

To: Municipal Planning and Development Review Officials
From: Commissioner, DEHCD
Date: September, 2010
Re: Legislative Revisions Affecting Vermont's Planning and Development Law

The past legislative biennium included a variety of statutory amendments affecting local land use planning and regulations, as well as regional planning and development. We are writing to inform you of these changes, to summarize them briefly, and to provide electronic links to both the language of the statutes and statutory summaries.

This memo is a continuation of our Department's practice of providing updates of legislative changes that affect local land use planning officials. We are available to answer questions and refer you to the Planning Information Center website at: www.vpic.info for additional information and resources on planning issues.

Statutory amendments affecting local land use officials passed during the 2009-2010 biennium include the following:

- River Corridor Management: Act 110
- Water Supply and Wastewater Permitting: Act 145
- Jurisdiction and Operational Standards for Salvage Yards: Act 56 (2009) & Act 93
- Economic Development / Broadband: Act 54 (2009)
- Challenges for Change: Act 146
- Growth Centers: Act 136
- Wastewater Feasibility Planning/ Capital bill: Act 161

[Note: A summary of all 2010 Acts and Resolves can also be reviewed at:
<http://www.leg.state.vt.us/reports/10summaries/10sum.htm>.]

River Corridor Management – Act 110

Statute: <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2010/acts/ACT110.pdf>

Summary: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT110SUM.HTM>

, Act 110 establishes a River Corridor Management Program within the Agency of Natural Resources to aid and support the municipal adoption of river corridor and buffer bylaws. The Act amends 24 VSA § 4411 (zoning bylaws); § 4414 (zoning and permissible types of regulations), as well as 10 V.S.A. § 1422 (Definitions) to enable towns to help protect river corridors, in order to prevent the hazards of flooding and river bank erosion and to protect water quality.

Act 110 adds protection of river corridors and buffers as a permissible type of zoning regulation and also describes the uses and benefits of using bylaws to protect river corridors. It adds “uses within a river corridor and buffer” to the list of types of land development that can be permitted, prohibited, and regulated by municipalities, and adds new language to allow additional zoning classifications for fluvial erosion areas, river corridors, and buffers in municipal zoning bylaws. Definitions for buffer, lake, river corridor, and river are added to chapter 49 of Title 10, Protection of Navigable Waters and Shorelands, and the same definitions are used in the amendments to Title 24 affecting zoning.

Water Supply and Wastewater System Permits – Act 145

Statute: <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2010/acts/ACT145.pdf>

Summary: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT145SUM.HTM>

ACT 145 creates a new requirement for applicants for a water or waste water permit to notify affected property owners when the isolation distance required for the proposed system extends onto abutting property. ANR cannot issue a permit for at least seven days after the affected property owner has received notice and been given the opportunity to comment.

The Act also amends § 4414(13) to enable municipalities the option of conditioning final zoning and subdivision permits upon the issuance from ANR of a wastewater and potable water supply permit. This statutory amendment clarifies that it is the issuance or denial of the final municipal zoning or subdivision permit (and not the decision to require the applicant to obtain a wastewater or potable water supply permit prior to issuance of the final municipal permit) that is appealable.

An Act Relating to Salvage Yards—Act 56

Statute: <http://www.leg.state.vt.us/docs/2010/Acts/ACT056.PDF>

Summary: <http://www.leg.state.vt.us/docs/2010/Acts/ACT056sum.htm>

Act 56 of 2009 transferred authority over junkyards in the state from the Agency of Transportation to the Agency of Natural Resources (ANR), and replaced the term “junkyard” with “salvage yard”. Under the Act, ANR will issue a certificate of registration to salvage yards (in place of the junkyard license that the Agency of Transportation formerly issued). ANR was granted rulemaking authority to implement the salvage yard program, authority to adopt and enforce screening and fencing requirements for salvage yards, and was required to submit to the general assembly in 2010 a proposed program for the regulation and permitting of salvage yards.

