

Rebuilding Economic Opportunity

THE NORTHEAST KINGDOM REPORT

Summary: In the spring of 2002 Gov. Howard Dean proclaimed his “Successful Communities Initiative”. It involved two state-led meetings, in Springfield and in Lyndon, to bring local people together to find solutions for job loss and economic distress in the regions. The government report from the Northeast Kingdom meeting recited numerous actions that various government agencies promised to take. What Northeast Kingdom business leaders recommended, however, is quite different. They don’t want more government. They want a government where taxation is fair and reasonable, regulation is strict, but fair, swift, and certain, and government employees want to cooperate with business for economic growth.

I. Introduction

On March 6, 2002 the Vermont Agency of Commerce and Community Development (ACCD) hosted a meeting of 85 people at Lyndon State College as a part of Gov. Howard Dean’s “Successful Communities Initiative”. Of the 85, all but about a dozen were either government employees, employees of organizations funded with taxpayer dollars, or politicians.

The outcome of the March 6 meeting was a report issued by the Agency on April 4. The three-page “Summary of Recommendations” section of the report contained 49 bulleted items.

Seven of the items are about Gov. Dean and Vermont’s Congressional delegation (all of who were represented) agreeing to support, advocate for, focus on, or work with various projects.

Twenty nine of the items involve the Agency of Commerce and Community Development being designated as, consulting with, taking the lead on, working with, providing, offering, exploring, playing a larger role, proposing, facilitating, and identifying.

Eight items involve various federal agencies agreeing to work with, await word about, develop, and serve as a resource for.

Five items involve other state agencies that will sponsor, make available, offer, and work with. This latter group includes the Agency of Natural Resources, whose one contribution was an agreement “to cooperate with the Governor’s Development Cabinet and ACCD to consider the potential of creating a permit system that would expedite permits in this region of the state.”

These results could hardly be described as encouraging to the business people who participated, or to anyone else deeply concerned about the region’s sagging economic prospects.

On May 8, a month after the appearance of the report, the **Ethan Allen Institute** sponsored an invitation-only economic development policy dinner. Fifteen Northeast Kingdom business leaders attended. The group included manufacturers, developers, bankers, and recreation leaders. Together the participants control well over \$400 million in economic assets in the Kingdom. (The specialized economy of agriculture,

though highly important to Vermont and the Kingdom, was not included on the dinner agenda.)

Understandably, business people whose success or failure can hinge on decisions by government are reluctant to criticize public officials to their face. Thus no public officials or politicians were invited to participate. The moderator announced at the beginning of the meeting that the discussion was off the record, and that this report would disclose neither the names of the participants nor information that might allow their business interests to be identified. Under this ground rule, participants in the meeting were far more outspoken than they would have been in a large meeting outnumbered six to one by government officials and politicians.

The purpose of the dinner was to identify the barriers to economic growth and prosperity in the Kingdom that could be reduced by changes in public policy. Accordingly, the group took it as a given that the geography, climate, natural resources, international trade rules, federal tax code, and to a large extent the transportation arteries of the region are not amenable to change.

What follows is a condensation of key points made at the meeting, along with several illuminating examples. Section VIII contains specific recommendations.

II. Taxation

Vermont's total tax burden makes our state non-competitive with states like New Hampshire, Tennessee, and Texas.

The Senate has just made threatened to make the disadvantage even worse by passing a 25 percent increase in the corporate income tax.

The same Senate bill has denied a passthrough of Congress's repeal of the estate tax. This denial will especially impact small businesses and farms.

The legislature's decision to decouple the Vermont income tax from the federal has produced serious business uncertainty. Given the complexion of the legislature and its constant search for new revenues, business is concerned that it will move toward creating an even more punitive state tax schedule. This year's Vermont income tax forms are even more difficult to understand than the federal forms.

Further, there is "unwritten tax law" at the Tax Department. The Tax Department has for years tried to expand tax revenues by such devices as taxing airliners that landed in Burlington, accounting for business equipment purchases at list price instead of the actual discount price paid, and narrowing manufacturing sales tax exemptions ("only equipment that actually touches the part being produced.")

"The legislature's decision to decouple the Vermont income tax from the federal has produced serious business uncertainty."

III. Regulation

The Northeast Kingdom's environment is invaluable both for its economic benefits and for its contribution to a high quality of life. Few if any business people in the Kingdom want to abandon reasonable regulation of economic activities to protect those values. They are willing to accept strict regulations, provided the process is fair, swift, and certain.

That unfortunately is not the case. Whatever was intended when the era of environmental regulation began in 1970, Vermont has long since become a land of "permit process grief."

The permit criteria and processes – notably Act 250 – have taken on a life of their own.

