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Subject: [VPA] VPA Legislative Update - grand finale - 10/15/20
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VPA Members,

The Legislature's extended session closed on September 25, and Governor Scott finished up his review of bills on October 12. Law making in 2020 has finally come to a close! Here's what happened on the three planning-related bills that made it to the Governor this fall. Following that, I've updated and revised information from my July 2, 2020 update on the outcome of other bills with a planning nexus – so that you've got it all in one message. The 2019-2020 biennium is over! Any bills that didn't make it across the finish line are dead. Resurrection is possible for some of them, but they will have to be re-introduced and start over in the next session.

For additional perspective, and information on a host of other bills related to municipalities, check out the legislative summaries done by the Vermont League of Cities and Towns (VLCT). They produced two summaries this session. One in July after the Legislature recessed for the summer - <https://www.vlct.org/news/2020-legislative-wrap>. One in on October 9 after the Legislature adjourned - <https://www.vlct.org/news/2020-supplemental-legislative-wrap>.

For more perspective on bills related to planning, check out the upcoming VT Department of Housing and Community Development (DHCD) legislative summary - <https://accd.vermont.gov/community-development/resources-rules/planning>. This one isn't ready yet, but will be posted in the coming weeks. DHCD staff are highly involved in the legislative action, and often report on bills with a planning connection that VPA didn't focus on. In other words, I highly recommend checking out their summary when it becomes available.

The Big Three:

H.926 – Act 250 Reform – Vetoed by the Governor on October 5

The House-passed version of this bill was a comprehensive reform package. The Senate stripped this down to a tiny nub that only dealt with a temporary solution for trails jurisdiction and a new review criteria to minimize forest fragmentation. The House agreed to the Senate's stripped down version, but the Governor did not. Looks like Act 250 reform will get a "do over" in the 2021 session. All legislative leaders say this will be a priority, but we won't really know about that until after the Legislature convenes in January. Unclear if the comprehensive version of H.926 will be resurrected, or if there will be a fresh start.

S.237 (Act 179) – Housing Bill – Signed by the Governor on October 12

As passed by the Senate, this bill had some very problematic provisions, including dictates on minimum lot sizes for areas served by municipal water and sewer. These provisions were stripped out of the bill in the House. The Senate agreed to the House version, as did the Governor. The new law (Act 179) took effect when the Governor signed it on October 12. Here's what the law stipulates:

- Accessory dwelling unit allowances expanded. Required provisions for municipal bylaws:
 - Size expansion – must allow ADUs of at least 30% the size of the single-family dwelling or 900 square feet, whichever is greater.
 - Review options – must use same review that applies to single-family dwellings – i.e., no

review options – must use same review that applies to single-family dwellings – i.e., no more conditional use review in districts where single-family dwellings are a permitted use.

- Short-term rental differentiation – can regulate short-term rentals distinctly from longer-term residential rentals.
- Existing small lot development expanded. Currently, municipalities can prohibit development on extremely small, existing lots that are less than one-eighth acre or have a lot width or depth dimension less than 40 feet. The bill modifies this provision so that it does not apply to small lots that are served by and able to connect to municipal sewer and water service.
- Conditional use character of the area standard limited for multiunit dwellings of four or less units. Such multiunit dwellings may reviewed as a conditional use, but may not be denied solely due to an undue adverse effect on the character of the area.
- Municipalities granted authority to regulate short-term rentals by means of an ordinance or bylaw. Definition of short-term rental includes, “... rented to the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for more than 14 days per calendar year.”
- Invalidates deed restrictions, covenants, or similar HOA-style restrictions created after January 1, 2021 that prohibit land development allowed under a municipality’s bylaws. In other words, for new developments, no more restrictions on accessory apartments, home occupations, and other types of land development that a municipality’s zoning bylaws allow. Such restrictions in existing developments will remain unaffected.
- Loan restructuring, forgiveness, and assistance from the Department of Environmental Conservation for the Town of Brattleboro and the Tri-Park Cooperative mobile home park. Also, authorizes the State Treasurer to provide financing for mobile home park infrastructure projects.

