

1 H.424

2 Introduced by Representatives Sheldon of Middlebury, Conquest of Newbury,
3 Brumsted of Shelburne, Conlon of Cornwall, Gonzalez of
4 Winooski, Jickling of Brookfield, LaLonde of South
5 Burlington, Lefebvre of Newark, Masland of Thetford,
6 McCullough of Williston, Quimby of Concord, Scheu of
7 Middlebury, and Wood of Waterbury

8 Referred to Committee on

9 Date:

10 Subject: Conservation and development; natural resources; land use; Act 250;
11 study commission

12 Statement of purpose of bill as introduced: In light of the upcoming 50th
13 anniversary of the State land use law, known as Act 250, this bill proposes to
14 create a commission to review and make recommendations on improving the
15 effectiveness and efficiency of the Act as currently implemented in achieving
16 its goals. The commission's tasks would include

- 17 • review of the Act 250 criteria in light of current science and research and
18 issues that have emerged during those 50 years, such as climate change;
19 • review of potential changes to Act 250 jurisdiction to encourage
20 development in designated centers and protect natural resources outside
21 those centers;

- 1 • review of the efficiency of the application and appeals process and ways
2 to improve the process for all participants, including applicants and
3 other parties, and to ensure that it continues to encourage citizen
4 participation; and
- 5 • review of the current administrative structure of the Act, including the
6 role of the Natural Resources Board.

7 Prior to making recommendations, the commission would solicit public input
8 and proposals on the issues within its charge.

9 An act relating to the Commission on Act 250: the Next 50 Years

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

11 ~~Sec. 1. FINDINGS; PURPOSE~~

12 (a) Findings. The General Assembly finds as follows:

13 (1) In 1969, Governor Deane Davis by executive order created the
14 Governor's Commission on Environmental Control, which consisted of
15 12 members and became known as the Gibb Commission because it was
16 chaired by Representative Arthur Gibb.

17 (2) The Gibb Commission's recommendations, submitted in 1970,
18 included a new State system for reviewing and controlling plans for large-scale
19 and environmentally sensitive development. The system was not to be

1 ~~centered in Montpelier. Instead, the power to review projects and grant~~
2 ~~permits would be vested more locally, in commissions for districts within the~~
3 ~~State.~~

4 (3) In 1970, the General Assembly enacted 1970 Acts and Resolves
5 No. 250, an act to create an environmental board and district environmental
6 commissions. This act is now codified at 10 V.S.A. chapter 151 and is
7 commonly known as Act 250. In Sec. 1 of Act 250 (the Findings), the General
8 Assembly found that:

9 (A) “the unplanned, uncoordinated and uncontrolled use of the lands
10 and the environment of the state of Vermont has resulted in usages of the lands
11 and the environment which may be destructive to the environment and which
12 are not suitable to the demands and needs of the people of the state of
13 Vermont”;

14 (B) “a comprehensive state capability and development plan and land
15 use plan are necessary to provide guidelines for utilization of the lands and
16 environment of the state of Vermont and to define the goals to be achieved
17 through land environmental use, planning and control”;

18 (C) “it is necessary to establish an environmental board and district
19 environmental commissions and vest them with the authority to regulate the
20 use of the lands and the environment of the state according to the guidelines
21 and goals set forth in the state comprehensive capability and development plan

1 and to give these commissions the authority to enforce the regulations and
2 controls”; and

3 (D) “it is necessary to regulate and control the utilization and usages
4 of lands and the environment to insure that, hereafter, the only usages which
5 will be permitted are not unduly detrimental to the environment, will promote
6 the general welfare through orderly growth and development and are suitable
7 to the demands and needs of the people of this state.”

8 (4) In 1973 Acts and Resolves No. 85, Secs. 6 and 7, the General
9 Assembly adopted the Capability and Development Plan (the Plan) called for
10 by Act 250. Among the Plan’s objectives are:

11 (A) “Preservation of the agricultural and forest productivity of the
12 land, and the economic viability of agricultural units, conservation of the
13 recreational opportunity afforded by the state’s hills, forests, streams and lakes,
14 wise use of the state’s non-renewable earth and mineral reserves, and
15 protection of the beauty of the landscape are matters of public good. Uses
16 which threaten or significantly inhibit these resources should be permitted only
17 when the public interest is clearly benefited thereby.”

18 (B) “Increased demands for and costs of public services, such as
19 schools, road maintenance, and fire and police protection must be considered
20 in relation to available tax revenues and reasonable public and private capital
21 investment. . . . Accordingly, conditions may be imposed upon the rate and

1 location of development in order to control its impact upon the community.”

2 (C) “Strip development along highways and scattered residential
3 development not related to community centers cause increased cost of
4 government, congestion of highways, the loss of prime agricultural lands,
5 overtaxing of town roads and services and economic or social decline in the
6 traditional community center.”

7 (D) “Provision should be made for the renovation of village and
8 town centers for commercial and industrial development, where feasible, and
9 location of residential and other development off the main highways near the
10 village center on land which is other than primary agricultural soil.”

11 (E) “In order to achieve a strong economy that provides satisfying
12 and rewarding job and investment opportunities and sufficient income to meet
13 the needs and aspirations of the citizens of Vermont, economic development
14 should be pursued selectively so as to provide maximum economic benefit
15 with minimal environmental impact.”

