Agenda Item IV.1

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

Title 19 : Highways

Chapter 011 : Protection Of Highways

(Cite as: 19 V.S.A. § 1111)

§ 1111. Permitted use of the right-or-way; relocation or adjustment orders

(a) Permits; relocation or adjustment orders.

(1) Permits must be obtained by anyone or any corporation wishing to use as described in this section any part of the highway right-of-way on either the State or town system. Notwithstanding any other statutory requirement, a permit shall be required for any use of any highway right-of-way, consistent with the provisions of this section. In issuing a permit under this section for a use of a State highway right-of-way, the Secretary may require a transportation impact fee in accordance with 10 V.S.A. chapter 151, subchapter 5. Except for this transportation impact fee authority of the Secretary, the authority given to the Board, the Secretary, and the Attorney General under this section shall also apply to the legislative bodies of towns, or their designees.

(2) Except in emergencies, the Agency or the municipality shall seek input and consider input received from affected utilities before issuing a utility relocation or adjustment order. In specifying the times for utility relocation or adjustment work, the Agency or the municipality shall allocate to each a reasonable time for its role in the relocation or adjustment work after taking into account:

(A) the season of the year; and

(B) the respective duties and responsibilities of the pole or conduit owner and the involved utilities, including the need to install, transfer, or retire individual components in a specific sequence.

(3) When the Agency or a municipality issues a utility relocation or adjustment order in accordance with law in connection with highway maintenance or construction activities, and a utility fails to move or adjust its line or other facility within the time specified in the order, that utility shall be liable to the State or to the municipality for damages that the State or the municipality is required to pay a contractor for delay caused by the failure. However, a utility shall not be liable for such damages if its failure to move or adjust the line or facility is for reasons beyond its control, including: emergency restoration activities; inclement weather; timing restrictions imposed by law or permits; terms of collective bargaining agreements; or the failure of another utility to complete its assigned responsibilities for the installation, transfer, or retirement of its facilities. If the Agency or the selectboard cannot agree with a utility as to whether the utility is liable or as to the amount of damages under this subdivision (a)(3), the Agency or selectboard may bring an action in accordance with subsection (h) of this section.

(b) Driveway entrances, highway grades; drainage. It shall be unlawful to develop, construct, regrade, or resurface any driveway, entrance, or approach, or build a fence or building, or deposit material of any kind within, or to in any way affect the grade of a highway right-of-way, or obstruct a ditch, culvert, or drainage course that drains a highway, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way, without a written permit from the Agency, in the case of State highways, or the legislative body, or designee of a municipality, in the case of town highways. As a condition of any such permit, compliance with all local ordinances and regulations relating to highways and land use shall be required. The Agency or legislative body, within their respective jurisdictions, may make such rules to carry out the provisions of this section as will adequately protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure, but shall in no case deny reasonable entrance and exit to or from property abutting the highways, except on limited access highways, using safety, maintenance of reasonable levels of service on the existing highways, and protection of the public investment in the existing highway infrastructure as the test for reasonableness, and except as necessary to be consistent with the planning goals of 24 V.S.A. § 4302 and to be compatible with any regional plan, State

agency plan, or approved municipal plan. However, in any case involving an access permit for a development contributing 75 or more peak hour trips to State highways or class 1 town highways, the permit may include reasonable conditions and requirements to protect service levels on such highways.

(c)(1) Installing pipes and wires in highway. It shall be unlawful to dig up or excavate a trench in a public highway for the purpose of installing pipes or wires without a written permit from the Agency in the case of State highways and the selectboard for town highways. The permit shall include any conditions imposed by the issuing party. All inspection of excavation and backfilling shall be done under the supervision of an agent of either the town or State as the case may be. Failure of any person, corporation, or municipality to perform the work or to restore the highways in a satisfactory and timely manner to the Agency or the town may result in either the Agency or the town completing the work at the expense of the permit holder; provided however, the Agency or town shall give timely notice to the permit holder of any defects, and the permit holder upon receipt of notice, shall have a reasonable time in which to repair the defects. The Agency or the selectboard may recover reasonable expenses incurred in this manner in a civil action in the name of the State or town with costs.

(2) These provisions shall not apply to cities and shall not prevent a person, corporation, or municipality from excavating to make emergency repairs to a break in a pipe or a short in a wire, but in all cases all work shall be completed to the satisfaction of the Agency or the town. Notice shall be given to the appropriate persons as expeditiously as possible after discovery of the problem.

(d) Use by private sewer or water lines. The Agency may issue permits allowing the use of highway rights-of-way for private sewer or water lines if, following notice and hearing, the Board certifies to the Agency that the requested use will serve the needs of the public. In its certificate, the Board may attach conditions as are required, including the following:

(1) the installation of sewer or water lines shall conform with plans and specifications approved by the Agency and shall be relocated at no cost to the State whenever the right-of-way is needed for highway purposes;

(2) reimbursement of the Agency by the permit applicant for the actual costs of the review, inspection, and engineering services provided by the Agency for these installations;

(3) reimbursement of the Agency by the permit applicant for the cost of assigning an inspector to the project during construction.

