

1 H.406

2 Introduced by Representatives Smith of New Haven, Bouchard of Colchester,

3 Clark of Vergennes and Lawrence of Lyndon

4 Referred to Committee on

5 Date:

6 Subject: Land use; natural resources; Act 250; municipalities; commercial or
7 industrial zones

8 Statement of purpose: This bill proposes to allow a municipality to receive
9 growth center designation for commercial or industrial zones that will then be
10 eligible for benefits that apply to designated growth centers, including
11 expedited permitting under Act 250 and agency of natural resources permit
12 programs.

13 An act relating to including commercial or industrial zones as designated
14 growth centers

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

16 Sec. 1. 24 V.S.A. § 2791 is amended to read:

17 § 2791. DEFINITIONS

18 As used in this chapter:

19 * * *

20 (12)(A) “Growth center” means an area of land that:

1 (A) Is a commercial or industrial zone under the bylaws of a
2 municipality adopted under chapter 117 of this title, the majority of land uses
3 in which constitute commercial or industrial development or both, and which is
4 sized to include a majority of the new commercial or industrial development,
5 or both, anticipated to occur in the municipality over a 20-year period; or

6 (B) contains ~~Contains~~ the characteristics specified in subdivision ~~(B)~~
7 (C) of this subdivision (12) and that is located in one or a combination of the
8 following:

- 9 (i) A designated downtown, village center, or new town center;
- 10 (ii) An area of land that is in or adjacent to a designated
11 downtown, village center, or new town center, with clearly defined boundaries
12 that have been approved by one or more municipalities in their municipal plans
13 to accommodate a majority of growth anticipated by the municipality or
14 municipalities over a 20-year period. Adjacent areas shall include those lands
15 which are contiguous to the designated downtown, village center, or new town
16 center. In situations where contiguity is precluded by natural or physical
17 constraints to growth center development, adjacent areas may include lands
18 lying close to and not widely separated from the majority of the lands within
19 the designated growth center. Noncontiguous land included as part of a growth
20 center must exhibit strong land use, economic, infrastructure, and
21 transportation relationships to the designated downtown, village center, or new

1 town center; be planned to function as a single, integrated growth center; and
2 be essential to accommodate a majority of growth anticipated by the
3 municipality or municipalities over a 20-year period.

4 ~~(B)~~(C) A growth center under subdivision (B) of this subdivision (12)
5 contains the following characteristics:

6 (i) It incorporates a mix of uses that typically include or have the
7 potential to include the following: retail, office, services, and other
8 commercial, civic, recreational, industrial, and residential uses, including
9 affordable housing and new residential neighborhoods, within a densely
10 developed, compact area;

11 (ii) It incorporates existing or planned public spaces that promote
12 social interaction, such as public parks, civic buildings (e.g., post office,
13 municipal offices), community gardens, and other formal and informal places
14 to gather.

15 (iii) It is organized around one or more central places or focal
16 points, such as prominent buildings of civic, cultural, or spiritual significance
17 or a village green, common, or square.

18 (iv) It promotes densities of land development that are
19 significantly greater than existing and allowable densities in parts of the
20 municipality that are outside a designated downtown, village center, growth
21 center, or new town center, or, in the case of municipalities characterized

1 predominately by areas of existing dense urban settlement, it encourages in-fill
2 development and redevelopment of historically developed land.

3 (v) It is supported by existing or planned investments in
4 infrastructure and encompasses a circulation system that is conducive to
5 pedestrian and other nonvehicular traffic and that incorporates, accommodates,
6 and supports the use of public transit systems.

7 (vi) It results in compact concentrated areas of land development
8 that are served by existing or planned infrastructure and are separated by rural
9 countryside or working landscape.

10 (vii) It is planned in accordance with the planning and
11 development goals under section 4302 of this title, and to conform to smart
12 growth principles.

13 (viii) It is planned to reinforce the purposes of 10 V.S.A. chapter
14 151.

