



# MEMORANDUM

State of Vermont  
Natural Resources Board  
10 Baldwin Street  
Montpelier, VT 05633-3201  
<https://nrb.vermont.gov/>

TO: Joint Fiscal Office, House Committees on Appropriations and on Ways and Means and the Senate Committees on Appropriations and on Finance

FROM: Sabina Haskell, Natural Resources Board Chair

DATE: December 15, 2023

RE: Natural Resources Board Fee Report for the 2024 Legislative Session

Act 78 of 2023 (H.494) Section E.127, directs the Natural Resources Board (NRB) to prepare a comprehensive fee report for each fee in existence on July 1, 2023. Below is a listing of the legislative directives under Section E.127 and the NRB's responses to each directive. Also attached is a table which provides additional detail.

1. **The statutory authorization and termination date if any.**  
See Natural Resources Board Fee Report for 2024 Legislative Session table (columns D and F).
2. **The current rate or amount and date the fee was last set or adjusted by the General Assembly or Joint Fiscal Committee.**  
See Natural Resources Board Fee Report for 2024 Legislative Session table (columns J and K).
3. **The Fund into which the fee revenues are deposited.**  
See Natural Resources Board Fee Report for 2024 Legislative Session table (columns G and H).
4. **The revenues derived from each fee in the previous five fiscal years.**  
See answers included in the Natural Resources Board Fee Report for 2024 Legislative Session table (columns L, M, N, P and R). Please note that several assumptions were used when summarizing this data:
  - a. Fee refunds under 10 V.S.A. 6083a(e), fee waivers under 10 V.S.A. 6083a(f) and fee adjustments due to negotiated settlement agreements are not accounted for in this analysis. The number and types of fee refunds, fee waivers and applications with negotiated settlement agreements can vary widely by year based on a number of factors. As a best estimate, total fee revenue derived from Act 250 applications can be reduced collectively for the NRB and ANR between approximately \$50,000 – \$250,000 per year due to fee refunds, fee waivers and applications with negotiated settlement agreements.
  - b. For applications that had a fee calculated below the minimum allowable fee or above the maximum allowable fee, those fees were rounded up or down to meet the minimum or maximum fee as appropriate. Rounding amounts are included under the actual receipts for each fiscal year under the application fee for construction costs 10 V.S.A. § 6083a (a)(1).
  - c. If an application fee was received in two payments in separate fiscal years, the total application fee is assumed to be received in the earlier fiscal year.

- d. Applications that are fee exempt are not included in this analysis. For example, applications proposed for a municipal or state purpose are fee exempt.

Please also note that some discrepancies were identified in the Vision accounting system by the NRB when undertaking this analysis. The values presented in this analysis are considered by the NRB to be more accurate than those resulting from Vision queries.

**5. The number of instances that each fee was paid in the two most recent fiscal years.**

See answers included in the Natural Resources Board Fee Report for 2024 Legislative Session table (columns O and Q). The instances of payment are reported. Also included are the number of applications or cases per year where those instances of payment occurred.

**6. A projection for fee revenues in the current fiscal year and the next fiscal year.**

See answers included in the Natural Resources Board Fee Report for 2024 Legislative Session table (columns S and T). Note that a Compound Annual Growth Rate (CAGR) over the five-year period (FY19 – FY23) was used to estimate FY24 and FY25 projected receipts except for Master Plan (10 V.S.A. § 6083a (a)(5)) projected receipts. Master Plan projected receipts were calculated using an average of actual receipts over the five-year period as projected receipts calculated using a CAGR yielded unrealistically high values.

**7. A description of the service or product provided or the regulatory function performed.**

The NRB oversees the administration of Act 250, Vermont's land use and development law. The Act 250 permitting process is implemented by nine District Commissions that serve specific geographic areas. District Commission decisions are made through a public, quasi-judicial process to assure that subdivisions and developments comply with the 10 criteria of Act 250 to ensure the protection of health, safety and welfare. The criteria evaluate a projects' impact on natural resources, town and state infrastructure, and municipal resources. The District Commissions that review applications are composed of citizen members and are supported by NRB staff. The NRB is also responsible for the enforcement of permits, issuing jurisdictional opinions on the applicability of Act 250, participating in Act 250 appeals to the Superior Court, Environmental Division, administrative services and promulgating environmental and land use policies, procedures and rules.

