

Journal of the House

Thursday, March 13, 2014

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by the Speaker.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 872

By the committee on Transportation,

An act relating to the State's Transportation Program and miscellaneous changes to the State's transportation laws;

Which was read the first time and referred to the committee on Appropriations.

H. 873

By the committee on Ways and Means,

An act relating to making technical amendments to tax increment financing laws;

Under the rule, placed on the Calendar for notice.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 211

Senate bill, entitled

An act relating to permitting of sewage holding and pumpout tanks for public buildings;

To the committee on Fish, Wildlife & Water Resources.

S. 247

Senate bill, entitled

An act relating to the regulation of medical marijuana dispensaries;

To the committee on Human Services.

S. 281

Senate bill, entitled

An act relating to vision riders and a choice of providers for vision and eye care services;

To the committee on Health Care.

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar, carrying appropriations, under the rule, were referred to the committee on Appropriations:

H. 728

House bill, entitled

An act relating to developmental services' system of care

H. 790

House bill, entitled

An act relating to Reach Up eligibility

H. 871

House bill, entitled

An act relating to miscellaneous pension changes

S. 40

Senate bill, entitled

An act relating to establishing an interim committee that will develop policies to restore the 1980 ratio of state funding to student tuition at Vermont State Colleges and to make higher education more affordable

Joint Resolution Referred to Committee

J.R.S. 47

By Committee on Institutions,

J.R.S. 47. Joint resolution relating to the approval of State land transactions.

Whereas, 10 V.S.A. § 2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange or lease certain lands, with the approval of the General Assembly, and

Whereas, the General Assembly considers the following actions to be in the best interest of the State, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Commissioner of Forests, Parks and Recreation is authorized to:

(1) Convey a limited right-of-way across a portion of Mt. Mansfield State Forest in the Town of Stowe to Eugene Touchette for forest management and seasonal recreation purposes. In exchange for this right-of-way, Mr. Touchette shall convey a right-of-way across his parcel to the State allowing access to Mt. Mansfield State Forest for forest management purposes.

(2) Quitclaim to Amy and Angel Mendel any and all interest in an existing unrestricted State-owned right-of-way in the Town of Victory to the Victory State Forest crossing a parcel of land the Mendels currently own. In exchange for terminating this State-owned right-of-way, the Mendels shall convey a new unrestricted right-of-way to the State across another portion of the Mendels' property providing access to Victory State Forest, and they shall pay for the cost of developing an associated new access road to Victory State Forest, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Forest, Parks and Recreation.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the Committee on Corrections and Institutions.

Bill Amended, Read Third Time and Passed

H. 799

House bill, entitled

An act relating to the importation of firewood

Was taken up and pending third reading of the bill, **Reps. Martin of Springfield, Bartholomew of Hartland, Connor of Fairfield, Lawrence of Lyndon, Michelsen of Hardwick, Partridge of Windham, Smith of New Haven, Stevens of Shoreham, Taylor of Barre City, Toleno of Brattleboro, and Zagar of Barnard** moved that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 83, subchapter 8 is added to read:

Subchapter 8. Importation of Firewood§ 2681. IMPORTATION OF FIREWOOD; PROTECTION FROM INVASIVE PESTS(a) Definitions. As used in this section:

(1) “Commissioner” means the Commissioner of Forests, Parks and Recreation.

(2) “Department” means the Department of Forests, Parks and Recreation.

(3) “Firewood” means untreated or treated wood processed for residential, recreational, or commercial use in any wood-burning appliance or fireplace, either indoor or outdoor, that is cut to a length less than 48 inches, either split or unsplit. “Firewood” shall not mean wood chips, wood pellets, pulpwood, logs 48 inches or more in length, or other wood sold or transported for manufacturing purposes.

(4) “Invasive species” means:

(A) nonnative plant pests that are capable of spreading into the State and that threaten forest health; and

(B) native plant pests, designated by the Commissioner, that are present in the State, that are capable of spreading to new areas of the State, and that threaten forest health.

(5) “Plant pests” shall be defined as in 6 V.S.A. § 1030(12).

