

1 TO THE HONORABLE SENATE:

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

8 Sec. 1. FINDINGS; PURPOSE

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

10 (1) In 1969, Governor Deane Davis by executive order created the
11 Governor’s Commission on Environmental Control, which consisted of
12 17 members and became known as the Gibb Commission because it was
13 chaired by Representative Arthur Gibb.

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

20 (3) In 1970, the General Assembly enacted 1970 Acts and Resolves
21 No. 250, an act to create an environmental board and district environmental

1 commissions. This act is now codified at 10 V.S.A. chapter 151 and is
2 commonly known as Act 250. In Sec. 1 of Act 250 (the Findings), the General
3 Assembly found that:

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

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

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

19 (D) “it is necessary to regulate and control the utilization and usages
20 of lands and the environment to insure that, hereafter, the only usages which
21 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.**

13 ~~**(1) The implementation of Act 250 has achieved multiple benefits**~~
14 ~~**since its passage. For example, over the last 50 years, Vermont has**~~
15 ~~**experienced significant changes and Act 250 has helped preserve**~~
16 ~~**Vermont’s traditional settlement patterns and scenic beauty and protect**~~
17 ~~**its nature resources.**~~

18 ~~**(2) Act 250 represents a quality of life outcome that is essential for**~~
19 ~~**Vermont’s future, ensuring that Vermont protects its environment and**~~
20 ~~**promotes responsible, smart growth to build a prosperous and stable**~~
21 ~~**economy and healthy, vibrant Vermont communities. Protecting**~~

1 Vermont's environment and growing its economy are not at odds but are
2 inextricably linked. The challenge facing Vermont is to preserve those
3 aspects of the State that Vermonters love while building economic
4 opportunity to ensure that it is affordable to live in Vermont.

5 (3) Meeting the challenge facing Vermont must begin with a
6 determination to protect the environment, because if the environment is
7 not protected, Vermont will not succeed in the economic arena because it
8 will have lost the special qualities of the State that Vermonters wish to be
9 able to afford.

10 (4) The General Assembly establishes a Commission on Act 250: the
11 Next 50 Years – 2070: A Vision for Vermont's Future (the Commission)
12 and intends that the Commission review the vision for Act 250 adopted in the
13 1970s and its implementation with a goal to ensure the objective of
14 ensuring that Act 250 continues, over the next 50 years, to be effective at
15 achieving its Act 250 supports Vermont's economic, environmental, and
16 land use planning goals.

17 (c) Executive Branch working group. Contemporaneously with the
18 consideration of this act by the General Assembly, the Chair of the Natural
19 Resources Board (NRB) has convened a working group on Act 250 to include
20 the NRB and the Agencies of Commerce and Community Development and of
21 Natural Resources, with assistance from the Agencies of Agriculture, Food and

1 Markets and of Transportation. The working group intends to make
2 recommendations during October 2017. The General Assembly intends that
3 the Commission established by this act receive and consider information and
4 recommendations offered by the working group convened by the Chair of the
5 NRB.

6 Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS —~~2070: A~~
7 ~~VISION FOR VERMONT'S FUTURE~~; REPORT

8 (a) Establishment. There is established the Commission on Act 250: the
9 Next 50 Years —~~2070: A Vision for Vermont's Future~~ (the Commission)
10 to:

11 (1) Review the goals of Act 250, including the Findings and the
12 Capability and Development Plan (the Plan), and assess, to the extent
13 feasible, the outcomes of Act 250's implementation from 1970 to 2017. This
14 review shall include consideration of the information, statistics, and
15 recommendations described in subdivision (d)(1)(B) of this section.

16 (2) Conduct engagement and dialogue with Vermonters on their
17 priorities for the future of the Vermont landscape, including how to maintain
18 Vermont's environment and sense of place, and address the issue of climate
19 change.

20 (3) ~~receive statistics on current Act 250 permit processing and~~
21 ~~appeals, hear from State agencies involved in land use and environmental~~

1 ~~permitting, and consider the recommendations of the working group~~
2 ~~described in Sec. 1(c) of this act;~~

3 ~~(4) review the Capability and Development Plan and make~~
4 ~~recommendations, if any, on necessary revisions to the Plan to best protect~~
5 ~~and preserve the environment and landscape of Vermont;~~

6 ~~(5) review and make recommendations on the issues enumerated in~~
7 ~~this section, including:~~

8 ~~(A) seeking to understand, with the context of the criteria of Act~~
9 ~~250, the impacts of climate change on infrastructure, development, and~~
10 ~~recreation within the State, and the ability of the Act to reduce greenhouse~~
11 ~~gas emissions from development;~~

