

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 234 entitled “An act relating to changes to Act 250”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 * * * Municipal Zoning * * *

8 Sec. 1. 24 V.S.A. § 2793e is amended to read:

9 § 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF
10 NEIGHBORHOOD DEVELOPMENT AREAS

11 (a) Purpose. This section is intended to encourage a municipality to plan
12 for new and infill housing in the area including and immediately encircling its
13 designated downtown, village center, new town center, or within its designated
14 growth center in order to provide needed housing and to further support the
15 commercial establishments in the designated center. To support this goal, this
16 section sets out a two-component process.

17 * * *

18 (b) Definitions.

19 (1) “Neighborhood planning area” means an automatically delineated
20 area including and encircling a downtown, village center, or new town center
21 designated under this chapter or within a growth center designated under this

1 chapter. A neighborhood planning area is used for the purpose of identifying
2 locations suitable for new and infill housing that will support a development
3 pattern that is compact, oriented to pedestrians, and consistent with smart
4 growth principles. To ensure a compact settlement pattern, the outer boundary
5 of a neighborhood planning area shall be located entirely within the boundaries
6 of the applicant municipality, unless a joint application is submitted by more
7 than one municipality, and shall be determined:

8 * * *

9 (c) Application for designation of a neighborhood development area. The
10 State Board shall approve a neighborhood development area if the application
11 demonstrates and includes all of the following elements:

12 * * *

13 (5) The proposed neighborhood development area consists of those
14 portions of the neighborhood planning area that are appropriate for new and
15 infill housing, excluding identified flood hazard and fluvial erosion areas,
16 except those areas containing preexisting development in areas suitable for
17 infill development as defined in § 29-201 of the Vermont Flood Hazard Area
18 and River Corridor Rule. In determining what areas are most suitable for new
19 and infill housing, the municipality shall balance local goals for future land
20 use, the availability of land for housing within the neighborhood planning area,
21 and the smart growth principles. Based on those considerations, the

1 municipality shall select an area for neighborhood development area
2 designation that:

3 (A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of
4 “important natural resources” as defined in subdivision 2791(14) of this title.
5 If an “important natural resource” is included within a proposed neighborhood
6 development area, the applicant shall identify the resource, explain why the
7 resource was included, describe any anticipated disturbance to such resource,
8 and describe why the disturbance cannot be avoided or minimized. If the
9 neighborhood development area includes flood hazard areas or river corridors,
10 the local bylaws shall contain provisions consistent with the Agency of Natural
11 Resources’ rules required under 10 V.S.A. § 754(a) to ensure that new infill
12 development within a neighborhood development area occurs outside the flood
13 hazard area and will not cause or contribute to fluvial erosion hazards within
14 the river corridor. If the neighborhood development area includes flood hazard
15 areas or river corridors, local bylaws shall also contain provisions to protect
16 river corridors outside the neighborhood development area consistent with the
17 Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a).

18 * * *

1 ACCELERATED PROGRAM FOR HOUSING FUNDED BY THE
2 AMERICAN RESUCE PLAN ACT OF 2021

3 § 6201. PURPOSE

4 The purpose of this subchapter is to provide an exemption from the
5 permitting requirements of chapter 151 of this title for affordable housing
6 projects that receive ARPA funds located in in certain designated areas.

7 § 6202. DEFINITIONS

8 As used in this subchapter

9 (1) “Affordable housing” means a housing project which shall meet the
10 stretch code established pursuant to 30 V.S.A. § 51 (d) and in which the
11 following apply:

12 (A) Owner-occupied housing. Owner-occupied housing shall be at
13 least 80 percent of the housing units have a purchase price that at the time of
14 first sale does not exceed 90 percent of the new construction, targeted area
15 purchase price limits established and published annually by the Vermont
16 Housing Finance Agency.

17 (B) Rental housing. At least 80 percent of the housing units that have
18 a duration of affordability of not less than 30 years and the total annual cost of
19 renting, including rent, utilities, and condominium association fees, does not
20 exceed 30 percent of the gross annual income of a household at 150 percent of
21 the highest of the following:

1 (i) the county median income, as defined by the U.S. Department
2 of Housing and Urban Development;

3 (ii) the standard metropolitan statistical area median income if the
4 municipality is located in such an area, as defined by the U.S. Department of
5 Housing and Urban Development; or

6 (iii) the statewide median income, as defined by the U.S.
7 Department of Housing and Urban Development.

8 (2) “ARPA-funded housing project” means an affordable housing
9 project funded in whole or in part by funds from the American Rescue Plan
10 Act of 2021.

