



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: House Committee on Ways and Means
From: Daniel Dickerson, Senior Fiscal Analyst
Date: February 24, 2021
Subject: Fish & Wildlife proposed Act 250 billback language

The Joint Fiscal Office has been asked to provide some fiscal insight on the Act 250 billback language for the Dept. of Fish & Wildlife (F&W), which has been proposed in the past and was included in the Governor's FY22 proposed budget language. The JFO reached out to F&W for information on past Act 250-related work as well as other relevant fiscal information. The data provided by F&W underlies the initial analysis in this memo.

F&W Act 250 work

F&W tracks Act 250 consultation in the form of logged employee hours. These hours are tracked concurrently with hours spent doing other consultation work, such as Sec. 248 reviews and chip harvest reviews. F&W monetized these hours going back five fiscal years and the costs are provided below.

Fiscal Year	2016	2017	2018	2019	2020
F&W Regulatory Review Cost	\$495,959	\$441,688	\$469,183	\$432,789	\$407,812

F&W informed the JFO that roughly 45% of this regulatory work consists of Act 250 reviews, or approximately \$200,000 in regulatory review costs per year on average based on the data above. The billback language that F&W is seeking would allow Act 250 review costs to be recouped. Due to the ebbs and flows of Act 250 review work from year-to-year, **F&W believes that billback proceeds would typically range from \$100,000 to \$250,000 per year.**

For some context, the Agency of Natural Resources (ANR) Central Office receives proceeds from a \$0.75 fee on each \$1,000.00 of proposed construction costs (up to \$15m) for Act 250 projects in order to cover its Act 250 review costs. A five-year picture of those fee proceeds is shown below.

Fiscal Year	2016	2017	2018	2019	2020
ANR - Act 250 fee proceeds	\$200,193	\$220,562	\$193,242	\$202,918	\$175,672

This fee revenue data was pulled from the VISION financial system by the JFO. Based on the ANR fee data, the assumption can be made that the F&W billbacks would result in annual proceeds similar to those of the \$0.75 per \$1,000.00 ANR fee.

Scope of F&W Billbacks

The proposed language in the Governor's budget would authorize F&W to bill applicants for the costs of participating in permit applications before a district commission. F&W would be required to provide notice to applicants as well as an initial cost estimate. These costs may pertain to employee application review, submissions, comments, and testimony before a district commission related to impacts of a project on natural resources. When compared to existing statutory billback language for ANR that exists in 3 V.S.A. §2809, a few distinctions can be made strictly relating to the costs and not the statutory scope:

1. The existing statutory language contains a cost floor of \$3,000, below which costs may not be billed back. This floor does not apply in all instances. The current proposal does not have a cost floor.
2. The existing statutory language contains a billback ceiling of \$50,000 for instances when ANR does not have internal capacity to process a request. Per statute, this ceiling does not appear to impact Act 250 review costs but does impact reviews of other applications. The current proposal does not have a billback ceiling.

The Commissioner of F&W noted in correspondence with the JFO the intent that billbacks would typically not apply to the first few hours of regulatory work if the proposal were to be enacted. However, the language does not impose any minimum or maximum billback limits.

Budget Impact

Per the Commissioner, proceeds from the billback language are not assumed in order to balance the F&W budget in FY22. The Commissioner did inform the JFO that the ongoing costs of the regulatory work undertaken by F&W on an annual basis, with no form of reimbursement, has limited the department's ability to fill currently vacant positions.