

1 H.424

2 Introduced by Representatives Sheldon of Middlebury, Conquest of Newbury,
3 Brumsted of Shelburne, Conlon of Cornwall, Gonzalez of
4 Winooski, Jickling of Brookfield, LaLonde of South
5 Burlington, Lefebvre of Newark, Masland of Thetford,
6 McCullough of Williston, Quimby of Concord, Scheu of
7 Middlebury, and Wood of Waterbury

8 Referred to Committee on

9 Date:

10 Subject: Conservation and development; natural resources; land use; Act 250;
11 study commission

12 Statement of purpose of bill as introduced: In light of the upcoming 50th
13 anniversary of the State land use law, known as Act 250, this bill proposes to
14 create a commission to review and make recommendations on improving the
15 effectiveness and efficiency of the Act as currently implemented in achieving
16 its goals. The commission's tasks would include

- 17 • review of the Act 250 criteria in light of current science and research and
18 issues that have emerged during those 50 years, such as climate change;
- 19 • review of potential changes to Act 250 jurisdiction to encourage
20 development in designated centers and protect natural resources outside
21 those centers;

- 1 • review of the efficiency of the application and appeals process and ways
2 to improve the process for all participants, including applicants and
3 other parties, and to ensure that it continues to encourage citizen
4 participation; and
- 5 • review of the current administrative structure of the Act, including the
6 role of the Natural Resources Board.

7 Prior to making recommendations, the commission would solicit public input
8 and proposals on the issues within its charge.

9 An act relating to the Commission on Act 250: the Next 50 Years

10 It is hereby enacted by the General Assembly of the State of Vermont:

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 12 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. In light of Act 250’s upcoming 50th anniversary, the General
18 Assembly establishes the Commission on Act 250: the Next 50 Years, in order
19 to review and make recommendations on improving the effectiveness and
20 efficiency of the Act as currently implemented in achieving the goals set forth
21 in the Findings and the Plan, which in this act will be referred to as “the Act

1 250 goals.” The General Assembly intends that the Commission provide
2 information to the public on the history and implementation of Act 250 and
3 solicit proposals and input from the public on the matters within its charge.
4 The General Assembly also intends that the Commission’s recommendations
5 enable the Act 250 program, going forward, to meet the Act 250 goals and to
6 safeguard Vermont’s environment effectively and efficiently.

7 Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS; REPORT;
8 APPROPRIATION

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

11 (1) provide information regarding Act 250 and its operation and
12 implementation to date; and

13 (2) review and make recommendations on improving the effectiveness
14 and efficiency of the Act as currently implemented in achieving the Act 250
15 goals.

16 (b) Membership. The Commission shall be composed of the following
17 12 members:

18 (1) Six current members of the General Assembly with knowledge and
19 expertise in one or of the following areas: conservation and development,
20 natural resources, or judicial or quasi-judicial process. Of these members:

1 (A) three shall be members of the House Representatives, appointed
2 by the Speaker of the House; and

3 (B) three shall be members of the Senate, appointed by the
4 Committee on Committees.

5 (2) The Chair of the Natural Resources Board or designee.

6 (3) A representative of a Vermont-based, statewide environmental
7 organization that has a focus on land use and significant experience in the Act
8 250 process, appointed by the Committee on Committees.

9 (4) A person with significant experience in real estate development and
10 land use permitting, including Act 250, appointed by the Speaker of the House.

11 (5) A representative of the Vermont Planners Association, appointed by
12 the Association.

13 (6) A member of a Vermont-based statewide business organization,
14 appointed by the Governor.

15 (7) A person who is the owner of a small business that has had to obtain
16 permits under Act 250, appointed by the Speaker of the House.

17 (c) Public meetings. The Commission shall conduct six public meetings in
18 different regions of the State to provide information and collect public input
19 regarding the protections and process of Act 250. The Commission shall
20 collaborate with regional and municipal planning organizations. At these
21 meetings, the Commission shall provide the information described in

1 subsection (d) of this section and solicit input and proposals from the public on
2 the issues identified in subsection (e) of this section.

3 (d) Information. The Commission shall summarize:

4 (1) the purpose and requirements of Act 250 and the rules adopted
5 pursuant to the Act, and the process for appealing decisions;

6 (2) the history of Act 250 and its implementation; and

7 (3) the data on numbers of applications and appeals and processing
8 times for each.

9 (e) Study; recommendations. In performing the review and making the
10 recommendations described in subsection (a) of this section:

11 (1) The Commission shall examine the criteria at 10 V.S.A. § 6086(a)
12 and make recommendations to:

13 (A) Ensure that the requirements of the criteria reflect current science
14 and research. This inquiry shall include specific examination of the Act 250
15 criteria related to air, water, waste, habitat protection, forestland, and the
16 impact of development on the budgets, facilities, and infrastructure of local,
17 regional, and State governments.

18 (B) Ensure that the criteria address the issue of climate change,
19 including greenhouse gas emissions from projects subject to the Act and the
20 potential effects of climate change on those projects.

1 (C) Ensure that the criteria support development in centers designated
2 under 24 V.S.A. chapter 76A and protect working farms, forestland, and
3 natural resources outside designated centers.

4 (D) Ensure that the criteria address any other issues related to the
5 impacts of developments and subdivisions that the Commission determines
6 have emerged since passage of the Act, including issues that may be raised by
7 changes in the environmental protections afforded by the federal government.

