

(H. 417) Act No. 250 of the Acts of 1970

An Act to create an Environmental Board and District Commissions

Sec. 1 Findings and declaration of intent.

WHEREAS, the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont; and

WHEREAS, a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control; and

WHEREAS, it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls; and

WHEREAS, it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state;

Now, therefore, the legislature declares that in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests, the state shall, in the interest of the public health, safety and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development and land use plans as hereinafter provided.

Sec. 2. Definitions

When used in this Act:

- (1) "Board" means the environmental board.
- (2) "Capability and development plan" means the plan prepared pursuant to section 19.
- (3) "Development" means the construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial, or industrial purposes. "Development" shall also mean the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision by-laws. The word "development" shall mean the construction of housing projects

such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land. The word "development" shall not include construction for farming, logging or forestry purposes below the elevation of 2500 feet. The word "development" also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings. The word "development" shall not include an electric generation or transmission facility which requires a certificate of public good under section 246 of Title 30. The word "development" shall also mean the construction of improvements for commercial, industrial or residential use above the elevation of 2500 feet.

(4) "District commission" means the district environmental commission.

(5) "Land Use Plan" means the plan prepared pursuant to section 20.

(6) "Lot" means an undivided interest in land of less than 10 acres, whether freehold or leasehold, including, but not limited to, interests created by trusts, partnerships, corporations, cotenancies and contracts.

(7) "Plat" means a map or chart, of a subdivision with surveyed lot lines and dimensions.

(8) "Person" shall mean an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated ownership. The word "person" also means a municipality or state agency.

(9) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, and within any continuous period of 10 years after the effective date of this act. In determining the number of lots, a lot shall be counted if any portion is within 5 miles.

Sec. 3. Board created, removal

(a) An environmental board is created. The board shall consist of nine members appointed in the month of February by the Governor, with the advice and consent of the Senate, so that five appointments expire in each odd numbered year. Eight of the members shall be appointed for a term of four years. The Chairman (ninth member) shall be appointed for a two year term.

(b) Any vacancy occurring in the membership of the board shall be filled by the governor for the unexpired portion of the term.

(c) Members shall be removable for cause only, except the chairman, who shall serve at the pleasure of the Governor.

Sec. 4. Administrative organization

(a) The board may appoint an executive officer and other employees, including administrative personnel, as it finds necessary in carrying out its duties, unless

the Governor shall otherwise provide.

(b) The board may apply for and receive grants from the federal government and from other sources.

(c) Other departments and agencies of state government shall cooperate with the board and make available to it data, facilities and personnel as may be needed to assist the board in carrying out its duties and functions.

Sec. 5 District environmental commissions

(a) For the purposes of the administration of this act, the state is divided into nine districts.

- (1) District No. 1, comprising Franklin, Grand Isle and Lamoille Counties.
- (2) District No. 2, comprising Orleans, Essex, and Caledonia Counties.
- (3) District No. 3, comprising Chittenden County.
- (4) District No. 4, comprising Addison County.
- (5) District No. 5, comprising Washington and Orange Counties.
- (6) District No. 6, comprising Rutland County.
- (7) District No. 7, comprising Windham County.
- (8) District No. 8, comprising Bennington County.
- (9) District No. 9, comprising Windsor County.

(b) A district environmental commission is created for each district. Each district commission shall consist of three members from that district appointed in the month of February by the Governor so that two appointments expire in each odd numbered year. Two of the members shall be appointed for a term of four years, and the chairman (third member) of each district shall be appointed for a two year term.

(c) Members shall be removable for cause only, except the chairman who shall serve at the pleasure of the Governor.

(d) Any vacancy shall be filled by the Governor for the unexpired period of term.

Sec. 6 Permit for development and subdivision

No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development or commence development without a permit. This section shall not prohibit the sale, mortgage or transfer of all, or an undivided interest in all, of a subdivision unless the sale, mortgage or transfer is accomplished to circumvent the purposes of this act.

Sec. 7. Permits not required

Section 6 shall not apply to a subdivision exempt under the regulations of the department of health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the board of health regulations, or has pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plans on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Section 6 shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Section 6 shall not apply to a state highway on which a hearing pursuant to section 222 of Title 19 has been held prior to June 1, 1970. Section 6 shall apply to any substantial change in such expected subdivision or development.

