

Senate Committee on Transportation

Joe Flynn, Secretary of Transportation

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Exempting Federal-Aid Transportation Projects from Act 250

A. Introduction

Good morning, and thank you for this opportunity to testify. I am here to support the provisions of H.197 and S.104 that would exempt federal-aid transportation projects from Act 250.

VTrans has integrated environmental stewardship into virtually all its programs, and VTrans often goes above and beyond minimum regulatory requirements to protect the environment. To give just a few examples, VTrans has made great strides in stormwater management to keep pace with evolving state and federal regulations, and VTrans rapidly incorporated modern standards for stream crossings into its bridge and culvert work in order to protect stream equilibrium and aquatic organism passage. As you know, VTrans has been working in partnership with other agencies on a variety of initiatives to accelerate vehicle electrification.

While VTrans will always look for efficiencies in regulatory programs, I am not here today with generalized complaints about the considerable regulatory burden that applies to the State's transportation network. Rather, I am here to urge the members of this Committee to take a serious look at whether it is good public policy to continue to apply Act 250 to federal-aid transportation projects. I suggest to the Committee that it is not.

B. Summary of Reasons Why Act 250 Should No Longer Apply to Federal-Aid Transportation Projects

Federal-aid transportation projects are comprehensively regulated by a breadth of state and federal laws that did not exist when Act 250 was enacted under emergency circumstances involving private developments nearly 50 years ago. In addition, federal-aid transportation projects—both state and municipal—are carefully planned and provide significant and meaningful opportunities for public input and appeals. These projects are all undertaken in the public interest, and they are subject to legislative review through the appropriations process. Act 250 has added significant expense, delay, and uncertainty to federal-aid transportation projects while adding little or no value to the environment. And increasingly, project

opponents are using Act 250 to advance their own commercial, political, or personal interests at the expense of sound public policy. Federal-aid transportation projects are not contributing to the unplanned development and uncontrolled pollution that Act 250 is intended to address.

C. Case Study: Interstate 89 Exit 17

Some of my staff are here today to provide you with some examples that will help illustrate how Act 250 can frustrate public transportation projects without protecting the environment. But before I hand things over, I would like to share a recent example how Act 250 is doing more harm than good.

1. Brattleboro Bridges

By way of background, the Brattleboro Bridges now under construction on Interstate 91 are not subject to Act 250 because the District Coordinator ruled that they do not represent a substantial change to a preexisting development, even though the project may have triggered the ten-acre threshold for Act 250 jurisdiction. Had Act 250 jurisdiction been asserted, and had the projects been contested, these bridges would probably not be under construction today. Had the sixty-year-old bridges failed, the result would have been closing a segment of the Interstate and redirecting all Interstate traffic through downtown Brattleboro, which would have been disastrous.

The bridges being replaced shared the same design as the bridge that collapsed in Minneapolis in 2007, killing 13 people and injuring 145 others. In the planning phases for this project VTrans, with the assistance of the Regional Planning Commission, listened to local interests and made appropriate adjustments to the design. This is an example of how even major transportation projects are completed with respect for public input and without avoidable environmental impacts, even when Act 250 does not apply.

2. Exit 17 Bridge Replacement and Intersection Improvements

The bridge carrying Route 2 over Interstate 89 near exit 17 in Colchester is in poor condition and needs to be replaced, and the intersection of the interstate ramps with Route 2 are unsafe and need to be improved. In a recent jurisdictional opinion, the Act 250 District Coordinator determined that the project is subject to Act 250

review, based on an analysis that is inconsistent with the JO for the Brattleboro Bridges, described above. (Rather than applying a substantial change analysis, the District Coordinator looked at the acres disturbed.) Whether or not Act 250 jurisdiction lawfully attaches to this project, all the project's potential impacts are covered by other required permits. (See the spreadsheet attached to the pre-filed testimony of other VTrans witnesses.) The project's federal funding is contingent on timely completion, and this bridge is one of many that will require critical upgrades in the coming years. Adding Act 250 to these projects will involve considerable paperwork, even without any appeals, without any discernable benefit to project outcomes, including environmental protection.

D. Conclusions

Exempting federal-aid transportation projects from Act 250 will save the State and municipal governments significant expense, delay, and uncertainty without contributing to fragmentation, sprawl, and pollution. These projects are carefully planned, heavily regulated, necessary, and in the public interest, and experience has shown that Act 250 is not adding environmental value to these projects. I respectfully ask the Committee to support the proposed exemption. Thank you for your consideration.