15 * * *

16 (16) “Commercial or industrial development” means, for the purposes of
17 subdivisions (12)(A) of this section and 2793c(f)(1)(D) of this title,
18 improvements that are used or to be used for the primary purpose of producing
19 income; that are not used for agricultural or residential purposes; and that
20 constitute retail space, office space, or improvements used for any activity

1 classified under the North American Industrial Classification System except
2 for agriculture, forestry, fishing, and hunting.

3 Sec. 2. 24 V.S.A. § 2793c is amended to read:

4 § 2793c. DESIGNATION OF GROWTH CENTERS

5 (a) Regional planning commission technical planning assistance. Regional
6 planning commissions, pursuant to section 4345a of this title, are uniquely
7 positioned to assist municipalities with growth center planning. To this end, at
8 the request of a municipality contemplating growth center designation, the
9 regional planning commission shall provide technical assistance in support of
10 that designation.

11 (1) Technical support shall include:

12 * * *

13 (C) build-out analyses for potential growth centers to document
14 whether the geographic area of proposed growth centers will accommodate a
15 majority of the projected growth over a 20-year period in a manner that is
16 consistent with the applicable definition under subdivision 2791(12) of this
17 title.

18 * * *

19 (b) Growth center designation application assistance.

20 * * *

1 (B) Under the preapplication review process, a municipality
2 proposing a growth center under subdivision 2791(12)(B) of this title shall
3 submit a preliminary application to the growth center subcommittee, consisting
4 of a draft growth center map and a brief explanation of planning and
5 implementation policies that the municipality anticipates it will enact prior to
6 submission of an application under subsection (d) of this section in order to
7 guide development inside the growth center and maintain the rural character of
8 the surrounding area, to the extent that it exists. This preapplication review
9 process shall be required prior to filing of an application under subsection (d)
10 of this section. The growth center subcommittee shall solicit comments from
11 state agencies regarding areas of respective agency interest; evaluate the
12 preliminary application for conformance with the requirements of this section;
13 identify potential issues related to the growth center's boundary and
14 implementation tools; and provide recommendations for addressing those
15 issues through adjustment to the growth center's boundary, revisions to
16 planned implementation tools, or consideration of alternative implementation
17 tools. Preliminary review shall be available to municipalities while they are
18 engaged in the municipal planning process so that recommendations may be
19 considered prior to the adoption of the municipal plan and associated
20 implementation measures.

21

* * *

1 (3) In consultation with the growth center subcommittee, the
2 commissioner of economic, housing and community development or designee
3 shall provide ongoing assistance to the state board to review applications for
4 growth center designation, including coordinating review by state agencies on
5 matters of agency interest and evaluating applications and associated plan
6 policies and implementation measures for conformance with the applicable
7 definition under subdivision 2791(12) of this title and any designation
8 requirements established under subsection (e) of this section.

9 (4) The Vermont municipal planning grant program shall make funding
10 for activities associated with growth centers planning a priority funding
11 activity, and the Vermont community development program shall make
12 funding for activities associated with growth centers planning a priority
13 funding activity under the planning grant program.

14 (c) Public involvement and review. Any decision to apply for growth
15 center designation shall be made by vote of the municipal legislative body,
16 subject to the process established under sections 1972 and 1973 of this title.

17 (d) Application and designation requirements. Any application for
18 designation as a growth center shall be to the state board ~~and~~ If the
19 application pertains to a growth center under subdivision 2791(12)(A) of this
20 title, the application shall include a specific demonstration that the proposed
21 growth center meets each provision of subsection (f) of this section. If the

1 application pertains to a growth center under subdivision 2791(12)(B) of this
2 title, the application shall include a specific demonstration that the proposed
3 growth center meets each provision of subdivisions (e)(1)(A) through (J) of
4 this section. In addition ~~to those provisions, each of the following shall apply:~~

5 (1) In the event that a proposed growth center under subdivision
6 2791(12)(B) of this title lacks one or a portion of one of the characteristics
7 listed in subdivision ~~2791(12)(B)~~ 2791(12)(C) of this title, the application shall
8 contain an explanation of the unique circumstances that prevent the growth
9 center from possessing that characteristic and why, in the absence of that
10 characteristic, the proposed growth center will comply with the purposes of
11 this chapter and all other requirements of this section.

