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Advocacy Updates: Create Housing

VLCT has identified housing, community development and land-use as a key topic to follow during the 2024 legislative session. Check back for the latest updates on this issue. Or, view our [Weekly Legislative Reports](#) page to see

everything we're following.

The June 10, 2024 entry below is a portion of our complete [2024 Legislative Wrap-Up](#).

Portion of 2024 Legislative Wrap-Up Related to This Topic – June 10, 2024

H.687 – Transitioning to Location-Based Act 250 Jurisdiction & Municipal Zoning Preemption

Amends multiple sections of Title 10, Title 24, Title 3, Title 32, Title 27, Title 9, and Title 20.

Effective on passage, with several exceptions.

The legislature and the Administration worked diligently all year to turn last year's four summer study committees on land use reform into a bill that strikes a balance between encouraging development where our state development goals want it to occur and discouraging it where we don't want it to occur.

VLCT largely supports the compromise, which gives many of our commercial centers a path to Act 250 exemption (a top priority in VLCT's [Municipal Policy](#) for the [2023/24 legislative biennium](#)), creates an Act 250 exemption for housing in smaller but densely settled areas, and sets a rulemaking process in place to map environmentally sensitive areas that need more protection.

The legislature was well aware of Governor Scott's desire to see more housing-development-friendly provisions in the bill throughout the session, and it remains to be seen if he and his administration see this bill as the housing bill they asked for, a land use conservation bill, or something in between. If the governor vetoes the bill, it's unclear whether the legislature has the votes to override it.

Four Key Reforms

VLCT broadly categorizes the several-hundred-page bill into four key reforms:

1. Extending and significantly expanding temporary Act 250 exemptions created in last year's Act 47, a welcome path to building housing now;
2. Creating new location-based jurisdiction for Act 250 that preliminarily relies on future land use maps and regional plans to exempt certain areas from Act 250 and increase Act 250 scrutiny in others by 2027;
3. Enacting new municipal land use pre-emptions and clarifying others established in 2023's Act 47; and
4. Establishing, amending, and repealing various housing and community development tools, including transitioning the state's designation program to the State Community Investment Program.

Notably, the bill does not adjust where Act 250 or municipal permit appeals are heard, something that was seen as veto bait by many in the State House. Instead, it commissions a study – one of about a half dozen contained in the bill.

Temporary Act 250 Exemptions

The bill's temporary Act 250 exemptions **through January 1, 2027**, include:

- Priority Housing Projects if they are located in designated downtowns, neighborhood development areas, or growth centers, or if they are within one-half mile around these centers (assuming they have permanent zoning and subdivision bylaws and are served by water or sewer or have adequate soils).
- The construction of 75 or fewer units of housing within a designated new town center, growth center, or neighborhood (if served by sewer or water or have adequate soils).
- The construction of 50 units of housing or fewer on 10 acres of land

in designated village centers or within one-quarter mile of the boundary if they have permanent zoning and subdivision bylaws and are served by sewer or water or with adequate soils, or are in a "census-designated urbanized area" (Burlington) with over 50,000 residents and within one quarter mile of a transit route.

- For housing in designated downtowns with permanent zoning and subdivision bylaws served by public sewer or water or adequate soils.

The bill's temporary Act 250 exemptions **through January 1, 2028**, include:

- No permit amendment is needed for accessory dwelling units constructed on existing single-family dwellings, and those accessory dwelling units constructed do not count toward total units constructed in other projects.
- No permit is required for converting a commercial structure to 29 or fewer housing units.

The bill's temporary Act 250 exemptions through December 31, 2030, include:

- Retail electric distribution rebuilding projects are exempt (with qualifications).

Location-Based Jurisdiction for Act 250

Act 250 largely treats development anywhere in the state the same way: it requires a detailed look at various elements of every project that meets certain criteria. The new location-based jurisdiction triggers will exempt projects in certain geographic areas while increasing scrutiny in others. The bill lays out an elaborate process to map these areas, classify them, allow communities to apply for designation as an area eligible for exemption, and create new rules.

The end result will be a tiered system of Act 250 jurisdiction:

Tier 1 A	Tier 1B	Tier 2	Tier 3
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Tier 1 A	Tier 1B	Tier 2	Tier 3
	Municipalities can apply to exempt a geographic region from Act 250 ONLY for the construction of up to 50 units of housing on 10 acres or less or for mixed use development with 50 units or fewer of housing on 10 acres or less.	Act 250 as-is, with new jurisdictional triggers included in bill.	New rulemaking process to determine additional protections for "critical natural resources". Language included to ensure no municipality is disproportionately impacted.
Municipalities can apply to exempt a geographic region from Act 250.			

