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H.731

Introduced by Representatives Turner of Milton, Condon of Colchester and
Dickinson of St. Albans Town

Referred to Committee on

Date:

Subject: Land use; environment; natural resources; local bylaws; Act 250;
environmental court; permit process; appeals

Statement of purpose: This bill proposes measures to reform the various land use and environmental permit processes in Vermont. Among other things, the bill would impose requirements on state and local permitting authorities to determine whether applications are complete within 45 days from filing and to issue decisions on applications within 45 days of determining they are complete. Under the bill, a party may request a local land use panel or a district commission to review an application under a more formal, recorded process, in which case more review time would be allowed, and any appeal would be on the record. The bill would expand and strengthen presumptions from one permit process to another, including: local “Act 250 review” decisions would be conclusive before a district commission with respect to municipal impacts, including aesthetics within the municipality; state wetlands decisions would result in conclusive presumptions before local land use panels; federal and state agency permits would create presumptions in Act 250 that

1 could be rebutted only if the issuance of the permits was arbitrary or
2 capricious; and qualified professional engineers or other professionals could
3 offer certifications that create presumptions in Act 250, subject to liability for
4 wrongful certification. The bill would amend Act 250 jurisdiction over
5 subdivisions, including allowing a person to create nine lots within a
6 designated downtown or growth center without triggering Act 250, even if that
7 person has created other lots outside the designated center. The bill proposes
8 amendments to the environmental appeals process, including allocating the
9 burden of proof to the appellant and using existing positions to create hearing
10 officers within the environmental court to expedite appeals. The bill would
11 enable the agency of natural resources to create a consolidated application
12 process for projects that are subject to multiple agency permits. The bill also
13 proposes a working group and studies and analyses for further examination and
14 development of data on permit process reform, and to require the agency of
15 natural resources and the natural resources board to complete creation of an
16 online database of applications and permits.

17 An act relating to land use and environmental permit process

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

1 otherwise authorized, the appropriate municipal panel shall issue a
2 determination of whether the application is complete, and failure of the panel
3 to issue such a determination within this period shall be deemed approval and
4 effective on the 46th day. The hearing and notice requirements of subsections
5 4464(a) and (b) of this title shall not apply to the panel's determination and
6 decision on whether an application is complete. If the panel determines that an
7 application is incomplete, it shall list each specific item that is missing and
8 provide the applicant a reasonable time to amend its application. A decision
9 under this section on whether an application is complete shall be in writing and
10 shall be sent to the applicant by certified mail.

11 Sec. 3. 24 V.S.A. § 4464 is amended to read:

12 § 4464. HEARING AND NOTICE REQUIREMENTS; DECISIONS AND
13 CONDITIONS; REQUESTS FOR FORMAL REVIEW;
14 ADMINISTRATIVE REVIEW; ROLE OF ADVISORY
15 COMMISSIONS IN DEVELOPMENT REVIEW; CONCLUSIVE
16 WETLANDS PRESUMPTION

17 (a) Notice procedures. All development review applications before an
18 appropriate municipal panel under procedures set forth in this chapter shall
19 require notice as follows.

20 (1) A warned public hearing shall be required for conditional use
21 review, variances, administrative officer appeals, and final plat review for

1 subdivisions. Any public notice for a warned public hearing shall be given not
2 less than ~~45~~ 10 days prior to the date of the public hearing by all the following:

3 * * *

4 (b)(1) Decisions. The appropriate municipal panel may recess the
5 proceedings on any application pending submission of additional information.

6 The panel should close the evidence promptly after all parties have submitted
7 the requested information. ~~The Notwithstanding any such recess or pending~~
8 information request, the panel shall adjourn the hearing and issue a decision
9 within 45 days after the adjournment of the hearing a determination that the
10 application is complete under section 4463a of this title, and failure of the
11 panel to issue a decision within this period shall be deemed approval and shall
12 be effective on the 46th day. However, with respect to an application that is
13 subject to the formal review procedure of subsection (e) of this section or is
14 otherwise conducted on the record under this chapter, the panel shall issue a
15 decision within 180 days of a determination that the application is complete
16 under section 4463a of this title, and failure of the panel to issue a decision
17 within this period shall be deemed approval and effective on the 181st day.

