VERMONT LEGISLATIVE
Joint Fiscal Office
1 Baldwin Street • Montpelier, VT 05633-5701 • (802) 828-2295 • https://ljfo.vermont.gov
Fiscal Note

May 7, 2024 Ted Barnett, Fiscal Analyst and Patrick Titterton, Senior Fiscal Analyst

H.687 – An act relating to land use planning, development, and housing

As passed by the Senate[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) replacing the current Natural Resources Board (NRB) on July 1, 2025. The bill would also make appropriations and establish programs and special funds to support housing development and revitalization efforts, funded by an increase to the property transfer tax (PTT) on second homes.

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 annual NRB fee revenue.
    - Agency of Natural Resources (ANR): $70,000 estimated annual revenue loss.
- **Implementation of three additional fees could increase Act 250 Permit Fund revenue beginning in fiscal year 2025.**
    - A portion of this would be due to the transition of the Act 250 appeals process from the Judiciary's Environmental Division to the newly-created LURB. Since appeals come with a fee to, this would result in a negligible annual General Fund revenue loss for the Judiciary beginning in fiscal year 2027.
- **An increase in the PTT rate on year-round habitable secondary residences without a landlord certificate from 1.25% to 2.5%. This change would generate $10.85 million in additional revenue in fiscal year 2025**
    - The bill would also increase the exemption from the PTT for transfers backed by certain financing programs from $110,000 to $150,000. This would reduce PTT revenues by $90,000 in fiscal year 2025.
    - The NRB would receive $900,000 in annual PTT revenue to replace permitting fee revenue lost

[1] https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0687/H-0687%20Senate%20Proposal%20of%20Amendment%20Unofficial.pdf

due to provisions in the bill.
    - The additional PTT revenue remaining after these changes is estimated to be $9.8 million in fiscal year 2025.
- **Appropriations of approximately $3.5 million in fiscal year 2025 from the General Fund using revenue from PTT changes.**
    - Also includes transfers of 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).
- **A property tax freeze for property rehabilitation or new construction in certain designated areas impacted by flooding in 2023.**
    - This is expected to lead to $1.16 million in forgone Education Fund revenue in fiscal year 2026, $2.44 million in foregone revenue in fiscal year 2027, and $3.90 million in foregone revenue in fiscal years 2028.

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**
3,466,750	Additional Dollars to GF (Sec. 74)
5,113,510	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 Attorney	56,250
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		**3,466,750**

Background and Details

The following sections would have a fiscal impact.

Sections 2-3: Land Use Review Board (LURB) and Nominating Committee

These sections 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 chair and four members of the LURB would be full-time positions. The Nominating 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 for per diem compensation and expense reimbursement

Section 9: Act 250 Fees

Section 9 would create two fees. The first fee would be $295 for any municipality filing an application for Tier 1A status. The second 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, the two fees could generate approximately $76,000 for the Act 250 Permit Fund. However, it is unclear how many towns will apply for Tier 1A status and when they will apply. Therefore, 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 when they resubmit.

Section 10: LURB Positions and Appropriations

Section 10 would create one staff attorney position 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 $56,250 from the General Fund in fiscal year 2025 to the NRB to fund the attorney position for a partial year. The LURB Board positions would be appointed on or after July 1, 2025, and therefore do not require a fiscal year 2025 appropriation. The NRB indicated that two attorneys will be needed at the start of fiscal year 2026 but requested that start early to facilitate the transition for the newly appointed board. The bill would provide partial year funding for one of the positions.

Act 182 (2022) and Act 47 (2023) directed the NRB to report on "necessary updates to the Act 250 program." In the report, published December 2023, the cost of NRB 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 $1.2 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 need for additional funds for this position would be approximately $80,000 in fiscal year 2026 and $160,000 in fiscal years after that.

The 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.

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

Section 18: Accessory On-Farm Businesses, Act 250 Permit Exemption

Section 18 modifies the definition of accessory on-farm businesses and exempts improvements to those businesses from Act 250 permitting. Due to the limited number of current permits issued to on-farm accessory businesses, this change is estimated to have a negligible impact to Act 250 Permit Fund revenues.

Section 19: Act 250 Road Rule

Section 19 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 provision 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 24: Act 250 Exemption for Priority Housing Projects

Section 24 would extend the Act 250 exemption created by Act 47 of 2023 for priority housing projects within a designated center through July 1, 2028, which is one additional year compared to current law. It would also 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. As in other provisions of the bill, the number of new projects that may fall into this exemption category is unknown, so JFO is not able to estimate the additional revenue loss that would result from the expansion of the exemption to priority housing projects within one-half mile of a designated center.

Section 26: Act 250 Exemption for Electric Utilities

Section 26 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. This provision would extend the existing indeterminate loss in Act 250 revenues resulting from the provision through 2030.

Sections 27-31: Tier 1A and Tier 1B creation, Act 250 Permit Requirements

Sections 27-31 create 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 mile 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.

The exemptions contained in this section would reduce Act 250 permitting fees that flow to the Act 250 Permit Fund, which funds NRB and ANR activities related to the Act 250 process. 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 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 supports 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 62: Municipal Planning Grant Program

Section 62 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: State Community Investment Program

Section 66 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 LURB, award Downtown and Village Tax Credits, manage the Downtown Transportation and 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 24 V.S.A. chapter 87.