16 (b) Purpose. In light of Act 250’s upcoming 50th anniversary, the General
17 Assembly establishes the Commission on Act 250: the Next 50 Years, in order
18 to review and make recommendations on improving the effectiveness and
19 efficiency of the Act as currently implemented in achieving the goals set forth
20 in the Findings and the Plan, which in this act will be referred to as “the Act
21 250 goals.” The General Assembly intends that the Commission provide

1 information to the public on the history and implementation of Act 250 and
2 solicit proposals and input from the public on the matters within its charge.
3 The General Assembly also intends that the Commission's recommendations
4 enable the Act 250 program, going forward, to meet the Act 250 goals and to
5 safeguard Vermont's environment effectively and efficiently.

6 Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS; REPORT;

7 APPROPRIATION

8 (a) Establishment. There is established the Commission on Act 250: the
9 Next 50 Years to:

10 (1) provide information regarding Act 250 and its operation and
11 implementation to date; and

12 (2) review and make recommendations on improving the effectiveness
13 and efficiency of the Act as currently implemented in achieving the Act 250
14 goals.

15 (b) Membership. The Commission shall be composed of the following
16 12 members:

17 (1) Six current members of the General Assembly with knowledge and
18 expertise in one or of the following areas: conservation and development,
19 natural resources, or judicial or quasi-judicial process. Of these members:

20 (A) three shall be members of the House Representatives, appointed
21 by the Speaker of the House, and

1 (B) three shall be members of the Senate, appointed by the
2 Committee on Committees.

3 (2) The Chair of the Natural Resources Board or designee.

4 (3) A representative of a Vermont-based, statewide environmental
5 organization that has a focus on land use and significant experience in the Act
6 250 process, appointed by the Committee on Committees.

7 (4) A person with significant experience in real estate development and
8 land use permitting, including Act 250, appointed by the Speaker of the House.

9 (5) A representative of the Vermont Planners Association, appointed by
10 the Association.

11 (6) A member of a Vermont-based statewide business organization,
12 appointed by the Governor.

13 (7) A person who is the owner of a small business that has had to obtain
14 permits under Act 250, appointed by the Speaker of the House.

15 (c) Public meetings. The Commission shall conduct six public meetings in
16 different regions of the State to provide information and collect public input
17 regarding the protections and process of Act 250. The Commission shall
18 collaborate with regional and municipal planning organizations. At these
19 meetings, the Commission shall provide the information described in
20 subsection (d) of this section and solicit input and proposals from the public on
21 the issues identified in subsection (e) of this section.

1 (d) Information. The Commission shall summarize:

2 (1) the purpose and requirements of Act 250 and the rules adopted
3 pursuant to the Act, and the process for appealing decisions;

4 (2) the history of Act 250 and its implementation; and

5 (3) the data on numbers of applications and appeals and processing
6 times for each.

7 (e) Study; recommendations. In performing the review and making the
8 recommendations described in subsection (a) of this section:

9 (1) The Commission shall examine the criteria at 10 V.S.A. § 6086(a)
10 and make recommendations to:

11 (A) Ensure that the requirements of the criteria reflect current science
12 and research. This inquiry shall include specific examination of the Act 250
13 criteria related to air, water, waste, habitat protection, forestland, and the
14 impact of development on the budgets, facilities, and infrastructure of local,
15 regional, and State governments.

16 (B) Ensure that the criteria address the issue of climate change,
17 including greenhouse gas emissions from projects subject to the Act and the
18 potential effects of climate change on those projects.

19 (C) Ensure that the criteria support development in centers
20 designated under 24 V.S.A. chapter 76A and protect working farms, forestland,
21 and natural resources outside designated centers.

1 ~~(D) Ensure that the criteria address any other issues related to the~~
2 impacts of developments and subdivisions that the Commission determines
3 have emerged since passage of the Act, including issues that may be raised by
4 changes in the environmental protections afforded by the federal government.

5 (2) The Commission shall examine potential changes to Act 250
6 jurisdiction to encourage development in designated centers and protect natural
7 resources outside those centers, including working farms and forestland.

8 (3) The Commission shall examine whether efficiencies in Act 250 are
9 available based on each of the following and, based on this examination, make
10 recommendations, if any, on ways to achieve those efficiencies while
11 preserving the authority of the Act:

12 (A) the current scope of environmental regulation by the Agency of
13 Natural Resources;

14 (B) the current scope and implementation of municipal and regional
15 land use planning and regulation; and

16 (C) the designations available under 24 V.S.A. chapter 76A.

17 (4) The Commission shall review the efficiency and effectiveness of the
18 process before the District Commissions in achieving the Act 250 goals and
19 whether alternatives could better meet these goals and improve the process for
20 participants, including applicants and other parties, and shall make its resulting
21 recommendations, if any.

1 (5) The Commission shall examine the effectiveness and efficiency of
2 the current appeals process in achieving the Act 250 goals and whether
3 alternatives could better meet these goals, and make its recommendations, if
4 any, on how to improve the appeals process to achieve them. This inquiry
5 shall include consideration of:

6 (A) barriers, if any, in the current appeals process that discourage
7 participation or reaching decisions on the merits of whether a project meets the
8 Act 250 criteria on appeal; and

9 (B) comparison of the cost, length, and efficiency of the appeals
10 process before the Environmental Division of the Superior Court as compared
11 to the appeals process before the former Environmental Board.