Sec. 8. Permit application

(a) An application for a permit shall be filed with the district commission as prescribed by the rules of the board and shall contain at least the following documents and information:

- (1) The applicant's name, address, and the address of each of the applicant's offices in this state, and, where the applicant is not an individual, municipality or state agency, the form, date and place of formation of the applicant.
- (2) Five copies of a plan of the proposed development or subdivision showing the intended use of the land, the proposed improvements, the details of the project and any other information required by this act, or the rules promulgated thereunder.
- (3) The fee prescribed by rule.
- (4) Certification of filing of notice as set forth in section 9.

Sec. 9. Notice of application

(a) On or before the date of filing of application the applicant shall send notice and a copy of the application to a municipality, and municipal and regional planning commissions wherein the land is located, and any adjacent Vermont municipality, municipal or regional planning commission if the land is located on a boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the land lies.

(b) The district commission shall forward notice and a copy of the application to the board and any state agency directly affected, and any other municipality or state agency, or person the district commission or board deems appropriate. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not more than 7 days after receipt of the application.

Sec. 10. Hearings

(a) Any one required to receive notice by section 9 and any adjoining property owner may request a hearing by filing a request within 15 days of receipt of notice. Upon receipt of notice the district commission shall treat the application pursuant to section 814 of Title 3. The district commission may order a hearing without a request within 20 days of receipt of the application.

(b) The date for a hearing shall be set within 25 days of receipt of the application or notice of appeal filed under section 14 (a). The hearing shall be held within 40 days of receipt of the application or notice of appeal. The parties shall be given not less than 10 days notice. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not less than 10 days before the hearing date.

(c) Parties shall be those who have received notice, adjoining property owners who have requested a hearing, and such other persons as the board may allow by rule. For the purposes of appeal only the applicant, a state agency, the regional and municipal planning commissions and the municipalities required to receive notice shall be considered parties.

Sec. 11. Hearing not required

If no hearing has been requested or ordered within the prescribed period no hearing need be held by the district commission. In such an event a permit shall be granted or denied within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.

Sec. 12. Denial of application

(a) No application shall be denied by the board or district commission unless it finds the proposed subdivision or development detrimental to the public health, safety or general welfare.

Before granting a permit the board or district commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable health and water resources department regulations.

(2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

(5) Will not cause unreasonable highway congestion or unsafe conditions with respect to use of the highways existing or proposed.

(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

(7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

(9) Is in conformance with a duly adopted development plan, land use plan or land capability plan.

(10) Is in conformance with any duly adopted local or regional plan under chapter 91 of Title 24.

(b) The board or district commission shall issue its findings and decision within 20 days of the final hearing day.

(c) A permit may contain such requirements and conditions as are allowable within the proper exercise of the police power and which are appropriate with respect to (1) through (10) of subsection (a), including but not limited to those set forth in section 4407 (4), (8) and (9), 4411 (a) (2), 4415, 4416 and 4417 of Title 24, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule.

(d) A permit may not be denied solely for the reasons set forth in (5), (6) and (7) of subsection (a) above. However, reasonable conditions and requirements allowable in subsection (c) may be attached to alleviate the burdens created.

(e) A denial of a permit shall contain the specific reasons for denial. A person may, within 6 months, apply for reconsideration of his permit which application shall include an affidavit to the district commission and all parties of record that the deficiencies have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration.

(f) The board may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to (1) through (7) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. The acceptance of such approval, permit or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A. Sec. 803 (b). The board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.

Sec. 13. Burden of proof

(a) The burden shall be on the applicant with respect to (1), (2), (3), (4), (9) and (10) of section 12 (a).

(b) The burden shall be on any party opposing the applicant with respect to (5) through (8) of section 12 (a) to show an unreasonable or adverse effect.

Sec. 14. Appeal

(a) An appeal from the district commission shall be to the board. The board shall hold a de novo hearing on all findings requested by any party. Notice of appeal shall be filed with the board within 30 days. The board shall notify the parties set forth in section 10 (c). The board shall proceed as in section 10 (b) and (c) and treat the applicant pursuant to section 814 of Title 3.