12 (2) Any demonstration that an application for a proposed growth center
13 under subdivision 2791(12)(B) of this title complies with subdivision (e)(1)(C)
14 of this section shall include an analysis, with respect to each existing
15 designated downtown or village or new town center located within the
16 applicant municipality, of current vacancy rates, opportunities to develop or
17 redevelop existing undeveloped or underdeveloped properties and whether
18 such opportunities are economically viable, and opportunities to revise zoning
19 or other applicable bylaws in a manner that would permit future development
20 that is at a higher density than existing development.

1 (3) ~~A~~ The application shall include a map and a conceptual plan for the
2 growth center.

3 (4) ~~A~~ The application shall include a build-out analysis and needs study
4 that demonstrates that the growth center meets the provisions of subdivision
5 (e)(1)(J) or (f)(1)(D) of this section, as applicable.

6 (5) ~~An~~ If the application pertains to a growth center under subdivision
7 2791(12)(B) of this title, the application shall include an explanation of all
8 measures the applicant has undertaken to encourage a majority of growth in the
9 municipality to take place within areas designated under this chapter. In the
10 case of a growth center under subdivision 2791(12)(B) of this title that is
11 associated with a designated downtown or village center, the applicant shall
12 also explain the manner in which the applicant's bylaws and policies will
13 encourage growth to take place first in its designated downtown or village
14 center and second in its proposed growth center.

15 (e) Designation decision on growth centers under subdivision 2791(12)(B)
16 of this title.

17 (1) Within 90 days of the receipt of a completed application for a growth
18 center under subdivision 2791(12)(B) of this title, after providing notice as
19 required in the case of a proposed municipal plan or amendment under
20 subsection 4384(e) of this title, and after providing an opportunity for the
21 public to be heard, the state board formally shall designate a growth center

1 under subdivision 2791(12)(B) of this title if the state board finds, in a written
2 decision, that the growth center proposal meets each of the following:

3 (A) The growth center meets the definition of a growth center
4 established in ~~subdivision 2791(12)~~ subdivisions 2791(12)(B) and (C) of this
5 title, including planned land uses, densities, settlement patterns, infrastructure,
6 and transportation within the center and transportation relationships to areas
7 outside the center. In the event that a proposed growth center lacks one or a
8 portion of one of the characteristics listed in subdivision ~~2791(12)(B)~~
9 2791(12)(C) of this title, the state board shall not approve the growth center
10 proposal unless it finds that the absence of that characteristic will not prevent
11 the proposed growth center from complying with the purposes of this chapter
12 and all other requirements of this section. This subdivision (A) does not confer
13 authority to approve a growth center that lacks more than one characteristic
14 listed in subdivision ~~2791(12)(B)~~ 2791(12)(C) of this title.

15 * * *

16 (2) The board, as a condition of growth center designation, may require
17 certain regulatory changes prior to the effective date of designation. In
18 addition, the growth center designation may be modified, suspended, or
19 revoked if the applicant fails to achieve the required regulatory changes within
20 a specified period of time. As an option, municipalities applying for growth

1 center designation may make certain regulatory changes effective and
2 contingent upon formal designation.

3 (3) Within 21 days of a growth center designation under subdivision (1)
4 of this subsection, a person or entity that submitted written or oral comments to
5 the state board during its consideration of the application for the designated
6 growth center may request that the state board reconsider the designation. Any
7 such request for reconsideration shall identify each specific finding of the state
8 board for which reconsideration is requested and state the reasons why each
9 such finding should be reconsidered. The filing of such a request shall stay the
10 effectiveness of the designation until the state board renders its decision on the
11 request. On receipt of such a request, the state board shall promptly notify the
12 applicant municipality of the request if that municipality is not the requestor.
13 The state board shall convene at the earliest feasible date to consider the
14 request and shall render its decision on the request within 90 days of the date
15 on which the request was filed.