**8. The relationship between the revenue raised and the cost of the service, product, or regulatory function supported by the fee.**

The NRB collects fees from the review of Act 250 applications and enforcement proceedings. Act 250 application fees are paid by the applicant submitting an Act 250 application. Enforcement fees are paid by the person the enforcement action is taken against.

The NRB Chair and 24 staff are full-time employees. NRB Board members and District Commissioners are paid on a per diem basis. Approximately 90% of NRB expenditures are allocated to personnel services, while only 10% of costs are allocated to operational expenses. Note: not included in this staffing statement are 3 limited-service exempt positions under ARPA funds that expire in December 2025.

Approximately 80% of NRB revenue is generated by application fees and enforcement costs through the NRB's Special Fund and approximately 20% of NRB revenue is received through an appropriation from the General Fund. Prior to 2015, the last time many NRB fee rates were changed, Special Fund revenue composed only 71% of NRB revenue while 29% was sourced from the General Fund.

**9. The amount of the fee if it would have been adjusted by inflation since the fee was last set.**

See answers included in the Natural Resources Board Fee Report for 2024 Legislative Session table. Note that the Personal Consumption Expenditures (PCE) price index and the Implicit Price Deflator for State and Local Government (NIPA) index were used to estimate fee adjustments due to inflation and those results are presented in separate columns (columns V and W, respectively).

**10. For any fees deposited in a special fund, the percent of the special fund that the fee represents.**

See answers included in the Natural Resources Board Fee Report for 2024 Legislative Session table (column I). Note that percentages are based on information from 2023 only and do not account for the 50% fee reduction for residential projects located in Neighborhood Development Areas.

**11. Whether any comparable fees exist in other jurisdictions.**

The Adirondack Park Agency provides land use regulation in New York State's Adirondack Park. The Adirondack Park Agency has a similar regulatory framework and covers a similar land area in regulatory territory to the NRB, but the Adirondack Park Agency provides some additional services and has a larger staff than the NRB. The Adirondack Park Agency is fully funded through General Fund support. To our knowledge the Adirondack Park Agency does not charge application fees within their regulatory program.

[https://apa.ny.gov/about\\_agency/index.html](https://apa.ny.gov/about_agency/index.html)

**12. Any policies that might affect the viability of the fee amount.**

The NRB would like to highlight that the HOME Act (Act 47 of 2023) includes new Act 250 exemptions for residential projects in designated downtowns and neighborhood development areas and new Act 250 exemptions for rebuilding electric distribution lines. These new exemptions from Act 250 took effect on July 1, 2023, and sunset in 2026. The new exemptions are likely to reduce annual Special Fund revenues for the NRB. To that end, the NRB has assessed all residential development projects permitted by Act 250 from 2018-2021 and utility line projects permitted between 2015-2022. Based on a review of those applications, the NRB estimates that the HOME Act would result in a reduction in Special Fund revenue of approximately \$94,680/year for new residential exemptions and approximately \$25,620/year for new utility line exemptions (\$120,300 total per year). In addition, the HOME Act also expands an exemption for priority housing projects and includes a pathway for municipal master plan permitting for certain municipalities. It should be noted that these other HOME Act provisions may also result in a reduction in Special Fund revenue.

Additionally, the NRB is currently litigating provisions of our existing fee waiver statute (10 V.S.A. 6083a(f)) related to a large-scale development project in Chittenden County. This pending litigation has the potential to further undermine the NRB's existing application fee structure and could result in a further reduction to Special Fund revenue. Since a final decision on this appeal has not yet been issued, the possible Special Fund revenue reduction is currently unknown.

**13. Any other relevant considerations for setting the fee amount.**

Currently, Act 250 and the operations of the NRB are the subject of several high-profile legislative studies, with significant legislative priorities - including housing - all of which could have major implications on fee revenue.

Per the JFO fee study instructions, fee calculations reflect the realities of the NRB fee structure today. The NRB recommends that this fee report not be used to influence potential legislative policy and governance decisions in 2024 and that operational issues, such as our fee structure, be revisited once that work is completed.

