

Senate Committee on Natural Resources and Energy
Comments on S.311 (Draft No. 3.1, 2/16/2024) &
H.687 (As Passed by the House – Unofficial Version) from
Charlie Baker on behalf of
Vermont Association of Planning and Development Agencies
April 11, 2024

General comments – Thank you for your work addressing our housing crisis, improving environmental protection, and strengthening the planning and permitting processes to better support implementation of municipal and regional plans.

Below are some general comments and then specific comments for your review based upon an assumption that H.687 is the foundational bill to which sections will be added, deleted, or amended. **Bolded comments are high priority** from our perspective. Comments in **Green** are new and in **Yellow** are updated from our comments yesterday. Thank you for your consideration.

General Comments:

1. **H.687 Sec.1 - Please add language to the purpose section (and maybe the bill title) noting the importance of addressing the housing crisis through regulatory reform of Act 250, clarification of municipal zoning reforms adopted last year in S.100, tax policy, and grant programs.**
2. **H.687 New - Please add the following sections of S.311 to H.687: Sections 2-22 and sections 27-67.** These are all of the sections related to interim Act 250 jurisdictional changes and exemptions, S.100 municipal zoning clarifications, tax credits, taxes, housing programs, rental data collection, short-term rentals, flood risk disclosure, mobile homes, age-restricted housing, and reports and studies. We are recommending that the long-term Act 250 sections (23-26) not be carried over from S.311 to H.687 as the relevant provisions have been worked out in H.687. Suggested modifications to Sections 2-22 in S. 311 are included below.
3. We recognize the need for immediate exemptions or jurisdictional changes. Therefore, **we would like to see the final bill include short term Act 250 exemptions similar to those in S.311 while starting the process for the longer-term system change in the planning, permitting, and designation processes as proposed in H.687.** We believe the new system outlined in H.687 with permanent Act 250 jurisdictional changes will more strongly support implementation in the medium and long term of municipal and regional plans by encouraging housing in areas planned for growth and better protecting the State's natural resources. RPCs will support this work so that all communities can participate regardless of local capacity.

S.311 Specific Comments:

1. Sec. 2 and Sec. 3: To make this consistent with H. 687, we recommend modifying these sections to create a new “Interim Tier 1A” and “Interim Tier 1B” and including reference to this in H. 687 Sec. 32. This will provide immediate exemptions as contemplated by S. 311, using the framework of exemptions in H. 687 Sec. 32.

- a. Interim Tier 1A would exempt all housing from Act 250 in the following areas: Designated Downtowns (including an additional ½ mile boundary), New Town Centers, Neighborhood Development Areas, Growth Centers.
- b. Interim Tier 1B would exempt housing up to 50 units on 10 or less acres from Act 250 in the following areas: Village Centers with permanent zoning or subdivision regulations, including an additional ¼ mile boundary.
- c. These changes should apply to not only new permits but also amendments to existing permits (original and amended jurisdiction).

2. We recommend adding language to make clear that priority housing projects may continue until the end of 2026 and also be allowed in downtowns and village centers permanently.

- i. (IV) Notwithstanding any other provision of law to the contrary, until December 31, 2026, the construction of a priority housing project located entirely within a designated downtown development district, designated neighborhood development area, or a designated growth center.
- ii. (V) Notwithstanding any other provision of law to the contrary, the construction of a priority housing project in a municipality with permanent zoning and subdivision regulations and located entirely within a State Designated Downtown or Village Center approved as part of the Environmental Review Board review of regional plan future land use maps under 10 V.S.A. § 6033(b).