18 Decisions shall be issued in writing and shall include a statement of the factual
19 bases on which the appropriate municipal panel has made its conclusions and a
20 statement of the conclusions. The minutes of the meeting may suffice,

1 provided the factual bases and conclusions relating to the review standards are
2 provided in conformance with this subsection.

3 * * *

4 (e) Formal review. A appropriate municipal panel shall conduct a
5 proceeding on a development review application pursuant to chapter 36 of this
6 title if the application is complete and the applicant or an interested person
7 presents to the panel during or before the first public hearing on the application
8 a written request for formal review and recorded hearings. If the request is
9 made by an interested person, the request shall include a demonstration that the
10 person meets the definition of interested person set out in subsection 4465(b)
11 of this title. An appropriate municipal panel may reject such a request only if
12 the application is substantially incomplete or if the requestor is not the
13 applicant and the panel determines that the requestor does not qualify as an
14 interested person. Each of the following shall apply to the review of an
15 application for which a request under this subsection has been made:

16 (1) If the request is made prior to the first public hearing on the
17 application, the appropriate municipal panel shall provide notice of the request
18 prior to that public hearing in accordance with the same notice procedures that
19 apply to the application under subsection (a) of this section except that, if the
20 request is received within 12 days prior to the hearing or prehearing

1 conference, the panel shall provide the maximum practicable days' notice of
2 the request.

3 (2) Provided that any extension complies with the provisions of
4 subdivision (b)(1) of this section, the panel shall extend the hearing schedule or
5 take other appropriate action as necessary to provide a fair and reasonable
6 opportunity for parties to prepare, present, and respond to evidence without
7 creating undue delay in the review of the application.

8 (3) The panel may require parties to submit prefiled testimony and
9 exhibits. If the panel requires submission of prefiled evidence, the applicant
10 and any interested persons supporting the application shall submit their
11 prefiled direct evidence first, and then other interested persons shall be given a
12 reasonable opportunity to submit their prefiled direct evidence. The panel may
13 then allow the submission or presentation of rebuttal testimony and exhibits in
14 the sequence and form that it reasonably determines to be appropriate.

15 (4) The panel shall record by video any hearing on the application that
16 follows the request. In the event that appeal is taken from the panel's act or
17 decision on such an application, the panel shall provide the environmental
18 court with the original recording of the hearing and a copy of the complete
19 written record and shall make and preserve a copy of the original recording for
20 the purpose of keeping a record.

1 (5) All incremental costs incurred by an appropriate municipal panel
2 with respect to a request under this subsection, including the cost of video
3 recording, shall be borne by the party that requested formal review and
4 recorded hearings. Such a panel may require such a requestor to post a bond,
5 payable to the applicable municipality, in the estimated amount of those costs.
6 For the purpose of this section, the term “incremental costs” means those costs
7 incurred by a panel beyond the costs it would incur if the application were
8 reviewed in the manner otherwise provided by this chapter.

9 (f) Conclusive wetlands presumption. With respect to a wetland that is
10 subject to the rules of the water resources panel pursuant to 10 V.S.A.
11 § 6025(d)(5) through (7), the issuance of a final decision on an application for
12 a permit, conditional use determination, or other approval under those rules
13 shall create a conclusive presumption concerning the wetland in any
14 proceeding before an appropriate municipal panel. If the final decision on the
15 application under those rules is affirmative, this presumption shall be that the
16 activity in the wetland or its buffer zone authorized in the permit, conditional
17 use determination, or other approval complies with any provisions related to
18 wetlands contained in the applicable bylaw, provided that all conditions of the
19 permit, conditional use determination, or other approval are met. If the final
20 decision on the application under those rules is negative, this presumption shall
21 be that the proposed activity in the wetland or its buffer zone does not comply

1 with any provisions related to wetlands contained in the applicable bylaw. For
2 purposes of this subsection, “final decision” means a decision for which the
3 appeals period has passed and no appeal was taken or on which appeal was
4 taken and the appeal or appeals have been conclusively determined.

5 Sec. 4. 24 V.S.A. § 4471 is amended to read:

6 § 4471. APPEAL TO ENVIRONMENTAL COURT

7 * * *

8 (b) Appeal on the ~~records~~ record.