12 (6) The Commission shall examine whether the intent of Act 250 to
13 encourage citizen participation is being achieved effectively and identify ways
14 to improve citizen participation in Act 250.

15 (7) The Commission shall examine the role of the Natural Resources
16 Board in administering the Act 250 program, including whether the Board as
17 currently constituted is the most effective and efficient structure to administer
18 Act 250 and alternatives to the Board model.

19 (f) Report. The Commission shall consider the public input and proposals
20 provided under subsection (c) of this section and the issues set forth in
21 subsection (e) of this section and shall publish a report of the Commission's

1 ~~recommendations for legislative action. The report shall attach proposed~~
2 legislation. The report of the Commission shall be posted to the website of the
3 General Assembly on or before January 15, 2019.

4 (g) Assistance.

5 (1) The staff of the Natural Resources Board shall provide professional,
6 legal, and administrative services to the Commission, including the scheduling
7 of meetings and the preparation of the Commission's report.

8 (2) The Office of Legislative Council shall provide legal services to the
9 Commission, including drafting the Commission's proposed legislation.

10 (3) The Commission shall have technical services of the Agencies of
11 Commerce and Community Development, of Natural Resources, and of
12 Transportation and, on request, shall be entitled to legal assistance from those
13 agencies in their areas of expertise.

14 (4) On request, the Commission shall be entitled to financial assistance
15 from the Joint Fiscal Office and to information from the Superior Court.

16 (5) A condition of Commission membership shall be that the
17 professional and technical resources of a member's organization shall be
18 available, on request, to the Commission. This condition shall not apply to the
19 member appointed under subdivision (b)(7) of this section. For the legislative
20 members and the Chair of the Natural Resources Board, this condition shall be
21 satisfied by subdivisions (1) and (2) of this section.

1 ~~(h) Meetings: officers.~~

2 (1) In addition to the public meetings required under subsection (c) of
3 this section, the Commission may meet not more than seven times, and shall
4 cease to exist on February 15, 2019.

5 (2) The staff of the Natural Resources Board and the Office of
6 Legislative Council jointly shall convene the first meeting of the Commission
7 to occur on or before August 1, 2017. At that meeting, the Commission shall
8 elect a chair and vice chair from among its legislative members. The Chair of
9 the Natural Resources Board or designee shall be the clerk of the Commission.

10 (3) The Commission may appoint members of the Commission to
11 subcommittees to which it assigns tasks related to specific issues within the
12 Commission's charge. Meetings of subcommittees shall not count toward the
13 meeting limits of this section.

14 (4) Meetings of the Commission and subcommittees shall be subject to
15 the Vermont Open Meeting Law and 1 V.S.A. § 172.

16 (i) Reimbursement. For attendance at Commission meetings during
17 adjournment of the General Assembly, legislative members of the Commission
18 shall be entitled to per diem compensation and reimbursement of expenses
19 pursuant to 2 V.S.A. § 406. However, there shall be no reimbursement for
20 attendance at subcommittee meetings.

21 ~~(j) working Group. There is created the working Group on Act 250: the~~

1 ~~Next 50 Years to develop, prior to September 30, 2017, the information and~~
2 ~~educational materials to be presented or provided at the public meetings of the~~
3 ~~Commission under subsection (c) of this section. The Working Group shall~~
4 ~~consist of the Chair and Vice Chair of the Commission and the Chair of the~~
5 ~~Natural Resources Board or designee. The Working Group shall have the same~~
6 ~~services as provided to the Commission under subsection (g) of this section.~~

7 (k) ~~Facilitator; retention; appropriation. On behalf of the Commission, the~~
8 ~~Working Group on Act 250, the Next 50 Years shall be authorized to retain,~~
9 ~~after a competitive bid process, a professional facilitator to assist the~~
10 ~~Commission and the Working Group in the development of information to be~~
11 ~~presented or provided at the public meetings under subsection (c) of this~~
12 ~~section; the conduct of these meetings; and in making decisions on its report~~
13 ~~and recommendations. During fiscal year 2018, the sum of \$50,000.00 is~~
14 ~~appropriated to the Commission for the purpose of this subsection.~~

15 Sec. 3. EFFECTIVE DATE

16 ~~This act shall take effect on passage.~~

Sec. 1. FINDINGS; PURPOSE

(a) Findings. The General Assembly finds as follows:

*(1) In 1969, Governor Deane Davis by executive order created the
Governor's Commission on Environmental Control, which consisted of
12 members and became known as the Gibb Commission because it was*

chaired by Representative Arthur Gibb

(2) The Gibb Commission's recommendations, submitted in 1970, included a new State system for reviewing and controlling plans for large-scale and environmentally sensitive development. The system was not to be centered in Montpelier. Instead, the power to review projects and grant permits would be vested more locally, in commissions for districts within the State.