11 (3) “ARPA development zone” means the following areas designated
12 pursuant to 24 V.S.A. chapter 76A: downtown development district, new town
13 center, growth center, and neighborhood development area.

14 § 6203. DETERMINATION OF ARPA-FUNDED PROJECTS

15 (a) Any person seeking to construct an ARPA-funded affordable housing
16 project located entirely within an ARPA development zone may obtain a
17 jurisdictional opinion from the district coordinator pursuant to section 6007 of
18 this title. The requester shall provide the District Coordinator with the
19 following:

20 (1) documentation sufficient to verify that the proposed project is an
21 ARPA-funded project;

1 (2) a project description sufficient to document the use, total square
2 footage of each component of the development, and all involved land proposed
3 to be used for the project; and

4 (3) a site plan.

5 (b) Any project deemed to be an ARPA-funded project that is not required
6 to obtain a permit or permit amendment pursuant to this subchapter, shall file a
7 final site plan with the district coordinator within three months of completion
8 of the project.

9 (c) Pursuant to Board rules all documentation and each jurisdictional
10 opinion issued pursuant to subsection shall be published online.

11 § 6204. ARPA-FUNDED PROJECTS AND ARPA DEVELOPMENT

12 ZONES; WHEN PERMITS REQUIRED

13 (a) No permit is required for an ARPA-funded housing project located
14 entirely within an ARPA development zone if the project is proposed for a
15 tract or tracts of land not currently encumbered by a permit issued pursuant to
16 this chapter.

17 (b) No permit amendment is required for an ARPA-funded housing project
18 located entirely within an ARPA development zone if the project will comply
19 with all conditions of any existing permit or permit amendment issued pursuant
20 to this chapter that applies to the tract or tracts of land on which the ARPA-
21 funded project will be located. If it is determined by a jurisdictional opinion

1 issued pursuant to section 6203 of this title that an ARPA-funded project will
2 not comply with one or more existing conditions, an application shall be filed
3 pursuant to section 6205 of this chapter.

4 (c) In order for the exemptions in this section to apply a jurisdictional
5 opinion must be issued pursuant to section 6203 of this title finding that the
6 exemptions apply.

7 § 6205. PERMITTING FOR ARPA-FUNDED PROJECTS

8 INCONSISTENT WITH EXISTING PERMITS

9 (a) This section concerns an application for a permit amendment to change
10 the conditions of an existing permit or permit amendment in order to authorize
11 the construction of an ARPA-funded project.

12 (b) Notwithstanding any provision in this chapter to the contrary, the
13 District Commission may authorize a district coordinator to issue an
14 amendment, without notice and a hearing, if the applicant demonstrates that all
15 parties to the existing permit or permit amendment, which contains the
16 condition or conditions proposed to be changed, or their successors in interest
17 have consented to the proposed changes to conditions relative to the criteria for
18 which the party obtained party status.

19 (c) If the applicant is not able to obtain the consent of a party or parties or
20 their successors in interest with respect to one or more of the conditions in the
21 existing permit or permit amendment proposed to be changed, the notice and

1 hearing requirements of section 6084 of this title shall apply. However,
2 notwithstanding any provision in this chapter to the contrary, review by the
3 District Commission shall be limited to whether the changes to conditions not
4 consented to by the party or parties or their successors in interest enable
5 positive findings to be made under subsection 6086(a) and are authorized
6 under subsection 6086(c) of this title.

7 § 6206. FUTURE CHANGES TO ARPA-FUNDED PROJECTS

8 Any change proposed to an ARPA-funded housing project that was not
9 required to obtain a permit pursuant to this subchapter and which is not itself
10 ARPA funded, must be authorized by a permit issued pursuant to this chapter
11 if the change constitutes a “substantial change.” For the purpose of this
12 subsection, a substantial change to an ARPA-funded project shall be analyzed
13 in the same manner that a substantial change to a preexisting development is
14 analyzed pursuant to Board rules.

15 § 6207. REPORTS

16 (a) On or before August 1, 2022, the Joint Fiscal Office shall convene a
17 working group to evaluate the impacts of this subchapter. The group shall
18 consist of:

19 (1) The Secretary of Commerce and Community Development, or
20 designee;

21 (2) The Chair of the Natural Resources Board, or designee;

1 (3) The Executive Director of the Vermont Housing and Conservation
2 Board, or designee;

3 (4) The Executive Director of the Vermont Housing Finance Agency, or
4 designee; and

5 (5) The Director of the Joint Fiscal Office or designee.

6 (b) The group shall elect a chair at its first meeting. A majority of
7 members shall constitute a quorum. The group shall meet up to four times per
8 year.

