

From: Vermont Planners Association <VPA@list.uvm.edu> on behalf of Alex Weinhagen <aweinhagen@HINESBURG.ORG>
Sent: Monday, April 8, 2024 7:36 AM
To: VPA@LIST.UVM.EDU
Subject: [VPA] VPA Legislative Summary - H.687/S.311 - 4/8/24
Attachments: H-0687 As Passed by the House Unofficial.pdf; s311_calendar_022024.pdf

VPA Members,

Act 250 reform is currently alive and wrapped up in two bills (H.687 & S.311) that are under review by the Senate Natural Resources and Energy Committee. H.687 passed the House on 3/28/24. S.311 was voted out of the Senate Economic Development, Housing, and General Affairs Committee on February 16. It landed in Senate Natural Resources, and was held for integration with H.687. As such, we anticipate that S.311 provisions will be blended into H.687.

As passed by the House, H.687 contains long-term, structural Act 250 reforms. On the other hand, S.311 contains short-term or interim Act 250 jurisdictional trigger changes and exemptions. Think of S.311 as Act 250 reform right away, and H.687 as Act 250 reform for the future. S.311 also contains municipal planning and zoning changes as a follow up to the HOME Act (Act 47) of 2023, as well as a variety of housing program investments.

All of this is ripe for more input from planning practitioners! (like you)

NOW is the time to send feedback to the Senate Natural Resources and Energy Committee. Submit comments via email to the full committee and its assistant (just six people). Contact information on the committee [webpage](#) and listed below. Two suggestions: 1) keep your comments brief; 2) be clear about what provisions of the bill are problematic and why. You don't have to suggest alternative language/solutions, but if you do, keep it brief. I repeat... keep it brief! Lengthy and detailed comments that take on many facets of the bill tend to be less effective. Pick just a few provisions that you are most concerned about or interested in, and focus on those.

Senate Natural Resources & Energy Committee:

- Senator Chris Bray (chairperson) - cbray@leg.state.vt.us
- Senator Anne Watson – awatson@leg.state.vt.us
- Senator Dick McCormack – rmccormack@leg.state.vt.us
- Senator Mark MacDonald – mmacdonald@leg.state.vt.us
- Senator Becca White - rwhite@leg.state.vt.us
- Jude Newman (Committee staff/assistant) - jnewman@leg.state.vt.us

H.687 Highlights – see attached bill for details:

Environmental Review Board created (replaces the existing Natural Resources Board). *Sections 1-18 of the bill.* A five-member professional board with a full-time chairperson and four half-time members. Candidates shall be sought with experience in one or more of the following: environmental science; land use law, policy, planning, and development; and community planning. The ERB shall be responsible for:

- Hearing appeals of Act 250 decisions (instead of the Environmental Court)
- Reviewing future land use maps of regional plans
- Reviewing municipal applications for Tier 1A area status
- Setting consistent policy and rule interpretation for Act 250 District Commissions
- Oversight, management, and training for Act 250 program staff and District Commissions

Forest Blocks & Habitat Connectors – New Criteria #8C. *Sections 19-22 of the bill.*

No undue adverse impact on these areas unless effects are “avoided, minimized, or mitigated”.

Rulemaking in conjunction with ANR to better define and map forest blocks and habitat connectors

Accessory On-Farm Business Exemption. *Sections 23a & 23b of the bill.*

Exempts certain types of accessory on-farm businesses from Act 250 permitting. Only those related to the storage, preparation, processing, or sale of qualifying products. NOT for accessory on-farm businesses related to event hosting or farm stays.

Road Rule Jurisdictional Expansion. *Sections 24 & 25 of the bill.* Resurrection of a former Act 250 trigger that hasn't been in place for decades.

Any development that includes the construction of roads and driveways that totals more than 2,000 feet in length. Does not apply to development in Tier 1A or Tier 1B areas.

Stated intent is to encourage clustered subdivision design and reduce fragmentation of resources.

Location-based Jurisdiction – Tier 1A, 1B, 2, 3. *Sections 26-32 of the bill.* Differentiates Act 250 jurisdiction by location. Jurisdiction expanded throughout the 95%+ of Vermont (Tier 2 and Tier 3 areas). Jurisdiction reduced for small to medium sized housing projects in areas planned for development (Tier 1B areas). Jurisdiction eliminated in select areas delineated by municipalities and approved by the ERB (Tier 1A areas).

