

1 Senate Natural Resources and Energy Proposals for S.237 Amendments

2 **This document is for discussion purposes. It is not organized as a proper**
3 **amendment, but will be used to highlight areas where the Committee**
4 **needs to make decisions.**

5 * * * Municipal Planning * * *

6 Strike out (b) of Sec. 2, 24 V.S.A. § 4412, Inclusive Development. Strike
7 out associated sections Sec. 3, 27 V.S.A. § 545, Sec. 4, Report On Substantial
8 Municipal Constraints, and Sec. 26, Implementation of Incentives.

9 Add, in its place, required recommendations from DHCD on a proposal that
10 would increase housing density in municipalities while still preserving the
11 ability of municipalities to have diverse solutions.

12 Add updated language on wastewater permits:

13 * * * Wastewater and Potable Water Supply Connections * * *

14 Sec. 14. 10 V.S.A. § 1972 is amended to read:

15 § 1972. DEFINITIONS

16 ~~For the purposes of~~ As used in this chapter:

17 * * *

18 (11) “Change in use” means converting to a different type of use, such
19 as from a residence to a restaurant or office space or from a restaurant to a
20 residence; change from seasonal to year-round use; or scaling up a use, such as

1 increasing the number of employees or adding bedrooms. “Change of use”
2 does not include the addition of a home occupation to a living unit.

3 (12) “Municipality” means a city, town, fire district, school district,
4 consolidated water district, incorporated village, or unorganized town or gore.

5 (13) “Sanitary sewer service line” means piping and associated
6 components that conveys wastewater from a building or structure or
7 campground to a wastewater treatment facility, to an indirect discharge system,
8 or to the leachfield of a soil-based wastewater system of less than 6,500
9 gallons per day. Sanitary sewer service lines also include piping that conveys
10 wastewater from a building or structure or campground to a sanitary sewer
11 collection line.

12 (14) “Water main” means water piping, such as a transmission main or
13 distribution main, that is part of a public water system as defined in the Agency
14 of Natural Resources’ Water Supply Rule. A water main includes piping
15 leading to fire hydrants.

16 (15) “Water service line” means the piping that is not a water main and
17 extends from the water main to a building or structure or campground.

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

19 § 1974. EXEMPTIONS

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

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

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

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

(a) Notwithstanding the requirement under section 1976 of this title that the Secretary delegate to a municipality authority to approve a connection and notwithstanding the requirement under section 1973 of this title, a municipality may issue an approval for a connection or an existing connection with a change in use to the municipal sanitary sewer collection line by a sanitary sewer service line or a connection to a water main by a new water service line, provided that the municipality documents the following information in a form prescribed by the Secretary:

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

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

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

(2) The municipality shall only issue authorizations for:

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

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

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

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

11 (5) The municipality requires documentation in the land records of the
12 municipality from a professional engineer or a licensed designer that the
13 connection authorized by the municipality was installed in accordance with the
14 technical standards.

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

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

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

5 (A) One of the following is true:

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

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

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

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

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

20 (2) It shall be a condition of each affirmative decision under this
21 subsection that a subsequent proposal of a development or subdivision on the

1 land to which the decision applies shall be subject to this chapter as if the land
2 had never previously received a permit under the chapter.

3 (3) An application for a decision under this subsection shall be made on
4 a form prescribed by the Board. The form shall require evidence
5 demonstrating that the application complies with subdivisions (1)(A)
6 through (C) of this subsection. The application shall be processed in the
7 manner described in section 6084 of this title and may be treated as a minor
8 application under that section. In determining whether to treat as minor an
9 application under this subsection, the District Commission shall apply the
10 criteria of this subsection and not of subsection 6086(a) of this title.

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

17
18 Definition of Mixed Use

19 10 V.S.A. § 6001

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

~~(v) Repealed. Permanently affordable housing. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting affordable housing units, as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A. § 610 that preserve their affordability for a period of 99 years or longer, provided the affordable housing units are located in a discrete project on a single tract or multiple contiguous tracts of land, regardless of whether located within an area designated under 24 V.S.A. chapter 76A.~~

* * *

(27) “Mixed income housing” means a housing project in which the following apply:

(A) Owner-occupied housing. For not less than 15 years, at At the option of the applicant, owner-occupied housing may be characterized by either of the following:

(i) at least 15 percent of the housing units have a purchase price that at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency; or

(ii) at least 20 percent of each type of the housing units, where the type is determined by the total number of bedrooms in the unit, have has a

1 purchase price that ~~at the time of first sale~~ does not exceed 90 percent of the
2 ~~new construction, targeted area~~ purchase price limits for that same type of
3 housing unit for households earning 85 percent of the area median income as
4 established and published annually by the Vermont Housing Finance Agency.