The studies under consideration in the 2024 Legislative session include:

- a. “Necessary Updates to the Act 250 Program” contemplates a framework of location-based jurisdiction that would allow for exemptions in “development-ready” areas of the state. Although there is no way to calculate the loss in fees, as an example, Chittenden County projects alone currently account for approximately 40% of NRB Special Fund fees. Likewise, the study considers a change to the NRB governance structure that would increase the NRB operating budget.
- b. [Designation2050VT study](#) proposes a simplified process for municipalities to be approved for Act 250 fee exemptions, tax credits and other incentives as they look to redevelop and update their communities.
- c. [VAPDA Future Land-use Mapping study](#) also addresses how location-based jurisdiction can encourage development by exempting certain areas of the state from Act 250.
- d. [VAPDA Municipal Delegation study](#) examines the feasibility of delegating administration of Act 250 permits to municipalities, which, if adopted, would decrease fees and at the same time potentially add compliance/enforcement responsibilities to the NRB.

cc Rachel Lomonaco, NRB Business Director  
Peter Gill, NRB Executive Director

**Natural Resources Board Fee Report for 2024 Legislative Session**

| Department | Fee Name   | Fee Description<br>Include service or product provided or regulatory function performed, who pays the fee, and fee assessment frequency.  | Statutory Reference        | Fee Setting Authority | Termination Date (if any) | Fund Number Receiving Fee Revenue | Fund Name Receiving Fee Revenue | % of Fund, based on total fund revenue | Current Fee   | Last Year Changed (Leg. Session)                              | FY 2019 Actual Receipts                      | FY 2020 Actual Receipts                      |
|------------|--|---|----------------------------|-----------------------|---------------------------|-----------------------------------|---------------------------------|--|---|---|--|--|
| Column A   | Column B   | Column C  | Column D                   | Column E              | Column F                  | Column G                          | Column H                        | Column I                               | Column J  | Column K  | Column L                                     | Column M                                     |
| NRB        | Act 250 Application Fee<br>Construction project review                     | For applications for projects involving construction, \$6.65 for each \$1,000.00 of the first \$15,000,000.00 of construction costs, and \$3.12 for each \$1,000.00 of construction costs above \$15,000,000.00.  | 10 V.S.A. § 6083a (a)(1)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 91.2%                                  | \$6.65 for each \$1,000.00 of the first \$15,000,000.00 of construction costs, and \$3.12 for each \$1,000.00 of construction costs above \$15,000,000.00                             | 2015  | \$ 1,968,558.95                              | \$ 1,872,882.81                              |
| NRB        | Act 250 Application Fee<br>Subdivision review                              | For applications for projects involving the creation of lots, \$125.00 for each lot.  | 10 V.S.A. § 6083a (a)(2)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 2.9%                                   | \$125.00 per lot created  | 2015  | \$ 42,625.00                                 | \$ 28,625.00                                 |
| NRB        | Act 250 Application Fee<br>Oil, gas and fissionable source material review | For applications for projects involving exploration for or removal of oil, gas, and fissionable source materials, a fee as determined under subdivision (1) of this subsection or \$1,000.00 for each day of Commission hearings required for such projects, whichever is greater.  | 10 V.S.A. § 6083a (a)(3)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 0.0%                                   | \$1,000.00 per day of Commission hearings   | 1998  | \$ -   | \$ -   |
| NRB        | Act 250 Application Fee<br>Earth extraction review                         | For applications for projects involving the extraction of earth resources, including sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of: a fee as determined under subdivision (1) of this subsection; or a fee equivalent to the rate of \$0.02 per cubic yard of the first million cubic yards of the total volume of earth resources to be extracted over the life of the permit, and \$0.01 per cubic yard of any such earth resource extraction above one million cubic yards. Extracted material that is not sold or does not otherwise enter the commercial marketplace shall not be subject to the fee. The fee assessed under this subdivision for an amendment to a permit shall be based solely upon any additional volume of earth resources to be extracted under the amendment. | 10 V.S.A. § 6083a (a)(4)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 0.8%                                   | \$0.02 per cubic yard of the first million cubic yards to be extracted, and \$0.01 per cubic yard of any such earth resource extraction above one million cubic yards                 | 2011  | \$ 18,911.84                                 | \$ 22,634.43                                 |
