

P. O. Box 512
Montpelier, Vermont 05601
February 18, 2020

House Committee on Ways and Means
State House
Montpelier, Vermont

Re: H.926 - An act relating to changes to Act 250

Dear Committee:

I ask you to reject the fee increase that is proposed in this bill. That fee increase would allow a restructuring of the Natural Resources Board that would make the Act 250 hearings more costly to all parties involved in them.

I am a civil engineer and resident of Montpelier who has been following the work on the future of act 250. I have provided written and in-person testimony at both the commission (in 2018) and at the House Committee on Natural Resources, Fish and Wildlife (last session and this). Over the years, I have prepared documents used in Act 250 applications and have participated as a witness in one set of hearings at a district environmental commission.

I believe that your committee's major focus will be on fees and additional tax revenues. The bill calls for additional fees to be assessed on applicants. Those fees would be for the sole purpose of restructuring the Natural Resources Board. The bill does not address the additional revenues needed by municipalities and regional planning commissions. Municipalities would need to raise their taxes to cover their additional costs to participate as parties in Act 250 hearings. The regional planning commissions would also need to raise more revenue to participate. This need for them to raise additional revenue was neither discussed nor addressed in the bill or the hearings at the Natural Resources, Fish and Wildlife Committee.

I hope that part of your committee's work is to consider the effects that the fee increase in the bill would have on municipalities and regional planning commissions.

The bill would lead to a major change in how Act 250 works. That major change would take the Act 250 hearings from the accessible, locally based, and locally staffed district environmental commissions and give the hearings to the centralized, formal, non-local Natural Resources Board out of Montpelier. Those hearings before the district environmental commissions are the face of Act 250 to the general public and are an essential element in the success of blending the environment and development in land use decisions.

The restructuring would result in a process that would make it more difficult for non-applicant parties to participate in the hearings associated with Act 250. (The non-applicant parties are municipalities, municipal planning commissions, regional planning commissions, State agencies affected by the proposed project, adjoining property owners, and any person with a particularized interest.) The process would be more difficult because the Natural Resources Board would be a quasi-judicial board, similar in structure and function to the Public Utilities Commission.

Now non-applicant parties at Act 250 hearings can successfully participate without the need to hire attorneys or experts. If this change in the Board's structure and duties goes into effect, non-applicant parties would need a lot more money to participate in the hearings. That money would be needed because appeals from decisions of the Natural Resources Board would go to the Supreme Court. Appeals would not be on the merits, but on the legal process involved. This type of appeal would require that the hearings by the Board be on the record. In order to be on the record, the Natural Resources, Fish and Wildlife Committee received credible testimony that the hearings by the board would need to follow the Vermont Rules of Civil Procedure, something like 1,000 pages of text in the Green Books. There is no way a non-applicant party can learn how to use those rules in the short time between the publishing of the notice of an application and the start of the hearing. Thus, non-applicant parties would need to hire an attorney (and possibly experts, too) to successfully participate before hearings run by the restructured Natural Resources Board.

The Natural Resources, Fish and Wildlife Committee was told it would take 2/3 of a million dollars to provide the additional staff at the Natural Resources Board. That committee heard no testimony on the additional revenue that would be needed by towns and regional planning commissions to participate as parties in the more formal hearings that would be needed if this restructuring is allowed to happen.

The additional fees that would be charged to applicants would not be needed if the restructuring does not happen. The municipalities and regional planning commissions would not need to raise additional revenue in order to participate.

The Natural Resources, Fish and Wildlife Committee heard Judge Grearson testify that there would be no reduction in costs (and therefore no offsetting reduction in the revenues to be raised) for the Environmental Division if it no longer hears appeals of Act 250 decisions.

That is a rather long explanation as to why I ask you to deny the proposed fee increase. In short the fee increase should be denied because it would enable an unnecessary restructuring of the Natural Resources Board and of the highly successful district environmental commissions. That restructuring would lead to a need for municipalities and regional planning commissions to raise their revenues in order to participate in Act 250 hearings. And there would be no offsetting reduction of costs to the Environmental Division of the Superior Court.

This bill would unnecessarily increase fees, lead to higher local taxes, and provide Act 250 hearings that would be more expensive for all parties. I ask that you oppose the proposed fee increase and the proposed restructuring of the Natural Resources Board.

Sincerely,

Thomas Weiss