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S.226

Senators Bray and Sirotkin move that the Senate concur in the House proposal of amendment with further proposal of amendment by striking out Sec. 23, effective dates, in its entirety and inserting in lieu thereof the following:

* * * Municipal Zoning * * *

Sec. 23. 24 V.S.A. § 2793e is amended to read:

§ 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF
NEIGHBORHOOD DEVELOPMENT AREAS

(a) Purpose. This section is intended to encourage a municipality to plan for new and infill housing in the area including and immediately encircling its designated downtown, village center, new town center, or within its designated growth center in order to provide needed housing and to further support the commercial establishments in the designated center. To support this goal, this section sets out a two-component process.

* * *

(b) Definitions.

(1) “Neighborhood planning area” means an automatically delineated area including and encircling a downtown, village center, or new town center designated under this chapter or within a growth center designated under this chapter. A neighborhood planning area is used for the purpose of identifying

1 locations suitable for new and infill housing that will support a development
2 pattern that is compact, oriented to pedestrians, and consistent with smart
3 growth principles. To ensure a compact settlement pattern, the outer boundary
4 of a neighborhood planning area shall be located entirely within the boundaries
5 of the applicant municipality, unless a joint application is submitted by more
6 than one municipality, and shall be determined:

7 * * *

8 (c) Application for designation of a neighborhood development area. The
9 State Board shall approve a neighborhood development area if the application
10 demonstrates and includes all of the following elements:

11 * * *

12 (5) The proposed neighborhood development area consists of those
13 portions of the neighborhood planning area that are appropriate for new and
14 infill housing, excluding identified flood hazard and fluvial erosion areas,
15 except those areas containing preexisting development in areas suitable for
16 infill development as defined in § 29-201 of the Vermont Flood Hazard Area
17 and River Corridor Rule. In determining what areas are most suitable for new
18 and infill housing, the municipality shall balance local goals for future land
19 use, the availability of land for housing within the neighborhood planning area,
20 and the smart growth principles. Based on those considerations, the

1 municipality shall select an area for neighborhood development area
2 designation that:

3 (A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of
4 “important natural resources” as defined in subdivision 2791(14) of this title.
5 If an “important natural resource” is included within a proposed neighborhood
6 development area, the applicant shall identify the resource, explain why the
7 resource was included, describe any anticipated disturbance to such resource,
8 and describe why the disturbance cannot be avoided or minimized. If the
9 neighborhood development area includes flood hazard areas or river corridors,
10 the local bylaws shall contain provisions consistent with the Agency of Natural
11 Resources’ rules required under 10 V.S.A. § 754(a) to ensure that new infill
12 development within a neighborhood development area occurs outside the
13 floodway and will not cause or contribute to fluvial erosion hazards within the
14 river corridor. If the neighborhood development area includes flood hazard
15 areas or river corridors, local bylaws shall also contain provisions to protect
16 river corridors outside the neighborhood development area consistent with the
17 Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a).

18 * * *

19 (6) ~~The neighborhood development area is served by:~~

20 ~~(A) municipal sewer infrastructure; or~~

1 ~~(B) a community or alternative wastewater system approved by the~~
2 ~~Agency of Natural Resources.~~ [Repealed.]

3 (7) The municipal bylaws allow minimum net residential densities
4 within the neighborhood development area greater than or equal to four ~~single-~~
5 ~~family detached~~ dwelling units per acre for all identified residential uses or
6 residential building types, exclusive of accessory dwelling units, or ~~no~~ not
7 fewer than the average existing density of the surrounding neighborhood,
8 whichever is greater. The methodology for calculating density shall be
9 established in the guidelines developed by the Department pursuant to
10 subsection 2792(d) of this title.

11 * * *

12 Sec. 24. 24 V.S.A. § 2793b is amended to read:

13 § 2793b. DESIGNATION OF NEW TOWN CENTER DEVELOPMENT
14 DISTRICTS

15 * * *

16 (b) Within 45 days of receipt of a completed application, the State Board
17 shall designate a new town center development district if the State Board finds,
18 with respect to that district, the municipality has:

19 * * *

20 (2) Provided a community investment agreement that has been executed
21 by authorized representatives of the municipal government, businesses and

1 property owners within the district, and community groups with an articulated
2 purpose of supporting downtown interests, and contains the following:

3 * * *

4 (B) Regulations enabling ~~high~~ densities that are ~~greater~~ not less than
5 four dwelling units, including all identified residential uses or residential
6 building types, per acre and not less than those allowed in any ~~other~~ part of the
7 municipality not within an area designated under this chapter.

