

1 H.823

2 Introduced by Representatives Botzow of Pownal and Klein of

3 East Montpelier

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; land use; natural resources; Act 250;

7 municipal planning and development; wastewater; designated centers

8 Statement of purpose of bill as introduced: This bill proposes to encourage

9 the location of new development in designated centers and the protection of

10 natural resources by making changes to the jurisdiction and criteria of

11 10 V.S.A. chapter 151 (Act 250), to the definition of designated growth centers

12 used by the Agency of Natural Resources in prioritizing funding for eligible

13 municipal projects, and to the permitting of new connections in designated

14 centers to municipal wastewater systems.

15 An act relating to encouraging growth in designated centers and protecting
16 natural resources

17 It is hereby enacted by the General Assembly of the State of Vermont:

* * * Amendments to 10 V.S.A. chapter 151 (Act 250) * * *

Sec. 1. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

In this chapter:

* * *

(3)(A) “Development” means each of the following:

* * *

(iv) 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, and within any continuous period of five years.

* * *

(B)(i) Smart Growth Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing or mixed use, or any combination thereof, and is located entirely within a growth center designated pursuant to 24 V.S.A. 2793c or ~~entirely~~ entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, or entirely within a village center that is also a neighborhood development area and both the center and area are designated under 24 V.S.A. chapter 76A, “development” means:

1 (I) Construction of mixed income housing with ~~200~~ 275 or
2 more housing units or a mixed use project with ~~200~~ 275 or more housing units,
3 in a municipality with a population of 15,000 or more.

4 (II) Construction of mixed income housing with ~~400~~ 150 or
5 more housing units or a mixed use project with ~~400~~ 150 or more housing units,
6 in a municipality with a population of 10,000 or more but less than 15,000.

7 (III) Construction of mixed income housing with ~~50~~ 75 or more
8 housing units or a mixed use project with ~~50~~ 75 or more housing units, in a
9 municipality with a population of 6,000 or more and less than 10,000.

10 (IV) Construction of mixed income housing with 30 or more
11 housing units or a mixed use project with 30 or more housing units, in a
12 municipality with a population of 3,000 or more but less than 6,000.

13 (V) Construction of mixed income housing with 25 or more
14 housing units or a mixed use project with 25 or more housing units, in a
15 municipality with a population of less than 3,000.

16 (VI) Historic Buildings. Construction of 10 or more units of
17 mixed income housing or a mixed use project with 10 or more housing units
18 ~~where~~ if the construction involves the demolition of one or more buildings that
19 are listed on or eligible to be listed on the State or National Register of Historic
20 Places. However, demolition shall not be considered to create jurisdiction
21 under this subdivision if the Division for Historic Preservation has determined

1 the proposed demolition will have: no adverse effect; no adverse effect
2 provided that specified conditions are met; or, will have an adverse effect, but
3 that adverse effect will be adequately mitigated. Any imposed conditions shall
4 be enforceable through a grant condition, deed covenant, or other legally
5 binding document.

6 (ii) Mixed Income Housing Jurisdictional Thresholds.

7 Notwithstanding the provisions of subdivision (3)(A) of this section, if a
8 project consists exclusively of mixed income housing and is located entirely
9 within a Vermont neighborhood designated pursuant to 24 V.S.A. § 2793d or a
10 neighborhood development area as defined in 24 V.S.A. § 2791(16),
11 “development” means:

12 (I) Construction of mixed income housing with ~~200~~ 275 or
13 more housing units, in a municipality with a population of 15,000 or more.

14 (II) Construction of mixed income housing with ~~400~~ 150 or
15 more housing units, in a municipality with a population of 10,000 or more but
16 less than 15,000.

17 (III) Construction of mixed income housing with ~~50~~ 75 or more
18 housing units, in a municipality with a population of 6,000 or more and less
19 than 10,000.

1 (IV) Construction of mixed income housing with 30 or more
2 housing units, in a municipality with a population of 3,000 or more but less
3 than 6,000.

