The Global Warming Solutions Act (GWSA)

**Background:** Act 168 established Greenhouse Gas Reduction Goals for reducing statewide greenhouse gas (mainly carbon dioxide) emissions to 25% below the 1990 level by 2012, 50% below by 2028, and “if practicable”, 75% below by 2050 (10 VSA 578). However the 2012 goal was missed, and by 2015 GHG emissions were 16% above the 1990 baseline.

**The GWSA:** Legislators and interest groups concerned about “climate change” propose to make Act 168’s “aspirational” emission goals into mandatory requirements. The result is the GWSA (H.688). Its principal purpose is to “create a legally enforceable system by which Vermont will reduce its statewide greenhouse gas emissions…” through state agency rule making. The mandatory reductions levels will now become 26% below the 2005 baseline (10 MMtCO2e) by 2025, 40% below by 2030, and 80% below by 2050.

**Findings:** the bill offers as authorities the UN Intergovernmental Panel on Climate Change in support of a “climate emergency”, and the U.S. Climate Alliance, a nonbinding agreement among 25 governors to pursue policies to implement the IPCC’s 2016 Paris Agreement, from which President Donald Trump withdrew U.S. support. The Findings include a long list of climate-induced disasters, and also speculate that Vermont could suffer a “climate crisis-related credit downgrade” for failing to act aggressively to reduce emissions.

**The Council:** GWSA would establish a 21-member Vermont Climate Council, composed of seven state officials, seven persons named by the Speaker of the House, and seven named by the Senate Committee on Committees. These latter 14 appointees will not include anyone representing the public.
generally, or taxpayers in particular, and will undoubtedly be carefully screened to exclude persons who might become critical of the Plan and the rules.

**The Plan:** The bill charges the Council with producing by July 1, 2021 a Plan that will set forth the specific initiatives, programs, and strategies that the State shall pursue to reduce greenhouse gas emissions, achieve the State’s reduction requirements…”

**The Council and Rule Making:** The Council “shall also provide guidance to the Secretary of Natural Resources concerning the form, content and subject matter of rules to be adopted pursuant to section 593 of this Chapter.” This is the new section authorizing the Secretary to adopt binding rules that he or she believes will make Vermonters act to comply with the mandatory emissions requirements and deadlines cited above.

**The Rule Making Process:** The proposed rule making process is unprecedented. The bill requires the Secretary to submit proposed rules to the Council 45 days, and to legislative committees 30 days, before submitting them to the executive branch Interagency Committee on Administrative Rules. Once the emissions reduction rules are finalized, the General Assembly will not vote on them.

**Enforcement by Litigation:** Of special interest are the last four pages of the bill, specifying “Cause of Action”: “Any person” can go to Superior Court to allege that “the rules adopted by the Secretary have failed to achieve the greenhouse gas emissions reductions requirements”. That plaintiff can seek a judicial order (mandamus) directing the Secretary to adopt or update rules that do achieve the requirements. That order would require a judge to make a determination of insufficient agency compliance with the emissions requirements, and order state agencies to
undertake more vigorous regulation to produce undetectable results on the planet’s climate many years in the future. A “substantially prevailing” plaintiff shall be awarded “reasonable costs and attorney’s fees unless doing so would not serve the interests of justice”. In addition to defending against a GWSA lawsuit, the State would be required to make these payments to plaintiffs. The most likely plaintiff is the Conservation Law Foundation, that successfully litigated against the State of Massachusetts for not taking sufficiently drastic action under an almost identical GWSA (Kain vs. Dept. of Environmental Protection, 474 Mass. 278, May 17, 2016).

**Criticisms:** Having failed for five years to even bring their favorite global warming solution – a carbon tax – to a vote, the “global climate solutions” advocates are trying to achieve many of the same results through an agency rule making process. The process set forth in this bill, starting with the “climate super government” Council, is unmistakably designed to authorize mandatory state regulation of anything and everything in the state’s economy that has any arguable connection to the transportation and use of carbon-based fuels. This means anything that uses grid electricity, powered machinery, motor fuel, and home and business heating. It means strict building standards and curtailing development in rural areas. Citizens will have no idea of what burdens enactment of GWSA will place on them, until long after the rule making process has been put in motion. All this is based on the premise, stated in the Findings, that the planet faces a “climate emergency” caused by human-caused greenhouse gas emissions, thus requiring increasingly far-reaching and desperate measures to “decarbonize” every human activity. This is a favorite
contention of impassioned GWSA advocates, but highly debatable.

Unilateral mandatory action to reduce emissions will cripple the competitiveness of Vermont in the national economy. It will force Vermonters to rely on uncertain and inevitably more expensive energy sources in every aspect of their daily lives.

Enforcing a vast array of mandatory carbon emissions reduction rules will require an army of regulators and enforcers, leading to a Green Police State.

The GWSA-authorized litigation will become a gold mine for climate litigators. The lawsuits will force judges to decide whether agencies have done enough to achieve emissions goals in 2028 and 2050, an inherently impossible task that judges are not equipped to undertake.

Most damning, the GWSA’s vast expansion of government power will be commenced without the record vote of a single member of the legislature. This is a shocking violation of the Vermont Constitution (Ch. I Art. 6th) and an assault on democratic government itself.