8 * * *

9 Sec. 25. 24 V.S.A. § 4449 is amended to read:

10 § 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
11 MUNICIPAL LAND USE PERMIT

12 (a) Within any municipality in which any bylaws have been adopted:

13 * * *

14 (4) No municipal land use permit issued by an appropriate municipal
15 panel or administrative officer, as applicable, for a site plan or conditional use
16 shall be considered abandoned or expired unless more than two years have
17 passed since the permit approval was issued.

18 * * * Municipal Bylaw Grants * * *

19 Sec. 26. 24 V.S.A. § 4306 is amended to read:

20 § 4306. MUNICIPAL AND REGIONAL PLANNING FUND

1 (a)(1) The Municipal and Regional Planning Fund for the purpose of
2 assisting municipal and regional planning commissions to carry out the intent
3 of this chapter is hereby created in the State Treasury.

4 (2) The Fund shall be composed of 17 percent of the revenue from the
5 property transfer tax under 32 V.S.A. chapter 231 and any monies from time to
6 time appropriated to the Fund by the General Assembly or received from any
7 other source, private or public. All balances at the end of any fiscal year shall
8 be carried forward and remain in the Fund. Interest earned by the Fund shall
9 be deposited in the Fund.

10 (3) Of the revenues in the Fund, each year:

11 (A) 10 percent shall be disbursed to the Vermont Center for
12 Geographic Information;

13 (B) 70 percent shall be disbursed to the Secretary of Commerce and
14 Community Development for performance contracts with regional planning
15 commissions to provide regional planning services pursuant to section 4341a
16 of this title; and

17 (C) 20 percent shall be disbursed to municipalities.

18 * * *

19 (c) Funds allocated to municipalities shall be used for the purposes of:

20 * * *

1 (4) reasonable and necessary costs of administering the Fund by the
2 Department of Housing and Community Development, not to exceed six
3 percent of the municipality allocation.

4 (d) New funds allocated to municipalities under this section may take the
5 form of Municipal Bylaw Modernization Grants in accordance with section
6 4307 of this title.

7 Sec. 27. 24 V.S.A. § 4307 is added to read:

8 § 4307. MUNICIPAL BYLAW MODERNIZATION GRANTS

9 (a) There are created Municipal Bylaw Modernization Grants to assist
10 municipalities in updating their land use and development bylaws. Bylaws
11 updated under this section shall increase housing choice, affordability, and
12 opportunity in areas planned for smart growth. The Grants shall be funded by
13 monies allocated from the municipality allocation of the Municipal and
14 Regional Planning Funds established in subdivision 4306(a)(3)(C) of this title
15 and any other monies appropriated for this purpose.

16 (b) Disbursement to municipalities shall be administered by the
17 Department of Housing and Community Development through a competitive
18 process providing the opportunity for all regions and any eligible municipality
19 to compete regardless of size.

20 (c) Funds may be disbursed by the Department in installments to ensure the
21 municipal bylaw updates meet the goals of this section.

1 (d) Funding may be used for the cost of regional planning commission staff
2 or consultant time and any other purpose approved by the Department.

3 (e) A municipality grantee shall use the funds to prepare amendments to
4 bylaws to increase housing choice, affordability, and opportunity and that
5 support a neighborhood development pattern that is pedestrian oriented in
6 areas planned for smart growth consistent with the smart growth principles
7 established in section 2791 of this title and that prioritize projects in designated
8 areas in accordance with chapter 76A of this title.

9 (f) To receive the grant, the municipality shall:

10 (1) identify municipal water and wastewater disposal infrastructure,
11 municipal water and sewer service areas, and the constraints on that
12 infrastructure based on the best available data;

13 (2) increase allowed housing types and uses, which may include
14 duplexes, to the same extent as single-family homes;

15 (3) include parking waiver provisions in areas planned for smart growth
16 consistent with smart growth principles as defined in section 2791 of this title
17 and appropriate situations;

18 (4) review and modify street standards that implement the complete
19 streets principles as described in 19 V.S.A. § 309d and that are oriented to
20 pedestrians;

