



Catherine Dimitruk, NRPC  
**Chair**  
David Snedeker, NVDA  
**Vice-Chair**  
Charlie Baker, CCRPC  
**Secretary/Treasurer**

April 19, 2023

Representative Amy Sheldon, Chair  
House Committee on Environment and Energy  
Vermont State House  
115 State Street  
Montpelier, VT 05633

RE: S.100 Testimony

Dear Chair Sheldon and members of the Committee,

On behalf of the Vermont Association of Planning and Development Agencies (the state association for Vermont's regional planning commissions), thank you for your work to address Vermont's housing crisis and protect Vermont's environment. We also appreciate the opportunities you have provided for us to provide testimony on S.100.

VAPDA strongly supports the intended purpose of S.100 to ease barriers to housing production. This is a smart growth bill that will support the implementation of regional and municipal plans. Here are our comments and suggestions on S.100 in priority order based on the version from April 14:

High Priority Changes:

1. Water/wastewater Permit Duplication – VAPDA finds that **adding Section 15 of H.68** is of utmost importance. This section would eliminate Agency of Natural Resources duplicative permitting of connections to wastewater and water supply. Municipalities, which own, operate, maintain, and whose users pay for those infrastructure investments, permit connections to those systems today. The current duplicative system adds no value and costs developers both dollars and time. (Sec.24, 10 V.S.A. § 1974; Sec. 25, 10 V.S.A. 1983)
2. Housing Data Collection - Vermont has inadequate information about the number of housing units built each year. Adding a requirement that the Grand List of each municipality include a numeric field with the number of dwelling units per parcel will allow municipalities, regional planning commissions, and the State to better understand the existing housing stock and the impact of our regulatory changes over time. Therefore, we suggest the following change:

32 V.S.A. § 4152

*Strengthening the Capability of Governments*

www.vapda.org ~ tel. (802) 524-5958 ~ 75 Fairfield Street ~ St. Albans, VT 05478

(3) A brief description of each parcel of taxable real estate in the town. "Parcel" means all contiguous land in the same ownership, together with all improvements thereon, including the number of residential units in a field that can be tabulated.

We suggest DHCD use the grand list data to report back to the Legislature on an annual basis the number and location of new housing units. The data and regular reporting are fundamental to understanding what is happening and adjusting policy in the future to achieve State goals.

3. Australian Ballot Elimination - We strongly recommend adding a section to eliminate adoption by Australian ballot for municipal plans and bylaws. Adopting municipal plans and bylaws are fundamentally a legislative task that should be carried out by the legislative body of each municipality. This will give rural municipalities the same flexibility as urban (over 5,000 population) municipalities. As with the legislation you develop, there is too much detail and nuance to subject these decisions to Australian ballot votes. Failure to include this provision is very likely to undermine many of the other sections requiring updated zoning, etc.

24 V.S.A. 4385

*(c) A plan of a municipality or an amendment thereof shall be adopted by a majority of the members of its legislative body at a meeting which is held after the final public hearing. ~~If, however, at a regular or special meeting of the voters duly warned and held as provided in 17 V.S.A. chapter 55, a municipality elects to adopt or amend municipal plans by Australian ballot, that procedure shall then apply unless rescinded by the voters at a regular or special meeting similarly warned and held. If the proposed plan or amendment is not adopted so as to take effect within one year after the date of the final hearing of the planning commission, it shall be considered rejected by the municipality.~~ Plans and amendments shall be effective upon adoption. Copies of newly adopted plans and amendments shall be provided to the regional planning commission and to the Commissioner of Housing and Community Development within 30 days after adoption, which may be done electronically, provided the sender has proof of receipt. If a municipality wishes its plan or plan amendment to be eligible for approval under the provisions of section 4350 of this title, it shall request approval. The request for approval may be before or after adoption of the plan by the municipality, at the option of the municipality.*

24 V.S.A. 4442

(c) Routine adoption.

~~*(2) However, a rural town as defined in section 4303 of this chapter, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.*~~

### *Strengthening the Capability of Governments*

~~(d) Petition for popular vote. Notwithstanding subdivision (c)(1) of this section, a vote by the legislative body on a bylaw, amendment, or repeal shall not take effect if five ten percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw, amendment, or repeal, and the petition is filed within 20 days of the vote. In that case, a meeting of the municipality shall be duly warned for the purpose of acting by Australian ballot upon the bylaw, amendment, or repeal.~~

4. H.5 Study - We request that the substance of H.5, An act relating to a study on strengthening regional plans and their implementation, or similar language, **be added to S.100**. It is critically important that regional plan future land use plans and policies become more consistent to better support smart growth development, municipal planning and zoning, and the implementation and improvement of Act 250.
5. Section 2 – Required Provisions and Prohibited Effects. Based upon our understanding that paragraph (D) is intended to enable duplexes by right in any single family zoning district and allow up to a four-unit multifamily dwelling by right in any sewer and water service area, we propose the following clarifying language:
  - In any district that allows year-round residential development, duplexes shall be ~~an allowed use~~ **a permitted use and shall be subject to** with the same dimensional standards as a single-unit dwelling. **Municipalities shall not adopt a maximum residential density standard that prevents a duplex from being permitted on a legally existing lot.**
  - In any district that is served by municipal sewer and water infrastructure that allows residential development, multiunit dwellings with four or fewer units shall be ~~an allowed~~ **a permitted** use.
6. Section 16 – Act 250. VAPDA generally supports this provision of the bill and suggests the following two additions to better include rural town village centers and align with Act 250:
  - Paragraph (xi) on page 20 lifts the jurisdictional threshold of Act 250 until July 1, 2026 to 25 units in designated downtowns, neighborhoods, and growth centers. We suggest the following edit to include more rural towns:
  - located entirely within a designated downtown development district, a designated neighborhood development area, **a designated village center plus a ¼ mile buffer**, or a designated growth center,
  - We suggest adding a definition of “housing unit” in 10 V.S.A. 6001 and within this definition make it clear that a duplex is to be treated as one housing unit. This will align Act 250 with the duplex-by-right provisions in Section 2 of the bill and allow for “gentle density” housing infill in much of the state.

