VERMONT LEGISLATIVE
Joint Fiscal Office
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Fiscal Note

April 23, 2024 Ted Barnett, Fiscal Analyst and Patrick Titterton, Senior Fiscal Analyst

H.687 – An act relating to community resilience and biodiversity protection through land use

As recommended by the Senate Committee on Natural Resources and Energy, Draft 4.1[1]

Bill Summary

The bill would make changes to land use regulations, municipal zoning laws, Act 250, and laws pertaining to the construction and maintenance of housing supply in Vermont. The bill would also restructure the administration of Act 250 with a professionalized Land Use Review Board (LURB). The bill would make appropriations and establish programs and special funds to support housing development and revitalization efforts.

Fiscal Impact

The Joint Fiscal Office (JFO) estimates that the bill would have the following fiscal impacts:

- Changes to the Act 250 process could decrease annual Act 250 Permit Fund revenue beginning in fiscal year 2025.
    - Natural Resources Board (NRB): $900,000 estimated annual revenue loss. This represents approximately 30% of its fee revenue.
    - Agency of Natural Resources (ANR): $70,000 estimated annual revenue loss.
- Implementation of three additional fees could generate an indeterminate increase in Act 250 Permit Fund revenue beginning in fiscal year 2025.
    - A portion of this would result from the transitioning of the Act 250 appeals process from the Environmental Division of the Judiciary to the newly-created LURB. Since appeals require the payment of a fee to the Judiciary, this would result in a negligible annual General Fund revenue loss beginning in fiscal year 2027.
- Appropriations of $67.2 million in fiscal year 2025 from the General Fund.
- Inclusion of three provisions that affect various revenue sources:
    - A property tax freeze for the rehabilitation or new construction in designated downtown development districts, neighborhood development areas, or a new market tax credit area. This exemption is expected to lead to $1.0 million in forgone Education Fund revenue in fiscal year 2025 and $1.8 million in fiscal year 2026.
    - An exemption of blighted properties from the Property Transfer Tax. This would reduce

[1] https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Natural%20Resources/Bills/H.687/Drafts,%20Amendments,%20and%20other%20legal%20documents/H.687~Ellen%20Czajkowski~As%20Voted%20out%20of%20Committee~4-17-2024.pdf

property transfer tax revenues by $400,000 annually, beginning in fiscal year 2025.

- A statutory amendment that would make entrance fees for continuing care communities medical expenses. This would reduce annual General Fund revenue by $500,000.

Summary of General Fund Appropriations and Expected Costs		
Section	**Appropriations**	**Fiscal Year 2025**
15	LURB – Two Attorney Positions	$112,500
43	F&W – Biologist Position	$125,000
61	Superior Court – Judge Position	$168,000
63	Municipal Planning Grant Program	$1,500,000
64	ACCD – Climate Resiliency Position	$125,000
64	ANR – Climate Resiliency Position	$125,000
87	DHCD – VHIP	$5,000,000
88	DEC – Healthy Homes Initiative	$1,000,000
91	DHCD – Middle-Income Homeownership Development Program	$10,000,000
92	VHCB – Perpetually Affordable Housing	$40,000,000
93	DCF – Rental Housing Stabilization	$400,000
94	AHS —Tenant Representation Pilot Program	$1,025,000
95	VSHA – Rent Arrears Assistance Fund	$2,500,000
96	VSHA – Landlord Relief Program	$1,100,000
97	DHCD – First Generation Homebuyer Program	$1,000,000
107	DHCD – Manufactured Home Improvement and Repair Program	$2,000,000
108	DHCD – Mobile Home Technical Assistance	$1,000,000
Total		**$67,180,500**
Section	**Revenue**	**Fiscal Year 2025**
37	ANR Act 250 Fees	-$70,000
37	LURB Act 250 Fees	-$900,000
73	PTT Exemption Threshold	-$110,000
73	PTT Second Homes	$12,850,000
80-82	Property Tax Exemption*	-$1,000,000
84	PTT – Blighted Property Exemption	-$400,000
85	Medical Expense Deduction	-$500,000
Total		**$9,870,000**

*This property tax exemption would affect the Education Fund.