9 (1) If the municipal legislative body has determined (or been instructed
10 by the voters) to provide that appeals of certain appropriate municipal panel
11 determinations shall be on the record, has defined what magnitude or nature of
12 development proposal shall be subject to the production of an adequate record
13 by the panel, and has provided that the municipal administrative procedure act
14 shall apply in these instances, then an appeal from such a decision of an
15 appropriate municipal panel shall be taken on the record in accordance with the
16 Vermont Rules of Civil Procedure.

17 (2) Notwithstanding subdivision (1) of this subsection, an appeal from a
18 decision of an appropriate municipal panel shall be taken on the record in
19 accordance with the Vermont Rules of Civil Procedure when the decision
20 results from a formal review under subsection 4464(e) of this title.

21 * * *

1 within the jurisdictional area of the same district commission, unless the lot is
2 within a designated downtown development district, village center, new town
3 center development district, growth center, or Vermont neighborhood under
4 section 2793, 2793a, 2793b, 2793c, or 2793d of Title 24, in which case the lot
5 shall only be counted in relation to other lots partitioned or divided by the
6 person within the same district, center, or neighborhood.

7 (B) The word “subdivision” shall not include a lot or lots created for
8 the purpose of conveyance to the state or to a qualified organization, as defined
9 under section 6301a of this title, if the land to be transferred includes and will
10 preserve a segment of the Long Trail.

11 (C) The word “subdivision” shall not include a lot or lots created for
12 the purpose of conveyance to the state or to a “qualified holder” of
13 “conservation rights and interest,” as those terms are defined in section 821 of
14 this title.

15 (D) The word “subdivision” shall not include a lot or lots created for
16 the purpose of conveyance to a person for whom a nonprofit organization will
17 construct or rehabilitate residential housing on the lot, if all of the following
18 apply:

19 (i) The organization qualifies under Section 501(c)(3) of the
20 Internal Revenue Code of 1986, as amended, provided that a principal purpose

1 of the organization is the construction and rehabilitation of housing and the
2 provision of such housing based on need.

3 (ii) The organization selected the person to whom the lot will be
4 conveyed on the basis of need.

5 (iii) The organization will provide the person with a no-interest,
6 no-profit loan for the housing to be constructed or rehabilitated on the lot, and
7 will use the mortgage payments on the loan to build or rehabilitate additional
8 housing for persons selected on the basis of need.

9 (E) "Subdivision" shall also mean a tract or tracts of land, owned or
10 controlled by a person, which the person has partitioned or divided for the
11 purpose of resale into six or more lots, within a continuous period of five
12 years, in a municipality which does not have duly adopted permanent zoning
13 and subdivision bylaws.

14 * * *

15 Sec. 6. 10 V.S.A. § 6083 is amended to read:

16 § 6083. APPLICATIONS

17 * * *

18 (d) The panels of the board and commissions shall make all practical
19 efforts to process matters before the board and permits in a prompt manner.
20 ~~The land use panel shall establish time limits for the processing of land use~~
21 ~~permits issued under section 6086 of this title as well as procedures and time~~

1 ~~periods within which to notify applicants whether an application is complete.~~
2 The land use panel shall report annually by February 15 to the house and
3 senate committees on natural resources and energy and on government
4 operations, and the house committee on fish, wildlife and water resources. The
5 annual report shall assess the performance of the board and commissions in
6 meeting ~~the~~ statutory time limits; identify areas which hinder effective
7 performance; list fees collected for each permit; summarize changes made to
8 improve performance; and describe staffing needs for the coming year. The
9 annual report shall list the number of enforcement actions taken by the land use
10 panel, the disposition of such cases, and the amount of penalties collected.

11 * * *

12 Sec. 7. 10 V.S.A. § 6084 is amended to read:

13 § 6084. NOTICE OF APPLICATION; HEARINGS, COMMENCEMENT OF
14 REVIEW

15 * * *

16 (b) A determination on whether the application is complete shall be made
17 within 45 days of receipt. Such a determination shall be issued in writing in
18 accordance with the rules of the land use panel. If the determination is that an
19 application is not complete, the determination shall list each specific item that
20 is missing and provide the applicant a reasonable time to amend its application.
21 Upon an application being ruled complete, the district commission shall

1 determine whether to process the application as a major application with a
2 required public hearing or process the application as a minor application with
3 the potential for a public hearing in accordance with board rules.

