

PHILIP B. SCOTT
Governor



State of Vermont
OFFICE OF THE GOVERNOR

August 12, 2020

The Honorable Mitzi Johnson, Speaker
The Honorable Tim Ashe, President Pro Tempore
The Honorable Tim Briglin, Chair, House Energy & Technology
The Honorable Chris Bray, Chair, Senate Natural Resources & Energy
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Dear Speaker Johnson, President Pro Tempore Ashe, Chair Briglin, and Chair Bray:

I agree with the intent expressed in H.688, *An act relating to addressing climate change*, and the need to reduce carbon emissions. In July, I signed a memorandum of understanding with states around the country to accelerate electrification of the medium- and heavy-duty bus and truck market. The agreement calls for 100 percent of all new medium- and heavy-duty vehicle sales to be zero emission vehicles by 2050. Additionally, as you are aware, I have continued to propose significant investments in electric vehicle initiatives including purchasing incentives and infrastructure build out. Additionally, this January prior to our financial challenges incurred from the COVID-19 pandemic, I proposed directing 25 percent of all future budget surpluses to home weatherization and additional transportation electrification.

I share the Legislature's sense of urgency to reduce emissions and enhance the resiliency of Vermont's infrastructure and landscape in the face of a changing climate. I believe the most expeditious path is a step-wise approach that focuses first on developing an economically feasible and responsible plan to meet the emissions reduction requirements and putting in place the mechanisms – likely a mix of regulatory requirements and financial and technical assistance programs – needed to ensure that the work will be sustained.

Climate change policy must include long-term solutions. In this way, there are many parallels to our work on clean water. The most valuable lesson of our clean water package is with careful work, tied to specific outcomes, we can develop, fund and implement a plan that has both positive economic *and* environmental results. Further, we know that litigation is time-consuming and expensive and, as such, should be viewed as a last resort.

More specifically, our work on clean water included inventorying what we are already doing, how much more we needed to do, the costs, and how to fund it in a way that is affordable for Vermonters. We should use this model for climate change prevention, resiliency, and adaptation work. It is proven. And it will work.

There are three primary areas of concern that I have with the current draft of H.688:

1. the structure and charge of the Vermont Climate Council (Council);
2. the creation of a cause of action which could lead to litigation; and
3. the absence of the legislature adopting the Vermont Climate Action Plan (Plan) promulgated by the Council.

First, I believe the way the Council, as currently composed, would constitute an unconstitutional usurpation of Executive authority by the Legislature. I propose instead the Council be comprised of appointees from the Executive Branch, supported by an advisory board made of the legislative appointees. In this way, we avoid the constitutional conflict that will arise around separation of powers.

Second, the unrealistic timelines increase the likelihood of lawsuits. By the time the Agency of Natural Resources (ANR) emerges from the planning and rulemaking processes, there will not be enough time to demonstrate the desired results before the first deadline. Further, by the time ANR has all of the data necessary to evaluate the 2025 milestone (based on the current lag in reporting data), it will be 2028, leaving them little time to change course before the 2030 deadline. Finally, there is no threshold for getting into court other than the failure to meet the requirements, even if ANR accomplishes everything in accordance with the Council's plan and applicable law. In the current language, one only needs to show the ANR rules substantially caused the failure. To avoid using taxpayer money on costly and unnecessary lawsuits, that will simultaneously slow our progress on addressing climate change, I would encourage the Legislature to remove the cause of action. Other states who have similar legislation, such as Maine, do not have a cause of action provision.

Lastly, given the weight of this effort, I believe the Legislature should review and vote on the Council's plan. We will not succeed if we are not all on the same page and making conscious investments to achieve the results.

Given our challenging economic conditions because of the COVID-19 pandemic, we must be particularly mindful of what Vermonters and businesses can afford. A project-based strategy will ensure we will not be investing revenue without a specific plan – that has been approved by the Legislature – detailing where funds will be directed and the exact results that will be achieved.

To help resolve these concerns, my Administration presented a marked-up version of H.688 (attached) to the House Energy and Technology Committee in early February, and as soon as Senate Natural Resources and Energy began taking up the bill at the end of May. This mark-up details a clearly structured path to get where we all want to go. Our proposal recognizes that this

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needs to be a conscientious effort of the whole of state government, not simply limited to the work of ANR. We have been, and remain, very grateful that the Legislature shares our commitment to addressing climate change as effectively as the work we have done together to build a comprehensive, and historic, clean water program. The Administration would welcome the opportunity to sit down and speak further with you, and your Committees, either now or when the Legislature returns in August.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip B. Scott", with a long horizontal flourish extending to the right.

Philip B. Scott
Governor

PBS/kp

c: Chairs Kitchel and Toll; Secretaries Young and Moore

Attachment: Bill Mark-Up