7. Section 17 - Designation of Village Centers by State Board. We generally support this

*Strengthening the Capability of Governments*

enhanced designation for priority housing projects in villages. However, the village center designation was designed for predominantly non-residential uses. We suggest the following revision:

- This enhanced designation allows a priority housing project with 50 or fewer units located entirely within a ¼ mile of the village center designation to be exempt from 10 V.S.A. chapter 151.

8. Section 17b – Neighborhood Planning Areas; Designation of Neighborhood Development Areas. We recommend deleting the new language in this section. It is reversing a positive change made last year and will make it more difficult for towns to obtain NDA designations.

- ~~(6) The neighborhood development area is served by at least one of the following:~~  
~~(A) municipal sewer infrastructure;~~  
~~(B) a community or alternative wastewater system approved by the Agency of Natural Resources; or~~  
~~(C) a public community water system.~~

Medium Priority Edits and Clarifications:

9. Section 1 - Parking - We support efforts that prevent municipalities from requiring more parking than is needed, understanding that the property owner/developer can provide more if desired. This is considered a best practice in professional planning. We do suggest a minor clarification to lines 19-20:
  - Municipalities may round up to the nearest whole parking space when calculating the total number of spaces for multiple unit developments.

10. Section 9 – Appeals. We would suggest that the new town centers and village centers be added to the list of designated areas where an appropriate municipal panel cannot find that a residential development will have an undue adverse effect on the character of the area affected:

- Notwithstanding subsection (a) of this section, a determination by an appropriate municipal panel that a residential development will not result in an undue adverse effect on the character of the area affected shall not be subject to appeal if the ~~determination is that~~ a proposed residential development seeking conditional use approval under subdivision 4414(3) of this title is within a designated downtown development district, designated growth center, designated new town center, designated village center, designated Vermont neighborhood, or designated neighborhood development area seeking conditional use approval will not result in an undue adverse effect on the character of the area affected under subdivision 4414(3) of this title.

11. Section 15 – Housing Navigators. DELETED. This section previously had \$300,000 for

*Strengthening the Capability of Governments*

regional planning commissions to provide services as housing navigators which we still support.

#### Comments in Support or Clarifying Edits

12. Section 11 and Section 12 – Elements of a Regional Plan and The Plan for a Municipality.

We support these sections. It will be very helpful to regional planning commissions to have a clear numeric goal or target developed as part of the Statewide Housing Needs Assessment conducted by the Department of Housing and Community Development every five years. Quantifying housing needs and providing targets to regions will assist the RPCs with planning for new housing, allocating resources and measuring impact. It will also allow statewide consistency in our Regional Plans. We have been getting requests for targets or a needs analysis from municipalities as they try to address housing needs. RPCs will work with our member municipalities to break out the targets/goals for municipalities to use in developing their municipal plans. This will help municipalities plan for housing growth. We used a similar process working with the Department of Public Service on enhanced regional and municipal energy plans. There was an incentive in the energy planning in that municipalities and RPCs received greater weight in the PUC permitting process when the energy plans were approved by the Commissioner of the Department of Public Service.

13. Section 17c – Report; Natural Resources Board. We suggest a slight modification to paragraph (7) to also include an examination of the five years and five-mile limitations. Suggested language is below:

- Whether increasing jurisdictional thresholds for housing development to 25 units and removing the 5 years and 5 miles limitation under 10 V.S.A. § 6001(3)(A)(iv) would affect housing affordability, especially for primary homeownership, and what the potential impact of increasing those thresholds to 25 units these changes would have on natural and community resources addressed under existing Act 250 criteria.

14. Section 19 – Enhanced Designation Process. More consideration should be given to the enhanced designation process. Perhaps this should be called delegation rather than designation. In addition, it should apply to the entire municipality rather than just the center. Specifically, municipalities should be allowed to provide functional equivalent regulations for some standards instead of exactly replicating the Act 250 standards within their local rules. The Committee may also want to consider if some criteria are better addressed under existing state permits (e.g. stormwater, wastewater, etc.) than via rules adopted by the municipality.

15. Section 25 – Energy Code Compliance; Study Committee. We support this initiative and appreciate having a seat on the committee.

Finally, we would like to express strong support for addressing Act 250-related amendments in 2024. Without commensurate changes at the State level, the municipally focused changes of S.100 will not produce as much housing in smart growth locations as it should. Anything that furthers the commitment to develop Act 250 changes would be welcome.

Please let us know if we can be of further assistance to the Committee. Thank you for your consideration.

Best regards,



Charlie Baker  
Vermont Association of Planning and Development Agencies  
Government Relations Chair