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February 27, 2018

The Honorable Jeanette White
Chair, Senate Committee on Government Operations
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: S. 281- Draft #2.1

Dear Senator White and Members of the Committee:

Thank you for the opportunity to address the committee with regard to the most recent draft of the bill.

As discussed by the Committee on February 21st, my suggestion for the name of the board is *Vermont Systemic Racism & Equity Review Board* and I would title the position, *Chief Equal Opportunity Officer*. As I mentioned, I think it is important to stay away from "Civil Rights" as that is not actually the person's job and it will likely cause confusion with the Human Rights Commission's jurisdiction and authority.

§5001(a). I also suggest that the position would be more independent if not placed in the Agency of Administration (AoA). Regardless of whether the Governor has the ability to hire or fire the Chief, situating that person in that office may subject them to political pressure from the Executive branch. My suggestion is to place the position in the Auditor's Office. It is an independent office and they have a lot of experience with data. If given the proper authority through statute, I don't think it matters that the position is not in the AoA. Agencies certainly take the Auditor seriously.

§5002(a). I believe that the Board should have powers beyond just appointing the Chief. The Board, not the Chief, should be charged with identifying and working to eradicate systemic racism in state government. It would carry out that charge by hiring and supervision of the Chief, overseeing the substantive work, setting policy and direction, strategic planning, etc. The Chief needs to report to and be accountable to some entity!

§5002(b)(1). The makeup of the Board should include a requirement that a certain number of the board members be people of color (POC). This is absolutely essential to the success of this effort. Otherwise, this just becomes another entity doing to or for people of color. My suggestion is for a majority to be POC. The persons appointed

should also have qualifications beyond implementing racial justice reform. (§5002(b)(2)). You also want people with diverse life experience who can bring that experience to bear on the work of the Board.

Duties- §5003(c). In addition to the duties stated, I think it is important for the Chief to work with agencies on development of a model equity policy that would cover both employment practices and delivery of services. I would also beef up the language in §5003(f) regarding the responsibility of the Chief to actively assist DHR and/or the Governor's Council on Equity and Diversity in the Workplace in the development of training that addresses systemic racism and implicit bias.

The Chief will be primarily working with state agencies and departments. He or she may need to solicit information from POC, who are users of state systems to determine whether, for example, there are agency or department culture issues that cause inequity but primarily it will work with state employees. Viewed through that lens, you would want the Chief to be able to compel a Secretary or Commissioner to provide information through testimony to the Board. I believe you would want the ability of the Chief to be able to compel production **data** in addition to papers and records. I would add the word "data" to §5003(c), line 2, p. 5. I don't think you need the language regarding payment of fees and mileage in §5003(c), lines 9-13, p. 5 since you do not pay those fees to state employees.

In §5003(d), I wonder if you could really assess penalties against Secretaries or Commissioners or line staff who refused to comply. If under (c), a subpoena has been issued, then perhaps the penalties associated with non-compliance with a subpoena issued by an administrative agency in 3 V.S.A. §809a would be better. Under Rule 45 of the Vermont Rules of Civil Procedure, a subpoena can only be issued by a court, an attorney, a magistrate, or a notary public (assuming the changes to the notary law don't eliminate this). Thus, your Chief would need to at least be a notary. Just something to keep in mind.

Finally, in thinking more about how this might work, I think the position of the Chief needs to be hired immediately and I would suggest that approach rather than the RFP for a consultant. I have two major concerns with the latter approach. First, I fear that the State will end up spending a lot of money on an out-of-state (or in-state) consulting firm that will make extensive recommendations and then there will be no follow through to carry out the next steps. But that concern aside, I have extensive experience working with an essentially volunteer board. They are very capable of the sorts of duties I have outlined above but the meat of the work is done by the staff of the agency. The board members will not be able to maneuver through creating an RFP, getting it through the BGS bid process, creating and negotiating a contract with the entity ultimately awarded the consulting job, getting AGO approval of the contract, etc. Nor is an administrative assistant, no matter how competent and where situated, going to be able to do this. It will require an Appointing Authority, i.e. an exempt state employee with authority to bind the state.

Depending on who the Board hires, a consultant may not even be necessary and if it is, the Chief can come back to the Legislature and make *that* request for FY20. In the meantime, that person can work on creating model policies and training, etc. or just get to work with agencies on known disparities that currently have supporting data.

Thank you for all of your hard work on this important issue. I hope this information is helpful and please let me know if there is any other information that would assist you in moving forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen", with a long, sweeping horizontal line extending to the right.

Karen L. Richards
Executive Director