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Joint Fiscal Office

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Fiscal Note

April 21, 2022

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S.234 An act relating to changes to Act 250

As recommended by the House Committee on Natural Resources, Fish, and Wildlife

<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Natural/Bills/S.234/Drafts,%20Amendments,%20and%20Legal%20Documents/S.234~Ellen%20Czajkowski~As%20Recommended%20by%20House%20Committee%20on%20Natural%20Resources,%20Fish,%20and%20Wildlife~4-20-2022.pdf>

Bill Summary

This bill proposes miscellaneous changes to statutes relating to municipal and regional planning, zoning, and development. The bill proposes the establishment of municipal bylaw grants, to be administered by the Dept. of Housing and Community Development (DHCD), to aid municipalities in updating land use and development regulations. The bill would also require DHCD to hire a consultant to write report evaluating various State designation programs and proposes an appropriation for this work.

The bill also proposes changes to laws concerning Act 250 and changes to the structure, function, and name of the Natural Resources Board. A five-member board called the Environmental Review Board is charged with hearing appeals of Act 250 permit decisions in addition to keeping the current duties of the Natural Resources Board. It also establishes the Environmental Review Board Nominating Committee, consisting of seven members, three from the Executive Branch and four members of the legislature.

The bill is effective on passage, except section 14, which is effective on September 1, 2024 and sections 36-37, which are effective on July 1, 2024.

Fiscal Impact

JFO estimates the bill would have the following fiscal impacts in FY 2023:

1. **Municipal Bylaw Grants (sec. 4-6) - \$650,000 allocation of total Municipal and Regional Planning Fund appropriation in FY 23 (can be accommodated within House budget construct)**
2. **Designated Area Report sec. 23) - \$150,000 General Fund appropriation in FY23 (not funded in House budget)**
3. **Natural Resources Board restructuring (sec. 25-41) - \$384,000 General Fund appropriation (funded by House in H.492)** The bill, as proposed by House Natural Resources, proposes a \$384,000 appropriation from the General Fund to the Environmental Review Board in FY 2023 to

pay for new staff and operating costs. This is the same funding language as H.492.

Background and details

Section 1 proposes to allow for neighborhood development area (NDA) boundaries to include flood hazard and fluvial erosion areas so long as there is preexisting development and the area is suitable for infill. NDA benefits include exemption from land gains tax, and reduced fees for ACT 250 permits and for wastewater permits. Any fiscal impact from this provision is estimated to be minimal.

Sections 4-5 propose to create Municipal Bylaw Modernization Grants for municipalities to update land use and development bylaws. The grants would be administered by DHCD and the bill proposes to allow them to recover costs up to 6% of a municipality's allocation from the Municipal and Regional Planning Fund. The bill proposes to fund the grant by carving out \$650,000 from the increased funding in FY23 to the Municipal and Regional Planning Fund.

Section 19 proposes to adjust the mitigation fee calculation for wood products manufacturers that propose to convert primary agricultural soils. The ratio for calculating the mitigation fee would be set at 1:1. These fees are remitted to the Vermont Housing and Conservation Trust Fund to be used to protect primary agricultural soils. The revenue impact from this provision is unknown.

Section 23 proposes to require that DHCD hire a consultant to write a report evaluating State designation programs in 24 V.S.A. chapter 76A. The bill contains a \$150,000 General Fund appropriation to DHCD in FY23 to perform this work. The FY23 appropriations bill, as passed by the House, did not include this appropriation. New funds would be needed to support this appropriation.

Section 26 would re-structure the existing Natural Resources Board to the Environmental Review Board and would establish Board membership as one full-time Chair and four additional half-time members.

Section 27 would establish a Environmental Review Board Nominating Committee. Four of the members would be legislators and entitled to per diems and expenses when meetings occur outside of the legislative session.

Section 30 would require the appointment of an Executive Director. This is an existing position that has not been filled for several years.

Section 33 outlines a new appeals process for which the Environmental Review Board is responsible.

Section 35 proposes a new \$295 fee for filing of an appeal with the Board. The Board estimates that there would be approximately 10-20 appeals filed each year, resulting in \$3,000 to \$6,000 in new revenues.

Section 38 would create five new positions at the Environmental Review Board:

- One Staff Attorney I
- Four half-time Environmental Review Board members, starting no later than July 1, 2023

Section 38 also appropriates \$384,000 to the Environmental Review Board from the General Fund in FY 2023 for the new positions and additional operating costs required to implement the appeals process established in this bill.

Budget context and future fiscal obligations

While the bill includes an appropriation to address some of the new costs in FY23, all new costs would be ongoing and would require funding in future years. The Natural Resources Board is primarily funded through Act 250 fees, which are deposited in the Act 250 Permit special fund. The Board also receives some

General Fund annually. Fee revenues and General Fund appropriations have not kept up with the cost to operate the Board. The Act 250 Permit fund has been in a deficit since the end of fiscal year 2019. The new costs from this bill would exacerbate the special fund deficit in future years without 1) additional ongoing General Fund support, or 2) fee increases. However, fee increases alone would not address the entirety of the funding need.

Table 1. S.234 Environmental Review Board - Appropriation and Costs, FY23 and future years		
	FY23	Out years
FY23 General Fund appropriation	\$384,000	
H.492 costs		
New – Staff Attorney I (FY23 cost dependent on timing of hire) – full year estimated	\$105,000	\$105,000 annually
Fill vacant Executive Director position (FY23 cost dependent on timing of hire) – half year estimated	\$80,000	\$160,000 annually
New – Four half-time ERB members (FY23 cost dependent on timing of appointments) – half year estimated for each member	\$170,000	\$420,000 annually
Per diems for legislators as members of new Nominating Committee	\$4,000	\$4,000 annually
Misc. operating costs (office space, furniture, etc.)	\$25,000	\$25,000 annually
Other misc. new costs (travel, mileage, expert witnesses) – <i>from Natural Resources Board</i>		\$30,000 annually
Total new annual costs	\$384,000	\$744,000 annually
<i>Remaining funding need</i>	<i>(\$0)</i>	<i>(\$744,000)</i>