In addition to these tiers, the bill includes a few miscellaneous exemptions from Act 250, including exempting certain accessory on-farm businesses from permits for construction or improvement for sale or storage of qualifying products, and exemptions for the conversion of hotels and motels to permanent affordable housing.

In return, in an effort to protect environmentally sensitive areas, a few new Act 250 hurdles would be erected to ensure that any development outside of those areas we want development to occur in happens in an environmentally sensitive way.

- A new road rule will trigger automatic Act 250 jurisdiction for construction or improvement (not just maintenance) if any single road is longer than 800 feet or any combination of road & driveways is longer than 2,000 feet. Municipal roads are exempt.
- Forest blocks and habitat connectors will be protected through a new rulemaking process.

Curious what tier your community might be eligible for? We are too, and we won't know until the maps and several rules are completed (likely in 2027 at best). But we do know that if your community is eligible for Tier 1 according to the map, it will also need to meet the following criteria:

	T1er 1A	T1er 1B
Process for Designation	Legislative body applies	Municipality asks to be "mapped"
Planning Requirements	• Municipal Plan • Consistent with downtown or village centers and planned growth areas, within approved future land use map designation • Permanent zoning and subdivision bylaws that do not have blanket exemptions for private and public land • Flood hazard and river corridor bylaws that apply to entire municipality are consistent with or stronger than certain statutory standards — <i>or</i> the proposed Tier 1A area excludes flood hazard areas	• Adopted and approved plan and planning process • Permanent zoning and subdivision bylaws (excluding flood hazard and fluvial erosion areas)

Tier 1A **Tier 1B**

- and river corridor
- Smart growth principles that regulate form and scale of development and allow for four stories
 - Historic character requirements
 - Natural communities, rare and threatened species protections

Water and wastewater systems or planned improvements that have capacity to support development

Water, wastewater, or soils that can accommodate a community system

Infrastructure Requirements

Municipal staff to support capital planning, development review, and zoning administration

Staff, officials, or contracted capacity to support development review and zoning administration

Staff

Previous Act 250 Permit Requirements

Municipalities must take over enforcement of preexisting Act 250 permits

Municipal Land Use Preemptions

Some of VLCT's early concerns about municipal zoning preemptions remain in the bill. Towns will be required to permit quadplex housing anywhere single-family housing is allowed in water and sewer districts, which, when combined with last year's new fifth of an acre zoning requirement, may equate to a de facto 20 unit per acre new zoning standard. The bill also doubles down on parking preemptions from last year's Act 47 and preempts municipalities from having meaningful input on hotel and motel conversions to permanent housing.

Preemptions of Concern in H.687

On-Farm Businesses Expands the definition of accessory on-farm businesses, removing the requirement that 50 percent (50%) of the annual sales are produced on the specific farm.
24 V.S.A. § 4412(11)

Planning Removes municipalities' ability to veto a regional plan.
24 V.S.A. § 4348

Multi-Family Units Municipalities may not require more land for duplexes.
Quadplexes allowed on the same size lot as single-unit dwellings.
Prohibits density and minimum lot size restrictions for multi-unit dwellings.
Density bonuses are rounded up
Prohibits restrictions on unrelated occupants from residing in the same unit.
24 V.S.A. § 4412

Hotel/Motel Conversion Adds "hotels and motels converted to permanently affordable housing developments" to list of uses with restricted municipal zoning authority.

24 V.S.A. § 4413

Parking

Sets maximum parking spot size limit to 9 feet by 18 feet, with exceptions.

Requires nonconforming parking spaces to count toward requirements when new residential units are being added to an existing unit.

Allows municipalities to count adjacent parking for residential parking requirements.

24 V.S.A. § 4428

The bill also includes preemptions that are less concerning to VLCT, including a requirement that all appropriate municipal panels warn and notice a hearing within 120 days after receiving a complete permit application (24 V.S.A. § 4464). VLCT feels this timeline is workable for most municipalities.

We are happy to report that the bill includes one preemption we supported: increasing the appeal threshold of a municipal decision from 10 people to 20 people (24 V.S.A. § 4465).

