

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: John E. Adams and Dale Azaria
Vermont Department of Housing and Community Development (DHCD)
DATE: June 30th, 2016
RE: **2016 Legislative Revisions to Vermont’s Planning and Development Act, the Downtown Development Act and Act 250**

The General Assembly enacted a number of 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](http://www.vermontstatutes.net) are updated in October and will not include the following changes until then. DHCD memos summarizing the statutory changes starting in 2007 can be found at http://acd.vermont.gov/strong_communities/opportunities/planning/statute.

Once again, in compiling these statutory amendments, we are indebted to Sharon Murray, for her work as Legislative Liaison for the [Vermont Planners Association](http://www.vermontplanners.org) (VPA) and to the [Vermont League of Cities and Towns](http://www.vermontleague.org) (VLCT) for their 2016 Legislative Updates.

Eight Year Municipal Plans Act 90 (H.367) -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT090/ACT090%20As%20Enacted.pdf>

- amends 24 V.S.A. §4350, 4385, 4387

This Act makes various changes to the process for adopting and amending municipal development plans. Most significantly, it extends the period for which these plans remain in effect from five to eight years (24 V.S.A. § 4387). It also describes a specific process for plan review and readoption, which includes considering the recommendations of the RPC, engaging in community outreach, considering consistency with the State’s land use goals, addressing the required elements of a municipal plan, addressing compatibility with the regional plan and the approved plans of adjoining municipalities, and establishing an implementation plan. The Act requires that the municipality document that it is actively engaged in implementation of the plan in order to retain confirmation (24 V.S.A. § 4350).



Finally, the Act clarifies that an amendment to a plan does not affect or extend the plan's expiration date (24 V.S.A. § 4385).

The eight-year expiration date for municipal plans applies to plans adopted or readopted on or after July 1, 2015. Plans adopted or readopted before July 1, 2015 will still expire on the prior five-year schedule.

Intermunicipal Service Agreements Act 89 (H.249) -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT089/ACT089%20As%20Enacted.pdf>

- Creates a new provision codified at 24 V.S.A. § 4345b

This Act grants authority to a regional planning commission (RPC) to enter into service agreements with municipalities regarding intermunicipal services. Prior to exercising this authority, the RPC must draft bylaws that specify the process for entering into, withdrawing from, and terminating a service agreement. The RPC must hold at least one public hearing regarding the draft bylaws. The votes in favor of the proposed bylaws must be at least 67 percent of the commissioners of the RPC. The bylaws become effective 35 days after the RPC vote unless a majority of the municipalities in the region veto the bylaws within that timeframe, in which case the bylaws are deemed repealed.

Once these bylaws are adopted, the RPC may promote cooperative arrangements and enter into a service agreement with one or more municipalities. The service agreement shall describe the services to be provided and the amount of funds payable by each municipality that is a party to the service agreement. Participation by a municipality is voluntary. The proposed service agreement must be ratified by the RPC and the legislative body of each municipality that is a party to the service agreement.

This Act, the bylaws, and the service agreement do not give the RPC the power of eminent domain, taxing authority, or legislative functions. Funds provided to an RPC may not be used to provide services under a service agreement without prior written authorization from the entity providing the funds. Funds provided by a municipality for regional planning services shall not be used by an RPC to cover the costs of providing services under a service agreement.

Renewable Energy Facilities and Municipal/Regional Plans Act 174 (S.260) -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT174/ACT174%20As%20Enacted.pdf>

- amends 24 V.S.A. § 4302(c)(7), 4345, 4345a, and creates new § 4352

The purpose of this Act is to improve the integration of planning for energy and land use.

The Act amends the statement of purposes of Chapter 117 (Planning and Development Act) to identify strategies for achieving the state's goals of making efficient use of energy, developing renewable energy resources, and reducing greenhouse gas emissions (24 V.S.A. § 4302(c)(7)). General strategies include increasing the energy efficiency of new and existing buildings; identifying areas suitable for renewable energy generation; encouraging the use and development of renewable or lower emission energy sources for electricity, heat, and transportation; and reducing transportation energy demand and single occupancy vehicle use. Specific strategies are identified in the State energy plans.



