
From: Molly Mahar <molly@skivermont.com>
Sent: Wednesday, September 2, 2020 12:39:54 PM
To: Ann Cummings <ACUMMINGS@leg.state.vt.us>
Subject: H. 926 Proposed F&W Bill Back Authority :: Comments/Suggestion

Dear Senator Cummings,

As an industry whose projects must regularly gain Act 250 approvals, we are quite concerned about how the Fish & Wildlife Department's bill back authority would be handled in H. 926 as it is written. In this context, I wanted to provide some comments and a suggestion for the Committee's consideration as your committee takes up this issue this afternoon.

As you know, the F&W Department is often called upon to review Act 250 applications for potential impacts on fish, wildlife and their supporting habitat, and they have stated that they are uncompensated for approximately \$200,000+ worth of staff time for this work. Currently, all applicants pay an Act 250 fee based on the construction costs of their project and a portion of that fee goes to the NRB and a smaller portion goes to the ANR. All of the fee portion that goes to the ANR is used in the Central Office which coordinates overall ANR review of Act 250 applications and none of it gets to F&W.

Rather than asking for an adjustment to the Act 250 application fee rate so that F&W's costs can be covered, F&W is now asking for very broad authority to bill applicants for their review of Act 250 applications and any involvement in providing comments or participating in hearings. An applicant will be provided an estimate of those costs by F&W, however their recourse under H.926 is to appeal that estimate to the Superior Court Environmental Division. This means their choice is to accept an estimate or spend up to a year in court and incur legal costs/attorney's fees and delay their own project. In short, they don't have a reasonable process to challenge an estimate from F&W.

To date we have no understanding of what to expect in terms of these F&W estimates. How much will they cost? What is an average cost of F&W staff time for small, medium and large projects? Is there an upper limit? Essentially we are faced with uncertainty in the magnitude of potential costs and have no reasonable process to challenge an estimate.

Several years ago, ANR tackled a similar problem for their participation in PUC proceedings by moving away from bill back authority and instead were authorized to charge a fee for their review of energy and telecommunication projects based on the capacity (energy generation) for small generation projects or a fee based on project construction costs for larger projects. This created a predictable cost estimate methodology with an upper limit on those costs (codified in 30 V.S.A. Section 248b.)

We are quite concerned about this broad bill back authority in H. 926 as it is written, and would ask that you require the NRB and F&W to come back in January with a proposed fee structure that is transparent, predictable, and tailored toward the size of a project or a bill back process that is more balanced for applicants and is done by mutual agreement and where disagreements can be resolved in a timely and cost-effective manner.

Thank you for your time to read this and your consideration of this suggestion. Sincerely,

Molly

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