(3) In 1970, the General Assembly enacted 1970 Acts and Resolves No. 250, an act to create an environmental board and district environmental commissions. This act is now codified at 10 V.S.A. chapter 151 and is commonly known as Act 250. In Sec. 1 of Act 250 (the Findings), the General Assembly found that:

(A) "the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont";

(B) "a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control";

(C) "it is necessary to establish an environmental board and district

~~environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls”; and~~

~~(D) “it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state.”~~

~~(4) In 1973 Acts and Resolves No. 85, Secs. 6 and 7, the General Assembly adopted the Capability and Development Plan (the Plan) called for by Act 250. Among the Plan’s objectives are:~~

~~(A) “Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state’s hills, forests, streams and lakes, wise use of the state’s non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefited thereby.”~~

~~(B) “Increased demands for and costs of public services, such as~~

~~schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. . . . Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.”~~

~~(C) “Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.”~~

~~(D) “Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other than primary agricultural soil.”~~

~~(E) “In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact.”~~

~~(b) Purpose. In light of Act 250’s upcoming 50th anniversary, the General Assembly establishes the Commission on Act 250: the Next 50 Years, in order to review and make recommendations on improving the effectiveness and~~

efficiency of the Act as currently implemented in achieving the goals set forth in the Findings and the Capability and Development Plan, which in this act will be referred to as “the Act 250 goals.” The General Assembly intends that the Commission provide information to the public on the history and implementation of Act 250 and solicit proposals and input from the public on the matters within its charge. The General Assembly also intends that the Commission’s recommendations enable the Act 250 program, going forward, to meet the Act 250 goals and to safeguard Vermont’s environment effectively and efficiently.

(c) Executive Branch working group. Contemporaneously with the consideration of this act by the General Assembly, the Chair of the Natural Resources Board (NRB) has convened a working group on Act 250 to include the NRB and the Agencies of Commerce and Community Development and of Natural Resources, with assistance from the Agencies of Agriculture, Food and Markets and of Transportation. The working group intends to make recommendations during October 2017. The General Assembly intends that the Commission established by this act receive and consider information and recommendations offered by the working group convened by the Chair of the NRB.

Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS; REPORT;

APPROPRIATION

~~(a) Establishment. There is established the Commission on Act 250: the
Next 50 Years to:~~

~~(1) provide information regarding Act 250 and its operation and
implementation to date; and~~

~~(2) review and make recommendations on improving the effectiveness
and efficiency of the Act as currently implemented in achieving the Act 250
goals.~~

~~(b) Membership. The Commission shall be composed of the following
11 members:~~

~~(1) Four current members of the General Assembly with knowledge and
expertise in one or more of the following areas: conservation and
development, natural resources, or judicial or quasi-judicial process. Of these
members:~~

~~(A) two shall be members of the House of Representatives, appointed
by the Speaker of the House; and~~

~~(B) two shall be members of the Senate, appointed by the Committee
on Committees.~~

~~(2) The Chair of the Natural Resources Board or designee.~~

~~(3) A representative of a Vermont-based, statewide environmental
organization that has a focus on land use and significant experience in the Act
250 process, appointed by the Committee on Committees.~~

~~(4) A person with significant experience in real estate development and land use permitting, including Act 250, appointed by the Speaker of the House.~~

~~(5) A representative of the Vermont Planners Association, appointed by the Governor.~~

~~(6) A member of a Vermont-based statewide business organization, appointed by the Governor.~~

~~(7) A person who is the owner of a small business that has had to obtain permits under Act 250, appointed by the Governor.~~

~~(8) A person currently serving in the position of an elected officer of a Vermont city or town, appointed by the Governor.~~

~~(c) Public meetings. The Commission shall conduct seven public meetings in different regions of the State to provide information and collect public input regarding the protections and process of Act 250, with the seventh meeting to occur in Montpelier. The Commission shall collaborate with regional and municipal planning organizations. At these meetings, the Commission shall provide the information described in subsection (d) of this section and solicit input and proposals from the public on the issues identified in subsection (e) of this section. In addition to public meetings, the Commission shall use social media and other online mechanisms to survey and obtain information from the public.~~

~~(d) Information. The Commission shall summarize and present to the~~

public:

(1) the purpose and requirements of Act 250 and the rules adopted pursuant to the Act, and the process for appealing decisions;

(2) the history of Act 250 and its implementation; and

(3) the data on numbers of applications and appeals and processing times for each.

(e) Study; recommendations. In performing the review and making the recommendations described in subsection (a) of this section:

(1) The Commission shall examine the criteria at 10 V.S.A. § 6086(a) and make recommendations to:

(A) Ensure that the requirements of the criteria reflect current science and research. This inquiry shall include specific examination of the Act 250 criteria related to air, water, waste, habitat protection, forestland, and the impact of development on the budgets, facilities, and infrastructure of local, regional, and State governments.

(B) Ensure that the criteria address the issue of climate change, including reducing greenhouse gas emissions from projects subject to the Act and ensuring that those projects are prepared for the potential effects of climate change. In 2013 Acts and Resolves No. 89, Sec. 1(1), the General Assembly found that “[t]he primary driver of climate change in Vermont and elsewhere is the increase of atmospheric carbon dioxide (CO₂) from the

burning of fossil fuels.”

(C) Ensure that the criteria support development in centers designated under 24 V.S.A. chapter 76A and preserve, outside designated centers, natural resources, working farms, and working forests, including a healthy forest industry and a healthy ecosystem protected from fragmentation. The Commission also shall consider the impact of these policies on towns in which physical or other constraints may inhibit development in or expansion of existing settlements.

