

February 26, 2026

Land Use Review Board Comments on H.727: An act relating to sustainable data center deployment

Act 250 Review of Data Centers:

Under existing law, a data center would have to have one of the following characteristics to trigger Act 250 jurisdiction:

- Located on a parcel of land greater than 10 acres in municipalities that have adopted permanent zoning and subdivision bylaws (10 VSA 6001(3)(a)(i))
- Located on a parcel of land greater than 1 acre in municipalities that have not adopted both permanent zoning and subdivision bylaws or municipalities that have elected to be subject to 1-acre jurisdiction (10 VSA 6001(3)(a)(ii), (iii))
- Located on a parcel already subject to an Act 250 permit (amendment jurisdiction)
- Located at or above 2,500 feet of elevation (10 VSA 6001(3)(vi))
- Withdrawing more than 340,000 gallons of groundwater per day from a well or spring, regardless of parcel size (10 VSA 6001(3)(a)(x))
- After July 1, 2026*, involves construction of 800 feet of road or 2000 feet of road and associated driveways (10 VSA 6001(3)(a)(xii))
- After December 31, 2026*, located in a Tier 3 area (10 VSA 6001(3)(a)(xiii))

In other words, any data center project that avoids each of these characteristics would **not** be required to be reviewed under Act 250, regardless of project size or potential for impact under the Act 250 criteria. They may still be subject to review under local zoning.

Moreover, 10 VSA 6001(3)(D) exempts “the construction of improvements for an electric generation, energy storage, or transmission facility that requires a certificate of public good under 30 V.S.A. § 248. Thus, to the extent that a data center could be eligible for a certificate of public good because it provides its own power generation, it would also not be reviewable under Act 250. There is no such limitation for projects which are served by a Large Load Service Equity contract, as proposed in the Public Service Department’s redline of H.727.

Proposal:

If the Committee’s intent is to have state-level review of all 20+ megawatt data centers as defined in H.727, it could propose a narrow jurisdictional trigger:

Sec. X. 10 V.S.A. § 6001(3)(A) is amended to add:

(3)(A) “Development” means each of the following:

* * *

(#) _____ The construction of improvements on a tract of land for a data center as defined in 30 V.S.A. § 283(1).

This would trigger Act 250 jurisdiction over data centers with “20 megawatts or more of power and is engaged in providing data processing, hosting, and related services as described under code 518210 of the 2022 North American Industry Classification System”, regardless of parcel size, layout, or location. The “tract of land” language would encumber the project’s entire parcel with an Act 250 permit.

A defined data center would still be required to obtain a Large Load Service Equity contract from the Public Utilities Commission as contemplated in proposed 30 V.S.A. § 284(a). In other words, the PUC would regulate the impacts of the project’s power use, and the Land Use Review Board’s District Commissions would regulate the project’s impacts on the land and its surrounding community under the Act 250 criteria (see 10 V.S.A. § 6086(a)(1)-(10)).¹

¹ The PUC is entitled to party status in Act 250 permitting processes as a matter of law, and may provide comment under Criterion 9(J) (“A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.”).