

CONFIDENTIAL LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.701 Name of Bill: An Act Relating to Environmental Permits

Agency of Natural Resources / Dept: DEC Author of Bill Review: Kim L. Greenwood

Date of Bill Review: 2/4/2016 Related Bills and Key Players: Click here to enter text.

Status of Bill (check one): ☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both

Recommended Position: Oppose

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill appears to do two things: 1) minimize the need for Act 250 applicants to utilize third-party professional or experts in the Act 250 process and 2) require that if regional permit specialists issue determinations related to the need for permits, certificates or other approval listed in 10 V.S.A 8503 via a project review sheets, that these determinations become an appealable act or decision of the Secretary. It requires that program staff respond to permit specialists' inquiries "promptly." Absent a timely appeal, these determinations would make the project review sheet determinations binding.

2. Is there a need for this bill? *Please explain why or why not.* 1) While best addressed by the Natural Resources Board, ANR does not believe that there is a need for this bill. It appears that in instances where the applicant possesses knowledge of the subject matter (i.e. Act 250 criteria) that that would be acceptable to Act 250 Commissions and that hiring an expert is not necessary. 2) ~~the~~. The bill may actually counter the intended outcome by requiring so much up-front work by the applicant, that it would result in increased permitting costs.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

1) 1) While best addressed by the Natural Resources Board, ANR believes that this portion of the bill could results in increased costs for the Department. More time would need to be spend with project applicants in ensuring that permit applications are complete and meet the technical standards required by Act 250. 2) Fiscal and programmatic implications would be incurred in three ways. First, increased training of the permit specialists would be required. Second, increased legal staffing needed to address appeals of project review sheets and appeals likely to result. Third, if the programs are required to respond to the permit specialists promptly, additional staffing at the program level will be required.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it? 1) While best addressed by the Natural Resources Board, ANR believes that the Natural Resources Board will incur increased costs. These would be incurred by needing to ensure that non-expert project plans are technically sound. Increased costs and resources for the enforcement of Act 250 permits may also be incurred, especially if plans are not technically sound and problems are encountered with the operational conditions of the project under the Act 250 permit. 2) Increased staffing at the program or legal level would result in increased costs in physical space both for staff and electronic or physical space for documents needed to be submitted for a determination by the permit specialists. These costs would be borne by DEC as well as Buildings and General Services.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

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1) While best addressed by the Natural Resources Board, ANR believes that many ANR programs will see increased permit processing times and increases in enforcement of Act 250 permits. Decreased costs for applicants would be negligible and may even result in increased costs after the permit is issued due to a lack of expertise in the subject area necessary to prevent unforeseen aspects once the permit is issued. 2) Increased legal costs for the regulated community in both preparing the documentation to the level required for the permit specialists to make such a decision, as well as costs related to appealing the outcomes of project review sheets.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? 1) While best addressed by the Natural Resources Board, ANR believes that the regulated community may support the proposal because of the perception of decreases up-front permitting costs. 2) The regulated community may support the proposal in concept because of decreased need to communicate with ANR programs, but that support is likely to dwindle when it is understood the extent to which documentation would be required to meet the purpose of bill.

6.2 Who else is likely to oppose the proposal and why? 1) While best addressed by the Natural Resources Board, ANR believes that environmental organizations, professional consultants and experts and the general public may oppose the proposal as it could result in applications and permits that are technically deficient, leading to increased delayed costs and impacts to the environment. 2) Business community, environmental organizations and private citizens because of increased costs of up-front documentation required and appeals of project review sheets.

7. Rationale for recommendation: *Justify recommendation stated above.* 1) While best addressed by the Natural Resources Board, ANR believes that the Natural Resources Board will not support the bill. Act 250 Commissions rely on technical experts to ensure that applications are not technically deficient. The additional costs borne by Act 250 in needing to verify the technical completeness of an application, as well as enforcement issues on operational situations that cannot be foreseen by non-experts will add to their opposition of the bill. 2) The level of documentation and project design necessary for permit specialists to make a jurisdictional determination would be both overwhelming and stifling to the regulated community. The project would need to be designed to 100% design levels and any changes to the project, no matter how slight, would require a new jurisdictional determination: the applicant would be locked into the final project. This would make it impossible to address concerns that arise during the permit process, difficult to minimize impacts, and create a rigid and reactive process that, in the end, would gain the applicant nothing.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

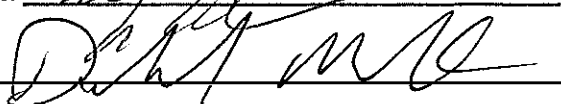
1) While best addressed by the Natural Resources Board, ANR believes that the Natural Resources Board will be unable to provide recommendations that would enable them to support the bill. 2) None.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? No to both portions of the proposed bill.

Commissioner has reviewed this document:

 Date: 2/11/16

Secretary has reviewed this document:

 Date: 2-12-16