

# House Natural Resources Testimony

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April 12, 2018

Chairman Dean and members of the House Natural Resources & Energy, thank you for allowing me to present testimony on H.665, a bill pertaining to Act 250, Conservation, and Development.

I am a Vermont Registered Professional Engineer and have been engaged in the Act 250 process since 1973. My first Act 250 application and hearing was for the Juster Mall, now Home Depot in Rutland. I have been involved in greater than 100 Act 250 decisions, most of lately, how to avoid Act 250.

Why? Because we cannot effectively advise a client if they will get a permit, how long it will take, and what it will cost to endure the process. The process is not predictable, timely, or economical. And as such, this is a job killer. The process must be predictable, must be expedited, and it must be cost effective.

The objective of Act 250 should be **to assist applicants in the permitting process** and **to issue permits**.

I support the draft bill H.665 as this will add to the predictably, timely administration, and help to contain the cost.

§ 6085 (f) *A decision of a Commission shall be issued within 20 days of the completion of deliberations ...*

Simply stated, time is money, Vermont has a short construction season, and timely permit issuance will enable projects to commence. There is no reason that a permit should not be issued within 20 days of “*completion of deliberations.*”

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

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA 13

(c) Requirements and conditions. *The District Commission shall not delay issuing a permit under this chapter on the grounds that the development or subdivision has not received one or more other required State permits or approvals; however, it may include a condition that construction may not commence until such other required permits or approvals are received.*

This is the way Act 250 used to be, construction was deferred until some ANR permits were issued, but the Act 250 permit was issued.

The review of ANR applications and permit issuance is a time-consuming process. As engineers, we can generally advise an applicant on the probable duration for the ANR & VTrans approvals. Some of these permit reviews may span several months or more.

Most normally, ANR & VTrans permits are predictable; the rules are specific about what is allowed and what may not be permitted. To that end, when an ANR or VTrans application is submitted, we have a high degree of comfort that the permit will be issued.

Allowing the District Commission to issue an Act 250 permit with a condition, “*that construction may not commence until such other required permits or approvals are received*”, will allow the applicant to proceed with construction negotiations, financing, contracting, all in anticipation of the issuance of the pending ANR & VTrans approvals.

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

Compliance with Vermont’s ANR regulations is sufficiently complex such that extensive education, training, experience, and licensing are mandated. The reviewers are employees of the state of Vermont, and educated and trained for compliance with the regulations.

The Act 250 District Environmental Commissioners are laypeople. These individuals routinely lack detailed knowledge of the ANR and other regulatory programs. That is why the issuance of an ANR or other permit should be ***CONCLUSIVE EVIDENCE***, which the requirements of the state of Vermont regulations, developed to protect the health, safety, and welfare, of the state of Vermont and its citizens.

For many of the permits listed in H.665, I have spent countless hours over decades trying to explain the regulations, design, permitting, construction, operation, and maintenance to a consideration that is most normally beyond those not licensed to design or permit systems.

Example: We were the engineers of record for a shopping center wherein nobody attended the hearing other than the applicant and commission. The applicant had a letter of intent from VTrans approving the access. The commission was not satisfied with the VTrans letter and conducted two additional hearings solely devoted to traffic. These hearings required the applicant to provide a team of professionals at an extensive expense (time and money).

Inasmuch as the commission was unable to comprehend the design and permitting criteria, the commission also retained their own traffic expert to listen to attend hearings and issue a professional opinion.

The independent traffic engineer, employed by the commission, found for the applicant.

**Were this legislation in place, then the commission would rightly have concluded that the information presented by VTrans was conclusive.**

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

(A) The Natural Resources Board may by rule allow the acceptance of a permit or permits or approval of any State agency with respect to subdivisions (a) criteria (1) through (5) of this section or a permit or permits of a specified municipal government with respect to subdivisions (a) criteria (1) through (7) and (9) and (10) of this section,

Significant portions of the Act 250 preparation, hearing, testimony, and findings of fact are derived from the testimony taken at the hearing. The reliance on the state permits would allow the applicant and the commission to know that the applicant has satisfied the burden with respect to the criteria.

This will allow the commission to respect the wishes of ANR, *create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement*, expedite the drafting of the findings of fact, and draft/issuance of the Act 250 permit.