

H.823

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

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~~ mobile home 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. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

(aa) 275 or more, in a municipality with a population of 15,000 or more;

(bb) 150 or more, in a municipality with a population of 10,000 or more but less than 15,000;

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000;

(dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000;

(ee) 25 or more, in a municipality with a population of less than 3,000; and

(ff) notwithstanding subdivisions (aa) through (ee) of this subdivision (iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(II) The determination of jurisdiction over a priority housing project shall count only the housing units included in that discrete project.

(III) Housing units in a priority housing project shall not count toward determining jurisdiction over any other project.

* * *

~~(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 within a downtown development district designated pursuant to 24 V.S.A. § 2793, “development” means:~~

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

~~(II) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.~~

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

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

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

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

~~(ii) Mixed Income Housing Jurisdictional Thresholds.~~

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

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

~~(II) Construction of mixed income housing with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.~~

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

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

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

~~(VI) Historic Buildings. Construction of 10 or more units of mixed income housing where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or will have an adverse effect, but that adverse effect will be adequately~~

~~mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document. [Repealed.]~~

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

(i) ~~Incentive for Growth Inside Designated Areas.~~

~~Notwithstanding subdivision (3)(A)(iv) of this section, housing units constructed by a person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall not be counted to determine jurisdiction over housing units constructed by that person entirely within a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area. [Repealed.]~~

(ii) ~~Five Year, Five Mile Radius Jurisdiction Analysis. Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall be counted together with housing units constructed by that person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area to determine jurisdiction over the housing~~

~~units constructed by a person partially or completely outside the designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area and within a five-mile radius in accordance with subdivision (3)(A)(iv) of this section.~~

[Repealed.]

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

* * *

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

(A) “Existing settlement” means an area that constitutes one of the following:

(i) a designated center; or

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

(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

* * *

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

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

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

(ii) at least 20 percent of the housing units have a purchase price which at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency;

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

(28) “Mixed use” means construction of both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing.

“Mixed use” does not include industrial use.

(29) “Affordable housing” means either of the following:

(A) Housing that is owned by its occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States

Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.

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

(30) “Designated ~~growth center~~” means a ~~growth center designated by the Vermont Downtown Development Board under the provisions of 24 V.S.A. chapter 76A~~ downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

* * *

(35) “Priority housing project” means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of:

(A) mixed income housing or mixed use, or any combination thereof, and is located entirely within a designated downtown development district,

designated new town center; designated growth center, or designated village center that is also a designated neighborhood development area under 24 V.S.A. chapter 76A; or

(B) mixed income housing and is located entirely within a designated Vermont neighborhood or designated neighborhood development area under 24 V.S.A. chapter 76A.

(36) "Strip development" means linear commercial development along a public highway that includes three or more of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, lack of connection to surrounding land uses except by highway, lack of coordination with surrounding land uses, and limited accessibility for pedestrians. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.

* * *

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

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

* * *

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. In determining appropriateness under this subdivision (B), the District Commission shall consider whether such a strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.

* * *

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a ~~district commission~~ District Commission.

* * *

~~(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by~~

~~the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private utility service,” (H) “costs of scattered development” and (J) “public utility services” of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.~~
Settlement patterns. To promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and

(ii) (I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

Sec. 3. 10 V.S.A. § 6086b is added to read:

§ 6086b. DOWNTOWN DEVELOPMENT; FINDINGS

Notwithstanding any provision of this chapter to the contrary, each of the following shall apply to a development or subdivision that is completely within a downtown development district designated under 24 V.S.A. chapter 76A and for which a permit or permit amendment would otherwise be required under this chapter:

(1) In lieu of obtaining a permit or permit amendment, a person may request findings and conclusions from the District Commission, which shall approve the request if it finds that the development or subdivision will meet subdivisions 6086(a)(1) (air and water pollution), (2) (sufficient water available), (3) (burden on existing water supply), (4) (soil erosion), (5) (traffic), (8) (aesthetics, historic sites, rare and irreplaceable natural areas), (8)(A) (endangered species; necessary wildlife habitat), (9)(B) (primary agricultural soils), (9)(C) (productive forest soils), (9)(F) (energy conservation), and (9)(K) (public facilities, services, and lands) of this title.