16 (4) Except as otherwise provided in this section, growth center
17 designation shall extend for a period of 20 years. The state board shall review
18 a growth center designation no less frequently than every five years, after
19 providing notice as required in the case of a proposed municipal plan or
20 amendment under subsection 4384(e) of this title, and after providing an
21 opportunity for the public to be heard. For each applicant, the state board may

1 adjust the schedule of review under this subsection so as to coincide with the
2 review of the related and underlying designation of a downtown, village center,
3 or new town center. If, at the time of the review, the state board determines
4 that the growth center no longer meets the applicable standards for designation
5 in effect at the time the growth center initially was designated, it may take any
6 of the following actions:

7 (A) require corrective action;

8 (B) provide technical assistance through the coordinated assistance
9 program; or

10 (C) remove the growth center's designation, with that removal not
11 affecting any of the growth center's previously awarded benefits.

12 (5) At any time a municipality shall be able to apply to the state board
13 for amendment of a designated growth center or any related conditions or other
14 matters, according to the procedures that apply in the case of an original
15 application.

16 (f) Designation decision on growth centers under subdivision 2791(12)(A)
17 of this title.

18 (1) Within 90 days of the receipt of a completed application for a growth
19 center under subdivision 2791(12)(A) of this title, after providing notice as
20 required in the case of a proposed municipal plan or amendment under
21 subsection 4384(e) of this title, and after providing an opportunity for the

1 public to be heard, the state board formally shall designate a growth center
2 under subdivision 2791(12)(A) of this title if the state board finds, in a written
3 decision, that the growth center proposal meets each of the following:

4 (A) The proposed growth center meets the definition established
5 under subdivision 2791(12)(A) of this title.

6 (B) The applicant has identified important natural resources and
7 historic resources within the proposed growth center and the anticipated
8 impacts on those resources, and has proposed mitigation.

9 (C)(i) The applicant has a regionally confirmed planning process and
10 an approved municipal plan, pursuant to section 4350 of this title;

11 (ii) The approved plan contains provisions that are appropriate to
12 implement the designated growth center proposal; and

13 (iii) The applicant has adopted bylaws in conformance with the
14 municipal plan that implement the provisions in the plan that pertain to the
15 designated growth center.

16 (D) The growth center is of a size that is sufficient to accommodate a
17 majority of the projected commercial or industrial development or both over a
18 20-year planning period in a manner that is consistent with the definition under
19 subdivision 2791(12)(A) of this title and that does not encompass an excessive
20 area of land that would involve the unnecessary extension of infrastructure to

1 service low-density development or result in a scattered or low-density pattern
2 of development at the conclusion of the 20-year planning period.

3 (2) The provisions of subdivisions (e)(2)–(5) of this section shall apply
4 to a growth center designated under this subsection.

5 ~~(f)~~(g) Review by land use panel and issuance of Act 250 findings of fact
6 and conclusions of law. Subsequent to growth center designation by the state
7 board, an applicant municipality may submit a request for findings of fact and
8 conclusions of law under specific criteria of 10 V.S.A. § 6086(a) to the land
9 use panel of the natural resources board for consideration in accordance with
10 the following:

11 (1) In requesting findings of fact, the applicant municipality shall
12 specify any criteria for which findings and conclusions are requested and the
13 nature and scope of the findings that are being requested.

14 (2) The panel shall notify all landowners of land located within the
15 proposed growth center, entities that would be accorded party status before a
16 district commission under 10 V.S.A. § 6085(c)(1)(C) and (D), and all owners
17 of land adjoining the proposed growth center of a hearing on the issue. The
18 panel may fashion alternate and more efficient means of providing adequate
19 notice to persons potentially affected under this subdivision. Persons notified
20 may appear at the hearing and be heard, as may any other person who has a

1 particularized interest protected by 10 V.S.A. chapter 151 that may be affected
2 by the decision.

