

P. O. Box 512
Montpelier, Vermont 05601
February 16, 2021

Senate Committee on Natural Resources and Energy
meeting remotely

Subject: "Maintenance" bill proposed by the administration, which facilitates the intent of executive order 02-21

Dear Committee:

Last week Tuesday (the 9th), DEC and NRB presented a "maintenance" bill. This maintenance bill will provide a large step toward implementing the governor's executive order 02-21. You created, and the senate passed, a resolution disapproving the executive order. Despite that disapproval, I believe the governor will implement the executive order anyway, because both chambers did not disapprove the resolution.

On reading the text of the proposed bill, I believe that it is part of a series of steps the governor is taking to implement his executive order anyway.

For the following reasons, I find it quite likely that the governor is planning to implement his executive order despite the Senate's resolution of disapproval. I base this likelihood on the combination of:

- this proposed bill from the administration
- the governor's proposed budget and his budget address
- his failure to appoint district commissioners

The administration's proposed bill

On February 9, Peter Walke and Greg Boulbol presented a "maintenance" bill to you. Sections 21 and 22 of that bill are designed to facilitate implementation of the Executive Order 02-21.

I realize that you have not yet gone over in committee the text of the administration's proposal. I viewed the slides that were presented to you on the 9th. I read the text of the proposed bill. Then I listened to your hearing to see if you had picked up on what I am about to describe. It was then that I learned you had seen the slide show and not gone over the proposed bill.

Section 21 proposes to amend section 10 VSA 6083, Applications. The proposal does two things that together work to undo your 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.

Section 22 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.

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 governor's proposed budget

On February 9, House Natural Resources, Fish and Wildlife posted a letter from House Appropriations. That letter contains the portions of the governor's proposed budget relating to natural resources. Included in that budget are the two, new, full-time positions of the two board members created by the executive order. That budget also fails to include the costs for the two district commissioners participating on hearings of applications. (Please refer to my testimony to you posted January 29, 2021 for more on the omission of this budget item.)

Hollowing out the district commissions

The governor has failed to make appointments as required to the district commissions. Neither the governor nor the Natural Resources Board advertises that there are vacancies on district commissions to be filled.

Buried deep in the governor's internet site is a page on boards and commissions (<https://governor.vermont.gov/boards-commissions>). That list on that page contains the each of the nine district commissions. It contains a link to an online application form. It is not clear how one retains a copy of the application form for one's files.

The Natural Resources Board does worse. It has a page that lists the districts and staffing of the district commissions (<https://nrb.vermont.gov/act250-program/district-staff-and-commissions>). It doesn't even provide a link to an application. It merely says "All Commissioners are appointed by the governor.

It is no wonder that there are so many vacancies and expired terms. It is like they pay lip service to the vacancies and do not want interested members of the public to apply. The climate council put out notices (advertising) seeking people to apply to become members of its subcommittees and got dozens of applications. So advertising works.

Yet neither the NRB nor the governor advertises. Here are the dismal results of that failure.

position	term not yet expired	term expired	vacant
chair (9: 1 per district)	0	8	1
member (18: 2 per district)	8	9	1
alternate member (optional, up to 4 per district)	3	25	8

Only 2 districts (4 and 5) can raise a quorum with people whose terms have not expired. District 1 has no one whose term has not expired. The other six districts (2, 3, 6, 7, 8, and 9) have only one member or alternate whose term has not expired. District 4 can raise a quorum; it cannot seat a full commission of three. District 5 can seat a full commission of three.

In conclusion, if you take up the maintenance bill, please remove sections 21 and 22.

Sincerely,
Thomas Weiss