

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 since  
14 its passage. For example, over the last 50 years, Vermont has experienced  
15 significant changes and Act 250 has helped preserve Vermont’s traditional  
16 settlement patterns and scenic beauty and protect its nature resources.

17 (2) Act 250 represents a quality of life outcome that is essential for  
18 Vermont’s future, ensuring that Vermont protects its environment and  
19 promotes responsible, smart growth to build a prosperous and stable economy  
20 and healthy, vibrant Vermont communities. Protecting Vermont’s  
21 environment and growing its economy are not at odds but are inextricably

1 linked. The challenge facing Vermont is to preserve those aspects of the State  
2 that Vermonters love while building economic opportunity to ensure that it is  
3 affordable to live in Vermont.

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

8 (4) The General Assembly establishes a Commission on Act 250: the  
9 Next 50 Years – 2070: A Vision for Vermont’s Future (the Commission) and  
10 intends that the Commission review the vision for Act 250 adopted in the  
11 1970s with a goal to ensure that Act 250 continues, over the next 50 years, to  
12 be effective at meeting the challenge facing Vermont.

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

1 recommendations offered by the working group convened by the Chair of the  
2 NRB.

3 Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS – 2070:

4 A VISION FOR VERMONT’S FUTURE; REPORT

5 (a) Establishment. There is established the Commission on Act 250: the  
6 Next 50 Years – 2070: A Vision for Vermont’s Future (the Commission) to:

7 (1) review the goals of Act 250 and assess, to the extent feasible, the  
8 outcomes of Act 250’s implementation from 1970 to 2017;

9 (2) conduct engagement and dialog with Vermonters on their priorities  
10 for the future of the Vermont landscape, including how to maintain Vermont’s  
11 environment and sense of place, and address the issue of climate change;

12 (3) receive statistics on current Act 250 permit processing and appeals,  
13 hear from State agencies involved in land use and environmental permitting,  
14 and consider the recommendations of the working group described in Sec. 1(c)  
15 of this act;

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

19 (5) review and make recommendations on the issues enumerated in this  
20 section, including:

1           (A) seeking to understand, with the context of the criteria of Act 250,  
2           the impacts of climate change on infrastructure, development, and recreation  
3           within the State, and the ability of the Act to reduce greenhouse gas emissions  
4           from development;

5           (B) ensuring that the Act 250 criteria reflect current scientific  
6           knowledge and research;

7           (C) examining the interface between Act 250 and other current  
8           permit processes at the local and State level;

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

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

13          (6) recommend changes to Act 250 to achieve the desired outcomes for  
14          Vermont's future.

15          (b) Membership; officers.

16           (1) The Commission shall be composed of the following  
17           seven members:

18           (A) three members of the House of Representatives, appointed by the  
19           Speaker of the House;

20           (B) three members of the Senate, appointed by the Committee on  
21           Committees; and

1           (C) one member of the House of Representatives or the Senate,  
2 jointly appointed by the Speaker of the House and the Committee on  
3 Committees.

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

6           (c) Advisors. Advisors to the Commission shall be appointed as set forth in  
7 this subsection. The advisors are referred to collectively as the “2070  
8 Advisors.”

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

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

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

15           (B) a representative of the Vermont Natural Resources Council  
16 (VNRC), appointed by VNRC;

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

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

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

4           (F) a person currently serving in the position of an elected officer of a  
5           Vermont city or town, appointed by the Vermont League of Cities and Towns;

6           (G) the Chair of the Environmental Law Section of the Vermont Bar  
7           Association;

8           (H) a designee of the Secretary of Agriculture, Food and Markets;

9           (I) a designee of the Secretary of Commerce and Community  
10          Development;

11          (J) a designee of the Secretary of Natural Resources;

12          (K) a designee of the Secretary of Transportation; and

13          (L) a former district coordinator or district commissioner, appointed  
14          by the Chair of the Natural Resources Board.

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

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

1 Office of Legislative Council during October 2017 after notice to the  
2 Commission members and the 2070 Advisors. Subsequent Commission  
3 meetings shall be at the call of the Chair or of any three members of the  
4 Commission.

5 (1) Preliminary meeting phase.

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

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

12 (i) receipt of the information and recommendations of the working  
13 group described in subsection 1(c) of this act;

14 (ii) information prepared by the Natural Resources Board on:

15 (I) the Act 250 application process;

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

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

1                    (IV) an overview of the history of the Natural Resources  
2 Board; and

3                    (iii) opportunity for the 2070 Advisors to present relevant  
4 information.

