

Proposed Changes to the Scope of Act 250 and their Impact on Development in Vermont

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Introduction

In the spring of 1969, Governor Deane Davis took a tour of a site in Dover, VT on which nineteen subdivisions totaling, 1,400 second homes were proposed to be built. Despite the fact that construction for most of the homes had not even begun yet, after seeing the burgeoning environmental degradation the site, Governor Davis used his gubernatorial influence to halt development until regulations could be implemented. This culminated in Act 250 being signed into law (Gillies, 2009). Today, Act 250 is nearly five decades old and has endured as Vermont's main development legislation.

Given that development in the Vermont Lake Champlain basin has a direct relationship with water pollution within the lake, this research represents an effort to understand how changes in Act 250 alter land use change and resultant phosphorus runoff. Additionally, the notion that agents representing different interests, regions, and political parties throughout the state will broaden or narrow the scope of development laws is explored. Many entities within the state claim Act 250 makes Vermont uncompetitive for business interests and that loosening regulations would have a positive economic impact. Still others believe that more could be done to protect Vermont's greatest resource, the beauty of its natural environment, and advocate for more extensive regulations. Act 250 has shaped Vermont's urban and natural settings for nearly a half century and will likely continue to play a vital role in the years to come.

Methodology

There are two main components to the methodology of this project: the architecture and construction of the Act 250 Database, and the coding of each individual bill. Prior to the 2016 RACC program, work had already been done towards developing a database of bills that pertained to Act 250. However, upon attempting to replicate former interns' search procedures, several gaps in their methods were found and subsequently had to be revised. Using the Vermont State Legislature database, bills related to Act 250 were found by using a keyword search for the following terms: *Act 250, 10 VSA 6001-6111, land use, development, landfill, water quality, phosphorus runoff, stake holder, party status*. This search was then repeated for each legislative biennia from 1993 to 2016.

After a complete list of proposed bills related to Act 250 was compiled, metadata for each bill was then recorded. This includes each bill's primary sponsor, their district and party affiliation, date introduced, bill number, title, act number if applicable, and a hyperlink to the full text of the bill. This process was repeated for each bill during the keyword search.

The second main component of the project was coding each bill in the database. This was done based on three different sets of criteria including *Process v. Content, Relevance, and Significance*. Bills coded for *Content* impact the direct implementation of Act 250. This includes all definitions, criteria regarding proper environmental regulation, and matters dealing with enforcement. Bills coded for *Process* deal with implementing the procedural practices of Act 250. This includes procedures regarding the permitting process, which stakeholders hold party status, the powers and authorities of the Environmental Board, and issues such as fees and time parameters.

Coding for *Relevance* was done to gauge the relevance of each bill to the wider RACC project as they pertain to subjects such as water quality, development, and land use. Coding was done on a one to five scale, with one being the least relevant and five being the most:

1. Very low relevance. Act 250 may be mentioned in the text of the bill or law, but there is little to no pertinent substance in the bill to RACC.
2. Low relevance. There is some pertinent substance to RACC, but it is not particularly noteworthy or important to overarching themes.
3. Somewhat relevant. There is relevant substance within the bill or law to RACC, but the substance may be either indirect or of minor significance.
4. Relevant. Substance of the bill or law is directly relating to RACC, and is of noteworthy importance.
5. Very relevant. Highly important to RACC and its goals, fundamentally linked to the project and its relation to Act 250.

Coding for *Significance* was done to gauge the importance of each bill to Act 250 as a larger piece of legislation. Coding was done on a one to three scale, with one being the least significant and three being the most:

1. Insignificant. Small changes in language or punctuation that have little importance
2. Somewhat significant. Bill alters the process or content of Act 250 to a middling degree.
3. Significant. Represents an integral amendment to the process or content of Act 250.

