VERMONT LEGISLATIVE
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Fiscal Note

April 30, 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] and further recommended by the Senate Committee on Finance, Draft 5.1[2]

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 $5.4 million in fiscal year 2025 from the General Fund.
  - Transfers approximately $5.1 million to the Vermont Housing and Conservation Trust Fund (VHCTF) and approximately $1.3 million to the Municipal and Regional Planning Fund (MRPF).
- Inclusion of three provisions that affect various revenue sources:

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[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

[2] https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Finance/Bills/H.687/Drafts,%20Amendments,%20Other%20Legal%20Documents/H.687~Kirby%20Keeton~%20Draft%205.1,%204-26-2024~4-26-2024.pdf

- 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 located areas impacted by the July floods or Franklin and Addison counties. This exemption is expected to lead to $900,000 in forgone Education Fund revenue in fiscal year 2025, $1.6 million in foregone revenue in fiscal year 2026, and $2.4 million in foregone revenue in fiscal year 2027.

Additional PTT Revenue Generated and Allocations	
10,850,000	PTT Second Homes (Sec. 73)
(90,000)	PTT Exemption Threshold (Sec. 73)
(900,000)	NRB (Sec. 77)
9,860,000	**Remainder**
3,443,000	Additional Dollars to GF (Sec. 74)
5,137,260	Additional Dollars to VHCTF (Sec. 74)
1,279,740	Additional Dollars to MRPF (Sec. 74)
9,860,000	**Total**

Appropriations from Additional General Fund Revenue		
Sec. 74	GF Allocation of New PTT Revenue	3,443,000
Sec. 15	NRB Staff Attorneys	112,500
Sec. 87	DHCD - VHIP	1,900,000
Sec. 90	First Generation Home Buyer Program	1,000,000
Sec. 91	Land Access Opportunities Board	1,000,000
Sec. 107	DHCD - Manufactured homes	1,000,000
Sec. 113	Eviction Study Committee	10,500
Sec. 113b	NRB Board Members	400,000
Total Appropriations		**5,423,000**
Balance		**(1,980,000)**

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.[3] 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 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

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

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 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.

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 would reduce PTT revenue by $90,000 in FY25 and $110,000 in FY26 and beyond. This would be made effective August 1, 2025.

Section 73 would also increase the property transfer tax rate on secondary residences that are fit for year-round habitation and not associated with a landlord certificate from 1.25% to 2.5%. This increase is forecasted to generate approximately $10.85 million in additional revenue in FY2025 and approximately $13.30 million in annual revenue in FY2026 and beyond. This would be made effective August 1, 2025.

Section 74
Section 74 would not withstand the marginal PTT revenue generated by the increase rate on secondary residences and the change in exemption threshold. This section would transfer $5.1 million to the VHCTF and approximately $1.3 million to the MRPF in fiscal year 2025 from the revenues anticipated from the proposed PTT changes. The remaining revenue from these sources would be allocated to the General Fund in fiscal year 2025.

Section 77
Section 77 would add a $900,000 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 three 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.
- Being located in areas that were declared a federal disaster between July 1, 2023 and October 15, 2023 and eligible for individual assistance or located in Franklin or Addison county. This would include all counties in the state except for Grand Isle, Essex, and Bennington.

JFO forecasts a $900,000 cost to the Education Fund in fiscal year 2025 for this exemption. The cost would increase in fiscal year 2026 and fiscal year 2027 as more properties receive exemptions; it would stabilize as the properties that received exemptions in the first year pass the three-year exemption window.

	FY 2025	FY 2026	FY 2027
Education Fund Costs	$900,000	$1.6 million	$2.4 million

Absent any other changes in policy, the statewide homestead property yield and/or statewide nonhomestead property tax rate will need to be adjusted to raise sufficient funds to account for this exemption.

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 $1.9 million from the General Fund in fiscal year 2025 to the Department of Housing and Community Development (DHCD) for VHIP.

Section 90
Section 90 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 91
Section 91 would appropriate $1.0 million from the General Fund in fiscal year 2025 to VHCB to administer the Land Access and Opportunity Board.

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 bill would appropriate $10,500 from the General Fund in fiscal year 2025 to the General Assembly for the costs of the Study Committee's per diem compensation.

Section 113b
Section 113b would appropriate $400,000 from the General Fund in fiscal year 2025 to the NRB to compensate the four new full-time LURB board members. This would provide funding for the board

members to begin their work prior to the full transition of the NRB to the LURB.