They are all too often implemented by bureaucrats with no sense of urgency at best, and biased against applicants whose proposals appear to threaten the bureaucrat's protection duties (fish and wildlife, stream flow, wetlands, historic preservation, esthetics). Regulators too often appear to believe they must justify their existence by finding something, however unreasonable, to object to.

One Kingdom project, now completed, had to pay \$300,000 just in permit compliance costs. An identical project built in New Hampshire would have cost around \$30,000 in compliance costs – and it would have had no more harmful effect on any environmental value than the far more costly Vermont project.

Another Kingdom project ran up \$130,000 in permit process costs over three years without getting a permit, despite strong public support. Competitors found it easy to manipulate the process to keep the new project out.

By contrast, a new \$3.5 million factory broke ground in the Whitefield NH industrial park within three weeks of getting its zoning permit, which required a 30 minute appearance before the zoning board. Another northern New Hampshire applicant was advised by the zoning board to apply for a 55-foot height limit instead of the requested 30-foot limit – to make a future board hearing on a height increase unnecessary.

One participant with considerable experience in manufacturing around the country said that he would never recommend building a plant in Vermont. What firms need to know is what they must do, where they can do it, what it will cost them, and when they can expect to have product on the dock. In Vermont none of the answers to

these questions are apparent at the beginning point. This consideration alone sends many executives of what could become Vermont companies on to locate in more congenial places.

A large firm wishing to build a plant here has little choice but to deal directly with the Governor. Its executives must act on the Governor's assurances that he will personally wire the deal to meet the applicant's needs. That works for influential companies like Husky, for which Governor Dean organized "Project Big Dog" and arranged over \$10 million in VEPC credits. But few Vermont firms are important enough to get a Governor's attention and personal cooperation. Nor do they want to have to cozy up to a Governor to get their application approved. They want fair, swift and certain rules that apply

equally to every applicant, large and small, homegrown and imported.

The Vermont process effectively requires private firms to make their business public, which is another deterrent.

Vermont is a paradise for professional obstructors, notably the virulently anti-growth Conservation Law Foundation. Had the legislature not changed the law, CLF's stormwater discharge attack on commercial development near Lake Champlain would have shut down virtually all development anywhere near a body of water. CLF's mission is apparently to please its contributors by launching high-powered legal attacks anywhere that economic and job growth can be stopped for whatever reason. The fact that Vermont's laws offer CLF so many opportunities to obstruct cannot be lost on firms considering locating or expanding here.

In one town near the Kingdom a needed 18-unit affordable housing development was

*Vermont is a paradise
for professional
obstructors, notably the
virulently anti-growth
Conservation Law
Foundation.*

stopped by Fish & Wildlife concern over its potential effect on the deer herd on the parcel's unused 150 acres – adjacent to over 1000 acres of woodland.

Act 250 offers endless opportunities for disgruntled ex-employees and adjacent property owners to defeat good projects. Applicants are not allowed to mitigate the conversion of small wetlands. The Governor has unilaterally declared that there will be no further development near Interstate exits, regardless of what local communities want. Even when an applicant has an agency permit, the Act 250 commission can make its own decision about whether the applicant meets the agency's requirements or not. In some parts of the state developers have obtained a long term blanket permit and made investment decisions, only to have the state change the permit conditions later on despite its promises.

In states like New York, regulatory legislation is written in some detail, to minimize latitude for bureaucratic interpretation. In Vermont, the part-time legislature is prone to declare sweeping principles, then turn power over to regulatory bureaucracies to implement as they see fit. In the natural resource area in particular, environmental lobby groups like the Vermont Natural Resources Council and VPIRG virtually live in the legislative committee rooms and exert inordinate influence over legislators. Many career regulators outlive the short-term political appointees at the Commissioner level, and are thus able to defeat any serious change of regulatory practice.

VOSHA (safety and health) has generally been less demanding than ANR regulation. But even with VOSHA, inspectors can amplify ridiculously small safety defects into tests of

will, and the plant owner who resists will pay dearly. One Kingdom business grossing \$15 million a year ended up cutting back from three shifts to one, after a battle with VOSHA.

IV. Insurance

Workers compensation has been abused for years. Workers with little or no health insurance coverage will claim that an injury or sickness is job-related, to get workers comp to pay for it. The existence of a claim is public information, and unleashes a pack of personal injury lawyers to sue on the worker's behalf. Ethan Allen Furniture in Orleans finally got the message about trumped-up claims, and was able to reduce claims by 70 percent in just one year.

Health insurance costs are escalating unbearably. There is very little competition because state policy since 1991 has been to drive insurers out. The state's Medicaid program seriously underpays hospitals, doctors, dentists and nursing homes, causing them to increasingly shift costs onto private sector premiums. The state Certificate of Need program has little restraining effect on medical technology costs, but has been used to thwart lower-cost competitors.

V. Housing

There is a serious need for moderately priced single-family housing. Given the difficulty of complying with local and state regulations, builders are oriented to building \$300,000+ retirement homes; if land and permits for a house lot cost \$25,000, that lot can only support an expensive home.

