



NATURAL RESOURCES BOARD

Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201

TO: Rep. Janet Ancel, Chair, and Members of the House Ways and Means Committee

FROM: Louis Borie, Executive Director *LB*

DATE: February 6, 2015

RE: Executive Fee Bill: FY 2016 Natural Resources Board Fees

Thank you for the opportunity to provide additional information in response to Committee questions about the Natural Resources Board's fee proposal. Also addressed below are comments by the Vermont Chamber of Commerce (VCC) in its testimony of January 5, 2015.

Act 250 Appeals

In Calendar Year 2013, ten (10) Act 250 permit decisions were appealed out of a total of 336 major and minor permits issued by the District Commissions, or 3%. Please note that this includes major and minor permits, but does not include an additional 184 administrative permit amendments issued for record keeping purposes or to approve minor revisions to permitted projects with no likelihood of impacts under the 10 criteria. Calendar Year 2014 data on appeals will be included in the NRB's 2014 Annual Report, to be submitted to the Legislature on February 15, 2015.

Withdrawals and Fee Refunds

In Calendar Year 2014, nine (9) Act 250 permit applications were withdrawn. This resulted in permit fee refunds totaling \$593.00. Permit fee refunds are governed by 10 V.S.A. § 6086a.(e) (see below), which provides for a partial refund of fees for withdrawn applications, with a higher percentage of the fee refunded if a hearing has not been held (approximately 75% of applications) and a lower percentage of the fee refunded if a hearing has been held.

10 V.S.A. § 6086a.

(e) A written request for an application fee refund shall be submitted to the district commission to which the fee was paid within 90 days of the withdrawal of the application.

(1) In the event that an application is withdrawn prior to the convening of a hearing, the district commission shall, upon request of the applicant, refund 50 percent of the fee paid between \$100.00 and \$5,000.00, and all of that portion of the fee paid in excess of \$5,000.00 except that the district commission may decrease the amount of the refund if the direct and indirect costs incurred by the state



of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission.

(2) In the event that an application is withdrawn after a hearing, the district commission shall, upon request of the applicant, refund 25 percent of the fee paid between \$100.00 and \$10,000.00 and all of that portion of the fee paid in excess of \$10,000.00 except that the district commission may decrease the amount of the refund if the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission.

(3) The district commission shall, upon request of the applicant, increase the amount of the refund if the application of subdivisions (1) and (2) of this subsection clearly would result in a fee that unreasonably exceeds the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program.

(4) District commission decisions regarding application fee refunds may be appealed to the land use panel in accordance with board rules.

(5) For the purposes of this section, a "hearing" is a duly warned meeting concerning an application convened by a quorum of the district commission, at which parties may be present. However, a hearing does not include a prehearing conference.

(6) In no event may an application fee or a portion thereof be refunded after a district commission has issued a final decision on the merits of an application.

(7) In no event may an application fee refund include the payment of interest on the application fee.

Comments of Vermont Chamber of Commerce (VCC)

In its February 5, 2015 comments, VCC questioned the basis for the anticipated fee revenue from the proposed ANR fee of \$.75 per \$1,000 of Act 250 construction costs. This fee would apply to those Act 250 applications with costs of \$15 Million or less. The proposed fee was based on \$338 Million of construction costs, the portion of Act 250 total construction costs in FY 2014 attributed to applications with a total construction cost of \$15 Million or less (as adjusted for the fee exemption for downtown projects). The proposed ANR fee of \$.75 per \$1,000 of construction costs would apply to these applications. Total construction costs for Act 250 applications in FY 2014 were \$400 Million, which includes those applications whose costs exceeded \$15 Million.

VCC also commented on the fee revenue for one-time expenditures proposed by NRB for FY 2016. In future years this fee revenue would be used to pay for the annualized cost of salaries increases, as well as "Pay Act". This is consistent with guidance from the Department of Finance and Management that Pay Act resources for NRB will be very limited and that proposed fee increases should be based on anticipated revenue needs over the next three-year period.

Please let me know if I can provide any additional information.