4 * * *

5 (d) ~~Any hearing or prehearing conference for a major application shall be~~
6 ~~held within 40 days of receipt of a complete application; or within 20 days of~~
7 ~~the end of the public comment period specified in the notice of minor~~
8 ~~application review if the district commission determines that it is appropriate to~~
9 ~~hold a hearing for a minor application.~~ A decision on any application under
10 this chapter shall be rendered within 45 days of a determination that the
11 application is complete, and failure of the district commission to issue a
12 decision within this period shall be deemed approval and shall be effective on
13 the 46th day. However, with respect to an application that is subject to the
14 formal review procedure of section 6085a of this title, the district commission
15 shall issue a decision within 180 days of a determination that the application is
16 complete, and failure of the district commission to issue a decision within this
17 period shall be deemed approval and shall be effective on the 181st day.

18 * * *

1 Sec. 8. 10 V.S.A. § 6085a is added to read:

2 § 6085a. FORMAL REVIEW AND RECORDED HEARINGS

3 (a) A district commission shall conduct a proceeding on an application for
4 development or subdivision in accordance with this section if the application is
5 complete and has been determined to be a major application under section
6 6084 of this title, and the applicant or a person qualifying for party status
7 presents to the district commission during or before the initial hearing or
8 prehearing conference on the application a written request for formal review
9 and recorded hearings. If the request is made by a person other than the
10 applicant, the request shall include a demonstration that the person qualifies for
11 party status under section 6085 of this title and the rules of the land use panel.
12 A district commission may reject such a request only if the application is
13 substantially incomplete or if the requestor is not the applicant and the district
14 commission determines that the requestor does not qualify for party status.

15 (b) Each of the following shall apply to the review of an application for
16 which a request under this subsection has been made:

17 (1) If the request is made prior to the initial hearing or prehearing
18 conference on the application, the district commission shall provide notice of
19 the request prior to such hearing or conference in accordance with the same
20 notice procedures that apply to the application under section 6084 of this title,
21 except that, if the request is received within 12 days prior to the hearing or

1 prehearing conference, the district commission shall provide the maximum
2 practicable days' notice of the request.

3 (2) Provided that any extension complies with the provisions of
4 subsection 6084(d) of this title, the district commission shall extend the
5 hearing schedule or take other appropriate action as necessary to provide a fair
6 and reasonable opportunity for parties to prepare, present, and respond to
7 evidence without creating undue delay in the review of the application.

8 (3) The district commission may require parties to submit prefiled
9 testimony and exhibits. If the district commission requires submission of
10 prefiled evidence, the applicant and any parties supporting the application shall
11 submit their prefiled direct evidence first, and then other parties shall be given
12 a reasonable opportunity to submit their prefiled direct evidence. The district
13 commission may then allow the submission or presentation of rebuttal
14 testimony and exhibits in the sequence and form that it reasonably determines
15 to be appropriate.

16 (4) Unless the parties agree otherwise, the district commission in a
17 prehearing order shall establish the type, sequence, and amount of discovery
18 available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting
19 the discovery permitted to that necessary for a full and fair determination of the
20 proceeding.

1 (c) During proceedings on an application under this section, the district
2 commission shall maintain the flexibility regarding the introduction of
3 evidence provided by 3 V.S.A. § 810 and the procedural flexibility and
4 informality that has been characteristic of district commission proceedings.

5 (d) On receipt of a request from the district commission for assistance with
6 regard to an application under this section, the board shall provide assistance to
7 the district commission as necessary.

8 (e) The district commission shall record by video any hearing on an
9 application that is heard under this section. In the event that appeal is taken
10 from a district commission act or decision on such an application, the district
11 commission shall provide the environmental court with the original recording
12 of the hearing and a copy of the complete written record and shall make and
13 preserve a copy of the original recording for the purpose of keeping a record.

14 (f) All incremental costs incurred by a district commission with respect to a
15 request under this section, including the cost of video recording, shall be borne
16 by the party that requested formal review and recorded hearings. A district
17 commission may require such a requestor to post a bond, payable to the
18 applicable municipality, in the estimated amount of those costs. For the
19 purpose of this section, the term “incremental costs” means those costs
20 incurred by a district commission beyond the costs it would incur if the
21 application were reviewed in the manner otherwise provided by this chapter.