12 ~~(B) ensuring that the Act 250 criteria reflect current scientific~~
13 ~~knowledge and research;~~

14 ~~(C) examining the interface between Act 250 and other current~~
15 ~~permit processes at the local and State level;~~

16 ~~(D) evaluating how successful Act 250 has been in meeting the~~
17 ~~goals set forth in the Findings and the Plan; and~~

18 ~~(E) evaluating how the processes for applying for and appeal Act~~
19 ~~250 permits are serving Vermonters and how they can be improved; and~~

20 ~~(3) Perform the tasks and the review set forth in subsection (e) of~~
21 ~~this section and submit a report with recommended changes to Act 250 to~~

1 achieve the ~~desired outcomes for Vermont's future~~ goals stated in the
2 **Findings and the Plan, including any suggested revisions to the Plan.**

3 (b) Membership; officers.

4 (1) The Commission shall be composed of the following
5 seven members:

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

8 (B) three members of the Senate, **not all from the same party,**
9 appointed by the Committee on Committees; and

10 (C) one member of the House of Representatives or the Senate,
11 jointly appointed by the Speaker of the House and the Committee on
12 Committees.

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

15 (c) Advisors. Advisors to the Commission shall be appointed as set forth in
16 this subsection. The advisors are referred to collectively as the "**2070 Act 250**
17 **Advisors.**" **The Commission may seek assistance from additional persons**
18 **or organizations with expertise relevant to the Commission's charge.**

19 (1) The advisors may attend and participate in Commission meetings
20 and shall have the opportunity to present information and recommendations to

1 the Commission. The Commission shall notify the advisors of each
2 Commission meeting.

3 (2) The advisors to the Commission shall be:

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

5 (B) **a representative of the Vermont Natural Resources Council**
6 **(VNRC), appointed by VNRC a representative of a Vermont-based,**
7 **statewide environmental organization that has a focus on land use and**
8 **significant experience in the Act 250 process, appointed by the Committee**
9 **on Committees;**

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

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

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

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

19 (G) **a person currently serving or who formerly served in the**
20 **position of an elected officer of a Vermont city or town, appointed by the**
21 **Vermont League of Cities and Towns;**

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

3 **(I) each of the following or their designees:**

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

5 **(ii) the Secretary of Commerce and Community Development;**

6 **(iii) the Secretary of Natural Resources; and**

7 **(iv) the Secretary of Transportation; and**

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

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

13 (d) Meetings; phases. The Commission shall meet as needed to perform its
14 tasks and shall conduct three phases of meetings: a preliminary meeting phase,
15 a public discussion phase, and a deliberation and report preparation phase. The
16 initial meeting shall be part of the preliminary meeting phase, convened by the
17 Office of Legislative Council during ~~October~~ **September** 2017 after notice to
18 the Commission members and the **2070 Act 250** Advisors. Subsequent
19 Commission meetings shall be at the call of the Chair or of any three members
20 of the Commission.

1 (1) Preliminary meeting phase.

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

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

8 (i) review of available information on the outcomes of Act 250
9 from 1970 to 2017, including case studies;

10 (ii) receipt of the information and recommendations of the
11 working group described in Sec. 1(c) of this act;

12 (iii) information prepared by the Natural Resources Board on:

13 (I) the Act 250 application process;

14 (II) coordination of the Act 250 program with the Agencies of
15 Agriculture, Food and Markets, of Commerce and Community Development,
16 of Natural Resources, and of Transportation;

17 (III) over multiple years, application processing times by
18 district, number of appeals of application decisions and time to resolve, and
19 number of appeals of jurisdictional opinions and time to resolve; and

20 (IV) an overview of the history of the Natural Resources
21 Board; and

1 (iv) opportunity for the **2070 Act 250** Advisors to present relevant
2 information.

3 (2) Public discussion phase. Following the preliminary meeting phase,
4 the Commission, with assistance from the **2070 Act 250** Advisors, shall
5 conduct a series of information and interactive meetings on 2070: A Vision for
6 Vermont’s Future.

7 (A) The purpose of this phase shall be to accomplish the **task public**
8 **engagement and dialogue** set forth in subdivision (a)(2) of this section. A
9 central question asked shall be: “How can Vermont achieve the best outcomes
10 for the public good by protecting the environment and encouraging economic
11 prosperity?”

12 (B) The Commission shall conduct this phase **following during**
13 adjournment of the **2018-session General Assembly.**

14 (3) Deliberation and report preparation phase. Following completion of
15 the public meeting phase, the Commission shall meet to **perform the tasks set**
16 **forth in subsection (e) of this section and** deliberate and prepare its written
17 report and recommendations, with assistance from the **2070 Act 250** Advisors.

