MEMORANDUM

TO: **Representative Donna Sweaney, Chair, House Government Operations**
FROM: **Patricia Moulton, Secretary, Agency of Commerce and Community Development**
DATE: **January 29, 2016**
SUBJECT: **Council of Governments proposed legislation, H.249 version 2.1**

The Agency of Commerce and Community Development is concerned that H.249 as it currently stands (version 2.1, dated 1/14/2016) does not contain sufficient protections for the local and regional planning functions that Vermont's municipalities need. As a state, we continue to ask our communities to do more and more planning, to address issues including economic development, flood resilience, energy planning, and more. These are important efforts, and we are just beginning to reap the benefits of some of the newer requirements. While many communities have made good progress on these and other local issues, state funding to support these efforts has remained largely flat. In fact, this year nearly 40% of Municipal Planning Grant applications went unfunded. For this reason, we want to make sure that a switch from regional planning commissions to regional councils of government does not undermine the funding and other support for these planning efforts.

To that end, we would like to propose a few modifications to H.249 to ensure that funding for planning is not diverted to other Council of Government functions, that there is adequate local support to justify changing from an RPC to a COG, and that there is sufficient statutory guidance regarding how the new COGs will operate.

Regarding funding, in ACCD's view it is critical that the statute clearly state that regional planning funds be spent only for regional planning. We recommend a modification to §4950(c) to ensure clarity on that point.

Last week I commented that ACCD had many questions about the how the COGs will be organized and how they will function. In that regard, we still question whether the proposed legislation is sufficiently developed to ensure that the COGs will be able to function as intended.

Vermont's existing structure for intermunicipal cooperation, in Title 24 Chapters 121 and 122, provides far more structure for establishing, operating, and disbanding union districts and intermunicipal contracts than the current proposal does. We know that there are concerns that Chapter 121's requirements are unwieldy, but it does not seem smart to swing too far in the other direction and create new political subdivisions without digging into the details of how they will work.

For example, we support the requirement that at least 50% of a council's appointed representatives shall be elected municipal officials from the member municipalities. However, there is no guidance on how to ensure that this is achieved. What happens if an RPC board and member communities vote to establish a COG, but then they can't agree on which municipalities may send appointees and which will send elected officials?

We also think it's essential that the legislation address the procedure for allowing a municipality to move from one COG to another. I've attached a copy of ACCD's existing policy on changes to RPC

boundaries for reference on how this has worked in the past. In our view, the same policy should apply to COGs.

We are also concerned that the proposed legislation lacks specific guidance about what powers COGs will have. The broad grant in section 4949(b)(2) of "any power, privilege, or authority capable of exercise by a member municipality" is too broad. At a minimum, the draft should be clarified to say that the grant of powers does not include the powers explicitly prohibited in section 4949(d) (essential legislative functions, taxing, and eminent domain). Additionally, before enacting this legislation, it would be wise to consider all of the powers that a municipality has, and whether it is appropriate to authorize COGs to exercise those powers or not.

Other questions that in our view remain unanswered:

- How are COGS dissolved if they do not work? Can they revert to the RPC structure? What are the steps?
- Under current law a municipality may move from one RPC to another on terms and conditions approved by ACCD. Can that happen with a COG? What would the procedure be?
- How will COGs interface and support the state's regional economic development programs?
- How can the state be assured its contracts to support regional planning, regional transportation, water quality, emergency management, renewable energy, and community planning efforts will not be used for COG purposes?
- How will COG projects and funding be separated from state contracts?
- Who pays for the COG's overhead and operational costs – management, indirect costs, insurance, etc.?
- How will COG finances be reported? Will COG contract work be audited separately?
- Who is responsible when things go wrong – the COG, contracting towns, both?
- How do COGs limit liability from towns not participating in joint contracting ventures?

Proposed Modifications to H.249, Draft 2.1:

1. In § 4948(a), delete the requirement of a vote by the Board of commissioners of the RPC.
2. Add a provision that addresses how a municipality can move from a COG to a neighboring COG or RPC. This should track 24 V.S.A. sec. 4341(c), which provides that a municipality may move from one RPC to another on term and conditions approved by ACCD. ACCD's policy is attached for reference.
3. In § 4948(b), provide further guidance on the process for entering into, withdrawing from, and terminating service agreements with member municipalities.
4. In § 4948(c), specify how the council will determine which municipalities may designate appointees rather than municipal officials to serve as their appointed representatives on the council, while ensuring that the 50% minimum of elected municipal officials is met.
5. In § 4949(b)(2), enumerate the powers that a COG may exercise, and specify that the powers and privileges do not include the powers set forth in § 4949(d).

6. In § 4949(c)(1), replace the phrase “In exercising its authority” with the phrase “If a regional council of governments chooses to exercise its authority” and change the “shall” in the first sentence to a “may.”
7. Shift the current § 4949(d) so that it immediately follows the current § 4949(b), so that the list of powers is all found in one place.
8. Eliminate § 4950(c)(1) and renumber (c)(2) simply as (c), and modify it to read as follows: “A council shall not use regional planning funds provided under section 4341a of this title, or municipal funds or grants provided for regional planning services under chapter 117 of this title to cover the costs of any function other than those described in section 4949(a) of this title.”