

1 H.332

2 Introduced by Representatives Deen of Westminster and Klein of

3 East Montpelier

4 Referred to Committee on

5 Date:

6 Subject: Conservation; natural resources; Act 250; municipal land use

7 regulation; commission

8 Statement of purpose: This bill proposes to created a two-year commission to
9 examine comprehensively Vermont's system of environmental and land use
10 regulation and the ability of that system to protect and preserve Vermont's
11 natural environment and scenic beauty in light of the challenges currently
12 facing the state and to do so in a manner that is transparent and efficient for
13 those who use or participate in the system. The commission would engage in a
14 broad public process and would recommend proposed legislation to the general
15 assembly.

16 An act relating to an environmental commission for Vermont in the 21st
17 century

18 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. FINDINGS

2 The general assembly finds that:

3 (1) On May 14, 1969, Gov. Deane C. Davis signed his executive order
4 no. seven, in which he established the Governor's commission on
5 environmental control. In the order, Gov. Davis found that:

6 Our physical environment is the sum of everything around us. It is
7 our beautiful mountains and valleys. It is our streams and lakes. It
8 is the air we breathe, and it is the winter's snow and summer's
9 green grass.

10 Thus far we have managed to preserve much of what is best in
11 Vermont's environment, but the forces of change are around us
12 everywhere.

13 Unplanned growth can change the face of a mountain peak in one
14 short season. It can turn a sparkling brook into a muddy, polluted
15 horror. It can change a lovely meadow into a dismal junkyard or
16 smoking dump.

17 (2) Finding that it was necessary to enact a comprehensive set of statutes
18 to preserve and protect the environment while allowing for continued
19 economic development, Gov. Davis directed the commission to collect,
20 analyze, and evaluate all available reports and data concerning Vermont's
21 environment; to consult with relevant state agencies, scientists, naturalists,

1 planners, and members of the public concerned with Vermont's environment;
2 and to develop a comprehensive program of proposed legislation for
3 presentation to the general assembly.

4 (3) The commission formed by this executive order became known as
5 the Gibb Commission after its chair, Rep. Arthur Gibb of Weybridge. The
6 commission conducted extensive research and analysis and numerous meetings
7 around the state. Among other things, its recommendations resulted in the
8 1970 enactment of 10 V.S.A. chapter 151 (Act 250), Vermont's landmark land
9 use control law, under which a state board administered a comprehensive
10 program of development and subdivision review, with nine district
11 commissions reviewing permit applications and with appeals of the district
12 decisions to the state board.

13 (4) Since 1970, Vermont's system of environmental and land use
14 regulation has grown and changed in a manner that has resulted in a set of
15 overlapping laws and programs administered by multiple entities that do not
16 always share the same regulatory objectives or coordinate in an optimal
17 fashion. A given project may require multiple permits from differing
18 authorities. In addition to Act 250, Vermont now has a set of programs
19 administered by different divisions within the Agency of Natural Resources,
20 including air pollution control, waste management, wastewater management,
21 water quality, and water supply, each of which may apply to a given project

1 and require a separate permit review. Municipalities that have adopted local
2 land use bylaws typically administer a variety of development review
3 mechanisms, including conditional use review, site plan review, and
4 subdivision review. There also are separate sets of siting review processes
5 administered by the public service board for electric generation and
6 transmission facilities, natural gas facilities, and telecommunications facilities.

7 (5) Appeals of most but not all environmental permitting decisions now
8 go to an environmental court that has two judges. If permitting decisions for a
9 project are appealed to the environmental court, the appeals will await the
10 court's ability to consider them within its caseload.

11 (6) Despite the expansion of environmental and land use regulation in
12 Vermont since 1970, it is not clear that the present regulatory system is
13 adequate to the environmental challenges currently facing the state or that the
14 present system is adequately understood and supported by the state's residents.

15 Examples include:

16 (A) Lake Champlain and numerous waters in Vermont are in
17 violation of the state's water quality standards, presenting significant issues
18 that the current system has been unable to resolve despite years of attention
19 and program deployment and that have resulted in often contentious dispute
20 and litigation.