Results

Fig. 1: Proportion of most relevant/significant bills proposed compared to total number

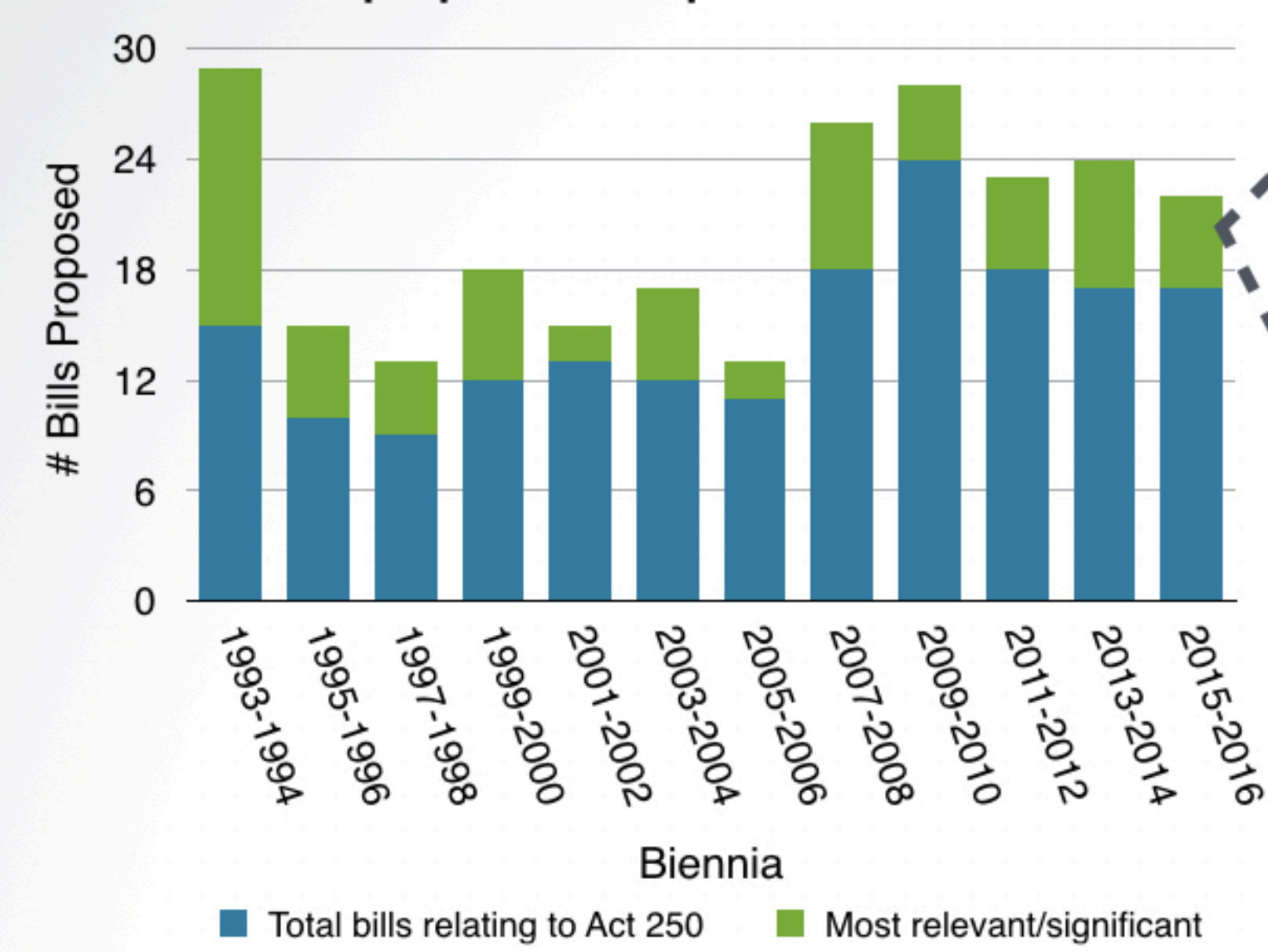


Fig. 2: Distribution of subject matter in most relevant/significant