9 (c) The group shall analyze the impacts of the exemption created under this
10 subchapter, including how many units of housing have been created under this
11 subchapter, what types of housing units have been created, and average rent of
12 the units created.

13 (d) The group shall submit reports to the committees of jurisdiction, which
14 are the Senate Committees on Economic Development, Housing and General
15 Affairs and on Natural Resources and Energy and the House Committees on
16 General, Housing, and Military Affairs and on Natural Resources, Fish, and
17 Wildlife. On or before January 15 each year, the group shall report to the
18 Committees of jurisdiction updates on the impacts of this subchapter. On or
19 before January 15, 2027, the group shall submit a preliminary final report to
20 the Committees. On or before March 1, 2027, the group shall submit its final
21 report.

1 (dd) 50 or more, in a municipality with a population of
2 ~~3,000 or more but~~ less than 6,000.

3 (ee) ~~25 or more, in a municipality with a population of less~~
4 ~~than 3,000. [Repealed.]~~

5 (ff) Notwithstanding subdivisions (cc) through (ee) of this
6 subdivision (3)(A)(iv)(I), 10 or more if the construction involves the
7 demolition of one or more buildings that are listed on or eligible to be listed on
8 the State or National Register of Historic Places. However, demolition shall
9 not be considered to create jurisdiction under this subdivision (ff) if the
10 Division for Historic Preservation has determined that the proposed demolition
11 will have no adverse effect, will have no adverse effect if specified conditions
12 are met, or will have an adverse effect that will be adequately mitigated. Any
13 imposed conditions shall be enforceable through a grant condition, deed
14 covenant, or other legally binding document.

15 * * *

16 (6) ~~“Floodway” means the channel of a watercourse that is expected to~~
17 ~~flood on an average of at least once every 100 years and the adjacent land areas~~
18 ~~that are required to carry and discharge the flood of the watercourse, as~~
19 ~~determined by the Secretary of Natural Resources with full consideration given~~
20 ~~to upstream impoundments and flood control projects~~ “Flood hazard area” has
21 the same meaning as under section 752 of this title.

1 (44) “Forest block” means a contiguous area of forest in any stage of
2 succession and not currently developed for nonforest use. A forest block may
3 include features including recreational trails, wetlands, or other natural features
4 that do not themselves possess tree cover and improvements constructed for
5 farming, logging, or forestry purposes.

6 (45) “Habitat” means the physical and biological environment in which
7 a particular species of plant or wildlife lives.

8 Sec. 9. 10 V.S.A. § 6086(a)(8) is amended to read:

9 (8) Ecosystem protection; scenic beauty; historic sites.

10 (A) Aesthetics. Will not have an undue adverse effect on the scenic
11 or natural beauty of the area, aesthetics, or historic sites or rare and
12 irreplaceable natural areas.

13 ~~(A)~~(B) Necessary wildlife habitat and endangered species. A permit
14 will not be granted if it is demonstrated by any party opposing the applicant
15 that a development or subdivision will destroy or significantly imperil
16 necessary wildlife habitat or any endangered species; and;

17 (i) the economic, social, cultural, recreational, or other benefit to
18 the public from the development or subdivision will not outweigh the
19 economic, environmental, or recreational loss to the public from the
20 destruction or imperilment of the habitat or species; or

1 (ii) all feasible and reasonable means of preventing or lessening
2 the destruction, diminution, or imperilment of the habitat or species have not
3 been or will not continue to be applied; or

4 (iii) a reasonably acceptable alternative site is owned or controlled
5 by the applicant ~~which~~ that would allow the development or subdivision to
6 fulfill its intended purpose.

7 (C) Forest blocks and connecting habitat. Will not result in an undue
8 adverse impact on forest blocks, connecting habitat, or rare and irreplaceable
9 natural areas. If a project as proposed would result in an undue adverse
10 impact, a permit may only be granted if effects are avoided, minimized, and
11 mitigated in accordance with rules adopted by the Board.

12 Sec. 10. CRITERION 8(C) RULEMAKING

13 (a) The Natural Resources Board (Board), in consultation with the Agency
14 of Natural Resources, shall adopt rules to implement the requirements for the
15 administration of 10 V.S.A. § 6086(a)(8)(C). Rules adopted by the Board shall
16 include:

17 (1) How forest blocks and connecting habitat are further defined,
18 including their size, location, and function, which may include:

19 (A) information that will be available to the public to determine
20 where forest blocks and connecting habitat are located; or

1 (B) advisory mapping resources, how they will be made available,
2 how they will be used, and how they will be updated.

