

Pensions

Last year, the legislature created a task force to make recommendations to close a more than \$3 billion gap in the state's teacher and state employee retirement funds. The Pension Benefits, Design, and Funding Task Force's [Final Report](#) issued in January, set the stage for legislative action that is currently taking place under the Golden Dome. Last Friday, the Senate passed [S.286](#), a bill that the House Government Operations Committee took up, moving from redistricting to consideration of public employee pensions.

S.286 does not address municipal pensions. Rather, it focuses solely on the state-funded Vermont State Teachers' Retirement System (VSTRS) and the Vermont State Employees Retirement System (VSERS) and implement the report's recommendations. According to the Joint Fiscal Office, the bill – based on preliminary actuarial estimates – is expected to reduce Vermont's long-term unfunded retirement liabilities for state employees and teachers by approximately \$2 billion. This would be done by pre-funding other

post-employment benefits, modifying the pension benefit structure, and making additional State of Vermont and employee contributions to the retirement systems.

The bill would appropriate \$200 million in one-time General Fund monies in FY22 to both systems – \$75 million to VSERS and \$125 million to VSTRS. It also contains \$13.3 million in a one-time Education Fund appropriation to fund the Retired Teachers' Health and Medical Benefits Fund in order to begin pre-funding the health care benefits for retired teachers. S.286 also implements higher employee contribution rates for active members in both pensions systems and modifications to the Cost-of-Living-Adjustment formula for all employee groups. The state also commits to ongoing additional payments towards the unfunded liability in future years.

Rep. Sarah Copeland Hanzas, chair of the House Government Operations Committee, made it clear that getting the pension bill out of committee and back to the Senate was their highest priority, leaving other bills to be taken up as time allows or when S.286 is voted out.

Municipal Pensions. Although S.286 does not address municipal pensions – because the state does not fund them – the legislature still needs to approve the Vermont Municipal Employees' Retirement System (VMERS) contribution rates set by their board of trustees – the board that is responsible for the administration, record keeping, and benefits of the systems and which serves as fiduciaries of the pension system.

Earlier this year, the VMERS board adopted the State Treasurer's recommended contributions rates. Those rates are now before the legislature to be codified into law. Normally, the contribution rates language is included in a bill that addresses miscellaneous retirement laws, but there is no such bill this year. Instead, [the rates](#) will likely be included in H.740, the budget bill. This week, House Gov. Ops. reviewed the rates, taking testimony from members of the VMERS board including State Treasurer Beth Pearce and board chair Chris Dube. The committee appeared willing to include the rates language in the budget rather than in a stand-alone committee bill and will make this recommendation to House Appropriations. The Senate will need to include this language in S.286 because H.740 has already left the building and currently sits in the Senate Appropriations Committee.

Resources for this article:

- [State Treasurer's Recommended Rates for VMERS](#)
- [State Treasurer Notice to Employers](#), Nov. 9, 2021

Tax Increment Financing

On Wednesday, the Senate Finance Committee took up the issue of tax increment financing (TIF), a tool municipalities use to finance improvements for public infrastructure like streets, sidewalks, and stormwater systems. H.159, the comprehensive economic development bill, included language that would implement a project-based TIF program and make several amendments to the regular TIF program that is currently authorized in statute. The bill passed the House one year ago and two weeks ago was voted out of Senate Economic Development, Housing and General Affairs. The Senate Finance Committee, which removed the TIF language, plans to vote out the remainder of the bill today.

The Senate Finance Committee discussed including any language relating to TIFs in H.738, a bill that would make miscellaneous changes to tax law.

On Wednesday, your advocacy staff testified in support of a project-based TIF program. Very similar language was passed by the Senate last year as part of S.33, a bill that has been biding its time on the House Ways and Means Committee wall for 11½ months because that committee has never taken it up.

The Vermont TIF Program clearly meets the state's goals of supporting historic downtowns and villages, increasing and diversifying economic development activities, facilitating development in compact settled areas, and contributing to retaining the rural nature of surrounding countryside. The program is also one of the most highly regulated nationally. According to a [Joint Fiscal Office Report](#) on TIFs (Jan. 17, 2022), "relative to other states, [the Vermont Economic Progress Council] and its staff provide significantly more information, transparency, and oversight on the Vermont's TIF program."

