

1 Introduced by Representatives Sheldon of Middlebury and Bongartz of

2 Manchester

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; land use; natural resources; Act 250;

6 Natural Resources Board; appeals

7 Statement of purpose of bill as introduced: This bill proposes to change the
8 name of the Natural Resources Board to the Environmental Review Board and
9 give it the authority to hear appeals from the District Commissions and district
10 coordinators in addition to the Board's current duties. The Environmental
11 Division of the Superior Court will continue to hear appeals from other
12 environmental permits, enforcement, and local zoning appeals. Members of
13 the Environmental Review Board would be appointed using the same
14 procedure as Superior Court judges, with the Judicial Nominating Board
15 reviewing the candidates. After the members of the Board are appointed, the
16 Board would adopt rules of procedure for appeals and would report back to the
17 General Assembly with recommendations to update Act 250.

18 An act relating to the structure of the Natural Resources Board

19 It is hereby enacted by the General Assembly of the State of Vermont:

20 * * * Natural Resources Board * * *

1 Sec. 1. 10 V.S.A. § 6021 is amended to read:

2 § 6021. BOARD; VACANCY, REMOVAL

3 (a) ~~A Natural Resources~~ The Environmental Review Board is created to
4 administer the Act 250 program and hear appeals.

5 (1) The Board shall consist of five members nominated, appointed by
6 ~~the Governor, with the advice and consent of the Senate, and confirmed in the~~
7 manner of a Superior Court judge so that one appointment expires in each year.
8 The Chair shall be a full-time position, and the other four members shall be
9 half-time positions. In making these appointments, ~~the Governor and the~~
10 Senate shall give consideration to candidates shall be sought who have
11 experience, expertise, or skills relating to the environment or land use one or
12 more of the following areas: environmental science, natural resources law and
13 policy, land use planning, community planning, or environmental justice.

14 (A) ~~The Governor shall appoint a chair of the Board, a position that~~
15 shall be a full-time position Board membership shall reflect, to the extent
16 possible, the racial, ethnic, gender, and geographic diversity of the State.

17 (B) Following initial appointments, the members, ~~except for the~~
18 Chair, shall be appointed for terms of ~~four~~ five years. The initial appointments
19 shall be for staggered terms.

20 (2) ~~The Governor shall appoint up to five persons, with preference given~~
21 to former Environmental Board, Natural Resources Board, or District

1 ~~Commission members, with the advice and consent of the Senate, to serve as~~
2 ~~alternates for Board members.~~

3 ~~(A) Alternates shall be appointed for terms of four years, with initial~~
4 ~~appointments being staggered.~~

5 ~~(B) The Chair of the Board may assign alternates to sit on specific~~
6 ~~matters before the Board in situations where fewer than five members are~~
7 ~~available to serve. [Repealed.]~~

8 (b) ~~Any vacancy occurring in the membership of the Board shall be filled~~
9 ~~by the Governor for the unexpired portion of the term~~ Terms; vacancy;
10 succession. The term of each appointment subsequent to the initial
11 appointments described in subsection (a) of this section shall be five years.
12 Any appointment to fill a vacancy shall be for the unexpired portion of the
13 term vacated. A member may seek reappointment under the terms of this
14 section.

15 (c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, members
16 shall only be removable for cause ~~only, except the Chair, who shall serve at the~~
17 ~~pleasure of the Governor~~ after notice and a hearing.

18 (d) Disqualified members. The Chair of the Board, upon request of the
19 Chair of a District Commission, may appoint and assign former Commission
20 members to sit on specific Commission cases when some or all of the regular

1 members and alternates of the District Commission are disqualified or
2 otherwise unable to serve.

3 (e) Retirement from office. When a Board member who hears all or a
4 substantial part of a case retires from office before the case is completed, the
5 member shall remain a member of the Board for the purpose of concluding and
6 deciding that case and signing the findings and judgments involved. A retiring
7 Chair shall also remain a member for the purpose of certifying questions of law
8 if a party appeals to the Supreme Court.

9 (f) Completion of case. A case shall be deemed completed when the Board
10 enters a final decision even though that decision is appealed to the Supreme
11 Court and remanded by that Court.

12 (g) Court of record; jurisdiction. The Board shall have the powers of a
13 court of record in the determination and adjudication of all matters within its
14 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.
15 It may render judgments and enforce the same by any suitable process issuable
16 by courts in this State. An order issued by the Board on any matter within its
17 jurisdiction shall have the effect of a judicial order. The Board's jurisdiction
18 shall include:

19 (1) the issuance of declaratory rulings on the applicability of this chapter
20 and rules or orders issued under this chapter, pursuant to 3 V.S.A. § 808; and

1 (2) the issuance of decisions on appeals pursuant to sections 6007 and
2 6089 of this title.

