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S.237

Senator Bray moves that the bill be amended as follows:

First: In Sec. 2, 24 V.S.A. § 4412, by striking out subdivision (b) in its entirety.

Second: By striking out Sec. 3, 27 V.S.A. § 545, in its entirety and inserting in lieu thereof the following:

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 Resources 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.

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

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

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

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

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

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

18 (3) An application for a decision under this subsection shall be made on
19 a form prescribed by the Board. The form shall require evidence
20 demonstrating that the application complies with subdivisions (1)(A)
21 through (C) of this subsection. The application shall be processed in the

1 manner described in section 6084 of this title and may be treated as a minor
2 application under that section. In determining whether to treat as minor an
3 application under this subsection, the District Commission shall apply the
4 criteria of this subsection and not of subsection 6086(a) of this title.

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

11 **Seventh: In Sec. 12, 24 V.S.A. 2793e(c)(7), by striking it out in its entirety.**

12 Eighth: By striking out Secs. 14 (10 V.S.A. § 1974(9), 15(10 V.S.A.
13 § 1983), and 16 (Study of Subdivision regulations in authorized municipalities)
14 in their entirety and inserting in lieu thereof the following:

15 * * * Wastewater and Potable Water Supply Connections * * *

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

17 § 1972. DEFINITIONS

18 For the purposes of As used in this chapter:

19 * * *

20 (11) “Change in use” means converting to a different type of use, such
21 as from a residence to a restaurant or office space or from a restaurant to a

1 residence; change from seasonal to year-round use; or scaling up a use, such as
2 increasing the number of employees or adding bedrooms. “Change of use”
3 does not include the addition of a home occupation to a living unit.

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

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

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

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

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

20 § 1974. EXEMPTIONS

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

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

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

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

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

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

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

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

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

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

7 Sec. 16a. STUDY OF SUBDIVISION REGULATIONS IN AUTHORIZED
8 MUNICIPALITIES

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

16 Ninth: By striking out Secs. 23 (Implementation) and 24 (Effective dates)
17 in their entireties and inserting in lieu thereof the following:

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

19 Sec. 23. 10 V.S.A. § 6001 is amended to read:

20 § 6001. DEFINITIONS

21 * * *

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

7 (7) ~~“Floodway fringe” means an area which is outside a floodway and is~~
8 ~~flooded with an average frequency of once or more in each 100 years as~~
9 ~~determined by the Secretary of Natural Resources with full consideration given~~
10 ~~to upstream impoundments and flood control projects. “River corridor” has the~~
11 same meaning as under section 752 of this title.

12 * * *

13 Sec. 24. 10 V.S.A. § 6086(a)(1)(D) is amended to read:

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

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

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

5 * * * Trails * * *

6 Sec. 25. 10 V.S.A. § 442(3) is amended to read:

7 (3) “Trails” means land used for hiking, walking, bicycling, cross-country
8 skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other
9 similar activities. Trails may be used for recreation, transportation, and other
10 compatible purposes, but the primary purpose shall not be the operation of a
11 motor vehicle. As used in this subsection, “motor vehicle” shall not include
12 all-terrain vehicles or snowmobiles.

13 Sec. 26. 10 V.S.A. § 6001 is amended to read:

14 § 6001. DEFINITIONS

15 * * *

16 (38) “Recreational trail” has the same meaning as “trails” in subdivision
17 442(3) of this title.

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

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

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

3 * * *

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

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

10 (II) For purposes of this subdivision (ix), involved land
11 includes:

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

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

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

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

1 (C) For the purposes of determining jurisdiction under subdivision
2 (A) of this subdivision (3), the following shall apply:

3 * * *

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

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

11 § 6081. PERMITS REQUIRED; EXEMPTIONS

12 * * *

13 (y) No permit or permit amendment shall be required for the construction
14 of improvements on a tract of land that would provide access across a
15 recreational trail provided that the access is not related to the use of the
16 permitted recreational trail and would not establish jurisdiction under this
17 chapter on its own.

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

21 Sec. 30. RECREATIONAL TRAILS RECOMMENDATIONS AND

1 REPORT

2 On or before December 15, 2020, the Agency of Natural Resources shall
3 report to the House Committee on Natural Resources, Fish, and Wildlife and to
4 the Senate Committee on Natural Resource and Energy with legislative
5 recommendations for a best management practices driven program for
6 Vermont trails system trails that is administered by the Agency of Natural
7 Resources. The report shall include recommendations for revisions to
8 10 V.S.A. chapter 20, including revisions to mapping, legislative authority to
9 administer the program, potential funding sources, staffing needs, and whether
10 to include other recreational trails. The Agency of Natural Resources shall
11 consult with stakeholders on the proposed program, including the Vermont
12 Trail Alliance, the Forest Partnership, and the Vermont Agency of
13 Transportation.

14 Sec. 31. PROSPECTIVE REPEAL

15 10 V.S.A. § 6001(3)(A)(xi) shall be repealed on January 1, 2022.

16 * * * Forest Blocks * * *

17 Sec. 32. 10 V.S.A. § 6001 is amended to read:

18 § 6001. DEFINITIONS

19 * * *

20 (40) “Connecting habitat” refers to land or water, or both, that links

21 patches of habitat within a landscape, allowing the movement, migration, and

1 dispersal of wildlife and plants and the functioning of ecological processes. A
2 connecting habitat may include recreational trails and improvements
3 constructed for farming, logging, or forestry purposes.

4 (41) “Forest block” means a contiguous area of forest in any stage of
5 succession and not currently developed for nonforest use. A forest block may
6 include recreational trails, wetlands, or other natural features that do not
7 themselves possess tree cover and improvements constructed for farming,
8 logging, or forestry purposes.