Under this Act, regional planning commissions (RPCs) are required to undertake studies and make recommendations on the conservation of energy and the development of renewable energy resources. These duties were optional for RPCs under prior law (24 VSA § 4345).

This Act gives RPCs the right to appear and participate before the Public Service Board in section 248 proceedings regarding projects in their region, and the obligation to do so when requested by the Board (24 VSA § 4345 and 30 VSA § 248(a)). The RPC of an adjacent region has the right to appear as a party if the facility is within a certain distance of the RPC's boundary (500 feet or 10 times the height of the facility's tallest component, whichever is greater). The legislative body and planning commission of an adjacent municipality have the right to appear as a party if the facility is within that same distance of the municipal border (30 VSA § 248(a)).

The description of the energy element of regional plans has been broadened to explicitly address all energy sectors, including electric, thermal, and transportation (24 VSA sec 4348a(a)(3)). Additionally, the energy element may identify potential areas for the development and siting of renewable energy resources and areas that are unsuitable for siting those resources or particular categories or sizes of those resources.

If an RPC wants its regional plan to be given "substantial deference" in Public Service Board proceedings under 30 VSA sec 248, the RPC may submit its plan to the Commissioner of Public Service. The plan will be reviewed to determine whether it includes the energy element as described in subdivision 4348a(a)(3), and is consistent with the State's statutory greenhouse gas reduction goal, the goal of serving 25% of the State's energy needs with renewable energy by 2025, building efficiency goals, the State energy policy and State energy plans, and the distributed renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard. "Consistent with" is defined by 24 VSA § 4302(f)(1) as requiring substantial progress toward attainment of the goals, unless the planning body determines that a particular goal is not relevant or attainable. The plan must also meet the standards for issuing a determination of energy compliance included in the State energy plans, and must allow for the siting of all types of renewable generation technologies in the region. The process for approval of a regional plan and appeal of an unfavorable decision are set forth in the statute at 24 VSA § 4352(e) and (f). "Substantial deference" means that a land conservation measure or specific policy in the plan shall be applied in accordance with its terms unless there is a clear and convincing demonstration to the Public Service Board that other factors affecting the general good of the State outweigh the application of the measure or policy (30 VSA § 248(b)(1)(C)). If the RPC is not satisfied with the Department of Public Service's decision it may appeal to the Natural Resources Board (24 VSA § 4352).

If a municipality wants its municipal plan to be given deference in Section 248 proceedings, the requirements are similar. The municipality may submit its plan to its RPC for the determination, provided that the RPC has received its own determination of energy compliance from the state/Public Service Department. If the RPC has not received such a determination, the municipality may submit its plan directly to the Commissioner of Public Service, but only through July 1, 2018. Municipalities may appeal the decision of the Commissioner of Public Service to the Natural Resources Board, but there is no right to appeal decisions of the RPC (24 VSA § 4352).



This Act also sets out new requirements for the development of the State Electrical Energy Plan and the State Comprehensive Energy Plan, so that they provide recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance, as well as requiring that the Department of Public Service consult with municipal and regional planning commissions in establishing the State energy plans (30 VSA sec 202 and 202b).

The Department of Public Service is required to publish recommendations and standards related to the determination of energy compliance and enhanced energy planning by November 1, 2016. Prior to issuing the recommendations and standards, the Department must engage in a public input process. The standards must address total current energy use across transportation, heating, and electric sectors; existing electric generation and renewable resources; targets for conservation, efficiency, fuel-switching and use of renewable energy; pathways and recommended action to achieve the targets, identification of potential areas for the development and siting of renewable energy resources; and identification of areas, if any, that are unsuitable for siting those resources.

Once the recommendations and standards are published, the Department of Public Service is also required to offer training sessions for municipal and regional planning commissions. The purpose of the training sessions is to assist planning commissions in the development of municipal and regional plans that are eligible to receive a determination of energy compliance. The Department of Public Service will collaborate with the Vermont League of Cities and Towns and Vermont Association of Planning and Development Agencies in the development and presentation of the training sessions, with at least one session to be held in the area of each RPC.