4. Page 6, Sec. 3, lines 1-5 – Subsection (bb) - Delete this section if recommendation #1 is implemented.
5. Page 6, Sec. 4, lines 7-14 – We support providing signs to promote public awareness and engagement. We recommend that paying for the sign be the responsibility of the applicant and that the NRB develop guidance for the requirements of the sign (color, size, type size, development concept, etc.) so that there is consistency across the state.
6. Page 7, Sec. 5, line 1 – We recommend that the NRB should be required to provide a rule for this provision so as to have consistency across the Districts: “(2) The Natural Resources Board ~~may by rule~~ shall by rule allow the acceptance of a permit or permits or approval of any State agency...”
7. **Page 7, Sec. 5, line 5 – We recommend that criteria (9) and (10) be removed from this provision because a municipal permit is not necessarily evidence of conformance with either of these criteria.**

8. Page 9, Sec. 8, line 4 – If priority housing projects remain, we recommend retaining 10 V.S.A. § 6081(p).

H.687 Specific Comments:

1. **Page 1, Sec. 1 – We recommend adding more about the need for housing in the purpose section as we recommended above. Perhaps the title of the bill could also be updated to include housing.**
2. Page 2, Sec. 2, lines 11-12 – We recommend striking the Capability and Development Plan language from this section as that plan does not exist and the function would be replaced by the regional plans.
3. Page 47-49, Secs. 26 and 27 – We support rulemaking to develop a clear and reasonable definition of Tier 3.
4. **Page 50, Sec. 28 -Tier 1B requirements need to be simplified. We would prefer to see this section reference the requirements for a village area in Sec. 40 on page 89-90, the proposed 24 V.S.A. § 4348a(a)(12)(C).**

(c) To obtain a Tier 1B area status under this section the regional planning commission shall demonstrate to the Board that the municipalities with Tier 1B areas meet the following requirements as included in subsection 24 V.S.A. § 4348a(a)(12)(C): *[see comment #8 below for additional proposed edits]*

(A) The municipality has requested to have the area mapped for Tier 1B.

(B) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with 24 V.S.A. § 4350.

(C) The municipality has adopted permanent zoning and subdivision bylaws in accordance with 24 V.S.A. §§ 4414, 4418, and 4442.

(D) The area excludes identified flood hazard and fluvial erosion areas, except those areas containing preexisting development in areas suitable for infill development as defined in § 29-201 of the Vermont Flood Hazard Area and River Corridor Rule unless the municipality has adopted flood hazard and river corridor bylaws applicable to the entire municipality that are consistent with the standards established pursuant to subsection 755(b) of this title (flood hazard) and subsection 1428(b) of this title (river corridor).

(E) The municipality has water supply, wastewater infrastructure, or soils that can accommodate a community system for compact housing development in the area proposed for Tier 1B.

(F) Municipal staff or contracted capacity adequate to support development review and zoning administration in the Tier 1B area.

5. **We recognize some municipalities may want Act 250 jurisdiction to remain. Therefore, we suggest providing an option for a municipality to opt out similar to ten-acre vs one-acre towns in 10 V.S.A. § 6001(3)(A)(iii).** This could be a new subsection (d) on page 50-51.

d) A municipality that is eligible for Tier 1B status may formally request of the Board that they be excluded from Tier 1B jurisdictional change if the municipality has elected by ordinance, adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply.

6. Page 51-52, Secs.28a-28c – We recommend deleting these interim exemptions in favor of those recommended for S.311 above in comment #1 on page 2.

7. **Page 53-54, Sec. 29, lines 1+ – Tier 1A requirements should be simplified.** We are concerned that there are too many requirements proposed here for even our largest communities to achieve Tier 1A status. **The below proposed edits align with the current NDA requirements which will save the ERB time when they develop guidance.**

1. To obtain a Tier 1A area status under this section, a municipality shall demonstrate to the Board that it has each of the following:

(A) A municipal plan that is approved in accordance with 24 V.S.A. § 4350. The boundaries are consistent with Downtown or Village Centers (24 V.S.A. § 4348a(a)(12)(A)) and Planned Growth Areas (24 V.S.A. § 4348a(a)(12)(B)) in an approved Regional Plan future land use map with any minor amendments.

(B) Municipal flood hazard planning, applicable to the entire municipality, in accordance with 24 V.S.A. § 4382(12) and the guidelines issued by the Department pursuant to 24 V.S.A. chapter 139.

(C) The municipality has adopted flood hazard and river corridor bylaws, applicable to the entire municipality, that are consistent with or stronger than the standards established pursuant to subsection 755(b) of this title (flood hazard) and subsection 1428(b) of this title (river corridor) or the proposed Tier 1A area excludes the flood hazard areas and river corridor.

