



VERMONT LEGISLATIVE
Joint Fiscal Office

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Fiscal Note

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

As recommended by the House Committee on Environment and Energy, Draft 10.1¹

Bill Summary

This bill would make changes to land use regulations, municipal zoning law, 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 Environmental Review Board (ERB). The bill would further establish programs and special funds for the purpose of supporting revitalization and resiliency 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 revenues starting in fiscal year 2027:
 - Natural Resources Board (NRB): \$900,000 estimated annual revenue loss. This represents approximately 30% of their fee revenue.
 - Agency of Natural Resources (ANR): \$70,000 estimated annual revenue loss.
 - These fee losses are not addressed through appropriations or additional revenue.
- Implementation of three additional fees would generate an indeterminate increase in Act 250 Permit Fund revenues starting in fiscal year 2027.
 - A portion of these fees would result from transitioning the Act 250 appeals process from the Environmental Division of the Judiciary to the ERB. Since these appeals require the payment of a fee to the Judiciary, this would result in a negligible annual General Fund revenue loss starting in fiscal year 2027 from the change of appeals jurisdiction.
- The bill would appropriate \$2.4 million in fiscal year 2025 from the General Fund.
 - \$1.5 million to the Municipal Planning Grant Program
 - \$484,000 for ERB employees
 - \$325,000 for Agency of Commerce and Community Development outreach and one position
 - \$125,000 for one position at the Agency of Natural Resources
- The bill would increase the annual cap on Downtown and Village Center Tax Credits from \$3.0 million to \$5.0 million, which would result in up to \$2.0 million of forgone revenue to the General Fund.

¹[https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Environment/Bills/H.687/Drafts,%20Amendments,%20Legal%20Documents/H.687~Ellen%20Czajkowski~House%20Committee%20on%20Environment%20and%20Energy%20Committee%20Report%20\(8-3-0\)~3-14-2024.pdf](https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Environment/Bills/H.687/Drafts,%20Amendments,%20Legal%20Documents/H.687~Ellen%20Czajkowski~House%20Committee%20on%20Environment%20and%20Energy%20Committee%20Report%20(8-3-0)~3-14-2024.pdf)

Summary of Appropriations and Expected Costs				
Section	Appropriations	Fiscal Year		
		2025	2026	2027
15	ERB Board and Attorneys	484,000	484,000	484,000
42	ACCD - Public Engagement	200,000		
44	Municipal Planning Grant Program	1,500,000		
45	ACCD - Position	125,000	125,000	125,000
45	ANR - Position	125,000	125,000	125,000
Total		2,434,000	734,000	734,000
Section	Revenue	Fiscal Year		
		2025	2026	2027
28-29	ANR Act 250 Fees			(70,000)
28-29	ERB Act 250 Fees			(900,000)
50-51	Downtown and Village Center Annual Cap Increase	(2,000,000)	(2,000,000)	(2,000,000)
Total		(2,000,000)	(2,000,000)	(2,970,000)

Background and Details

The following sections have a fiscal impact.

Sections 3-4

Section 3 would establish the ERB to administer the Act 250 program. The ERB 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 ERB would consist of five members appointed by the Governor after review and approval from the Environmental Review Board Nominating Committee. The Nominating Committee would be created in the bill and is 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 of the ERB would be a full-time position while the other four would be half-time.

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 ERB 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 ERB.

The second fee would be a \$295 fee for any municipality filing an application for Tier 1A status. Lastly, any regional planning commission (RPC) filing a regional plan or future land use map that is reviewed by the ERB would pay a fee of \$295. These fee revenues 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 in total fee revenue. However, it is unclear how many towns will apply for Tier 1A status and when they will apply. Because of this, fee revenue is likely to be far less than \$76,000. RPCs would have to resubmit regional plans or land use maps every 8 years, generating nominal additional revenues along with those renewals.

Section 15

Section 15 would create two staff attorney positions and four half-time ERB member positions. These positions are in addition to the current full-time chair at the NRB. The section appropriates \$484,000 from the General Fund in fiscal year 2025 to the ERB to fund these positions.

Act 182 of 2022 and Act 47 of 2023 directed the NRB to report on “Necessary Updates to the Act 250 Program.” In this report, published December 2023, the costs of NRB Board governance and staffing reforms was estimated using the Public Utility Commission, which also has part-time board members, as a model. Using the methodology laid out in the report, the annual cost of the two attorneys and four part-time board members would be approximately \$700,000, which is not fully covered by the appropriation in this section.²

Sections 28-29

Section 28 would create Tier 1 areas that are exempt from Act 250 under certain conditions. Municipalities could apply for Tier 1A status if they meet certain criteria related to flood risk, capital budget, and municipal staffing to support development, zoning and bylaw requirements, wastewater infrastructure, and historic and environmental planning. Residential developments in these areas would be exempt from Act 250 and associated permitting fees.