(e) Project inspectors; highway access plan. The Agency may assign an inspector to the project during construction at the applicant's expense. Any application to the Agency for a drive or access permit by reason of any development subject to the provisions of this section shall include a proposed highway access plan for the entire tract of land. The Agency shall impose reasonable conditions to reduce the number of accesses that will be required for the tract of land. These conditions may include a required setback of any construction or improvements from the highway to permit the construction of frontage road or roads, acceleration and deceleration lanes, and/or other areas for off-highway control and management of vehicles, and may require reimbursement for any costs to the State for the installation of traffic control devices or road improvements reasonably required because of the development and may permit or require integration of the access and on-site traffic control facilities and connection of frontage roads between contiguous tracts of land as development is occurring or may occur along the highway.

(f) Revoking access; frontage road. The Agency, in the case of State highways, or the selectboard, in the case of town highways, may, as development occurs on land abutting the highway, provide as a condition of any permit for the elimination of access previously permitted and require the construction of a common frontage road or other access improvements which may serve more than one property or lot.

(g) Permit suspension. In addition to any other enforcement powers that may be provided for by law, the Secretary or his or her designated representative, on behalf of the Agency or the legislative body, or designee on behalf of a municipality, may suspend any permit under this section until compliance is obtained. If there is continued use or activity after suspension, the Secretary, on behalf of the Agency, or the legislative body, on behalf of a municipality, may physically close the driveway or access point if, in the opinion of the Secretary or the legislative body, the safety of highway users is or may be affected.

(h) Restraining prohibited acts; damages. Whenever the Secretary believes that any person is in violation of the provisions of this chapter, he or she may also bring an action in the name of the Agency in a court of competent jurisdiction against the person to collect civil penalties as provided for in subsection (j) of this section, for damages,

and to restrain by temporary or permanent injunction the continuation or repetition of the violation. The selectboard shall have the same authority for town highways. The court may issue temporary or permanent injunctions without bond, and any other relief as may be necessary and appropriate for abatement of any violation. An action, injunction, or other enforcement proceeding by a municipality relating to the failure to obtain or comply with the terms and conditions of any permit issued by a municipality pursuant to this section shall be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date on which the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

(i) Assurance of discontinuance. The Secretary or the selectboard may accept an assurance of discontinuance of any violation of the terms of this chapter including when applicable schedules of abatement for a violation. Any assurance of discontinuance shall be in writing, and shall be filed with the Attorney General, the court having jurisdiction over the subject matter, and the town clerk of the town in which the violation occurred for recording in the land records. The Attorney General, within ten days of receipt of the assurance, if he or she objects to the terms, may petition the Board for a hearing of the violation in the manner prescribed by law. The Board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 15 days thereafter. Evidence of violation of an assurance shall be prima facie proof of the violation as cited in the assurance. Prior to institution of any action or proceeding under this subsection, the Secretary whenever he or she believes any person to be or to have been in violation may issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and notice of intention to institute an action or proceeding against the person responsible for the violation. In this event, the Secretary shall within 30 days provide the person with notice, an opportunity to be heard, and an opportunity to settle the matter before instituting an action or proceeding as provided for in this subsection.

(j) Civil penalty. Any person who violates the provisions of this chapter or the terms of an order issued by a court under this chapter shall forfeit and pay to the State a civil penalty of not less than $100.00 and not more than $10,000.00 for each violation; provided however, where violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for the correction or termination of the violation shall constitute an additional separate and distinct offense except during the time an appeal from the order may be taken or is pending. For the purposes of this subsection, the court issuing the injunction on petition of the Secretary shall retain jurisdiction for purposes of awarding the civil penalty.

(k) No deed purporting to subdivide land abutting a State highway or a class 1 town highway can be recorded unless all the abutting lots so created are in accord with the standards of this section, including the requirement to provide a frontage road or roads.

(l) Recording of permits; recording fees. Initial and subsequent permits shall be recorded at the expense of the applicant in the land records of any municipality in which the affected property is located, unless the Agency (in the case of State highways) or the legislative body (in the case of town highways) determines that such action is not warranted in specific instances or for certain categories of permits. The Agency or the legislative body may include, as a condition of the permit, that the issued permit shall not be valid until the permit holder records in the office of the appropriate municipal clerk the "notice of permit action" provided with the issued permit by the Agency or the legislative body. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1989, No. 79; 1989, No. 246 (Adj. Sess.), §§ 13-15; 1997, No. 62, § 56, eff. June 26, 1997; 1997, No. 120 (Adj. Sess.), § 8a; 1997, No. 150 (Adj. Sess.), § 13; 1999, No. 156 (Adj. Sess.), § 13, eff. May 29, 2000; 2003, No. 56, § 55, eff. June 4, 2003; 2009, No. 132 (Adj. Sess.), § 10, eff. May 29, 2010; 2013, No. 145 (Adj. Sess.), § 3; 2017, No. 38, § 18.)