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S.237

Senator Bray moves that the bill be amended as follows:

First: By striking out Sec. 2, 24 V.S.A. § 4412, in its entirety and inserting in lieu thereof the following:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

* * *

(D) Bylaws shall designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings. No bylaw shall have the effect of excluding these multiunit or multifamily dwellings from the municipality. Within any regulatory district that allows multiunit residential dwellings, no bylaw shall have the effect of prohibiting multiunit residential dwellings of four or fewer units as an allowed, permitted use, or of conditioning approval based on the character of the area.

(E) Except for flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, no bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to ~~an owner-occupied~~ a single-family dwelling on an owner-

1 occupied lot. A bylaw may require a single-family dwelling with an accessory
2 dwelling unit to be subject to the same review, dimensional, or other controls
3 as required for a single-family dwelling without an accessory dwelling unit.

4 An accessory dwelling unit means ~~an efficiency or one-bedroom apartment a~~
5 distinct unit that is clearly subordinate to a single-family dwelling, and has
6 facilities and provisions for independent living, including sleeping, food
7 preparation, and sanitation, provided there is compliance with all the
8 following:

9 (i) The property has sufficient wastewater capacity.

10 (ii) The unit does not exceed 30 percent of the total habitable floor
11 area of the single-family dwelling or 900 square feet, whichever is greater.

12 ~~(iii) Applicable setback, coverage, and parking requirements~~
13 ~~specified in the bylaws are met.~~

14 (F) Nothing in subdivision ~~(a)(1)(E)~~ of this section shall be construed
15 to prohibit:

16 (i) a bylaw that is less restrictive of accessory dwelling units; or

17 (ii) a bylaw that ~~requires conditional use review for one or more of~~
18 ~~the following that is involved in creation of an accessory dwelling unit:~~

19 ~~(I) a new accessory structure;~~

20 ~~(II) an increase in the height or floor area of the existing~~

21 ~~dwelling; or~~

1 Committees Economic Development, Housing, and General Affairs and on
2 Natural Resources and Energy with legislative recommendations to enhance
3 the availability of affordable housing. The report shall consider factors to
4 reduce costs, including increasing housing density while providing
5 municipalities flexible options to achieve the density goals, reducing energy
6 costs through conservation and efficiency, and reducing transportation costs.
7 The housing density recommendations may provide for performance targets or
8 average density increases and methods for determining housing density in
9 order to measure progress. The Department shall consult with stakeholders
10 and consider the incorporation of the findings and recommendations of the
11 Zoning for Great Neighborhoods program.

12 Third: By striking out Sec. 4, report on substantial municipal constraints, in
13 its entirety and inserting in lieu thereof the following:

14 Sec. 4. 24 V.S.A. § 2798 is amended to read:

15 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

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

20 (b) The Natural Resources Board shall conduct a de novo hearing on the
21 decision under appeal and shall proceed in accordance with the contested case

1 requirements of the Vermont Administrative Procedure Act. The Natural
2 Resources Board shall issue a final decision within 90 days of the filing of the
3 appeal. The provisions of 10 V.S.A. § 6024 regarding assistance to the Natural
4 Resources Board from other departments and agencies of the State shall apply
5 to appeals under this section.

6 Sec. 4a. 10 V.S.A. § 6089 is amended to read:

7 § 6089. APPEALS

8 (a) Appeals of any act or decision of a District Commission under this
9 chapter or a district coordinator under subsection 6007(c) of this title shall be
10 made to the Environmental Division in accordance with chapter 220 of this
11 title. For the purpose of this section, a decision of the Chair of a District
12 Commission under section 6001e of this title on whether action has been taken
13 to circumvent the requirements of this chapter shall be considered an act or
14 decision of the District Commission.

15 (b)(1) A determination by the Downtown Development Board designating
16 a downtown development district or neighborhood development area pursuant
17 to 24 V.S.A. chapter 76A is appealable to the Natural Resources Board.

18 (2) Procedure.

19 (A) An appeal under this subsection may be brought by any person
20 aggrieved by the determination of the Downtown Development Board.

1 that permit and the obligation to obtain amendments to the permit on finding
2 each of the following:

3 (A) One of the following is true:

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

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

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

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

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

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

1 of Natural Resources' Water Supply Rule. A water main includes piping
2 leading to fire hydrants.

3 (15) "Water service line" means the piping that is not a water main and
4 extends from the water main to a building or structure or campground.

