

P. O. Box 512
Montpelier, Vermont 05601
March 24, 2021

House Committee on Natural Resources, Fish and Wildlife
meeting remotely

Subject: testimony on dr req 21-0956 miscellaneous natural resources and development subjects

Dear Committee:

Last week you held a hearing on this draft committee bill: dr req 21-0956 miscellaneous natural resources and development subjects. I notice that you are scheduled to hold another hearing on this subject, tomorrow, March 24. Please include this letter as testimony on your draft bill.

This letter addresses my concerns that your proposed bill will facilitate the governor's plan to re-organize the Natural Resources Board. Even though the Senate disapproved the executive order, I doubt that the governor will give up his plan for the re-organization. So I'm requesting that you include, in your bill, provisions that do not facilitate a future re-organization. I share the concern that Rep. Lefebvre expressed last week concerning provisions relating to Act 250 in this bill. I thank him for expressing that concern.

I suggest changes to sections 24 and 25 of the draft. And I suggest that you require some means of outreach to bring district commissions up to full strength and to keep them there.

How the budget bill, H.439 addresses the Natural Resources Board.

Before I discuss my concerns on your bill, I notice that House Appropriations has reduced the amount for the Natural Resources Board in its proposed budget bill (H.439, pp. 77 and 78). Thank you for your part in that reduction. The reduction is \$500,000, which was the amount the governor's request had included to re-organize the Natural Resources Board. (I provide page numbers in the bill to help you find them more quickly.)

The budget bill seems not to authorize the positions needed to re-organize the Board. Thank you for your part in that, as well. (pp. 115 through 117?)

The budget bill does provide the full \$1,000,000 (p. 114 from COVID money) requested by the governor to eliminate the deficit in the Act 250 special fund. This is some \$352,000 more than is needed to eliminate the existing deficit. The \$352,000 is essentially the same amount of money as the governor had requested for the personal services portion of the re-organization plan.

The budget bill also provides the Board with \$500,000 (p. 94 from ARP Act technology modernization funds) for phase 2 of the Act 250 13 online application and database project - moving Act 250 services online.

The budget bill also gives the Board chair a raise. (p. 176)

The Senate's disapproval of the re-organization likely is not an end to the governor's plan to re-organize the Natural Resources Board. I doubt that the governor will give up on his plan for the re-organization. It is even possible that he will declare the executive order in effect on April 15, because both chambers did not approve the resolution. The executive order expresses the governor's belief that the Vermont Constitution's requirement that any resolution be approved by both chambers. Should he choose that route, I hope you are prepared.

Whether the governor chooses an immediate confrontation or chooses to bide his time, I request that you make several changes to your draft bill.

Suggestions for Section 24

Section 24 proposes to amend section 10 VSA 6083, Applications. I see only one place to amend 10 V.S.A. § 6083(a). That is with the number of copies of a plan.

The draft does two things that together work to undo the Senate's disapproval of the executive order.

- It will remove the requirement that an application for a permit be filed with the district commission.
- It will require an application to "be filed . . . as prescribed by . . . other guidance that the Board may issue from time to time."

What I foresee happening is that the NRB will issue guidance requiring that all applications be submitted to the NRB. Guidance of course is easier and faster to create than rules. Having all applications go to the NRB is one component of the executive order.

I request that section 24 be modified to read as follows.

§ 6083. Applications

(a) An application for a permit shall be filed with the District Commission as prescribed by the rules of the Board and shall contain at least the following documents and information:

- (1) The applicant's name, address, and the address of each of the applicant's offices in this State, and, where the applicant is not an individual, municipality or State agency, the form, date, and place of formation of the applicant.
- (2) Four copies of a plan of the proposed development or subdivision showing the intended use of the land, the proposed improvements, the details of the project, and any other information required by this chapter, or the rules adopted under this chapter. If the application is filed online, then only one copy is required.
- (3) The fee prescribed by section 6083a of this title.
- (4) Certification of filing of notice as set forth in 6084 of this title.

