

S.234 An Act relating to changes to Act 250  
As Passed HNRFW  
20 April 2022

Sec.	Citation	Summary
<b>Municipal Zoning</b>		
1	24 V.S.A. § 2793e	<p>This section would allow multiple towns to file joint applications for Neighborhood Development Areas (NDAs). It allows NDAs to include areas in flood hazard areas if they are suitable for infill development as defined under ANR’s rule. If the NDA does include flood hazard areas, the local bylaws must contain provisions consistent with ANR’s model Flood Hazard and River Corridor bylaws. It strikes the requirement that NDAs to have either a municipal sewer or an approved community or alternative wastewater system. It requires that an NDA have a density of 4 residential units of any kind within its zoning districts.</p>
2	24 V.S.A. § 2793b	<p>It requires that a New Town Center have a density of 4 residential units of any kind within its zoning districts.</p>
3	24 V.S.A. § 4449	<p>No municipal land use permit for a site plan or conditional use shall expire in less than two years.</p>
4	24 V.S.A. § 4306	<p>It amends the existing Municipal Grant program to allow some of the funds to go to the new grants established in Sec. 5. § 4306 already has grant program to give municipalities funds for municipal planning projects, which DHCD administers. The program is broad and projects can range from developing a town plan to adopting new permanent or temporary bylaws or updating bylaws. It also amends 24 V.S.A. § 4306 to allow DHCD to use up to 6% of funds from the municipal allocation to administer the grant programs.</p>
5	24 V.S.A. § 4307	<p>Adds a new section, 24 V.S.A. § 4307. The Municipal Bylaw Modernization Grant Program is created to provide towns with funding to modernize their bylaws to increase housing density and opportunity. The grants shall be administered by DHCD, which shall issue guidelines on the grant applications by Sept. 1, 2022. These grants are more specific than the existing grants. They require that a town seek to update their bylaws in smart growth areas to increase density.</p>
6		<p>It provides that, to the extent that increased funding is provided in fiscal year 2023 to the Municipal and Regional Planning Fund, \$650,000.00 shall be used for Municipal Bylaw Modernization Grants established in 24 V.S.A. § 4307.</p>

7	24 V.S.A. § 4414	Prohibits towns from requiring more than one parking space per bedroom for ADUs.
<b>Act 250</b>		
8	10 V.S.A. § 6001	Raises cap on number of PHPs that can be exempt from Act 250 in small towns from 25 to 50 units Updates definitions of: “flood hazard area,” “river corridor,” “mixed income housing” and “priority housing project” It also changes the definition of mixed income housing, so the calculation of affordable housing units is adjusted based on number of bedrooms. It expands the definition of priority housing projects in neighborhood development areas to included “mixed use” development. Currently, in NDAs, phps must consist exclusively of housing.
9	10 V.S.A. § 6081	Amends the exemption section of Act 250. It simplifies the exemption for priority housing projects so that no permit or permit amendment is needed, including for permits on existing projects that will include priority housing projects.
10	10 V.S.A. §6084(f)	Repeals 10 V.S.A. § 6084(f), the simplified process that currently exists for amending permit conditions for phps. Directly connected to Sec. 9.
11	10 V.S.A. § 6086	Updates Criterion 1(D) to use the ANR definitions
<b>Municipal Response to Act 250 Requests</b>		
12	10 V.S.A. 6086(g)	Requires towns to respond to requests from Act 250 applicants within 90 days or the application shall be deemed to have no unreasonable burden under criteria 6&7
<b>Forest Blocks</b>		
13	10 V.S.A. § 6001	Adds definitions related to forest blocks and connecting habitat to be used in criterion 8C
14	10 V.S.A. § 6086(a)(8)	Adds new criterion to Act 250- 8C which requires applicants to not cause undue adverse impacts to forest blocks, connecting habitats, and rare and irreplaceable natural areas.
15		Rulemaking for new Criterion 8C- forest blocks and connecting habitat
16	10 V.S.A. § 127	Requires ANR to map forest blocks and connecting habitat and to establish procedures for updating maps.
<b>Wood Product Manufacturers</b>		
17	10 V.S.A. § 6001	Definitions for Wood Product Manufacturers
18	10 V.S.A. § 6086(c)	Specifies permit conditions for Wood Product Manufacturers, allowing some operation on nights, weekends, and holidays for deliveries from forestry operations and for deliveries of fuel wood.