4 (V) Construction of mixed income housing with 25 or more
5 housing units, in a municipality with a population of less than 3,000.

6 (VI) Historic Buildings. Construction of 10 or more units of
7 mixed income housing ~~where~~ if the construction involves the demolition of one
8 or more buildings that are listed on or eligible to be listed on the State or
9 National Register of Historic Places. However, demolition shall not be
10 considered to create jurisdiction under this subdivision if the Division for
11 Historic Preservation has determined the proposed demolition will have: no
12 adverse effect; no adverse effect provided that specified conditions are met; or
13 will have an adverse effect, but that adverse effect will be adequately
14 mitigated. Any imposed conditions shall be enforceable through a grant
15 condition, deed covenant, or other legally binding document.

16 (C) For the purposes of determining jurisdiction under subdivisions
17 (3)(A) and (3)(B) of this section, the following shall apply:

18 (i) Incentive for Growth Inside Designated Areas.

19 (I) Notwithstanding subdivision (3)(A)(iv) of this section,
20 housing units constructed by a person partially or the determination of
21 jurisdiction over a discrete housing project that is located completely outside

1 inside a designated downtown development district, designated growth center,
2 designated Vermont neighborhood, or designated neighborhood development
3 area shall ~~not be counted to determine jurisdiction over housing units~~
4 ~~constructed by that person entirely within a designated downtown development~~
5 ~~district, designated growth center, designated Vermont neighborhood, or~~
6 ~~designated neighborhood development area~~ count only the housing units
7 included in that discrete project.

8 (II) Notwithstanding subdivision (3)(A) of this section,
9 improvements within a downtown development district designated under
10 24 V.S.A. § 2793 shall be treated as exempt from the requirement to obtain a
11 permit under section 6081 of this title if there is compliance with a final
12 jurisdictional opinion issued under section 6007 of this title that concludes that
13 the improvements constitute a development or subdivision or a material change
14 to a permitted project and that the requestor has demonstrated each of the
15 following:

16 (aa) The State Historic Preservation Officer or designee has
17 determined that the improvements will have no undue adverse effect on any
18 historic site.

19 (bb) The improvements will meet or exceed the applicable
20 energy conservation and building energy standards under subdivision
21 6086(a)(9) of this title.

1 (cc) The Secretary of Transportation or designee has
2 determined that the improvements will have no significant impact on any
3 highway, transportation facility, or other land or structure under the Secretary's
4 jurisdiction.

5 (dd) The Commissioner of Buildings and General Services
6 or designee has determined that the improvements will have no significant
7 impact on any adjacent land or facilities under the Commissioner's
8 jurisdiction.

9 (ee) The Agency of Natural Resources has determined that
10 the project will have no significant impact on any land or facilities under its
11 jurisdiction or on any important natural resources, other than primary
12 agricultural soils. In this subdivision (ee), "important natural resources" shall
13 have the same meaning as under 24 V.S.A. § 2791.

14 (ff) The Secretary of Agriculture, Food and Markets or
15 designee has determined that the improvements will not reduce or convert
16 primary agricultural soils or that there will be appropriate mitigation for any
17 reduction in or conversion of those soils.

18 (ii) Five-Year, ~~Five Mile Radius~~ Jurisdiction Analysis. Within
19 any continuous period of five years, housing units constructed by a person
20 entirely within a designated downtown district, designated growth center,
21 designated Vermont neighborhood, or designated neighborhood development

1 area shall be counted together with housing units constructed by that person
2 partially or completely outside a designated downtown development district,
3 designated growth center, designated Vermont neighborhood, or designated
4 neighborhood development area to determine jurisdiction over the housing
5 units constructed by a person partially or completely outside the designated
6 downtown development district, designated growth center, designated Vermont
7 neighborhood, or designated neighborhood development area ~~and within a~~
8 ~~five mile radius in accordance with subdivision (3)(A)(iv) of this section.~~

