

1 H.487

2 Introduced by Representatives Fagan of Rutland City, Burditt of West

3 Rutland, Harrison of Chittenden, Jerome of Brandon, Norris of

4 Shoreham, Notte of Rutland City, Potter of Clarendon, Sullivan

5 of Dorset, and Terenzini of Rutland Town

6 Referred to Committee on

7 Date:

8 Subject: Conservation and development; State land use; Act 250

9 Statement of purpose of bill as introduced: This bill proposes to require the
10 District Environmental Commissions under 10 V.S.A. chapter 151 (Act 250) to
11 issue a decision on an application within 20 days following the close of a
12 hearing, to allow them to grant land use permits on condition that other State
13 approvals are received, and to direct that certain State and municipal permits
14 and approvals constitute conclusive evidence on specified Act 250 criteria.

15 An act relating to changes to Act 250

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. 10 V.S.A. § 6085 is amended to read:

18 § 6085. HEARINGS; PARTY STATUS

19 * * *

1 (f) A hearing shall ~~not~~ be deemed closed ~~until a~~ after the Commission
2 provides an opportunity to all parties to respond to the last permit or evidence
3 submitted. Once a hearing has been closed, a Commission shall ~~conclude~~
4 ~~deliberations as soon as is reasonably practicable. A decision of a Commission~~
5 ~~shall be issued within 20 days of the completion of deliberations~~ issue a
6 decision within 20 days. Failure of the Commission to issue a decision within
7 this period shall be deemed approval.

8 Sec. 2. 10 V.S.A. § 6086 is amended to read:

9 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

10 (a) Criteria. Before granting a permit, the District Commission shall find
11 that the subdivision or development:

12 * * *

13 (b) Partial findings. At the request of an applicant, or upon its own motion,
14 the District Commission shall consider whether to review any criterion or
15 group of criteria of subsection (a) of this section before proceeding to or
16 continuing to review other criteria. This request or motion may be made at any
17 time prior to or during the proceedings. The District Commission, in its sole
18 discretion, shall, within 20 days ~~of the completion of deliberations~~ after closing
19 its hearing on the criteria that are the subject of the request or motion, either
20 issue its findings and decision thereon, or proceed to a consideration of the
21 remaining criteria.

1 (c) Requirements and conditions. A permit may contain such requirements
2 and conditions as are allowable proper exercise of the police power and which
3 are appropriate ~~within the~~ with respect to subdivisions (a)(1) through (10) of
4 this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2),
5 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and
6 the filing of bonds to ~~insure~~ ensure compliance. The requirements and
7 conditions incorporated from Title 24 may be applied whether or not a local
8 plan has been adopted. General requirements and conditions may be
9 established by rule of the Natural Resources Board. The District Commission
10 shall not delay issuing a permit under this chapter on the grounds that the
11 development or subdivision has not received one or more other required State
12 permits or approvals; however, it may include a condition that construction
13 shall not commence until such other required permits or approvals are
14 received.

15 (d) Other State and municipal permits. In this subsection, “criterion”
16 means a subdivision of subsection (a) of this section under which the District
17 Commission must make a finding before granting a permit. For example,
18 “criterion (1)(B)” means subdivision (a)(1)(B) of this section regarding waste
19 disposal.

20 (1) Conclusive evidence. The issuance and submission of permits and
21 approvals identified in this subdivision shall constitute conclusive evidence

1 that the improvement, discharge, emission, or other activity described and
2 approved in the permit or approval is not detrimental to the public health and
3 welfare and complies with the specific criterion or criteria that are identified in
4 this subdivision.

5 (A) With respect to undue water pollution under criterion (1) and to
6 criterion (1)(B) (waste disposal), each one of the following:

7 (i) A wastewater system and potable water supply permit pursuant
8 to chapter 64 of this title and the rules adopted under that chapter.

9 (ii) A discharge permit or authorization of a discharge under a
10 general permit issued pursuant to chapter 47 of this title and the rules adopted
11 under that chapter for a wastewater treatment facility owned or controlled by
12 the applicant that will be used by the development or subdivision.