3 (h) Hearing officers. One Board member or employee of the Board duly
4 appointed by the Chair of the Board may inquire into and examine any matter
5 within the jurisdiction of the Board.

6 (1) A hearing officer may hold any hearing on any matter within the
7 jurisdiction of the Board.

8 (2) Hearings conducted by a hearing officer shall be in accordance with
9 3 V.S.A. §§ 809–816. A hearing officer may administer oaths and exercise the
10 powers of the Board necessary to hear and determine a matter for which the
11 officer was appointed. A hearing officer shall report findings of fact in writing
12 to the Board in the form of a proposal for decision. A copy shall be served
13 upon the parties pursuant to 3 V.S.A. § 811. However, judgment on those
14 findings shall be rendered only by a majority of the Board.

15 (3) The hearing officer shall report findings of fact and conclusions of
16 law in writing to the Board. A copy of the proposed decision shall be served
17 on the parties pursuant to 3 V.S.A. § 811 but shall be subject to a final decision
18 by the Board. The parties shall have 15 days to request oral argument before
19 the Board.

20 Sec. 2. 10 V.S.A. § 6025 is amended to read:

21 § 6025. RULES

1 (a) The Board may adopt rules of procedure for itself and the District
2 Commissions. The Board shall adopt rules of procedure that govern appeals
3 and other contested cases before it and are consistent with this chapter.

4 * * *

5 Sec. 3. 10 V.S.A. § 6027 is amended to read:

6 § 6027. POWERS

7 (a) The Board and District Commissions ~~each~~ shall have supervisory
8 authority in environmental matters respecting projects within their jurisdiction
9 and shall apply their independent judgment in determining facts and
10 interpreting law. Each shall have the power, with respect to any matter within
11 its jurisdiction, to:

12 (1) administer oaths, take depositions, subpoena and compel the
13 attendance of witnesses, and require the production of evidence;

14 (2) allow parties to enter upon lands of other parties for the purposes of
15 inspecting and investigating conditions related to the matter before the Board
16 or Commission;

17 (3) enter upon lands for the purpose of conducting inspections,
18 investigations, examinations, tests, and site evaluations as it deems necessary
19 to verify information presented in any matter within its jurisdiction; and

20 (4) apply for and receive grants from the federal government and from
21 other sources.

1 (b) The powers granted under this chapter are additional to any other
2 powers ~~which~~ that may be granted by other legislation.

3 (c) The ~~Natural Resources~~ Board ~~may designate or shall~~ establish ~~such~~
4 regional offices ~~as it deems necessary~~ in each district established pursuant to
5 subsection 6026(a) of this title to implement the provisions of this chapter and
6 the rules adopted ~~hereunder~~. Each regional office shall have at least one
7 District Coordinator working in it. The ~~Natural Resources~~ Board may
8 designate or require a regional planning commission to receive applications,
9 provide administrative assistance, perform investigations, and make
10 recommendations.

11 (d) At the request of a District Commission, if the Board Chair determines
12 that the workload in the requesting district is likely to result in unreasonable
13 delays or that the requesting District Commission is disqualified to hear a case,
14 the Chair may authorize the District Commission of another district to sit in the
15 requesting district to consider one or more applications.

16 (e) The ~~Natural Resources~~ Board may by rule allow joint hearings to be
17 conducted with specified State agencies or specified municipalities.

18 (f) The Board may publish or contract to publish annotations and indices of
19 its decisions, the decisions of the Environmental Division and the Supreme
20 Court, and the text of those decisions. The published product shall be available

1 at a reasonable rate to the general public and at a reduced rate to libraries and
2 governmental bodies within the State.

3 (g) The ~~Natural Resources~~ Board shall manage the process by which land
4 use permits are issued under section 6086 of this title, may initiate enforcement
5 on related matters, under the provisions of chapters 201 and 211 of this title,
6 and may ~~petition the Environmental Division~~ initiate and hear petitions for
7 revocation of land use permits issued under this chapter. Grounds for
8 revocation are:

9 (1) noncompliance with this chapter, rules adopted under this chapter, or
10 an order that is issued that relates to this chapter;

11 (2) noncompliance with any permit or permit condition;

12 (3) failure to disclose all relevant and material facts in the application or
13 during the permitting process;

14 (4) misrepresentation of any relevant and material fact at any time;

15 (5) failure to pay a penalty or other sums owed pursuant to, or other
16 failure to comply with, court order, stipulation agreement, schedule of
17 compliance, or other order issued under Vermont statutes and related to the
18 permit; or

19 (6) failure to provide certification of construction costs, as required
20 under subsection 6083a(a) of this title, or failure to pay supplemental fees as
21 required under that section.