Municipalities could have areas designated as Tier 1B 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 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 NRB Act 250 Permitting Fund, which funds the NRB, and the ANR Act 250 Permit Fund. Permitting 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. ANR review of Act 250 permits incurs a \$0.75 per \$1,000 fee for the first \$15,000,000 of construction costs.

The changes to Act 250 permitting requirements in these sections may result in a reduction in fee revenue for the NRB Act 250 Permit Fund of approximately \$900,000 starting in fiscal year 2027. This represents approximately 30% of permitting and subdivision fee cost revenue.

ANR also reviews Act 250 permit applications for compliance with environmental criteria. ANR receives a portion of Act 250 fees for this work that averages approximately \$200,000 annually. This fee revenue is budgeted to support the 2.7 full-time employees tasked with completing this work which incurs a cost to ANR of approximately \$380,000 annually. The Joint Fiscal Office (JFO) estimates a similar percentage of fee revenue loss for the ANR Act 250 Permit Fund; of approximately \$70,000 starting in fiscal year 2027.

The exact magnitude of revenue loss depends on the designation of tier areas by municipalities and RPCs. The criteria for Tier 1A and Tier 1B, which would exempt certain types of developments from Act 250, are expansive and could include most of Chittenden County and towns with permanent zoning.

Section 42

Section 42 would task RPCs with contracting with a communications consultant to conduct a public engagement process on land use, climate change, and related legislation enacted during the 2024 legislative session. The campaign will include public service announcements, a statewide website, a series of regional public meetings, and other materials. The bill would appropriate \$200,000 from the General Fund in fiscal year 2025 to the Agency of Commerce and Community Development (ACCD) to hire the consultant, create the website, and other public engagement related costs.

Section 44

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

Section 44 would rename the Municipal Planning Grant Program as the Municipal Planning and Resilience Grant Program. This program 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 ACCD for the Municipal and Regional Planning and Resiliency Fund.

Section 45

Section 45 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). This position would assist in the financing of climate resilience projects from the Special Environmental Revolving Funds.

Section 47

Section 47 would establish the Vermont Community Investment Board (VCIB), which would coordinate funding and benefits for the State Community Investment Program, review proposed regional plan future use maps in conjunction with the ERB, award Downtown and Village Tax Credits, manage the Downtown Transportation Related Capital Improvement Fund program, and review ERB guidelines. VCIB would be comprised of 16 members and meet quarterly.

This section would also modify the downtown and neighborhood designation process. 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 State wastewater fees, and an exemption from the land gains tax (which flows to the General Fund). Step 3 designation would also allow the area to become eligible for a Tax Increment Financing District. Like other sections of the bill, estimating the impact of these changes is challenging without knowing which areas RPCs will propose for designation or the portion of State fees or tax revenues generated in those areas.

Sections 50-51

Section 50 would make two adjustments 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 51 would increase the aggregate annual cap for Downtown and Village Center Program Tax Credits from \$3.0 million to \$5.0 million, which would result in forgone revenue to the General Fund. Developers who may claim the credit against their personal income tax liabilities upon completion of an eligible project. Typically, these credits are sold to banks or insurance companies who may claim them against their tax liabilities.

Agency of Natural Resources Fiscal Impacts

As noted, ANR currently receives a portion of Act 250 fee revenue amounting to approximately \$200,000 annually. Currently ANR's role in administering its role in Act 250 reviews requires 2.7 full-time employees at a cost of approximately \$380,000 annually.

ANR has noted that the bill is expected to increase the Agency's staffing and fiscal costs. The bill would expand Act 250 jurisdiction outside of Tier 1 areas in two ways. First, the implementation of the Road Rule in Section 24 will trigger automatic Act 250 permitting for developments involving a single new road 800 feet or longer or a combination of new roads and driveways 2,000 feet or longer. Second, the Tier 3

jurisdictional category in Section 26 would trigger Act 250 and require ANR review. Both of these changes would require ANR staff review and engagement. The bill would also task the ERB with collaborating with ANR to map and identify Tier 3 areas.

In Section 21, the bill would add new Act 250 criteria regulating forest blocks and connecting habitat utilizing ANR mapping. This would require ANR to maintain and update maps enable this regulation, which would require ANR staff. Section 21 also tasks the ERB with collaborating with ANR to adopt rules and requirements relating to forest blocks and connecting habitat.

ANR has indicated that it anticipates needing an additional 2.5 full-time employees in the Department of Fish and Wildlife (DFW) and 1.5 full-time employees in the Office of Planning to implement this bill. ANR anticipates the cost of these employees to amount to approximately \$315,000 in the DFW and \$200,000 in the Office of Planning. The bill currently does not authorize or provide funding for these positions.