1 (B) In response to the challenge of climate change, Vermont has
2 established ambitious goals for reduction of greenhouse gas emissions and
3 improvement of building energy efficiency, yet these goals affect activities
4 often outside of the purview or practices of the existing system.

5 (C) The state has established statutory goals and policies to promote
6 a settlement pattern of compact urban and village centers surrounded by a
7 rural, working landscape, yet development outside of such centers has
8 continued in a manner many view as inconsistent with those goals and policies.

9 (D) Project developers and citizens concerned about projects alike
10 often voice complaints that it is not always clear which permits are required for
11 a given project and that participation in multiple permit review processes can
12 be expensive, daunting, and time-consuming. Participants in and observers of
13 permit review processes have stated concerns about whether processes and
14 decision-making are transparent and whether decisions are in fact being made
15 based on science and applicable law.

16 (7) Since 1970, the pace of change has accelerated significantly. Not
17 only has the pace of technological change increased, but the ensuing advances
18 in technology have transformed economics, communications, recreation, and
19 nearly all other aspects of life. So rapid has technological change become that
20 this year's technological advance may become next year's outmoded system.
21 We must ensure that our environmental regulations appropriately support and

1 utilize the benefits of deploying new technology and, at the same time, protect
2 and preserve the state's natural environment and scenic beauty, and we must
3 ensure that the deployment of new technology does not result in environmental
4 impacts that persist after the technology becomes outmoded.

5 Sec. 2. COMMISSION ON VERMONT'S ENVIRONMENT

6 (a) Creation of commission. There is created a commission on Vermont's
7 environment (the commission) to examine comprehensively Vermont's system
8 of environmental and land use regulation and the ability of that system to
9 protect and preserve Vermont's natural environment and scenic beauty in light
10 of the challenges currently facing the state and to do so in a manner that is
11 transparent and efficient for those who use or participate in the system.

12 (b) Membership. The commission shall be composed of 13 members.
13 Four members of the committee shall be members of the general assembly, of
14 which two shall be members of the house and two members of the senate. The
15 house members shall be the chairs of the house committees on fish, wildlife,
16 and water resources and on natural resources and energy. The senate members
17 shall be the chair of the senate committee on natural resources and energy and
18 one member of that senate committee appointed by the president pro tempore.
19 The remaining nine members shall be:

20 (1) The secretary of natural resources or designee.

21 (2) The chair of the natural resources board or designee.

1 (3) The commissioner of economic, housing, and community
2 development or designee.

3 (4) A representative designated by the Vermont Natural Resources
4 Council.

5 (5) A person appointed by the governor from a list of three names
6 submitted by the Association of Chamber Executives.

7 (6) A person with expertise in local planning and land use regulation
8 designated by the Vermont League of Cities and Towns.

9 (7) A representative of a regional planning commission designated by
10 the Vermont association of regional planning and development agencies.

11 (8) One member appointed by the governor with experience in
12 developing and constructing projects that require Act 250 and other state and
13 local permits.

14 (9) One member appointed by the governor from an institution of higher
15 learning in Vermont who has relevant scientific expertise.

16 (c) The commission shall elect a chair from among its legislative members.
17 The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply
18 to the meetings and decision-making of the commission.

19 (d) Powers; duties.

20 (1) The committee's tasks shall include following:

1 (A) To collect, analyze, and evaluate all available reports, articles,
2 studies, and data relating to Vermont's environment prepared within the past
3 ten years.

4 (B) To consult with all agencies of state government whose activities
5 and functions affect the environment of and land use in the state.

6 (C) To consult with the state's regional planning commissions,
7 regional development corporations, and representatives of municipal planning
8 commissions.

9 (D) To consult with relevant nongovernment organizations with
10 special expertise applicable to Vermont's environment such as the Lake
11 Champlain Basin Program, the Preservation Trust of Vermont, and Smart
12 Growth Vermont.

13 (E) To solicit the views of scientists, naturalists, planners, business
14 organizations such as the Lake Champlain Regional Chamber of Commerce,
15 and others concerned with Vermont's environment.

16 (F) To identify the barriers to achieving the water quality standards,
17 greenhouse gas reduction goals, building efficiency goals, and other statutory
18 goals and policies related to protecting Vermont's environment, and to propose
19 means to overcome those barriers.

