



STATE OF VERMONT

MEMORANDUM

To: Senate Committee on Natural Resources and Energy
From: Hannah Smith, Law Clerk
Date: April 1, 2014
Subject: H.448 Summary

H.448, an act relating to Act 250 and primary agricultural soils, would revise the provisions of 10 V.S.A. chapter 151 (Act 250) that govern mitigating the conversion of primary agricultural soils. The bill would give District Environmental Commissions more flexibility in determining whether mitigation should take place on- or off-site of the project tract. The bill would also redefine primary agricultural soils under Act 250.

An Act 250 permit will only be granted if the District Commission finds that the proposed development will not result in any reduction of the agricultural potential of primary agricultural soils on the project tract, or suitable mitigation will be provided for any reduction in agricultural potential of such soils. Under the existing statute, suitable mitigation depends on where the project tract is located- mitigation for projects located *within* designated growth centers takes place off-site and mitigation for projects located *outside* of growth centers takes place on-site, unless a District Commission finds “appropriate circumstances” warrant otherwise. The bill would allow District Commissions more flexibility to determine where suitable mitigation should take place.

Section 1 amends 10 V.S.A. § 6093. The bill mandates that applicants provide suitable mitigation for the conversion of primary agricultural soils, and sets out requirements for and factors to be considered in determining suitable mitigation.

- The bill removes the requirement that mitigation depend on the location of the project tract, and states that mitigation shall be achieved either on-site, off-site, or through a combination of on- and off-site mitigation.
- In determining the off-site mitigation fee to be paid, the bill allows for a ratio of 1:1 protected acres to acres of impacted primary agricultural soils in certain designated areas. For development outside certain designated areas, the ratio shall be no less than 2:1 but no more than 3:1.
- In determining the number of acres to be preserved in the case of on-site mitigation, the bill again allows for a ratio of 1:1 protected acres to acres of impacted soil for development in certain designated areas, and a ratio of no less than 2:1 but no more than 3:1 for development outside those designated areas.
- The bill allows for combined on- and off-site mitigation.

- The bill eliminates the existing language that allows for mitigation flexibility in “appropriate circumstances,” and instead lays out specific requirements for and factors to be considered by District Commissions, on a case-by-case basis, in order to determine suitable mitigation.
- The bill allows the Commissions to consider the recommendations of the Secretary of Agriculture, Food and Markets in determining suitable mitigation.
- The bill directs how off-site mitigation fees shall be used by the Vermont Housing and Conservation Board, and by the Agency of Agriculture.

Section 2 of the bill amends 10 V.S.A. § 6001(15) to redefine primary agricultural soils under Act 250.

- The bill provides a more scientific definition for these soils, based on the rating system used by the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS).
- The bill also identifies factors to be considered by the Commissions in determining that soils have lost their agricultural potential.
- The new definition allows Commissions to find that soils not identified by the NRCS have agricultural potential, based on their present or recent use for agricultural activities.

Section 3 of the bill amends the primary agricultural soil criterion (10 V.S.A. § 6086(a)(9)(B)) that District Commissions consider when determining whether to grant a permit under Act 250. The bill requires that if a project results in any reduction of the agricultural potential of primary agricultural soils, the developer must efficiently develop the project tract if entirely off-site mitigation is to be allowed by the Commission. The language in 6086(a)(9)(B)(iii) referring to projects located in growth centers is eliminated, because under the bill, off-site mitigation may be used whether or not the project will be located in a designated growth center.