Background and Details

The following sections would have a fiscal impact.

Sections 2-3

Section 3 would establish the LURB to administer the Act 250 program. The LURB would retain the current duties of the NRB in addition to hearing appeals, reviewing the future land use maps of regional plans, reviewing applications' Tier 1A area status, and reviewing the maps that establish Tier 1B areas.

The LURB would consist of five members appointed by the Governor after review and approval from the LURB Nominating Committee. The Committee would be created in the bill and be comprised of two members of the House, two members of the Senate, and two members of the Executive Branch. Legislative members of the Committee would be eligible to receive per diem compensation. The chair and four members of the LURB would be full-time positions.

Section 12

Section 12 would create three fees. The first would apply to anyone filing an appeal, cross appeal, or petition from a District Commission decision or jurisdictional opinion. They would pay a $295 fee unless the LURB approves a waiver based on indigency. Appeals are currently heard through the Environmental Division of the Judiciary. Initial filings would incur a $295 fee, subsequent pleadings a $120 fee, and post judgment motions a $90 fee, all of which would flow to the General Fund. Currently, the number of filings per year is limited, leading to a negligible General Fund impact starting in fiscal year 2027 with the transfer of the appeal process to the LURB.

The second fee would be a $295 fee for any municipality filing an application for Tier 1A status. The third fee would be $295 and apply to any regional planning commission (RPC) filing a regional plan or future land use map that is reviewed by the LURB. Revenue would depend both on the number of towns that file applications and how RPCs file plans and maps. If all 247 municipalities and 11 RPCs were to submit plans, it could generate approximately $76,000 between the two fees. However, it is unclear how many towns will apply for Tier 1A status and when they will apply. Because of this, revenue is likely to be far less than $76,000. RPCs would also have to pay the $295 fee when they resubmit regional plans or land use maps every eight years, generating nominal additional revenue.

Section 15

Section 15 would create two staff attorney positions and four full-time LURB member positions. These positions are in addition to the current full-time chair at the NRB. The bill would appropriate $112,500 from the General Fund in fiscal year 2025 to the NRB for the attorney positions. The LURB Board positions would be appointed on or after July 1, 2025, and therefore do not require a fiscal year 2025 appropriation. NRB has indicated that the attorneys will be needed at the start of fiscal year 2026 but would be used to facilitate the transition for the new board appointed.

Act 182 (2022) and Act 47 (2023) direct NRB to report on "Necessary Updates to the Act 250 Program." In the report, published December 2023, the cost of NRB Board governance and staffing reforms was estimated using the Public Utility Commission's (PUC) operating cost as a model. Using the methodology laid out in the report, the annual cost of the two attorneys and four full-time board members would be approximately $1.18 million.[2] The LURB members would be appointed and begin their positions in fiscal year 2026.

Also in fiscal year 2026, the LURB would appoint an executive director. NRB anticipates the annual cost of the Executive Director to be approximately $160,000. Currently, the NRB Executive Director is funded with American Rescue Plan Act – State Fiscal Recovery (ARPA-SFR) dollars through December 31, 2025. The

[2] https://legislature.vermont.gov/assets/Legislative-Reports/NRB-Necessary-Updates-to-Act-250-Study_FINAL-1.pdf

need for additional funds for this position would be approximately $80,000 in fiscal year 2026 and $160,000 in fiscal years after that.

NRB has indicated that in order to carry out existing work, and in anticipation of needs to implement and administer the new LURB framework, two limited service positions are needed. The annual cost of these positions would be $225,000. Currently, two limited service positions exist and are funded with ARPA-SFR dollars through December 31, 2025. The need for additional funds for these positions would be approximately $112,500 in fiscal year 2026 and $225,000 in fiscal years thereafter.