bills

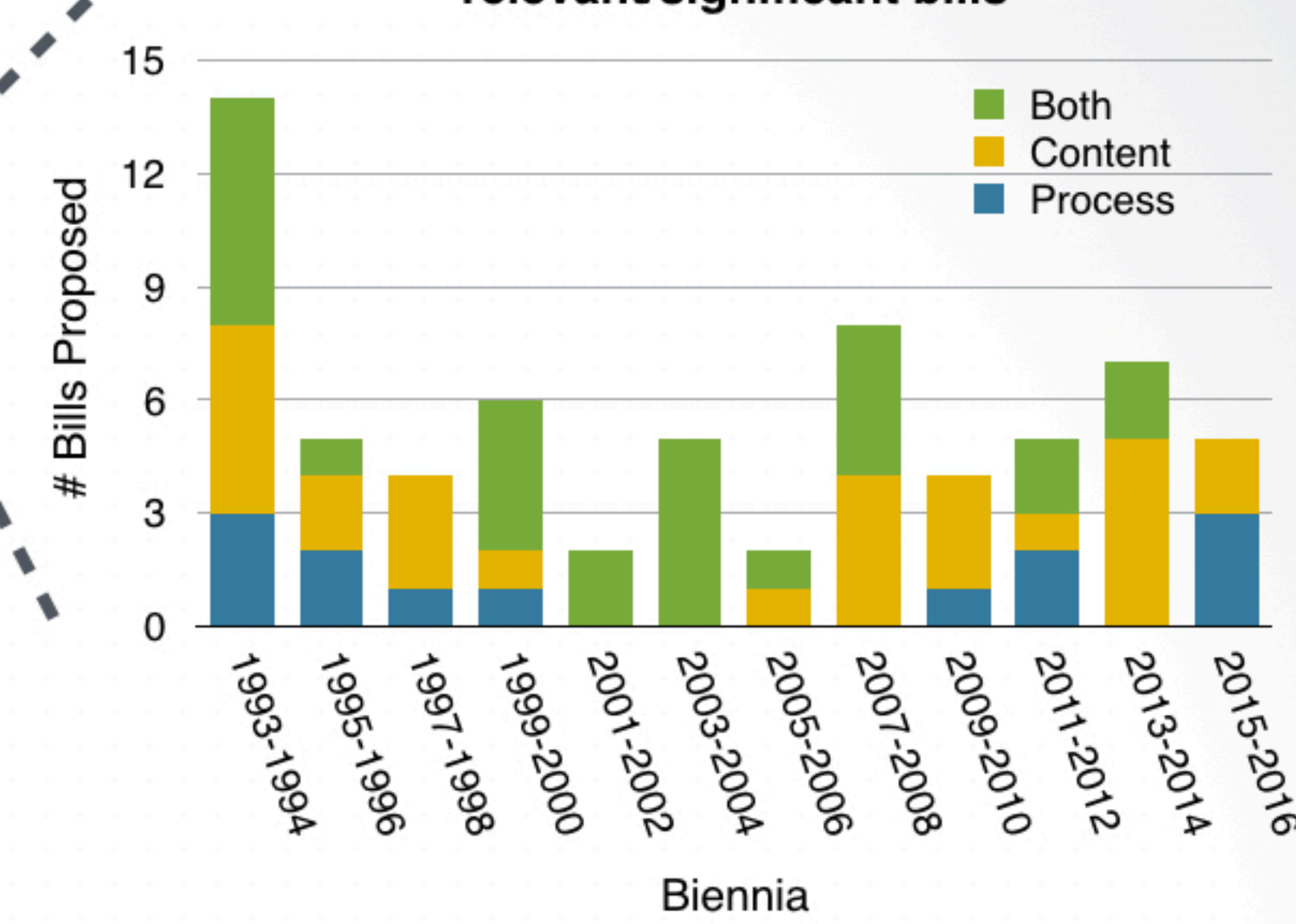


Fig. 3: Most relevant/significant proposed