

House Natural Resources and Fish and Wildlife Committee
February 24, 2020 Testimony of Ed Stanak
Proposed Addition of Two Legal Counsel in Committee Amended H.926

I was able to be present for the final hour of the House Natural Resources and Fish and Wildlife committee meeting on Friday February 21st when the committee discussed the possible content of a “committee amendment “ version of H.926. The committee seemed to be inclined to include a provision in the amended bill for the addition of two legal counsel positions at the NRB. The committee should reconsider this preliminary decision and not create or add such positions. Below are abbreviated reasons as to why the expenditure of at least \$182,131 of General Funds for such a purpose is unnecessary and imprudent.

The NRB once had a staffing level which included four legal counsel positions. That dates back to an era when the board’s responsibilities were broader than at present. It is my understanding that the NRB has operated with two legal counsel for the last several years.

The annual work force report produced by the Department of Human Resources on January 15, 2020 includes details for all state departments and agencies. Relevant data for the NRB can be found at pages 6 and 8 of the report. One can see that the authorized staffing levels for the NRB include three exempt positions (i.e. the chair of the board and the two legal counsel) . There are two unspecified exempt vacancies. There is, or was, an exempt position for the executive director whose responsibilities have been assumed by the board chair.

The NRB annual report dated February 12, 2020 to the General Assembly does not include any references to two legal counsel positions being held in abeyance. Similarly, the NRB annual report does not include any reference to or justification for two additional legal counsel positions.

The NRB provided relevant committees of jurisdiction with its proposed operating budget for FY 2021. That proposed budget does not include any increase in legal counsel staffing.

The estimates for staffing costs for the enhanced NRB proposal which were provided to the HNRFW committee by the NRB included costs of \$182,131 for two new legal staff positions. It is my understanding that the JFO indicated to the Ways and Means committee that that estimate is low and that actual costs would be higher.

At the February 21st meeting of the HNRFW committee, the proponents of the two additional legal counsel positions commented that the purpose of these positions would be to “strengthen the District Commissions and the NRB. “ I recall no testimony or submittals to the HNRFW committee during the 2019 and 2020 sessions that support such views. Similarly, there were no recommendations for increased legal counsel staff in the January 2019 report of the legislative Act 250 Study Commission.

It is germane to ask how the NRB currently utilizes the skills of its existing two legal counsel. While there are some obvious and necessary functions that the counsel provide, it is also clear that there are other NRB functions which are not heavily reliant on counsel and just two examples will be cited. First, the NRB has ruling making capacity but has not been proactive in doing so for several years beyond “housekeeping measures”. It is unfortunate, for instance, that the NRB did not actively pursue a rule for recreational trails (Existing Rule 71 was promulgated in 2013 and addresses jurisdiction but not an expedited review process comparable to Rule 51.) and as result that topic has unnecessarily been placed on the plate of the HNRFW committee. Second, the NRB asserts that its legal counsel are involved in appeals of jurisdictional opinions and district commission decisions into the judicial system. It would be revealing to perform case studies of the appellate cases over the last few years and identify the actual extent of the NRB’s participation as a party. How many briefs, motions and/or memoranda of law did the NRB file in those matters? Conversely, how many of the cases were merely “monitored” by the NRB with no substantive participation? Where is the justification to increase legal counsel staffing levels based upon current workloads?

To the extent that the HNRFW committee concludes that its amended version of H.926 should include a request of additional General Fund revenues in order to strengthen the administration of Act 250, here are two suggestions for consideration:

- A) As outlined in prior submittals (See e.g. my testimony dated January 22nd) and verbal comments to the committee, the NRB is a failed administrative entity. The committee should consider requiring that the NRB perform a self study of its mission and its actual practices since its creation in 2005 and then provide a report to the committee by January 2021 of proposed corrective actions. Better yet, have this study performed by an objective third party such as the Auditor of Accounts.

- B) As I have contended, the committee should establish a new jurisdictional “bright line” for the subdivision of lands above the elevation of 1,500 feet per the final section in H.633. This would ensure meaningful application of the forest block and connecting habitat provisions in H.926. Concurrent with this, a new NRB staff position would be created with the use of General Funds that would assist small scale applicants in the preparation of application submittals for subdivisions over 1,500 feet in the rural communities. This staff position could also provide assistance to individuals statewide who seek to be parties to Commission proceedings in navigating process issues and in understanding the requirements for fact based submittals under the ten criteria for effective and orderly participation at District Commission hearings.

Thank you for your consideration of my testimony.