

**TO: Sunset Advisory Commission**  
**FROM: Bor Yang, Executive Director of the Vermont Human Rights Commission**  
**RE: Board and Commission Review**

Dear Senator White and Members of the Sunset Advisory Commission,

The following information is submitted to you in response to the questions provided by your Commission, in preparation for my testimony this Thursday, December 10<sup>th</sup> at 9:15 a.m. Please do not hesitate to contact me with any questions or concerns. Thank you!

/s/ Bor Yang  
Executive Director

**1. In general, how often does the board and commission meet? Provide specific information on how often the board or commission has met in the past two fiscal years. Provide information on where agendas and minutes of meetings can be found.**

The Human Rights Commission (hereinafter “HRC” or “Commission”) consists of six full-time staff members who meet Mondays – Fridays during the State’s regular operating hours; and five Commissioners who meet monthly.

Staff:

- a. The Executive Director is responsible for the administration of the office, management, and supervision of staff. The Executive Director oversees the development of civil rights training, develops the policy and legislative agenda at the direction of the Commissioners, serves as the legislative liaison and testifies before the Legislature, in addition to serving on task forces and committees. Additionally, the Executive Director is the legal counsel and reviews all complaints, investigative reports, provides legal advice to the Commissioners, and serves as the attorney on all litigation arising out of investigations at the HRC that proceed to a formal recommendation and Commission vote of “reasonable grounds.”
- b. The Director of Policy, Education and Outreach. This is a non-attorney position that serves as a legislative liaison at the discretion of the Executive Director. This position is also responsible for developing training, organizing community events and forums, and maintaining the agency’s website and social media platforms.
- c. Three staff attorneys. The Supervising Attorney is charged with performing the duties of the Executive Director in her absence, if disabled, or if a vacancy in the office occurs. The Supervising Attorney also handles an equal share of investigations with the other two Staff Attorney Investigators. All Staff Attorney Investigators independently investigate complaints of discrimination under all statutes within the HRC’s jurisdiction, write investigative reports, and make recommendations.

- d. The Executive Staff Assistant whose primary responsibility is to receive, analyze and respond to inquiries regarding potential complaints of discrimination, in addition to serving as the administrative assistant. These duties include drafting complaints, resolving “informal” investigations, preparing and performing all administrative tasks associated with Commission Meetings, monitoring legislative bills, serving as vendor and records liaison, maintaining the case management system, performing data entry and analysis, and assisting all staff.

Commissioners:

The five Commissioners of the Vermont Human Rights Commission meet on a monthly basis to hear confidential cases except during the month of November and February. They also meet on an as-needed basis for special meetings. Twice a year, Commissioners may meet for strategic planning and retreat with staff.

In Fiscal Year 2019, Commissioners met twelve times; and eight times in Fiscal Year 2020. There were fewer meetings in FY2020 due to the COVID-19 pandemic. To honor the wishes of parties to appear in person, the HRC’s March 2020 Commission was cancelled. The in-person summer retreat for Commissioners and Staff was cancelled in summer 2020 and strategic planning was embedded throughout the eight Commission meetings.

Meeting agendas and minutes may be found on the HRC’s website:  
<https://hrc.vermont.gov/about-us/meetings>

**2. Provide the names of members of the board or commission, their term length and expiration, their appointing authority, and the amount of any per diem they receive.**

Commissioners are appointed by the Governor with the advice and consent of the Senate. They serve five-year staggered terms, each expiring on the last day of February. Commissioners may be reappointed at the Governor’s discretion.

Kevin “Coach” Christie, Chair	2018-2023
Nathan Besio	2007-2022
Donald Vickers	2008-2021
Dawn Ellis	2015-2020 (waiting on reappointment)
Joan Nagy	2019-2024

Each Commissioner receives a per diem of \$50. Commissioners are compensated pursuant to 32 V.S.A. § 1010 with a maximum of \$1,000.00 a year. Commissioners at the HRC should be compensated at a greater rate as they are asked to commit many hours per month and year to fulfill their roles, as discussed below.

