

VCE Testimony on H. 823 – Senate Natural Resources and Energy Cmte – 4/4/14

Thank you for the chance to testify today on this bill. While we were not able to participate in House discussions of H. 823 as much as we would have liked, we support the bill's efforts to facilitate development in downtowns.

However we have some concerns about the legislation in its current form.

VCE was not a participant in the Act 59 study that led to the development of this legislation. We have reviewed the study report.

Our concerns about the legislation are specific to the new, unfunded permitting process outlined in Section 3 of the bill, which is proposed to be conducted by the Natural Resources Board.

It is worth noting that there appears to be no reference to this new, expanded role for the NRB in the Act 59 study report.

VCE has participated in discussions about permit reform for more than a decade, so we are familiar with the changes that have been made and the roles that various commissions and boards play. We are aware that the NRB currently

- Holds monthly meetings
- Gets reports on court cases
- Makes decisions about participating in court cases

We are aware that the NRB currently does not

- Oversee district commissions on a day-to-day basis
- Get updates on the status of cases before district commissions
- Hold hearings
- Draft findings or conditions
- Issue permits

We would argue that utilizing the NRB to review proposed projects is not the best use of state resources and will not achieve the desired goals.

- The new NRB process is not detailed in the legislation, and therefore its implementation is unpredictable.
- The NRB is being charged with hosting public hearings, drafting findings and conditions, none of which the NRB has experience with.
- The proposed on-the-record process has not been employed in Act 250, and creates a burden on citizen participation. The inability to prepare compelling evidence in time for statutorily-mandated hearing timetables will result in evidence not available to the appellate court. Use of on-the-record hearings will, as the Chair has pointed out, make appeals less likely by making the whole process overly burdensome, and serve to discourage engagement with the process.

This is a significant policy change, one that have been rejected many times over the past few years by many groups active in the Act 250 process.

- Changes the role of state agencies and replaces the District Commission's information gathering process with one that has much less public accountability.

- The proposal for the NRB to hold hearings in Montpelier adds time and expense to citizens.
- The short list of Act 250 criteria to be reviewed excludes criterion 8, aesthetics. While in theory there may be no disputes about what gets built in downtowns, we'd suggest that the federal courthouse and Rite Aid buildings here in Montpelier are evidence otherwise.
- The process as outlined in the legislation will result in "findings" and "conditions" issued by the NRB, but will not result in a "permit". This raises enforcement questions.
- Loss of application fees adversely impacts Act 250's program budget.
- If this new process would only be used a few times a year, why set up a new process?

This legislation as drafted seems to ignore one important component of a vibrant village center or downtown, and that is the residential component. If this bill is passed as proposed, it will require downtown residents to travel to Montpelier for a hearing, if one is allowed, and excludes any discussion about aesthetics.

Overall, this proposal will decrease public access to, participation in, and ownership of decisions on major Act 250 cases.

What is our solution? We recommend that the bill will be greatly improved by directing district commissions, which already have the capability to hold hearings, draft findings and conditions, and recommend enforcement when necessary, replace what is currently proposed to be done by the NRB.

The commissions have proven themselves to be more than capable of efficiently handling complex Act 250 cases in ways that successfully balance various interests and engage all stakeholders in a productive manner. There truly is no need to re-invent the wheel.

We also note that while there is no history of success with on-the-record proceedings and we do not support it, district commissions can put a camera in a room for the hearing to augment their digital audio record, and they can try it to see if it works.

If you do choose to leave this language in the bill, we suggest that the legislation include a report back on how many permits of this sort are applied for, whether hearings were held, and how the on-the-record provision is working.

Finally, we note that on other aspects of the bill that are related to agricultural lands, we share the concerns voiced by CLF earlier about flexibility and mitigation.

In summary, we support H.823 with changes to allow for the district commission process to play the newly defined review role. We oppose the provision to create a new process at the NRB, which we believe is unnecessary, duplicative of existing functions, and goes far beyond any role for the NRB previously-envisioned. If the NRB is going to have an expanded role, that needs to be part of a larger conversation.