

**2026 Transportation Bill****Rachel Dimitruk Testimony****February 18, 2025**

Thank you, Chair Walker, Vice Chair Corcoran, and the House Committee on Transportation for inviting me to testify on Sections 7 and 8 of the 2025 Transportation Bill.

I am the Executive Secretary of the Vermont Transportation Board. I am here with the Chair of the Transportation Board, Pamela Loranger.

The Transportation Board was created in 1975 as a successor to the Highway Board and Aeronautics Board. It is a quasi-judicial and regulatory board which focuses on functions related to transportation. The Board's duties and responsibilities are broad and include responding to petitions and specific activities pursuant to statutory authority in areas such as state highways, aeronautics, railroad, and other surface transportation. For example, the Board hears appeals from Agency decisions on disputes involving construction contracts. These are contracts for paving, bridges, road construction, and road alterations. With these contract disputes, the Board holds full hearings and acts as a trial court before issuing a decision on the rights and responsibilities of the Agency and the contractor. (19 V.S.A. § 5(d)(4)). Appeals from the Transportation Board on contract disputes go directly to the Supreme Court. The Board is also where Vermont residents petition for a right of way over a state highway (19 V.S.A. § 1111), petition to name a transportation facilities (19 V.S.A. § 5(b)), seek approval for airports and restricted landing areas (5 V.S.A. § 207), and challenge the rents imposed for use of Agency of Transportation controlled facilities such as airport hangers (19 V.S.A. § 5(d)(6)). The Board hears small claims against the Agency of Transportation, such as damage to a vehicle from road maintenance done by the Agency. In addition, the Board hears appeals from municipalities challenging the Agency's determination that the municipality must pay back grant funds (19 V.S.A. § 309c).

Section 7 of the 2025 Transportation Bill amends 19 V.S.A. § 3. As the law currently reads, the Governor appoints the Chair of the Board. The Board sees a need to elect other officers not only to provide support for the Chair but also to encourage the engagement of Board members. This amendment makes that possible.

Section 8 of the 2025 Transportation Bill amends 19 V.S.A. § 5(d)(4) to exempt the bidding process and bidding protests from the appellate jurisdiction of the Board. The amendment came about at the request of the Agency of Transportation. The language of the amendment was negotiated between the Board and the Agency and then amended by legislative counsel.

Section 5(d)(4)'s use of the term "execution of contracts" has been interpreted by the Vermont Supreme Court to mean changes of circumstances and unforeseen circumstances, interpretation of contract terms, breach of contract, and termination of contract. *See W.M. Schultz Constr., Inc. v. Vermont Agency of Transportation*, 209 Vt. 146, 203 A.3d 1205 (2018); *Earth Construction, Inc. v. State*, 178 Vt. 620, 882 A.2d 1172 (2005); *Luck Brothers, Inc. v. Vermont Agency of Transportation*, No. 637092012, 2013 WL 5313419, at *4-5 (Vt.Super. Apr. 05, 2013). This amendment would not change the Board's role as the trial court for these contract disputes. Given the unique nature of challenges to the bidding process, the Board has no objection to clarifying those cases are outside of the jurisdiction of the Board.

I thank the Committee for inviting my testimony on behalf of the Vermont Transportation Board and am happy to answer any questions or address other issues.