### 3. Provide an overview of the board or commission's purpose.

The HRC's mission is to promote full human and civil rights in Vermont and protect Vermonters from unlawful discrimination. It meets this mission through its statutory duties by:

- a. Enforcing the anti-discrimination laws of Vermont through investigations and litigation: The Vermont Fair Housing and Public Accommodations Act (VFHPA), 9 V.S.A. §4500 *et seq.*, and the Vermont Fair Employment Practices Act (FEPA) and Conditions for Employment under 21 V.S.A. §309 (flexible working arrangements) for State government employees only.<sup>1</sup> Places of public accommodations include hospitals, prisons, roads, schools, businesses, and any office or establishment that provides goods or services to the general public. These statutes prohibit individuals or entities from taking adverse action (discriminating) against individuals in protected categories based on their membership in one or more of the protected categories.<sup>2</sup> In 2018, the State of Vermont adopted the gender-neutral bathroom law for all single-stall restrooms in the state, 18 V.S.A. § 1792. The Legislature assigned responsibility for inspections of these facilities and related signage to the Department of Public Safety's Division of Fire Safety. However, gender identity is a protected class in accommodation law, so as a public accommodations issue the law falls under the enforcement authority of the Vermont Human Rights Commission.
- b. Conciliating disputes pre and post investigative reports: Complainants and Respondents are offered timely and meaningful access to mediation services or informal means of conciliation that promote mutually satisfactory resolutions to their disputes.
- c. Educating the public and providing information and referrals: HRC staff offer information, referrals, educational programs and educational training to those who request these services. Additionally, HRC staff requests relief in the form of training in all post-investigative settlements and when appropriate, in pre-investigative settlements. HRC staff engage in coalition and community activities that address the needs of members of protected categories.

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<sup>1</sup> Individuals with discrimination complaints concerning private employment file their complaints with the Vermont Attorney General's Office, Civil Rights Division.

<sup>2</sup> The Human Rights Commission enforces state anti-discrimination/civil rights laws; it does not enforce federal laws. Vermont law is broader than federal law in terms of the categories of people who are protected from discrimination.

- d. Advancing effective public policies on human rights: The HRC provides leadership in public policy development with respect to civil and human rights issues in Vermont and presents testimony to the Legislature on such issues as well as advice to the executive and judicial branches upon request.

The appointed Commissioners serve multiple vital roles:

- a. Recruit and hire the Executive Director;
- b. Conduct Commission meetings by reviewing the investigative reports and responses, listening to the arguments of both sides, inquiring of the parties, discussing the merits of the case, making final determinations;
- c. Approve settlement agreements;
- d. Set the overall policy of the organization with the advice and counsel of the Executive Director; and
- e. Authorize the Executive Director to pursue litigation.

**4. Is that purpose still needed? What would happen if the board or commission no longer fulfilled that purpose?**

As mentioned above, The HRC serves many purposes but possibly the most important is enforcing the anti-discrimination statutes of the state. If the Commission were to cease, there would be no other entity with statutory authority to investigate violations of Vermont's anti-discrimination laws in housing, public accommodations and state government employment.

Federal entities such as the Department of Housing and Urban Development (HUD), the Office of Civil Rights (OCR) and the Equal Employment Opportunity Commission (EEOC) rely on local entities such as the HRC and Civil Rights Unit of the Attorney General's Office to review claims that trigger both state and federal jurisdiction.

Violations of federal anti-discrimination laws may still be investigated by the aforementioned federal entities. However, federal laws are not as broad and comprehensive as Vermont's state laws thereby leaving many Vermonters who would otherwise have claims with no option but to file suit in court. These include Vermonters who are discriminated against on the basis of gender identity, sexual orientation, marital status, age (in housing and under 40 in employment), receipt of public assistance and victims of domestic violence.

Eliminating the HRC would not only burden federal entities and courts but more importantly would create significant barriers for Vermonters with legitimate claims of discrimination. Many Vermonters, both complainants and respondents, who appear before the HRC are unrepresented and desire an amicable and efficient resolution.

Settlements present an opportunity to achieve outcomes that may not be available through a lengthy investigation or litigation such as policy changes, employment opportunities, maintenance of housing or benefits and services, etc.

The HRC is in a unique position to assist and support Vermonters in navigating and crafting a resolution that considers the challenges presented in Vermont, i.e. limited employment and housing market and rural environment.