Act 56 also amended municipal requirements for the certification of approved locations for salvage yards, authorizing municipalities to consider additional factors in the location of salvage yards and prohibiting salvage yards from locating within 100 feet of the nearest edge of a state or town road or within 100 feet of navigable waters. The act allows municipalities to include in a certificate of approved location appropriate conditions to ensure the protection of public health, the environment, or safety, and to ensure protection from nuisance conditions. The municipal certificate of approved location must also include a requirement that a salvage yard existing on July 1, 2009 be set back 100 feet from a state or town road or from navigable water, and allowed municipalities to treat existing salvage yards that cannot meet the setback requirement as a nonconformity under municipal bylaw. The act also authorizes municipalities to inspect salvage yards and to recommend that ANR initiate enforcement actions.

Operational Standards for Salvage Yards – Act 93

Statute: <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2010/acts/ACT093.pdf>

Summary: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT093SUM.HTM>

Act 93 of 2010 follows upon Act 56 of 2009 and addresses a variety of issues relating to salvage yards. It creates interim operational standards and requires the Agency of Natural Resources (ANR) to adopt permanent regulations for the siting, operation, and closure of salvage yards by March 31, 2011. The act also clarifies and expands the definition of salvage yard to include “automobile graveyards” (24 V.S.A § 2241); amends 24 V.S.A. § 4303(11) to add “a certificate of approved location for a salvage yard” to the definition of “municipal land use permit”; and amends 24 V.S.A. § 4454(a) to remove the fifteen year

statute of limitation against instituting an action, injunction, or enforcement proceeding for violations of 24 V.S.A. §§ 2241-2283.

Economic Development & Broadband Deployment (2009) – Act 54

Statute: <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2010/acts/ACT054.pdf>

Summary: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT054SUM.HTM>

Act 54 (of 2009) addresses a series of programs and policies related to economic development and the use of ARRA funds for that purpose, including the development of telecommunications infrastructure. The Act seeks to expedite permitting and development for infrastructure needed to expand broadband and cellular communications throughout the state by making several changes to telecommunications permitting under Title 30. In 2007, Act 79 [Advancing Broadband and Telecommunication Infrastructure] established authority for the Public Service Board (PSB) to permit telecom facilities under 30 V.S.A. 248a, thereby exempting these from local land use regulations under 24 V.S.A. chapter 117. Act 54 amends 30 V.S.A. 248a(c)(2) to include “[n]othing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located.” This language clarifies that within the 248a process a town may make recommendations to the PSB that are based on local ordinances or bylaws. The changes to Title 24 make these changes consistent with the significant changes to Title 30 made by the bill.

Act 54 also adds a section on revoking municipal land use permits. It gives the environmental court authority to revoke a municipal land use permit (including a telecommunications permit) when the permit is violated or gained through misrepresentation. The Act adds a new section to chapter 117, 24 V.S.A. § 4470a, addressing misrepresentations of material fact and allowing an Authorizing Official (AO) or Appropriate Municipal Panel (AMP) to reject an application because of misrepresentation and setting forth a process to award attorney’s fees incurred due to a misrepresentation.

Act 54 also amends Act 250’s definition of development to exclude telecommunication facilities and certain abatement/remediation measures and specifically exempts certain county and state projects and the construction of improvements to pre-existing municipal, county, or state roads and bridges funded with ARRA funds from Act 250’s permitting requirements.

Growth Centers: Act 136

Statute: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT136.PDF>

Summary: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT136SUM.HTM>

Act 136 makes adjustments to the Growth Center Program (established in 2006) to facilitate the Growth Center designation process, clarify the rules surrounding the designation of growth centers, and adjust membership to the Downtown Board to fully incorporate members who were previously only participants in growth center designations, and not all of the Board’s processes.

Three new members are added to the Vermont Downtown Development Board (State Board): one from the Vermont Planners Association, one from the Natural Resources Board, and one from a Regional Planning Commission.

