

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: Jacob Hemmerick and Dale Azaria
Vermont Department of Housing and Community Development (DHCD)
DATE: June 27, 2018
RE: **2018 Legislative Revisions to Vermont’s Planning and Development Act, the
Downtown Development Act, Act 250, and Other Relevant Changes**

In 2018 the General Assembly enacted several laws and amendments affecting local planning and regulation. As in past years, we are issuing this memo to inform municipal officials of changes in statute and to provide web links to the pertinent statutory language.

The [Vermont Statutes Online](#) are updated in October and will not include the 2018 changes until then. Links provided below go to the bills as enacted.

In compiling these statutory amendments, we owe thanks to Alex Weinhagen, for his work as Legislative Liaison for the [Vermont Planners Association](#) (VPA) and to the [Vermont League of Cities and Towns](#) (VLCT) for their 2018 Legislative Updates.

MUNICIPAL & REGIONAL PLANNING & REGULATION

Electronic Plan & Bylaw Distribution & Extended State Designation Terms

Act 197 | S.94 | *An act relating to promoting remote work*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT197/ACT197%20As%20Enacted.pdf>

Effective July 1, the act: enables electronic notification and distribution of regional and local bylaws, plans, and amendments; extends the term of downtown and new town center designations from 5 to 8 years with a review after 4 years; and extends the term of village center designations from 5 to 8 years without a 4-year review.

Group Home & Residential Care Home Bylaw Limitations

Act 130 | H.856 | *An act related to miscellaneous amendments to municipal law*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT130/ACT130%20As%20Enacted.pdf>

Effective July 1, the act modifies protections for group homes and residential care homes by eliminating the provision that allowed a municipality’s land use regulations to require that such facilities be separated by at least 1,000 feet. Now a residential care home or group home operated under State licensing or registration, serving up to 8 disabled persons, must be considered an allowed permitted single-family residential use of property, and may be within 1,000 feet of a like facility.



Accessory On-Farm Business Protections & Limitations

Act 143 | H.66 | *An act related to municipal land use regulation of accessory on-farm businesses*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT143/ACT143%20As%20Enacted.pdf>

Effective July 1, the act:

- Limits municipal land use regulations from prohibiting “accessory on-farm business” at the same location as a farm subject to the [Required Agricultural Practices](#) rules operated by the farmer, farm resident, or farm lessee.
- Authorizes municipalities to regulate an “accessory on-farm business” through application of site plan review and performance standards equal to similarly regulated commercial uses.
- Allows an accessory on-farm business to take place in a new or existing structure, or on the land.
- Defines “accessory on-farm business” to include:
 - Storage, preparation and sale of products, provided that half of the sales are from qualifying products principally produced on the farm using farm commodities.
 - Educational, recreational, and social events that feature agricultural practices and/or qualifying products.

Rural Economic Development

Act 194 | S.276 | *An act relating to promoting remote work*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT194/ACT194%20As%20Enacted.pdf>

The act:

- Requires the Agency of Commerce to make recommendations to the General Assembly by December 15, 2018 to create a rural industrial park designation program that provides regulatory and permitting incentives. The act also requires the Department of Public Service to report to the General Assembly on the effect of electric utility demand charges on the ability of industrial enterprises to locate in rural towns of the State.
- Requires the Agency of Agriculture, Food and Markets (AAFM) to develop rules for certifying nutrient management technical service providers. Beginning on July 1, 2019, a nutrient management technical service provider cannot create a nutrient management plan for a farm unless certified by AAFM.
- Provides that certain forest operations requiring an Act 250 permit be reviewed as a minor application. Related, [Act 198](#) protects forestry operations meeting Acceptable Management Practices from nuisance lawsuits.

ENERGY

State Energy Planning

Act 139 | H.410 | *An act related to appliance efficiency, energy planning, and electric vehicle parking*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT139/ACT139%20As%20Enacted.pdf>

Effective July 1, 2018, the act requires the State Comprehensive Energy Plan (CEP) to include recommendations for State agency energy and transportation planning and requires those other plans and utility resource plans to be consistent with the CEP. The act also requires submissions to the General Assembly by the Public Utility Commission and the Department of Public Service on issues relating to renewable electric generation and constrained areas of the electric utility grid. Requirements and findings could inform future regional and town plan energy element chapters.