**5. How well is the board or commission performing in executing that purpose? What evidence can you provide to substantiate that performance?**

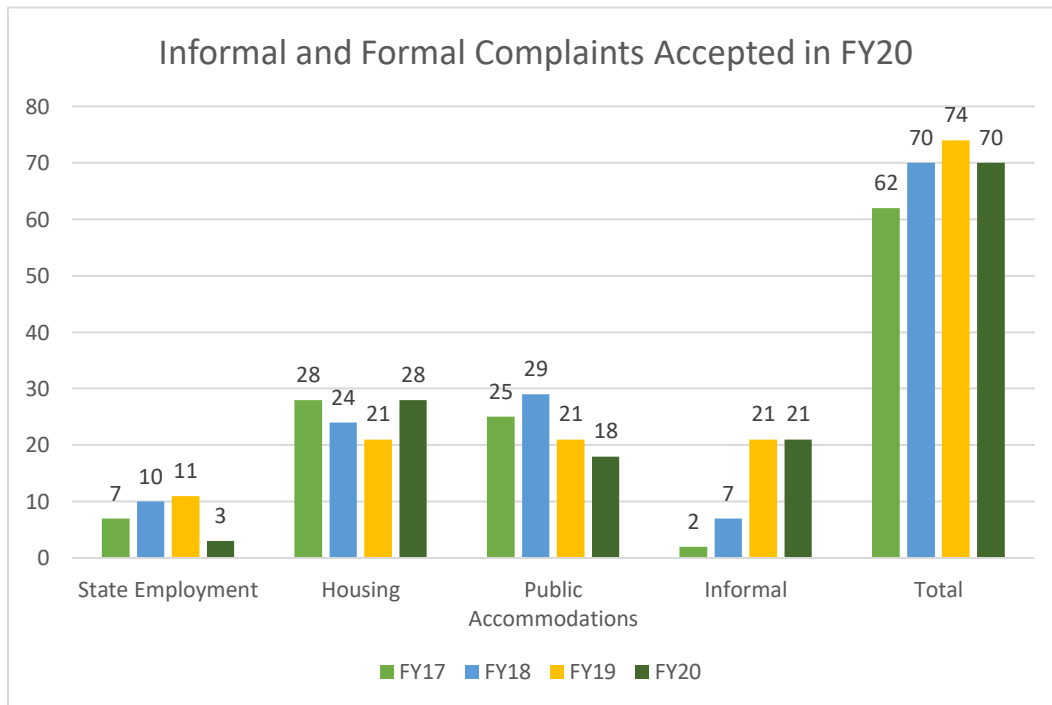
The following information is drawn from the HRC’s FY2020 (July 1, 2019- June 30, 2020) Annual Report (in draft form) and previously submitted annual reports.

Calls & Website:

In FY20, the HRC received 656 calls for assistance from the general public. There were approximately 25,870 page-views on the HRC’s website from a total of 7,903 users. Of these, 86.7% were new visitors.

Cases Opened:

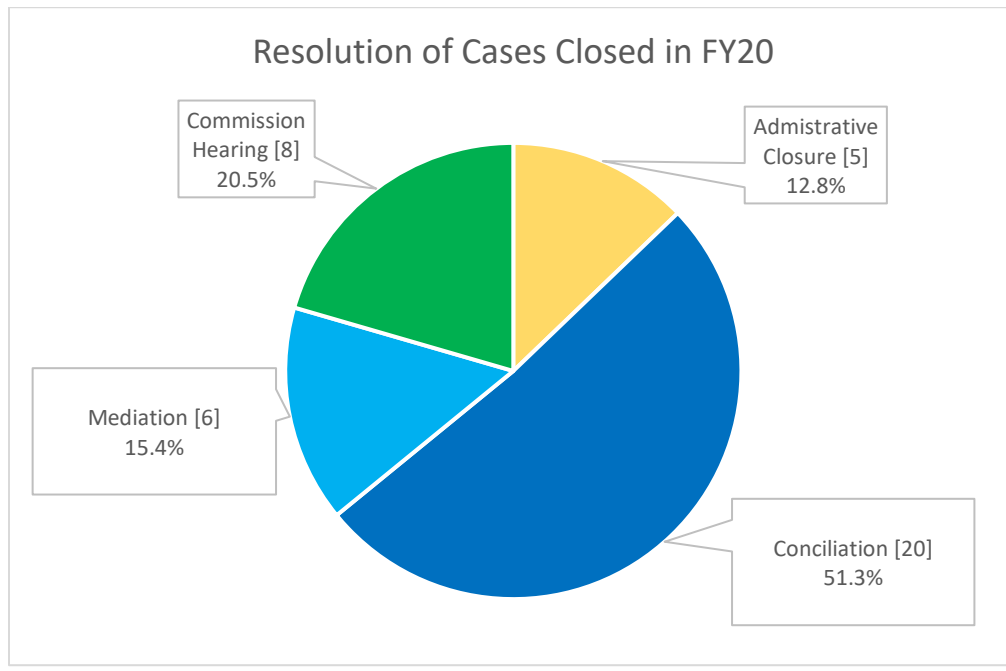
The HRC opened 70 cases: 21 informal cases (resolved quickly with letter and preliminary negotiations) and 49 formal cases (accepted for processing and investigation). The following chart reviews the number of complaints accepted since FY2017:



Resolutions:

Cases are disposed of by commission meeting, conciliation/mediation, or administrative closure. Out of the 49 formal cases opened in FY20, 15 were resolved by the end of the fiscal year. In total, 39 formal cases were resolved in FY20, including the 15 opened in FY20, 15 opened in FY19, and 9 opened in FY18.

Of the cases closed in FY20, two-thirds (66.7%) were resolved by a settlement between parties, either within the Human Rights Commission conciliation framework or through a withdrawal of the case with a mediated or otherwise private settlement. The remaining one-third (33.3%) were resolved either through a Commission hearing (20.5%) or through an administrative closure of the case without a settlement (12.8%).



The resolution of cases by conciliation and mediation improved measurably between FY19 and FY20. While FY19 saw 17 cases settle (14 through conciliation and 3 through mediation), that number rose to 26 settlements in FY20 (20 through conciliation and 6 through mediation, representing a 53% increase.

Resolutions resulted in both monetary and non-monetary outcomes. A total of \$117,540 was paid through agreements. Non-monetary outcomes included the Respondent developing and adopting policies, distributing and posting them, attending trainings on fair housing, de-escalation, human rights, etc., removing physical barriers, creating advisory committees to review existing policies and practices and more.

The Commission heard 12 cases, in comparison to 13 cases in FY19 and 17 cases in FY18. The decline in cases brought before the Commissioners is due to the fact that many more cases settled prior to a final determination in FY20. Several cases contained

multiple parties and/or alleged discrimination on the basis of multiple protected categories; within the 12 cases heard by Commissioners they delivered 18 separate findings. Commissioners voted no reasonable grounds 13 times. Commissioners voted reasonable grounds 5 times.

Special note:

While the number of cases have remained steady over time at the HRC, the complexities of cases have changed significantly. Because public accommodations extends beyond commercial buildings to include schools, hospitals, prisons and roads, this has brought many novel and complex cases to the Commission for review. Some of the legal questions raised and analyzed in recent years include:

- *Does the segregation of inmates with psychiatric disabilities in Vermont's correctional facilities violate the integration mandate and Vermont's Public Accommodations statute?*
- *What implications do particular state and federal constitutional amendments such as the 4th amendment (prohibition against unlawful search and seizure) and 5<sup>th</sup> Amendment (privilege against self-incrimination) have on whether or not a person in a protected category is deprived of services, benefits and privileges guaranteed under the Public Accommodations statute?*
- *Does the State have a legal obligation to people with disabilities who are not in the care and custody of DMH or DAIL and if so, does a failure to meet that obligation equate to a violation of the Olmstead provision of the American with Disabilities Act(ADA) and the Vermont Public Accommodations statute?*
- *Has a government agency created an administrative process that effectively puts a person with PTSD at a disadvantage with respect to obtaining government benefits, privileges and services to which he is otherwise entitled.*

Education & Outreach:

The HRC endeavors to reach all Vermonters including legislators, community members, business owners, housing providers, tenants, private and non-profit organizations, attorneys and other service providers. During FY20, the HRC trained a total of 840 people in 29 separate events and participated in and/or conducted 11 outreach events that reached approximately 1350 people.