1 (5) reduce nonconformities by making the allowed standards principally
2 conform to the existing settlement within any area designated under chapter
3 76A of this title and increase allowed lot, building, and dwelling unit density
4 by adopting dimensional, use, parking, and other standards that allow compact
5 neighborhood form and support walkable lot and dwelling unit density, which
6 may be achieved with a standard allowing at least four units per acre or
7 allowing the receipt of a State or municipal water and wastewater permit to
8 determine allowable density or by other means established in guidelines issued
9 by the Department;

10 (6) restrict development of and minimize impact to important natural
11 resources, including new development in flood hazard areas, undeveloped
12 floodplains, and river corridor areas, unless lawfully allowed for infill
13 development in §29-201 of the Vermont Flood Hazard Area and River
14 Corridor Rule;

15 (7) update the municipal plan’s housing element as provided in
16 subdivision 4382(a)(10) of this title related to addressing lower- and moderate-
17 income housing needs, implement that element of the plan including through
18 the bylaw amendments, and demonstrate how those bylaws support the
19 implementation of the housing element; and

20 (8) comply with State and Federal Fair Housing Act, including the fair
21 housing provisions of Vermont’s Planning and Development Act.

1 (g) On or before September 1, 2022, the Department shall adopt guidelines
2 to assist municipalities applying for grants under this section.

3 Sec. 28. APPROPRIATION

4 To the extent that increased funding is provided in fiscal year 2023 to the
5 Municipal and Regional Planning Fund, \$650,000.00 shall be used for
6 Municipal Bylaw Modernization Grants established in 24 V.S.A. § 4307.

7 * * * Accessory Dwelling Units * * *

8 Sec. 29. 24 V.S.A. § 4414 amended to read:

9 § 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

10 * * *

11 (4) Parking and loading facilities. A municipality may adopt provisions
12 setting forth standards for permitted and required facilities for off-street
13 parking and loading, which may vary by district and by uses within each
14 district. These bylaws may also include provisions covering the location, size,
15 design, access, landscaping, and screening of those facilities. In determining
16 the number and size of parking spaces required under these regulations, the
17 appropriate municipal panel may take into account the existence or availability
18 of employer “transit pass” and rideshare programs, public transit routes, and
19 public parking spaces in the vicinity of the development. However, a
20 municipality shall not require an accessory dwelling unit to have more than
21 one parking space per bedroom.

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* * * Act 250 * * *

Sec. 30. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

As used in this chapter:

* * *

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

* * *

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land and within any continuous period of five years. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

(aa) [Repealed.]

(bb) [Repealed.]

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.

1 (dd) 50 or more, in a municipality with a population of
2 ~~3,000 or more but~~ less than 6,000.

3 (ee) ~~25 or more, in a municipality with a population of less~~
4 ~~than 3,000. [Repealed.]~~

5 (ff) Notwithstanding subdivisions (cc) through (ee) of this
6 subdivision (3)(A)(iv)(I), 10 or more if the construction involves the
7 demolition of one or more buildings that are listed on or eligible to be listed on
8 the State or National Register of Historic Places. However, demolition shall
9 not be considered to create jurisdiction under this subdivision (ff) if the
10 Division for Historic Preservation has determined that the proposed demolition
11 will have no adverse effect, will have no adverse effect if specified conditions
12 are met, or will have an adverse effect that will be adequately mitigated. Any
13 imposed conditions shall be enforceable through a grant condition, deed
14 covenant, or other legally binding document.

15 * * *

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

1 Sec. 31. 10 V.S.A. § 6081(p) is amended to read:

2 ~~(p)(1) No permit or permit amendment is required for any change to a~~
3 ~~project that is located entirely within a downtown development district~~
4 ~~designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of~~
5 ~~any combination of mixed use and mixed income housing, and the cumulative~~
6 ~~changes within any continuous period of five years, commencing on or after~~
7 ~~May 28, 2002, remain below any applicable jurisdictional threshold specified~~
8 ~~in subdivision 6001(3)(A)(iv)(I) of this title.~~

9 ~~(2) No permit or permit amendment is required for a priority housing~~
10 ~~project in a designated center other than a downtown development district if~~
11 ~~the project remains below any applicable jurisdictional threshold specified in~~
12 ~~subdivision 6001(3)(A)(iv)(I) of this title and will comply with all conditions~~
13 ~~of any existing permit or permit amendment issued under this chapter that~~
14 ~~applies to the tract or tracts on which the project will be located. If such a~~
15 ~~priority housing project will not comply with one or more of these conditions,~~
16 ~~an application may be filed pursuant to section 6084 of this title.~~