Section 24

Section 24 would create an Act 250 jurisdictional trigger for the creation or improvement of a new single road of greater than 800 feet or of roads and any associated driveways greater than 2,000 feet, after July 1, 2026. This provision would not affect developments within a Tier 1A or Tier 1B area. This could generate revenue for the Act 250 Permit Fund, however, without information about the number of new developments that would be subject to this rule, JFO is unable to provide an estimate.

Section 29-30

Section 29 would extend the Act 250 exemption for priority housing projects within a designated center through July 1, 2027 and add an exemption to developments within a half-mile of the designated center located within the same municipality. The exemptions would only apply if a development receives a jurisdictional opinion and substantially completes construction by June 30, 2029.

Section 31-32

These sections would extend the Act 250 exemption for electric utility rebuilding of utility lines and related facilities to improve reliability per Act 47 (2023) from January 1, 2026 until December 31, 2030.

Section 37

Section 37 creates two stages of Act 250 exemptions. Interim exemptions, in effect until July 1, 2027, would exempt construction of 75 units within a half-mile of a designated downtown development district, or within new town centers, growth centers, or neighborhood development areas. Interim exemptions would also include housing projects of 50 units or less on ten acres of land within village centers with permanent zoning or subdivision bylaws or within municipalities within a census designated urbanized area with over 50,000 residents within one-quarter miles of a transit route.

The bill would not require Act 250 permitting for the construction of improvements for a hotel or motel converted to permanently affordable housing. The bill would also exempt the construction of improvements for an accessory dwelling unit until July 1, 2027.

The adoption of Tier 1A and Tier 1B areas could create further expansions of areas exempt from Act 250. Municipalities could apply for Tier 1A status starting January 1, 2026 if they meet certain criteria related to flood risk, capital budget, and municipal staffing to support development, zoning and by-law requirements, wastewater infrastructure, and historic and environmental planning. Residential developments in these areas would be exempt from Act 250 and associated permitting fees.

Tier 1B areas would be noted on regional plans developed by RPCs and approved by the LURB if they meet certain requirements related to permanent zoning and bylaws, flood risk, water supply and wastewater infrastructure, and municipal staff available to support the development. Residential or mixed-use developments in these areas would be exempt from Act 250 and related permitting fees if they have 50 housing units or fewer on ten acres or less of land.

This section would reduce Act 250 permitting fees that flow to the Act 250 Permitting Fund, which funds the NRB and the ANR Act 250 Permit Fund. Fees for the NRB are $6.65 per $1,000 of the first $15,000,000 of construction costs. Fees decrease to $3.12 per $1,000 of additional construction costs, up to a maximum of $165,000 per permit. Projects may also be subject to subdivision review fees of $125 per lot created, and a master plan review fee of $0.10 per $1,000 of estimated construction costs.

The changes to permitting requirements in these sections may result in a reduction in fee revenue for the Act 250 Permit Fund of approximately $900,000 beginning in fiscal year 2025 – approximately 30% of permitting and subdivision fee cost revenue. The exact magnitude of revenue loss after interim exemptions in fiscal year 2027 depends on the designation of tier areas by municipalities and RPCs. These areas are likely to be more expansive than the land area covered by interim expansions.

ANR also reviews Act 250 permit applications for compliance with environmental criteria. It receives a portion of Act 250 fees for this work; approximately $200,000 annually. This revenue is to support the full-time employees tasked with completing the work, which incurs a cost to ANR of approximately $380,000 per year. JFO estimates a similar percentage of fee revenue loss for the Act 250 Permit Fund of approximately $70,000 starting in fiscal year 2025.

Section 43
Section 43 would appropriate $125,000 from the General Fund in fiscal year 2025 to the Department of Fish and Wildlife (F&W) for one new permanent classified biologist position to assist in the implementation of this act.

Section 61
Section 61 creates a new permanent judge position in the Superior Court and funds the position with a $168,000 General Fund appropriation in fiscal year 2025.

Section 63
Section 63 would rename the Municipal Planning Grant Program as the Municipal Planning and Resilience Grant Program. It would retain its existing purpose but also support resiliency planning and provide funding to RPCs to increase staff to support municipalities' resiliency efforts.

