

1 H.234

2 Introduced by Representatives Clarkson of Woodstock, Burke of Brattleboro,  
3 Donovan of Burlington, Krowinski of Burlington, Lenes of  
4 Shelburne, Masland of Thetford, O'Sullivan of Burlington, and  
5 Stevens of Waterbury

6 Referred to Committee on

7 Date:

8 Subject: Conservation and development; natural resources; land use;  
9 affordable housing; Act 250; appeals

10 Statement of purpose of bill as introduced: For publicly funded affordable  
11 rental housing projects, this bill proposes to speed the process of issuing  
12 decisions under 10 V.S.A. chapter 151 (Act 250) and appeals from those  
13 decisions.

14 An act relating to permits for publicly funded affordable housing projects

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

16 Sec. 1. FINDINGS; PURPOSE

17 (a) The General Assembly finds that:

18 (1) As of January 2015:

19 (A) Nearly one-half (47.5 percent) of all renter households were  
20 paying more than 30 percent of monthly income for housing.

1           (B) Nearly one-quarter (22.4 percent) of all renter households were  
2           paying more than 50 percent of monthly income for housing.

3           (C) The statewide rental vacancy rate was one percent.

4           (2) Based on the Department of Housing and Community  
5           Development's Vermont Housing Needs Assessment for 2015–2020, Vermont  
6           needs approximately 29,000 apartments to meet the needs of renting families  
7           with incomes that are 80 percent or less of the median income for their county,  
8           as defined by the U.S. Department of Housing and Urban Development.

9           (3) Annually through the Vermont Housing Finance Agency (VHFA)  
10           and the Vermont Housing and Conservation Board (VHCB), Vermont invests  
11           substantial public monies into creating affordable rental housing. During fiscal  
12           year 2014:

13           (A) the VHFA invested nearly \$25 million in perpetually affordable  
14           rental housing through loans and allocation of tax credits; and

15           (B) the VHCB invested approximately \$4.5 million in affordable  
16           rental housing.

17           (b) The purpose of this bill is to reduce the potential for the process of  
18           obtaining and appealing land use permits to delay the build-out of publicly  
19           funded, perpetually affordable rental housing projects to meet the critical need  
20           that they address or to unduly increase the costs to the public of these projects.



1 80 percent of the standard metropolitan statistical area income if the  
2 municipality is located in such an area, as defined by the U.S. Department of  
3 Housing and Urban Development, and the total annual cost of the housing,  
4 including principal, interest, taxes, insurance, and condominium association  
5 fees, is not more than 30 percent of the gross annual household income.

6 (B) Housing that is rented by the occupants whose gross annual  
7 household income does not exceed 80 percent of the county median income, or  
8 80 percent of the standard metropolitan statistical area income if the  
9 municipality is located in such an area, as defined by the U.S. Department of  
10 Housing and Urban Development, and the total annual cost of the housing,  
11 including rent, utilities, and condominium association fees, is not more than  
12 30 percent of the gross annual household income.

13 \* \* \*

14 (38) "Housing subsidy covenant" shall have the same meaning as in  
15 27 V.S.A. § 610.

16 (39) "Publicly funded permanent affordable housing" shall mean  
17 affordable housing that is funded in whole or part by a federal or State agency  
18 and consists of rental housing units that are subject to housing subsidy  
19 covenants that preserve their affordability for a period of 99 years or longer.

1 Sec. 3. 10 V.S.A. § 6083 is amended to read:

2 § 6083. APPLICATIONS

3 \* \* \*

4 (e)(1) The District Commissions shall give priority to:

5 (A) municipal projects that have been a municipal project mandated  
6 by the State through a permit, enforcement order, court order, enforcement  
7 settlement agreement, statute, rule, or policy;

8 (B) a project that is publicly funded permanent affordable housing.

9 (2) In this subsection, “priority” shall mean that the application for a  
10 project moves ahead of all other pending applications with respect to  
11 scheduling conferences and hearings and issuing decisions.