(D) Ensure that the criteria address any other issues related to the impacts of developments and subdivisions that the Commission determines have emerged since passage of the Act, including issues that may be raised by changes in the environmental protections afforded by federal law and regulation.

(2) The Commission shall examine potential changes to Act 250 jurisdiction to encourage development in designated centers and protect natural resources outside those centers, including working farms and forestland.

(3) The Commission shall examine whether efficiencies in Act 250 are available based on each of the planning and permitting processes listed in this subdivision and, based on this examination, make recommendations, if any, on ways to achieve those efficiencies while preserving the authority of the Act.

~~(A) In performing this examination, the Commission shall consider the compatibility with Act 250 of the scope, criteria, and procedures for each of these processes, which are:~~

~~(i) current environmental regulation by the Agency of Natural Resources;~~

~~(ii) current implementation of municipal and regional land use planning and regulation; and~~

~~(iii) the designations available under 24 V.S.A. chapter 76A.~~

~~(B) The Commission's examination shall identify changes in these planning and permitting processes that would assist in making Act 250 more effective and efficient.~~

~~(4) The Commission shall review the efficiency and effectiveness of the process before the District Commissions in achieving the Act 250 goals and whether changes could better meet these goals and improve the process for participants, including applicants and other parties, and shall make its resulting recommendations, if any.~~

~~(5) The Commission shall examine the effectiveness and efficiency of the current appeals process in achieving the Act 250 goals and whether changes could better meet these goals, and make its recommendations, if any, on how to improve the appeals process to achieve them. This inquiry shall include consideration of.~~

~~(A) barriers, if any, in the current appeals process that discourage participation;~~

~~(B)(i) the use of de novo hearing or on the record review on appeal of Act 250 decisions; and~~

~~(ii) if de novo hearing is retained, barriers in the current appeals process, if any, that inhibit reaching decisions on the merits of whether a project meets the Act 250 criteria on appeal; and~~

~~(C) comparison of the cost, length of time, and efficiency of the appeals process before the Environmental Division of the Superior Court as compared to the appeals process before the former Environmental Board.~~

~~(6) The Commission shall examine whether the intent of Act 250 to encourage citizen participation is being achieved effectively and identify ways to improve citizen participation in Act 250.~~

~~(7) The Commission shall examine the role of the Natural Resources Board and alternatives to the Board model in administering the Act 250 program, including whether the Board as currently constituted is the most effective and efficient structure to administer Act 250.~~

~~(8) The Commission shall examine the circumstances under which land might be released from Act 250 jurisdiction when the use of land has changed to a use that would not constitute a development or subdivision within the meaning of the Act. The Commission shall propose a process and criteria~~

~~under which such a release might be allowed.~~

~~(9) The Commission shall examine the definitions of “development” and “subdivision” contained in the Act and consider whether changes to those definitions would better achieve the Act 250 goals, including:~~

~~(A) examining changes to improve the ability of the Act to protect forest blocks and habitat connectivity;~~

~~(B) reviewing the scope of Act 250’s jurisdiction over projects on ridgelines, including its ability to protect ridgelines that are lower than 2,500 feet, and projects on ridgelines that are expressly exempted from Act 250; and~~

~~(C) considering projects that involve land in more than one town and one of the towns has both permanent zoning and subdivision bylaws and one of the towns does not have both sets of bylaws.~~

~~(f) Report. The Commission shall consider the public input and proposals provided under subsection (c) of this section and the issues set forth in subsection (e) of this section and shall report its findings and recommendations for legislative action to the House Committee on Natural Resources, Fish and Wildlife and the Senate Committee on Natural Resources and Energy (the Natural Resource Committees). The report shall attach proposed legislation. The report of the Commission shall be submitted on or before January 15, 2019 and on submission shall be posted to the web pages of the Natural Resources Committees.~~

(g) Assistance.

(1) The staff of the Natural Resources Board shall provide professional, legal, and administrative services to the Commission, including the scheduling of meetings and the preparation of the Commission's report.

(2) The Office of Legislative Council shall provide legal services to the Commission, including drafting the Commission's proposed legislation.

(3) The Commission shall have technical services of the Agencies of Commerce and Community Development, of Natural Resources, and of Transportation and, on request, shall be entitled to legal assistance from those agencies in their areas of expertise.

(4) On request, the Commission shall be entitled to financial assistance from the Joint Fiscal Office and to data from the Superior Court on appeals before the Environmental Division from decisions under Act 250, including annual numbers of appeals, length of time, and disposition.

(5) The Commission may request that an organization that has a member on the Commission make available to the Commission information or professional or technical resources that the member's organization already possesses.

(h) Meetings; officers.