9 (iii) ~~Discrete Housing Projects in Designated Areas and Exclusive~~
10 ~~Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19)~~
11 ~~of this section, jurisdiction shall be determined exclusively by counting~~
12 ~~housing units constructed by a person within a designated downtown~~
13 ~~development district, designated growth center, designated Vermont~~
14 ~~neighborhood, or designated neighborhood development area, provided that~~
15 ~~the housing units are part of a discrete project located on a single tract or~~
16 ~~multiple contiguous tracts of land. [Repealed.]~~

17 * * *

18 (16) ~~“Rural growth areas” means lands which are not natural resources~~
19 ~~referred to in subdivisions 6086(a)(1)(A) through (F), subdivision~~
20 ~~6086(a)(8)(A) and subdivisions 6086(a)(9)(B), (C), (D), (E) and (K) of this~~

1 ~~title~~ “Existing settlement” excludes strip development and means an area that
2 constitutes one of the following:

3 (A) A designated center.

4 (B) An existing community center that is compact in form and size;
5 that contains a mixture of uses that include a substantial residential component
6 and that are within walking distance of each other; that has significantly higher
7 densities than densities that occur outside the center; and that is typically
8 served by municipal infrastructure such as water, wastewater, sidewalks, paths,
9 transit, parking areas, and public parks or greens.

10 * * *

11 (27) “Mixed income housing” means a housing project in which the
12 following apply:

13 (A) Owner-occupied housing. At the option of the applicant,
14 owner-occupied housing may be characterized by either of the following:

15 (i) at least 15 percent of the housing units have a purchase price
16 which at the time of first sale does not exceed 85 percent of the new
17 construction, targeted area purchase price limits established and published
18 annually by the Vermont Housing Finance Agency; or

19 (ii) at least 20 percent of the housing units have a purchase price
20 which at the time of first sale does not exceed 90 percent of the new

1 construction, targeted area purchase price limits established and published
2 annually by the Vermont Housing Finance Agency;

3 (B) Affordable Rental Housing. At least 20 percent of the housing
4 units that ~~is~~ are rented by the occupants whose gross annual household income
5 does not exceed ~~60~~ 80 percent of the county median income, or ~~60~~ 80 percent
6 of the standard metropolitan statistical area income if the municipality is
7 located in such an area, as defined by the United States Department of Housing
8 and Urban Development for use with the Housing Credit Program under
9 Section 42(g) of the Internal Revenue Code, and the total annual cost of the
10 housing, as defined at Section 42(g)(2)(B), is not more than 30 percent of the
11 gross annual household income as defined at Section 42(g)(2)(C), and with a
12 duration of affordability of no less than ~~30~~ 20 years.

13 (28) "Mixed use" means construction of both mixed income housing
14 and construction of space for any combination of retail, office, services,
15 artisan, and recreational and community facilities, provided at least 40 percent
16 of the gross floor area of the buildings involved is mixed income housing.
17 "Mixed use" does not include industrial use.

18 (29) "Affordable housing" means either of the following:

19 (A) Housing that is owned by its occupants whose gross annual
20 household income does not exceed 80 percent of the county median income, or
21 80 percent of the standard metropolitan statistical area income if the

1 municipality is located in such an area, as defined by the United States
2 Department of Housing and Urban Development, and the total annual cost of
3 the housing, including principal, interest, taxes, insurance, and condominium
4 association fees, is not more than 30 percent of the gross annual household
5 income.

6 (B) Housing that is rented by the occupants whose gross annual
7 household income does not exceed 80 percent of the county median income, or
8 80 percent of the standard metropolitan statistical area income if the
9 municipality is located in such an area, as defined by the United States
10 Department of Housing and Urban Development, and the total annual cost of
11 the housing, including rent, utilities, and condominium association fees, is not
12 more than 30 percent of the gross annual household income.

13 (30) “Designated ~~growth~~ center” means a ~~growth~~ center designated by
14 the Vermont Downtown Development Board under the provisions of
15 24 V.S.A. chapter 76A.