13 (iii) An approval issued by a pollution abatement facility that is
14 permitted under chapter 47 of this title and is in compliance with its permit,
15 authorizing the connection of the development or subdivision to the facility.

16 As used in this subdivision, “pollution abatement facility” has the same
17 meaning as set forth in section 1251 of this title.

18 (iv) A sewer line extension permit pursuant to chapter 47 of this
19 title and rules adopted under that chapter.

1 (v) An underground injection permit for the discharge of
2 nonsanitary waste into an injection well pursuant to chapter 47 of this title and
3 rules adopted under that chapter.

4 (vi) A solid waste or hazardous waste certification pursuant to
5 chapter 159 of this title and rules adopted under that chapter.

6 (vii) An underground storage tank permit pursuant to chapter 59
7 of this title and the rules adopted under that chapter, with regard solely to the
8 substance to be stored in the tank.

9 (B) With respect to whether dust and odor from a development or
10 subdivision will create undue air pollution under criterion (1) or have an undue
11 adverse effect on aesthetics under criterion (8): an air pollution control permit
12 pursuant to section 556 of this title and rules adopted under that section.

13 (C) With respect to criteria (2) (sufficient water available) and (3)
14 (existing water supply), each of the following:

15 (i) a wastewater system and potable water supply permit pursuant
16 to chapter 64 and rules adopted under that chapter;

17 (ii) an approval issued by a public water system pursuant to
18 chapter 56 of this title authorizing the connection of the development or
19 subdivision to the system;

20 (iii) a public water system construction permit pursuant to
21 chapters 48, 56, and 61 of this title and rules adopted under those chapters; and

1 (iv) a public water system operating permit issued by the Agency
2 of Natural Resources pursuant to chapters 48, 56, and 61 of this title and rules
3 adopted under those chapters.

4 (D) With respect to undue water and air pollution under criterion (1)
5 and criteria (2) (sufficient water available) and (3) (existing water supply): a
6 permit for the application of herbicides to maintain and clear rights-of-way
7 pursuant to 6 V.S.A. chapter 87 and rules adopted under that chapter.

8 (E) With respect to criterion (1)(G) (wetlands): a permit or
9 authorization under a general permit pursuant to chapter 37 of this title and
10 rules adopted under that chapter for activities in a significant wetland as
11 defined in chapter 37 or its associated buffer zone.

12 (F) With respect to whether a stormwater discharge during
13 construction will cause undue water pollution under criterion (1) or complies
14 with criteria (1)(B) (waste disposal) and (4) (soil erosion): an individual
15 construction stormwater discharge permit or authorization under a general
16 permit for stormwater discharges from construction sites issued pursuant to
17 chapter 47 of this title and rules adopted under that chapter.

18 (G) With respect to the impacts of a development or subdivision on a
19 State highway under criteria (5) (traffic) and (9)(K) (public investments): a
20 letter of intent issued by the Agency of Transportation confirming that the

1 Agency has reviewed the proposed development or subdivision and is prepared
2 to issue an access permit pursuant to 19 V.S.A. § 1111.

3 (H) With respect to the conformance of a development or subdivision
4 with the plan of the municipality under criterion 10 (local and regional plans):
5 a municipal land use permit as defined under 24 V.S.A. § 4303 issued by the
6 municipality for the development or subdivision.

7 (I) With respect to impacts to the municipality under criterion (6)
8 (educational services) or (7) (governmental services) and conformance with the
9 plan of the municipality under criterion (10) (local and regional plans): a
10 positive determination concerning the development or subdivision issued by a
11 development review board pursuant to 24 V.S.A. § 4420. Such a
12 determination shall constitute conclusive evidence only with respect to those
13 criteria described in this subdivision for which the review board has issued a
14 positive determination.

15 (2) Rebuttable presumptions. This subdivision applies to State and
16 municipal permits and approvals not set forth in subdivision (1) of this
17 subsection.