(6) “Treated firewood” means firewood that has been processed and treated in a manner sufficient to prevent invasive species from surviving.

(7) “Untreated firewood” means firewood that is not treated firewood.

(b) Rulemaking. On or before July 1, 2015, the Commissioner, after consultation with the Secretary of Agriculture, Food and Markets, shall adopt rules regulating the importation of untreated firewood into the State. The rules shall:

(1) address whether certain types of untreated firewood should be prohibited from importation due to the potential to spread invasive species;

(2) address whether a treatment certificate or some other form of approval shall be required to import firewood from one or more states;

(3) address whether persons who produce or sell firewood in the State shall be required to track purchases of untreated firewood from out of State in order to allow for identification of sources of invasive species;

(4) address whether the State should design and implement a voluntary certification for treated firewood;

(5) include a process under which the Commissioner may waive requirements or prohibitions under the rule related to the importation of firewood when the Commissioner determines that waiver is in the public interest and poses minimal threat to forest health; and

(6) address any other issue the Commissioner identifies as necessary for preventing the importation of invasive species into the State when importing firewood.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 501

House bill, entitled

An act relating to operating a motor vehicle under the influence of alcohol or drugs;

H. 584

House bill, entitled

An act relating to municipal regulation of parking lots and meters;

H. 618

House bill, entitled

An act relating to exclusive jurisdiction over delinquency proceedings by the Family Division of the Superior Court;

Bill Amended; Third Reading Ordered**H. 661**

Rep. Moran of Wardsboro, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to exhumation requirements and notice

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 5212 is amended to read:

§ 5212. PERMIT TO REMOVE DEAD BODIES; NOTICE

* * *

(b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the municipality in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent, sibling, or descendant of the deceased, or that the ~~cemetary commissioner~~ Cemetery Commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the ~~probate division of the superior court~~ Probate Division of the Superior Court of the district in which the body is located as provided in section 5212a of this title. In addition to the published notice, an applicant for a removal permit shall notify directly, by certified mail, the town clerk in the municipality in which the body is interred or entombed and:

(1)(A) the surviving spouse of the deceased, if any;

(B) all surviving adult children of the deceased;

(C) all surviving parents of the deceased; and

(D) all surviving adult siblings of the deceased;

(2) any descendants of the deceased if the individuals listed in subdivisions (1)(A)-(D) of this subsection are nonexistent.

* * *

Sec. 2. 18 V.S.A. § 5212a is amended to read:

§ 5212a. REMOVAL; OBJECTIONS

(a) Unless removal is otherwise authorized by law, a spouse, child, parent, or sibling of the deceased may, after receipt of the certified mail as required under section 5212 of this title or within 30 days after the date notice was last published under section 5212 of this title, object to the proposed removal by filing a complaint in the ~~probate division of the superior court~~ Probate Division of the Superior Court of the district in which the body is interred or entombed. A copy of the complaint shall be filed with the clerk of the town where the body is interred or entombed.

..*

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on General, Housing and Military Affairs agreed to and third reading ordered.

Bill Read Second Time; Consideration Interrupted by Recess

H. 823

Rep. Ellis of Waterbury, for the committee on Natural Resources and Energy, to which had been referred House bill, entitled

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

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * 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 community 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, limited accessibility for pedestrians, and lack of coordination with surrounding land uses in terms of design, signs, lighting, and parking. 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. This subdivision (B) shall not require an applicant to construct an improvement on a tract that the applicant does not own or control. However, the District Commission may require an applicant to contribute to the cost of constructing such an improvement.

* * *

(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;

(ii) is designed in a manner consistent with the planning goals set forth in 24 V.S.A. § 4302(c)(1);

(iii) will conform to the land use element, map, and resource protection policies included in the municipal and regional plans applicable to the proposed location of the development or subdivision;

(iv) will not establish, extend, or contribute to a pattern of strip development along public highways;

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

(vi) if the development or subdivision will be adjacent to an area that already constitutes strip development, is designed to avoid or 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 Board, 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) (historic sites and rare and irreplaceable natural areas only) (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 (a) of this section.

