

Summary of S.14 as Introduced

Prepared by Ellen Czajkowski, Legislative Counsel, January 17, 2021

Section 4 of Act 179 of 2020 added a new section of law to Title 27, the Property title. It states that any deed restriction, covenant or other binding agreement added to a deed after January 1, 2021 is invalid if it prohibits land development otherwise allowed under a town's bylaws. It does not affect conservation easements or housing subsidy covenants.

The phrase "land development" as used in the municipal zoning bylaws has a very broad definition and includes most changes that would be made to a property. Also, the phrase "deed restriction, covenant, or other binding agreement" is very broad.

Overall, this language invalidates deed restrictions that prohibit things that are otherwise allowed under a town's bylaws.

After it was enacted, concerns were raised about the breadth of the language, which is likely to invalidate many common deed restrictions, including those used by homeowner associations and those added as part of settlement agreements.

S.14 narrows the language in 27 V.S.A. § 545. It states that deed restrictions added after March 1, 2021 are invalid if they would prohibit accessory dwelling units (ADUs) and development of existing small lots. Those are both things that were addressed in Act 179 and both encourage infill development and increasing housing density. This bill seeks to prevent private parties from overriding the intent of Act 179.

The bill takes effect retroactively on January 1, 2021 in order to avoid invalidating any deed restriction under the prior language.