Last year, Regional Development Corporations of Vermont testified to the House Commerce Committee in support of a project-based TIF program in the context of H.129, another bill that never made it out of committee as a free-standing bill.

The project-based TIF – voted out of the Senate Economic Development, Housing and General Affairs Committee – would be modeled on the existing TIF program, and a municipality:

- could apply for approval of a project-based TIF located in a area designated by the Vermont Downtown Development Board or in an industrial park planned and designed for industrial buildings
- could retain up to 70 percent of education property taxes newly generated by the project for up to twenty years, and
- must use at least 85 percent of newly created municipal property taxes for the same period of time to repay the debt,
- which may not total more than \$5 million, and
- must be approved by the voters,
- that is used to build public infrastructure integral to one private development project
- if the infrastructure and development are in confirmed municipal and regional development plans and
- the project has significance for employment, housing, brownfield remediation or transportation improvements.

Cities and towns that have received American Rescue Plan Act (ARPA) direct aid dollars could dedicate at least part of those funds to construct infrastructure that would make private residential and commercial development more attractive. Money allocated from both ARPA and the Infrastructure Investment and Jobs Act would be available for wastewater or water supply and transportation amenities that make streets walkable, bikeable, and downtown-friendly. Yet there will still be the need for gap funding to tie a project together, particularly in the instance of wastewater. With a project-based TIF and the money currently available from federal sources, if a town is not able to assemble financing for a project now, that project's prospects are dim.

We will continue to update you on any action from the Senate Finance Committee that continues the discussion in the context of H.738.

Resource for this article:

- [Regional Development Corporations of Vermont Project-Based TIF presentation](#), Feb. 24, 2021

Act 250 and Housing

[Note: On 4/12/22, the first sentence in paragraph seven of this article was revised.]

According to the Vermont Housing Finance Agency (VHFA), developers need to build a minimum of 5,800 homes and apartments in the state by 2025 in addition to housing the homeless and replacing homes likely to be removed from the state's total housing stock; to address the broader issue of affordable housing, they need to more than triple that number. Currently, Vermont is heading in the wrong direction as the numbers

of primary homes constructed between 2010 and 2017 increased at a rate of 0.2 percent, a figure the VHFA called a virtual stagnation.

As we have noted before, housing was cited as the primary issue for the legislature to address at the beginning of the session. There is general consensus that something needs to happen *now*. What that something is, however, is controversial and threatens to again leave the state with no meaningful action in 2022.

No one wants Vermont to end up looking like the urban and suburban parts of states to our south. Everyone apparently wants more housing to be built *somewhere* – but maybe not in their backyard, or in the woods abutting their neighborhood, or at the end of their road. The web of regulations currently in law, the costs of construction and land, the lack of labor, and the propensity to defend the status quo in one's neighborhood all contribute to the dire housing situation in Vermont. S.226 and S.234 are two efforts to address a number of those factors, but in some respects, the bills are at cross-purposes to one another. Both bills need to work together, with their primary objective being the solution of Vermont's housing crisis.

S.234 would combine new jurisdiction over forest blocks, connecting habitat, and roads to limit the reduction of Vermont's forest cover and natural areas (described below). However, in the context of the current housing crisis, one has to ask if there is a smarter way to address development in the rural parts of the state than throwing up new Act 250 regulatory restrictions outside of the 23 designated downtowns and nine neighborhood development areas in the state. According to the Department of Housing and Community Development, fully 77 percent of new housing built has historically been outside of community centers. It is highly unlikely that the 5,800 housing units VHFA says are needed can all be constructed as qualifying priority housing projects in those designated downtowns and neighborhood development areas, and it would be most unfortunate if the housing development being developed outside those areas ended up being prohibited.

S.226 would primarily address the impediments to building housing in Vermont. S.234 is primarily the Act 250 and land use bill. S.226 is in the House General, Housing and Military Affairs Committee and S.234 is in the House Natural Resources, Fish, and Wildlife Committee. Each committee is taking testimony on its respective bill and the Natural Resources committee is also taking testimony on S.226, the bill we discussed in [Weekly Legislative Report No. 13](#).