16 * * *

17 (35) “Strip development” means linear commercial development along a
18 public highway that includes some or all of the following characteristics:
19 broad road frontage, predominance of single-story buildings, limited reliance
20 on shared highway access, lack of connection to any existing settlement except

1 by highway, limited accessibility for pedestrians, and lack of coordination with
2 surrounding land uses in terms of design, signs, lighting, and parking.

3 Sec. 2. 10 V.S.A. § 6086 is amended to read:

4 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

5 (a) Before granting a permit, the ~~district commission~~ District Commission
6 shall find that the subdivision or development:

7 * * *

8 (5)(A) Will not cause unreasonable congestion or unsafe conditions with
9 respect to the use of the highways, trails, pedestrian and bicycle facilities,
10 transit operations and facilities, waterways, railways, airports and airways, and
11 other means of transportation existing or proposed. The District Commission
12 shall allow traffic from a development or subdivision in a designated center to
13 cause a level of service that is lower than the level of service required outside a
14 designated center, unless this lower level of service will cause or exacerbate
15 unsafe conditions.

16 (B) Will provide transportation access and mobility for all users of
17 the development or subdivision and reduce dependence on single occupancy
18 vehicles by incorporating, as appropriate, transportation demand management
19 strategies and safe access and connections to nearby lands and facilities,
20 including pedestrian, bicycle, and transit networks and services.

21 * * *

* * *

VT LEG #296627 v.3

1 development or subdivision proposed for an area in which a pattern of strip
2 development has already been established shall incorporate compact site
3 design; shall create or contribute to mixed uses in the adjacent area; and shall
4 provide appropriate connections to existing and planned transit, bicycle, and
5 pedestrian networks.

6 * * *

7 Sec. 3. 10 V.S.A. § 6093 is amended to read:

8 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

9 (a) Mitigation for loss of primary agricultural soils. Suitable mitigation for
10 the conversion of primary agricultural soils necessary to satisfy subdivision
11 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

12 (1) Project located in designated downtown, growth center, or
13 neighborhood development area. If the project tract is located in a ~~designated~~
14 downtown development district, growth center, or neighborhood development
15 area designated under 24 V.S.A. chapter 76A, an applicant who complies with
16 subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee
17 into the Vermont ~~housing and conservation trust fund~~ Housing and
18 Conservation Trust Fund established under section 312 of this title for the
19 purpose of preserving primary agricultural soils of equal or greater value with
20 the highest priority given to preserving prime agricultural soils as defined by

1 the U.S. Department of Agriculture. Any required offsite mitigation fee shall
2 be derived by:

3 (A) ~~determining~~ Determining the number of acres of primary
4 agricultural soils affected by the proposed development or subdivision;

5 (B) ~~multiplying~~ Multiplying the number of affected acres of primary
6 agricultural soils by a factor resulting in a ratio established as follows:

7 (i) ~~for~~ For development or subdivision within a designated
8 downtown development district, growth center, or neighborhood development
9 area, the ratio shall be 1:1;

10 (ii) ~~for~~ For residential construction that has a density of at least
11 eight units of housing per acre, of which at least eight units per acre or at least
12 40 percent of the units, on average, in the entire development or subdivision,
13 whichever is greater, meets the definition of affordable housing established in
14 this chapter, no mitigation shall be required. However, all affordable housing
15 units shall be subject to housing subsidy covenants, as defined in 27 V.S.A.
16 § 610, that preserve their affordability for a period of 99 years or longer. For
17 purposes of this section, housing that is rented shall be considered affordable
18 housing when its inhabitants have a gross annual household income that does
19 not exceed 60 percent of the county median income or 60 percent of the
20 standard metropolitan statistical area income if the municipality is located in
21 such an area.

1 (C) ~~multiplying~~ Multiplying the resulting product by a
2 “price-per-acre” value, which shall be based on the amount that the ~~secretary~~
3 ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets
4 has determined to be the recent, per-acre cost to acquire conservation
5 easements for primary agricultural soils in the same geographic region as the
6 proposed development or subdivision.

