

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.823 Name of Bill: _____

Agency/ Dept: Natural Resources Board Author of Bill Review: Melanie Kehne

Date of Bill Review: May 8, 2014

Status of Bill: (check one):

☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both bodies

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill is intended to provide incentives for development in designated centers. The Act 250 provisions are as follows:

- For Designated Downtowns only, H.823 establishes a new Act 250 review process. This review is limited to issues of statewide or regional concern, including energy efficiency, air and water pollution, historic sites, impacts on state transportation infrastructure and state facilities, and impacts on primary agricultural soils. The District Commission's review is based on initial review and recommendations by specific state agencies (ANR, AAFM, VTrans, Division of Historic Preservation, Public Service Department, and BGS), with an opportunity for hearing if there are substantive issues raised. The resulting District Commission approval is not a permit, so there is no Act 250 permit application fee.
- The bill adds provisions to Act 250 to address strip development by promoting smart growth infill and ensuring that projects do not contribute to strip development.
- It defines "existing settlement" to include any state-designated center. This provides benefits to projects in designated centers, under Act 250 Criterion 9H (scattered development; only applies to projects not in or contiguous to an existing settlement) and the new Criterion 9L (historic settlement patterns; only applies to projects outside an existing settlement).
- It adds language to Act 250 Criterion 5 to require, as appropriate, safe access and connections to adjacent lands and facilities and existing and planned pedestrian, bicycle or transit networks; and use of transportation demand management strategies, where appropriate. This is intended to incorporate Complete Streets principles and smart growth transportation strategies, as appropriate. The type, scale and transportation impacts of the project will be considered to determine what measures are reasonable and appropriate.

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- It raises existing Act 250 jurisdictional thresholds for “priority” housing projects in certain designated centers, allowing larger housing projects that meet the mixed use or mixed income requirements to be built without Act 250 permits. The minimum requirements for affordability are also relaxed in H.823. Both provisions are intended to provide incentives for developers to create more housing in these designated centers.

The bill also contains ANR incentives.

2. Is there a need for this bill? *Please explain why or why not.*

Yes. H.823 updates Act 250 Criterion 9L to address strip development outside designated centers and other existing settled communities. It also updates the language in Act 250 Criterion 5 (transportation) to require appropriate transportation alternatives, such as pedestrian or bike paths, transit, or transportation demand management.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

There will be some fiscal impact on the NRB Special Fund, since projects that would be exempted or subject to the new limited/accelerated findings process will not pay Act 250 application fees. It is anticipated that there will be only two applications per year in Designated Downtowns for the new Act 250 Findings, so the fiscal impact is not expected to be significant. *See JFO Fiscal Note.* But it may become an issue in the future if application numbers pick up.

The NRB will have to develop a process, and promulgate a rule incorporating the process, for the new Downtown Findings.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Other agencies will be given 30 days to review Act 250 projects in Designated Downtowns and provide recommendations to the District Commission. Many agencies regularly review and comment on Act 250 applications already (ANR, AAFM, VTrans, DHP), but the 30-day limit could present a challenge. There is flexibility in the bill if an applicant allows more time, for instance, to resolve an environmental issue with a state agency and get a positive recommendation for Act 250. But this is at the applicant’s option only.

All agencies listed in the bill are aware of this provision and have agreed to it. It is expected that there will be very few (two per year) of these Downtown applications to review and process.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? *(for example, public, municipalities, organizations, business, regulated entities, etc)*

The business and development community (Vermont Chamber, Lake Champlain Chamber, GBIC, Vermont Association of Realtors, Homebuilders) have raised concerns about costs of complying with the new Criterion 9L. VLCT joined them in supporting Sen. Flory’s proposal to delete the Criterion 9L provisions in the Senate. That amendment failed.

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Despite VLCT's apparent opposition to the Criterion 9L changes, focusing growth in designated centers and other existing communities could be a cost-saving measure for municipal governments. More compact development patterns can make it cheaper and easier for towns to provide services.

The Conservation Law Foundation has expressed concern that the bill gives away Act 250 jurisdiction in designated centers without providing real incentives to develop there, and without corresponding jurisdictional improvements in outlying areas; that this results in reduced environmental protection.

6. Other Stakeholders:

DHCD has a complete list of supporters and opponents.

6.1 Who else is likely to support the proposal and why?

6.2 Who else is likely to oppose the proposal and why?

7. Rationale for recommendation: *Justify recommendation stated above.*

This bill is a balanced package of substantive Act 250 improvements outside designated centers and reduced Act 250 requirements in those centers. The Criterion 9L provisions will let Act 250 do its part to help improve and infill existing strip development, and to prevent sprawl in the future.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

No change. Support as is.

Secretary/Commissioner has reviewed this document: _____ **Date:** _____