| NRB        | Act 250 Application Fee Master plan review                                 | For applications for projects involving the review of a master plan, a fee equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in current dollars in addition to the fee established in subdivision (1) of this subsection for any portion of the project seeking construction approval.  | 10 V.S.A. § 6083a (a)(5)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 1.4%                                   | \$0.10 per \$1,000.00 of construction costs   | 1998  | \$ -   | \$ 125.00                                    |
| NRB        | Act 250 Application Fee<br>Minimum fee                                     | Notwithstanding the provisions of subsection (a) of this section, there shall be a minimum fee of \$187.50 for original applications and \$62.50 for amendment applications, in addition to publication and recording costs. These costs shall be in addition to any other fee established by statute, unless otherwise expressly stated.   | 10 V.S.A. § 6083a (b)      | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 0.2%                                   | \$187.50 per original application or \$62.50 for amendment application  | 2015  | \$ 9,937.50                                  | \$ 6,562.50                                  |
| NRB        | Act 250 Application Fee<br>Maximum fee                                     | In addition, in no event shall the fee for an individual permit or permit amendment application, including each individual permit or permit amendment application seeking approval for any portion of a project involving a master plan, exceed \$165,000.00.   | 10 V.S.A. § 6083a (a)(6)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | n/a                                    | \$165,000.00 per application  | 2015  | summed under other categories as appropriate | summed under other categories as appropriate |
| NRB        | Act 250 Application Fee<br>Neighborhood Development Area fee reduction     | Fees for residential development in a Vermont neighborhood or neighborhood development area designated according to 24 V.S.A. § 2793e shall be no more than 50 percent of the fee otherwise charged under this section. The fee shall be paid within 30 days after the permit is issued or denied.  | 10 V.S.A. § 6083a (d)      | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | n/a                                    | n/a   | 2008  | \$ (36,433.92)                               | \$ (9,291.24)                                |
| NRB        | Act 250 Certification of actual construction costs                         | A Commission or the Natural Resources Board may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.   | 10 V.S.A. § 6083a (g)      | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 3.3%                                   | Varies - calculated on the difference from estimated construction costs presented in an application and actual construction costs once construction is complete                       | 1998  | \$ 156,183.03                                | \$ 203,376.48                                |
| NRB        | Act 250 Enforcement<br>Out of pocket expenses                              | Reimbursement attributable to the resolution of a violation under authority that the Natural Resources Board enforces.  | 10 V.S.A. Chs. 151 and 201 | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             | 0.1%                                   | Varies - calculated based on work performed   | 2011  | \$ 16,034.20                                 | \$ 13,427.38                                 |
| NRB        | Act 250 Enforcement<br>Civil citations                                     | Enforcement penalties associated with civil citations and administrative penalties.   | 10 V.S.A. Chs. 151 and 201 | Legislature           | n/a                       | 10000                             | General Fund                    | n/a                                    | For civil citations, not more than \$3,000.00. For administrative penalties, not more than \$42,500.00 for each determination of a separate violation with a maximum of \$170,000.00. | For civil citations 2010<br>For administrative penalties 2009 | \$ 76,050.47                                 | \$ 77,523.31                                 |
| ANR        | Construction project review (ANR)  | An additional \$0.75 for each \$1,000.00 of the first \$15,000,000.00 of construction costs shall be paid to the Agency of Natural Resources to account for the Agency of Natural Resources' review of Act 250 applications.  | 10 V.S.A. § 6083a (a)(1)   | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             |  | \$0.75 for each \$1,000.00 of the first \$15,000,000.00 of construction costs   | 2015  |  |  |
| ANR        | Certification of actual construction costs (ANR)                           | A Commission or the Natural Resources Board may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.   | 10 V.S.A. § 6083a (g)      | Legislature           | n/a                       | 21260                             | Act 250 Permit Fund             |  | Varies - calculated on the difference from estimated construction costs presented in an application and actual construction costs once construction is complete                       | 1998  |  |  |



