

1

S.234

2

Introduced by Senators Bray, Balint, Clarkson and Lyons

3

Referred to Committee on

4

Date:

5

Subject: Conservation and development; land use; Act 250

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Statement of purpose of bill as introduced: This bill proposes to make multiple

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amendments to the State land use and development law, Act 250, including:

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creating designated smart growth areas that will be exempt from Act 250 and

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providing grants to municipalities to assist them in achieving this new

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designation, requiring municipalities to respond to Act 250 requests within

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90 days, adding new criteria for forest blocks and connecting habitat, adding a

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jurisdictional trigger for roads, clarifying permit conditions for wood product

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manufacturers, clarifying Act 250 jurisdiction in one-acre towns, and creating

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a committee to study the governance and administration of the Act 250

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program.

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An act relating to changes to Act 250

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

2 * * * Smart Growth Designation * * *

3 Sec. 1. 10 V.S.A. § 6001(43) is added to read:

4 (43) “Smart growth designation” means the process by which a
5 designated center demonstrates that the center has satisfied the requirements of
6 24 V.S.A. § 2793f. The term shall also refer to the resulting status.

7 Sec. 2. 10 V.S.A. § 6081 is amended to read:

8 § 6081. PERMITS REQUIRED; EXEMPTIONS

9 * * *

10 (y) No permit or permit amendment is required for any subdivision or
11 development located in a smart growth designation area. If the smart growth
12 designation is terminated, a development or subdivision within the designated
13 center must receive a permit, if applicable.

14 Sec. 3. 24 V.S.A. § 2793f is added to read:

15 § 2793f. SMART GROWTH DESIGNATION

16 (a) Application and approval. A municipality, by resolution of its
17 legislative body, may apply to the Natural Resources Board for a smart growth
18 designation for any designated downtown development district or designated
19 neighborhood development area. The Natural Resources Board shall issue an
20 affirmative determination on finding that the municipality meets the
21 requirements of subsection (b) of this section.

1 (b) Smart growth designation requirements.

2 (1) To obtain a smart growth designation under this section, a
3 municipality must demonstrate that it has each of the following:

4 (A) an approved designated downtown development district or
5 designated neighborhood development area;

6 (B) a municipal plan that is approved in accordance with section
7 4350 of this title;

8 (C) a housing element in its town plan in accordance with
9 subdivision 4382(10) of this title that achieves the purposes of subdivision
10 4302(11) of this title and that includes clear implementation steps for achieving
11 mixed income housing, including affordable housing, a timeline for
12 implementation, responsibility for each implementation step, and potential
13 funding sources;

14 (D) adopted one of the following to promote the availability of
15 affordable housing opportunities in the municipality:

16 (i) inclusionary zoning as provided in subdivision 4414(7) of this
17 title;

18 (ii) a restricted housing trust fund with designated revenue
19 streams;

20 (iii) a housing commission as provided in section 4433 of this
21 title; or

1 (iv) impact fee exemptions or reductions for affordable housing as
2 provided in section 5205 of this title;

3 (E) municipal flood hazard planning, applicable to the entire
4 municipality, in accordance with subdivision 4382(12) of this title and the
5 guidelines issued by the Department pursuant to subsection 2792(d) of this
6 title;

7 (F) flood hazard and river corridor bylaws, applicable to the entire
8 municipality, that are consistent with the standards established pursuant to
9 10 V.S.A §§ 755(b) (flood hazard) and 1428(b) (river corridor);

10 (G) a capital budget and program pursuant to section 4430 of this title
11 that make substantial investments in the ongoing development of the
12 designated area, are consistent with the plan's implementation program, and
13 are consistent with the smart growth principles defined in subdivision 2791(13)
14 of this title;

15 (H) municipal bylaws that do not include broad exemptions
16 excluding significant private or public land development from requiring a
17 municipal land use permit; and

18 (I) adequate municipal staff to support coordinated comprehensive
19 capital planning, development review, and zoning administration.

1 (2) Designated downtown development districts seeking enhanced
2 designation shall, in addition to the requirements of subdivisions (c)(1)–(6) of
3 this section, also have:

4 (A) urban form bylaws for the enhanced designated center that
5 further the smart growth principles of this chapter and adequately regulate the
6 physical form and scale of development and conform to the guidelines
7 established by the Department; and

8 (B) historic preservation bylaws for established design review
9 districts, historic districts, or historic landmarks pursuant to subdivisions
10 4414(1)(E) and (F) of this title for the enhanced designated center that meet
11 State historic preservation guidelines issued by the Department pursuant to
12 subsection 2792(d) of this title.

