Senate Natural Resources Proposed changes to S.237

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SNRE's proposed changes are in **bold** after each section.

Sec. 1 requires a municipal plan map to include water supply and sewer disposal lines, facilities, and service areas. It also requires the plan to comply with the housing requirements of 24 V.S.A. § 4412.

No change, however, concerned about the expense to towns to update maps, particularly given (i) the COVID-19 pandemic's impacts on municipalities, and (ii) Senate Appropriations' action to remove funding for financial and technical assistance.

Sec. 2 makes numerous changes to 24 V.S.A. § 4412

(a) includes:

- In a district that allows multiunit dwellings, a municipality must allow up to four units per dwelling.
- Amends the definition of accessory dwelling unit (ADU) by removing the requirements that it has to be owner occupied and that it has to be one bedroom or fewer. It also allows the size of the ADUs to be 30 percent of the single-family dwelling or 900 square feet, whichever is greater.
- Prohibits municipalities from banning development on existing lots 1/8 acre in size if able to connect to municipal sewer and water.
- (b) includes:
- Establishes Inclusive Development provisions. These provisions are voluntary until they go into effect on July 1, 2023. A municipality may opt out of these requirements by filing a Substantial Municipal Constraint Report.
    - A municipality cannot prevent the creation of lots 1/4 acre or larger if able to connect to municipal water or 1/8 acre or larger if able to connect to municipal water and sewer.
    - Must condition subdivision approval on receiving State wastewater permit.
    - Duplexes are required to go through the same review as single-family units.
    - Parking spaces that are leased separately from housing units shall count as double towards the parking minimum if located within 1/2 mile of a transit stop.
    - Municipalities that comply with the Inclusive Development provisions are eligible for incentives including priority funding and tax credits. Also, a municipality that has adopted the provisions may enforce the language in Sec. 3, which invalidates deed restrictions that conflict with the provisions.

Sec. 3 invalidates restrictive deeds and covenants that prohibit land development allowed under the Inclusive Development provisions of § 4412. It includes language so conservation easements and housing subsidy covenants are not unintentionally preempted.

Sec. 4 requires the Dept. of Housing and Community Development to report back to the General Assembly by January 15, 2023 on a Substantial Municipal Constraint Reports received.

Strike Sec. 2(b) and related Secs. 3-4. Replace with:

Sec. 3. REPORT ON INCREASING HOUSING DENSITY

On or before January 15, 2021, the Department of Housing and Community Development shall report to the House Committees on General, Housing, and Military Affairs and on Natural Resources, Fish, and Wildlife and to the Senate Committees Economic Development, Housing, and General Affairs and on Natural Resource and Energy with legislative recommendations to enhance the availability of affordable housing. The report shall consider factors to reduce costs, including increasing housing density while providing municipalities flexible options to achieve the density goals; reducing energy costs through conservation and efficiency; and reducing transportation costs. The housing density recommendations may provide for performance targets or average density increases and methods for determining housing density in order to measure progress. The Department shall consult with stakeholders and consider the incorporation of the findings and recommendations of the Zoning for Great Neighborhoods program.

New Sec. 4 adds language so that designations of DD and NDAs may be appealed to NRB.
Sec. 4. 24 V.S.A. § 2798 is amended to read:

§ 2798. DESIGNATION DECISIONS; NONAPPEAL APPEAL

(a) ~~The~~ A person aggrieved by a designation ~~decisions~~ decision of the State Board under ~~this chapter are not subject to appeal~~ section 2793 or 2793e of this title may appeal to the Natural Resources Board established under 10 V.S.A. chapter 151 within 30 days of the decision.

(b) The Natural Resources Board shall conduct a de novo hearing on the decision under appeal and shall proceed in accordance with the contested case requirements of the Vermont Administrative Procedure Act. The Natural Resources Board shall issue a final decision within 90 days of the filing of the appeal. The provisions of 10 V.S.A. § 6024 regarding assistance to the Natural Resources Board from other departments and agencies of the State shall apply to appeals under this section.

Sec. 5 amends a few definitions in Act 250. It makes technical corrections to "mixed income housing" in order to reflect VFHA's current practice. It strikes the references in "priority housing project" to Downtown Development Districts (DDDs) and Neighborhood Development Areas (NDAs).

No change.

Sec. 6 makes multiple changes to Act 250 to exempt DDDs and NDAs from Act 250 and allows existing Act 250 permits in those areas to be extinguished.
Small change- strike reference to extinguishing existing permits and add reference to new language in Sec. 8. See below. Existing permits may apply to be released from permit (same as extinguish), but District Commission decides.