5 (B) Rental housing. For not less than 15 years, at least 20 percent
6 of each type of the housing units, where the type is determined by the total
7 number of bedrooms in the unit, that is are rented has a total annual cost of
8 renting, including rent, utilities, parking fees, and any association fees, that
9 does not exceed the max gross rent for that same type of housing unit for
10 households earning 80 percent of the area median income as established and
11 published annually by the Vermont Housing Finance Agency, constitute
12 affordable housing and have a duration of affordability of not less than 15
13 years.

14 (C) When calculating the percentage of housing units that must meet
15 the applicable purchase price limits and total annual cost thresholds of
16 subsections (A) and (B) of this section, the percentage shall be rounded up to
17 the nearest whole number to avoid parts of units needing to be affordable and
18 when there is only one unit within a unit type that unit shall be excluded from
19 the percentage calculation.

20 * * *

21 (29) "Affordable housing" means either of the following:

1 (A) Owner-occupied housing for which the total annual cost of
2 ownership, including principal, interest, taxes, insurance, and condominium
3 association fees, does not exceed 30 percent of the gross annual income of a
4 household at 120 percent of the highest of the following:

5 (i) the county median income, as defined by the U.S. Department
6 of Housing and Urban Development;

7 (ii) the standard metropolitan statistical area median income if the
8 municipality is located in such an area, as defined by the U.S. Department of
9 Housing and Urban Development; or

10 (iii) the statewide median income, as defined by the U.S.
11 Department of Housing and Urban Development.

12 (B) Rental housing for which the total annual cost of renting,
13 including rent, utilities, and condominium association fees, does not exceed 30
14 percent of the gross annual income of a household at 80 percent of the highest
15 of the following:

16 (i) the county median income, as defined by the U.S. Department
17 of Housing and Urban Development;

18 (ii) the standard metropolitan statistical area median income if the
19 municipality is located in such an area, as defined by the U.S. Department of
20 Housing and Urban Development; or

1 ~~(iii) the statewide median income, as defined by the U.S.~~

2 ~~Department of Housing and Urban Development.~~

3 “Permanently affordable housing” means a housing project in which the
4 following apply:

5 (A) Owner occupied housing. At least 20 percent of each type of
6 housing unit is subject to housing subsidy covenants as defined in 27 V.S.A. §
7 610 that require the subject housing units to meet the affordability thresholds
8 set forth in subsection 27 of this section each time the unit is sold for not less
9 than 99 years.

10 (B) Rental housing. At least 20 percent of each type of housing unit
11 meets the affordability thresholds in subsection 27 of this section for not less
12 than 99 years.

13 10 V.S.A. § 6094

14 * * *

15 (ii) For residential construction that has a density of at least eight
16 units of housing per acre, of which at least eight units per acre or at least 40
17 percent of the units, on average, in the entire development or subdivision,
18 whichever is greater, meets the definition of permanently affordable housing
19 established in this chapter, no mitigation shall be required, regardless of
20 location in or outside a designated area described in this subdivision (a)(1).
21 However, all affordable housing units shall be subject to housing subsidy

1 ~~covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a~~
2 ~~period of 99 years or longer. As used in this section, housing that is rented~~
3 ~~shall be considered affordable housing when its inhabitants have a gross annual~~
4 ~~household income that does not exceed 60 percent of the county median~~
5 ~~income or 60 percent of the standard metropolitan statistical area income if the~~
6 ~~municipality is located in such an area.~~

7 * * *

8 * * * Act 250 Criterion 1(D) * * *

9 Update definitions of floodway and floodway fringe to flood hazard area and
10 river corridor, to be used in criterion 1(D).

11 10 V.S.A. § 6001 is amended to read:

12 * * *

13 (6) ~~“Floodway” means the channel of a watercourse which is expected to~~
14 ~~flood on an average of at least once every 100 years and the adjacent land areas~~
15 ~~which are required to carry and discharge the flood of the watercourse, as~~
16 ~~determined by the Secretary of Natural Resources with full consideration given~~
17 ~~to upstream impoundments and flood control projects. “Flood hazard area” has~~
18 ~~the same meaning as under section 752 of this title.~~

19 (7) ~~“Floodway fringe” means an area which is outside a floodway and is~~
20 ~~flooded with an average frequency of once or more in each 100 years as~~
21 ~~determined by the Secretary of Natural Resources with full consideration given~~

1 ~~to upstream impoundments and flood control projects.~~ “River corridor” has the
2 same meaning as under section 752 of this title.