7 (2) Project located outside designated downtown, growth center, or
8 neighborhood development area. If the project tract is not located in a
9 designated downtown, growth center, or neighborhood development area,
10 mitigation shall be provided on site in order to preserve primary agricultural
11 soils for present and future agricultural use, with special emphasis on
12 preserving prime agricultural soils. Preservation of primary agricultural soils
13 shall be accomplished through innovative land use design resulting in compact
14 development patterns which will maintain a sufficient acreage of primary
15 agricultural soils on the project tract capable of supporting or contributing to
16 an economic or commercial agricultural operation and shall be enforceable by
17 permit conditions issued by the ~~district commission~~ District Commission. The
18 number of acres of primary agricultural soils to be preserved shall be
19 derived by:

20 (A) determining the number of acres of primary agricultural soils
21 affected by the proposed development or subdivision; and

1 (B) multiplying the number of affected acres of primary agricultural
2 soils by a factor based on the quality of those primary agricultural soils, and
3 other factors as the ~~secretary of agriculture, food and markets~~ Secretary of
4 Agriculture, Food and Markets may deem relevant, including the soil's
5 location; accessibility; tract size; existing agricultural operations; water
6 sources; drainage; slope; the presence of ledge or protected wetlands; the
7 infrastructure of the existing farm or municipality in which the soils are
8 located; and the N.R.C.S. rating system for Vermont soils. This factor shall
9 result in a ratio of no less than 2:1, but no more than 3:1, protected acres to
10 acres of impacted primary agricultural soils.

11 (3) Mitigation flexibility.

12 (A) Notwithstanding the provisions of subdivision (1) of this
13 subsection pertaining to a development or subdivision on primary agricultural
14 soils within a designated downtown, growth center, or neighborhood
15 development area, the ~~district commission~~ District Commission may, in
16 appropriate circumstances, require onsite mitigation with special emphasis on
17 preserving prime agricultural soils if that action is deemed consistent with the
18 agricultural elements of local and regional plans and the goals of 24 V.S.A.
19 § 4302. In this situation, the approved plans must designate specific soils that
20 shall be preserved inside designated downtowns, growth centers, and
21 neighborhood development areas. For projects located within a ~~these~~

1 designated ~~growth-center~~ areas, all factors used to calculate suitable mitigation
2 acreage or fees, or some combination of these measures, shall be as specified
3 in this subsection, subject to a ratio of 1:1.

4 (B) Notwithstanding the provisions of subdivision (2) of this
5 subsection pertaining to a development or subdivision on primary agricultural
6 soils outside a designated downtown, growth center, or neighborhood
7 development area, the ~~district commission~~ District Commission may, in
8 appropriate circumstances, approve off-site mitigation or some combination of
9 onsite and off-site mitigation if that action is deemed consistent with the
10 agricultural elements of local and regional plans and the goals of 24 V.S.A.

11 § 4302. For projects located outside a these designated ~~growth-center~~ areas, all
12 factors used to calculate suitable mitigation acreage or fees, or some
13 combination of these measures, shall be as specified in this subsection, subject
14 to a ratio of no less than 2:1, but no more than 3:1.

15 * * *

16 * * * Appeal of Jurisdictional Determination * * *

17 Sec. 4. 10 V.S.A. § 8504(h) is amended to read:

18 (h) De novo hearing. The Environmental Division, applying the
19 substantive standards that were applicable before the tribunal appealed from,
20 shall hold a de novo hearing on those issues which have been appealed, except
21 in the case of:

1 (1) ~~a~~ A decision being appealed on the record pursuant to 24 V.S.A.
2 chapter 117;

3 (2) ~~a~~ A decision of the Commissioner of Forests, Parks and Recreation
4 under section 2625 of this title being appealed on the record, in which case the
5 court shall affirm the decision, unless it finds that the Commissioner did not
6 have reasonable grounds on which to base the decision.