Type	Number of events	Number trained
Fair Housing Trainings (fair housing laws, reasonable accommodation requests, and/or mental illness and housing)	15	109
Implicit Bias & Civil Rights and trainings in bystander intervention & microaggressions.	13	661
COVID-19 Townhall: Xenophobia & Racism	1	70
Outreach Events	11	1350
Total	29	2190

**6. If the purpose is still needed, can State government be more effective and efficient if the purpose was executed in a different manner?**

When the Legislature enacted the HRC more than 30 years ago, the intent was to mitigate and eradicate unlawful discrimination in the State. Over time, the Legislature expanded the HRC’s jurisdiction by adding more protected categories of people, with this same intent and purpose.

Enforcing the anti-discrimination laws of the state, conciliating cases, providing trainings and conducting outreach and advancing policies are all valiant and sensical tools for mitigating and eradicating discrimination. But if the disparities brought to light by the global pandemic and the social unrests across the country and here in Vermont have taught us anything, it is that what we’ve been doing as a State, is not enough.

Mitigating and eradicating discrimination is the work of us all, not any one person or any one entity. But, in order for the HRC to meaningfully engage in that work with the community, the Governor and Legislature, it must be adequately staffed and supported. The HRC has been traditionally under-resourced with limited staffing. The HRC needs more staff to close out cases faster and to bring every case that reaches a reasonable grounds determination to litigation when it cannot be settled. Litigation allows the HRC the test legal theories and create precedence. The work of a Policy Director should be separate from an Education and Outreach Coordinator. The work of the Executive Staff Assistant should be shared between an Office Manager and Intake Specialist. The work of the Executive Director is too wide and varied to meaningfully focus on the type of system changes that is required to eradicate discrimination in across all of the different protected categories: race, national origin, age, sex, disability, sexual orientation, gender identity, etc.



**7. If the purpose is still needed, do any of your board or commission’s functions overlap or duplicate those of another State board or commission or federal or State agency? If so, is your board or commission still the best entity to fulfill the purpose?**

The functions and duties of the HRC do not overlap with any other entity at the State. While the Civil Rights Unit of the Attorney General’s Office investigates violations of the Vermont Fair Employment Practices Act as to private and municipal employees, The HRC investigates claims brought by state employees.

As mentioned earlier, there are several federal entities that also enforce federal anti-discrimination laws: HUD, EEOC, OCR. But they do not enforce state anti-discrimination laws and Vermont’s laws extend protections to many groups of people not covered under federal laws.

**8. Does the board or commission’s enabling law continue to correctly reflect the purpose and activities of the board or commission?**

Yes, the enabling law still reflects the purpose and activities of the HRC.

**9. Provide a list of the board and commission’s last fiscal year expenditures including staffing costs. How are these funded?**

The HRC’s funding comes primarily from the General Funds. It also receives approximately \$70,000 annually from the Department of Housing and Urban Development to enforce fair housing in Vermont. These federal funds pay for both administrative and training costs. Approximately 90% of the HRC’s budget goes to personal services while the remaining 10% is for operating costs.

See the HRC’s FY2020 actual expenditures:

Account Code Description	FY2020 Actuals
<b>Personal Services:</b>	
Salaries	\$408,971.60
FICA	\$30,536.43
Health Insurance	\$66,882.44
Retirement	\$67,361.54
Dental Insurance	\$3,053.53
Life Insurance	\$1,712.39
Long Term Disability	\$696.95
Employee Assistance Program	\$173.52