17 Sec. 32. 10 V.S.A. § 6084(f) is amended to read:

18 ~~(f) This subsection concerns an application for a new permit amendment to~~
19 ~~change the conditions of an existing permit or existing permit amendment in~~
20 ~~order to authorize the construction of a priority housing project described in~~
21 ~~subdivision 6081(p)(2) of this title.~~

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

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

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

13 * * *

14 * * * Municipal Response to Act 250 Requests * * *

15 Sec. 34. 10 V.S.A. 6086(g) is added to read:

16 (g) If a municipality fails to respond to a request by the applicant within
17 90 days as to the impacts related to subdivision (a)(6) or (7) of this section, the
18 application will be presumed not to have an unreasonable burden on
19 educational, municipal, or governmental services.

1 * * * Wood Products Manufacturers * * *

2 Sec. 35. 10 V.S.A. § 6001 is amended to read:

3 § 6001. DEFINITIONS

4 * * *

5 (43) “Wood product” means logs, pulpwood, veneer wood, bolt wood,
6 wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and
7 bark.

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

17 Sec. 36. 10 V.S.A. § 6086(c) is amended to read:

18 (c)(1) Permit conditions. A permit may contain such requirements and
19 conditions as are allowable proper exercise of the police power and ~~which~~ that
20 are appropriate within the respect to subdivisions (a)(1) through (10) of this
21 section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2),

1 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and
2 the filing of bonds to ensure compliance. The requirements and conditions
3 incorporated from Title 24 may be applied whether or not a local plan has been
4 adopted. General requirements and conditions may be established by rule of
5 the Natural Resources Board.

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

7 (A) When issuing a permit with conditions on wood products
8 manufacturing and delivery, the District Commission shall account for the
9 seasonal, weather-dependent, land-dependent, and varied conditions unique to
10 the industry.

11 (B) A permit condition that sets hours of operation for a wood
12 products manufacturer shall only be imposed to mitigate an impact under
13 subdivision (a)(1), (5), or (8) of this section. If an adverse impact would result,
14 a permit with conditions shall allow the manufacturer to operate while
15 allowing for flexible timing of deliveries of wood products from forestry
16 operations to the manufacturer outside permitted hours of operation, including
17 nights, weekends, and holidays, for the number of days demonstrated by the
18 manufacturer as necessary to enable deliveries, not to exceed 90 days per year.

19 (C) Permit with conditions on the delivery of wood heat fuels. A
20 permit with conditions issued to a wood products manufacturer that produces
21 wood chips, pellets, cord wood, or other fuel wood used for heat shall allow for

1 flexible delivery of that fuel wood from the manufacturer to the end user
2 outside permitted hours of operation, including nights, weekends, and holidays,
3 from October 1 through April 30 of each year. Permits with conditions shall
4 mitigate the undue adverse impacts while enabling deliveries by the
5 manufacturer.

6 (D) Permit amendments. A wood products manufacturer holding a
7 permit may request an amendment to existing permit conditions related to
8 hours of operation and seasonal restrictions to be consistent with subdivisions
9 (B) and (C) of this subsection (c). Requests for condition amendments under
10 this subsection shall not be subject to Act 250 Rule 34(E).

11 * * * One-acre towns * * *

12 Sec. 37. INTENT; AMENDMENT OF 10 V.S.A. § 6001(3)(A)(ii)

13 The General Assembly's intent in the amendments to 10 V.S.A.
14 § 6001(3)(A)(ii) set forth in Sec. 38 of this act is to clarify the text to reflect
15 the way jurisdiction over commercial and industrial development in towns
16 without permanent zoning and subdivision bylaws has been determined since
17 the passage of Act 250 in 1970. The General Assembly does not intend any
18 provision of this act to be interpreted as a substantive change to determining
19 jurisdiction under 10 V.S.A. § 6001(3)(A)(ii).

20 Sec. 38. 10 V.S.A. § 6001 is amended to read:

21 § 6001. DEFINITIONS

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

(i) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes in a municipality that has adopted permanent zoning and subdivision bylaws.