(2) The request shall be complete as to the criteria listed in subdivision (1) of this subsection and need not address other criteria of subsection 6086(a) of this title.

(A) The requestor shall file the request in accordance with the requirements of subsection 6084(a) of this title and the requestor shall provide

a copy of the request to each agency and department listed in subdivision (3) of this section.

(B) Within five days of the request's filing, the District Coordinator shall determine whether the request is complete. Within five days of the date the District Coordinator determines the request to be complete, the District Commission shall provide notice of the complete request to each person required to receive a copy of the filing under subdivision (2)(A) of this section and to each adjoining property owner and shall post the notice and a copy of the request on the Board's web page. The computation of time under this subdivision (2)(B) shall exclude Saturdays, Sundays, and State legal holidays.

(3) Within 30 days of receiving notice of a complete request:

(A) The State Historic Preservation Officer or designee shall submit a written recommendation on whether the improvements will have an undue adverse effect on any historic site.

(B) The Commissioner of Public Service or designee shall submit a written recommendation on whether the improvements will meet or exceed the applicable energy conservation and building energy standards under subdivision 6086(a)(9)(F) of this title.

(C) The Secretary of Transportation or designee shall submit a written recommendation on whether the improvements will have a significant

impact on any highway, transportation facility, or other land or structure under the Secretary's jurisdiction.

(D) The Commissioner of Buildings and General Services or designee shall submit a written recommendation on whether the improvements will have a significant impact on any adjacent land or facilities under the Commissioner's jurisdiction.

(E) The Secretary of Natural Resources or designee shall submit a written recommendation on whether the improvements will have a significant impact on any land or facilities under its jurisdiction or on any important natural resources, other than primary agricultural soils. In this subdivision (E), "important natural resources" shall have the same meaning as under 24 V.S.A. § 2791.

(F) The Secretary of Agriculture, Food and Markets or designee shall submit a written recommendation on whether the improvements will reduce or convert primary agricultural soils and on whether there will be appropriate mitigation for any reduction in or conversion of those soils.

(4) Any person may submit written comments or ask for a hearing within 30 days of the date on which the District Commission issues notice of a complete request. If the person asks for a hearing, the person shall include a petition for party status in the submission. The petition for party status shall meet the requirements of subdivision 6085(c)(2) of this title.

(5) The District Commission shall not hold a hearing on the request unless it determines that there is a substantial issue under one or more applicable criteria that requires a hearing. The District Commission shall hold any hearing within 20 days of the end of the comment period specified in subdivisions (3) and (4) of this section. Subdivisions 6085(c)(1)–(5) of this title shall govern participation in a hearing under this section.

(6) The District Commission shall issue a decision within 60 days of issuing notice of a complete request under this section or, if it holds a hearing, within 15 days of adjourning the hearing. The District Commission shall send a copy of the decision to each State agency listed in subdivision (3) of this section, to the municipality, to the municipal and regional planning commissions for the municipality, and to each person that submitted a comment, requested a hearing, or participated in the hearing, if any. The decision may include conditions that meet the standards of subsection 6086(c) of this title.

(7) The requestor may waive the time periods required under subdivisions (3), (4), and (6) of this section as to one or more agencies, departments, the District Commission, the District Coordinator, or other persons. Such a waiver shall extend the applicable and subsequent time periods by the amount of time waived. In the absence of a waiver under this subdivision, the failure of a State agency to file a written determination or a

person to submit a comment or ask for a hearing within the time periods specified in subdivisions (3) and (4) of this section shall not delay the District Commission's issuance of a decision on a complete request.