(b) An appeal from a decision of the board under subsection (a) shall be to the supreme court by a party as set forth in section 10 (c).

(c) No objection that has not been urged before the board may be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(d) An appeal from the board will be allowed for all usual reasons, including the unreasonableness or insufficiency of the conditions attached to a permit. An appeal from the district commission will be allowed for any reason except no appeal shall be allowed when an application has been granted and no preliminary hearing requested.

Sec. 15. Data and investigations

The board and district commission may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application. An applicant shall grant the board or district commission, or their agents, permission to enter upon his land for these purposes.

Sec. 16. Duration and revocation of permits

(a) Any permit granted under this act shall be for a specified period determined by the board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated in the application, and with due regard for the economic considerations attending the proposed development or subdivision.

(b) A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.

Sec. 17. Renewals and Nonuse

(a) At the expiration of each permit, it may be renewed under the same procedure herein specified for an original application.

(b) Nonuse of a permit for a period of one year following the date of issuance shall constitute an abandonment of the project and the permit shall be considered expired.

(c) If the application is made for an extension prior to expiration the district commission may grant an extension and may waive the necessity of a hearing.

Sec. 18. Interim land capability plan

Prior to the adoption of the capability and development plan, the board shall adopt an interim land capability and development plan which will describe the present use of the land and define in broad categories the capability of the land for development and use based on ecological considerations and which plan shall be in effect until the adoption of the land use plan, or until July 1, 1972, whichever first occurs.

Sec. 19. Capability and Development plan

The board shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants, as well as efficiency and economy in the process of development, including but not limited to, such distribution of population and of the uses of the land for urbanization, trade, industry, habitation, recreation, agriculture, forestry and other uses as will tend to create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population and tend toward an efficient and economic utilization of drainage, sanitary and other facilities and resources and the conservation and production of the supply of food, water and minerals. In addition, the plan may accomplish the purposes set forth in section 4302 of Title 24.

Sec. 20. Land use plan

After the adoption of a capability and development plan, the board shall adopt a land use plan based on the capability and development plan which shall consist of a map and statements of present and prospective land uses based on the capability and development plan, which determine in broad categories the proper use of the lands in the state whether for forestry, recreation, agriculture or urban purposes, the plans to be further implemented at the local level by authorized land use controls such as subdivision regulations and zoning.

Sec. 21. Public hearings

(a) The board shall hold public hearings for the purpose of collecting information to be used in establishing the capability and development plan, land use plan, and interim land capability plan. The public hearings may be held in an appropriate area or areas of the state and shall be conducted according to rules to be established and published by the board.

(b) The board may, on its own motion or on petition of an interested agency of the state or any regional or local planning commission, hold such other hearings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules and regulations.

(c) At least one public hearing shall be held in each district prior to adoption of a plan pursuant to sections 19 and 20 of this act. Notice of a hearing shall be furnished each municipality, and municipal and regional planning commission in the district where the hearing is to be held not less than fifteen days prior to the hearing.

(d) The provisions of chapter 25 of Title 3 shall not apply to the hearings under this section.

Sec. 22. Submission to municipal and regional planning commissions

Prior to approval of a plan by the board the tentative plan shall be submitted to each municipal and regional planning commission, which shall forward its comments and recommendations, if any, to the board within 30 days. The board shall, prior to approval of the plan, consider all such comments and recommendations, make such changes in the plan as it deems appropriate, and convey its specific responses to the respective planning commissions from which the comments and recommendations originated.

Sec. 23. Approval of governor and legislature

Upon approval of a capability and development, land use or interim land capability plan by the board, it shall submit the plan to the governor for approval. The governor shall approve the plan, or disapprove the plan or any portion of a plan, within 30 days of receipt. If the governor fails to act, the plan shall be deemed approved by the governor. This section and section 22 shall also apply to any amendment of a plan.

After approval by the governor, plans pursuant to section 19 and 20 shall be submitted to the general assembly when next in session for approval by joint resolution. A plan shall be considered adopted for the purposes of section 12 (a) (9) when the required final approval has been made.