It is important to require that applications go to the district commission. The computer system can be set up to have applications go directly to the appropriate district commission. In fact, the online application system for DEC's wastewater system and potable water supply permit requires one to submit the application directly to the appropriate DEC regional office, with a link to each office. I hope that NRB is setting up their on-line application system to do the same. If the Natural Resources Board is not setting up their online application system that way, I ask that you require them to set up the system so that applications go directly to the regional offices. DEC's permit system is at anronline.vermont.gov. The links to each regional office are at <https://anronline.vermont.gov/Home/83836795-4a4f-4915-bf44-2be0f8efd76e>

Suggestions for Section 25

Section 25 proposes to amend section 10 VSA 6084, Notice of application; hearings; commencement of review. The proposal will remove the requirement to send a copy of the application with the notice. So, the statutory parties will be given notice of the application and then each of them, somehow, will need to actually dig up the application. Making each statutory party look up the application (instead of just sending them the application) is a waste of time. It might save the applicant a smidgen of time. It will take the recipients of the notices much more time to retrieve the documents.

Apparently there will no longer be physical copies of applications or documents associated with an application. That is a serious problem. I have found that documents on the internet go missing or are made really difficult to find or impossible to find. Links are broken. I cannot find documents on the Act 250 database because of broken links. I cannot find ANR reports, probably because they just aren't there: they go away, or disappear, or are at a new location that is not indexed. There is also the very real possibility of malefactors invading the system and altering or destroying documents.

The proposal is to require district commissions to send notices of applications to the listed individuals and entities. The district commissions now have too few members with current appointments. So it is inappropriate to burden commissions with too few members with more duties. I suggest that the requirement of sending

notices remain with the applicant.

Suggestions for bringing district commissions to full size.

I am not sure how to require outreach for vacancies and expired terms. I ask that you find a way to require that outreach.

The nine district environmental commissions should have 27 members and up to 4 alternate members each (for a total of 36 alternate members). However, there are now only 11 members with current terms, including chairs. The other 16 positions have expired terms or are shown as vacant. The governor is allowed to appoint up to four alternates for each district commission. There are only 7 alternates. District 4 (Chittenden County) is the only district with a full roster of commissioners and alternates. District 5 (Washington, Lamoille, and a sliver of Orange Counties) is the only other commission that can seat three for public hearings. The other seven district commissions have only one member each with a current appointment.

It seems that neither the NRB nor the governor actively solicits applications for appointment. The NRB passes the buck on vacancies by stating "All commissioners are appointed by the governor." There is no link to the governor's appointments page. The same NRB page does provide a list of commissioners and alternates for each district and whether vacant or the expiration date. Some of the listings show expirations as far back as January 31, 2017.

The governor's page on appointments is found by going to the governor's home page; clicking on "Boards and Commissions" down near the bottom. That goes to a page with a link to "APPLY NOW" and a list of all boards and commissions. The list does not indicate that there are any vacancies. Clicking on the District #8 environmental commission, as an example, one finds a list of the seven positions by name and the date the term expires. District #8 has one term expiring January 31, 2023; and 6 that have expired on January 31 of 2019, 2020, and 2021. (It appears that all terms of district commissions expire on January 31 in accordance with the requirement that the governor make appointed in the month of February. §6026(b)) There is no indication that the governor is seeking appointments for any of them.

I think a better solution is for the NRB's page to provide a link to the governor's page. And the NRB should state something like "The district commissions have 9 vacancies, 36 positions with expired terms, and 4 positions with terms that will expire on January 31, 2022. If you are interested in being a district commissioner or alternate, please apply at governor.vermont.gov/boards-and-commissions."

A better solution for the governor's site is for the site to have the same kind of listing as I proposed for the NRB site. Also, I think it would be easier to apply if the link to "APPLY NOW" is also on the page for each individual board or commission. (Rather than making an applicant go back one page to find the application button.)

In conclusion, I ask that you amend sections 24 and 25 as I have indicated. I also ask that you require outreach for keeping district environmental commissions at full strength.

Thank you for taking time to read this testimony.

Sincerely,
Thomas Weiss