Several sections of S.234 are similar to S.226, such as the definition of a priority housing project and mixed income housing. Both bills would expand the ability to build infill housing in suitable parts of a neighborhood development area containing pre-existing development that might be in a river corridor. If a neighborhood development area included flood hazard areas or river corridors, local bylaws would need to protect river corridors outside the neighborhood development area. S.234 would eliminate the requirement that a neighborhood development area be served by municipal sewer or an alternative community wastewater system.

S.234 would increase the number of housing units in a priority housing project that could be built before Act 250 jurisdiction is triggered such that up to 49 units could be built in a municipality of fewer than 6,000 residents. It would not eliminate the arbitrary 10-5-5 statute, which states that construction of housing projects "... with 10 or more units, owned or controlled by a person within a radius of five miles of any point on any involved land and within any continuous period of five years would be subject to Act 250 jurisdiction." In fact, the bill it would extend jurisdiction in one-acre towns to improvements on any tract of land owned or controlled by a person within a radius of five miles of any point on any involved land.

S.234 would require a district commission to find that a development would not result in an undue adverse impact on "forest blocks" or "connecting habitat." While S.234 defines the terms forest block and connecting habitat – and, for that matter, habitat –the bill does not indicate what size a connecting habitat or forest block is in order to merit protection from Act 250. A forest block is a "contiguous area of forest in any stage of succession and not currently developed for nonforest use." Connecting habitat means "land or water, or both, that links patches of habitat within a landscape, allowing the movement, migration and dispersal of

wildlife and plants and the functioning of ecological processes." Size, location, and function – all hugely significant thresholds – would be left to the Natural Resources Board to define

The term development (and, thus, Act 250 jurisdiction) – would include construction of a road, or a driveway longer than 800 feet –or combination of roads of more than 2000 feet – that provides access to any part of a tract of land of more than one acre owned or controlled by a person that is provided access by the road. Roads constructed for a municipal, county, or state purpose, utility corridor, forestry, or farming purpose and those entirely within designated downtowns or neighborhood development areas would not be subject to the Act 250 road rule.

In the next couple of weeks, the House will need to sort out its priorities regarding housing and the protection of natural areas – hopefully in a manner that reasonably accommodates both. We will keep you apprised of any further developments.

Resources for this article:

- [VHFA Building Access to Homeownership](#)
- [VHFA Housing Stock Graphic](#)
- [VHFA Vermont Housing Needs Assessment: Housing Stock](#)
- [Department of Housing and Community Development State Designation Programs](#)
- [S.226 Summary Chart](#)
- [S.234 Summary Chart](#)

Pupil Weights

Diving into the Education Funding system and the discussion about how to correct the decades-long inequities in funding based on pupil weights is truly a mind-bending exercise. For the past 25 years, Vermont has neglected to adequately fund the education of students who live in poverty or in rural areas, or those who attend small schools or who are English language learners.

The historic inequities and recommendations for correcting them were delivered to the legislature in 2019 in the Pupil Weighting Factors Report. Since then, principal author and UVM Professor Tammy Kolbe has valiantly participated in both refining the recommendations and responding to legislative proposals from the Task Force on the Implementation of the Pupil Weighting Factors Report and the Senate Finance and House Ways and Means committees.

The way in which the legislature chooses to right those long-term wrongs will affect every school district in the state and, consequently, the property taxes that cities and towns must assess and collect to fill the two thirds of the education fund made up by property taxes. It will also determine whether education funding is equitable going forward.

On March 25, the Senate passed S.287, a bill would, put very simply, implement the recommended pupil weights over the course of five years and put into statute the methodology for determining those weights. Those new weights would be used by the secretary of education to determine the equalized pupil count for the next fiscal year. The equalized pupil count – which, when averaged with the equalized counts for the previous two years, is the basis for determining what an adopted school budget costs per equalized pupil – would be final by December 15 of each year. S.287 as passed by the Senate anticipates updating the weighting factors at least every five years. In addition to the weights accorded to English Language Learners in the new system, an additional amount of categorical aid would be awarded based on the number of English Language Learners in a school district.