1 (h) ~~The Natural Resources~~ Board may hear appeals of fee refund requests
2 under section 6083a of this title and appeals decisions made by District
3 Commissions or district coordinators.

4 (i) The Chair, subject to the direction of the Board, shall have general
5 charge of the offices and employees of the Board and the offices and
6 employees of the District Commissions.

7 (j) ~~The Natural Resources Board may participate as a party in all matters~~
8 ~~before the Environmental Division that relate to land use permits issued under~~
9 ~~this chapter.~~ [Repealed.]

10 * * *

11 Sec. 4. 10 V.S.A. § 6028 is amended to read:

12 § 6028. COMPENSATION

13 Members of the ~~Board and~~ District Commissions shall receive per diem pay
14 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~
15 ~~§ 1010.~~

16 Sec. 5. 10 V.S.A. § 6084 is amended to read:

17 § 6084. NOTICE OF APPLICATION; PREAPPLICATION PROCESS;

18 HEARINGS; COMMENCEMENT OF REVIEW

19 (a) The plans for the construction of any development or subdivision
20 subject to the permitting requirements of this chapter must be submitted by the
21 applicant to the District Commission, municipal and regional planning

1 commissions, affected State agencies, and adjoining landowners not less than
2 30 days prior to filing an application under this chapter, unless the municipal
3 and regional planning commissions and affected State agencies waive this
4 requirement.

5 (1) The District Commission may hold a meeting on the proposed plans
6 and the municipal or regional planning commission may take one or more of
7 the following actions:

8 (A) make recommendations to the applicant within 30 days;

9 (B) once the application is filed with the District Commission, make
10 recommendations to the District Commission by the deadline established in the
11 applicable provision of this section, Board rule, or scheduling order issued by
12 the District Commission.

13 (2) The application shall address the substantive written comments and
14 recommendations made by the planning commissions related to the criteria of
15 subsection 6086(a) of this title received by the applicant and the substantive
16 oral comments related to those criteria made at a public hearing under
17 subdivision (1) of this subsection.

18 (3) This subsection shall not apply to a project that has been designated
19 as using simplified procedures pursuant to subdivision 6025(b)(1) of this title
20 or an administrative amendment.

1 ~~(b) On or before the date of~~ Upon the filing of an application with the
2 District Commission, the ~~applicant~~ District Commission shall send, by
3 electronic means, notice ~~and a copy~~ of the ~~initial~~ application to the owner of
4 the land if the applicant is not the owner; the municipality in which the land is
5 located; the municipal and regional planning commissions for the municipality
6 in which the land is located; the Vermont Agency of Natural Resources; and
7 any adjacent Vermont municipality and municipal and regional planning
8 commission if the land is located on a municipal or regional boundary. The
9 ~~applicant shall furnish to the District Commission the names of those furnished~~
10 ~~notice by affidavit, and shall post,~~ send by electronic means a copy of the
11 notice ~~in~~ to the town clerk's office of the town or towns in which the project
12 lies. The town clerk shall post the notice in the town office. The applicant
13 shall also provide a list of adjoining landowners to the District Commission.
14 Upon request and for good cause, the District Commission may authorize the
15 applicant to provide a partial list of adjoining landowners in accordance with
16 Board rules.

17 ~~(b)(c)~~ (c) Upon an application being ruled complete, the District Commission
18 shall determine whether to process the application as a major application with
19 a required public hearing or process the application as a minor application with
20 the potential for a public hearing in accordance with Board rules.

21

* * *

1 ~~(e)~~(d) Anyone required to receive notice of commencement of minor
2 application review pursuant to subsection ~~(b)~~(c) of this section may request a
3 hearing by filing a request within the public comment period specified in the
4 notice pursuant to Board rules. The District Commission, on its own motion,
5 may order a hearing within 20 days of notice of commencement of minor
6 application review.

7 ~~(d)~~(e) Any hearing or prehearing conference for a major application shall
8 be held within 40 days of receipt of a complete application; or within 20 days
9 of the end of the public comment period specified in the notice of minor
10 application review if the District Commission determines that it is appropriate
11 to hold a hearing for a minor.