12 (3) If a priority conflict arises among projects described in subdivisions  
13 (1)(A) and (B) of this subsection, the District Commission shall assign priority  
14 to those projects in chronological order based on the date it received a  
15 complete application.

16 Sec. 4. 10 V.S.A. § 6085 is amended to read:

17 § 6085. HEARINGS; PARTY STATUS

18 \* \* \*

19 (f) A hearing shall not be closed until a Commission provides an

20 opportunity to all parties to respond to the last permit or evidence submitted.

21 Once a hearing has been closed, a Commission shall conclude deliberations as

1 soon as is reasonably practicable. A decision of a Commission shall be issued  
2 within 20 days of the completion of deliberations.

3 (g) Notwithstanding any contrary authority provided by subsection (f) of  
4 this section, a Commission shall issue its decision on a project that is publicly  
5 funded permanent affordable housing within 120 days of the date a complete  
6 application is filed. An applicant may agree to extend this 120-day period.  
7 This subsection shall not apply to a Commission's review of an application  
8 under section 6085a of this title.

9 Sec. 5. 10 V.S.A. § 6085a is added to read:

10 § 6085a. PUBLICLY FUNDED PERMANENT AFFORDABLE HOUSING;

11 RECORDED HEARINGS

12 (a) An applicant for a project that is publicly funded affordable housing  
13 may submit a demand for recorded hearings. The applicant shall submit this  
14 demand at the time of application under section 6084 of this title. If the  
15 applicant submits such a demand, any appeal under section 6089 of this title  
16 shall be a review of the record of the proceeding before the District  
17 Commission in accordance with subdivision 8504(h)(3) of this title.

18 (b) Within 10 calendar days of receipt of both a complete application under  
19 section 6084 of this title and a timely demand for recorded hearings under  
20 subsection (a) of this section, the District Commission shall provide notice of

1 the demand for recorded hearings in accordance with the procedures of  
2 subdivision 6084(b)(1) of this title.

3 (c) Each of the following shall apply to the review of an application under  
4 this section:

5 (1) The District Commission shall extend the hearing schedule or take  
6 other appropriate action as necessary to provide a fair and reasonable  
7 opportunity for parties to prepare, present, and respond to evidence without  
8 creating undue delay in the review of the application.

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

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



1 ~~court~~ Court shall affirm the decision, unless it finds that the Commissioner did  
2 not have reasonable grounds on which to base the decision.

3 (3) An act or decision of a District Commission on an application for a  
4 publicly funded permanent affordable housing project heard under section  
5 6085a of this title, in which case the Division's review shall be on the record.  
6 Each of the following shall apply to an appeal subject to this subdivision:

7 (A) The Division shall remand to the District Commission if the  
8 District Commission improperly excluded evidence, did not provide adequate  
9 notice or opportunity to be heard, or otherwise failed to comply with the  
10 requirements of 3 V.S.A. chapter 25 pertaining to contested cases. The  
11 Division need not remand for harmless error.

12 (B) The Division shall not set aside findings of fact unless clearly  
13 erroneous.

14 \* \* \*

15 (p) Affordable housing.

16 (1) Definitions. In this section:

17 (A) "Affordable housing" and "publicly funded permanent affordable  
18 housing" shall have the same meaning as in section 6001 of this title.

19 (B) "Housing subsidy covenant" shall have the same meaning as in  
20 27 V.S.A. § 610.

1           (C) “Priority” shall mean that an appeal moves ahead of all other  
2           pending appeals with respect to scheduling conferences and hearings and  
3           issuing decisions.

4           (2) The Environmental Division shall give priority to an appeal of an act  
5           or decision concerning a project that is publicly funded permanent affordable  
6           housing. The Division shall issue its decision on such an appeal within 180  
7           days of the date the notice of appeal was filed. An applicant may agree to  
8           extend this 180-day period.

9           Sec. 7. EFFECTIVE DATE

10           This act shall take effect on July 1, 2015.