Municipal planners and regulators should take notice of the first three items – e.g., accessory dwelling units, existing small lot development, conditional use review for multiunit dwellings. These new State provisions take precedence over any contradictory provisions in municipal zoning bylaws. As of October 12 – i.e., no phase in period. Undoubtedly, this will impact allowances for accessory dwelling units (aka accessory apartments) in many municipalities. Next time you update your zoning, you’ll want to make sure it complies with these statutory provisions. Until then, you’ll need to go by the State statutory provisions.

S.54 (Act 164) – Cannabis Tax & Regulate – Became law on October 7 without the Governor’s signature

Medical use of cannabis (aka marijuana) was legalized in Vermont in 2004. Possession of one ounce or less was decriminalized in 2013. Recreational use of cannabis was legalized in Vermont in 2018. The circle is now complete with the legalization of production, testing, distribution, and retail sales. The Senate passed the bill in the 2019 session, and the House early in the 2020 session. Ultimately, the House/Senate conference committee was able to hammer out a compromise that both chambers approved. The Governor saw the writing on the wall, and allowed the bill to become law on October 7 without his signature. The law does not become fully effective until 2022. The new tax and regulate system is still very much a work in progress,

with responsibility for some details left to the new Cannabis Control Board, which will be formed in 2021. Some interesting facets (especially for municipal planners):

- Retail sales will only be allowed in communities that vote to opt-in. No deadline for that, but even so, prepare for some interesting community conversations, petitions, and votes in 2021 and early 2022!
- Cultivation, testing, warehousing, and distribution are NOT subject to any municipal opt-in – i.e., they can happen whether you like it or not.
- Municipalities cannot issue blanket prohibitions of cannabis establishments via ordinance or zoning. However, the bill empowers communities to create local cannabis control commissions, and for such commissions to condition issuance of a local license on any zoning bylaw adopted pursuant to 24 V.S.A, section 4414.
- My reading is that municipalities can make cannabis establishments subject to conditional use review/approval, and perhaps even craft new conditional use review standards pursuant to 24 VSA, section 4414(3)(B)(v). Essentially, municipalities can use all of the tools in section 4414 – e.g., zoning districts, conditional use review, performance standards, perhaps even overlay districts.
- Cannabis shall not be regulated as “farming”, and cultivated cannabis shall not be considered an agricultural product or agricultural crop under relevant State laws. It appears that municipalities will have the power to regulate cannabis cultivation through zoning, unlike traditional agricultural practices and agricultural structures.

Other legislation:

H.681 (Act 92) – Covid-19 Flexibility Government Operations – Signed by the Governor 3/30/20
A variety of accommodations for government operations during the covid-19 state of emergency – elections, open meetings protocol, and water/wastewater system disconnection moratorium.

- Open meeting law accommodations during the state of emergency:
 - Allows boards to meet electronically in lieu of a meeting at a physical location.
 - Requires that information be posted on how to access electronic meetings, with the same access information included in the meeting agenda.
 - Requires that such electronic meetings be recorded, unless unusual circumstances make it impossible.
 - Allows for meeting minutes to be posted in 10 days instead of the usual 5 days – in the event of staffing shortages.
- Extension of deadlines:
 - State licenses, permits, programs, plans issued to municipalities and RPCs – extended by 90 days after the end of the state of emergency.
 - Municipal licenses, permits, programs, plans – shall remain valid for 90 days after the end of the state of emergency.
 - Municipalities also given the authority to extend or waive deadlines.

S.345 (Act 113) – Covid-19 Municipal Provisions – Signed by the Governor 6/15/20

More accommodations for municipalities during the covid-19 state of emergency – i.e., open meeting posting, borrowing funds.

- Allows municipalities to post meeting agendas and notices in two designated electronic locations in lieu of the normal requirement for posting in two designated physical locations.
- Requires that agendas and notices be posted in/near the municipal clerk's office, and that a copy of each agenda or notice be provided to the newspapers of general circulation for the municipality. **Not sure they understood that last provision that requires agendas and notices be forwarded to newspapers, since that is rather onerous.

H.948 (Act 106) – Covid-19 Municipal Meetings – Signed by the Governor 6/15/20

Additional accommodations for municipalities during the covid-19 state of emergency.