7 (3) An act or decision of the Natural Resources Board under subsection
8 6007(d) of this title (review of jurisdictional opinions) concerning the
9 applicability of subdivision 6003(3)(C)(i)(II) of this title (improvements within
10 designated downtowns), which shall be reviewed on the record created by the
11 Board. The Environmental Division shall uphold the Board unless the
12 Division determines that the Board abused its discretion or made factual
13 determinations not supported by substantial evidence when the record is
14 viewed as a whole. The Division shall not consider an appellant's objection
15 that was not urged before the Board, unless the failure or neglect to urge the
16 objection is excused by extraordinary circumstances.

17 * * * Agency of Natural Resource Rule Revisions * * *

18 Sec. 5. MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

19 (a) In the Environmental Protection Rules of the Agency of Natural
20 Resources, chapter 2 (municipal pollution control priority system), subchapter

1 500 (definitions), the definition of “designated growth center” is struck and a
2 new definition of “designated growth center” is inserted in lieu thereof to read:

3 “Designated growth center” shall mean a growth center as defined under
4 24 V.S.A. § 2791 that is designated under 24 V.S.A. § 2793c.

5 (b) On or before August 1, 2014, the Secretary of Natural Resources shall
6 conform the published version of the rules described in this section to the
7 requirements of subsection (a) of this section. Provided that the only revision
8 to those rules is the change required by subsection (a) of this section, the
9 rulemaking procedures of the Vermont Administrative Procedure Act shall not
10 apply to the publication of this conformed version of the rules. However, on
11 publication, the Secretary shall send a copy of the conformed version of the
12 rules to the Office of the Secretary of State and the Legislative Committee on
13 Administrative Rules.

14 Sec. 6. 10 V.S.A. § 1571 is amended to read:

15 § 1571. DEFINITIONS

16 As used in this chapter:

17 * * *

18 (10) “Designated growth center” means a growth center as defined
19 under 24 V.S.A. § 2791 that is designated under 24 V.S.A. § 2793c.

2 § 1628. PRIORITIES

17 § 1972. DEFINITIONS

* * *

1 (11) “Designated center” means a downtown development district,
2 village center, new town center, growth center, Vermont neighborhood, or
3 neighborhood development area designated under 24 V.S.A. chapter 76A.

4 Sec. 9. 10 V.S.A. § 1973 is amended to read:

5 § 1973. PERMITS

6 (a) Except as provided in this section and sections 1974 and 1978 of this
7 title, a person shall obtain a permit from the Secretary before:

8 (1) subdividing land;

9 (2) creating or modifying a campground in a manner that affects a
10 potable water supply or wastewater system or the requirements for providing
11 potable water and wastewater disposal;

12 (3) constructing, replacing, or modifying a potable water supply or
13 wastewater system;

14 (4) using or operating a failed supply or failed system;

15 (5) constructing a new building or structure;

16 (6) modifying an existing building or structure in a manner that
17 increases the design flow or modifies other operational requirements of a
18 potable water supply or wastewater system;

19 (7) making a new or modified connection to a new or existing potable
20 water supply or wastewater system; or

(b) Application for a permit shall be made on a form prescribed by the Secretary. The

(2) The Secretary shall issue a permit for a new or modified connection from a building or structure in a designated center to a municipal wastewater system on submission of a certification by a professional engineer or designer licensed under section 1975 of this title that the design of the connection complies with the applicable design requirements of the rules adopted under this chapter along with a letter from the municipality stating that its wastewater system has sufficient capacity to accommodate the new or modified connection. The Secretary shall ensure that the application form complies with this subdivision (2).

VT LEG #296627 v.3

1 Sec. 10. WASTEWATER RULES; AMENDMENT

2 On or before December 1, 2014, the Agency of Natural Resources shall
3 amend its form under 10 V.S.A. § 1973 and its rules under 10 V.S.A. § 1978 to
4 conform to the provisions of Secs. 8 and 9 of this act.

5 * * * Effective Dates * * *

6 Sec. 11. EFFECTIVE DATES

7 (a) This section and Sec. 5 (municipal pollution control priority system)
8 shall take effect on passage.

9 (b) The remainder of this act shall take effect on June 1, 2014.