The Senate-passed version of S.287 (as does the House proposed version), would suspend the statute that assesses a penalty for excess spending per pupil (a certain percentage above the statewide average per pupil spending) through FY28. The Senate-passed bill would establish an Education Fund Advisory

Committee to monitor the education financing system, conduct analyses, and recommend updates to the pupil weighting factors.

The House Ways and Means Committee is discussing a different approach. Their draft version of a rewritten S.287 would transition the education funding system from using pupil weighting factors to a new animal – cost adjustments – to “provide equitable tax capacity to local school districts to address various student needs and circumstances.” The transition to cost adjustments would take place over the course of three or four school years. This is a significant step away from directly implementing the pupil weights. It would instead put into statute the cost adjustment dollar amount paid as a grant for each category of pupil in a school district’s cost adjustment count. That means that every year, the legislature will need to determine average cost adjustment amounts and will have the capacity to amend those up or down, which is a risky job to leave directly at the legislature’s feet, as its commitment may wane in lean years. The result may be that districts will receive either too much or too little compensation, because no one is average. The House bill would also eliminate the Education Fund Advisory Committee.

It is not clear where, particularly in the House bill cost controls would be built in, another significant issue given that the Education Fund in FY23 is anticipated to be \$1.9 billion to educate 85,806 students.

And while there is a spreadsheet showing estimates of the impact of the cost factor adjustments in the House bill, there is unfortunately no comparable spreadsheet for the Senate proposal. Thus, school board members and local officials cannot actually compare the likely outcomes of each proposal.

The House Ways and Means Committee will be taking testimony next Tuesday and expects to finalize a proposal thereafter.

Resources for this article

- [Cost Adjustments Estimated Impacts, 3-Year Transition](#), April 8, 2022
- [Education Fund Outlook](#), March 2022
- [Senate Finance Version of S.287, Joint Fiscal Office Fiscal Note](#), March 8, 2022
- [Tammy Kolbe Testimony on Report of the Task Force on Pupil Weighting](#), Jan. 26, 2022
- [Vermont School Boards Association Testimony: Pupil Weights v. Cost Equity Grants](#), Feb. 2, 2022

Elsewhere in the State House

As we head toward the last few weeks of the session, readers may notice that on one hand the topics we discuss get a bit repetitive, while on the other hand bill numbers and legislative initiatives start flying around like the Golden Snitch in the Harry Potter universe – that is, they’re much sought after, elusive, and wily. It is also the season of thinking about taking hostages in the form of retaining possession of a bill until the other chamber releases a priority piece of legislation upon which it is working. As you read about several bills in which content has changed considerably, you would do well to wonder where the original topic might turn up next.

Criminally Threatening Behavior. On Wednesday, the House Judiciary Committee passed out [S.265](#), a bill that expands and amends what are considered criminally threatening acts and behavior to include threats to third persons. On Friday, the House passed the bill. Under current law, criminally threatening behavior is defined as when a person knowingly threatens another person and, as a result of the threat, places the other in reasonable apprehension of death or serious bodily injury by words or conduct. S.265 would amend the definition to include threats made to “a group of particular persons.” The bill would also prohibit threats that made a person or group reasonably fear they might be sexually assaulted.

S.265 also includes new criminal violations for threats made towards public servants, including municipal officials. A person found guilty of committing a criminally threatening act as newly defined above, at public places and spaces – such as schools, places of worship, polling places and federal, state, or municipal

buildings – could be imprisoned for up to two years or fined up to \$2,000, or both. Further, a person found guilty of committing such an act with the “intent to terrify, intimidate, or unlawfully influence the conduct of a candidate for public office, a public servant, an election official, or a public employee in any decision, opinion, recommendation, vote, or other exercise of discretion taken in capacity as a [public official], or with the intent to retaliate against a [public official],” could be imprisoned for up to two years or fined up to \$2,000, or both.

The bill will now head back to the Senate.

Boards and Commissions. **H.465** is this year's boards and commissions bill. Every year since 2018, when the Sunset Advisory Commission was created, the legislature has passed a bill that implements the commission's suggestions to revise, revamp, or eliminate state boards and commissions that exist throughout state government and are in statute. Although none of the boards and commissions in this year's bill concerns local government, the bill does include language that addresses the per diem compensations these board members receive.