(D) A capital budget and program pursuant to 24 V.S.A. § 4430 that make substantial investments in the ongoing development of the Tier 1A area, are consistent with the plan's implementation program, and are consistent with the smart growth principles defined in 24 V.S.A. chapter 139.

(E) Permanent zoning and subdivision bylaws that do not include broad exemptions that exclude significant private or public land development from requiring a municipal land use permit.

(F) Urban form bylaws The municipality has permanent land development regulations for the Tier 1A area that further the smart growth principles of 24 V.S.A. chapter 139, adequately regulate the physical form and scale of development, with reasonable provision for a portion of the areas with sewer and water to allow at least

four stories, and conform to the guidelines established by the Board. *[consistent with existing NDA requirements.]*

(D) (G) Historic preservation bylaws for established design review districts, historic districts, or historic landmarks pursuant to 24 V.S.A. § 4414(1)(E) and (F) for the portion of the Tier 1A area that meet State historic preservation guidelines issued by the Department of Housing and Community Development pursuant to 24 V.S.A. chapter 139. The Tier 1A area is compatible with the character of adjacent National Register Historic Districts, National or State Register Historic Sites, and other significant cultural and natural resources identified by local or State government. *[consistent with existing NDA requirements.]*

(H) Wildlife habitat planning bylaws for the Tier 1A area that protect significant natural communities; rare, threatened, and endangered species; and river corridors or exclude these areas from the proposed Tier 1A area. *[defer this to the Tier 3 rulemaking process.]*

(E) (H) Permitted water and wastewater systems or planned improvements have with the capacity to support additional development within the Tier 1A area. The municipality shall have adopted consistent policies, by municipal plan and ordinance, on the allocation, connection, and extension of water and wastewater lines that include a defined and mapped service area to support the Tier 1A area. *[reduce requirements and allow for planned improvements of systems.]*

(J) Municipal staff adequate to support coordinated comprehensive and capital planning, development review, and zoning administration in the Tier 1A area. *[not needed.]*

(K) The applicable regional plan has been approved by the Board. *[covered in revised #1.]*

8. Page 89-90, Sec. 40, lines 11+ - Revise the future land use description and criteria for Village areas as follows so that the criteria for mapping and Tier 1B status are consolidated in this section of statute:

(C) Village areas. These areas include the traditional settlement area or a proposed new settlement area, typically comprised of a cohesive mix of residential, civic, religious, commercial, and mixed-use buildings, arranged along a main street and intersecting streets that are within walking distance for residents who live within and surrounding the core. *Village areas shall have one of the following: municipal water, wastewater, or land development regulations. If no municipal wastewater is available, the area must have soils that are adequate for wastewater disposal.* They provide some opportunity for infill development or new development areas where the village can grow and be flood resilient. These areas include existing village center designations and similar areas statewide, but this area is larger than the village center designation. Village areas must meet the following criteria:

(i) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title.

(ii) The municipality has adopted bylaws and land development regulations in accordance with sections 4414, 4418, and 4442 of this title.

(iii) The Village area has municipal water, or wastewater, or the area must have soils that are adequate for wastewater disposal.

~~(iv)~~ ~~(iii)~~ Unless the municipality has adopted flood hazard and river corridor bylaws, applicable to the entire municipality, that are consistent with the standards established pursuant to 10 V.S.A. § 755b (flood hazard) and 10 V.S.A. § 1428(b) (river corridor), the area excludes identified flood hazard and fluvial erosion areas, except those areas containing preexisting development in areas suitable for infill development as defined in § 29-201 of the Vermont Flood Hazard Area and River Corridor Rule.

9. **Page 94, Sec. 40, lines 1-6 – We recommend this subsection be updated to direct VAPDA to develop a standard methodology for all future land use areas, not just Tier 1B** as follows:

(e) The VAPDA shall develop, maintain, and update standard methodology and process for the mapping of all future land use areas, areas eligible for Tier 1B status under 10 V.S.A. § 6033, and designations under 24 V.S.A. chapter 139.

10. Page 94-95, Sec. 41 – We support this study of regional planning commissions' capacity and consistency.