Sec. 24. Amendments to boundaries

(a) After final adoption, any department or agency of the state or a municipality, or any property owner or lessee may petition the board for a change in the

boundary of any district created under section 20 or the capability of land for a use under section 18. Within 10 days of receipt, the board shall forward a copy of the petition to the district commission and regional planning agency for comments and recommendations. If no regional planning commission exists, the copy shall be sent to the affected municipal planning commissions and municipalities.

(b) After 60 days but within 120 days of the original receipt of a petition, the board shall advertise a public hearing to be held in the appropriate county. The board shall notify the persons and agencies that have an interest in the change of the time and place of the hearing.

(c) With respect to petitions relating to section 20 no change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified, and the following requirements have been fulfilled:

(1) The petitioner has submitted proof that the land is usable and adaptable for the use for which it is proposed to be classified, and

(2) Conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable.

(d) With respect to petitions relating to section 18 no change shall be allowed unless the land is capable of sustaining the use proposed.

(e) The applicant, any person or municipality directly affected, who is aggrieved may appeal to the supreme court as in 14 (c).

Sec. 25. Additional powers

(a) The board shall adopt rules to interpret and carry out the provisions of this act.

(b) The board and district commissions shall have the power to compel the attendance of witnesses, and require the production of evidence.

(c) The powers granted to the board under this act are additional to any other powers which may be granted to it by other legislation.

(d) The board may designate or establish such regional offices as it deems necessary to implement the provisions of this act and the rules adopted hereunder. The board may designate or require a regional planning commission to receive applications, provide administrative assistance, investigations, and make recommendations.

(e) The board, when it determines the workload in any district is such that unreasonable delays will result, may at the request of an overloaded district authorize the district commission of another district to sit in that district to consider applications.

(f) The board may by rule allow joint hearings to be conducted with specified state agencies or specified municipalities.

Sec.26. Procedures

The provisions of chapter 25 of Title 3 shall apply unless otherwise specifically stated.

Sec. 27. Approval by local governments and state agencies

The permit required under section 6 shall not supersede or replace the requirements for a permit of any other state agency or municipal government.

Sec. 28. Penalty for violation

A violation of any provision of this act or the rules promulgated hereunder is punishable by a fine of not more than \$500.00 for each day of the violation or imprisonment for not more than two years, or both.

Sec. 29. Enforcement, conveyances invalid for establishing title

In addition to the other penalties herein provided, the board may, in the name of the state of Vermont, institute any appropriate action, injunction, or other proceeding to prevent, restrain, correct or abate any violation hereof or of the rules promulgated hereunder.

Sec. 30. 32 V.S.A. Sec. 3378 is amended to read as follows:

Section 3378. Prohibition against certain recordings

No town clerk shall record, or receive for recording, any deed to which has not been affixed an acknowledgement of return and tax payment under Sec. 3377 of this Title and a certificate in the form prescribed by the environmental board signed under oath by the seller, that the conveyance of the real property and any development thereon by the seller is in compliance with or exempt from the provisions of this act. A town clerk who violates this section shall be fined \$50.00 for the first such offense and \$100.00 for each subsequent offense.

A person who purposely or knowingly falsifies any statement contained in the certificate required is punishable by fine of not more than \$500.00 or imprisonment for not more than one year.

Sec. 31. Members of the board and district commissions shall receive a per diem pay of \$25.00 and all necessary expenses.

Sec. 32. Temporary provisions

(a) On or before June 1, 1970, the governor shall appoint four members to the board whose terms shall expire January 31, 1971, four members whose terms shall expire January 31, 1973, and a chairman whose term shall expire January 31, 1971.

(b) On or before June 1, 1970, the governor shall appoint one member of each district commission whose term shall expire January 31, 1971, one member whose term shall expire January 31, 1973, and a chairman whose term shall expire January 31, 1971.

(c) The appointments to the board shall be made with the advice and consent of the senate for all appointments made during the present session of the legislature, and for all appointments, not so made, whose terms expire in 1973, by the senate of the general assembly convening January, 1971.

Sec. 33. Separability

If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 34. There is hereby appropriated to the executive office the sum of \$30,000.00 for the purposes of this act. These funds shall not revert but may be used until June 30, 1971.

Sec. 35. Section 6 shall take effect on June 1, 1970. All other sections shall take effect from passage.