- Tier 1A areas – Fully exempt from Act 250 permitting – Requires an application by a municipality and approval by the ERB. Municipalities must meet stringent criteria that will likely make Tier 1A areas small, rare, and limited to urban areas (see section 29 of the bill). Plucked from the larger list of 11 requirements, potentially limiting criteria include:
 - “Urban form bylaws” with allowance for at least four-story structures in a portion of the Tier 1A area.
 - Historic preservation bylaws for established design review and historic districts.
 - Wildlife habitat planning bylaws for the Tier 1A area.
 - Permitted water and wastewater systems with the capacity to support additional development.
- Tier 1B areas – Partial exemption from Act 250 permitting – Requires inclusion in regional plan future land use maps.
 - Exempts projects with 50 or fewer units of housing (residential or mixed use) on tracts of land involving 10 acres or less.
- Tier 2 areas – Status quo Act 250 jurisdiction triggers, but with the new road rule, and without current exemptions for priority housing projects. This will be most of the Vermont – exclusive of Tier 1A, Tier 1B, and Tier 3 areas.
- Tier 3 areas – Automatic Act 250 jurisdiction for any development. Areas to be determined by rule making, but consisting of critical natural resources which may include river corridors, headwaters streams, habitat connectors.

Existing Permit Release Via Conditions on Municipal Permits. *Section 33 of the bill.*

Deals with the dissolution of existing Act 250 permits in Tier 1A areas by requiring that appropriate municipal panels (e.g., DRB) include and enforce previously issued Act 250 permit conditions with certain exceptions.

Regional Plan Approval/Confirmation. *Section 39 of the bill.*

Creates an approval/confirmation process for regional plans by the ERB. After a Regional Planning Commission adopts a regional plan, it must be submitted for ERB review and approval/confirmation. Interested parties and municipalities will have an opportunity to participate in the ERB review process; however, the ERB approval/confirmation is final and is not appealable.

Regional Plan Future Land Use Categories & Map. *Section 40 of the bill.*

Standardizes land use categories in support of new Act 250 location-based jurisdiction (e.g. identifying Tier 1B areas) and revisions to the State's designation program, which comes later in the bill.

- Downtown/Village Centers

- Planned Growth Areas
- Village Areas
- Transition/Infill Area
- Resource-based Recreation Area
- Enterprise Area
- Hamlet
- Rural – General
- Rural – Agricultural & Forestry
- Rural – Conservation

Municipal Planning Grant Focus Through 2027. Section 43 of the bill.

Requires that for the next few years (until July 1, 2027), MPG funding prioritize grants to municipalities that do not have zoning or subdivision bylaws – i.e., for the purpose of creating said bylaws.

State Designation Program Reform. Sections 46-47 of the bill. Reorganizes the existing designation program largely based on the recommendations from the 2023 designation reform study.

- Creates the Vermont Community Investment Board (replaces the Downtown Development Board)
- Transitions existing designation areas into new designation categories.
- Relies on regional plan future land use maps to identify designation areas, as approved by the ERB. No more municipal application for a designation area! Designation areas are “automatic” consistent with regional plan maps.
- Simplifies designation types with just two categories:
 - Centers – downtowns and village centers
 - Neighborhoods – areas planned for growth (e.g., neighborhood development areas and growth centers)
- Designation area benefits for Centers will be progressive based on the community’s level of planning and preparedness:
 - Step 1 – automatic for any designated Center; benefits include access to the Better Places Program; Downtown and Village Center tax credit program, etc.
 - Step 2 – easy to achieve with a municipal planning process confirmed by the RPC and a municipal plan with goals for investment in the Center; benefits include State grant priority, funding priority for infrastructure projects, authority to lower speed limits to less than 25 mph within the Center, State wastewater permit fees capped at \$50 for residential development.
 - Step 3 – harder to achieve; similar requirements to existing Downtown Designation; benefits include funding for a local downtown organization, special signage options, housing appeal limitations, highest priority for proposed State functions/buildings, infrastructure funding.
- Designation area benefits for Neighborhoods are simpler (i.e., no step system), and include: State grant priority; funding priority for State infrastructure programs; access to the Downtown and Village Center tax credit program; housing appeal limitations; authority to lower speed limits to less than 25 mph within the Center, State wastewater permit fees capped at \$50 for residential development

Reauthorization of the Better Places Program. Section 47 of the bill.