bills by party of primary sponsor

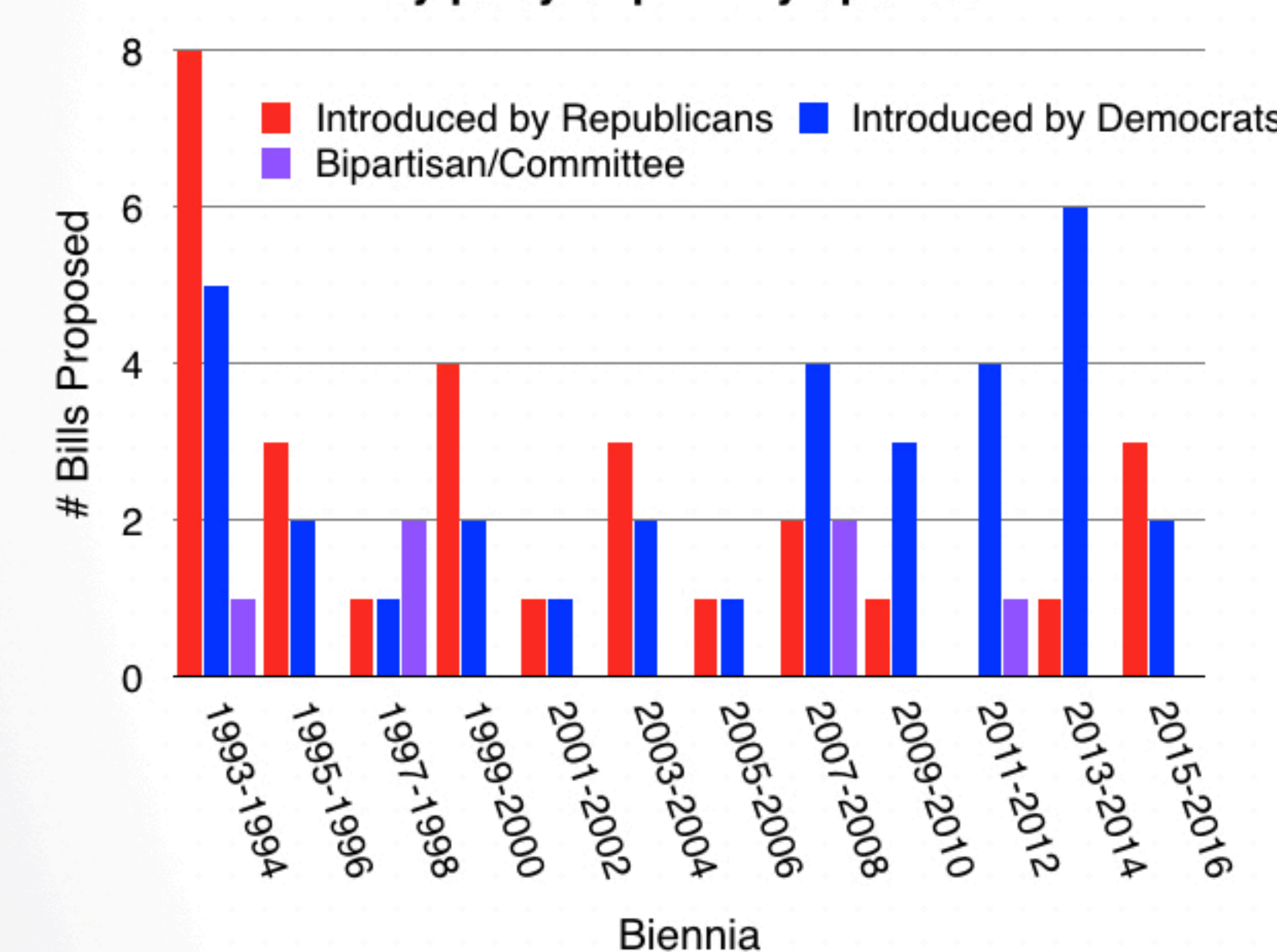


Fig. 4: Vermont