

# Testimony Regarding BE Home Act

March 22, 2024



Testimony of the Vermont League of Cities and Towns

Ted Brady, Executive Director

Senate Committee on Natural Resources and Energy

Regarding S. 311, BE Home Act

March 21, 2024

My name is Ted Brady, and I am the Executive Director of the Vermont League of Cities and Towns, which represents all 247 cities and towns in Vermont. Thank you for asking me in to talk about elements of the “BE Home Act” that would impact municipalities. While I won’t be discussing a majority of the bill today, please know that Vermont’s municipalities support the larger, state regulatory-focused nature of many provisions of the bill. Addressing our state’s

housing shortage cannot be rested on the shoulders of municipalities alone. It will take federal, state and local collaborative action to ensure Vermonters have access to safe and affordable housing.

Every other year, all 247 cities and towns in Vermont consider and adopt a municipal policy that serves as the guide star for VLCT's policy work in this building. I wanted to share a few of the officially adopted portions of that policy with you today – as they don't represent my opinion – but the collective opinion of every city and town in Vermont, and directly address the work you are doing on S. 311. One of our core principles calls for “local discretion to pursue sustainable housing and economic development, recovery, and resiliency.” S. 311 could, and I stress “could”, enable municipalities with new tools to do exactly that. This is especially important because last year, the Legislature prioritized taking local control away from municipalities in an effort to facilitate more growth. VLCT understood the necessity of many of the changes in Act 47, though as I said at the time, parallel changes to the state's land use law – Act 250 – were needed to make these sacrifices worthwhile. This bill appropriately delivers on meaningful changes to the state's land use law.

Related to Act 250, our municipal policy calls for:

- allowing municipalities with duly adopted local zoning and subdivision regulations to accept responsibility to administer Act 250 solely within their own jurisdictions;
- eliminating Act 250 jurisdiction over projects in designated downtowns, growth centers, new town centers, designated village centers, neighborhood development areas, and other areas designated in municipal plans;
- defining “regional impact” in Act 250 to mean a measurable effect on areas outside the borders of the city or town in which a project is proposed to be located;
- limiting district commissions' review of projects to those with regional impact and projects in municipalities without duly adopted zoning or subdivision bylaws;
- retaining Criterion 10 of Act 250, conformance with a duly adopted local plan or capital program adopted pursuant to 24 V.S.A. Chapter 117; and
- eliminating so-called “legacy only” Act 250 jurisdiction over properties that would not otherwise trigger current Act 250 jurisdiction.

S. 311 would have the effect of realizing many of these priorities. Specifically, Sections 24 and 26 establishing a three-tiered designation system and Act 250 exemptions in tiers 1A and 1B would effectively realize our call to exempt our designated centers from duplicative permitting requirements. We support this language, the approach to designating these tiers (through rulemaking with local engagement), and the benefits of each tier. VLCT's only apprehension in these sections is the language in Section 24 (b) (1) that requires municipalities to apply for approval from a regional planning commission. The relationship between municipalities and regional planning commissions is not and should not be a regulatory relationship. RPCs provide invaluable technical assistance. While VLCT understands that RPCs would be involved in the application process, they should not be given veto authority over a municipality. As such, we recommend simply amending the language to read:

(1) Municipalities develop the application for designation and proposed maps of the areas and submit it to the regional planning commission for comment and approval. The regional planning commission shall then review the proposal to ensure it is consistent with the regional plan, and provide additional technical input and advice as needed to improve the application.

In instances where the RPC and the municipalities disagree, the bill currently allows municipalities to still apply, and for the Board to make the ultimate decision. As such, the use of "approval" in the language above may have been an error from an earlier draft.

Several provisions of the bill preempt local zoning in an apparent effort to increase housing development. I want to remind this committee that many of the examples being used in this building as municipal obstacles to development were not municipal zoning issues, but appeals issues. In Woodstock and in Putney, towns changed their town plans, worked with developers, and said yes to affordable housing. Municipal land use processes were not the problem in these instances – it was citizens exploiting the Act 250 appeals process and the municipal appeals process. VLCT supports provisions of S. 311, including portions of Section 18, that increase the threshold for appeals of municipal permit from 10 people to 3 percent or 25 people. Though even this threshold could be exclusionary and encourage NIMBY appeals.

Unfortunately, there are several provisions of this bill that focus on further pre-empting municipal zoning decisions that may have unintended impacts:

- Section 10 would have the effect of more than doubling the aggressive upzoning done just last year – which requires municipalities to allow five units per acre where water and sewer exist. This language would set a new 12 unit per acre minimum anywhere there is sewer and water. This may be appropriate in many water and sewer districts, but certainly not in all of them, and more than doubles the aggressive mandate the Legislature created last year.
- Section 11 would allow any hotel and motel to be converted to a permanent housing unit. Specifically, turning a 50-unit hotel into a 50-unit housing complex has implications for a community. It may increase school enrollment. It may increase the need for transit services. It may increase water and sewer consumption. It may increase the need for recreational infrastructure (hotel guests don't need parks or T-ball coaches). Our communities have first-hand experience with the unintended consequences of changing the use of certain structures without careful planning. Our short-term rental issue here in Vermont has had wide ranging impacts on communities. The decision to turn hotels and motels into homeless shelters with no services during COVID led to enormous spikes in public safety budgets in places like Rutland City and Colchester. Hotels and motels were not created to be long-term housing units, and as such, towns didn't vet the projects when developed to ensure the area would be appropriate for permanent housing.
- Section 12 would further restrict a municipalities' ability to regulate parking. Act 47 last year addressed limiting municipalities' ability to set certain parking spot requirements for housing developments. This bill requires towns to count tandem parking spots as multiple spots related to parking requirements. Tandem parking works, sometimes. Smaller parking spots work, sometimes. Using excess parking in an adjacent lot works, sometimes. Municipalities need the ability to decide when these situations are appropriate and when they are not.
- Section 17 sets a timeline on appropriate municipal panels conducting land use reviews that will have unintended consequences, likely resulting in more denials. Changing the requirement that these panels issue a decision 45 days after the close of a hearing to 180 days after the submission of an application fails to recognize that small towns relying on volunteers take time to pull hearings together, do the work, and issue permits. It also mistakenly assumes that towns are the one's dragging these processes out – when it is often the developer and the town trying to get to yes, making amendments, and making better projects. VLCT believes our larger towns and cities could work within

the 180 day clock, but recommends allowing smaller towns, less than 5,000, to remain tied to the 45 day clock from end of the hearing currently in statute.

I appreciate the committee's efforts to address our state's housing shortage. Municipalities are a willing partner at the table to solve our housing crisis. As such,

I hope any actions you take will be with us, not to us. I'd happily take any questions.

Attachments

[Testimony to Senate Natural Resources and Energy](#)