District Biomass Heating

Act 102 | H.616 | *An act relating to thermal efficiency monies and biomass-led district heat*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT102/ACT102%20As%20Enacted.pdf>

The act allows an efficiency utility to use thermal efficiency monies to convert thermal customers using fossil fuels to cost-effective biomass-led district heating.



Electric Vehicle Parking Restrictions & Enforcement

Act 139 | H.410 | *An act related to appliance efficiency, energy planning, and electric vehicle parking*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT139/ACT139%20As%20Enacted.pdf>

Effective July 1, 2018, the act modifies Title 23 to allow the enforcement of electric vehicle charging station signage. It also allows the Secretary of Transportation to prescribe special restrictions related to parking plug-in electric vehicles in designated areas of State highways. Municipalities preparing for installations of Electric Vehicle Supply Equipment using local funds and/or [new State grants](#) should plan accordingly.

Section 248 Renewable Energy Parking Area/Structure Setbacks

Act 163 | H.676 | *An act relating to miscellaneous energy subjects*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT163/ACT163%20As%20Enacted.pdf>

Effective July 1, 2018, the act modifies Public Utilities Commission setback requirements for vehicle parking or for canopies used for parking vehicles. It also establishes a voluntary habitat standard under which solar electric generation sites may claim that they provide benefits to pollinators and shrub-dependent birds.

WATER QUALITY

Stormwater Management & Expanded Permitting

Act 181 | H.576 | *An act related to stormwater management*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT181/ACT181%20As%20Enacted.pdf>

The act:

- Authorizes the use of stormwater offsets and stormwater impact fees to permit discharges to all waters of the State, not just discharges to Lake Champlain or stormwater-impaired waters.
- Extends the deadline (from December 31, 2017 to 120 days after the Agency of Natural Resources' (ANR) adopts a new stormwater management rule) to meet ANR's requirement to issue a general permit for discharges from impervious surface of three or more acres in size when discharge was unpermitted or permitted prior to 2002. The deadline cannot exceed October 1, 2023 for the Lake Memphremagog basin or in a watershed of a stormwater-impaired water.
- Reduces the threshold for an operational stormwater permit for new construction or redevelopment from one acre to one-half acre effective July 1, 2022, with fee waivers for permits less than one acre.
- Requires ANR to issue annual reports on: the number of project implementing stormwater treatment categories, estimated phosphorus reduction from impervious surfaces permitted in the prior calendar year, and whether it is achieving a 70% average phosphorus load reduction under the stormwater management rule.

Clean Water State Revolving Loan Fund (CWSRF)

Act 185 | H.777 | *An act related to the Clean Water State Revolving Loan Fund*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT185/ACT185%20As%20Enacted.pdf>

The act:

- Expands CWSRF eligible project types to include cost-effective natural resource stormwater projects, e.g.: floodplain restoration, wetland restoration, and vegetated river buffers. Current statute authorizes loans to municipalities for traditional wastewater treatment and stormwater projects.
- Allows CWSRF to fund natural resource projects sponsored by a municipality and paired with a traditional project.



- Expands CWSRF eligibility to private borrowers to obtain access to low-interest loans for water quality projects. Typical borrowers would include homeowner's associations, mobile home parks, ski areas, and those required to comply with the 3-acre stormwater permit. Private entities would pay a higher interest rate and higher administrative fee rate than municipalities

Expanded Loan Program Eligibility to Repair Water & Wastewater Systems

Act 168 (S.260) *An act related to funding the cleanup of State waters*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT168/ACT168%20As%20Enacted.pdf>

The act expands eligibility for the [Onsite Loan Program](#) (OLP) from single family homes to owner-occupied multi-family properties, as well as to shared systems (i.e. across multiple lots). Applicants must still be homeowners occupying their residence year-round and have a failed or almost failed septic or potable water system. Applicants must meet household income requirements (currently \$112,208) and be denied credit from a conventional lender. Interest rates are fixed at 3%, with a 15-year repayment schedule for most borrowers. Financing can be used to replace a failed system or connect a residence to an existing drinking water or wastewater system. Loan proceeds are also available to finance filtration systems where the onsite water has 'failed' due to water quality.