3 (2) Standards establishing how impacts can be avoided, minimized, or
4 mitigated, including how fragmentation of forest blocks or connecting habitat
5 is avoided or minimized, which may include steps to promote proactive site
6 design of buildings, roadways and driveways, utility location, and location
7 relative to existing features such as roads, tree lines, and fence lines.

8 (3) Criteria to identify when a forest block or connecting habitat is
9 eligible for mitigation.

10 (4) Standards for how impacts to a forest block or connecting habitat
11 may be mitigated. Standards may include:

12 (A) appropriate ratios for compensation;

13 (B) appropriate forms of compensation such as conservation
14 easements, fee interests in land, and other forms of compensation; and

15 (C) appropriate uses of on-site and off-site mitigation.

16 (b) The Board shall convene a working group to provide input to the rule
17 prior to prefiling with the Interagency Committee on Administrative Rules.

18 The Board shall convene the working group on or before February 1, 2023.

19 (c) The Board shall file a final proposed rule with the Secretary of State
20 and Legislative Committee on Administrative Rules on or before June 15,
21 2023.

1 Sec. 11. 10 V.S.A. § 127 is amended to read:

2 § 127. RESOURCE MAPPING

3 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources
4 shall complete and maintain resource mapping based on the Geographic
5 Information System (GIS) or other technology. The mapping shall identify
6 natural resources throughout the State, including forest blocks, that may be
7 relevant to the consideration of energy projects and projects subject to chapter
8 151 of this title. The Center for Geographic Information shall be available to
9 provide assistance to the Secretary in carrying out the ~~GIS-based~~ resource
10 mapping.

11 (b) The Secretary ~~of Natural Resources~~ shall consider the ~~GIS-based~~
12 resource maps developed under subsection (a) of this section when providing
13 evidence and recommendations to the Public Utility Commission under
14 30 V.S.A. § 248(b)(5) and when commenting on or providing
15 recommendations under chapter 151 of this title to District Commissions on
16 other projects.

17 (c) The Secretary shall establish and maintain written procedures that
18 include a process and science-based criteria for updating resource maps
19 developed under subsection (a) of this section. Before establishing or revising
20 these procedures, the Secretary shall provide opportunities for affected parties
21 and the public to submit relevant information and recommendations.

1 (aa) Routine maintenance shall include replacing a culvert
2 or ditch, increasing the size or configuration of an existing drainage structure
3 to improve resiliency, applying new stone, grading, or making repairs after
4 adverse weather.

5 (bb) Routine maintenance shall not include changing the
6 size of the road, changing the location or layout of the road, or adding
7 pavement unless undertaken to improve the function of an existing drainage
8 structure.

9 (III) For the purpose of determining the length under this
10 subdivision (xi), the length of all roads and driveways within the tract or tracts
11 of land constructed within any continuous period of 10 years after October 1,
12 2020 shall be included.

13 (IV) This subdivision (xi) shall not apply to:

14 (aa) a road constructed for a municipal, county, or State
15 purpose; a utility corridor of an electric transmission or distribution company;
16 or a road located entirely within a designated downtown or neighborhood
17 development area; and

18 (bb) a road used primarily for farming or forestry purposes
19 unless used for a residential purpose.

20 * * *

1 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and
2 the filing of bonds to ensure compliance. The requirements and conditions
3 incorporated from Title 24 may be applied whether or not a local plan has been
4 adopted. General requirements and conditions may be established by rule of
5 the Natural Resources Board.

6 (2) Permit conditions on a wood products manufacturer.

7 (A) A permit condition that sets hours of operation for a wood
8 products manufacturer shall only be imposed to mitigate an impact under
9 subdivision (a)(1), (5), or (8) of this section.

10 (B) If an adverse impact under subdivision (a)(1), (5), or (8) of this
11 section would result, a permit with conditions shall allow the manufacturer to
12 operate while mitigating these impacts. A permit with conditions that mitigate
13 these impacts shall allow for deliveries of wood products from forestry
14 operations to the manufacturer outside permitted hours of operation, including
15 nights, weekends, and holidays, for the number of days demonstrated by the
16 manufacturer as necessary to enable business operations, not to exceed 90 days
17 per year.

18 (3) Permit with conditions on the delivery of wood heat fuels. A permit
19 with conditions issued to a wood products manufacturer that produces wood
20 chips, pellets, cord wood, or other fuel wood used for heat shall allow
21 shipment of that fuel wood from the manufacturer to the end user outside

1 permitted hours of operation, including nights, weekends, and holidays, from
2 October 1 through April 30 of each year. Permits with conditions shall
3 mitigate the undue adverse impacts while enabling the operations of the
4 manufacturer.