Many local officials who serve on permanent or temporary state boards and commissions are entitled to receive per diem compensation for their time. The current \$50 per diem has not increased in many years, and it doesn't take into account the wide variety of work demands or the time commitments required to review materials and remain current on relevant issues. Due to the modest per diem, many people whose perspectives on a board or commission would be immensely valuable cannot afford to serve.

H.465 proposes that future governor-recommended budgets include a per diem compensation rate schedule for each board or commission. In the annual budget documentation, all agencies and departments that administer funds for board and commissions must provide a list of entities and the current and projected per diem rate and expense reimbursement for each entity. The governor may also authorize per diem compensation and expense reimbursement for boards and commissions by executive order.

The bill passed the House last month and the Senate Government Operations Committee took it up this week and will continue to review it.

Rental Housing. Early this week, the House General, Housing and Military Affairs Committee took testimony on S.210, the bill that would enact the Rental Housing Registry and transfer primary responsibility for rental housing inspections from the local health officer to the Department of Public Safety. The new version of the bill, which came over from the Senate, is designed to address the governor's concerns about S.79, a bill the governor vetoed last June. VLCT advocacy staff testified in support of moving primary responsibility for rental housing inspections to the Department of Public Safety. Fire Safety Division Director Michael Desrochers, testified that while he has been involved in and supportive of the move, the division is experiencing difficulty recruiting employees.

Charters. The legislature is busy again this week addressing municipal charters.

- **City of Barre.** In an interesting turn of events at the end of last week, the House Government Operations Committee did an about turn on a controversial provision of the Barre City charter bill in **H.444**. When the Senate returned the bill to them, the committee initially voted to include a provision concerning which flags could fly on municipal property that they had originally stripped out when they first voted out the charter last year. This year, the Senate put the language back in the bill before returning it to the House. Early last week, House Gov. Ops. voted to include the flag language, but suddenly the majority of the committee changed their minds and again removed the flag language. This week, the bill was up for consideration on the House floor – but on a motion by Government Operations Committee member and Barre City representative Peter Anthony, the bill was re-committed and sent back to House Gov. Ops.
- **Town of Springfield.** The same day that H.444 was sent back to committee, House Government Operations Committee Chair Sarah Copeland Hanzas also sent the Town of Springfield Charter bill,

[H.447](#), back to the committee. It is unclear what the committee's next actions will be on both of these charters.

- **City of Burlington, City of St. Albans, Town of Hardwick.** This week, the House Government Operations Committee reviewed several other charter amendment bills including [H.741](#), which would convert the St. Albans city clerk and city treasurer positions from elected to appointed offices. They voted out that charter favorably. The committee also discussed [H.743](#), a bill that makes various governance and clean-up language changes to the Town of Hardwick's charter. The committee did not take action on that bill.

The committee did not take any action on a new Burlington City charter amendment that addresses "**houses of ill fame**" but did vote out another city charter bill: [H.744](#) amends Burlington's charter to implement a ranked-choice voting system for city council races. The bill is currently on the House floor for a final vote today.

- **City of Burlington, Colchester Fire District No. 1.** The Senate Government Operations Committee reviewed two charter bills this week. [H.708](#), another City of Burlington charter, provides ordinance authority to the city to protect residential tenants from evictions without "just cause" as defined in the charter. The bill was passed out by the committee and subsequently approved by the Senate as a whole. The committee also took up [H.718](#), a charter bill that dissolves the Colchester Fire District No. 1 and transfers of property, assets, and liabilities to the Champlain Water District.

New Bills

Number	Summary	Current Location
H.744	Would approve an amendment to the charter of the City of Burlington to adopt ranked choice voting for City elections.	House Government Operations
H.745	Would approve the adoption of the charter of the Town of Montgomery that would organize the town government of the town, adopt all general law not contradicted by this charter, and initiate the use of a local options tax on a contingent basis.	House Government Operations
H.746	Would repeal the City-specific authority to regulate "houses of ill fame."	House Government Operations