

House Ways and Means Committee  
February 20, 2020 Hearing  
Testimony of Ed Stanak  
H.926 Proposed Act 250 Amendments

My name is Ed Stanak and I am a resident of Barre City. I was employed for 32 years by the State of Vermont as an Act 250 district coordinator. I was present at the majority of hearings conducted by the House Natural Resources, Fish and Wildlife (HNRFW) Committee during 2019-2020 concerning proposed Act 250 legislation, testified several times and provided written submittals. I appear today to provide perspective on the costs of the proposed new Natural Resources Board and the related possible sources of revenue to fund additional staff and operational costs, as set out in H.926.

Overview

The use of General Fund or Act 250 Special Fund revenues is inappropriate given the extremely small amount of applicants who may benefit from the proposed drastic change in the administration of Act 250 set out in H.926.

An undated submittal from the current NRB filed with the HNRFW committee on February 11, 2020 outlines the “ proposed annual budget changes” necessary to fund the new NRB program. The total cost was estimated as \$640,687.

Based on the past historic revenue streams for the funding of the Act 250 program (See NRB annual report to the General Assembly dated February 12, 2020 at page 15), the revenue stream for the estimated \$640, 687 would come from either the General Fund or the Act 250 Special Fund (i.e. revenue generated from Act 250 permit application fees pursuant to 10 VSA 6083a).

Current NRB Operating Costs

The February 2020 annual report does not specify total costs for the Act 250 program. Instead it states (at page 15) that “In FY 2019, the NRB is relying on Special Funds to cover 81% of its annual expenditures for personal service and operating costs, with the remaining 19% covered by General Funds.”

Special Fund authority for the NRB in FY 2019 was \$2.531M. Thus, the total operating cost for the Act 250 program in FY 2019 can be estimated as \$3.124M with the General Fund contribution being \$593,000 . By way of comparison, the Special Fund amount for FY 2018 was \$2.245M.

The total Special Funds (i.e. application fees) actually collected in FY2019 were \$2.135 M suggesting a shortfall of \$396,000. The comparable figure for FY2018 (\$1.773M) also suggests a shortfall of \$672,000.

It would appear that the shortfall in Special Fund revenues for FY2018 and FY2019 required supplemental use of General Funds in excess of the originally budgeted amounts.

### The Rationale for the Creation of the New NRB

The request for increased funding for the operation of the new NRB is premised upon the creation of a new statewide board as detailed in H.926. This board would replace the existing public hearing function of the existing nine District Commissions.

A praiseworthy component of the District Commissions over the last 50 years has been a user friendly process providing for accessible public participation and the resolution of issues for the vast majority of cases without any necessity of subsequent appeal to the Environmental Division of the Superior Court. The final January 2019 report of the seven member legislative study Commission on Act 250 created by Act 47 in 2017 documented (at pages 54-62 of the report ) that there is widespread satisfaction across the state with the current District Commission hearing process. The legislative Commission on Act 250 recommended no changes to District Commission process and the HNRFW committee adhered to this view throughout the numerous hearings it conducted during the 2019 session.

This view was cast aside on January 7, 2020 when a private organization and the executive branch submitted an 11<sup>th</sup> hour 74 page proposal that included the complete elimination of the District Commissions – in effect hijacking the methodical deliberative process to that point by the HNRFCW committee. The final proposal in H.926 stripping away the role of the District Commissions in conducting hearings was the purported “compromise” accepted by the majority of the HNRFW committee.

### Current Volume of Act 250 Applications

In FY2019 there were a total of 23 hearings conducted statewide for so-called “major” applications by all of the District Commissions. There were 220 other projects reviewed as “minors” by the District Commissions without need of hearings. Thus, the amount of Act 250 applications that annually require hearings is in the range of 9% of all applications. \*

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\* As noted in the NRB February 2020 annual report at page 11, there were 202 other applications processed in FY2019 but these were “administrative amendments” processed by District Commission staff merely for recordkeeping purposes consistent with Act 250 Rule 34 (D).

The proponents of the new NRB convinced the majority of the HNRFW committee that the creation of the new NRB was required in order to address issues associated with the appeals of decisions on “major” applications by the District Commissions. In FY 2019 there were a total of 8 District Commission “major” applications which were appealed – out of the 243 substantive applications processed by the Commissions. A total of 8 District Commission cases were appealed in FY 2019 -3% of all applications. (page 16 of the NRB February annual report).\*

Thus the proposed increased annual cost for the administration of the Act 250 program of \$640,000 is being driven by perceived difficulties for the less than 3% of cases appealed on an annual basis. By comparison, the 80% of all applications processed as “minors” without hearings are the “Mom and Pop”/small business developments across the state. The same application fees are paid by all applicants regardless of whether the application is processed as a “minor” or “major”.

#### Use of the General Fund as Revenue Stream for the New NRB

It is interesting to note that the allocation of General Fund revenues for the administration of Act 250 during FY 2017-2019 has been in the range of \$600,000 per year. In this context, if the General Fund is to be utilized as the revenue source for the increased costs of the new NRB hearing process, that would be the approximate equivalent of a doubling of the annual allocation of General Funds for the Act 250 program.

Putting it another way, the cost of conducting the approximate 23 hearings per year on “major” applications will translate to an additional cost of \$27,826 per hearing and this cost will be “baked into” the budget for subsequent years.

One needs to ask the question of whether this increased expenditure of General Fund revenues is prudent and necessary when one notes that the benefit of this substantial increase is for the benefit of only 3% of the overall Act 250 application caseload (i.e. the cases that get appealed)? While the legislative study Commission on Act 250 identified problems with the current appellate process at the Environmental Division of the Superior Court, it did not recommend any solution requiring the destruction of the District Commission hearing process.

The question must be asked: how many other state programs, infrastructure projects and social services would be better served by increased expenditures of \$640,000 from the General Fund?

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\* As explained on page 16 of the NRB annual report, 6 jurisdictional opinions were also appealed in FY2019 but these cases have nothing to do with the District Commission public hearing process to be eliminated by H.926.

### Use of Increased Act 250 Application Fees for New NRB

The current Act 250 application fee rate structure is described on page 15 of the NRB 2020 annual report. The rates apply equally to all applicants whether an application is eventually processed as a "minor" or a "major".\*

As outlined above, there have been apparent shortfalls during FY 2018 and 2019 in the anticipated revenue stream from Act 250 application fees (i.e. Special Funds) . Arguably, any increase in fees should be utilized to address such shortfalls in the operation of the current program. But should the Ways and Means committee decide to rely upon an increase in application fees to fund the new NRB hearing process, it must be recognized that that fee increase will be borne primarily by the 80% of projects that do not require hearings (or do not result in any appeals). In other words, the committee will be making a policy decision that Mom and Pop small business projects will in effect subsidize the drastic changes to the Act 250 hearing process for the benefit of 3% of projects –typically the large and complex projects – which are the subject of appeals.

### Conclusions

The Ways and Means committee should decline to provide any revenue stream for the funding of the ill advised new NRB hearing process proposed in H.926 because it will be an unnecessary and imprudent expenditure of General Fund revenues or an unfair increased financial burden on small businesses.

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\*The use of the term "major" is really a misnomer. It is not used in statute or rule. It is a term used in comparison with the process set out in Act 250 Rule 51 for "minor applications". All that "major" connotes is that a hearing is held on a project and size is not the sole determining factor for holding a hearing. Other factors include the type of project, potential for impacts and extent of likely public interest.