The Department of Public Service, in consultation with DHCD, will have \$300,000 to award in FY 2017 to RPCs and municipalities for training or assistance to municipalities in the implementation of this Act.

The Act also contains various other provisions regarding electric generation facilities, the impact of such projects on primary agricultural soils, a rule-making process regarding sound from wind generation facilities, a pilot project for net-metering in preferred locations, group net metering systems, and makes adjustment of the renewable energy requirements for small municipal electric utilities. It also creates an Access to Public Service Board Working Group to review the current processes for citizen participation in Public Service Board proceedings and make recommendations to ease public participation.

Forests and Planning Act 171 (H.857) -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT171/ACT171%20As%20Enacted.pdf>

- amends 24 V.S.A. §4302, §4303, §4348, §4382, §4413

Act 171 amends multiple provisions related to timber harvesting and forest management, as well as makes additions to municipal and regional planning requirements related to forest blocks and habitat connectors. The following amendments related to the state planning goals, regional plans and municipal plans go into effect January 1, 2018.



The state planning goals in 24 V.S.A §4302 are amended to explicitly include forests in the list of resources to be “maintained” and “improved,” adding that “Vermont’s forestlands should be managed so as to maintain and improve forest blocks and habitat connectors.”

Definitions are created for the following terms: “Forest block,” “Forest fragmentation,” “Habitat connector,” and “Recreational trail” (24 V.S.A §4303).

The Act requires that the land use element in regional plans must identify areas reserved for flood plain as well as areas identified by the State, regional planning commissions, or municipalities for the maintenance of forest blocks, wildlife habitat, and habitat connectors. Additionally, regional plans must “indicate those areas that are important as forest blocks and habitat connectors and include plans for development in those areas that minimizes forest fragmentation and promotes the health, viability and ecological function of forests, and stating that a plan may include policies to encourage the active management of those areas for wildlife habitat, water quality, timber production, recreation or other values or functions recognized by the regional planning commission” (24 V.S.A §4348).

Additionally, the Act requires that the land use plan for a municipality must indicate those areas “identified by the State, the regional planning commission, or the municipality that require special consideration for aquifer protection; for wetland protection; or for the maintenance of forest blocks, wildlife habitat, and habitat connectors; or for other conservation purposes,” as well as “indicate those areas that are important as forest blocks and habitat connectors and plans for land development in those areas to minimize forest fragmentation and promote the health, viability, and ecological function of forests” (24 V.S.A §4382).

Effective July 1, 2016, the list of activities that a municipal zoning bylaw shall not regulate (24 V.S.A. §4413) is amended to include "forestry operations" and a paragraph is added to the section:

This subsection does not prevent an appropriate municipal panel, when issuing a decision on an application for land development over which the panel otherwise has jurisdiction under this chapter, from imposing reasonable conditions under subsection 4464(b) of this title to protect wildlife habitat, threatened or endangered species, or other natural, historic, or scenic resources and does not prevent the municipality from enforcing such conditions, provided that the reasonable conditions do not restrict or regulate forestry operations unrelated to land development.

The Act also creates a Study Committee on Land Use Regulation and Forest Integrity to study potential revisions to Act 250 and chapter 117 of title 24 (municipal bylaws) to protect contiguous areas of forestland from fragmentation and promote habitat connectivity between forestland while protecting working forestland use, agriculture and recreation. The report is due on January 1, 2017.



Miscellaneous Amendments Relevant to Local Planning and Regulation

A number of other bills that have some bearing on local planning or regulation but that do not directly involve changes to Chapter 117, Chapter 76A or Act 250 were also passed. These include the following.

Miscellaneous Economic Development Provisions Act 157 (H.868) --

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT157/ACT157%20As%20Enacted.pdf>

As part of the Miscellaneous Economic Development Bill, the legislature converted the state's contracts with the RPCs and regional development corporations (RDCs) into grants (24 VSA sec. 4341a).