1 technical determinations of the agency shall be accorded substantial deference
2 by the commissions. The acceptance of negative determinations issued by a
3 development review board under the provisions of 24 V.S.A. § 4420, with
4 respect to local Act 250 review of municipal impacts shall create a
5 presumption that the application is detrimental to the public health and welfare
6 with respect to the specific requirement for which it is accepted. Any
7 determinations, positive or negative, under the provisions of 24 V.S.A. § 4420
8 shall create conclusive presumptions; however, such presumptions shall apply
9 only to the extent that the impacts under the criteria are limited to the
10 municipality issuing the decision. Such a rule may be revoked or amended
11 pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont
12 Administrative Procedure Act. The rules adopted by the land use panel shall
13 not approve the acceptance of a permit or approval of such an agency or a
14 permit of a municipal government unless it satisfies the appropriate
15 requirements of subsection (a) of this section.

16 (2) The rules adopted by the land use panel under subdivision (d)(1) of
17 this section shall provide that a certification by a qualified professional
18 engineer, architect, or other qualified professional may be submitted by the
19 applicant in lieu of evidence under specified subdivisions of subsection (a) of
20 this section. Each of the following shall apply to such certifications:

1 procedural orders, and decisions on discovery disputes. Any decision by the
2 hearing officer that is dispositive of the matter and adverse to one or more
3 parties to the proceeding shall be issued as a proposal for decision that is
4 served upon the parties, and an opportunity shall be afforded to each party to
5 file exceptions and present briefs and oral argument to an environmental judge.
6 A decision by the hearing officer that is dispositive of the matter and is not
7 adverse to one or more parties to the proceeding also shall be issued as a
8 proposal for decision, but an opportunity for parties to file exceptions and
9 briefs and present oral argument shall not be required. A proposal for decision
10 under this section shall contain a statement of the reasons for and of each issue
11 of fact or law necessary to the proposed decision. Upon issuance by a hearing
12 officer of a proposal for decision, the matter promptly shall be returned to an
13 environmental judge for final decision.

14 Sec. 12. POSITION TRANSFERS

15 Effective July 1, 2011, one associate general counsel position at the natural
16 resources board other than the associate general counsel for enforcement is
17 transferred to the environmental court to be an environmental court hearing
18 officer. The position of case manager to the environmental court shall be used
19 for the other position of environmental court hearing officer. The
20 administrative judge may commence recruitment for these positions prior to
21 July 1, 2011 and shall appoint the hearing officers as soon as possible on or

1 after that date. Such hearing officers shall be exempt from the classified
2 service, with a salary to be the same as that of a judicial bureau hearing officer
3 under 32 V.S.A. § 1003.

4 Sec. 13. 10 V.S.A. § 8504 is amended to read:

5 § 8504. APPEALS TO THE ENVIRONMENTAL COURT

6 * * *

7 (d) Requirement that persons aggrieved ~~Act 250 parties~~ by decisions of the
8 secretary or district commission participate before the secretary or district
9 commission.

10 (1) No aggrieved person may appeal an act or decision that was made by
11 the secretary or a district commission unless, in the case of an appeal from the
12 secretary, the person participated in the proceedings before the secretary or, in
13 the case of an appeal from a district commission, was granted party status by
14 the district commission pursuant to subdivision 6085(c)(1)(E) of this title,
15 participated in the proceedings before the district commission, and retained
16 party status at the end of the district commission proceedings. In addition, the
17 person may only appeal those issues under the criteria with respect to which
18 the person was granted party status.

19 (2) Notwithstanding subdivision (d)(1) of this section, an aggrieved
20 person may appeal an act or decision of the secretary or district commission if
21 the environmental judge determines that:

1 shall affirm the decision, unless it finds that the commissioner did not have
2 reasonable grounds on which to base the decision;

3 (3) a decision of a district commission on an application that is subject
4 to formal review under section 6085a of this title, in which case the appeal
5 shall be on the record. The court shall remand to the district commission if the
6 district commission improperly excluded evidence, did not provide adequate
7 notice or opportunity to be heard, or otherwise failed to comply with the
8 requirements of 3 V.S.A. chapter 25 with respect to contested cases. The court
9 need not remand for harmless error. The court shall not set aside any findings
10 of fact by the district commission unless clearly erroneous.

11 * * *

12 (n) Intervention. Any person may intervene in a pending appeal if that
13 person participated in the proceeding from which appeal is taken and:

14 (1) appeared as a party in the action appealed from and retained party
15 status;

16 (2) is a party by right;

17 (3) is the natural resources board, or either panel of the board;

18 (4) is a person aggrieved, as defined in this chapter;

19 (5) qualifies as an “interested person,” as established in 24 V.S.A.