HEALTH, SAFETY, & QUALITY OF LIFE

Rental Housing Safety Reforms

Act 188 | H.907 | *An act related to improving rental housing safety*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT188/ACT188%20As%20Enacted.pdf>

The act:

- Establishes a Rental Housing Advisory Board, made up of 11 members, appointed by the Commissioner of DHCD (3 landlords, 3 tenants, 3 municipal officials, 2 members at-large). The Board will submit a report by January 2019 to the General Assembly answering several questions pertaining to potential changes to the housing health code and methods of conducting inspections, issuing Health Orders, and submitting appeals. The Board will also act as an advisory group and will regularly report on deliberations to the Housing Council.
- Directs the Department of Health to assign a person to oversee and provide assistance to local health officers and make the name and contact information of that person available on request.
- Amends local health officer duties to require investigation upon request and establishes inspection reporting requirements.
- Directs the Tax Department to annually publish and make available in searchable format several pieces of information gleaned from the Landlord-Certificate (LC-142) beginning in 2019, useful planning data.

Civil Solid Waste Ordinance Penalties

Act 130 | H.856 | *An act related to miscellaneous amendments to municipal law*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT130/ACT130%20As%20Enacted.pdf>

Effective July 1, 2018, the Act modifies Title 24 to increase maximum allow fines from \$500 to \$800.

Nuisance Aircraft & Water Vessels

Act 158 | H.917 | *An act relating to the Transportation Program and miscellaneous changes to transportation-related law*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT158/ACT158%20As%20Enacted.pdf>

The act creates new subchapters to address 1) abandoned aircraft and aircraft components left on airport property and 2) abandonment of vessels on public waters or on immediately adjacent land. Related, the Transportation Advisory Board is [accepting comments](#) until July 1, 2018 on State rules related to permitting and municipal approval of private airports.



Well Water Testing Requirements

Act 161 | H.554 | *An act relating to the regulation of dams and the testing of groundwater resources*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT161/ACT161%20As%20Enacted.pdf>

Effective July 1, 2019, the act requires a new groundwater source to be tested prior to use as a well by the person who owns or controls the groundwater source. The Agency of Natural Resources will adopt rules to implement the testing requirement: including when to test, who is authorized to test, and how to sample. Failure to test will not affect marketability of title, provided that the test results are forwarded to the Department of Health prior to conveyance of the property. The act requires laboratories conducting groundwater source testing to submit the results to ANR and the Department of Health.

Swimming Hole Landowner Liability

Act 136 | H.132 | *An act relating to limiting landowner liability for posting the dangers of swimming holes*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT136/ACT136%20As%20Enacted.pdf>

Consistent with other Vermont laws limiting landowner liability for non-commercial recreational access, the act provides a landowner with immunity from liability for posting a sign warning about dangers on the owner's land or water.

Gender-Neutral, Single-User Restrooms

Act 127 | H.333 | *An act relating to identification of gender-free restrooms in public buildings and places of public accommodation*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT127/ACT127%20As%20Enacted.pdf>

Effective July 1, 2018, the act modified Title 18 to require that all single-user restrooms in public buildings or places of public accommodation be gender-neutral.

GOVERNANCE

Municipal Charters and General Law

Act 99 | H.846 | *An act related to the application of general law to chartered municipalities*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT099/ACT099%20Act%20Summary.pdf>

Now in effect, the act clarified that except as provided in a municipal's special charter law all other provisions of general law apply to that municipality. This was not entirely settled under prior law, which gave standing to municipal charters in matters not otherwise provided general law. This settles that a municipal charter can fill gaps not otherwise addressed by general law as well as differ from general law to respond to local needs.

Releasing or Retaining Municipal (Lease) Glebe Lands

Act 152 | H.859 | *An act relating to requiring municipal corporations to affirmatively vote to retain ownership of lease lands*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT151/ACT151%20As%20Enacted.pdf>

Effective July 1, 2018, the act adds a new section to Title 24 to require an affirmative vote of the legislative body to retain some or all lease lands by January 1, 2020. Glebe lands were established as part of Vermont's original town charters to pay for clergy and schools and remain on titles today. The release of lease lands will not affect any other encumbrance on the land. The act also exempts lease land conveyances from statutory notice required for the conveyance of municipal real estate.

State Rulemaking Process & Transparency

Act 156 | H.908 | *An act relating the Administrative Procedures Act*

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT156/ACT156%20As%20Enacted.pdf>

The act directs the Secretary of State to create an online centralized rule system where agencies will post adopted and proposed rules. Once developed, this will be a useful resource for municipal planning and development officials to track and participate in State rulemaking.



Prior DHCD memos summarizing the statutory changes starting in 2007 can be found at <http://accd.vermont.gov/community-development/resources-rules/planning>.