Governmental Timeline

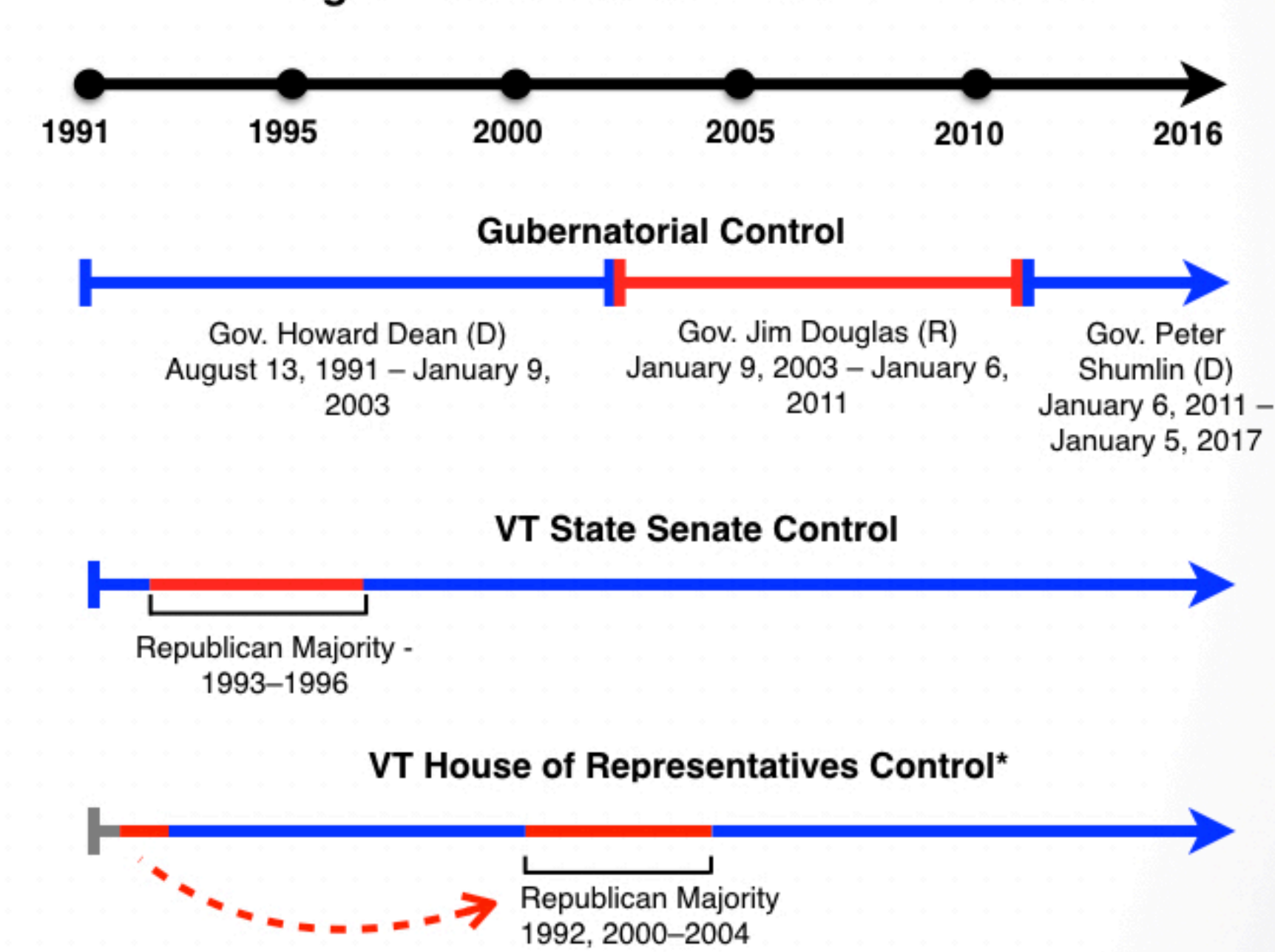


Fig. 5: Change in scope of Content