12 ~~(e)~~(f) Any notice for a major or minor application, as required by this
13 section, shall also be published by the District Commission in a local
14 newspaper generally circulating in the area where the development or
15 subdivision is located and on the Board's website not more than ten days after
16 receipt of a complete application.

17 * * *

18 ~~(f)~~(g) This subsection concerns an application for a new permit amendment
19 to change the conditions of an existing permit or existing permit amendment in
20 order to authorize the construction of a priority housing project described in
21 subdivision 6081(p)(2) of this title.

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~~(g)~~(h) When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections ~~(b)~~(c) through ~~(e)~~(f) of this section:

* * *

Sec. 6. 10 V.S.A. § 6089 is amended to read:

§ 6089. APPEALS

~~Appeals of any act or decision of a District Commission under this chapter or a district coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in accordance with chapter 220 of this title. For the purpose of this section, a decision of the Chair of a District Commission under section 6001e of this title on whether action has been taken to circumvent the requirements of this chapter shall be considered an act or decision of the District Commission.~~

(a)(1) An appeal from the District Commission shall be to the Board and shall be accompanied by a fee prescribed by section 6083a of this title.

(2) Participation before District Commission. An aggrieved person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District

1 Commission proceedings. In addition, the person may only appeal those issues
2 under the criteria with respect to which the person was granted party status.

3 However, notwithstanding these limitations, an aggrieved person may appeal
4 an act or decision of the District Commission if the Board determines that:

5 (A) there was a procedural defect that prevented the person from
6 obtaining party status or participating in the proceeding;

7 (B) the decision being appealed is the grant or denial of party status;
8 or

9 (C) some other condition exists that would result in manifest injustice
10 if the person's right to appeal was disallowed.

11 (3) An appellant to the Board, under this section, shall file with the
12 notice of appeal a statement of the issues to be addressed in the appeal, a
13 summary of the evidence that will be presented, and a preliminary list of
14 witnesses who will testify on behalf of the appellant.

15 (4) The Board shall hold a de novo hearing on all findings requested by
16 any party that files an appeal or cross appeal, according to the rules of the
17 Board. The hearing shall be held in the municipality where the project subject
18 to the appeal is located, if possible, or as close as possible.

19 (5) Notice of appeal shall be filed with the Board within 30 days of the
20 act or decision by the Board. The Board shall notify the parties who had party
21 status before the District Commission of the filing of any appeal.

1 (6) Prehearing Discovery.

2 (A) Discovery of persons who may provide testimony pursuant to
3 Vermont Rule of Evidence 702 shall be provided as set forth in the Vermont
4 Rules of Civil Procedure 26-37.

5 (B) Interrogatories may be submitted pursuant to the Vermont Rule
6 of Civil Procedure 33 but, other than with regard to testimony pursuant to
7 Vermont Rule of Evidence 702, shall be limited to discovery of the identity of
8 witnesses and a summary of each witness’s testimony, except by order of the
9 Board for cause shown.

10 (C) Parties may submit requests to produce and requests to enter
11 upon land pursuant to the Vermont Rule of Civil Procedure 34.

12 (D) Depositions pursuant to Vermont Rules of Civil Procedure 30-32
13 shall only be of persons who may provide testimony pursuant to Vermont Rule
14 of Evidence 702, except by order of the Board for cause shown.

15 (E) The duty to supplement prehearing discovery shall be governed
16 by Vermont Rule of Civil Procedure 26(e) except that the duty to supplement
17 also shall apply to all facts and opinions disclosed in depositions.

18 (b) Precedent before the Board. Prior decisions of the former
19 Environmental Board, Water Resources Board, Waste Facilities Panel, and
20 Environmental Division shall be given the same weight and consideration as
21 prior decisions of the Environmental Review Board.

1 (c) An appeal from a decision of the Board under subsection (a) of this
2 section shall be to the Supreme Court by a party as set forth in subsection
3 6085(c) of this title.

4 (d) No objection that has not been raised before the Board may be
5 considered by the Supreme Court, unless the failure or neglect to urge such
6 objection shall be excused because of extraordinary circumstances.

7 (e) An appeal of a decision by the Board shall be allowed pursuant to 3
8 V.S.A. § 815, including the unreasonableness or insufficiency of the conditions
9 attached to a permit. An appeal from the District Commission shall be allowed
10 for any reason except no appeal shall be allowed when an application has been
11 granted and no preliminary hearing requested.

12 (f) Precedent before the Supreme Court. Precedent from the former
13 Environmental Board and of the Environmental Review Board that interpret
14 Act 250 shall be provided the same deference by the Supreme Court as
15 precedents accorded to other executive branch agencies charged with
16 administering their enabling act. On appeal to the Supreme Court from the
17 Environmental Review Board, decisions of the Environmental Review Board
18 interpreting this act also shall be accorded that deference.