20 (G) To consider the potential consolidation of state environmental
21 permit programs, including water quality, air pollution control, waste

1 management, and Act 250, and associated rulemaking and appeals, into a
2 department of environmental quality to be directed by a three-person
3 environmental council that includes members with relevant scientific expertise
4 and is supported by staff scientists and counsel, in a manner similar to the
5 proposals contained in H.546 of the 2009-10 biennium and S.28 of this
6 biennium.

7 (H) To consider the potential consolidation of the departments of fish
8 and wildlife and of forests, parks and recreation into a single department or
9 agency.

10 (I) To evaluate the advantages and disadvantages of reorganizing
11 rulemaking and decision-making authority as described in subdivisions (G) and
12 (H) of this subdivision (1), including the management and budgetary
13 efficiencies that might be gained with respect to the functions now being
14 exercised by the natural resources board and the environmental court and the
15 management of the agency of natural resources and its departments.

16 (J) To consider the development of standardized, transparent
17 procedures applicable to permit review processes currently administered by
18 agency of natural resources and its departments.

19 (K) To consider a potential statutory requirement that, when a project
20 is subject to Act 250, the issuance of all other permits, certificates, and
21 approvals required from the department of environmental quality shall be

1 consolidated into the Act 250 process and conducted by the district
2 commission, with scientists of the department who would normally issue the
3 other permits providing technical determinations to the district commission.

4 (L) To identify potential opportunities to merge and make identical
5 the criteria of 10 V.S.A. § 6086(b) and the standards and criteria of other
6 environmental and land use permit and approval processes administered by the
7 various agencies of state government, with a goal to improve environmental
8 protection, create procedural efficiencies, and reduce or eliminate
9 redundancies.

10 (M) To consider the potential creation of a proposed program for
11 delegating authority under Act 250 to municipal governments with respect to
12 developments and subdivisions within designated growth centers under
13 24 V.S.A. § 2793c.

14 (N) To develop a comprehensive program of proposed legislation, for
15 presentation to the general assembly, to overhaul Vermont's system of
16 environmental regulation in a manner that will improve its ability to protect
17 and preserve the state's natural environment and scenic beauty in light of the
18 challenges currently facing the state; that will enhance its ability to achieve
19 water quality standards, goals for greenhouse gas reduction, building
20 efficiency, and desired settlement patterns, and other statutory goals and
21 policies related to the environment; that will allow Vermont to take advantage

1 of contemporary technological advances while preserving and supporting
2 Vermont's environment and values; and that is transparent and efficient for
3 those who use or participate in the system.

4 (2) For purposes of the tasks assigned to it, the commission shall have
5 the administrative and legal assistance of the legislative council, and shall have
6 the technical and legal assistance of the agencies of commerce and community
7 development, of natural resources, and of transportation; of the department of
8 public service; and of the natural resources board.

9 (d) Report. By January 15, 2013, the commission shall submit its proposed
10 legislation to the general assembly.

11 (e) Term; reimbursement.

12 (1) The commission shall cease to exist on July 1, 2013. The
13 commission may hold as many meetings as it deems necessary to complete its
14 assigned tasks.

15 (2) For attendance at up to six meetings each year during adjournment
16 of the general assembly, legislative members of the commission shall be
17 entitled to compensation and reimbursement for expenses as provided in
18 2 V.S.A. § 406.

19 (3) Members of the commission who are not legislators or employees of
20 the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A.
21 § 1010.

1 (4) During the completion of its tasks and prior to submitting its
2 recommended legislation to the general assembly, the commission shall hold
3 meetings at different locations throughout the state that are publically noticed
4 so as to achieve broad public attendance and participation.

5 (5) Costs of the commission under subdivisions (3) and (4) of this
6 subsection shall be paid by the commissioner of finance and management and
7 allocated among the budgets of the agencies of commerce and community
8 development and of natural resources and of the natural resources board in
9 proportion to the relative sizes of the budgets of those agencies and board.

10 Sec. 3. EFFECTIVE DATE; APPOINTMENTS

11 (a) This act shall take effect on July 1, 2011.

12 (b) All appointments under this act shall be made by September 1, 2011.

13 (c) The legislative council shall convene the first meeting of the
14 commission on or before September 21, 2011.