20 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

1 (g) The secretary shall make all practical efforts to process permits in a
2 prompt manner. ~~The secretary shall establish time limits for the processing of~~
3 ~~each permit as well as procedures and time periods within which to notify~~
4 ~~applicants whether an application is complete.~~ A determination on whether an
5 application or amended application to the agency for a permit, certificate, or
6 other similar approval is complete shall be made within 45 days of receipt. If
7 the agency determines that an application is not complete, it shall list each
8 specific item that is missing and provide the applicant a reasonable time to
9 amend its application. A decision on any application to the agency for a
10 permit, certificate, or other similar approval shall be rendered within 45 days
11 of a determination that the application is complete, and failure of the agency to
12 issue a decision within this period shall be deemed approval and shall be
13 effective on the 46th day unless such deemed approval would conflict with the
14 requirements of a delegated federal program. The secretary shall report no
15 later than the third Tuesday of each annual legislative session to the house and
16 senate committees on natural resources and government operations. The
17 annual report shall assess the agency's performance in meeting ~~the~~ statutory
18 time limits; identify areas which hinder effective agency performance; list fees
19 collected for each permit; summarize changes made by the agency to improve
20 performance; describe staffing needs for the coming year; and certify that the
21 revenue from the fees collected is at least equal to the costs associated with

1 those positions. This report is in addition to the fee report and request,
2 required by subchapter 6 of chapter 7 of Title 32.

3 * * *

4 Sec. 15. PERMIT PROCESS STUDIES

5 (a) No later than December 15, 2010, the secretary of natural resources
6 shall convene and chair a working group which shall conduct and complete a
7 study on duplication, overlap, and inefficiency in the environmental and land
8 use permit processes applicable to development in Vermont.

9 (1) Members of the working group shall include the chair of the natural
10 resources board; the secretaries of agriculture, food and markets, commerce
11 and community development, and transportation; the commissioners of
12 environmental conservation, fish and wildlife, and economic, housing and
13 community development; the state historic preservation officer; and the heads
14 of such other state agencies or departments as the governor may choose to
15 appoint.

16 (2) The working group shall conduct open meetings at which members
17 of the public shall be invited to attend and comment, including members of the
18 development and business community, representatives of environmental and
19 planning organizations, and representatives and members of the Vermont
20 League of Cities and Towns, Inc.

1 (3) The working group shall:

2 (A) Compare federal, state, and local environmental and land use
3 permitting requirements and regulations applicable to Vermont.

4 (B) Identify areas of overlap, duplication, and contradiction among
5 such requirements and regulations.

6 (C) Recommend methods and draft proposed legislation to reduce
7 such overlap, duplication, and contradiction and to streamline and improve
8 efficiency in the permitting process.

9 (D) Submit a written report containing the comparisons,
10 identifications, and recommendations and proposed legislation required by this
11 subdivision (3) to the senate committees on economic development, housing
12 and general affairs and on natural resources and energy and to the house
13 committees on commerce and economic development, on fish, wildlife and
14 water resources, and on natural resources and energy.

15 (4) The working group shall be entitled to administrative, legal, and
16 other staff assistance from the agencies of commerce and community
17 development and of natural resources and from the natural resources board.

18 (b) By October 1, 2010, the agency of natural resources and the natural
19 resources board each shall perform an analysis and submit a written report, the
20 purpose of which is to develop, for permit applications that have taken longer
21 than 90 days to process, a more in-depth and systematic understanding of the

1 reasons and categories of reasons, whether structural or otherwise, for those
2 longer periods. Each of the following shall apply to the analyses and reports
3 required by this section:

4 (1) The analysis and report shall be with regard to applications for
5 permits, under the programs that the agency and the natural resources board
6 respectively administer, filed within the five years immediately prior to
7 January 1, 2009.

8 (2) In performing the analysis required by this section, the agency and
9 board respectively shall identify each application the processing of which took
10 longer than 90 days from the date on which the application was first filed,
11 regardless of whether the initial filing was complete. For the purpose of this
12 subdivision, “identify” means at a minimum the name of each applicant, a brief
13 description of the project, the location of the project, the permit or approval for
14 which application was made, whether the application was for an original or
15 amended permit, the date of initial application, and the date of disposition by,
16 as applicable, the agency or a district commission.

