

# Act 250

# Governor's Executive Order 02-21

Testimony to  
Senate Natural Resources & Energy Committee  
and House Natural Resources Fish & Wildlife Committee



**Vermonters** for a **Clean Environment**

Annette Smith, Executive Director

January 21, 2021

# HISTORY

The governor's authority to re-organize the executive branch was granted by Act 245 of 1970, signed by Governor Davis a few minutes before he signed Act 250. (Yes, that Act 250.)

That year included the shake-up and re-organizations that created the first agencies.

The next act in the series, 246, created the Agency of Natural Resources.



## Legislative Finding for 3 V.S.A. Chapter 41 Reorganization by the Governor (§§ 2001 through 2007)

Finding (e):

*"...It is the goal of reorganization through coordination of government programs and policies **to improve the relationship between citizens and government agencies.**"*

The governor's order weakens that relationship. The weakening occurs by moving the hearing process to a higher level in the organization chart. Typically, the higher in the organization chart, the more rigid are the requirements and the less access there is for citizens. That clearly applies to Act 250.

Weakening also occurs by diminishing the relationship between the district commissioners and the government by making government less accessible to Vermont citizens.



## Legislative Findings for 3 V.S.A. Chapter 41 Reorganization by the Governor (§§ 2001 through 2007)

(a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of his office efficiently within the policy limits established by the legislature...

...(d) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy-making capability and to improve the administrative capability of the executive to carry out these policies.

(e) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of government programs and policies to improve the relationship between citizens and administrative agencies.

(f) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities."

# **The Governor's EO Improperly Interferes with the Legislature's Established Policy for the Role of District Commissions**

The role of District Commissions as provided in Chapter 151 is an essential part of legislative policy.

This executive order strips the District Commissions of many of their functions.

A non-professional board is part of the policy established by the legislature.



# Legislative Consideration of Professional Board in Last Biennium — 2019-2020

- The Senate never considered this or similar proposal.
- The House NRF&W Committee passed out a related but different proposal. It included — moving hearings on applications to the NRB, appointment process via Judicial Nominating Board (not serving at the pleasure of the Governor).
- Fees to pay for the new Board were removed by House Ways & Means Committee.
- Alterations to Natural Resources Board and District Commissions were removed by House Appropriations Committees.
- The House accepted the amendments of Ways & Means and Appropriations Committees.

# Current Problems with Act 250 Administration

<https://nrb.vermont.gov/act250-program/district-staff-and-commissions>

- Not Fully Staffed — Some District Coordinators are now covering two or three districts. When staff retires, positions are not filled.

Recent message to me from District One Coordinator:

*"I got inundated once Bill retired, and have a huge backlog."*

- Commissioner Positions Not Filled — District One, for instance, had no Chair for a full year, has vacancies, and no institutional knowledge. Some expired terms not filled.
- Political Appointments. No open application process for District Commissioners. The Chair of the NRB serving at the pleasure of the governor is a problem, regardless of party or governor.



# Costs & Budgets

- The Governor's Executive Order involves high salaries for three new full-time positions plus equivalent payments to two District Commissioners.
- Last year's proposal involved large fee increases that would disproportionately benefit large businesses at the expense of small businesses. *See Ed Stanak's testimony to House Ways & Means, 2/20/20\**
- Consideration of the merits of this proposal should occur only after disapproval of the EO, enabling the House and Senate to consider it (and other ideas) as part of the normal legislative process, which includes budgeting.
- The EO does not allow time for the legislature to make changes prior to April 15, 2021, when the budgeting process is taken into consideration.

\* <https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Ways%20and%20Means/Bills/H.926/W~Ed%20Stanak~H.926%20-%20Testimony%20to%20House%20Ways%20and%20Means~2-20-2020.pdf>