8 (2) The Commission shall examine potential changes to Act 250
9 jurisdiction to encourage development in designated centers and protect natural
10 resources outside those centers, including working farms and forestland.

11 (3) The Commission shall examine whether efficiencies in Act 250 are
12 available based on each of the following and, based on this examination, make
13 recommendations, if any, on ways to achieve those efficiencies while
14 preserving the authority of the Act:

15 (A) the current scope of environmental regulation by the Agency of
16 Natural Resources;

17 (B) the current scope and implementation of municipal and regional
18 land use planning and regulation; and

19 (C) the designations available under 24 V.S.A. chapter 76A.

20 (4) The Commission shall review the efficiency and effectiveness of the
21 process before the District Commissions in achieving the Act 250 goals and

1 whether alternatives could better meet these goals and improve the process for
2 participants, including applicants and other parties, and shall make its resulting
3 recommendations, if any.

4 (5) The Commission shall examine the effectiveness and efficiency of
5 the current appeals process in achieving the Act 250 goals and whether
6 alternatives could better meet these goals, and make its recommendations, if
7 any, on how to improve the appeals process to achieve them. This inquiry
8 shall include consideration of:

9 (A) barriers, if any, in the current appeals process that discourage
10 participation or reaching decisions on the merits of whether a project meets the
11 Act 250 criteria on appeal; and

12 (B) comparison of the cost, length, and efficiency of the appeals
13 process before the Environmental Division of the Superior Court as compared
14 to the appeals process before the former Environmental Board.

15 (6) The Commission shall examine whether the intent of Act 250 to
16 encourage citizen participation is being achieved effectively and identify ways
17 to improve citizen participation in Act 250.

18 (7) The Commission shall examine the role of the Natural Resources
19 Board in administering the Act 250 program, including whether the Board as
20 currently constituted is the most effective and efficient structure to administer
21 Act 250 and alternatives to the Board model.

1 (f) Report. The Commission shall consider the public input and proposals
2 provided under subsection (c) of this section and the issues set forth in
3 subsection (e) of this section and shall publish a report of the Commission's
4 recommendations for legislative action. The report shall attach proposed
5 legislation. The report of the Commission shall be posted to the website of the
6 General Assembly on or before January 15, 2019.

7 (g) Assistance.

8 (1) The staff of the Natural Resources Board shall provide professional,
9 legal, and administrative services to the Commission, including the scheduling
10 of meetings and the preparation of the Commission's report.

11 (2) The Office of Legislative Council shall provide legal services to the
12 Commission, including drafting the Commission's proposed legislation.

13 (3) The Commission shall have technical services of the Agencies of
14 Commerce and Community Development, of Natural Resources, and of
15 Transportation and, on request, shall be entitled to legal assistance from those
16 agencies in their areas of expertise.

17 (4) On request, the Commission shall be entitled to financial assistance
18 from the Joint Fiscal Office and to information from the Superior Court.

19 (5) A condition of Commission membership shall be that the
20 professional and technical resources of a member's organization shall be
21 available, on request, to the Commission. This condition shall not apply to the

1 member appointed under subdivision (b)(7) of this section. For the legislative
2 members and the Chair of the Natural Resources Board, this condition shall be
3 satisfied by subdivisions (1) and (2) of this section.

4 (h) Meetings; officers.

5 (1) In addition to the public meetings required under subsection (c) of
6 this section, the Commission may meet not more than seven times, and shall
7 cease to exist on February 15, 2019.

8 (2) The staff of the Natural Resources Board and the Office of
9 Legislative Council jointly shall convene the first meeting of the Commission
10 to occur on or before August 1, 2017. At that meeting, the Commission shall
11 elect a chair and vice chair from among its legislative members. The Chair of
12 the Natural Resources Board or designee shall be the clerk of the Commission.

13 (3) The Commission may appoint members of the Commission to
14 subcommittees to which it assigns tasks related to specific issues within the
15 Commission's charge. Meetings of subcommittees shall not count toward the
16 meeting limits of this section.

17 (4) Meetings of the Commission and subcommittees shall be subject to
18 the Vermont Open Meeting Law and 1 V.S.A. § 172.

19 (i) Reimbursement. For attendance at Commission meetings during
20 adjournment of the General Assembly, legislative members of the Commission
21 shall be entitled to per diem compensation and reimbursement of expenses

1 pursuant to 2 V.S.A. § 406. However, there shall be no reimbursement for
2 attendance at subcommittee meetings.

3 (j) Working Group. There is created the Working Group on Act 250: the
4 Next 50 Years to develop, prior to September 30, 2017, the information and
5 educational materials to be presented or provided at the public meetings of the
6 Commission under subsection (c) of this section. The Working Group shall
7 consist of the Chair and Vice Chair of the Commission and the Chair of the
8 Natural Resources Board or designee. The Working Group shall have the same
9 services as provided to the Commission under subsection (g) of this section.

10 (k) Facilitator; retention; appropriation. On behalf of the Commission, the
11 Working Group on Act 250: the Next 50 Years shall be authorized to retain,
12 after a competitive bid process, a professional facilitator to assist the
13 Commission and the Working Group in the development of information to be
14 presented or provided at the public meetings under subsection (c) of this
15 section; the conduct of these meetings; and in making decisions on its report
16 and recommendations. During fiscal year 2018, the sum of \$50,000.00 is
17 appropriated to the Commission for the purpose of this subsection.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on passage.