13 (3) Designated neighborhood development areas seeking enhanced
14 designation shall have, in addition to the requirements of this subsection,
15 wildlife habitat planning bylaws for the enhanced designated center that
16 comply with standards established by the Department of Fish and Wildlife.

17 (4) If any party entitled to notice under subdivision (4)(A) of subsection
18 (c) of this section or any resident of the municipality raises concerns about the
19 municipality’s compliance with the requirements for the underlying
20 designation, those concerns must be addressed as part of the municipality’s
21 application.

1 (c) Process for issuing smart growth designation.

2 (1) A preapplication meeting shall be held with Department staff to
3 review the program requirements. The meeting shall be held in the
4 municipality unless another location is agreed to by the municipality.

5 (2) An application by the municipality must include the information and
6 analysis required by the Department’s guidelines established pursuant to
7 section 2792 of this title on how to meet the requirements of subsection (b) of
8 this section.

9 (3) The Department shall establish a procedure for submission of a draft
10 application that involves review and comment by all the parties to be noticed in
11 subdivision (4)(A) of this subsection and shall issue a preapplication memo
12 incorporating the comments to the applicant after receipt of a draft preliminary
13 application.

14 (4) After receipt of a complete final application, the Natural Resources
15 Board shall convene a public hearing in the municipality to consider whether
16 to issue a determination of smart growth designation under this section.

17 (A) Notice.

18 (i) At least 35 days in advance of the Board’s meeting, the
19 Department shall provide notice to the municipality and post it on the
20 Agency’s website.

1 (ii) The municipality shall publish notice of the meeting at least
2 30 days in advance of the Board's meeting in a newspaper of general
3 circulation in the municipality, and deliver physically or electronically, with
4 proof of receipt or by certified mail, return receipt requested to the Agency of
5 Natural Resources; the State Downtown Board; the Division for Historic
6 Preservation; the Agency of Agriculture, Food and Markets; the Agency of
7 Transportation; the regional planning commission; the regional development
8 corporations; and the entities providing educational, police, and fire services to
9 the municipality.

10 (iii) The notice shall also be posted by the municipality in or near
11 the municipal clerk's office and in at least two other designated public places
12 in the municipality and on the websites of the municipality and the Agency of
13 Commerce and Community Development.

14 (iv) The municipality shall also certify in writing that the notice
15 required by this subdivision (c)(4)(A) has been published, delivered, and
16 posted within the specified time.

17 (B) No defect in the form or substance of any requirements of this
18 subsection (c) shall invalidate the action of the Board where reasonable efforts
19 are made to provide adequate posting and notice. However, the action shall be
20 invalid when the defective posting or notice was materially misleading in
21 content. If an action is ruled to be invalid by the Superior Court or by the

1 Board itself, the Department shall provide and the municipality shall issue new
2 posting and notice, and the Board shall hold a new hearing and take a new
3 action.

4 (5) The Board may recess the proceedings on any application pending
5 submission of additional information. The Board shall close the proceedings
6 promptly after all parties have submitted the requested information.

7 (6) The Board shall issue its determination in writing. The
8 determination shall include explicit findings on each of the requirements in
9 subsection (b) of this section.

10 (d) Review of smart growth designation status.

11 (1) Length of designation. Initial determination of a smart growth
12 designation may be made at any time. Thereafter, review of the smart growth
13 designation shall be concurrent with the next periodic review of the underlying
14 designated downtown or neighborhood development area.

15 (2) The Board, on its motion, may review compliance with the smart
16 growth designation requirements at more frequent intervals.

17 (3) If at any time the Board determines that the designated smart growth
18 area no longer meets the standards for the designation, it shall take one of the
19 following actions:

20 (A) require corrective action within a reasonable time frame; or

21 (B) terminate the smart growth designation.

1 (4) If the underlying designation is terminated, the smart growth
2 designation also shall terminate.

3 (e) Appeal.

4 (1) An interested person may appeal any act or decision of the Board
5 under this section to the Environmental Division of the Superior Court within
6 30 days following the act or decision.

7 (2) As used in this section, an “interested person” means any one of the
8 following:

9 (A) A person owning a title to or occupying property within or
10 abutting the designated center.

11 (B) The municipality making the application or a municipality that
12 adjoins the municipality making the application.

13 (C) The regional planning commission for the region that includes
14 the designated center or a regional planning commission whose region adjoins
15 the municipality in which the designated center is located.

16 (D) Any 20 persons who, by signed petition, allege that the decision
17 is not in accord with the requirements of this chapter and who own or occupy
18 real property located within the municipality in which the designated center is
19 located or an adjoining municipality. The petition must designate one person
20 to serve as the representative of the petitioners regarding all matters related to

1 the appeal. The designated representative must have participated in the public
2 hearing described in subdivision (c)(4) of this section.

