

2017 Vermont Laws Affecting The Environment And Land Use

By Jon Anderson, Esq.

A summary of the major environment and land use laws enacted by the Vermont Legislature in 2017 is as follows:

Planting in Flood Plains – Act 4, effective March 6, 2017, grants planting projects in flood or other hazard areas or river corridors a zoning permit by operation of law. “Planting projects” means planting vegetation to restore natural or beneficial flood plain functions as defined by federal law (42 U.S.C. § 4121(a)).

Communications Siting Authority – Act 32, effective July 1, 2017, extends the Public Service Board’s (“PSB”) telecommunications siting authority from July 1, 2017 to July 1, 2020. Act 32 also requires that notice of siting applications contain an itemization of the rights and opportunities available to legislative bodies and planning commissions to participate in siting review.

Net Metering – Act 42, effective May 22, 2017, authorizes the PSB to apply the same rules to net metering systems beginning ten years after their installation as will be applied to net metering projects approved after January 1, 2017. Act 42 also adopts for Vermont certain federal appliance and lighting efficiency standards. Such standards will be effective in Vermont even if repealed by the federal government.

The Future of Act 250 – Act 47, effective May 23, 2017, creates a six-member legislative committee to review Act 250’s operation to insure that over the next 50 years Act 250 supports Vermont’s economic, environmental and land use planning goals. The Speaker of the House will appoint three House members to the Commission, not all from the same party, and the Senate Committee on Committees will appoint three Senators to the Commission. The Commission will be advised by a group comprised as follows:

- (A) the Chair of the Natural Resources Board or designee;
- (B) a representative of a Vermont-based, statewide environmental organization that has a focus on land use and significant experience in the Act 250 process, appointed by the Committee on Committees;
- (C) a person with expertise in environmental science affiliated with a Vermont college or university, appointed by the Speaker of the House;
- (D) a representative of the Vermont Association of Planning and Development Agencies, appointed by the Speaker of the House;
- (E) a representative of the Vermont Planners Association, appointed by the Committee on Committees;
- (F) a representative of a Vermont-based business organization with significant experience in real estate development and land use permitting, including Act 250, appointed by the Committee on Committees;
- (G) a person currently serving or who formerly served in the position of an elected officer of a Vermont city or town, appointed by the Vermont League of Cities and Towns;

- (H) the Chair of the Environmental Law Section of the Vermont Bar Association;
- (I) each of the following or their designees;
 - (i) the Secretary of Agriculture, Food and Markets;
 - (ii) the Secretary of Commerce and Community Development;
 - (iii) the Secretary of Natural Resources; and
 - (iv) the Secretary of Transportation; and
- (J) a current or former district coordinator or district commissioner, appointed by the Chair of the Natural Resources Board.
- (K) The Commission and the Chair of the Natural Resources Board each may appoint one additional advisor.

The Commission will first review available information about Act 250 before conducting a public engagement phase followed by a deliberation and report preparation phase. The bill lists a very broad set of issues to be considered including virtually every area of concern recently raised about Act 250. The Commission will also consider recommendations, due in October, 2017, from an executive branch working group including the Chair of the Natural Resources Board and the Secretaries of the Agencies of Commerce and Community Development and Natural Resources with assistance from the Agencies of Agriculture and Transportation.

Act 47 also authorizes filled land in Burlington to be used for public markets and extends to July 1, 2018 the deadline for commercial trash haulers to offer separate collection of food waste.

Energy and Telecommunications Siting – Act 52, effective May 30, 2017 and July 1, 2017, allows municipal and regional planning commissions to hold information meetings concerning proposed public utility facilities and to require representatives of facilities seeking construction permits and the Department of Public Service (“DPS”) to attend such meeting. The bill further requires the DPS to consider comments from the hearing by making recommendations concerning any proposal.

Act 52 also allows the local and regional planning commissions to request the DPS to retain at the expense of the Petitioner experts to review the proposed facilities.

Act 52 also allows local and regional planning commissions to make recommendations to the Public Service Board concerning proposed facilities.