Sec. 7 repeals two sections of Act 250 related to DDDs and NDAs.

No change.

Sec. 8 requires municipal panels to add existing Act 250 permit conditions to the municipal land use permit for a development, unless the conditions are no longer needed.

Strike and replace with this language:

10 V.S.A. § 6090

(c) Change to nonjurisdictional use; release from permit.

(1) On an application signed by each permittee, the District Commission may release land subject to a permit under this chapter from the obligations of that permit and the obligation to obtain amendments to the permit, on finding each of the following:

(A) One of the following is true:

(i) The use of the land as of the date of the application is not the same as the use of the land that caused the obligation to obtain a permit under this chapter;

(ii) or the municipality where the land is located has adopted permanent zoning and subdivision bylaws, but had not when the permit was issued;

(iii) the land is located in a designated downtown or neighborhood development area that is exempt from this chapter.

(B) The use of the land as of the date of the application does not constitute development or subdivision as defined in section 6001 of this title and would not require a permit or permit amendment but for the fact that the land is already subject to a permit under this chapter.

(C) The permittee or permittees are in compliance with the permit and their obligations under this chapter.

(2) It shall be a condition of each affirmative decision under this subsection that a subsequent proposal of a development or subdivision on the land to which the decision applies shall be subject to this chapter as if the land had never previously received a permit under the chapter.

(3) An application for a decision under this subsection shall be made on a form prescribed by the Board. The form shall require evidence demonstrating that the application complies with subdivisions (1)(A) through (C) of this subsection. The application shall be processed in the manner described in section 6084 of this title and may be treated as a minor application under that section. In addition to those required to be notified under section 6084, the District Commission shall send notice at the same time to all other parties to the permit and to all current adjacent landowners.

(4) The District Commission shall evaluate the conditions in the permit and determine whether the conditions are still necessary to mitigate impacts under the criteria of section 6086(a). If the District Commission finds that conditions are still necessary, it shall deny the application or approve the application on the condition that the necessary conditions are added to the municipal permit.

Sec. 9 adds the executive director of the Vermont Housing and Conservation Board as a member of the Vermont Downtown Development Board.

Sec. 10 amends the requirements for a Downtown Development District by striking the references to Act 250 and by requiring an additional housing element to promote affordable housing.

Sec. 11 condenses the references to the Downtown and Village Center Tax Credit Program in the Village Center Designation statute.

No change to Sec. 9-11.

Sec. 12 amends the Neighborhood Development Area statutes in multiple ways. It strikes the references to Act 250. It requires an additional housing element to promote affordable housing.

It also amends the requirement that the NDA not include areas that are in flood hazard areas or river corridors unless the area contains preexisting development and is suitable for infill.

Small change- strike amendment in (7) to return to current law:

(7) ~~The~~ Within the neighborhood development area, the municipal bylaws allow minimum lot sizes of one-quarter of an acre or less and minimum net residential densities ~~within the neighborhood development area~~ greater than or equal to four single-family detached dwelling units per acre, exclusive of accessory dwelling units, or no fewer than the average existing density of the surrounding neighborhood, whichever is greater.

(7) The municipal bylaws allow minimum net residential densities within the neighborhood development area greater than or equal to four single-family detached dwelling units per acre, exclusive of accessory dwelling units, or no fewer than the average existing density of the surrounding neighborhood, whichever is greater.

Sec. 13 amends the Downtown and Village Center Tax Credit Program to include NDAs and qualified flood mitigation projects.

No change.

Sec. 14 exempts a person who receives a wastewater connection permit from the municipality from needing a State permit.

Sec. 15 states that a municipality may issue wastewater connection permits if the municipality owns a public water system.

Sec. 16 requires ANR to report back to the General Assembly on whether municipalities should have jurisdiction to issue subdivision permits.

Rewrite Sec. 14-16 based on language drafted by Leg Council and ANR. Does not change substance, but corrects issues with existing delegation statute.

Sec. 26 allows the incentives for the Inclusive Development provisions to be available immediately for towns that comply before July 1, 2023.

Strike because striking Sec. 2(b).

Sec. 27 states that the bill goes into effect on July 1, 2020, except for the Inclusive Development provisions which are effective July 1, 2023.

Will change based on striking Sec. 2(b) and adding new Act 250 language.