

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish and Wildlife to which was
3 referred House Bill No. 424 entitled “An act relating to the Commission on
4 Act 250: the Next 50 Years” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS; PURPOSE

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

9 (1) In 1969, Governor Deane Davis by executive order created the
10 Governor’s Commission on Environmental Control, which consisted of
11 12 members and became known as the Gibb Commission because it was
12 chaired by Representative Arthur Gibb.

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

19 (3) In 1970, the General Assembly enacted 1970 Acts and Resolves
20 No. 250, an act to create an environmental board and district environmental
21 commissions. This act is now codified at 10 V.S.A. chapter 151 and is

1 commonly known as Act 250. In Sec. 1 of Act 250 (the Findings), the General
2 Assembly found that:

3 (A) “the unplanned, uncoordinated and uncontrolled use of the lands
4 and the environment of the state of Vermont has resulted in usages of the lands
5 and the environment which may be destructive to the environment and which
6 are not suitable to the demands and needs of the people of the state of
7 Vermont”;

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

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

18 (D) “it is necessary to regulate and control the utilization and usages
19 of lands and the environment to insure that, hereafter, the only usages which
20 will be permitted are not unduly detrimental to the environment, will promote

1 the general welfare through orderly growth and development and are suitable
2 to the demands and needs of the people of this state.”

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

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

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

18 (C) “Strip development along highways and scattered residential
19 development not related to community centers cause increased cost of
20 government, congestion of highways, the loss of prime agricultural lands,

1 overtaxing of town roads and services and economic or social decline in the
2 traditional community center.”

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

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

12 (b) Purpose. In light of Act 250’s upcoming 50th anniversary, the General
13 Assembly establishes the Commission on Act 250: the Next 50 Years, in order
14 to review and make recommendations on improving the effectiveness and
15 efficiency of the Act as currently implemented in achieving the goals set forth
16 in the Findings and the Capability and Development Plan, which in this act
17 will be referred to as “the Act 250 goals.” The General Assembly intends that
18 the Commission provide information to the public on the history and
19 implementation of Act 250 and solicit proposals and input from the public on
20 the matters within its charge. The General Assembly also intends that the
21 Commission’s recommendations enable the Act 250 program, going forward,

1 to meet the Act 250 goals and to safeguard Vermont’s environment effectively
2 and efficiently.

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

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

14 APPROPRIATION

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

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

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

1 (b) Membership. The Commission shall be composed of the following
2 11 members:

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

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

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

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

12 (3) A representative of a Vermont-based, statewide environmental
13 organization that has a focus on land use and significant experience in the Act
14 250 process, appointed by the Committee on Committees.

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

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

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

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

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

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

15 (d) Information. The Commission shall summarize and present to the
16 public:

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

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

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

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

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

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

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

17 (C) Ensure that the criteria support development in centers designated
18 under 24 V.S.A. chapter 76A and preserve, outside designated centers, natural
19 resources, working farms, and working forests, including a healthy forest
20 industry and a healthy ecosystem protected from fragmentation. The
21 Commission also shall consider the impact of these policies on towns in which

1 physical or other constraints may inhibit development in or expansion of
2 existing settlements.

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

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

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

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

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

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

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

2 **(B) The Commission’s examination shall identify changes in these**
3 **planning and permitting processes that would assist in making Act 250**
4 **more effective and efficient.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (g) Assistance.

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

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

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

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

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

15 (h) Meetings; officers.

16 (1) In addition to the public meetings required under subsection (c) of
17 this section, the Commission may meet as needed to perform its tasks, and
18 shall cease to exist on February 15, 2019.

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

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

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

5 (3) The Commission may appoint members of the Commission to
6 subcommittees to which it assigns tasks related to specific issues within the
7 Commission’s charge.

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

10 (i) Reimbursement.

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

15 (B) Other members of the Commission who are not employees of
16 the State of Vermont and who are not otherwise compensated or
17 reimbursed for their attendance shall be entitled to per diem
18 compensation and reimbursement of expenses pursuant to 32 V.S.A.
19 § 1010 for no more than 10 Commission meetings. These costs shall be
20 allocated to the budget of the Natural Resources Board and District
21 Environmental Commissions.

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

3 (j) Facilitator; retention; appropriation. On behalf of the Commission, the
4 Office of Legislative Council shall be authorized to retain, after a competitive
5 bid process, a professional facilitator to assist the Commission in the
6 development of information to be presented or provided at the public meetings
7 under subsection (c) of this section; the conduct of these meetings; the use of
8 social media and other online mechanisms to survey and obtain information
9 from the public; and in making decisions on its report and recommendations.
10 The facilitator shall attend each of the public meetings conducted under
11 subsection (c) of this section. During fiscal year 2019, the sum of \$50,000.00
12 is appropriated to the Office of Legislative Council for the purpose of this
13 subsection and the expenditure of up to \$50,000.00 for this purpose is
14 authorized.

15 Sec. 3. EFFECTIVE DATE

16 This act shall take effect on passage.

17
18 (Committee vote: _____)

19 _____

20 Representative _____

21 FOR THE COMMITTEE