Additional Provisions

The final portions of H.687 include a potpourri of changes to existing community and economic development programs and the creation of a few more. In such additional provisions, H.687:

- Eliminates the local match requirement in the Municipal Planning Grant Program for municipalities without zoning or subdivision bylaws through July of 2027, prioritizing these applications for funding, and adds flood protection and climate resiliency to eligible uses.
- Creates a temporary Property Tax Stabilization Program for New Construction or Rehabilitation in Flood-Impacted Communities.
- Changes the state "Downtown" designation program to the "State Community Investment Program".
- Codifies the Better Places Program and makes technical changes

- to the Code Improvement Tax Credit
- Increases the property transfer tax on second homes and increases the clean water surcharge on property transfers.
- Requires new health and safety disclosures for short-term rentals and requires new flood disclosures for both sale and rental property.
- Makes changes and provides funding for the Vermont Rental Housing Improvement Program (VHIP).
- Provides funding for the Manufactured Home Improvement and Repair Program.
- Calls for reports on:
 - Vermont statewide and regional housing targets
 - Feasibility of a state land bank program for housing
 - Including rent payments in consumer credit reports
 - Modernizing the landlord-tenant laws and evictions processes in Vermont

H.612 – Miscellaneous Cannabis Amendments

Amends 6 V.S.A. § 662(4), 7 V.S.A. § 864, § 868, § 869, § 881, § 907, § 910, § 951(b), § 952(e), § 955, § 977, § 978(f), 18 V.S.A. § 4230(d), 20 V.S.A. § 2730(b), 24 V.S.A. § 4414a added, 32 V.S.A. § 7902, § 9741.

Effective on passage, except that: (1) Sec. 6, 7 V.S.A. § 910, shall take effect on July 1, 2025; and (2) Sec. 16, setbacks for cannabis cultivation, shall take effect on January 1, 2025.

H.612 makes a number of changes to cannabis laws in Vermont regarding both retail sales and medical cannabis. Most important to municipalities, it allows municipalities to establish minimum set-back requirements for outdoor grow operations starting January 1, 2025.

Specific provisions of interest for municipalities:

There shall be the following minimum setback distance between the cannabis plant canopy and a property boundary or edge of a highway:

- If the cultivation occurs in a cannabis cultivation district adopted by

a municipality pursuant to 24 V.S.A. § 4414a, the setback shall be not larger than 25 feet as established by the municipality.

- If the cultivation occurs outside of a cannabis cultivation district adopted by a municipality pursuant to 24 V.S.A. § 4414a or no cannabis cultivation district has been adopted by the municipality, the setback shall be not larger than 50 feet as established by the municipality;
- and (iii) if a municipality does not have zoning, the setback shall be 10 feet;

Sets a process for municipalities to establish a cultivation district and calls for a report on siting and licensing of outdoor cannabis cultivation.

- A municipality, after consultation with the municipal cannabis control commission, if one exists, may adopt a bylaw identifying cannabis cultivation districts where the outdoor cultivation of cannabis is preferred within the municipality. Cultivation of cannabis within a cannabis cultivation district shall be presumed not to result in an undue effect on the character of the area affected. The adoption of a cannabis cultivation district shall not have the effect of prohibiting cultivation of outdoor cannabis in the municipality.

- On or before December 15, 2024, the Cannabis Control Board shall submit to the Senate Committees on Government Operations and on Economic Development, Housing and General Affairs and the House Committees on Government Operations and Military Affairs and on Commerce and Economic Development a report regarding the siting and licensing of outdoor cannabis cultivation. The report shall: (1) summarize the current impact of outdoor cultivation on local municipalities; (2) summarize the impact of establishing various siting requirements to existing licensed outdoor cultivators; (3) address whether and how to authorize municipalities to establish local cultivation districts; (4) address whether and how outdoor cultivation of cannabis should be entitled to the rebuttable presumption that cultivation does not constitute a nuisance under 12 V.S.A. chapter 195; and (5) recommend whether local cannabis control commissions established pursuant to 7 V.S.A. chapter 33 should be granted additional authority to regulate outdoor cannabis cultivators.

- The Cannabis Control Board shall consult with the Vermont League of Cities and Towns, the Cannabis Equity Coalition, the Vermont Medical Society, the Cannabis Retailers Association of Vermont, and other interested stakeholders in developing the report.

Bills to Watch as the Biennium Draws to a Close – May 10, 2024

Act 250 and Housing Compromise Starts to Emerge in S.311 and H.687 – Apr 12, 2024

Act 250 Reform Bill Passes House After Hours of Debate on Controversial Amendments - March 29

The Senate's Be Home Bill and the House's Tri-Partisan H.719 – Feb 1, 2024

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