**Natural Resources Board Fee Report for 2024 Legislative Session**

| Department | Fee Name   | Fee Description<br>Include service or product provided or regulatory function performed, who pays the fee, and fee assessment frequency.   | Description and amounts of comparable fees in other jurisdictions | Policies affecting the fee amount | Other relevant considerations for setting the fee amount   |
|------------|--|--|---|-----------------------------------|--|
| Column A   | Column B   | Column C   | Column X  | Column Y                          | Column Z   |
| NRB        | Act 250 Application Fee<br>Construction project review                     | For applications for projects involving construction, \$6.65 for each \$1,000.00 of the first \$15,000,000.00 of construction costs, and \$3.12 for each \$1,000.00 of construction costs above \$15,000,000.00.   | see attached memorandum   | see attached memorandum           | Note that fee refunds, fee waivers and fee adjustments due to settlement agreements are not accounted for in this analysis. See attached memorandum for further information. |
| NRB        | Act 250 Application Fee<br>Subdivision review                              | For applications for projects involving the creation of lots, \$125.00 for each lot.   | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Application Fee<br>Oil, gas and fissionable source material review | For applications for projects involving exploration for or removal of oil, gas, and fissionable source materials, a fee as determined under subdivision (1) of this subsection or \$1,000.00 for each day of Commission hearings required for such projects, whichever is greater.   | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Application Fee<br>Earth extraction review                         | For applications for projects involving the extraction of earth resources, including sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of: a fee as determined under subdivision (1) of this subsection; or a fee equivalent to the rate of \$0.02 per cubic yard of the first million cubic yards of the total volume of earth resources to be extracted over the life of the permit, and \$.01 per cubic yard of any such earth resource extraction above one million cubic yards. Extracted material that is not sold or does not otherwise enter the commercial marketplace shall not be subject to the fee. The fee assessed under this subdivision for an amendment to a permit shall be based solely upon any additional volume of earth resources to be extracted under the amendment. | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Application Fee Master plan review                                 | For applications for projects involving the review of a master plan, a fee equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in current dollars in addition to the fee established in subdivision (1) of this subsection for any portion of the project seeking construction approval.   | see attached memorandum   | see attached memorandum           | To set the FY24 and FY25 projected receipts for master plan costs, a simple average was used rather than compound annual growth rate, over the five year period.             |
| NRB        | Act 250 Application Fee<br>Minimum fee                                     | Notwithstanding the provisions of subsection (a) of this section, there shall be a minimum fee of \$187.50 for original applications and \$62.50 for amendment applications, in addition to publication and recording costs. These costs shall be in addition to any other fee established by statute, unless otherwise expressly stated.  | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Application Fee<br>Maximum fee                                     | In addition, in no event shall the fee for an individual permit or permit amendment application, including each individual permit or permit amendment application seeking approval for any portion of a project involving a master plan, exceed \$165,000.00.  | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Application Fee<br>Neighborhood Development Area fee reduction     | Fees for residential development in a Vermont neighborhood or neighborhood development area designated according to 24 V.S.A. § 2793e shall be no more than 50 percent of the fee otherwise charged under this section. The fee shall be paid within 30 days after the permit is issued or denied.   | see attached memorandum   | see attached memorandum           | The percent of Fund, based on total fund revenue does not account for the 50% fee reduction for residential projects located in Neighborhood Development Areas.              |
| NRB        | Act 250 Certification of actual construction costs                         | A Commission or the Natural Resources Board may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.  | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Enforcement<br>Out of pocket expenses                              | Reimbursement attributable to the resolution of a violation under authority that the Natural Resources Board enforces.   | see attached memorandum   | see attached memorandum           |  |
| NRB        | Act 250 Enforcement<br>Civil citations                                     | Enforcement penalties associated with civil citations and administrative penalties.  | see attached memorandum   | see attached memorandum           |  |
| ANR        | Construction project review (ANR)  | An additional \$0.75 for each \$1,000.00 of the first \$15,000,000.00 of construction costs shall be paid to the Agency of Natural Resources to account for the Agency of Natural Resources' review of Act 250 applications.   |   |                                   | ANR fee information to be completed by ANR   |
| ANR        | Certification of actual construction costs (ANR)                           | A Commission or the Natural Resources Board may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.  |   |                                   | ANR fee information to be completed by ANR   |