

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. The General Assembly establishes a Commission on Act 250:
13 the Next 50 Years (the Commission) and intends that the Commission review
14 the vision for Act 250 adopted in the 1970s and its implementation with the
15 objective of ensuring that, over the next 50 years, Act 250 supports Vermont’s
16 economic, environmental, and 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; REPORT

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

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

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

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

1 the goals stated in the Findings and the Plan, including any suggested revisions
2 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 "Act 250
17 Advisors." The Commission may seek assistance from additional persons or
18 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 a Vermont-based, statewide environmental
6 organization that has a focus on land use and significant experience in the Act
7 250 process, appointed by the Committee on Committees;

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

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

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

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

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

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

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

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

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

4 (iii) the Secretary of Natural Resources; and

5 (iv) the Secretary of Transportation; and

6 (J) a current or former district coordinator or district commissioner,

7 appointed by the Chair of the Natural Resources Board.

8 (3) The Commission and the Chair of the Natural Resources Board each

9 may appoint one advisor in addition to the advisors set forth in subdivision

10 (c)(2) of this section.

11 (4) Each appointing authority for an advisor to the Commission shall

12 promptly notify the Office of Legislative Council of the appointment when

13 made.

14 (d) Meetings; phases. The Commission shall meet as needed to perform its

15 tasks and shall conduct three phases of meetings: a preliminary meeting phase,

16 a public discussion phase, and a deliberation and report preparation phase. The

17 initial meeting shall be part of the preliminary meeting phase, convened by the

18 Office of Legislative Council during September 2017 after notice to the

19 Commission members and the Act 250 Advisors. Subsequent Commission

20 meetings shall be at the call of the Chair or of any three members of the

21 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 and analyses. When information
10 relevant to this review does not exist, the Commission may request its
11 preparation.

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

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

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

18 (I) the Act 250 application process;

19 (II) coordination of the Act 250 program with the Agencies of
20 Agriculture, Food and Markets, of Commerce and Community Development,
21 of Natural Resources, and of Transportation;

1 (III) over multiple years, application processing times by
2 district, number of appeals of application decisions and time to resolve, and
3 number of appeals of jurisdictional opinions and time to resolve; and

4 (IV) an overview of the history of the Natural Resources Board.

5 (v) Opportunity for the Act 250 Advisors to present relevant
6 information.

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

11 (A) The purpose of this phase shall be to accomplish the public
12 engagement set forth in subdivision (a)(2) of this section.

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

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

19 (e) Tasks; report and recommendations. After considering the information
20 from its public discussion meetings and consultation with the Act 250

1 Advisors, the Commission shall perform the tasks set forth in this subsection
2 and submit its report, including:

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

7 (2) Review and recommendations related to:

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

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

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

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

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

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

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

9 (v) Whether Act 250 applies to the type and scale of development
10 that provides adequate protection for important natural resources as defined in
11 24 V.S.A. § 2791.

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

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

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

1 250 with the scope, criteria, and procedures of Agency of Natural Resources
2 permitting, municipal and regional land use planning and regulation, and
3 designation under 24 V.S.A. chapter 76A.

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

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

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

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

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

14 (v) Other appellate structures.

15 (G) The following specific considerations:

16 (i) Circumstances under which land might be released from Act
17 250 jurisdiction.

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

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

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

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

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

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

18 (g) Assistance.

19 (1) The Office of Legislative Council shall provide administrative and
20 legal assistance to the Commission, including the scheduling of meetings and
21 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 Act
16 250 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 For fiscal year 2018, the amount of \$25,000.00 is appropriated to the Office
6 of Legislative Council for the purpose of Sec. 2(d)(2) of this act, the public
7 discussion phase, including obtaining professional assistance in the design and
8 conduct of this phase, if requested by the Commission, and the cost of
9 presentations and meetings other than per diems and expenses of Commission
10 members.

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on passage.

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15 (Committee vote: _____)

16

17

Senator _____

18

FOR THE COMMITTEE