(1) In addition to the public meetings required under subsection (c) of this section, the Commission may meet as needed to perform its tasks, and

~~shall cease to exist on February 15, 2019.~~

~~(2) The staff of the Natural Resources Board and the Office of Legislative Council jointly shall convene the first meeting of the Commission to occur during October 2017. At that meeting, the Commission shall:~~

~~(A) elect a chair from among its legislative members and a vice chair from among its members; and~~

~~(B) receive the information and recommendations developed by the working group described in Sec. 1(c) of this act.~~

~~(3) The Commission may appoint members of the Commission to subcommittees to which it assigns tasks related to specific issues within the Commission's charge.~~

~~(4) Meetings of the Commission and subcommittees shall be subject to the Vermont Open Meeting Law and 1 V.S.A. § 172.~~

~~(i) Reimbursement.~~

~~(A) For attendance at no more than 10 Commission meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.~~

~~(B) Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement~~

~~of expenses pursuant to 32 V.S.A. § 1010 for no more than 10 Commission meetings. These costs shall be allocated to the budget of the Natural Resources Board and District Environmental Commissions.~~

~~(C) There shall be no reimbursement for attendance at subcommittee meetings or more than 10 Commission meetings.~~

~~(i) ~~Facilitator; retention; appropriation~~ On behalf of the Commission, the Office of Legislative Council shall be authorized to retain, after a competitive bid process, a professional facilitator to assist the Commission in the development of information to be presented or provided at the public meetings under subsection (c) of this section; the conduct of these meetings; the use of social media and other online mechanisms to survey and obtain information from the public; and in making decisions on its report and recommendations. The facilitator shall attend each of the public meetings conducted under subsection (c) of this section. During fiscal year 2018, the sum of \$50,000.00 is appropriated to the Office of Legislative Council for the purpose of this subsection and the expenditure of up to \$50,000.00 for this purpose is authorized.~~

Sec. 3. EFFECTIVE DATE

~~*This act shall take effect on passage.*~~

Sec. 1. FINDINGS; PURPOSE

(a) Findings. The General Assembly finds as follows:

(1) In 1969, Governor Deane Davis by executive order created the Governor's Commission on Environmental Control, which consisted of 17 members and became known as the Gibb Commission because it was chaired by Representative Arthur Gibb.

(2) The Gibb Commission's recommendations, submitted in 1970, included a new State system for reviewing and controlling plans for large-scale and environmentally sensitive development. The system was not to be centered in Montpelier. Instead, the power to review projects and grant permits would be vested more locally, in commissions for districts within the State.

(3) In 1970, the General Assembly enacted 1970 Acts and Resolves No. 250, an act to create an environmental board and district environmental commissions. This act is now codified at 10 V.S.A. chapter 151 and is commonly known as Act 250. In Sec. 1 of Act 250 (the Findings), the General Assembly found that:

(A) "the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont";

(B) "a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands

and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control”;

(C) “it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls”; and

(D) “it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state.”

(4) In 1973 Acts and Resolves No. 85, Secs. 6 and 7, the General Assembly adopted the Capability and Development Plan (the Plan) called for by Act 250. Among the Plan’s objectives are:

(A) “Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state’s hills, forests, streams and lakes, wise use of the state’s non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses

which threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefited thereby.”

(B) “Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. . . . Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.”

(C) “Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.”

(D) “Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other than primary agricultural soil.”

(E) “In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact.”

(b) Purpose. The General Assembly establishes a Commission on Act 250: the Next 50 Years (the Commission) and intends that the Commission review the vision for Act 250 adopted in the 1970s and its implementation with the objective of ensuring that, over the next 50 years, Act 250 supports Vermont's economic, environmental, and land use planning goals.

(c) Executive Branch working group. Contemporaneously with the consideration of this act by the General Assembly, the Chair of the Natural Resources Board (NRB) has convened a working group on Act 250 to include the NRB and the Agencies of Commerce and Community Development and of Natural Resources, with assistance from the Agencies of Agriculture, Food and Markets and of Transportation. The working group intends to make recommendations during October 2017. The General Assembly intends that the Commission established by this act receive and consider information and recommendations offered by the working group convened by the Chair of the NRB.

Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS; REPORT

(a) Establishment. There is established the Commission on Act 250: the Next 50 Years (the Commission) to:

(1) Review the goals of Act 250, including the findings set forth in 1970 Acts and Resolves No. 250, Sec. 1 (the Findings) and the Capability and Development Plan adopted in 1973 Acts and Resolves No. 85, Secs. 6 and 7

(the Plan), and assess, to the extent feasible, the positive and negative outcomes of Act 250's implementation from 1970 to 2017. This review shall include consideration of the information, statistics, and recommendations described in subdivision (d)(1)(B) of this section.

(2) Engage Vermonters on their priorities for the future of the Vermont landscape, including how to maintain Vermont's environment and sense of place, and address relevant issues that have emerged since 1970.

(3) Perform the tasks and the review set forth in subsection (e) of this section and submit a report with recommended changes to Act 250 to achieve the goals stated in the Findings and the Plan, including any suggested revisions to the Plan.

(b) Membership; officers.

(1) The Commission shall be composed of the following six members:

(A) three members of the House of Representatives, not all from the same party, appointed by the Speaker of the House; and

(B) three members of the Senate, not all from the same party, appointed by the Committee on Committees.

(2) At its first meeting, the Commission shall elect a Chair and Vice Chair. The Vice Chair shall function as Chair in the Chair's absence.

(c) Advisors. Advisors to the Commission shall be appointed as set forth in this subsection. The advisors are referred to collectively as the "Act 250

Advisors.” The Commission may seek assistance from additional persons or organizations with expertise relevant to the Commission’s charge.

(1) The advisors may attend and participate in Commission meetings and shall have the opportunity to present information and recommendations to the Commission. The Commission shall notify the advisors of each Commission meeting.