3 Sec. 4. 24 V.S.A. § 2792 is amended to read:

4 § 2792. Vermont Downtown Development Board

5 (a) A “Vermont Downtown Development Board,” also referred to as the
6 “State Board,” is created to administer the provisions of this chapter. The State
7 Board shall be composed of the following members or their designees:

8 * * *

9 (12) The executive director of the Vermont Housing and Conservation
10 Board or designee.

11 * * *

12 Sec. 5. 24 V.S.A. § 4306 is amended to read:

13 § 4306. MUNICIPAL AND REGIONAL PLANNING FUND

14 (a)(1) The Municipal and Regional Planning Fund for the purpose of
15 assisting municipal and regional planning commissions to carry out the intent
16 of this chapter is hereby created in the State Treasury.

17 (2) The Fund shall be composed of 17 percent of the revenue from the
18 property transfer tax under 32 V.S.A. chapter 231 and any monies from time to
19 time appropriated to the Fund by the General Assembly or received from any
20 other source, private or public. All balances at the end of any fiscal year shall

1 be carried forward and remain in the Fund. Interest earned by the Fund shall
2 be deposited in the Fund.

3 (3) Of the revenues in the Fund, each year:

4 (A) 10 percent shall be disbursed to the Vermont Center for
5 Geographic Information;

6 (B) 70 percent shall be disbursed to the Secretary of Commerce and
7 Community Development for performance contracts with regional planning
8 commissions to provide regional planning services pursuant to section 4341a
9 of this title; and

10 (C) 20 percent shall be disbursed to municipalities.

11 * * *

12 (d) New funds allocated to municipalities under this section may take the
13 form of special purpose grants in accordance with section 4307 of this title.

14 Sec. 6. 24 V.S.A. § 4307 is added to read:

15 § 4307. MUNICIPAL SMART GROWTH DESIGNATION GRANTS

16 (a) There are created Municipal Bylaw Modernization Grants to assist
17 municipalities in updating their land use and development bylaws to achieve a
18 smart growth designation under section 2793f of this title. The Grants shall be
19 funded by monies allocated from the municipality allocation of the Municipal
20 and Regional Planning Fund established in subdivision 4306(a)(3)(C) of this
21 title and any other monies appropriated for this purpose.

1 (b) A municipality that receives a grant shall use the funds for the adoption
2 of bylaws that are required under section 2793f of this title to achieve the smart
3 growth designation. Funding may be used for mapping, the cost of regional
4 planning commission staff or consultant time, carrying out the provisions of
5 subchapters 5–10 of this chapter, and any other purpose approved by the
6 Department.

7 (c) Disbursement to municipalities shall be administered by the Department
8 of Housing and Community Development through a competitive process,
9 providing the opportunity for all regions and any eligible municipality to
10 compete regardless of size. The Department shall, to the extent reasonably
11 possible, ensure that grants are awarded with the intent of achieving
12 geographic distribution across the State.

13 (d) On or before September 1, 2022, the Department shall adopt guidelines
14 to assist municipalities applying for grants under this section.

15 * * * Municipal Response to Act 250 Requests * * *

16 Sec. 7. 10 V.S.A. 6086(g) is added to read:

17 (g) If a municipality fails to respond to a request by the applicant within
18 90 days as to the impacts related to subdivision (a)(6) or (7) of this section, the
19 application will be presumed not to have an unreasonable burden on
20 educational, municipal, or governmental services.

1 or connecting habitat by a recreational trail or by improvements constructed for
2 farming, logging, or forestry purposes below the elevation of 2,500 feet.

3 (47) “Habitat” means the physical and biological environment in which
4 a particular species of plant or wildlife lives.

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

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

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

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

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

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

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

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

9 Sec. 10. CRITERION 8(C) RULEMAKING

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

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

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

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

20 (2) Standards establishing how impacts can be avoided, minimized, or
21 mitigated, including how fragmentation of forest blocks or connecting habitat

1 is avoided or minimized, which may include steps to promote proactive site
2 design of buildings, roadways and driveways, utility location, and location
3 relative to existing features such as roads, tree lines, and fence lines.

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

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

8 (A) appropriate ratios for compensation;

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

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

12 (b) The Board shall convene a working group to provide input to the rule
13 prior to pre-filing with the Interagency Committee on Administrative Rules.

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

15 (c) The Board shall file a final proposed rule with the Secretary of State
16 and Legislative Committee on Administrative Rules on or before June 15,
17 2023.

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

19 § 127. RESOURCE MAPPING

20 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources
21 shall complete and maintain resource mapping based on the Geographic

1 Information System (GIS) or other technology. The mapping shall identify
2 natural resources throughout the State, including forest blocks, that may be
3 relevant to the consideration of energy projects and projects subject to chapter
4 151 of this title. The Center for Geographic Information shall be available to
5 provide assistance to the Secretary in carrying out the ~~GIS-based~~ resource
6 mapping.