S.311 Municipal Zoning Highlights – see attached bill for details:

(from my February 26 legislative summary)

S.311 includes much more robust Act 250 exemptions for residential development – both in the immediate term, and as part of the future Tier-based jurisdictional system proposed in H.687. The full scope of these exemptions is complicated, difficult to summarize, and will likely be revised dramatically by the Senate Natural Resources & Energy Committee. S.311 also includes a dash of municipal zoning reform/pre-emption. These are easier to detail, and include:

- Duplexes – Builds on last year’s HOME Act (Act 47, S.100), to require that duplexes be a permitted use and be treated the same as single unit dwellings with regard to land area (i.e., density).

- Multi-unit Dwellings – Expands on last year’s HOME Act provision regarding areas served by municipal sewer and water, to require that 3 and 4 unit dwellings be permitted on lots of at least 1/3 acre and with an allowed density of at least 12 units per acre. Also clarifies that both density and minimum lot size standards for multi-unit dwellings cannot be more restrictive than those required for single unit dwellings. *Unclear if this means the minimum lot size requirement for a 4-plex must be the same as a single-unit dwelling lot, or if it can be required to be bigger on a per unit basis.*
- Density & Lot Size – Expands on last year’s HOME Act minimum five dwelling units per acre density within municipal sewer and water areas. The new provision would require that any lot smaller than one acre by no more than 10% be treated as one acre for residential density purposes, if granted a variance. *Yep, that’s a weird one given how difficult it is to grant variances.*
- Unrelated Occupants – Prohibits zoning and subdivision bylaws from having the effect of prohibiting unrelated occupants from residing in the same dwelling.
- Hotel & Motel Conversion – Puts conversion of hotels and motels to permanently affordable housing in the protected class of uses – i.e., those that can only be subject to limited review akin to site plan review. Similar to State facilities, churches, schools, etc.
- Parking Bylaws – Expressly allows for certain types of parking and sets a standard parking space size:
 - Tandem Parking Allowed – Tandem (i.e., stacked) parking spaces shall count toward residential parking requirements; however, a municipality may require that tandem spaces are not shared between different dwelling units.
 - Parking Space Size – Defines dimensions of a standard parking space as 9’x18’, but allows municipalities to allow smaller spaces for compact cars, and larger spaces for ADA compliance as required.
 - Existing Non-conforming Parking – Requires that municipalities allow existing nonconforming parking spaces to count toward parking requirements when new dwelling units are added to an existing building.
- Lot Coverage – Requires that municipalities allow for a maximum lot coverage bonus of 10% on lots that allow access to new or subdivided lots without road frontage. *Still wondering what stakeholder or specific problem project prompted this provision.*
- Decision Clock – Requires that appropriate municipal panels (e.g., DRB, PC, ZBA) issue decisions on a development application within 180 days of receipt of a complete application, unless the applicant and the panel agree to waive the deadline. *Needs refinement, as this change could result in slower decisions compared to the current requirement of issuing a decision within 45 days of closing a hearing.*
- Appeals Interested Person/Group Number – The ability of immediate abutters, the applicant, and others outlined in statute would remain. However, the bill does change the existing provision that allows any 10 residents or property owners to appeal a municipal development review decision. Instead, this would be increased to three percent of the municipality’s population or any 25 persons. *Wording seems unclear as to whether it is really three percent of the population (potentially a very large number in some communities) or just 25 persons.*
- Appeal Exclusions – Prohibits appeals of municipal decisions regarding residential and mixed-use development with up to 25 dwelling units in areas served by municipal sewer and water. Prohibits appeals regarding any permitted residential and mixed-use development that doesn’t require conditional use review. Prohibits appeals regarding any housing or mixed-use development within a designated center in a zoning district that allows residential development.

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