18 ~~(4) Opportunity. During the course of its work, the Commission~~
19 ~~shall provide an opportunity for organizations or individuals with~~
20 ~~expertise in any of the areas being considered by the Commission to~~
21 ~~provide information to assist in the Commission’s work.~~

1 (e) **Tasks;** report and recommendations. After considering the information
2 from its public discussion meetings and consultation with the **2070 Act 250**
3 Advisors, the Commission shall **perform the tasks set forth in this**
4 **subsection and** submit **a its report that includes its recommendations on the**
5 **topics set forth in subdivisions (a)(4) through (6) of this section and,**
6 **including:**

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

11 (2) **Review and** recommendations related to:

12 **(A) An evaluation of how successful Act 250 has been in meeting**
13 **the goals set forth in the Findings and the Plan.**

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

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

18 Whether the criteria reflect current science and adequately
19 address climate change and other environmental issues that have emerged
20 since 1970. **On climate change, the Commission shall seek to understand,**
21 **within the context of the criteria of Act 250, the impacts of climate change**

1 **on infrastructure, development, and recreation within the State, and**
2 **methods to reduce greenhouse gas emissions from projects subject to**
3 **Act 250.**

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

7 (iii) Whether the criteria support natural resources, working farms,
8 and working forests in a healthy ecosystem protected from fragmentation **and**
9 **loss of wildlife corridors.**

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

12 (v) Whether Act 250 applies to the type and scale of development
13 that provides adequate protection for important natural resources as defined in
14 24 V.S.A. § 2791.

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

18 **(D) An examination of the interface between Act 250 and other**
19 **current permit processes at the local and State levels. This examination**
20 **shall include consideration of the relationship of the scope, criteria, and**
21 **procedures of Act 250 with ~~those~~ the scope, criteria, and procedures of ~~the~~**

1 Agency of Natural Resources **permitting**, municipal and regional land use
2 planning and regulation, and **designated areas designation** under 24 V.S.A.
3 chapter 76A.

4 **(E) The effectiveness and efficiency of the District Environmental**
5 **Commissions and the Act 250 appeals process, An evaluation of how well**
6 **the Act 250 application, review, and appeals processes are serving**
7 **Vermonters and the State’s environment and how they can improved,**
8 including consideration of:

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

11 (ii) The structure of the Natural Resources Board.

12 (iii) De novo or on the record appeals.

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

16 (v) Other appellate structures.

17 **(F) The following specific considerations:**

18 (i) Circumstances under which land might be released from Act
19 250 jurisdiction.

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

4 **(iii) The scope of Act 250’s jurisdiction over projects on**
5 **ridgelines, including its ability to protect ridgelines that are lower than**
6 **2,500 feet, and projects on ridgelines that are expressly exempted from**
7 **Act 250.**

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

11 **(v) The potential of a for-profit business entity that obtains**
12 **party status to offer to withdraw its opposition or appeal in return for**
13 **payment or other consideration that is unrelated to addressing the**
14 **impacts of the relevant project under the Act 250 criteria.**

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

17 (f) Due date. On or before ~~January 15, 2019~~ **December 15, 2018**, the
18 Commission shall submit its report and recommendations to the House
19 Committee on Natural Resources, Fish and Wildlife and the Senate Committee
20 on Natural Resources and Energy (the Natural Resource Committees). The
21 report shall attach the Commission’s proposed legislation.

1 (g) Assistance.

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

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

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

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

17 (h) Subcommittees. The Commission may appoint members of the
18 Commission to subcommittees to which it assigns tasks related to specific
19 issues within the Commission's charge and may request one or more of the
20 **2070 Act 250** Advisors to assist those subcommittees.

1 (i) Reimbursement.

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

6 (B) There shall be no reimbursement for attendance at subcommittee
7 meetings or more than 10 Commission meetings.

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

9 Sec. 3. APPROPRIATION

10 **The For fiscal year 2018, the amount of \$25,000.00 is appropriated to the**
11 **Office of Legislative Council for the purpose of ~~this act, including the cost of~~**
12 **~~meetings and obtaining professional facilitation services if requested by~~**
13 **~~the Commission Sec. 2(d)(2) of this act, the public discussion phase,~~**
14 **including obtaining professional assistance in the design and conduct of**
15 **this phase, if requested by the Commission, and the cost of presentations**
16 **and meetings other than per diems and expenses of Commission members.**

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on passage.

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1 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE