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H.665

Introduced by Representatives Fagan of Rutland City, Burditt of West
Rutland, Canfield of Fair Haven, Carr of Brandon, Chesnut-
Tangerman of Middletown Springs, Cupoli of Rutland City,
Gage of Rutland City, Harrison of Chittenden, Helm of Fair
Haven, Howard of Rutland City, Keefe of Manchester, McCoy
of Poultney, Norris of Shoreham, Potter of Clarendon,
Scheuermann of Stowe, Shaw of Pittsford, Sullivan of Dorset,
and Terenzini of Rutland Town

Referred to Committee on

Date:

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

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

An act relating to changes to Act 250

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

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

3 § 6085. HEARINGS; PARTY STATUS

4 * * *

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

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

13 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

16 * * *

17 (b) Partial findings. At the request of an applicant, or upon its own motion,
18 the District Commission shall consider whether to review any criterion or
19 group of criteria of subsection (a) of this section before proceeding to or
20 continuing to review other criteria. This request or motion may be made at any
21 time prior to or during the proceedings. The District Commission, in its sole

1 discretion, shall, within 20 days ~~of the completion of deliberations~~ after closing
2 its hearing on the criteria that are the subject of the request or motion, either
3 issue its findings and decision thereon, or proceed to a consideration of the
4 remaining criteria.

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

18 (d) Other state and municipal permits. In this subsection, “criterion” means
19 a subdivision of subsection (a) of this section under which the District
20 Commission must make a finding before granting a permit. For example,

1 “criterion (1)(B)” means subdivision (a)(1)(B) of this section regarding waste
2 disposal.

3 (1) Conclusive evidence. The issuance and submission of permits and
4 approvals identified in this subdivision shall constitute conclusive evidence
5 that the improvement, discharge, emission, or other activity described and
6 approved in the permit or approval is not detrimental to the public health and
7 welfare and complies with the specific criterion or criteria that are identified in
8 this subdivision.

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

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

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

17 (iii) An approval issued by a pollution abatement facility that is
18 permitted under chapter 47 of this title and is in compliance with its permit,
19 authorizing the connection of the development or subdivision to the facility. In
20 this subdivision, “pollution abatement facility” shall have the same meaning as
21 set forth in section 1251 of this title.

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

3 (v) An underground injection permit for the discharge of non-
4 sanitary waste into an injection well pursuant to chapter 47 of this title and
5 rules adopted under that chapter.

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

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

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

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

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

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

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

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

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

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

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

20 (G) With respect to the impacts of a development or subdivision on a
21 State highway under criteria (5) (traffic) and (9)(K) (public investments): a

1 letter of intent issued by the Agency of Transportation confirming that the
2 Agency has reviewed the proposed development or subdivision and is prepared
3 to issue an access permit pursuant to 19 V.S.A. § 1111.

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

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

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

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

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

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

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

1 ~~determinations, positive or negative, under the provisions of 24 V.S.A. § 4420~~
2 shall create presumptions only to the extent that the impacts under the criteria
3 are limited to the municipality issuing the decision.

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

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

1 this chapter, this subsection shall not remove jurisdiction. This termination of
2 jurisdiction in these situations does not represent legislative intent with respect
3 to continuing jurisdiction over other types of development not specified in this
4 subsection.

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

18 Sec. 3. EFFECTIVE DATE; IMPLEMENTATION

19 This act shall take effect on July 1, 2018 and shall supersede any contrary
20 rules of the Natural Resources Board (Board). On or before September 15,

- 1 2018, the Board shall file proposed rule amendments with the Secretary of
- 2 State to conform its rules to this act.