(ii) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes ~~on more than one acre of land within~~ in a municipality that has not adopted permanent zoning and subdivision bylaws.

* * *

* * * Reports * * *

Sec. 39. REPORT; ACT 250 JURISDICTION OVER AGRICULTURAL
BUSINESSES

On or before January 15, 2023, the Natural Resources Board shall submit to the General Assembly a report with recommendations on how Act 250 jurisdiction should be applied to agricultural businesses, including those located on properties already operating as farms. The Board shall consult with the Agency of Agriculture, Food and Markets, the Vermont Planners

1 Association, the regional planning commissions, and other interested
2 stakeholders. The report shall include recommendations as to how to clarify
3 what is and what is not an accessory on-farm business. The report shall
4 address the current land use planning requirements for farms and farms with
5 accessory on-farm businesses and whether different types of businesses
6 associated with farms and farming require different levels of review. The
7 report may consider whether or not the location of such businesses is relevant
8 and may consider the designation or adoption of agricultural business
9 innovation zones with different levels of review.

10 Sec. 40. DESIGNATED AREA REPORT; APPROPRIATION

11 (a) The sum of \$150,000.00 is appropriated from the General Fund to the
12 Department of Housing and Community Development in fiscal year 2023 for
13 the purpose of hiring a consultant to evaluate the State designation programs
14 established in 24 V.S.A. chapter 76A pursuant to subsection (b) of this section.

15 (b)(1) The Department of Housing and Community Development shall hire
16 an independent consultant to:

17 (A) review and assess the State designation programs and incentives
18 established in 24 V.S.A. chapter 76A that recognize and invest in the vitality of
19 Vermont's compact settlement areas; and

1 (B) conduct statewide stakeholder outreach to support the evaluation
2 of and future improvements to the programs, including participation by State,
3 regional, municipal, and advocacy and nongovernmental organizations.

4 (2) The consultant shall make recommendations on how to:

5 (A) objectively define and map existing compact settlements as a
6 basis for broader recognition;

7 (B) improve the consistency between and among regional plans and
8 future land use maps;

9 (C) modernize these programs, including consideration of program
10 reform or consolidation;

11 (D) make the designation programs and associated benefits more
12 accessible to municipalities;

13 (E) apply regulatory and nonregulatory benefits;

14 (F) strengthen designation and incentives as a platform for place-
15 based economic development, climate action, complete streets, and equity and
16 efficiency of public investment and service delivery;

17 (G) implement the smart growth principles established by 24 V.S.A.
18 § 2791; and

19 (H) achieve the goals established in 24 V.S.A. § 4302.

1 (3) On or before July 15, 2023, the consultant shall submit a written
2 report to the General Assembly with its findings and any recommendations for
3 legislative action.

4 Sec. 41. REPORT; NATURAL RESOURCES BOARD

5 (a) On or before December 31, 2023, the Chair of the Natural Resources
6 Board shall report to the House Committees on Natural Resources, Fish, and
7 Wildlife and on Ways and Means and the Senate Committees on Finance and
8 on Natural Resources and Energy on necessary updates to the Act 250
9 program.

10 (b) The report shall include:

11 (1) How to transition to a system in which Act 250 jurisdiction is based
12 on location, which shall encourage development in designated areas, the
13 maintenance of intact rural working lands, and the protection of natural
14 resources of statewide significance, including biodiversity. Location-based
15 jurisdiction would adjust the threshold for Act 250 jurisdiction based on the
16 characteristics of the location. This section of the report shall consider whether
17 to develop thresholds and tiers of jurisdiction as recommended in the
18 Commission on Act 250: the Next 50 Years Report.

19 (2) How to use the Capability and Development Plan to meet the
20 statewide planning goals.

1 (3) An assessment of the current level of staffing of the Board and
2 District Commissions, including whether there should be a district coordinator
3 located in every district.

4 (4) Whether the permit fees are sufficient to cover the costs of the
5 program and, if not, a recommendation for a source of revenue to supplement
6 the fees.

7 (5) Whether the permit fees are effective in providing appropriate
8 incentives.

9 (6) Whether the Board should be able to assess its costs on applicants.

10 * * * Effective Dates * * *

11 Sec. 42. EFFECTIVE DATES

12 This act shall take effect on July 1, 2022, except that Sec. 11 (Missing
13 Middle Pilot Program) and Sec. 21 (tax sales) shall take effect on passage.