related bills

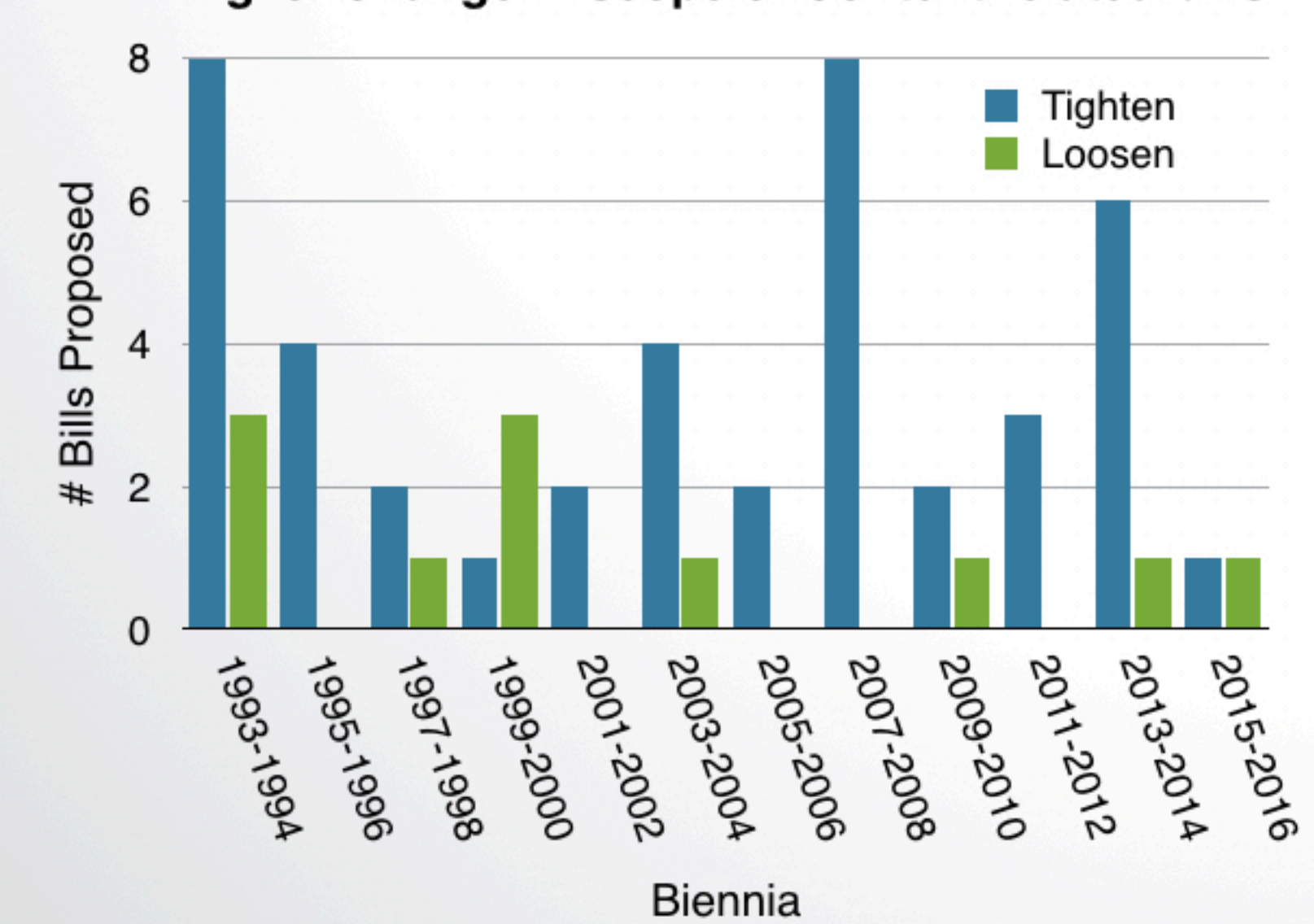
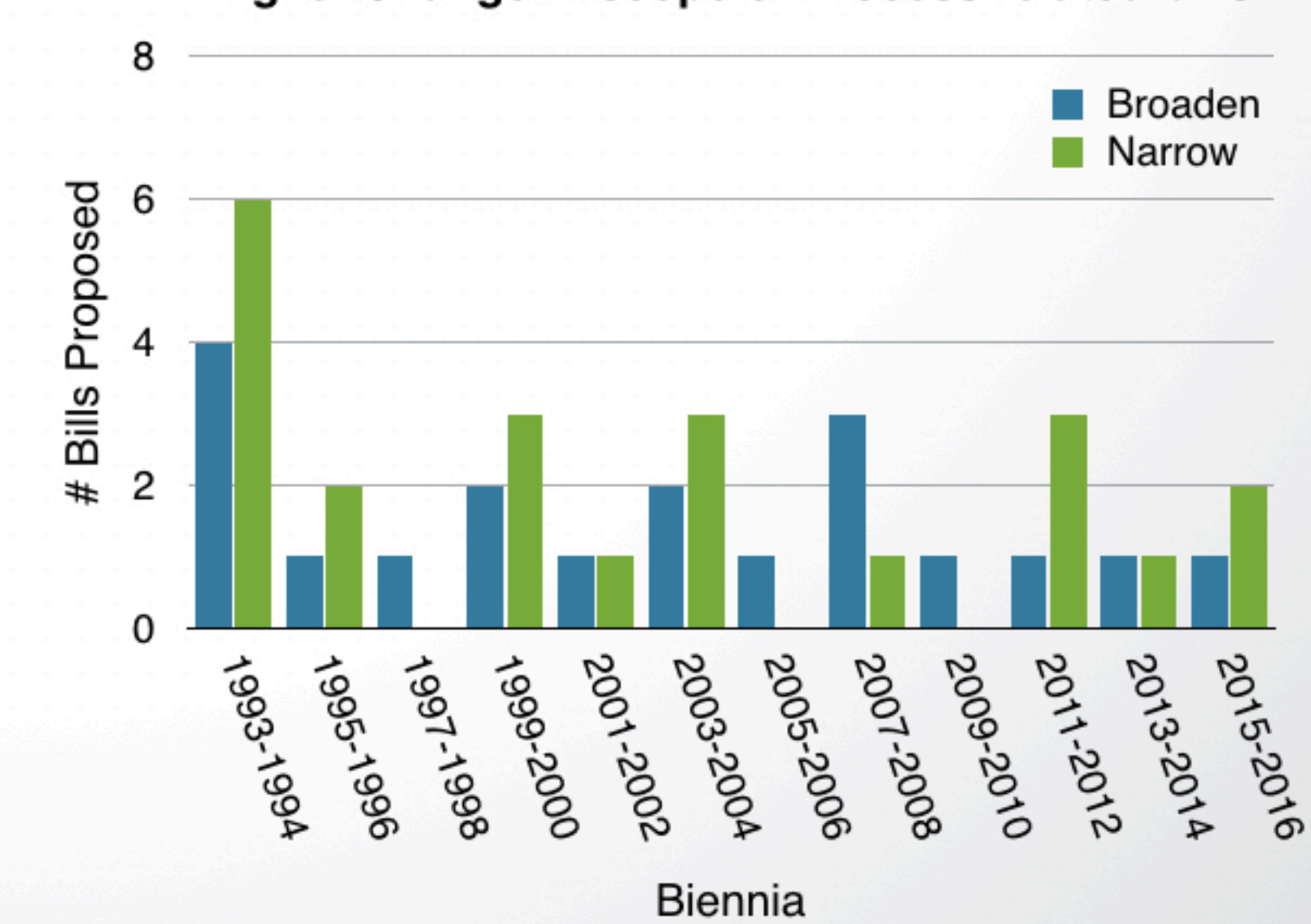