The coming repeal of the 10-acre exemption from subdivision percolation testing regulations makes new rural housing a chancy proposition

“There is a serious need for moderately priced single-family housing. Builders are oriented to building \$300,000+ retirement homes.”

in areas of heavy soils. Whether alternative septic system technology will make such lots buildable is still not known, and powerful environmental organizations are working hard to limit buildable land.

It is increasingly hard to get reasonable property insurance for apartment buildings, due to rules about lead and an aggressive plaintiff's bar. Only two companies are left in this market.

VI. Energy

The state's efforts to break the power supply contract with HydroQuebec have poisoned what ought to be a mutually beneficial and cooperative the relationship. HQ now shows little to no interest in new power supply arrangements with Vermont and its energy users.

The state's requirement that utilities enter into long term contracts to buy the high-cost output of Independent Power Producers (wood chip and small hydro) has increased power costs for all users, and benefited no one but the IPP owners (and in the case of the wood chip plant, their suppliers.) This has also been an obstacle to renegotiating the HQ contract, since HQ will hardly agree to take less for their power while Vermont-based IPPs are ripping off consumers far more, on a per kwhr basis.

Electricity costs in Vermont are among the highest in the nation. This puts energy-intensive manufacturers at a serious disadvantage. One NEK manufacturer has an annual electricity bill in excess of \$1.4 million. This company also has a plant in Tennessee, where electric rates are one half of those in Vermont. There is continuing pressure for the company to transfer its operations.

VII. Other Issues

Financing for business growth has generally been available, through Kingdom-based banks, NCIC, VEDA and other lenders.

The Kingdom's telecommunications infrastructure is still deficient. The region needs many more cell towers, but cell companies face the usual opposition to tower siting. Broadband telecom access in the Kingdom is far behind what is needed.

Transportation is generally not a problem, particularly north-south. Improvements on US 2 west of Danville would be useful. There is little opportunity for heavy, low-value commodity transportation by rail.

Workforce preparation is generally acceptable, but many of the best young graduates still depart the area for greater opportunities elsewhere.

VIII. Recommendations

Some of the following recommendations were proposed at the May 8 dinner meeting. Others were added based on the discussion. The dinner participants did not have the opportunity to discuss all of the recommendations as a group, but have reviewed them in draft form. They generally agree that they would have a strongly beneficial impact on the economic prospects of the Northeast Kingdom and Vermont generally.

In contrast to the ACCD Sustainable Communities report, these recommendations do not use verbs like work with, consult, advocate, support, provide, offer, explore, or propose. They say exactly what ought to be done, and who ought to do it. Most of the recommendations focus on reform of laws, government policies, and agency practices.

The state's efforts to break the power supply contract with HydroQuebec have poisoned what ought to be a mutually beneficial and cooperative the relationship.

The absence of specific recommendations relating to agriculture, retailing and tourism promotion does not mean that little can be done to improve the economic climate in those areas. Those sectors were simply not the focus of this report.

These recommendations are not intended to be exhaustive, but suggestive. Crafting legislation to carry them out would naturally require consideration of policies not discussed here, and a balancing of interests.

A. Taxation

1. The legislature should recouple the Vermont income tax to the federal tax code, and thereby incorporate the most important beneficial provisions of the 2001 Federal tax bill: marginal rate reductions and a phase out of the death tax. Instead of scavenging for tax revenues to replace revenue reductions from the 2001 act, the legislature ought to cut back on Vermont's overgrown spending programs.

“The legislature should
recouple the Vermont
income tax to the federal
tax code.”

2. The legislature should adopt technical corrections provisions that expand the definition of non-taxable equipment used in manufacturing, and require valuation of equipment purchases at the actual price paid.

3. The legislature should not increase the corporate income tax rate as currently proposed by a majority of the Senate. The present corporate tax rate is not unreasonable, but every effort to increase it to finance big government, especially in an economic slowdown, is seen by business as an ominous indication of the orientation of the state's political leadership.

B. Regulation

1. The legislature should limit party standing by right in Act 250 proceedings to applicants, adjacent property owners, municipalities,

regional planning commissions, and affected state agencies. District commissions should be allowed to receive testimony from other parties where material to the application, but such other parties should not have a right to appeal decisions of the district commission. Local citizen groups objecting to an application should exert their influence on their politically accountable municipal governments and planning commissions.