5 Sec. 15. 10 V.S.A. § 1974(9) is added to read:

6 § 1974. EXEMPTIONS

7 Notwithstanding any other requirements of this chapter, the following projects
8 and actions are exempt:

9 * * *

10 (9) A person who receives an authorization from a municipality that
11 administers a program registered with the Secretary pursuant to section 1983 of
12 this title.

13 Sec. 16. 10 V.S.A. § 1983 is added to read:

14 § 1983. REGISTRATION FOR MUNICIPAL WASTEWATER SYSTEM
15 AND POTABLE WATER SUPPLY CONNECTIONS

16 (a) Notwithstanding the requirement under section 1976 of this title that the
17 Secretary delegate to a municipality authority to approve a connection and
18 notwithstanding the requirement under section 1973 of this title, a municipality
19 may issue an approval for a connection or an existing connection with a change
20 in use to the municipal sanitary sewer collection line by a sanitary sewer
21 service line or a connection to a water main by a new water service line,

1 provided that the municipality documents the following information in a form
2 prescribed by the Secretary:

3 (1) The municipality owns or has legal control over connections to:

4 (A) a public community water system permitted pursuant to chapter
5 56 of this title; and

6 (B) a wastewater treatment facility permitted pursuant to chapter 47
7 of this title.

8 (2) The municipality shall only issue authorizations for:

9 (A) a sanitary sewer service line that connects to the sanitary sewer
10 collection line that serves a single connection; and

11 (B) a water service line that connects to the water main that serves a
12 single connection.

13 (3) The building or structure connects to both the sanitary sewer
14 collection line and public community water system.

15 (4) The municipality issues approvals that comply with the technical
16 standards for sanitary sewer service lines and water service lines adopted under
17 the Agency of Natural Resources' Wastewater System and Potable Water
18 Supply Rules.

19 (5) The municipality requires documentation in the land records of the
20 municipality from a professional engineer or a licensed designer that the

1 connection authorized by the municipality was installed in accordance with the
2 technical standards.

3 (6) The municipality retains plans that show the location and design of
4 authorized connections.

5 (b) The municipality shall notify the Secretary 30 days in advance of
6 terminating any registration. The municipality shall provide all approvals and
7 plans to the Secretary as a part of this termination notice.

8 (c) Upon request of the Secretary, a municipality approving a connection
9 under this section shall provide copies of approvals of connection, connection
10 plans, and any associated documentation.

11 Sec. 16a. STUDY OF SUBDIVISION REGULATIONS IN AUTHORIZED
12 MUNICIPALITIES

13 The Agency of Natural Resources' Wastewater and Potable Water Supply
14 Technical Advisory Committee shall report to the House Committee on
15 Natural Resources, Fish, and Wildlife and the Senate Committee on Natural
16 Resources and Energy on whether municipalities authorized under 10 V.S.A. §
17 1983 should also have jurisdiction to issue wastewater and potable water
18 supply permits instead of the Agency of Natural Resources for subdivisions
19 when the lot is served by municipal water and sewer.

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* * *

(38) “Recreational trail” has the same meaning as “trails” in subdivision 442(3) of this title.

(39) “Vermont trails system trail” means a recreational trail recognized by the Agency of Natural Resources pursuant to chapter 20 of this title. For purposes of this chapter, the construction, operation, and maintenance of a Vermont trails system trail shall be for a municipal, county, or State purpose.

Sec. 27. 10 V.S.A. § 6001(3)(A) is amended to read:

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

* * *

(xi) The construction of improvements for a Vermont trails system trail on a tract or tracts of land involving more than 10 acres.

(I) This subdivision (xi) shall be the exclusive mechanism for determining jurisdiction over a recreational trail that is a Vermont trails system trail and shall only apply to the construction of improvements made on or after July 1, 2020.

(II) For purposes of this subdivision (xi), involved land includes:

(aa) land that is physically altered, including any ground disturbance and clearing that will occur; and

1 (bb) infrastructure that is incidental to the operation of the
2 trail, including restrooms, parking areas, shelters, picnic areas, kiosks, and
3 interpretive and directional signage.

4 (III) For purposes of this subdivision (xi), involved land does
5 not include land where no ground will be disturbed or cleared or any Vermont
6 trails system trail constructed before July 1, 2020.