17 (3) For each such application, the agency and board respectively shall
18 identify each reason why the application took longer than 90 days to process.
19 Reasons may include: the application was determined to be incomplete, in
20 which case the agency and the board shall also summarize the areas in which
21 the application was incomplete and identify whether and when the application

1 was completed; additional information was requested of the applicant, in which
2 case the agency and the board shall also summarize the requested information
3 and identify whether and when such information was received; the applicant
4 requested that the application be placed on hold, in which case the agency and
5 the board shall also identify whether and when the applicant requested that the
6 application be reactivated; and such other reasons as are factually accurate.

7 (4) The agency and board respectively shall analyze the data developed
8 pursuant to subdivisions (2) and (3) of this section and develop categories of
9 reasons, applicable to multiple applications, why the applications subject to
10 this section took longer than 90 days to process. The agency and board
11 respectively shall determine the total number of applications that took longer
12 than 90 days to process, the number of such applications for each category
13 developed under this subdivision, and the number of such applications that are
14 within more than one category developed under this subdivision.

15 (5) The agency and board respectively shall submit a report that
16 includes, describes, and discusses at least each of the following. The agency
17 and the board may agree to combine the reports into one document:

18 (A) A summary of the actions and steps taken within the agency and
19 the board to complete the tasks required by this section, including ensuring the
20 accuracy of the data used and developed.

1 (B) In the case of the agency, an identification of each agency
2 program that it included in the analysis required by this section and, for each
3 agency program not included, a statement of why the program was not
4 included. The agency may exclude from this analysis an agency program that
5 does not issue environmental or land use permits, certificates, or approvals.

6 (C) The total number of applications subject to this section that took
7 longer than 90 days to process.

8 (D) For the categories of reasons developed under subdivision (4) of
9 this section:

10 (i) A summary of the analysis supporting the development of these
11 categories.

12 (ii) An identification of each such category and the number of
13 applications subject to this section that fall within the category.

14 (iii) The number of applications subject to this section that fall
15 within more than one of the categories developed under subdivision (4) of this
16 section.

17 (iv) The recommendations of the agency and board respectively to
18 address each such category in a manner that reduces application processing
19 time. Recommendations may include draft legislation, rule changes, issuance
20 or revision of procedures, and issuance or revision of application forms and
21 instructions.

1 (E) An appendix, in electronic format on data disc, that contains
2 individually for each application subject to this section a document that at a
3 minimum includes the information described in subdivisions (2) and (3) of this
4 section. Document names shall use a consistent format agreed on between the
5 agency and the board. The data disc shall organize the documents in
6 subfolders on the disc by permit type and, within those subfolders, by
7 environmental district.

8 (6) The data gathered in completing the tasks required under
9 subdivisions (2) and (3) of this section shall be entered in a database that is
10 capable of generating reports that can serve as the documents required by
11 subdivision (5)(E) of this section. To promote the goal of transparency, the
12 database software used under this subdivision (6) shall be software that is
13 reasonably available to the general public for commercial purchase.

14 (7) The report required by subdivision (5) of this section shall be
15 submitted to the governor, to the senate committees on economic development,
16 housing and general affairs and on natural resources and energy, and to the
17 house committees on commerce and economic development, on fish, wildlife
18 and water resources, and on natural resources and energy.

19 Sec. 16. ONLINE STATE ENVIRONMENTAL PERMIT DATABASE

20 No later than January 1, 2011, the natural resources board and the agency of
21 natural resources jointly shall implement an online, comprehensive, and

1 searchable database of all applications and permits issued by the district
2 commissions and the department of environmental conservation. This
3 database shall be available to the general public and shall allow users to locate
4 the lands and waters to which the permits apply. The secretary of natural
5 resources or the secretary's designee shall manage and be responsible for this
6 implementation and shall be entitled to assistance from the chair of the natural
7 resources board and the board's staff. This implementation may be through
8 expansion of the agency of natural resources' existing Act 250 database,
9 provided such expansion meets the requirements of this section.

10 Sec. 17. EFFECTIVE DATE

11 This act shall take effect on July 1, 2011, except that this section and Secs.
12 12, 15, and 16 of this act shall take effect from passage.