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

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

13                    (B) The Commission shall conduct this phase following adjournment  
14 of the 2018 session.

15                    (3) Deliberation and report preparation phase. Following completion of  
16 the public meeting phase, the Commission shall meet to deliberate and prepare  
17 its written report and recommendations, with assistance from the 2070  
18 Advisors.

19                    (4) Opportunity. During the course of its work, the Commission shall  
20 provide an opportunity for organizations or individuals with expertise in any of

1 the areas being considered by the Commission to provide information to assist  
2 in the Commission's work.

3 (e) Report and recommendations. After considering the information from  
4 its public discussion meetings and consultation with the 2070 Advisors, the  
5 Commission shall submit a report that includes its recommendations on the  
6 topics set forth in subdivisions (a)(4) through (6) of this section and:

7 (1) a statistical analysis based on available data on permitting in general  
8 and on Act 250 permit processing specifically, produced in collaboration with  
9 municipal, regional, and State planners and regulatory agencies;

10 (2) recommendations related to:

11 (A) an examination of the criteria and jurisdiction of Act 250,  
12 including:

13 (i) whether the criteria reflect current science and adequately  
14 address climate change and other environmental issues that have emerged  
15 since 1970;

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

19 (iii) whether the criteria support natural resources, working farms,  
20 and working forests in a healthy ecosystem protected from fragmentation;

1                    (iv) whether Act 250 promotes compact centers of mixed use and  
2                    residential development surrounded by rural lands; and

3                    (v) whether Act 250 applies to the type and scale of development  
4                    that provides adequate protection for important natural resources as defined in  
5                    24 V.S.A. § 2791;

6                    (B) the relationship of the scope, criteria, and procedures of Act 250  
7                    with those of the Agency of Natural Resources, municipal and regional land  
8                    use planning and regulation, and designated areas under 24 V.S.A. chapter  
9                    76A;

10                   (C) the effectiveness and efficiency of the District Environmental  
11                   Commissions and the Act 250 appeals process, including consideration of:

12                   (i) public participation before the District Environmental  
13                   Commissions and in the appeals process;

14                   (ii) the structure of the Natural Resources Board;

15                   (iii) de novo or on the record appeals;

16                   (iv) comparison of the history and structure of the former  
17                   Environmental Board appeals process with the current process before the  
18                   Environmental Division of the Superior Court; and

19                   (v) other appellate structures;

1           (D) the following specific considerations:

2           (i) circumstances under which land might be released from Act  
3           250 jurisdiction;

4           (ii) potential revisions to Act 250’s definitions of development and  
5           subdivision for ways to better achieve the goals of Act 250, including the  
6           ability to protect forest blocks and habitat connectivity; and

7           (iii) potential jurisdictional solutions for projects that overlap  
8           between towns with and without both permanent zoning and subdivision  
9           bylaws; and

10           (E) such other issues related to Act 250 as the Commission may  
11           consider significant.

12           (f) Due date. On or before January 15, 2019, the Commission shall submit  
13           its report and recommendations to the House Committee on Natural Resources,  
14           Fish and Wildlife and the Senate Committee on Natural Resources and Energy  
15           (the Natural Resource Committees). The report shall attach the Commission’s  
16           proposed legislation.

17           (g) Assistance.

18           (1) The Office of Legislative Council shall provide administrative and  
19           legal assistance to the Commission, including the scheduling of meetings and  
20           the preparation of recommended legislation. The Joint Fiscal Office shall

1 provide assistance to the Commission with respect to fiscal and statistical  
2 analysis.

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

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

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

13 (h) Subcommittees. The Commission may appoint members of the  
14 Commission to subcommittees to which it assigns tasks related to specific  
15 issues within the Commission's charge and may request one or more of the  
16 2070 Advisors to assist those subcommittees.

17 (i) Reimbursement.

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

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

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

4           Sec. 3. APPROPRIATION

5           The amount of \$25,000.00 is appropriated to the Office of Legislative  
6           Council for the purpose of this act, including the cost of meetings and  
7           obtaining professional facilitation services if requested by the Commission.

8           Sec. 4. EFFECTIVE DATE

9           This act shall take effect on passage.

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11           (Committee vote: \_\_\_\_\_)

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13

Senator \_\_\_\_\_

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FOR THE COMMITTEE