(A) The requestor shall file the request in accordance with the requirements of subsection 6084(a) of this title, except that the filing shall be with the Board, 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 Chair of the Board shall determine whether the request is complete. Within five days of the date the Chair determines the request to be complete, the Board 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 its 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 determination 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 determination 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 determination 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 determination 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 determination 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 determination 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 Board 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, except that it shall be filed with the Board.

(5) The Board 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 Board shall hold any hearing within 20 days of the end of the comment period specified in subdivisions (3) and (4) of this section.

(A) The Board shall conduct the hearing as a contested case under the Vermont Administrative Procedure Act.

(B) Subdivisions 6085(c)(1)–(5) of this title shall govern participation in a hearing under this section.

(6) The Board 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 Board shall send a copy of the decision to the District Commission in whose district the development or subdivision is located, 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 Board, or other persons. Such a waiver shall extend the applicable and subsequent time periods by the amount of time waived.

(8) The record of a proceeding under this section shall consist of the request, each written determination issued under subdivision (3) of this section, each comment and request for hearing submitted under subdivision (4) of this section, each document submitted for introduction into evidence at the hearing, an audio or audiovisual recording of the hearing, and the decision of the Board.

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 Board 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 Board 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 Board 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. 10 V.S.A. § 6089 is amended to read:

§ 6089. APPEALS

Appeals of any act or decision of a ~~district commission~~ District Commission under this chapter or the Natural Resources Board under ~~section~~ subsection 6007(d) of this title or under section 6086b of this title shall be made to the Environmental Division in accordance with chapter 220 of this title. For the purpose of this section, a decision of the chair of a ~~district commission~~ District Commission under section 6001e of this title on whether action has been taken to circumvent the requirements of this chapter shall be considered an act or decision of the ~~district commission~~ District Commission.

Sec. 6. 10 V.S.A. § 6093 is amended to read:

§ 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

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

(1) Project located in ~~growth center~~ certain designated areas. This subdivision (1) applies to projects located in the following areas designated under 24 V.S.A. chapter 76A: a downtown development district, a growth center, a new town center designated on or before January 1, 2014, and a neighborhood development area associated with a designated downtown development district. If the project tract is located in a ~~designated growth center~~ one of these designated areas, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont ~~housing and conservation trust fund~~ Housing and Conservation Trust Fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

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

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

(i) ~~for~~ For development or subdivision within a designated ~~growth center~~ area described in this subdivision (a)(1), the ratio shall be 1:1;

(ii) ~~for~~ For residential construction that has a density of at least eight units of housing per acre, of which at least eight units per acre or at least 40 percent of the units, on average, in the entire development or subdivision,

whichever is greater, meets the definition of affordable housing established in this chapter, no mitigation shall be required, regardless of location in or outside a designated area described in this subdivision (a)(1). However, all affordable housing units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or longer. ~~For purposes of~~ As used in this section, housing that is rented shall be considered affordable housing when its inhabitants have a gross annual household income that 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.

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

(2) Project located outside certain designated ~~growth-center~~ areas. If the project tract is not located in a designated ~~growth-center~~ area described in subdivision (a)(1) of this section, mitigation shall be provided on site in order to preserve primary agricultural soils for present and future agricultural use, with special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils shall be accomplished through innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract capable of supporting or contributing to an economic or commercial agricultural operation and shall be enforceable by permit conditions issued by the ~~district commission~~ District Commission. The number of acres of primary agricultural soils to be preserved shall be derived by:

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

(B) ~~multiplying~~ Multiplying the number of affected acres of primary agricultural soils by a factor based on the quality of those primary agricultural soils, and other factors as the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets may deem relevant, including the soil’s location; accessibility; tract size; existing agricultural operations; water sources; drainage; slope; the presence of ledge or protected wetlands; the infrastructure of the existing farm or municipality in which the soils are located; and the N.R.C.S. rating system for Vermont soils. This factor shall

result in a ratio of no less than 2:1, but no more than 3:1, protected acres to acres of impacted primary agricultural soils.

(3) Mitigation flexibility.

(A) Notwithstanding the provisions of subdivision (a)(1) of this ~~subsection~~ section pertaining to a development or subdivision on primary agricultural soils within a certain designated ~~growth-center areas~~, the ~~district commission~~ District Commission may, in appropriate circumstances, require onsite mitigation with special emphasis on preserving prime agricultural soils if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. In this situation, the approved plans must designate specific soils that shall be preserved inside ~~growth-centers~~ a designated area described in subdivision (a)(1) of this section. For projects located within such a designated ~~growth-center area~~, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

(B) Notwithstanding the provisions of subdivision (a)(2) of this ~~subsection~~ section pertaining to a development or subdivision on primary agricultural soils outside a designated ~~growth-center area described in subdivision (a)(1) of this section~~, the ~~district commission~~ District Commission may, in appropriate circumstances, approve off-site mitigation or some combination of onsite and off-site mitigation if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. For projects located outside such a designated ~~growth-center area~~, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection (a), subject to a ratio of no less than 2:1, but no more than 3:1.

* * *

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 by the Board under section 6086b of this title;

* * *

* * * Appeal of Downtown Development Findings * * *

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 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.

* * *

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

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

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

(3) An act or decision of the Natural Resources Board under section 6086b of this title (downtown development; findings), which shall be reviewed on the record created by the Board. The Environmental Division shall uphold the Board unless the Division determines that the Board abused its discretion or made factual determinations not supported by substantial evidence when the record is viewed as a whole. The Division shall not consider an appellant's objection that was not urged before the Board, unless the failure or neglect to urge the objection is excused by extraordinary circumstances.

* * *

* * * 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 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.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Recess

At one o'clock and forty-two minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At two o'clock and twenty-seven minutes in the afternoon, the Speaker called the House to order.

Consideration Resumed; Bill Amended and Third Reading Ordered

H. 823

Consideration resumed on House bill, entitled

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

Thereupon, the recommendation of amendment offered by the committee on Natural Resources and Energy was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Gage of Rutland City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 92. Nays, 44.

Those who voted in the affirmative are:

Ancel of Calais	Haas of Rochester	Michelsen of Hardwick
Bartholomew of Hartland	Head of South Burlington	Miller of Shaftsbury
Botzow of Pownal	Heath of Westford	Mook of Bennington
Burke of Brattleboro	Hooper of Montpelier	Moran of Wardsboro
Campion of Bennington	Hoyt of Norwich	Mrowicki of Putney *
Carr of Brandon	Huntley of Cavendish	Nuovo of Middlebury
Christie of Hartford	Jerman of Essex	O'Brien of Richmond
Clarkson of Woodstock	Jewett of Ripton	O'Sullivan of Burlington
Cole of Burlington	Johnson of South Hero	Partridge of Windham
Connor of Fairfield	Keenan of St. Albans City	Pearson of Burlington *
Conquest of Newbury *	Kitzmiller of Montpelier	Peltz of Woodbury
Copeland-Hanzas of Bradford	Klein of East Montpelier	Potter of Clarendon
Cross of Winooski	Krowinski of Burlington	Pugh of South Burlington
Dakin of Chester	Kupersmith of South Burlington	Rachelson of Burlington
Deen of Westminster	Lenes of Shelburne	Ralston of Middlebury
Donovan of Burlington	Lippert of Hinesburg	Ram of Burlington
Ellis of Waterbury	Macaig of Williston	Russell of Rutland City
Emmons of Springfield	Malcolm of Pawlet	Ryerson of Randolph
Evans of Essex	Manwaring of Wilmington	Scheuermann of Stowe
Fay of St. Johnsbury	Marek of Newfane *	Sharpe of Bristol
Feltus of Lyndon	Martin of Springfield	Stevens of Waterbury
Fisher of Lincoln	Martin of Wolcott	Stevens of Shoreham
Frank of Underhill	Masland of Thetford	Stuart of Brattleboro *
French of Randolph	McCarthy of St. Albans City	Sweaney of Windsor
Gallivan of Chittenden	McCormack of Burlington	Taylor of Barre City
Grad of Moretown	McCullough of Williston	Till of Jericho
		Toleno of Brattleboro

Toll of Danville	Waite-Simpson of Essex	Woodward of Johnson
Townsend of South Burlington	Webb of Shelburne	Yantachka of Charlotte
Trieber of Rockingham	Weed of Enosburgh	Young of Glover
Vowinkel of Hartford	Wilson of Manchester	Zagar of Barnard
	Wizowaty of Burlington	

Those who voted in the negative are:

Batchelor of Derby	Donahue of Northfield	Lewis of Berlin
Beyor of Highgate	Fagan of Rutland City	McFaun of Barre Town
Branagan of Georgia	Gage of Rutland City	Morrissey of Bennington
Brennan of Colchester	Goodwin of Weston	Myers of Essex
Browning of Arlington	Greshin of Warren	Pearce of Richford
Buxton of Tunbridge	Hebert of Vernon	Poirier of Barre City
Canfield of Fair Haven	Helm of Fair Haven	Quimby of Concord
Consejo of Sheldon	Hubert of Milton	Savage of Swanton
Corcoran of Bennington	Johnson of Canaan	Shaw of Pittsford
Cupoli of Rutland City	Juskiewicz of Cambridge	Smith of New Haven
Davis of Washington	Koch of Barre Town	Strong of Albany
Devereux of Mount Holly	Komline of Dorset	Terenzini of Rutland Town
Dickinson of St. Albans Town	Krebs of South Hero	Turner of Milton *
Donaghy of Poultney	Larocque of Barnet	Van Wyck of Ferrisburgh
	Lawrence of Lyndon	Winters of Williamstown

Those members absent with leave of the House and not voting are:

Bissonnette of Winooski	Kilmartin of Newport City	South of St. Johnsbury
Bouchard of Colchester	Lanpher of Vergennes	Spengler of Colchester
Burditt of West Rutland	Marcotte of Coventry	Wright of Burlington
Condon of Colchester	Mitchell of Fairfax	
Higley of Lowell	Shaw of Derby	

Rep. Conquest of Newbury explained his vote as follows:

“Mr. Speaker:

I find it useful, always, to be cautious around Act 250, and I am here. In this case, though, the proposals here appear to me to simply encourage development in the smart ways we largely agree on and, importantly to me, don’t create new burdens to building small businesses in rural areas.”

Rep. Marek of Newfane explained his vote as follows:

“Mr. Speaker:

Few bills that we pass this year will do more to help ensure that the Vermont we love today will remain one that we can love as well in the future. One New Jersey is quite enough for any country.”

Rep. Mrowicki of Putney explained his vote as follows:

“Mr. Speaker:

My vote supports using smart growth principles to lead the way in the 21st century and balance the need for maintaining a cleaner environment with development.

Your Committee on Natural Resources has done some stellar work to promote housing, transportation alternatives and a better future for our children and subsequent generations.”

Rep. Pearson of Burlington explained his vote as follows:

“Mr. Speaker:

It’s heartening to see many standing up to resist changes to Act 250. I, however, believe it is appropriate to make small changes that stimulate development and in-fill in our downtowns.”

Rep. Stuart of Brattleboro explained her vote as follows:

“Mr. Speaker:

America the beautiful will become America the ugly if we don’t learn as a state and a nation to honor the beauty and sanctity of the American landscape.

Europeans and many other societies with histories far older than ours have learned to contain development in order to protect the heritage, beauty and values of their ancestors for generations to come.”

Rep. Turner of Milton explained his vote as follows:

“Mr. Speaker:

I cannot support adding another condition in the Act 250 process that will likely add even more unpredictability to obtaining a permit.”

House Resolution Adopted

H.R. 16

House resolution, entitled

House resolution reaffirming the friendly bilateral relationships between Taiwan and both the United States and Vermont and the important role of Taiwan in the international community

Was taken up and adopted on the part of the House.

Message from the Senate No. 29

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bills of the following titles:

S. 237. An act relating to civil forfeiture proceedings in cases of animal cruelty.

S. 264. An act relating to technical corrections to civil and criminal procedure statutes.

S. 269. An act relating to business consumer protection and data security breaches.

In the passage of which the concurrence of the House is requested.

Adjournment

At three o'clock and twenty-three minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.