- Allows quasi-judicial proceedings to be conducted via electronic means without designating a physical location.
- Allows Boards of Civil Authority to forgo physical inspection of properties that are the subject of an appeal (e.g., property valuation/assessment).

H.966 (Act 137) – Covid-19 Funding & Economic Relief – Signed by the Governor 7/2/20

One of the big covid-19 relief bills to spend a portion of the over \$1.25 Billion the State received as part of the federal CARES act. For details and funding amounts, see the summary of the bill by section. Provides funding for:

- Direct grants to businesses and individuals
- Local government grants – for covid-19 reimbursable expenses (municipalities, RPCs, solid waste districts)
- Digitizing municipal land records
- Housing assistance:
 - Legal and counseling services for those at risk of homelessness, and for landlord / tenant assistance
 - VHCB for new housing facilities
 - VHFA for foreclosure protection to low- and moderate-income homeowners
 - VT State Housing Authority for rental assistance and eviction protection
 - DHCD for a re-housing recovery program to renovate properties that are vacant, blighted, or in violation of housing laws for persons with COVID-related needs
 - Various programs for homelessness assistance (rental subsidies, motel vouchers, housing navigation / case management, direct financial assistance, and incentives for landlords)
- Broadband expansion and emergency services

S.301 (Act 125) – Telecom PUC Review Authority – Signed by the Governor 7/1/20

Extends the authority of the Public Utility Commission to review telecom facilities until July 1, 2023. This authority was supposed to sunset and revert back to municipalities several times. Another in a long list of extensions to this sunset provision.

H.656 (Act 129) – Miscellaneous Agricultural Subjects (definition of “local”) – Signed by the Governor 7/1/20

Only one small section with a planning nexus – sort of... agricultural planning, or if you like to eat local. Section 17 (pages 18-22) provides definitions of “local”, “local to Vermont”, “locally grown or made in Vermont”, “raw agricultural product”, and more.

H.688 (Act 153) – Global Warming Solutions Act – Became law on 9/23/20 pursuant to an override of the Governor’s veto

The much talked about law to require reductions in Vermont’s greenhouse gas emissions. Essentially putting some teeth into implementation of the State’s Comprehensive Energy Plan goals. The law creates a Vermont Climate Council, and requires the council to adopt a Climate Action Plan by 12/1/2021 (to be updated every four years) that will set forth specific programs and strategies. It requires that the Vermont Agency of Natural Resources adopt rules by 12/1/2022 to implement the plan. Allows any person to take the State to court if the ANR rules aren’t adopted or if the rules are insufficient to meet the required emission reductions in the plan.

H.611 (Act 156) – Older Vermonters Act – Signed by the Governor 10/5/20

I found this new law interesting, even though it isn’t directly related to the types of planning most VPA members are engaged in. It includes principles for a comprehensive and coordinated system of services and supports for older Vermonters and addresses the role and duties of the Department of Disabilities, Aging, and Independent Living (DAIL). It requires DAIL to adopt a State Plan on Aging at least once every four years.

H.967 (Act 161) – Family Child Care Homes – Signed by the Governor 10/5/20

A minor and temporary revision to allowances for the number of children at family child care homes. Until September 2021, such homes will be allowed to expand service for part-time, school-age children from four hours per day to full day.

H.673 (Act 171) – Tree Wardens – Signed by the Governor 10/8/20

A bunch of positive changes to clarify the powers and responsibilities of Municipal Tree Wardens.

S.220 (Act 178) – Professional Regulation & State Energy Goal Education – Signed by the Governor 10/12/20

A variety of changes to the regulation of various professionals. For our purposes, the interesting part is in sections 33-37 of the new law, which requires certain that certain professionals obtain continuing education (two hours) on the State’s energy goals. Specified professions include: architects, landscape architects, pollution abatement facility operators, potable water supply and wastewater system designers, professional engineers, property inspectors, real estate appraisers, real estate brokers and salespersons, gas appliance installers, oil burning equipment installers, limited oil burning equipment installers, boiler inspectors, electricians, and plumbers.

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