The Act establishes a subcommittee to create a pre-application review process, defines the subcommittee’s membership and duties, and establishes a new framework of the pre-application review process. The Act also clarifies the criteria for growth center designation and provides a process for persons or entities to request reconsideration of a growth center designation.

Wastewater Feasibility Planning/ Capital bill: Act 161

Statute: <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2010/acts/ACT161.pdf>

Summary: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT161SUM.HTM>

The Capital bill is an annual appropriation of funds for capital projects that are financed through state bonding. Section 12 of the Act authorizes appropriations for wastewater and water supply feasibility planning to municipalities. Up to \$50,000 is appropriated to the Vermont Agency of Natural Resource for grants or loans for a study of the feasibility and planning of site-appropriate potable water supply and wastewater systems, including innovative decentralized systems, for historic villages and existing settled areas. Systems shall be designed to comply with the adopted municipal plan. The Act grants ANR broad discretion to determine eligibility and other programmatic requirements.

Challenges For Change – Act 146

<http://www.leg.state.vt.us/misc/259311.pdf> [*This annotated version of the Challenges bill, created by the legislative council, combines several changes made to H. 792 by subsequent bills*]

Act 146 seeks a different approach to reducing government spending to meet budget reduction targets by establishing a process for re-structuring the way government acts and delivers services, rather than dramatically reducing or eliminating programs. There are many aspects to this Act, including some that affect local and regional planning and development.

Municipal Permits

Act 146 adds a requirement that all local zoning permits, certificates of occupancy, and municipal land use permits include a statement (approved by the Secretary of Natural Resources) noting that state permits might be required and the applicant has the responsibility to contact state agencies to clarify their responsibility for a state permit. The Act also amends the section on subdivision review to require the same notice.

Act 146 contains a series of measures affecting Regional Planning entities and funds, as follows:

Municipal and Regional Planning Fund:

- Sets a deadline of December 31 for disbursement of the funds for FY11 Municipal Planning Grants.
- Requires the Secretary of the Agency of Commerce and Community Development to fund Regional Planning Commissions through performance-based contracts (rather than the practice of granting funds to RPCs), and to withhold funds for poor performance. Seventy percent (70%) of the Municipal and Regional Planning Fund would be utilized for Regional Planning.

Regional Planning:

- Changes the interval a regional planning commission must review the compatibility of municipal plans from every five years to every eight years.
- Adds new optional powers and duties for regional planning commissions: to acquire office assistance by contract; help communities with economic growth; gather economic data on areas served; and assist businesses to support economic growth.
- Amends the duties of regional planning commissions to consider the economic benefits of a proposed regional plan in addition to the economic consequences.
- Authorizes municipal “legislative bodies” to merge planning regions.
- Allows municipalities to move from one regional planning commission to another under terms and conditions approved by the Secretary of Commerce and Community Development.

- Eliminates the requirement that regional planning commissions be created with evidence of adequate funding and eliminates language allowing a planning region to include municipalities from other states.
- Authorizes regional planning commissions the option of electing an executive board and outlines the duties of an executive board.
- Removes language requiring a joint interregional commission to negotiate conflicting regional/municipal plans before requesting review by the council of regional commissioners (but keeps the requirement for requesting a mediator).
- Removes restrictions on how regional planning commissions qualify for appropriations.
- Extends the time for regional plans to be readopted from every five years to every eight.
- Requires the Chittenden County Regional Planning Commission and the Chittenden County Metropolitan Planning Organization to develop a plan, action steps and a timeline for merging.

Regional Performance Contracts:

- Adds a new section for “performance contracts for regional planning services.” The new section requires performance contracts between regional planning commissions/development corporations and the Secretary of Commerce and Community Development.
- Beginning February 1, 2011, regional planning commissions will receive funding based on performance-based contracting and outcomes.

Oversight Panel:

- Establishes an oversight panel for economic development grants (chapter 76). The oversight panel is included in overseeing the annual performance contracts to regional planning commissions.