3 * * *

4 10 V.S.A. § 6086(a)

5 * * *

6 (D) ~~Floodways~~ Flood hazard areas; river corridors. A permit will be
7 granted whenever it is demonstrated by the applicant that, in addition to all
8 other applicable criteria:

9 (i) the development or subdivision of lands within a ~~floodway~~
10 flood hazard area or river corridor will not restrict or divert the flow of flood
11 waters, cause or contribute to fluvial erosion, and endanger the health, safety,
12 and welfare of the public or of riparian owners during flooding; ~~and~~

13 ~~(ii) the development or subdivision of lands within a floodway~~
14 ~~fringe will not significantly increase the peak discharge of the river or stream~~
15 ~~within or downstream from the area of development and endanger the health,~~
16 ~~safety, or welfare of the public or riparian owners during flooding.~~

17 * * * Recreational Trails * * *

18 10 V.S.A. § 442(3) is amended to read:

19 (3) “Trails” means land used for hiking, walking, bicycling, cross-country
20 skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other
21 similar activities. Trails may be used for recreation, transportation, and other

1 compatible purposes, but the primary purpose shall not be the operation of a
2 motor vehicle. As used in this subsection, “motor vehicle” shall not include
3 all-terrain vehicles or snowmobiles.

4 Sec. XX. 10 V.S.A. § 6001 is amended to read:

5 § 6001. DEFINITIONS

6 * * *

7 (50) “Recreational trail” has the same meaning as “trails” in subdivision
8 442(3) of this title.

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

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

14 * * *

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

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

1 Resources. The report shall include recommendations for revisions to
2 10 V.S.A. chapter 20, including revisions to mapping, legislative authority to
3 administer the program, and potential funding sources and staffing needs. The
4 Agency of Natural Resources shall consult with stakeholders on the proposed
5 program, including the Vermont Trail Alliance, the Forest Partnership, and the
6 Vermont Agency of Transportation.

7 Sec. XX. PROSPECTIVE REPEAL

8 10 V.S.A. § 6001(3)(A)(xiii) and (3)(C)(vi)(II) shall be repealed on
9 January 1, 2022.

10 * * * Forest Blocks * * *

11 Include H.926 language and require rulemaking to address avoid, minimize,
12 and mitigate and the use of maps.

13 10 V.S.A. § 6001

14 (38) “Connecting habitat” refers to land or water, or both, that links
15 patches of habitat within a landscape, allowing the movement, migration, and
16 dispersal of wildlife and plants and the functioning of ecological processes. A
17 connecting habitat may include recreational trails and improvements
18 constructed for farming, logging, or forestry purposes.

19 (39) “Forest block” means a contiguous area of forest in any stage of
20 succession and not currently developed for nonforest use. A forest block may
21 include recreational trails, wetlands, or other natural features that do not

1 themselves possess tree cover and improvements constructed for farming,
2 logging, or forestry purposes.

3 (40) “Fragmentation” means the division or conversion of a forest block
4 or connecting habitat by the separation of a parcel into two or more parcels; the
5 construction, conversion, relocation, or enlargement of any building or other
6 structure, or of any mining, excavation, or landfill; and any change in the use
7 of any building or other structure, or land, or extension of use of land.
8 However, fragmentation does not include the division or conversion of a forest
9 block or connecting habitat by a recreational trail or by improvements
10 constructed for farming, logging, or forestry purposes below the elevation of
11 2,500 feet.

12 (41) “Habitat” means the physical and biological environment in which
13 a particular species of plant or wildlife lives.

14 (42) As used in subdivisions (38), (39), and (40) of this section,
15 “recreational trail” means a corridor that is not paved and that is used for
16 recreational purposes, including hiking, walking, bicycling, cross-country
17 skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

18 10 V.S.A. § 6086(a)

19 * * *

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

1 (A) Will not have an undue adverse effect on the scenic or natural
2 beauty of the area, aesthetics, or historic sites ~~or rare and irreplaceable natural~~
3 ~~areas.~~

4 (A)(B) Necessary wildlife habitat and endangered species. A permit
5 will not be granted if unless it is demonstrated by ~~any party opposing~~ the
6 applicant that a development or subdivision will not destroy or significantly
7 imperil necessary wildlife habitat or any endangered species; ~~and or, if such~~
8 destruction or imperilment will occur:

9 (i) the economic, social, cultural, recreational, or other benefit to
10 the public from the development or subdivision will ~~not~~ outweigh the
11 economic, environmental, or recreational loss to the public from the
12 destruction or imperilment of the habitat or species; ~~or~~

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

16 (iii) a reasonably acceptable alternative site is not owned or
17 controlled by the applicant ~~which~~ that would allow the development or
18 subdivision to fulfill its intended purpose.