7 Sec. 28. 10 V.S.A. § 6001(3)(C) is amended to read:

8 (C) For the purposes of determining jurisdiction under subdivision
9 (3)(A) of this section, the following shall apply:

10 * * *

11 (vi) Recreational trails. When jurisdiction over a trail has been
12 established pursuant to subdivision (A) of this subdivision (3), jurisdiction
13 shall extend only to the recreational trail and infrastructure that is incidental to
14 the operation of the trail. Jurisdiction shall not extend to the remainder of a
15 parcel or parcels where a recreational trail is located, unless otherwise
16 determined to be jurisdictional pursuant to another provision of this chapter.

17 Sec. 29. 10 V.S.A. § 6081 is amended to read:

18 § 6081. PERMITS REQUIRED; EXEMPTIONS

19 * * *

20 (y) No permit or permit amendment shall be required for the construction
21 of improvements on a tract of land that would provide access across a

1 recreational trail, provided that the access is not related to the use of the
2 permitted recreational trail and would not establish jurisdiction under this
3 chapter on its own.

4 (z) Until January 1, 2022, no permit is required for a Vermont trails system
5 trail recognized pursuant to chapter 20 of this title if the trail was in existence
6 prior to July 1, 2020.

7 Sec. 30. RECREATIONAL TRAILS RECOMMENDATIONS AND
8 REPORT

9 On or before December 15, 2020, the Agency of Natural Resources shall
10 report to the House Committee on Natural Resources, Fish, and Wildlife and to
11 the Senate Committee on Natural Resource and Energy with legislative
12 recommendations for a best management practices driven program for
13 Vermont trails system trails that is administered by the Agency of Natural
14 Resources. The report shall include recommendations for revisions to
15 10 V.S.A. chapter 20, including revisions to mapping, legislative authority to
16 administer the program, potential funding sources, staffing needs, and whether
17 to include other recreational trails. The Agency of Natural Resources shall
18 consult with stakeholders on the proposed program, including the Vermont
19 Trail Alliance, the Forest Partnership, and the Vermont Agency of
20 Transportation.

21 Sec. 31. PROSPECTIVE REPEAL

1 block or connecting habitat by a recreational trail or by improvements
2 constructed for farming, logging, or forestry purposes below the elevation of
3 2,500 feet.

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

6 Sec. 33. 10 V.S.A. § 6086(a)(8) is amended to read:

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

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

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

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

19 (ii) all feasible and reasonable means of preventing or lessening
20 the destruction, diminution, or imperilment of the habitat or species have not
21 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) Will not result in an undue adverse impact on forest blocks and
5 connecting habitat. If a project as proposed would result in fragmentation, a
6 permit may only be granted if effects are avoided, minimized, and mitigated in
7 accordance with rules adopted by the Board.

8 Sec. 34. CRITERION 8(C) RULEMAKING

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

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

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

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

19 (2) Standards establishing how fragmentation of forest block or
20 connecting habitat is avoided or minimized, which may include steps to
21 promote proactive site design of buildings, roadways and driveways, utility

1 location, and location relative to existing features such as roads, tree lines, and
2 fence lines.

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

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

7 (A) appropriate ratios for compensation;

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

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

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

13 The Board shall convene the working group on or before September 1, 2020.

14 (c) The Board shall file a final proposed rule with the Secretary of State
15 and Legislative Committee on Administrative Rules on or before September 1,

16 2021.

17 * * * The Road Rule * * *

18 Sec. 35. 10 V.S.A. 6001(3)(A) is amended to read:

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

20 * * *

1 (x) The construction of a road or roads and any associated
2 driveways to provide access to or within a tract of land of more than one acre
3 owned or controlled by a person. For the purposes of determining jurisdiction
4 under this subdivision, any new development or subdivision on a parcel of land
5 that will be provided access by the road and associated driveways is land
6 involved in the construction of the road. Jurisdiction under this subdivision
7 shall not apply unless the length of the road and any associated driveways in
8 combination is greater than 2,000 feet. As used in this subdivision, “roads”
9 shall include any new road or improvement to a Class IV road by a private
10 person, including roads that will be transferred to or maintained by a
11 municipality after their construction or improvement. For the purpose of
12 determining the length of any road and associated driveways, the length of all
13 other roads and driveways within the tract of land constructed within any
14 continuous period of 10 years commencing after July 1, 2020 shall be
15 included. This subdivision shall not apply to a State or municipal road, a
16 utility corridor of an electric transmission or distribution company, a road used
17 primarily for farming or forestry purposes, **or a road in a designated downtown**
18 **or neighbor development area.** The conversion of a road used for farming or
19 forestry purposes that also meets the requirements of this subdivision shall
20 constitute development.

