

Summary Comparison of Act 47 Commission Draft Legislation and Executive Branch Draft Legislation

Topic	H.197 and S.104	19-0040 (Act 47 Commission Bill)
Federally funded transportation projects	Exempts from Act 250 review transportation projects funded in whole or in part with federal dollars.	Not included per the Commission’s report.
Unique resource areas	Proposes a petition process for establishing Act 250 jurisdiction over unique resource value areas.	Not addressed.
Accessory on-farm businesses	Includes accessory on-farm businesses in the agricultural exemption to Act 250 jurisdiction.	Not included per the Commission’s report.
Forest-based enterprises	Allows forest-based enterprises to accept delivery of raw materials for a minimum of 60 days per year. Places restrictions on District Commissions’ abilities to impose time-of-day delivery restrictions. Allows forest-based enterprises to deliver fuel to end users outside of normal business hours during the heating season. Gives forest-based enterprises a credit against primary agricultural soils mitigation.	Not included per the Commission’s report.
Flood Hazard Areas and River Corridors	Replaces the definitions of “floodway” and “floodway fringe” with definitions of “flood hazard area” and “river corridor,” which are the terms used in ANR’s regulations.	Makes the same change, but through slightly different means.
Designated Centers	Exempts designated centers from Act 250 jurisdiction provided the municipality obtains an enhanced designation. To obtain an enhanced designation, the municipality must demonstrate it has met certain additional land use planning, environmental regulation, and capital planning requirements.	Exempts some designated centers from Act 250 jurisdiction provided the municipality assumes responsibility for reviewing projects’ compliance with the Act 250 criteria.
Industrial parks	Creates a process for reviewing and appealing application fee waiver requests.	Not included per the Commission’s report.

	Creates a process for refunding a portion of an application fee when actual construction costs are less than the estimate upon which the fee was based. ¹	
Forest blocks and connecting habitat	Adds both terms to Criterion 8.	Adopts an avoid, minimize, and mitigate approach to forest and connecting habitat fragmentation. The mitigation will work somewhat like prime agricultural soils mitigation. Requires ANR to map forest blocks.
Presumptive permits	Clarifies the type of evidence that is admissible to rebut certain presumptive permits. The standard is derived from the standard for obtaining a new trial based on newly discovered evidence.	To get a presumption, the Board must first determine that the permit was issued as part of a program that reliably meets its goals. Lowers the standard for rebutting a presumption. Any evidence contrary to the presumed fact will be sufficient. There are no presumptions for permits that authorize the discharge of pollutants into impaired waters.
Trails	Specifies that trails in the Vermont Trails System fall within the jurisdictional threshold for municipal, county, and State purposes. Requires the NRB to create rules regarding jurisdiction over trails, including a mechanism for releasing jurisdiction when certain prerequisites are met.	No recommendation.
Capabilities and Development Plan	Not addressed.	Adds a section on greenhouse gas emissions and climate change. Amends the section on utilization of natural resources to include ecosystem protection. Requires the Board, ACCD, ADS, and ANR to update the capability and development maps.

¹ The Act 194 Industrial Park working group report suggests some additional and related changes to Act 250 Rule 21 (master plans and partial findings).

		Deletes the prohibition against using the findings in the plan as criteria in the consideration of permit applications.
Structural changes	Not addressed.	<p>Renames Act 250 as the Vermont Act on Land Use and the Environment (VALUE).</p> <p>Renames the NRB the Vermont Environmental Review Board.</p> <p>Converts the Board into a professional or semi professional board that hears Act 250 appeals and appeals from ANR permits.</p> <p>Appeals from the Board would go to the Supreme Court.</p> <p>The Environmental Division would continue to hear municipal appeals and enforcement matters.</p> <p>Codifies existing caselaw that states Act 250 has supervisory authority over all environmental matters respecting projects triggering jurisdiction.</p> <p>Prohibits anyone who receives or has received during the previous two years a significant portion of his or her income from a permit holder or permit applicant from hearing appeals of water pollution control permits.</p>
Jurisdictional	No whole sale restructuring of jurisdictional triggers proposed.	<p>Proposes the following tiers of jurisdictional triggers:</p> <ol style="list-style-type: none"> 1. Commercial development on tracts of land involving more than 10 acres. 2. Commercial development on more than one acre in towns without permanent zoning and subdivision. 3. Commercial development on a to-be-determined amount of acreage or the creation of a to-be determined number of lots in a rural and working lands area.

		<ol style="list-style-type: none"> 4. Construction of improvements or a subdivision of lands in a critical resource area. 5. Commercial development in an interchange area. Adds an additional criterion for these areas. <p>Reduces the 2,500-foot jurisdictional triggers to 2,000 feet. Creates a process for releasing parcels from Act 250 jurisdiction.</p>
Energy generation facilities	Not addressed.	Considers one of two jurisdictional changes. First, asserting jurisdiction over facilities above 2,000 feet. Second, asserting jurisdiction over merchant generation facilities. Both would transfer jurisdiction of some projects from the PUC to Act 250.
Commercial purpose	Not addressed.	Defines commercial purpose to nullify the decision in <i>In re Laberge Shooting Range</i> , 2018 VT 84, that a facility accepting donations must depend on those donations to trigger Act 250 jurisdiction.
Air pollution	Not addressed.	<p>Splits Criterion 1 into two parts; one for air pollution and one for water pollution.</p> <p>For air pollution:</p> <ol style="list-style-type: none"> 1. Requires projects to meet Clean Air Act and DEC regulation requirements. 2. Establishes an avoid, minimize, and mitigate strategy for greenhouse gases emissions. 3. Requires projects to be designed to withstand the effects of climate change.
Water pollution	Not addressed.	Splits Criterion 1 into two parts; one for air pollution and one for water pollution.

		Does not significantly alter the water pollution components of the criterion.
Transportation and traffic	Not addressed.	Amends Criterion 5 to reference interference with bicycle, pedestrian, and other transit infrastructure. Projects within interchange areas may be denied under Criterion 5.
Burdens of proof	Not addressed.	Shifts the burden under Criterion 8(A) (necessary wildlife habitat and endangered species), new (B) (forest fragmentation), and new (C) (connecting habitat) to the applicant. On appeals, the permittee has the burden of production and the appellant has the burden of persuasion.
Energy efficiency	Not addressed.	Adds energy efficiency to the criterion that currently addresses energy conservation.
Public investments	Not addressed.	Adds to Criterion 9(K) publicly conserved lands, designated centers, and Downtown and Village Center Tax Credit investments.
Local and regional plans	Not addressed.	Requires regional planning commissions to approve local plans and requires the NRB to approve regional plans. Regional plans must identify critical resource areas.