

MEMORANDUM

To: Representative Stephen Carr

From: James Volz, Chairman, Public Service Board

Re: Response to Request Re Supporting Implementation of ePSB

Date: December 8, 2015

During our meeting today, you volunteered to take up the task of introducing a housekeeping amendment to Title 30 to make it clear that the Clerk of the Board works for the Chair of the Board and not the entire Board. We also discussed the progress of implementing the Board's new electronic case management system, which will be known as ePSB. I neglected to mention that there were also some housekeeping amendments that would be very helpful in implementing ePSB. Following are the recommended changes to Title 30. Below I show each suggested change in redline/strikeout, and explain the reasons I believe each suggested change would be helpful. I would be happy to answer any questions you may have and to discuss these recommendations with the Committee if it would be helpful. Thanks for your help.

Due Date for Recommendations Filed by Municipal and Regional Planning Commissions on Section 248 Projects

Section 248(f) of Title 30 currently requires that municipal and regional planning commissions file recommendations regarding a Section 248 construction project, if any, with the Board and the petitioner *before* the petition for that construction project is filed with the Board. This requirement creates confusion because municipal and regional planning commissions are effectively responding to the project as it was described in the 45-day advance notice filing that those commissions received. However, petitioners sometimes modify projects in response to comments they receive on the 45-day advance notice filing. In such instances, it can be unclear whether the municipal and regional planning commissions' recommendations still apply to the project for which Board approval is sought.

In addition, the current statutory language poses administrative challenges for ePSB. A Section 248 case will be created in ePSB when the petition for that project is filed with the Board. The filing of municipal and regional planning commission recommendations with the

Board before the appropriate Section 248 case is created in ePSB will create additional work for Board staff who must keep track of those early filings and manually match up the recommendations with the correct Section 248 cases after they are filed.

To address these concerns, I suggest modifying Section 248(f) to allow municipal and regional planning commissions to file their recommendations regarding a Section 248 construction project within 21 days *after* the date the petition for the project is filed with the Board. This change will eliminate the confusion regarding whether the commissions' recommendations respond to the project for which Board approval is sought, and will enable the commissions to file their recommendations after the appropriate Section 248 case has been created. This change will also provide municipal and regional planning commissions with additional time to prepare their recommendations while not extending the duration of the Board proceeding in which the petition is being considered. Municipal and regional planning commissions that want to influence a project before it is filed with the Board still can make comments directly to the developer after the submission of the 45-day advance notice.

My specific suggested statutory change to 30 V.S.A. § 248(f) is as follows:

(f) However, plans for the construction of such a facility within the State must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement. Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions ~~shall~~ may make recommendations, ~~if any,~~ to the Public Service Board and to the petitioner at least seven days prior to filing of the petition within 21 days after the date the petition is filed with the Public Service Board.

Clarification of Chairperson's Authority

The implementation of ePSB requires significant changes to the PSB's internal business processes, including changes in employee assignments and the operation of the PSB's office. Pursuant to 30 V.S.A. § 3(g), "The chairperson shall have general charge of the offices and employees of the Board." However, as presently enacted into law, portions of 30 V.S.A. §§ 5 and 6 and 32 V.S.A. § 1012 suggest that, where the PSB clerk's functions and duties are concerned, it is the Board as a whole, rather than the chairperson, who oversees the work of the PSB clerk. This ambiguity undermines the clarity of the legislative directive in §3(g) pursuant to which the supervisory authority for the "offices and employees" of the Public Service Board is assigned to the chairperson. In turn, this lack of clarity both complicates and introduces confusion into the decision-making and implementation process regarding some of the changes necessary for ePSB to function. Clarifying the chairperson's authority to make all decisions regarding changes to all employee assignments and to supervise all aspects of the PSB's administrative operations and employee performance would streamline the implementation of ePSB and significantly bolster the prospects for a successful launch and continued use of this system.

I also recommend updating references to “papers” in 30 V.S.A. § 6 to reflect the fact that, with the implementation of ePSB, many of the PSB’s records will be in an electronic format.

My specific recommended statutory changes are as follows:

30 V.S.A. § 5:

The ~~board chairperson~~ shall appoint a clerk, who shall serve during ~~its his or her~~ pleasure. The board members and clerk shall be sworn to the faithful discharge of the duties of their offices and, before entering upon the same, shall file a certificate of their oaths for record in the office of the secretary of state.

30 V.S.A. § 6:

The clerk shall have the custody of the seal of the board, keep a full record of its proceedings, file and preserve at its office all ~~documents and papers~~ filings and records entrusted to his or her care, prepare such ~~papers documents~~ and notices as may be required by the board, and perform such other duties as ~~it the chairperson~~ may prescribe. The clerk shall have power, under the direction of the board, to issue subpoenas for witnesses and to administer oaths in all cases before the board or pertaining to the duties of the office.

32 V.S.A. § 1012

The annual salary of the Chairperson of the Public Service Board shall be the same as fixed for each Superior Court judge. The annual salary of each of the other members of the Public Service Board, each of whom shall serve on a part-time basis, shall be equal to two-thirds of that of the Chairperson. ~~The annual salary of the clerk of such Board shall be fixed by the Board with the approval of the Governor.~~