3 (3) The panel shall review the request in accordance with and shall issue
4 findings of fact and conclusions of law under the applicable criteria of
5 10 V.S.A. § 6086(a) which are deemed to have been satisfied by the
6 applicant's submissions during the formal designation process, any additional
7 submissions, as well as associated municipal plan policies, programs, and
8 bylaws. Findings and conclusions of law shall be effective for a period of five
9 years, unless otherwise provided. The panel, before issuing its findings and
10 conclusions, may require specific changes in the proposal, or regulatory
11 changes by the municipality, as a condition for certain findings and
12 conclusions. These findings and conclusions shall be subject to appeal to the
13 environmental division pursuant to 10 V.S.A. chapter 220 within 30 days of
14 issuance.

15 (4) During the period of time in which a growth center designation
16 remains in effect, any findings and conclusions issued by the panel or any final
17 adjudication of those findings and conclusions shall be applicable to any
18 subsequent application for approval by a district commission under chapter
19 151 of Title 10 and shall be binding upon the district commission and the
20 persons provided notice in the land use panel proceeding, according to the

1 rules of the land use panel, provided the proposed development project is
2 located within the designated growth center.

3 (5) In any application to a district commission under chapter 151 of
4 Title 10 for approval of a proposed development or subdivision to be located
5 within the designated growth center, the district commission shall review de
6 novo any relevant criteria of 10 V.S.A. § 6086(a) that are not subject to
7 findings of fact and conclusions of law issued by the land use panel pursuant to
8 this section.

9 (6) The decision of the state board pursuant to this section shall not be
10 binding as to the criteria of 10 V.S.A. § 6086(a) in any proceeding before the
11 panel or a district commission.

12 ~~(g)~~(h) Review by district commission. In addition to its other powers, in
13 making its determinations under 10 V.S.A. § 6086, a district commission may
14 consider important resources within a proposed growth center that have been
15 identified in the designation process and the anticipated impacts on those
16 resources, and may require that reasonable mitigation be provided as an
17 alternative to permit denial.

18 ~~(h)~~(i) Concurrent designation. A municipality may seek designation of a
19 growth center concurrently with the designation of a downtown pursuant to
20 section 2793 of this title, the designation of a village center pursuant to section

1 2793a of this title, or the designation of a new town center pursuant to section
2 2793b of this title.

3 ~~(i)~~(j) Benefits from designation. A growth center designated by the state
4 board pursuant to this section is eligible for the following development
5 incentives and benefits:

6 (1) Financial incentives.

7 (A) A municipality may use tax increment financing for
8 infrastructure and improvements in its designated growth center pursuant to the
9 provisions of Title 32 and this title. A designated growth center under this
10 section shall be presumed to have met any locational criteria established in
11 Vermont statutes for tax increment financing. The state board may consider
12 project criteria established under those statutes and, as appropriate, may make
13 recommendations as to whether any of those project criteria have been met.

14 (B) Vermont economic development authority (VEDA) incentives
15 shall be provided to designated growth centers.

16 (2) State assistance and funding for growth centers.

17 (A) It is the intention of the general assembly to give the highest
18 priority to facilitating development and growth in designated downtowns and
19 village centers whenever feasible. The provisions in this section and elsewhere
20 in law that provide and establish priorities for state assistance and funding for
21 designated growth centers are not intended to take precedence over any other

1 provisions of law that provide state assistance and funding for designated
2 downtowns and village centers.

3 (B) On or before January 15, 2007, the secretary of administration, in
4 consultation with the secretaries of natural resources, transportation, commerce
5 and community development, and agriculture, food and markets, shall report to
6 the general assembly on the priorities and preferences for state assistance and
7 funding granted in law to downtown centers, village centers, and designated
8 growth centers, and the manner in which such priorities are applied.