9 (42) “Fragmentation” means the division or conversion of a forest block
10 or connecting habitat by the separation of a parcel into two or more parcels; the
11 construction, conversion, relocation, or enlargement of any building or other
12 structure, or of any mining, excavation, or landfill; and any change in the use
13 of any building or other structure, or land, or extension of use of land.
14 However, fragmentation does not include the division or conversion of a forest
15 block or connecting habitat by a recreational trail or by improvements
16 constructed for farming, logging, or forestry purposes below the elevation of
17 2,500 feet.

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

20 (44) As used in subdivisions (40), (41), and (42) of this section,
21 “recreational trail” means a corridor that is not paved and that is used for

1 recreational purposes, including hiking, walking, bicycling, cross-country
2 skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

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

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

5 (A) Will not have an undue adverse effect on the scenic or natural
6 beauty of the area, aesthetics, historic sites **or rare and irreplaceable natural**
7 **areas.**

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

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

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

19 (iii) a reasonably acceptable alternative site is owned or controlled
20 by the applicant ~~which~~ that would allow the development or subdivision to
21 fulfill its intended purpose.

1 (C) Will not result in an undue adverse impact on forest blocks and
2 connecting habitat. If a project as proposed would result in fragmentation, a
3 permit may only be granted if effects are avoided, minimized, and mitigated in
4 accordance with rules adopted by the Board.

5 Sec. 34. CRITERION 8(C) RULEMAKING

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

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

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

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

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

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

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

5 (A) appropriate ratios for compensation;

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

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

9 (b) The Board shall convene a working group to provide input to the rule
10 prior to prefiling with the Interagency Committee on Administrative Rules.

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

12 (c) The Board shall file a final proposed rule with the Secretary of State
13 and Legislative Committee on Administrative Rules on or before September 1,
14 2021.

15 * * * The Road Rule * * *

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

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

18 * * *

19 (x) The construction of a road or roads and any associated
20 driveways to provide access to or within a tract of land of more than one acre
21 owned or controlled by a person. For the purposes of determining jurisdiction

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

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

18 § 127. RESOURCE MAPPING

19 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources
20 (the Secretary) shall complete and maintain resource mapping based on the
21 Geographic Information System (GIS) or other technology. The mapping shall

1 identify natural resources throughout the State, including forest blocks, that
2 may be relevant to the consideration of energy projects and projects subject to
3 chapter 151 of this title. The Center for Geographic Information shall be
4 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~
5 resource mapping.

6 (b) The Secretary ~~of Natural Resources~~ shall consider the ~~GIS-based~~
7 resource maps developed under subsection (a) of this section when providing
8 evidence and recommendations to the Public Utility Commission under
9 30 V.S.A. § 248(b)(5) and when commenting on or providing
10 recommendations under chapter 151 of this title to District Commissions on
11 other projects.

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

17 * * * **Wood Product Manufacturer** * * *

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

19 § 6001. DEFINITIONS

20 * * *

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

10 (46) “Wood product” means logs, pulpwood, veneer wood, bolt wood,
11 wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and
12 bark.

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

14 (c)(1) A permit may contain such requirements and conditions as are
15 allowable proper exercise of the police power and which are appropriate within
16 the respect to subdivisions (a)(1) through (10) of this section, including those
17 set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and
18 4464, the dedication of lands for public use, and the filing of bonds to insure
19 compliance. The requirements and conditions incorporated from Title 24 may
20 be applied whether or not a local plan has been adopted. General requirements
21 and conditions may be established by rule of the Natural Resources Board.

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

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

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

12 (3) Permit conditions on the delivery of wood heat fuels. A permit
13 issued to a wood products manufacturer that produces wood chips, pellets, cord
14 wood, or other fuel wood used for heat shall allow shipment of that fuel wood
15 from the manufacturer to the end user outside permitted hours of operation,
16 including nights, weekends, and holidays, from October 1 through April 30 of
17 each year. Conditions shall minimize the undue adverse impacts while
18 enabling the operations of the manufacturer.

19 (4) Wood products manufacturer holding a permit may request an
20 amendment to existing permit conditions related to hours of operation and
21 seasonal restrictions to be consistent with subdivisions (2) and (3) of this

1 subsection. Requests for condition amendments under this subsection shall not
2 be subject to Act 250 Rule 34E.

3 * * * Municipal Response to Act 250 Requests * * *

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

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

9 * * * Fish and Wildlife Billback Authority * * *

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

11 § 6094. ALLOCATION OF COSTS; DEPARTMENT OF FISH AND
12 WILDLIFE

13 (a) Notwithstanding any other provision of law, the Department of Fish and
14 Wildlife shall have the authority to bill the applicant for the costs of
15 participating in any major permit application before a District Commission,
16 including the costs of employee application review, submissions, comments,
17 and testimony before a District Commission related to impacts on wildlife,
18 necessary wildlife habitat, or connecting habitat. The Department may recover
19 those costs from the applicant after notice to the applicant, including an
20 estimate of the costs of the personnel or services.

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

5 (c) An applicant to which costs are allocated under this section may
6 petition the District Commission to review the costs allocated. The District
7 Commission shall conduct a hearing to determine reasonableness of the costs.
8 The District Commission shall consider the size and complexity of the project
9 and may revise the cost allocations if determined unreasonable.

10 Sec. 41. EFFECTIVE DATES

11 This act shall take effect on July 1, 2020, except that Sec. 36, 10 V.S.A.
12 § 6086(a)(8), shall be effective on September 15, 2021.