These provisions could expand the number or size of the areas that are ultimately designated and eligible to receive the benefits outlined above. The exemption on the land gains Tax or Special Fund revenues from the $50 cap on ANR stormwater fees could reduce General Fund revenue. The exact magnitude of this change ultimately depends on the number of areas designated on land use maps.

Section 71: Downtown and Village Center Program Tax Credits

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. These provisions are not expected to have an overall fiscal impact, as they do not modify the $3.0 million cap on annual tax credits for the program

Section 73: Property Transfer Tax (PTT) Amendments
Section 73 would increase the PTT exemption for property transfers financed with the Vermont Housing Finance Agency (VHFA), the Vermont Housing and Conservation Trust Fund (VHCTF), or U.S. Department of Agriculture Rural Development (USDA-RD) assistance from $110,000 to $150,000. JFO estimates the change would reduce PTT revenue by $90,000 in fiscal year 2025 and $110,000 in fiscal year 2026 and beyond. This would be made effective August 1, 2024.

Section 73 would also increase the PTT 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 $10.9 million in additional revenue in fiscal year 2025 and approximately $13.30 million in annual revenue in fiscal year 2026 and beyond. This would be made effective August 1, 2024.

The net revenue impact from the increased exemption and rate on secondary residences is expected to be $10.7 million in fiscal year 2025 and $13.2 million in fiscal year 2026.

Section 74: Allocations of Additional PTT Revenue
Section 74 would notwithstand the statutory allocations for PTT revenue and allocate the additional net revenue generated from the increased rate on secondary residences. This section would transfer $5.1 million to the VHCTF and approximately $1.3 million to the MRPF in fiscal year 2025. Remaining revenue would be allocated to the General Fund.

Section 77: PTT Allocation to Act 250 Permit Fund
Section 77 would allocate an additional $900,000 to the Act 250 Permit Fund from overall PTT revenue before any of the statutory allocations to the VHCTF, MRPF, and General Fund. This would be adjusted according to the percentage change in Consumer Price Index for All Urban Consumers (CPI-U) inflation in the previous fiscal year.

Sections 79-82: Property Tax Exemptions
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 half-mile of a designated downtown development district, village center, neighborhood development area, or new market tax credit area. Properties in a tax increment finance (TIF) district would qualify if the legislative body of a municipality voted to allow the exemption in those areas;
- Receiving a "qualifying improvement";
- Being used as a principal residence; and
- Being located in an area that was declared a federal disaster between July 1, 2023 and October 15, 2023 and eligible for Federal Emergency Management Agency (FEMA) 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 $1.16 million cost to the Education Fund starting in fiscal year 2026 for this exemption. The cost would increase in fiscal years 2027 and 2028 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 2026	FY 2027	FY 2028
Education Fund Forgone Revenue	$1.16 million	$2.43 million	$3.90 million

Absent any other changes in policy, the statewide homestead property yield and/or statewide nonhomestead property tax rate may need to be adjusted to account for the forgone revenue from this exemption.

Section 86: Vermont Rental Housing Improvement Program (VHIP)

Section 86 would make changes to the Vermont Rental Housing Improvement Program's (VHIP) five-year forgivable loans. For any unit converted from commercial to residential, loans could be made for up to $70,000. The maximum loan amount for eligible rental housing units, $50,000, will remain unchanged.

This section would also place requirements on ten-year forgivable loans offered through the program. These include requirements relating to affordability, accessibility, and housing status of prospective tenants. For each year that recipients meet the requirements of the program 10% of the loan amount is forgiven.

Section 90: Appropriation for First-Generation Homebuyer Program

Section 90 would appropriate $1.0 million from the General Fund in fiscal year 2025 to the Department of Housing and Community Development (DHCD) to grant to VHFA for the First-Generation Homebuyer Program.

Section 91: Appropriation for Land Access and Opportunity Board

Section 91 would appropriate $1.0 million from the General Fund in fiscal year 2025 to the Vermont Housing and Conservation Board (VHCB) to administer the Land Access and Opportunity Board. Act 182 of 2022 specified that the Land Use and Opportunity Board would work with organizations to "improve access to woodlands, farmland, and land and home ownership for Vermonters from historically marginalized or disadvantaged communities who continue to face barriers to land and home ownership."

Section 107: DHCD Mobile Home Infrastructure

Section 107 would appropriate $1.0 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 113: Appropriation for Landlord-Tenant Law Study Committee

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 two House members, two 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, a person who has experienced an eviction who is appointed by the Champlain Valley Office of Economic Opportunity. The Committee would be eligible for per diem compensation for not more than six meetings. The estimated cost of per diem compensation is estimated to be $7,700 in fiscal year 2025. The bill would appropriate $10,500 from the General Fund in fiscal year 2025 to the General Assembly for the cost of eligible Committee members' per diem compensation.

Section 113a: Long-Term Affordable Housing Study Committee

Section 113a would create the Long-Term Affordable Housing Study Committee to create a plan to develop affordable housing. The Committee would be comprised of two member of the House, two members of the Senate, representatives from VHCB, VHFA, DHCD, the Department for Children and Families (DCF), and a representative from the Housing and Homelessness Alliance of Vermont. Eligible committee members could receive per diem compensation for up to 12 meetings. This estimated cost is approximately $15,000 in fiscal year 2025.

Section 113b: Appropriation to NRB

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 on July 1, 2025.