18 (A) The Natural Resources Board may by rule allow the acceptance
19 of a permit or permits or approval of any State agency with respect to
20 subdivisions ~~(a) criteria~~ (1) through (5) ~~of this section~~ or a permit or permits of
21 a specified municipal government with respect to ~~subdivisions (a) criteria~~ (1)

1 through (7) and (9) and (10) ~~of this section~~, or a combination of such permits
2 or approvals, in lieu of evidence by the applicant. ~~A District Commission, in~~
3 ~~accordance with rules adopted by the Board, shall accept determinations issued~~
4 ~~by a development review board under the provisions of 24 V.S.A. § 4420, with~~
5 ~~respect to local Act 250 review of municipal impacts.~~

6 (B) The acceptance under rules adopted pursuant to this subdivision
7 (2) of such an approval, positive determinations, permit, or permits shall create
8 a presumption that the application is not detrimental to the public health and
9 welfare with respect to the specific requirement for which it is accepted. In the
10 case of approvals and permits issued by the Agency of Natural Resources,
11 technical determinations of the Agency shall be accorded substantial deference
12 by the Commissions.

13 (C) A District Commission, in accordance with rules adopted by the
14 Board, shall accept negative determinations issued by a development review
15 board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250
16 review of municipal impacts. The acceptance of ~~negative such~~ determinations
17 ~~issued by a development review board under the provisions of 24 V.S.A. §~~
18 ~~4420, with respect to local Act 250 review of municipal impacts~~ shall create a
19 presumption that the application is detrimental to the public health and welfare
20 with respect to the specific requirement for which it is accepted. Any such
21 ~~determinations, positive or negative, under the provisions of 24 V.S.A. § 4420~~

1 shall create presumptions only to the extent that the impacts under the criteria
2 are limited to the municipality issuing the decision.

3 (D) Such a rule issued under this subdivision (2) may be revoked
4 or amended pursuant to the procedures set forth in ~~3 V.S.A., chapter 25~~, the
5 Vermont Administrative Procedure Act. The rules adopted by the Board shall
6 not approve the acceptance of a permit or approval of such an agency or a
7 permit of a municipal government unless it satisfies the appropriate
8 requirements of subsection (a) of this section.

9 (e) Temporary improvements; film and television. This subsection shall
10 apply with respect to a development that consists of the construction of
11 temporary physical improvements for the purpose of producing films,
12 television programs, or advertisements. These improvements shall be
13 considered “temporary improvements” if they remain in place for less than one
14 year, unless otherwise extended by the permit or a permit amendment, and will
15 not cause a long-term adverse impact under any of the 10 criteria after
16 completion of the project. In situations where this subsection applies,
17 jurisdiction under this chapter shall not continue after the improvements are no
18 longer in place and the conditions in the permit have been met, provided there
19 is not a long-term adverse impact under any of the 10 criteria after completion
20 of the project; except, however, if jurisdiction is otherwise established under
21 this chapter, this subsection shall not remove jurisdiction. This termination of

1 jurisdiction in these situations does not represent legislative intent with respect
2 to continuing jurisdiction over other types of development not specified in this
3 subsection.

4 (f) Stay of construction. Prior to any appeal of a permit issued by a District
5 Commission, any aggrieved party may file a request for a stay of construction
6 with the District Commission together with a declaration of intent to appeal the
7 permit. The stay request shall be automatically granted for seven days upon
8 receipt and notice to all parties and pending a ruling on the merits of the stay
9 request pursuant to Board rules. The automatic stay shall not extend beyond
10 the 30-day appeal period unless a valid appeal has been filed with the
11 Environmental Division. The automatic stay may be granted only once under
12 this subsection during the 30-day appeal period. Following appeal of the
13 District Commission decision, any stay request must be filed with the
14 Environmental Division pursuant to the provisions of chapter 220 of this title.
15 A District Commission shall not stay construction authorized by a permit
16 processed under the Board's minor application procedures.

17 Sec. 3. EFFECTIVE DATE; IMPLEMENTATION

18 This act shall take effect on July 1, 2019 and shall supersede any contrary
19 rules of the Natural Resources Board (Board). On or before September 15,
20 2019, the Board shall file proposed rule amendments with the Secretary of
21 State to conform its rules to this act.