This Act calls for a study on internet-based lodging accommodations businesses, to be developed by the Departments of Taxes, of Health, of Tourism and Marketing, of Financial Regulation, and the Division of Fire Safety within the Department of Public Safety, engaging interested stakeholders as necessary. The study is due on January 15, 2017. (Section J.1)

The Act establishes the Vermont Creative Network, a communications, advocacy, and capacity-building entity that strengthens Vermont's creative sector and uses it to enhance Vermonters' quality of life and increase the State's economic vitality. This group is instructed to issue a report by January 15, 2017, and create a strategic plan by June 30, 2017. The group is supposed to support regional creativity zones and identify methods and opportunities to strengthen the links within the creative sector. (Section L.1)

The Act also calls for a study of housing, including review of statutory tools and programs to update existing housing stock, evaluation of the priority housing project exemption under Act 250, and a Vermont Economic Progress Council led stakeholder process to investigate alternative municipal infrastructure financing. (Section T.2)

Department of Environmental Conservation (DEC) Permitting Act 150 (S.123) --

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT150/ACT150%20As%20Enacted.pdf>

Act 150 (S.123) standardizes approximately 85 different notice and comment processes into 5 standard categories. The Act also requires that all notice go through a centralized environmental notice bulletin that would provide detailed information on the project, including critical documents being reviewed by DEC, and send interested persons e-mail notices when there is a change to the project status. Finally, the Act requires that for a person to appeal an act of DEC that they comment during the comment period and their appeal is limited to those issues that they commented upon. The Act takes effect January 1, 2018.

Classification of State Waters Act 79 (H.517) --

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT079/ACT079%20As%20Enacted.pdf>

Act 79 increases the number of options for classifying waters of the state.

Endangered Species Act 145 (H.570) --

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT145/ACT145%20As%20Enacted.pdf>

Act 145 clarifies the process for listing a species threatened or endangered and authorizes the Agency of Natural Resources (ANR) to designate (by rule) critical habitat for threatened and endangered species, (the Act explicitly states that downtowns and village centers shall not be designated critical habitat). The Act also clarifies how ANR issues threatened and endangered takings permit, including specifying the criteria for an incidental taking permit.



Conservation Easements Act 84 (H.580) - -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT084/ACT084%20As%20Enacted.pdf>

This Act provides that a tax lien will not affect a conservation right and interest if the tax lien attaches the subject property after the conservation right and interest has been recorded in the municipal land records. It also provides that the requirement for re-recording a notice of claim every 40 years does not apply to conservation or preservation rights and interests.

Public Notice of Wastewater Discharges Act 86 (H.674) - -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT086/ACT086%20As%20Enacted.pdf>

This act requires wastewater treatment facility operators to post (online) a public alert within one hour of discovery of an untreated discharge of sewage and specifies details regarding what the municipality must report to the Agency of Natural Resources. Additionally, the Act requires that every sewer overflow outfall be marked with a permanent sign, and that a municipality in which an untreated discharge from a wastewater treatment facility occurs shall post signs in the area of the discharge.

Open Meeting Law, Act 129 (S.114)

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT129/ACT129%20As%20Enacted.pdf>

This Act amends several provisions in the Vermont Open Meeting Law. This Act provides that:

- when one or more members of a public body are participating in a meeting electronically and a vote is taken, only votes that are not unanimous are required to be taken by roll call;
- if a quorum or more of the members of a public body will attend a meeting without being physically present, the meeting agenda shall designate a physical location where the public may attend and participate in the meeting, rather than requiring special public announcement of such a meeting;
- if a public body is required to post meeting minutes on a website, the minutes must remain posted for at least one year from the date of the meeting, unless they are draft minutes that have been substituted with updated minutes;
- the time period for a public body to respond to a notice of alleged violation, and the time period for a failure to respond to such a notice to be deemed a denial, is 10 calendar days;
- certain violations of the Open Meeting Law require the public body to cure the violation by either ratifying, or declaring as void, any action taken at or resulting from the meeting; and
- no one is subject to criminal liability for any violation of the Open Meeting Law's agenda posting requirement that occurred before July 1, 2015.