Act 52 also requires PSB decisions to address each area of inquiry raised at the hearing before the Planning Commissions.

Act 52 also requires the DPS to investigate complaints of non-compliance and to issue draft administrative citations of non-compliance including that remedial actions be taken and that a civil penalty of up to \$5,000 be paid. After a 30-day public comment period, the DPS may revise the citation and the PSB can then open a proceeding to investigate the complaint. If the PSB does not open an investigation, the DPS shall issue a final citation which the recipient may then appeal to the PSB.

Act 52 also changes the name of the PSB to Public Utility Commission and requires all hearings unless “the hearing is for the sole purpose of considering information to be treated as confidential pursuant to a protective order duly adopted by the Board.” Act 52 also requires the submission of a report by December 15, 2017 a plan to allow citizens to access Board hearings and workshops from remote locations. Act 52 also requires the submission by November 15, 2017 of a report on the deployment of energy storage facilities in Vermont, by December 15, 2018, of a report concerning exceptions from the so-called standard offer program and by December 15, 2017 of a report concerning the exception of the PSB from the Open Meeting Law.

Contaminated Properties – Act 55, effective June 2, 2017, allows the Agency of Natural Resources Secretary to initiate a proceeding requiring persons releasing perfluorooctanoic acid to extend municipal water lines to properties with water supplies that are contaminated by releases of the chemical. Act 55 also allows the ANR Secretary to impose restrictions on the future use of contaminated properties following the execution of a corrective action plan that does not entirely clean up a property.

Aquatic Nuisance Species Control – Act 67, effective beginning on June 8, 2017, first extends the list of aquatic nuisance species to include Zebra and Quagga mussels, Asian clams, fishhook and spiny water fleas and rusty crayfish. Act 67 requires persons operating boats to drain them before transporting them away from any water. Act 67 also requires signage informing people of this requirement to be posted at public access and landing areas. Act 67 also requires the ANR Secretary to establish a program to train people to decontaminate boats, trailers and motor vehicles to prevent the spread of nuisance species and empowers lake associations, municipalities and the Department of Environmental Conservation to establish nuisance species inspection stations. Act 67 also allows for the use until February 1, 2018 of up to 15 bottom barriers on an inland lake to control nuisance species under certain conditions. Act 67 also requires the Agency of Natural Resources to submit to the Legislature a report on how to control aquatic nuisance species to and from Lake Champlain.

Miscellaneous Agricultural Subjects – Act 75, effective beginning June 12, 2017, allows the Vermont Working Lands Enterprise Board to establish criteria for providing the award of grants and loans, etc. for investments in agriculture and forestry and authorizes such grants and loans to be made to improve stormwater quality. Act 75 also requires the Secretary of Agriculture to submit to the Legislature by November 15, 2017 a report on whether to collect information concerning the use of subsurface tile drains and how to disseminate such information. Act 75 also defines agricultural land subject to current use tax relief as including stream buffer zones required by the Agency of Agriculture. Act 75 also exempts from sales tax equipment used for forestry and dyed diesel fuels to power such equipment.

Rural Economic Development – Act 77, effective beginning June 12, 2017, establishes a Rural Economic Development Initiative (“REDI”) to provide funding and technical assistance to small firms and businesses to promote economic development in rural areas appropriates \$75,000. Beginning on January 15, 2018, and each year thereafter, REDI must report to the Legislature on its activities and programs.

Act 72 also requires the Secretary of Agriculture to convene by October 1, 2017 the “Vermont Milk Commission” to review and evaluate proposals to help the dairy industry. Act 77 requires the Public Service Commission to report by January 15, 2018 on the efficacy of allowing industrial electric customers to self-administer electric efficiency programs. Act 77 also limits to \$1,000 or less the air pollution registration fee due from anaerobic digesters. Act 77 also establishes a priority system for funding grants for phosphorus removal. Act 77 also requires the Commissioner of Financial Regulation to submit to the Legislature by November 15, 2017 a report concerning ways to reduce worker compensation insurance rates for the forestry industry.

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