19 (C) Will not result in an undue adverse impact on forest blocks,
20 connecting habitat, or rare and irreplaceable natural areas. If a project as
21 proposed would result in an undue adverse impact, a permit may only be

1 granted if effects are avoided, minimized, and mitigated in accordance with
2 rules adopted by the Board.

3 **CRITERION 8(C) RULEMAKING**

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

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

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

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

14 (2) Standards establishing how fragmentation of forest block or
15 connecting habitat is avoided or minimized, which may include steps to
16 promote proactive site design of buildings, roadways and driveways, utility
17 location, and location relative to existing features such as roads, tree lines and
18 fence lines.

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

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

3 (A) appropriate ratios for compensation;

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

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

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

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

10 (c) The Board shall file a final proposed rule with the Secretary of State
11 and Legislative Committee on Administrative Rules on or before September 1,
12 2021.

13 * * * The Road Rule * * *

14 (xii) The construction of a road or roads and any associated
15 driveways to provide access to or within a tract of land of more than one acre
16 owned or controlled by a person. For the purposes of determining jurisdiction
17 under this subdivision, any new development or subdivision on a parcel of land
18 that will be provided access by the road and associated driveways is land
19 involved in the construction of the road. Jurisdiction under this subdivision
20 shall not apply unless the length of the road and any associated driveways in
21 combination is greater than 2,000 feet. As used in this subdivision, “roads”

1 shall include any new road or improvement to a Class IV road by a private
2 person, including roads that will be transferred to or maintained by a
3 municipality after their construction or improvement. For the purpose of
4 determining the length of any road and associated driveways, the length of all
5 other roads and driveways within the tract of land constructed within any
6 continuous period of 10 years commencing after July 1, 2020 shall be
7 included. This subdivision shall not apply to a State or municipal road, a
8 utility corridor of an electric transmission or distribution company, or a road
9 used primarily for farming or forestry purposes. The conversion of a road used
10 for farming or forestry purposes that also meets the requirements of this
11 subdivision shall constitute development.

12 * * * Resource Mapping; Forest Blocks * * *

13 Sec. 4. 10 V.S.A. § 127 is amended to read:

14 § 127. RESOURCE MAPPING

15 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources
16 (the Secretary) shall complete and maintain resource mapping based on the
17 Geographic Information System (GIS) or other technology. The mapping shall
18 identify natural resources throughout the State, including forest blocks, that
19 may be relevant to the consideration of energy projects and projects subject to
20 chapter 151 of this title. The Center for Geographic Information shall be

1 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~
2 resource mapping.

3 (b) The Secretary of ~~Natural Resources~~ shall consider the ~~GIS-based~~
4 resource maps developed under subsection (a) of this section when providing
5 evidence and recommendations to the Public Utility Commission under
6 30 V.S.A. § 248(b)(5) and when commenting on or providing
7 recommendations under chapter 151 of this title to District Commissions on
8 other projects.

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

14 * * * Forest Products Industry * * *

15 10 V.S.A. § 6086(c)

16 (2) Permit conditions on a forest-based enterprise.

17 (A) A permit condition that sets hours of operation for a forest-based
18 enterprise shall only be imposed to mitigate an impact under subdivision
19 (a)(1), (5), or (8) of this section.

20 (B) Unless an impact under subdivision (a)(1) or (5) of this section
21 would result, a permit issued to a forest-based enterprise shall allow the

1 enterprise to ship and receive forest products outside regular hours of
2 operation. These permits shall allow for deliveries of forest products from
3 forestry operations to the enterprise outside of permitted hours of operation,
4 including nights, weekends, and holidays, for a minimum of 60 days per year.

5 (C) In making a determination under this subdivision (2) as to
6 whether an impact exists, the District Commission shall consider the
7 enterprise's role in sustaining forestland use and the impact of the permit
8 condition on the forest-based enterprise. Conditions shall impose the
9 minimum restriction necessary to address the undue adverse impact.

10 (3) Permit conditions on the delivery of wood heat fuels. A permit
11 issued to a forest-based enterprise that produces wood chips, pellets, cord
12 wood, or other fuel wood used for heat shall allow shipment of that fuel wood
13 from the enterprise to the end user outside permitted hours of operation,
14 including nights, weekends, and holidays, from October 1 through April 30 of
15 each year.

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