5 (4) Permit amendments. A wood products manufacturer holding a
6 permit may request an amendment to existing permit conditions related to
7 hours of operation and seasonal restrictions to be consistent with subdivisions
8 (2) and (3) of this subsection. Requests for condition amendments under this
9 subsection shall not be subject to Act 250 Rule 34(E).

10 * * * One-acre towns * * *

11 Sec. 15. 10 V.S.A. § 6001 is amended to read:

12 § 6001. DEFINITIONS

13 * * *

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

15 (i) The construction of improvements on a tract or tracts of land,
16 owned or controlled by a person, involving more than 10 acres of land within a
17 radius of five miles of any point on any involved land, for commercial or
18 industrial purposes in a municipality that has adopted permanent zoning and
19 subdivision bylaws.

20 (ii) The construction of improvements on a tract or tracts of land,
21 owned or controlled by a person, involving more than one acre of land within a

1 radius of five miles of any point on any involved land, for commercial or
2 industrial purposes ~~on more than one acre of land within~~ in a municipality that
3 has not adopted permanent zoning and subdivision bylaws.

4 * * *

5 * * * Environmental Court * * *

6 Sec. 17. ENVIRONMENTAL DIVISION OF SUPERIOR COURT;
7 POSITIONS; APPROPRIATION

8 (a) Establishment of the following limited-service positions is authorized in
9 the Environmental Division of the Superior Court in fiscal year 2023:

10 (1) one Environmental Division judge; and

11 (2) one law clerk.

12 (b) There is appropriated the sum of \$300,000.00 to the Environmental
13 Division of the Superior Court in fiscal year 2023 from the American Rescue
14 Plan Act of 2021 - Coronavirus State Fiscal Recovery Fund for the positions
15 established in subsection (a) of this section.

16 * * * Reports * * *

17 Sec. 18. REPORT; ACT 250 JURISDICTION OVER AGRICULTURAL
18 BUSINESSES

19 On or before January 15, 2023, the Natural Resources Board shall submit to
20 the General Assembly a report with recommendations on how Act 250
21 jurisdiction should be applied to agricultural businesses, including those

1 located on properties already operating as farms. The report shall address the
2 current land use planning requirements for farms and farms with accessory on-
3 farm businesses and whether different types of businesses associated with
4 farms and farming require different levels of review. The report may consider
5 whether or not the location of such businesses is relevant and may consider the
6 designation or adoption of agricultural business innovation zones with different
7 levels of review.

8 Sec. 19. DESIGNATED AREA REPORT; APPROPRIATION

9 (a) The sum of \$150,000.00 is appropriated from the General Fund to the
10 Department of Housing and Community Development in fiscal year 2023 for
11 the purpose of hiring a consultant to evaluate the State designation programs
12 established in 24 V.S.A. chapter 76A pursuant to subsection (b) of this section.

13 (b)(1) The Department of Housing and Community Development shall hire
14 an independent consultant to:

15 (A) review and assess the State designation programs and incentives
16 established in 24 V.S.A. chapter 76A that recognize and invest in the vitality of
17 Vermont's compact settlement areas; and

18 (B) conduct statewide stakeholder outreach to support the evaluation
19 of and future improvements to the programs, including participation by State,
20 regional, municipal, and advocacy and non-governmental organizations.

1 (2) The consultant shall make recommendations on how to:

2 (A) objectively define and map existing compact settlements as a
3 basis for broader recognition;

4 (B) improve the consistency between and among regional plans and
5 future land use maps;

6 (C) modernize these programs, including consideration of program
7 reform or consolidation;

8 (D) make the designation programs and associated benefits more
9 accessible to municipalities;

10 (E) apply regulatory and non-regulatory benefits;

11 (F) strengthen designation and incentives as a platform for place-
12 based economic development, climate-action, complete streets, and equity and
13 efficiency of public investment and service delivery;

14 (G) implement the smart growth principles established by 24 V.S.A.
15 § 2791; and

16 (H) achieve the goals established in 24 V.S.A. § 4302.

17 (3) On or before July 15, 2023, the consultant shall submit a written
18 report to the General Assembly with its findings and any recommendations for
19 legislative action.

20 * * * Study Committee; Effective Date * * *

21 Sec. 20. STUDY COMMITTEE; NATURAL RESOURCES BOARD

1 Sec. 21. EFFECTIVE DATES

2 This act shall take effect on July 1, 2022, except that Sec. 9 (10 V.S.A.
3 § 6086(a)(8)) shall take effect on January 1, 2024.

4

5

6 (Committee vote: _____)

7

8

Senator _____

9

FOR THE COMMITTEE