19	10 V.S.A. § 6093	It reduces the fee for primary ag soil mitigation for wood products manufacturers. It currently would be between 2:1-3:1, but this lowers it to 1:1. That money goes to VHCB to conserve prime ag soils elsewhere.
<b>Jurisdiction in 1-acre towns</b>		
20		Intent language to clarify that the change in Sec. 21 is supposed to reflect the current practice and not change how jurisdiction is calculated in 1-acre towns.
21	10 V.S.A. § 6001	Amends the language to make the jurisdictional trigger for 1-acre towns identical to the language for 10-acre towns.
<b>Reports</b>		
22		Report on Act 250 Jurisdiction Over Agricultural Businesses due by Jan 1, 2023 from the NRB
23		Designated Area Report; \$150,000 to DHCD to hire a consultant to review the Designated Area Program. Report due July 1, 2023.
24		Report from NRB to report to General Assembly on various Act 250 topics including: how to transition to location-based jurisdiction, how to use the Capability and Development Plan, the effectiveness of the current fee structure, and assessment of current staff levels.
<b>H.492</b>		
25		Purpose section.
26	10 V.S.A. § 6021	Amends the statute which establishes the Natural Resources Board. This section changes the name of the Board to the Environmental Review Board. The Board shall have 5 members appointed by the Governor after applicants are reviewed by the Environmental Review Board Nominating Committee. The Chair shall be a full-time position, and the other four members shall be half-time positions. It adds language for types of skills sought and encourages diversity in the members of the Board. Terms are for 5 years. There are no alternates. Terms start on July 1 and end on June 30. Vacancies are to be filled for remainder of term. Members may seek reappointment. Members are only removable by the other Board members for cause after notice and a hearing, using procedures adopted by the Board. Retiring members may remain part of a case until it is concluded.
27	10 V.S.A. § 6032	Adds a new section which establishes the Environmental Review Board Nominating Committee. The Nominating Committee shall advertise vacancies on the Board, review applicants for Board positions, and recommend qualified candidates to the Governor. The Committee shall be made up for 3 members of the Executive Branch appointed by the Governor, with at least one from the Dept of HR; 2 members of the House appointed by the Speaker; and 2 members of the Senate appointed by the Committee on Committees. Terms for Committee members shall last for 2 years.
28	10 V.S.A. § 6025	It directs the Board to adopt rules of procedure for hearing appeals.

29	10 V.S.A. § 6027	<p>Amends the powers of the Board. It adds language reaffirming the supervisory authority of the Board and District Commissions. It requires the Board to publish its decisions online. It gives the Board the power to hear appeals. This is in addition to the Board’s existing duties in statute, which include:</p> <ul style="list-style-type: none"> <li>• administer oaths, take depositions, subpoena and compel the attendance of witnesses, and require the production of evidence</li> <li>• enter upon lands of parties before it and for investigations</li> <li>• apply and receive grants</li> <li>• manage workload of District Commissions.</li> <li>• allow for joint hearings</li> <li>• publish index of decisions, including its own</li> <li>• manage process for issuing land use permits</li> <li>• initiate enforcement</li> <li>• initiate and hear petitions for revocation of permits (this is a change; the Environmental Court hears these petitions currently)</li> <li>• hear appeals for fee refund requests</li> </ul>
30	10 V.S.A. § 6022	<p>It gives the Board authority to hire additional permanent personnel. It also states that the Board shall hire an Executive Director. The duties of the Executive Director shall be:</p> <ol style="list-style-type: none"> <li>(1) supervising and administering the operation and implementation of Act 250 and the Board’s rules;</li> <li>(2) assisting the Board in its duties and administering Act 250;</li> <li>(3) employing such staff as may be required to carry out the functions of the Board; and</li> <li>(4) preparing an annual budget for submission to the Board.</li> </ol>
31	10 V.S.A. § 6084	<p>It shifts the burden of providing notice of applications to the District Commissions and requires notice be posted on the Board’s website.</p>
32	10 V.S.A. § 6086(f)	<p>Strikes reference to appeals going to E-Court and clarifies that requests to stay a permit that has been appealed should be made to the Board (not the Court). <b>NEW FROM H.492</b></p>
33	10 V.S.A. § 6089	<p>Provides the procedure for appeals. Appeals of jurisdictional opinions and permit decisions go to Board, with fee of \$295. To appeal, must have party status which requires participation at hearings before District Commission. Board shall hold a de novo hearing on the appeal. The hearing shall be in the town or as close as possible to the site at issue in the appeal. Appeal must be filed within 30 days of a decision by District Commission. It adds limits to the types of prehearing discovery that may be used. Prefiled expert witness testimony must follow VT Rules of Civil Procedure. For non-expert witnesses, interrogatories are limited to ID of witness and summary of testimony. Parties may request to enter land at issue. Parties may not use depositions, unless allowed by the Board.</p> <p>Appeals of Board decisions go to the Supreme Court. Appeal to Supreme Court is limited to objections raised</p>

34	10 V.S.A. § 6007	It gives the Board authority to hear appeals of JOs issued by district Coordinators. Appeals must be filed within 30 days.
35	10 V.S.A. § 6083a	Establishes \$295 as the filing fee for filing appeals with the ERB.
36	10 V.S.A. chapter 220	It removes the Environmental Division's authority to hear Act 250 permit and JO appeals. It strikes the references to Act 250 from the chapter.
37	4 V.S.A. § 34	Amends the jurisdiction of the Environmental Division to remove its jurisdiction over revoking Act 250 permits because the Board now has the authority.
<b>Appropriation; transition; effective dates</b>		
38		Appropriates \$384,000 to the ERB for a new staff attorney and the salaries of the 4 new half-time Board members.
39		Transfers the personnel of the NRB to the ERB.
40		Gives the Environmental Division the authority to finish work on pending appeals until July 1, 2024.
41		Gives revision authority to Leg Counsel to change the references to the NRB to the ERB.
42		The bill is effective on passage Except- Sec. 14 (new criterion 8(C)) shall take effect on September 1, 2024 after the rules are adopted. Secs. 36-37, which are the sections on the authority of the Environmental Division, are effective on July 1, 2024, when the Board takes over the appeals.