

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 10, 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. 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).**

If the requirements for Tier 1B remain in Sec. 28, we recommend:

- a. eliminating requirement (A). The idea is to simplify the process of local based jurisdiction, and to encourage housing. Yet 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.”
 - b. eliminating (E) for water and wastewater as each housing project would have to meet those requirements anyway,
 - c. eliminating (F) as this is already addressed when a municipality adopts zoning or subdivision bylaws.
5. Page 51-52, Secs.28a-28c – We recommend deleting these interim exemptions in favor of those in S.311.
 6. **Page 53-54, Sec. 29, lines 1+ – Tier 1A requirements should be simplified.** We have some concern that there may be too many requirements proposed here for even our largest communities to achieve Tier 1A status. **We would prefer to see this section reference the requirements for a planned growth area in Sec. 40 on page 87-89, the proposed 24 V.S.A. § 4348a(a)(12)(B).** This will also reduce confusion and provide more consistency

between regional plans and Tier 1A status approvals by the ERB. We offer some specific suggestions in the next three comments.

- a. Page 53-54, Sec. 29, lines 18-2 – We recommend that the Urban form bylaws requirement be removed as a requirement for Tier 1A as it is already included as a requirement for Downtown designation in Sec. 47 on page 115 subsection (x).
 - b. Page 54, Sec. 29, lines 3-7 – We recommend that the historic preservation bylaws requirement be removed as a requirement for Tier 1A as it is already included as a requirement for Downtown designation in Sec. 47 on page 115 subsection (ix).
 - c. Page 54, Sec. 29, lines 8-10 – We recommend that the wildlife habitat planning bylaws requirement be removed as a requirement for Tier 1A as it will mostly be covered by the requirement to protect river corridors in subsection (C).
 - d. Page 54, Sec.29, lines 11-15 - We recommend that the water and wastewater requirement be removed as a requirement for Tier 1A as it is addressed during the permitting process within the municipality at a project-by-project level and not needed for this planning stage.
7. **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.”
8. Page 94-95, Sec. 41 – We support this study of regional planning commissions’ capacity and consistency.