9 (3) State infrastructure and development assistance.

10 (A) With respect to state grants and other state funding, priority
11 should be given to support infrastructure and other investments in public
12 facilities located inside a designated growth center to consist of the following:

13 (i) Agency of natural resources funding of new, expanded,
14 upgraded, or refurbished wastewater management facilities serving a growth
15 center in accordance with the agency's rules regarding priority for pollution
16 abatement, pollution prevention, and the protection of public health and water
17 quality.

18 (ii) Technical and financial assistance for brownfields remediation
19 under the Vermont brownfields initiative.

20 (iii) Community development block grant (CDBG) program
21 implementation grants.

1 (iv) Technical, financial, and other benefits made available by
2 statute or rule.

3 (B) Whenever the commissioner of the department of buildings and
4 general services or other state officials in charge of selecting a site are planning
5 to lease or construct buildings suitable to being located in a designated growth
6 center after determining that the option of utilizing existing space in a
7 downtown development district pursuant to subdivision 2794(a)(13) of this
8 title or within a designated village center pursuant to subdivision 2793a(c)(6)
9 of this title or within a designated new town center pursuant to subdivision
10 2793b(c)(2) of this title is not feasible, the option of locating in a designated
11 growth center shall be given thorough investigation and priority in consultation
12 with the legislative body of the municipality.

13 (4) State investments. The state shall:

14 (A) Expand the scope of the downtown transportation fund, as funds
15 are available, to include access to downtowns with the first priority being
16 projects located in designated downtowns, the second priority being projects
17 located in designated village centers, and the third priority being projects
18 located in designated growth centers.

19 (B) Extend priority consideration for transportation enhancement
20 improvements located within or serving designated downtowns, village
21 centers, and growth centers.

1 (C) Grant to projects located within designated growth centers
2 priority consideration for state housing renovation and affordable housing
3 construction assistance programs.

4 (5) Regulatory incentives.

5 (A) Master plan permit application. At any time while designation of
6 a growth center is in effect, any person or persons who exercise ownership or
7 control over an area encompassing all or part of the designated growth center
8 or any municipality within which a growth center has been formally designated
9 may apply for a master plan permit for that area or any portion of that area to
10 the district commission pursuant to the rules of the land use panel.
11 Municipalities making an application under this subdivision are not required to
12 exercise ownership of or control over the affected property. The district
13 commission shall be bound by any conclusions or findings of the land use
14 panel, or any final adjudication of those findings and conclusions, pursuant to
15 subsection (f) of this section but shall consider de novo any of the criteria of
16 10 V.S.A. § 6086(a) that were not subject to the final issuance of findings and
17 conclusions by the land use panel pursuant to that subsection. In approving a
18 master permit, the district commission may set forth specific conditions that an
19 applicant for an individual project permit will be required to meet.

1 (B) Individual project permits within a designated growth center.

2 (1) The district commission shall review individual Act 250 permit
3 applications in accordance with the specific findings of fact and conclusions of
4 law issued by the land use panel under this section, if any, and in accordance
5 with the conditions, findings, and conclusions of any applicable master plan
6 permit. Any person proposing a development or subdivision within a
7 designated growth center where no master plan permit is in effect shall be
8 required to file an application with the district environmental commission for
9 review under the criteria of 10 V.S.A. § 6086(a). The district commission shall
10 give priority to an application for a permit with respect to a development or
11 subdivision to be constructed in a designated growth center and shall issue a
12 decision on the application no later than 90 days after the application is
13 determined to be complete.

14 (2) Notwithstanding any other provision of law, the agency of natural
15 resources shall give priority to an application for a permit, certificate, or other
16 approval with respect to an emission, discharge, facility, or activity proposed
17 to occur in a designated growth center and shall issue a decision on the
18 application no later than 90 days after the agency determines the application to
19 be complete.

20 Sec. 3. EFFECTIVE DATE

21 This act shall take effect on July 1, 2011.