The bill would appropriate $1.5 million from the General Fund in fiscal year 2025 to the Agency of Commerce and Community Development (ACCD) for the Municipal and Regional Planning and Resiliency Fund.

Section 64
Section 64 would appropriate $125,000 from the General Fund in fiscal year 2025 to ACCD for a permanent full-time position to staff climate resiliency grants from the Municipal Planning and Resilience Grant Program. This section would appropriate $125,000 from the General Fund in fiscal year 2025 to ANR to fund a new permanent full-time position in the Water Investment Division of the Department of Environmental Conservation (DEC). The position would assist in the financing of climate resilience projects from the Special Environmental Revolving Funds.

Section 66
Section 66 would establish the Vermont Community Investment Board (VCIB), that would coordinate funding and benefits for the State Community Investment Program, review proposed regional plan future use maps in conjunction with the LURB, award Downtown and Village Tax Credits, manage the Downtown Transportation Related Capital Improvement Fund program, and review LURB guidelines. VCIB would be comprised of 16 members and meet quarterly.

This section would also modify the downtown and neighborhood designation process. Step 1 would automatically qualify village centers for funding and technical assistance through the Better Places Grant Program. Downtowns and Village Centers that attain a Step 2 or Step 3 designation would be eligible for certain benefits that are currently only available to property holders in areas with a neighborhood designation, such as a $50 cap on ANR-DEC wastewater fees, and an exemption from the land gains tax. Regional plans could also create designated neighborhoods, which in addition to current funding and tax benefits, would be allowed to create special taxing districts currently authorized in Title 24, Chapter 87.

Section 71

Section 71 would make an adjustment to Downtown and Village Center Program Tax Credits. The first would increase the maximum credit for combined costs of qualified code improvements from $75,000 to $100,000. The second would increase the maximum credit for flood mitigation improvements from $75,000 to $100,000.

Section 73

Section 73 would increase the property transfer tax (PTT) exemption for property transfers financed with VHFA, the Vermont Housing and Conservation Trust Fund (VCTF), or USDA-RD assistance from $110,000 to $150,000. JFO estimates the change will reduce PTT revenue by $110,000 annually. This change will reduce revenues available for the funds receiving revenue from the PTT –VCTF, the Municipal and Regional Planning Fund (MRPF), and the General Fund.

Section 73 would also increase the property transfer tax rate on secondary residences from 1.25% to 2.5%. This increase is forecasted to generate approximately $12.85 million in annual revenue.

Section 75-76

Sections 75 and 76 would establish allocations for revenue generated by the 2.5% PTT tax rate increase on secondary residences. Of the revenue generated by this, 60% would be allocated to the VCTF, 23.5% to the MRPF, and 16.5% to the General Fund.

Section 77

Section 77 would add a $2,000,000 allocation to the Act 250 Permit Fund from overall PTT revenue before any of the percentage allocations outlined in sections 28-30. This would be adjusted according to the percentage change in CPI-U inflation in the previous fiscal year.

Section 80-82

These sections would create a new construction or rehabilitation property tax exemption that would freeze the education property tax of qualifying properties for five years. A property would qualify by:

- Being located within a designated downtown development district, village center, neighborhood development area, or new market tax credit area;
- Receiving a "qualifying improvement"; and
- By being used as a principal residence.

JFO forecasts a $1.0 million cost to the Education Fund in fiscal year 2025 for this exemption. The cost would increase in fiscal year 2026 as more properties receive exemptions; it would stabilize as the properties that received exemptions in the first year pass the two-year exemption window.

	FY 2025	FY 2026
Education Fund Costs	$1.0	$1.8

Section 84

Section 84 would exempt transfers of blighted properties, provided that the property is rehabilitated and occupied within three years of purchase.[3] If it isn't rehabilitated within this time, the buyer would pay the tax

[3] Blighted is defined in the bill as "substandard structural or housing conditions including unsanitary and unsafe dwellings and deterioration sufficient to constitute a threat to human health, safety, and public welfare

that would have been due at the time of transfer. The value of housing transferred that would be considered blighted is limited; JFO estimates that this will reduce PTT revenue by $400,000 per year. This would impact VCTF, MRPF, and the General Fund.