Sec. 4. 10 V.S.A. § 6081(v) is added to read:

(v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the District Commission under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the District Commission has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change.

Sec. 5. [Deleted.]

Sec. 6. [Deleted.]

Sec. 7. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the

following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

* * *

(10) 10 V.S.A. chapter 151, relating to land use, and including findings and conclusions issued under section 6086b of this title;

* * *

* * * Nonappeal, Recommendation to District Commission * * *

Sec. 8. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

(a) Act 250 and agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the Secretary, the Natural Resources Board, or a ~~district commission~~ District Commission under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

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

Sec. 9. MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

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

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

“Designated center” shall mean a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

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

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

§ 1571. DEFINITIONS

As used in this chapter:

* * *

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

Sec. 11. 10 V.S.A. § 1628 is amended to read:

§ 1628. PRIORITIES

The ~~department~~ Department shall make awards under this chapter to eligible municipal projects on the basis of urgency of need as determined according to a system of priorities adopted by the ~~department~~ Department and to the extent appropriate funds are available. The system of priorities shall include increased priority to eligible municipal projects in designated centers. The ~~department~~ Department shall assure that projects sponsored by a town school district, or incorporated school district shall be given increased priority for purposes of the receipt of engineering planning advances awarded under section 1593 of this chapter. The total amount of the engineering planning advances made and still outstanding during a period for this purpose shall not exceed 30 percent of the bond issue or appropriation voted for construction grant funds by the ~~general assembly~~ General Assembly for the period in which the award is made.

Sec. 12. 10 V.S.A. § 1973 is amended to read:

§ 1973. PERMITS

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

- (1) subdividing land;

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

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

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

(5) constructing a new building or structure;

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

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

(8) changing the use of a building or structure in a manner that increases the design flows or modifies other operational requirements of a potable water supply or wastewater system.

* * *

(f)(1) The Secretary shall give deference to a certification by a licensed designer with respect to the engineering design or judgment exercised by the designer in order to minimize agency review of certified designs. Nothing in this section shall limit the responsibility of the licensed designer to comply with all standards and rules, or the authority of the Secretary to review and

comment on design aspects of an application or to enforce agency rules with respect to the design or the design certification.

(2) The Secretary shall issue a permit for a new or modified connection to a water main and a sewer main or indirect discharge system from a building or structure in a designated downtown development district upon submission of an application under subsection (b) of this section that consists solely of the certification of a licensed designer, in accordance with subsection (d) of this section, and a letter from the owner of the water main and sewer main or indirect discharge system allocating the capacity needed to accommodate the new or modified connection. However, this subdivision (2) shall not apply if the Secretary finds one of the following:

(A) The Secretary has prohibited the system that submitted the allocation letter from issuing new allocation letters due to a lack of capacity.

(B) As a result of an audit of the application performed on a random basis or in response to a complaint, the system is not designed in accordance with the rules adopted under this chapter.

* * *

Sec. 13. WASTEWATER RULES; AMENDMENT

On or before December 1, 2014, the Agency of Natural Resources shall amend its application form under 10 V.S.A. § 1973 and its rules under 10 V.S.A. § 1978 to conform to the provisions of Sec. 12 of this act.

* * * Inclusionary Zoning * * *

Sec. 14. 24 V.S.A. § 4414(7) is amended to read:

(7) Inclusionary zoning. In order to provide for affordable housing, bylaws may require that a certain percentage of housing units in a proposed subdivision ~~or~~, planned unit development, or multi-unit development meets defined affordability standards, which may include lower income limits than contained in the definition of “affordable housing” in subdivision 4303(1) of this title and may contain different affordability percentages than contained in the definition of “affordable housing development” in subdivision 4303(2) of this title. These provisions, at a minimum, shall comply with all the following:

* * *

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

(a) This section and Sec. 9 (municipal pollution control priority system) shall take effect on passage.

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