Workers Comp - Ins Premium	\$3,200.00
Unemployment Compensation	
Catamount Health Assessment	
Per Diem	\$2,300.00
Other Pers Serv	
Sheriffs	
Service of Papers	\$68.90
Contr & 3rd Party – Legal	\$654.50
Contr&3rd Pty-Appr/Engineering	\$3,616.00
Contr&3rd Pty-Educ & Training	\$288.00
ADR Mediation	
Other Contr and 3rd Pty Serv	\$4,971.08
Interpreters	\$161.40
<b>Vacancy Savings:</b>	
<b>Operating:</b>	
Disposal	
Recycling	\$22.00
Repair & Main-OfficeTechEquip	\$218.38
Rent Land & Bldgs-Office Space	
Rent Land&Bldgs-Non-Office	
Rental of Equipment & Vehicles	
Rental – Auto	\$292.00
Rental - Office Equipment	\$1,892.00
Rental – Other	\$395.00
Fee For Space Charge	\$30,236.48
Insurance other than Empl Bene	\$31.70
Insurance - General Liability	\$664.23
Dues	\$420.00
Communications	
ADS VOIP Exp	\$6,230.77
Toll-Free Telephone	
Internet	
Telecom-Mobile Wireless Data	
Telecom-Telephone Service	\$744.62
Telecom-Video Conferencing Svc	
Telecom-Toll Free Phone Serv	
Telecom-Conf Calling Services	
Telecom-Wireless Phone Service	\$108.31
ADS Service Level Agreement	\$6,729.05
IT Inter Svc Cost-VISION/ISD	\$4,440.00
ADS Centrex Exp	\$145.27
IT Inter Svc Cost User Support	
IT Inter Svc Cost AppDev&Maint	
ADS Allocation Exp	\$6,229.81
Advertising – Print	\$1,225.81
Advertising – Web	
Advertising – Other	
Advertising - Job Vacancies	

Sponsorships	\$100.00
Printing and Binding	
Printing & Binding-BGS Copy Ct	\$172.00
Printing-Promotional	
Photocopying	
Registration for Meetings&Conf	\$484.24
Emp Training & Background Chks	
Postage	
Postage-BGS Postal Svcs Only	\$502.09
Freight & Express Mail	
Instate Conf, Meetings, Etc	
Catering/Meals Cost	\$343.80
Outstate Conf, Meetings, Etc.	
Travel-Inst-Auto Mileage-Emp	\$2,189.58
Travel-Inst-Other Transp-Emp	\$80.00
Travel-Inst-Meals-Emp	
Travel-Inst-Lodging-Emp	
Travel-Inst-Incidentals-Emp	\$92.00
Travl-Inst-Auto Mileage-Nonemp	\$1,616.36
Travel-Inst-Meals-Nonemp	
Travel-Inst-Lodging-Nonemp	
Travel-Inst-Incidentals-Nonemp	
Travel-Outst-Auto Mileage-Emp	\$433.46
Travel-Outst-Other Trans-Emp	\$1,233.20
Travel-Outst-Meals-Emp	\$381.75
Travel-Outst-Lodging-Emp	\$3,361.04
Travel-Outst-Incidentals-Emp	\$50.00
Trav-Outst-AutoMileage-Nonemp	
Travel-Outst-Trans -Non Emp	
Travel-Outst-Meals-Nonemp	
Travel-Outst-Lodging-Nonemp	\$863.72
Other Purchased Services	
Agency Fee	\$631.73
Human Resources Services	
Moving State Agencies	\$258.75
Office Supplies	\$1,356.86
Gasoline	
Small Tools	
Other General Supplies	
IT & Data Processing Supplies	
Agric, Hort, Wildlife	\$46.08
Food	\$574.50
Books&Periodicals-Library/Educ	
Subscriptions	\$3,972.37
Other Books & Periodicals	\$251.44
Hardware-Computer Peripherals	
Info Tech Purchases-Hardware	
Hardware-Desktop & Laptop PCs	\$1,170.00

Furniture & Fixtures	
Single Audit Allocation	\$181.00
Registration & Identification	
<b>TOTALS:</b>	<b>\$675,019.68</b>

**10. Is the board or commission required by law to prepare any reports or studies for the Legislature, the Governor, or any State agency or officer? If so, have those reports or studies been produced? Does the board or commission have ongoing reporting obligations?**

Per its enabling statute, the HRC submits an annual report to the Senate President and the Speaker of the House by December 31 of each year. All reports have been produced and the obligation to report is on-going. At the time of this response, the HRC's Annual Report is being prepared for submission.