7 (b) The Secretary ~~of Natural Resources~~ shall consider the ~~GIS-based~~
8 resource maps developed under subsection (a) of this section when providing
9 evidence and recommendations to the Public Utility Commission under
10 30 V.S.A. § 248(b)(5) and when commenting on or providing
11 recommendations under chapter 151 of this title to District Commissions on
12 other projects.

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

18 * * * Roads * * *

19 Sec. 12. 10 V.S.A. § 6001 is amended to read:

20 § 6001. DEFINITIONS

21 As used in this chapter:

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

* * *

(xi) The construction of a road, roads, driveway, or driveways, which in combination is greater than 2,000 feet, to provide access to or within a tract or tracts of land of more than one acre owned or controlled by a person.

(I) For the purposes of determining jurisdiction under this subdivision (xi), any tract or tracts of land that will be provided access by the road or driveway is involved land.

(II) As used in this subdivision (xi), “road” shall include any new road or upgrade of a class 4 highway by a person other than a municipality, including a road that will be transferred to or maintained by a municipality after its construction or upgrade. For the purposes of this subdivision (II), routine maintenance of a class 4 highway or stormwater improvement required pursuant to section 1264 of this title shall not constitute an “upgrade.”

(aa) Routine maintenance shall include replacing a culvert or ditch, applying new stone, grading, or making repairs after adverse weather.

(bb) Routine maintenance shall not include changing the size of the road, changing the location or layout of the road, or adding pavement.

1 woodchips, mulch, and fuel wood; and log and pulp concentration yards.

2 “Wood products manufacturer” does not include facilities that purchase,

3 market, and resell finished goods, such as wood furniture, wood pellets, and

4 milled lumber, without first receiving wood products from forestry operations.

5 (49) “Wood product” means logs, pulpwood, veneer wood, bolt wood,

6 wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and

7 bark.

8 Sec. 14. 10 V.S.A. § 6086(c) is amended to read:

9 (c)(1) Permit conditions. A permit may contain such requirements and
10 conditions as are allowable proper exercise of the police power and ~~which~~ that
11 are appropriate within the respect to subdivisions (a)(1) through (10) of this
12 section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2),
13 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and
14 the filing of bonds to ensure compliance. The requirements and conditions
15 incorporated from Title 24 may be applied whether or not a local plan has been
16 adopted. General requirements and conditions may be established by rule of
17 the Natural Resources Board.

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

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

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

9 (3) Permit with conditions on the delivery of wood heat fuels. A permit
10 with conditions issued to a wood products manufacturer that produces wood
11 chips, pellets, cord wood, or other fuel wood used for heat shall allow
12 shipment of that fuel wood from the manufacturer to the end user outside
13 permitted hours of operation, including nights, weekends, and holidays, from
14 October 1 through April 30 of each year. Permits with conditions shall
15 mitigate the undue adverse impacts while enabling the operations of the
16 manufacturer.

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

1 * * * One-acre towns * * *

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

3 § 6001. DEFINITIONS

4 * * *

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

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

11 (ii) The construction of improvements on a tract or tracts of land,
12 owned or controlled by a person, involving more than one acre of land within a
13 radius of five miles of any point on any involved land, for commercial or
14 industrial purposes ~~on more than one acre of land~~ within a municipality that
15 has not adopted permanent zoning and subdivision bylaws.

16 * * *

17 * * * Study Committee; Effective Date * * *

18 Sec. 16. STUDY COMMITTEE; NATURAL RESOURCES BOARD

19 STRUCTURE

20 (a) There is created a study committee on the structure and function of the
21 Natural Resources Board. The group shall consist of eight members, four

1 appointed by the Speaker of the House and four appointed by the Committee
2 on Committees.

3 (b) The group shall hear from various stakeholder groups on how to
4 enhance the administration of the Act 250 program, including considerations
5 of:

6 (1) the membership of the Board;

7 (2) the appointment process;

8 (3) grounds for removing a member from the Board;

9 (4) the responsibilities and authorities of the Board and District

10 Commissions;

11 (5) funding of the operation of the Board, District Commissions, and the
12 Act 250 program; and

13 (6) the handling of appeals issued by the District Commissions and the
14 Board.

15 (c) On or before December 31, 2022, the group shall report back to the
16 General Assembly with any proposed changes to the structure and function of
17 the Natural Resources Board.

18 * * * Effective Date * * *

19 Sec. 17. EFFECTIVE DATE

20 This act shall take effect on July 1, 2022.