2. The legislature should thoroughly revise the Act 250 permit criteria to, among other things,

- exempt from consideration any wetland less than one acre in size and not attached to a waterway, and any wetland which is man-made.
- exempt applicants from responsibility for identifying and protecting ancient burying grounds and aboriginal campsites.
- exempt applicants from meeting historic preservation criteria unless preservation is specifically advocated by the municipality
- exempt applicants from complying with endangered species criteria unless the species in question exists nowhere else but in the region of the proposed project.
- provide that land use for value-added manufacturing always trumps the preservation of forest and agricultural soils and prohibition of “scattered development”
- end the requirement to comply with the esthetics criterion unless the esthetics of the project are challenged by the local government or planning commission; and
- change Act 250's Criterion 10 to require compliance with duly adopted zoning

bylaws instead of imprecise and visionary local and regional plans.

In addition, the law should require district commissions to accept state agency permits as determinative unless a party can show that they are arbitrary, based on serious errors of fact, or fraudulent.

3. The legislature should amend state law and employee contracts to provide that arbitrary enforcement action against businesses, overt hostility to persons engaging in economic activity beneficial to the people of this state, and unreasonable and costly delays by state regulatory agency employees are just cause for termination of employment.

4. When civil service state employees attempt to impose onerous conditions as their price for signing off on permit applications, the law should allow the applicant to demand that an accountable commissioner appointed by the Governor and confirmed by the Senate endorse the imposition of such conditions in writing.

5. The legislature should change Act 250 to require that the Governor may reappoint a district environmental commissioner only if a majority of the elected selectmen or city councilors in the district give their assent to such reappointment.

6. The legislature should require that approval by an Act 250 district commission of a blanket plan for a long-term project is final, unless the Governor certifies in writing that a drastic change of circumstances requires amending the plan in the public interest.

7. The legislature should adopt a regulatory accountability act, by which one fifth of the members of the House or Senate can force a

vote to approve or disapprove any agency rule or pending proposal for a rule.

8. The state certificate of need (CON) process is of little value in restraining medical cost increases and ought to be repealed.

C. Insurance

1. The state should pay the full cost of the health care services it requires medical providers (hospitals, doctors, dentists, nursing homes, etc.) to give to persons enrolled in state health care programs like Medicaid and VHAP. This would end the cost shift which is a major factor in driving up the cost of private health insurance.

2. The legislature should follow the lead of New Hampshire and repeal insurance laws that have driven out insurers; specifically, community rating and guaranteed issue.

3. The governor should appoint insurance regulators who believe in a thriving market in health insurance, in place of those whose goal is to drive out private health insurance in order to pave the way toward adoption of a government-run single payer system.

4. The legislature should create a high-risk pool, as 30 other states have done, to cover uninsurable individuals and transients, up to a limit of one percent of the population. The pool should be financed by beneficiary premiums, assessments on insurers, and appropriations.

5. The legislature should tighten the workers compensation law to make it more difficult for workers to game the system with imaginary work-related injuries, and the Governor should see that the appeals board is composed of individuals committed to fair play regardless of the relative economic positions of the parties.

The legislature ... should stop raiding the transportation fund to support state general fund programs like Medicaid and Act 60.

D. Housing

1. The legislature should amend the on site sewage law to prevent repeal of the rule allowing the 10 acre lot exemption until such time as ANR rules are adopted that allow a wide range of workable and cost-effective treatment technologies.

2. The legislature should reform the tort law to protect building owners, particularly affordable rental housing owners, from costly lawsuits and enormous judgments for relatively minor causes. This will restore the market for property insurance of rental properties.

E. Energy

1. The state Department of Public Service should repair its relationship with Hydro Quebec, and seek opportunities for cooperation.

2. The legislature should decline to adopt any new preferential deals for favored energy producers (wind and solar) that would increase the cost of electricity to ratepayers.

3. The Department of Public Service should investigate best practices among states that have successfully implemented electrical energy deregulation, and adopt such practices to benefit Vermont manufacturers.

F. Other Issues

1. The legislature should collect transportation taxes to create and maintain a good transportation system. It should stop raiding the transportation fund to support state general fund programs like Medicaid and Act 60.

2. The legislature should act to minimize opportunities for obstructionist organizations to block the construction of badly needed cell towers. Antennas based in silos and steeples provide an economic benefit to the landowners as well as better service to cell phone users.

3. Continual improvements to US 2 westbound from Danville will benefit the area's businesses.

VIII. Conclusion

The foregoing recommendations illustrate concrete steps that the state's public policy makers should take to improve job creation and the business climate in the Northeast Kingdom, and throughout Vermont generally.

Vermont can have a quality environment, and a thriving economic sector. To achieve this it will be necessary to inject some sense of balance and common sense into policies that have become unduly burdensome to those who take risks, invest, and create new wealth. The time to take these steps is now.

"(We must) inject some sense of balance and common sense into policies that have become unduly burdensome to those who take risks, invest and create new wealth."



Ethan Allen Institute

4836 Kirby Mountain Road • Concord, VT 05824

Phone: 802-695-1448 • Fax: 802-695-1436

E-mail: eai@ethanallen.org

Web page: <http://www.ethanallen.org>