

1 **Changes in bold highlight = changes from 2.1 per committee review on**

2 **4/18/17**

3 **Changes in bold only = changes contained in 2.1 not reviewed on 4/18/17**

4 TO THE HONORABLE SENATE:

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

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 17 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  
20 centered in Montpelier. Instead, the power to review projects and grant

1 permits would be vested more locally, in commissions for districts within the  
2 State.

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

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

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

17 (C) “it is necessary to establish an environmental board and district  
18 environmental commissions and vest them with the authority to regulate the  
19 use of the lands and the environment of the state according to the guidelines  
20 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

1 investment. . . . Accordingly, conditions may be imposed upon the rate and  
2 location of development in order to control its impact upon the community.”

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

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

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

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

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

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

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

14           (1) Review the goals of Act 250, including the findings **set forth in**  
15           **1970 Acts and Resolves No. 250, Sec. 1 (the Findings)** and the Capability  
16           and Development Plan **adopted in 1973 Acts and Resolves No. 85, Secs. 6**  
17           **and 7** (the Plan), and assess, to the extent feasible, the **positive and negative**  
18           outcomes of Act 250's implementation from 1970 to 2017. This review shall  
19           include consideration of the information, statistics, and recommendations  
20           described in subdivision (d)(1)(B) of this section.

1           (2) Conduct engagement and dialogue with Engage Vermonters on  
2           their priorities for the future of the Vermont landscape, including how to  
3           maintain Vermont’s environment and sense of place, and address the issue of  
4           climate change relevant issues that have emerged since 1970.

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

9           (b) Membership; officers.

10           (1) The Commission shall be composed of the following  
11           seven members:

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

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

16           (C) one member of the House of Representatives or the Senate,  
17           jointly appointed by the Speaker of the House and the Committee on  
18           Committees.

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

1        (c) Advisors. Advisors to the Commission shall be appointed as set forth in  
2        this subsection. The advisors are referred to collectively as the “Act 250  
3        Advisors.” The Commission may seek assistance from additional persons or  
4        organizations with expertise relevant to the Commission’s charge.

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

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

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

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

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

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

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

1           (F) 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           (G) a person currently serving or who formerly served in the position  
5           of an elected officer of a Vermont city or town, appointed by the Vermont  
6           League of Cities and Towns;

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

9           (I) each of the following or their designees:

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

11           (ii) the Secretary of Commerce and Community Development;

12           (iii) the Secretary of Natural Resources; and

13           (iv) the Secretary of Transportation; and

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

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

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



1 initial meeting shall be part of the preliminary meeting phase, convened by the  
2 Office of Legislative Council during September 2017 after notice to the  
3 Commission members and the Act 250 Advisors. Subsequent Commission  
4 meetings shall be at the call of the Chair or of any three members of the  
5 Commission.

6 (1) Preliminary meeting phase.

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

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

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

17 (ii) Review of the history and implementation of land use  
18 planning in Vermont, including municipal and regional planning under  
19 24 V.S.A. chapter 117.

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

- 1                    (iv) Information prepared by the Natural Resources Board on:  
2                    (I) the Act 250 application process;  
3                    (II) coordination of the Act 250 program with the Agencies of  
4 Agriculture, Food and Markets, of Commerce and Community Development,  
5 of Natural Resources, and of Transportation;  
6                    (III) over multiple years, application processing times by  
7 district, number of appeals of application decisions and time to resolve, and  
8 number of appeals of jurisdictional opinions and time to resolve; and  
9                    (IV) an overview of the history of the Natural Resources Board.

10                   (v) Opportunity for the Act 250 Advisors to present relevant  
11 information.

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

16                   (A) The purpose of this phase shall be to accomplish the public  
17 engagement and dialogue set forth in subdivision (a)(2) of this section. A  
18 central question asked shall be: “How can Vermont achieve the best  
19 outcomes for the public good by protecting the environment and  
20 encouraging economic prosperity?”

1           (B) The Commission shall conduct this phase during adjournment of  
2           the General Assembly.

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

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

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

15           (2) Review and recommendations related to:

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

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

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

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

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

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

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

16                  (v) Whether Act 250 applies to the type and scale of development  
17                  that provides adequate protection for important natural resources as defined in  
18                  24 V.S.A. § 2791.

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

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

4                   **(E) An examination of the interface between Act 250 and other**  
5                   **current permit processes at the local and State levels. This examination**  
6                   **shall include consideration of the relationship of the scope, criteria, and**  
7                   **procedures of Act 250 with those the scope, criteria, and procedures of the**  
8                   **Agency of Natural Resources permitting, municipal and regional land use**  
9                   **planning and regulation, and designated areas designation under 24 V.S.A.**  
10                  **chapter 76A.**

11                  **(F) The effectiveness and efficiency of the District Environmental**  
12                  **Commissions and the Act 250 appeals process, An evaluation of how well**  
13                  **the Act 250 application, review, and appeals processes are serving**  
14                  **Vermonters and the State’s environment and how they can improved,**  
15                  **including consideration of:**

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

18                         **(ii) The structure of the Natural Resources Board.**

19                         **(iii) De novo or on the record appeals.**

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

4                    (v) Other appellate structures.

5                    (G) The following specific considerations:

6                    (i) Circumstances under which land might be released from Act  
7                    250 jurisdiction.

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

11                   **(iii) The scope of Act 250’s jurisdiction over projects on**  
12                   **ridgelines, including its ability to protect ridgelines that are lower than**  
13                   **2,500 feet, and projects on ridgelines that are expressly exempted from**  
14                   **Act 250.**

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

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

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

3            (f) Due date. On or before ~~January 15, 2019~~ December 15, 2018, the  
4            Commission shall submit its report and recommendations to the House  
5            Committee on Natural Resources, Fish and Wildlife and the Senate Committee  
6            on Natural Resources and Energy (the Natural Resource Committees). The  
7            report shall attach the Commission’s proposed legislation.

8            (g) Assistance.

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

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

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

20           (4) On request, the Commission shall be entitled to data from the  
21           Superior Court on appeals before the Environmental Division from decisions

1 under Act 250, including annual numbers of appeals, length of time, and  
2 disposition.

3 (h) Subcommittees. The Commission may appoint members of the  
4 Commission to subcommittees to which it assigns tasks related to specific  
5 issues within the Commission’s charge and may request one or more of the  
6 2070 Act 250 Advisors to assist those subcommittees.

7 (i) Reimbursement.

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

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

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

15 Sec. 3. APPROPRIATION

16 **The For fiscal year 2018, the amount of \$25,000.00 is appropriated to the**  
17 **Office of Legislative Council for the purpose of ~~this act, including the cost of~~**  
18 **~~meetings and obtaining professional facilitation services if requested by~~**  
19 **~~the Commission Sec. 2(d)(2) of this act, the public discussion phase,~~**  
20 **~~including obtaining professional assistance in the design and conduct of~~**



1 **this phase, if requested by the Commission, and the cost of presentations**  
2 **and meetings other than per diems and expenses of Commission members.**

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect on passage.

5

6

7 (Committee vote: \_\_\_\_\_)

8

\_\_\_\_\_

9

Senator \_\_\_\_\_

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FOR THE COMMITTEE