Fig. 6: Change in scope of Process related bills



The main findings of this research are that Act 250, in fact, lives in a robust legislative environment. Compared to the overall volume of Vermont House and Senate bills proposed each year, very few of them have anything to do with making changes to Act 250. Few changes are ever proposed, fewer still are of much substance (see Figure 1), and it is yet more uncommon for these bills to actually be passed into law. Proposed *Process* oriented bills seem to be more common than *Content* related changes, though the distribution is muddled by bills that change both (see Figure 2). Most of the proposed bills that deal with *Process* are meant to streamline the site permitting or change which stakeholders can claim party status and influence the application process. Proposed changes in Act 250's *Content* have mainly come in the form of changes to specific definitions surrounding certain agricultural practices (i.e. onsite composting), or adding exemptions for industries such as wind power. The ten main criteria that serve as Act 250's operative mechanisms (§ 6086) have remained relatively unchanged since their implementation in 1973.

There does seem to be some correlation between proposed bills that change the scope of Act 250 and the party affiliation of the primary sponsor of said bills. Before coding for the the capacity for change each bill carried with it, we postulated that Democrats would tend towards tighter and broader regulation, whereas Republicans would tend towards a more loose and narrow scope. While not accurate across the board, this hypothesis held true for the bulk of cases (see Figures 3, 5, 6). Given these findings, the next logical step was determining if this was reflected in the wider legislative environment of Vermont. However, after comparing control of the House, Senate, and Governorship, this correlation remains unsubstantiated (see Figure 4).

Discussion

Perhaps the most noteworthy qualms surrounding Act 250 and how it is implemented are the length and expense associated with the application process, and that its existence makes Vermont noncompetitive in attracting new businesses to the state. While there may be some merit to these arguments, Act 250 is an overall very logical piece of legislation. Act 250 is not meant to govern best development practices, but rather mandate there be a zoning plan in place for any development over ten acres. While this plan does indeed dictate what, where, and by what means a development is constructed, this is all done at a municipal level by stakeholders, zoning officials, and affected parties. Act 250 ensures that adequate zoning process happens and that there is an appropriate level of environmental impact study done before a ground is broken on the largest developments in the state.

While the process can be lengthy and somewhat expensive for a developer, once meeting the proper requirements outlined in Act 250, extremely few applications are ever rejected. In the first ten years of the law's existence only 2.6% of all submitted applications were refused (Gillies, 2009). Given that Act 250 is essentially a mandate stating that none of any ten environmentally protective criteria are violated, protests stating the law is anti-business are misguided. In the words of Vermont Chief Judge James Oakes, "[Act 250] represented the culmination of an effort to create a process that would subject subdivisions and other large developments in Vermont to administrative review so as to ensure economic growth without environmental catastrophe" (as cited in Gillies, 2009). In the context of the larger research project, the eutrophication of Lake Champlain is approaching an environmental catastrophe. If Act 250 were to be repealed or replaced with a weaker development law, Vermont could expect to see a spike in development, which in turn would create more impermeable surfaces and ultimately more harmful phosphorus runoff. This would be nothing but detrimental to the lake ecosystem, wider environment, and potentially disastrous for the tourism-based Vermont economy.

Acknowledgements and References

- References:
1. Gillies, P. S., Esq. (2009). The Evolution of Act 250: From Birth to Middle Age. The Vermont Bar Journal and Digest.
 2. Vermont State Legislature: Partisan composition. (n.d.). Retrieved from https://ballotpedia.org/Vermont_State_Legislature#Partisan_composition

Special thanks to:

Richard Kujawa, PhD, Saint Michael's College
 Clare Ginger, PhD, University of Vermont
 William Morse, RACC Intern, Green Mountain College

Funding provided by NSF Grant EPS-1101317