(2) The advisors to the Commission shall be:

(A) the Chair of the Natural Resources Board or designee;

(B) a representative of a Vermont-based, statewide environmental organization that has a focus on land use and significant experience in the Act 250 process, appointed by the Committee on Committees;

(C) a person with expertise in environmental science affiliated with a Vermont college or university, appointed by the Speaker of the House;

(D) a representative of the Vermont Association of Planning and Development Agencies, appointed by the Speaker of the House;

(E) a representative of the Vermont Planners Association, appointed by the Committee on Committees;

(F) a representative of a Vermont-based business organization with significant experience in real estate development and land use permitting, including Act 250, appointed by the Committee on Committees;

(G) a person currently serving or who formerly served in the position

of an elected officer of a Vermont city or town, appointed by the Vermont League of Cities and Towns;

(H) the Chair of the Environmental Law Section of the Vermont Bar Association;

(I) each of the following or their designees:

(i) the Secretary of Agriculture, Food and Markets;

(ii) the Secretary of Commerce and Community Development;

(iii) the Secretary of Natural Resources; and

(iv) the Secretary of Transportation; and

(J) a current or former district coordinator or district commissioner, appointed by the Chair of the Natural Resources Board.

(3) The Commission and the Chair of the Natural Resources Board each may appoint one advisor in addition to the advisors set forth in subdivision (c)(2) of this section.

(4) Each appointing authority for an advisor to the Commission shall promptly notify the Office of Legislative Council of the appointment when made.

(d) Meetings; phases. The Commission shall meet as needed to perform its tasks and shall conduct three phases of meetings: a preliminary meeting phase, a public discussion phase, and a deliberation and report preparation phase. The initial meeting shall be part of the preliminary meeting phase,

convened by the Office of Legislative Council during September 2017 after notice to the Commission members and the Act 250 Advisors. Subsequent Commission meetings shall be at the call of the Chair or of any three members of the Commission.

(1) Preliminary meeting phase.

(A) The preliminary meeting phase shall include the initial meeting of the Commission and such additional meetings as may be scheduled.

(B) During the preliminary meeting phase, the Commission shall become informed on the history, provisions, and implementation of Act 250, including its current permitting and appeals processes. This phase shall include:

(i) Review of available information on the outcomes of Act 250 from 1970 to 2017, including case studies and analyses. When information relevant to this review does not exist, the Commission may request its preparation.

(ii) Review of the history and implementation of land use planning in Vermont, including municipal and regional planning under 24 V.S.A. chapter 117.

(iii) Receipt of the information and recommendations of the working group described in Sec. 1(c) of this act;

(iv) Information prepared by the Natural Resources Board on:

- (I) the Act 250 application process;
- (II) coordination of the Act 250 program with the Agencies of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation;
- (III) over multiple years, application processing times by district, number of appeals of application decisions and time to resolve, and number of appeals of jurisdictional opinions and time to resolve; and
- (IV) an overview of the history of the Natural Resources Board.
- (v) Opportunity for the Act 250 Advisors to present relevant information.
- (2) Public discussion phase. Following the preliminary meeting phase, the Commission, with assistance from the Act 250 Advisors, shall conduct a series of informational and interactive meetings on 2070: A Vision for Vermont's Future.
- (A) The purpose of this phase shall be to accomplish the public engagement set forth in subdivision (a)(2) of this section.
- (B) The Commission shall conduct this phase during adjournment of the General Assembly.
- (3) Deliberation and report preparation phase. Following completion of the public meeting phase, the Commission shall meet to perform the tasks set forth in subsection (e) of this section and deliberate and prepare its written

report and recommendations, with assistance from the Act 250 Advisors.

(e) Tasks; report and recommendations. After considering the information from its public discussion meetings and consultation with the Act 250 Advisors, the Commission shall perform the tasks set forth in this subsection and submit its report, including:

(1) A statistical analysis based on available data on Vermont environmental and land use permitting in general and on Act 250 permit processing specifically, produced in collaboration with municipal, regional, and State planners and regulatory agencies.

(2) Review and recommendations related to:

(A) An evaluation of the degree to which Act 250 has been successful or unsuccessful in meeting the goals set forth in the Findings and the Plan.

(B) An evaluation of whether revisions should be made to the Plan.

(C) An examination of the criteria and jurisdiction of Act 250, including:

(i) Whether the criteria reflect current science and adequately address climate change and other environmental issues that have emerged since 1970. On climate change, the Commission shall seek to understand, within the context of the criteria of Act 250, the impacts of climate change on infrastructure, development, and recreation within the State, and methods to incorporate strategies that reduce greenhouse gas emissions.

(ii) Whether the criteria support development in areas designated under 24 V.S.A. chapter 76A, and preserve rural areas, farms, and forests outside those areas.

(iii) Whether the criteria support natural resources, working lands, farms, agricultural soils, and forests in a healthy ecosystem protected from fragmentation and loss of wildlife corridors.

(iv) Whether Act 250 promotes compact centers of mixed use and residential development surrounded by rural lands.

(v) Whether Act 250 applies to the type and scale of development that provides adequate protection for important natural resources as defined in 24 V.S.A. § 2791.

(vi) Whether the exemptions from Act 250 jurisdiction further or detract from achieving the goals set forth in the Findings and the Plan, including the exemptions for farming and for energy projects.