Section 85

Section 85 would remove language that limits the medical expense deduction of entrance fees or payments to continuing care communities regulated under 8 V.S.A. § 151 to limits established by the IRS on medical insurance products. Currently, Wake Robin, located in Shelburne, is the only continuing care retirement community in the state regulated under 8 V.S.A. § 151. Removing this language would allow continuing care community costs to be treated as medical expenses on personal income taxes. JFO estimates that this would cost the General Fund $500,000 per year.

Section 86

Section 86 would transition the Vermont Rental Housing Improvement Program (VHIP) from grants to loans. Loans may not exceed $70,000 per unit, for any unit converted from commercial to residential. The maximum loan amount eligible rental housing units will remain unchanged at $50,000. The term length of the forgivable loans will be five years.

Section 87

Section 87 would appropriate $5.0 million from the General Fund in fiscal year 2025 to the Department of Housing and Community Development (DHCD) for VHIP.

Section 91

Section 91 would appropriate $10.0 million from the General Fund in fiscal year 2025 to DHCD for a grant to the Vermont Housing Finance Agency (VHFA) for the Middle-Income Homeownership Development Program.

Section 92

Section 92 would appropriate $40.0 million from the General Fund in fiscal year 2025 to the Vermont Housing and Conservation Board (VHCB) for the production and preservation of affordable housing units including manufactured home communities, permanent homes for those experiencing homelessness, recovery residences, and housing for farm workers and refugees. This appropriation would also fund the construction and preservation of emergency shelters for households experiencing homelessness.

Section 93

Section 93 would appropriate $400,000 from the General Fund in fiscal year 2025 to the Department for Children and Families' Office of Economic Opportunity for a grant to the Champlain Valley Office of Economic Opportunity for the Rental Housing Stabilization Services Program.

Section 94

Section 94 would appropriate $1.0 million from the General Fund in fiscal year 2025 to the Agency of Human Services (AHS) to grant to Vermont Legal Aid for the Tenant Representation Pilot Program.

Section 95

Section 95 would appropriate $2.5 million form the General Fund in fiscal year 2025 to the Vermont State Housing Authority (VSHA) for the Rent Arrears Assistance Fund.

Section 96

Section 96 would appropriate $1.1 million from the General Fund in fiscal year 2025 to VSHA for the Landlord Relief Program to assist landlords eligible to access relief due to participation in the Section 8 project-based voucher program.

Section 97
Section 97 would appropriate $1.0 million from the General Fund in fiscal year 2025 to DHCD to grant to VHFA for the First Generation Homebuyer Program.

Section 107
Section 107 would appropriate $2.0 million from the General Fund in fiscal year 2025 to DHCD to improve mobile home park infrastructure under the Manufactured Home Improvement and Repair Program and to expand the Home Repair Awards program.

Section 108
Section 108 would appropriate $700,000 from the General Fund in fiscal year 2025 to DHCD for a subgrant to the Champlain Valley Office of Economic Opportunity to fund the Mobile Home Park Technical Assistance Services Team.

It would also appropriate $300,000 from the General Fund in fiscal year 2025 to DHCD for a subgrant to the Champlain Valley Office of Economic Opportunity to fund individual resident emergency grants for income eligible mobile homeowners to prevent the loss of housing, remediate unsafe housing, enhance safety, health, and provide relief from the impacts of natural disasters.

Section 113
Section 113 would create the Landlord-Tenant Law Study Committee to review landlord-tenant laws and evictions processes in Vermont. The Committee would be comprised of three House members, three Senate members, a representative from Vermont Legal Aid, a representative from the Vermont Landlords Association, a representative from DHCD, and a representative from the Judiciary. The Committee would be eligible for per diem compensation for not more than six meetings. The cost of the per diem compensation is estimated to be approximately $10,500.