21 Sec. 36. 10 V.S.A. § 127 is amended to read:

1 § 127. RESOURCE MAPPING

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

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

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

21 * * * Wood Product Manufacturer * * *

1 Sec. 37. 10 V.S.A. § 6001 is amended to read:

2 § 6001. DEFINITIONS

3 * * *

4 (44) “Wood products manufacturer” means a manufacturer that
5 aggregates wood products from forestry operations and adds value through
6 processing or marketing in the wood products supply chain or directly to
7 consumers through retail sales. “Wood products manufacturer” includes
8 sawmills; veneer mills; pulp mills; pellet mills; producers of firewood,
9 woodchips, mulch, and fuel wood; and log and pulp concentration yards.
10 “Wood products manufacturer” does not include facilities that purchase,
11 market, and resell finished goods, such as wood furniture, wood pellets, and
12 milled lumber, without first receiving wood products from forestry operations.

13 (45) “Wood product” means logs, pulpwood, veneer wood, bolt wood,
14 wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and
15 bark.

16 Sec. 38. 10 V.S.A. § 6086(c) is amended to read:

17 (c)(1) A permit may contain such requirements and conditions as are
18 allowable proper exercise of the police power and which are appropriate within
19 the respect to subdivisions (a)(1) through (10) of this section, including those
20 set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and
21 4464, the dedication of lands for public use, and the filing of bonds to insure

1 compliance. The requirements and conditions incorporated from Title 24 may
2 be applied whether or not a local plan has been adopted. General requirements
3 and conditions may be established by rule of the Natural Resources Board.

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

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

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

16 (3) Permit with conditions on the delivery of wood heat fuels. A permit
17 with conditions issued to a wood products manufacturer that produces wood
18 chips, pellets, cord wood, or other fuel wood used for heat shall allow
19 shipment of that fuel wood from the manufacturer to the end user outside
20 permitted hours of operation, including nights, weekends, and holidays, from
21 October 1 through April 30 of each year. Permits with conditions shall

1 mitigate the undue adverse impacts while enabling the operations of the
2 manufacturer.

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

8 * * * Municipal Response to Act 250 Requests * * *

9 Sec. 39. 10 V.S.A. 6086(g) is added to read:

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

14 * * * Fish and Wildlife Billback Authority * * *

15 Sec. 40. 10 V.S.A. 6094 is added to read:

16 § 6094. ALLOCATION OF COSTS; DEPARTMENT OF FISH AND
17 WILDLIFE

18 (a) Notwithstanding any other provision of law, the Department of Fish and
19 Wildlife shall have the authority to bill the applicant for the costs of
20 participating in any major permit application before a District Commission,
21 including the costs of employee application review, submissions, comments,

1 and testimony before a District Commission related to impacts on natural
2 resources under subsection 6086(a) of this title, including on wildlife,
3 necessary wildlife habitat, or connecting habitat. The Department may recover
4 those costs from the applicant after notice to the applicant, including an
5 estimate of the costs of the personnel or services.

6 (b) From time to time, the Department shall provide the applicant with
7 detailed statements showing the amount of money contracted for or expended
8 on personnel and services. All funds for services under this section shall be
9 paid directly to the Department.

10 (c) An applicant to which costs are allocated under this section may
11 petition the District Commission to review the costs allocated. The District
12 Commission shall conduct a hearing to determine reasonableness of the costs.
13 The District Commission shall consider the size and complexity of the project
14 and may revise the cost allocations if determined unreasonable.

15 (d) District Commission decisions regarding the reasonableness of fees
16 may be appealed, by the Department or the applicant, to the Natural Resources
17 Board in accordance with rules adopted by the Board.

18 Sec. 41. 10 V.S.A. § 6027(h) is amended to read:

19 (h) The Natural Resources Board may hear appeals of fee refund requests
20 under section 6083a of this title and of allocation of costs under section 6094.

21 * * * Effective Dates * * *

1 Sec. 42. EFFECTIVE DATES

2 This act shall take effect on July 1, 2020, except that Sec. 36, 10 V.S.A.

3 § 6086(a)(8), shall take effect on September 15, 2021.

DRAFT