(D) An examination of changes that have occurred since 1970 that may affect Act 250, such as changes in demographics and patterns and structures of business ownership.

(E) An examination of the interface between Act 250 and other current permit processes at the local and State levels and opportunities to consolidate and reduce duplication. This examination shall include consideration of the relationship of the scope, criteria, and procedures of Act

250 with the scope, criteria, and procedures of Agency of Natural Resources permitting, municipal and regional land use planning and regulation, and designation under 24 V.S.A. chapter 76A.

(F) An evaluation of how well the Act 250 application, review, and appeals processes are serving Vermonters and the State's environment and how they can be improved, including consideration of:

(i) Public participation before the District Environmental Commissions and in the appeals process, including party status.

(ii) The structure of the Natural Resources Board.

(iii) De novo or on the record appeals.

(iv) Comparison of the history and structure of the former Environmental Board appeals process with the current process before the Environmental Division of the Superior Court.

(v) Other appellate structures.

(G) The following specific considerations:

(i) Circumstances under which land might be released from Act 250 jurisdiction.

(ii) Potential revisions to Act 250's definitions of development and subdivision for ways to better achieve the goals of Act 250, including the ability to protect forest blocks and habitat connectivity.

(iii) The scope of Act 250's jurisdiction over projects on

ridgelines, including its ability to protect ridgelines that are lower than 2,500 feet, and projects on ridgelines that are expressly exempted from Act 250.

(iv) Potential jurisdictional solutions for projects that overlap between towns with and without both permanent zoning and subdivision bylaws.

(v) The potential of a person that obtains party status to offer to withdraw the person's opposition or appeal in return for payment or other consideration that is unrelated to addressing the impacts of the relevant project under the Act 250 criteria.

(H) Such other issues related to Act 250 as the Commission may consider significant.

(f) Due date. On or before December 15, 2018, the Commission shall submit its report and recommendations to the House Committee on Natural Resources, Fish and Wildlife and the Senate Committee on Natural Resources and Energy (the Natural Resource Committees). The report shall attach the Commission's proposed legislation.

(g) Assistance.

(1) The Office of Legislative Council shall provide administrative and legal assistance to the Commission, including the scheduling of meetings and the preparation of recommended legislation. The Joint Fiscal Office shall provide assistance to the Commission with respect to fiscal and statistical

analysis.

(2) The Commission shall be entitled to technical and professional services from the Natural Resources Board and the Agencies of Commerce and Community Development, of Natural Resources, and of Transportation.

(3) On request, the Commission shall be entitled to available statistics and data from municipalities, regional planning commissions, and State agencies on land use and environmental permit processing and decisions.

(4) On request, the Commission shall be entitled to data from the Superior Court on appeals before the Environmental Division from decisions under Act 250, including annual numbers of appeals, length of time, and disposition.

(h) Subcommittees. The Commission may appoint members of the Commission to subcommittees to which it assigns tasks related to specific issues within the Commission's charge and may request one or more of the Act 250 Advisors to assist those subcommittees.

(i) Reimbursement.

(A) For attendance at no more than 10 Commission meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(B) There shall be no reimbursement for attendance at subcommittee

meetings or more than 10 Commission meetings.

(j) Cessation. The Commission shall cease to exist on February 15, 2019.

Sec. 3. ASSISTANCE; PUBLIC ENGAGEMENT

If requested by the Commission established under Sec. 2 of this act, the Office of Legislative Council may retain professional assistance in the design and conduct of the public discussion phase set forth in Sec. 2(d)(2) of this act, provided the cost of this assistance does not exceed \$20,000.00.

Sec. 3a. ADDITIONAL AUTHORIZED USE; PUBLIC TRUST LANDS

(a) The General Assembly finds that:

(1) the General Assembly has the authority to authorize public uses of filled public trust lands in the City of Burlington; and

(2) the use of the filled public trust lands in the City of Burlington authorized by this act is consistent with the public trust doctrine.

(b) In addition to the uses authorized by the General Assembly in 1990 Acts and Resolves No. 274, 1991 Acts and Resolves No. 53, 1996 Acts and Resolves No. 87, and 1997 Acts and Resolves No. 22, the filled public trust lands within the City of Burlington that are located north of the centerline of Maple Street extending north to the northern terminus of the Lake Street extension completed in 2016 and that extend to the waters of Lake Champlain may be utilized for public markets that benefit Vermont's public and are available to the public on an open and nondiscriminatory basis.

(c) Any use authorized under this act is subject to all applicable requirements of law.

Sec. 3b. 10 V.S.A. § 6607a(g)(1) is amended to read:

(g)(1) Except as set forth in subdivisions (2), (3), and (4) of this subsection, a commercial hauler that offers the collection of municipal solid waste shall:

(A) Beginning on July 1, 2015, offer to collect mandated recyclables separated from other solid waste and deliver mandated recyclables to a facility maintained and operated for the management and recycling of mandated recyclables.

(B) Beginning on July 1, 2016, offer to collect leaf and yard residuals separate from other solid waste and deliver leaf and yard residuals to a location that manages leaf and yard residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(3)-(5) of this title.

(C) Beginning on July 1, ~~2017~~ 2018, offer collection of food residuals separate from other solid waste and deliver to a location that manages food residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(2)-(5) of this title.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.