

TESTIMONY ON H.424 BEFORE SENATE NATURAL RESOURCES AND
ENERGY COMMITTEE JON GROVEMAN VNRC POLICY AND WATER
PROGRAM DIRECTOR APRIL 7, 2017

- My name is Jon Groveman, Policy and Water Program Director for the Vermont Natural Resources Council (VNRC). Thank you for the opportunity to testify on H.424
- H.424 is a very important bill. The bill calls for a broader review of Vermont's landmark environmental law, Act 250, as Act 250 approaches its 50th anniversary.
- Act 250 was enacted in 1969 to address the impact of larger scale development on Vermont's natural resources and communities – both the impact of development on the ability of communities to provide services and the impact of development on Vermont's traditional development pattern - village, town and city centers surrounded by farms and forests.
- A hallmark of Act 250 from its conception was having decisions made at the regional level by District Commissions through a process that is fair and allows citizens to address concerns in an informal way. To address impacts in a way that allowed locals to easily participate and have their voices heard by people from their area of the state – a tricky balance that the Act 250 framers knew would have to be struck for act 250 to be successful.
- Overall Act 250 has been successful and has served Vermont well since its adoption in 1969. It has helped shape large scale developments to minimize impacts, has discouraged developments that are not well planned or financed, which has protected Vermont against the boom and bust style developments that we have seen in the rest of the country, and has protected Vermont's natural resources including critical wildlife habitat, rare natural areas, historic resources and much more.
- I submit that Vermont would not be the Vermont that we know and love today without Act 250 in place.
- With that said, it has been almost 50 years since Act 250 was enacted, and VNRC believes it is appropriate at this point in time to take a thoughtful, careful and comprehensive look at how Act 250 can be modernize to make it more effective, efficient and to ensure that it is meeting the needs of Vermonters in the 21st century.

- VNRC has a long history of protecting the integrity of Act 250. In fact VNRC's history parallels Act 250's history. VNRC is just over 50 years old. VNRC was formed out of concern that Vermont's rural character and working lands were being threatened by over development and poorly planned development.
- VNRC has resisted past efforts to open up Act 250 for review out of fear that the criteria and process would be weakened. So what brings VNRC to the conclusion that Vermont should take a step back and review Act 250?
- First, Act 250 has been altered significantly since 1969 – sometimes in large structural ways, but mostly through consistent changes that have had the cumulative effect of weakening the Act one change at a time.
- The largest change to Act 250 was in 2004 when Governor Douglas made a priority altering the Act 250 appeals process by eliminating the Environmental Board, which administered the Act 250 program and heard Act 250 appeals, and sending Act 250 appeals to the Environmental Court.
- This change did more than redirect appeals to the Court. It altered the administrative structure of Act 250 by removing significant power from the Environmental Board. The successor Natural Resources Board now administers Act 250. However, without appeals authority, the NRB has a very different relationship with the District Commissions than the Environmental Board did, and it must function in the context of the Environmental Court having the main say in interpreting Act 250.
- Redirecting appeals to the Court has also proven to be a significant change. The Environmental Board was a quasi-judicial body consisting of 9 members from different backgrounds and from different parts of the state. As someone who has been involved in Act 250 decisions since 1995, my analysis is that the Environmental Board rendered more in depth comprehensive decisions, and conducted a less formal appeals process, than the Environmental Court. Act 250 appeals are now heard by one Superior Court judge in a much more formal setting that focuses more on process than substance.
- As I noted, there have been many other changes to Act 250 since its adoption in 1969 that have weakened the Act.
- For example, since 2002 Act 250 has been changed at least 5 times to decrease jurisdiction over certain housing projects.

- In addition, there have been numerous exemptions or provisions to decrease jurisdiction or Act 250 review over certain projects. I have prepared a non-exhaustive list of some of the exemptions.
- After decades of these kind of changes to Act 250, and the major structural changes to Act 250 adopted in 2004, VNRC believes it is time to look at modernizing the act rather than making these piecemeal changes that have weakened Act 250 over time.
- While there is a risk in opening up Act 250 in this way, VNRC believes the potential rewards outweigh these risks.
- The potential reward is to build off the strong foundation that Act 250 provides, but modernize it to reflect the most current science, knowledge of planning, and current regulatory structures. For example, climate change was not an issue in 1969, thus the Act does not squarely address climate. We have learned a lot about water and air pollution, and waste management that could be better reflected in the Act.
- The development pressures in Vermont and the opportunities and challenges facing our communities are different today than they were in 1969.
- How well the Act 250 process is serving Vermonters – both the structure of the NRB post elimination of the Environmental Board, and the Environmental Court as the appellate body for Act 250 since 2004, should be reviewed. VNRC has significant concerns about how the Environmental Court has functioned as the appellate Act 250 body, in particular how having appeals go to the Court has altered the structure of Act 250 and affected the role of the NRB. It is time to review these concerns in a thoughtful and comprehensive manner.
- For this Commission to be successful it must be comprised of fair minded people who are willing to evaluate any changes to Act 250 in good faith. It should be comprised of people or organizations that have a broad view of land use in Vermont and the role and function of Act 250 in Vermont. It will not work if it is comprised of every group with a narrow, specific interest.
- VNRC believes that individuals or groups with specific interests can plug into the Commission's work by providing expert input to help guide the Commission's decision.
- The Commission membership must be small and nimble enough to address the complicated issues it will be reviewing. The Gibb

Commission was comprised of 12 people. This Commission as proposed in H.242 I believe includes 11 members. This is approximately the right amount of people to enable the Commission to function effectively

- VNRC would like the opportunity to provide specific language to improve the Commission make up, and to provide additional direction to the Commission to hear from individuals or groups with specific interests or expertise on specific issues to ensure that these points of views are heard and that the Commission has the benefit of this information.
- Finally, to be successful members of the Commission must go into this process with the goal of improving and modernizing Act 250, not to weaken the Act.
- VNRC believes that if this is done right, Act 250 could be altered to ensure that Vermont continues to grow in the 21st century in a way that preserves our traditional settlement patterns, protects our working farms and forests, and keeps our villages, towns and city centers vibrant.