19 (g) Upon appeal to the Supreme Court, the Board’s findings of fact shall be
20 accepted unless clearly erroneous.

1 Sec. 7. 10 V.S.A. § 6007 is amended to read:

2 § 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL
3 DETERMINATION

4 * * *

5 (c) With respect to the partition or division of land, or with respect to an
6 activity that might or might not constitute development, any person may
7 submit to the district coordinator an “Act 250 Disclosure Statement” and other
8 information required by the rules of the Board and may request a jurisdictional
9 opinion from the district coordinator concerning the applicability of this
10 chapter. If a requestor wishes a final determination to be rendered on the
11 question, the district coordinator, at the expense of the requestor and in
12 accordance with rules of the Board, shall publish notice of the issuance of the
13 opinion in a local newspaper generally circulating in the area where the land
14 that is the subject of the opinion is located and shall serve the opinion on all
15 persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In
16 addition, the requestor who is seeking a final determination shall consult with
17 the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list
18 of persons who shall be notified by the district coordinator because they are
19 adjoining property owners or other persons who would be likely to be able to
20 demonstrate a particularized interest protected by this chapter that may be
21 affected by an act or decision by a District Commission.

1 (d) A person who seeks review of a jurisdictional opinion issued by a
2 district coordinator may bring an appeal to the Board of the issues addressed in
3 the opinion.

4 (1) If the opinion was served on the person when issued, the person’s
5 request under this subsection shall be submitted to the Board within 30 days of
6 the opinion’s issuance.

7 (2) If the opinion was not served on the person when issued, the request
8 shall be submitted to the Board:

9 (A) within 30 days from the date on which the opinion was served on
10 the requestor; or

11 (B) at any time, if the opinion is never served on the requestor.

12 (3) The Board shall give notice of the request.

13 (A) The Board shall serve the notice on all persons listed in
14 subdivisions 6085(c)(1)(A)–(E) of this title and post the notice on its website.

15 (B) If the request pertains to a jurisdictional opinion for which a final
16 determination was requested under subsection (c) of this section, the Board
17 shall:

18 (i) serve the notice on all persons on the approved subdivision
19 6085(c)(1)(E) list; and

1 (ii) publish at the expense of the requestor the notice in a local
2 newspaper having general circulation in the area where the land that is the
3 subject of the request is located.

4 (4) An act or decision of the Board under this subsection may be
5 appealed to the Supreme Court pursuant to chapter 220 of this title.

6 Sec. 8. 10 V.S.A. § 6083a is amended to read:

7 § 6083a. ACT 250 FEES

8 * * *

9 (i) All persons filing an appeal, cross appeal, or petition from a District
10 Commission decision or jurisdictional determination shall pay a fee of
11 \$295.00, plus publication costs.

12 * * * Appeals * * *

13 Sec. 9. 10 V.S.A. chapter 220 is amended to read:

14 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

15 § 8501. PURPOSE

16 It is the purpose of this chapter to:

17 (1) consolidate existing appeal routes for municipal zoning and
18 subdivision decisions and acts or decisions of the Secretary of Natural
19 Resources, ~~district environmental coordinators, and District Commissions,~~
20 excluding enforcement actions brought pursuant to chapters 201 and 211 of
21 this title and the adoption of rules under 3 V.S.A. chapter 25;

1 (2) standardize the appeal periods, the parties who may appeal these acts
2 or decisions, and the ability to stay any act or decision upon appeal, taking into
3 account the nature of the different programs affected;

4 ~~(3) encourage people to get involved in the Act 250 permitting process~~
5 ~~at the initial stages of review by a District Commission by requiring~~
6 ~~participation as a prerequisite for an appeal of a District Commission decision~~
7 ~~to the Environmental Division;~~

8 ~~(4) assure~~ ensure that clear appeal routes exist for acts and decisions of
9 the Secretary of Natural Resources;

10 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy
11 generation plants and telecommunications facilities with review under,
12 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of
13 proceedings pertaining to telecommunications facilities occurring only while
14 30 V.S.A. § 248a remains in effect.

15 § 8502. DEFINITIONS

16 As used in this chapter:

17 ~~(1) “District Commission” means a District Environmental Commission~~
18 ~~established under chapter 151 of this title. [Repealed.]~~

19 ~~(2) “District coordinator” means a district environmental coordinator~~
20 ~~attached to a District Commission established under chapter 151 of this title.~~
21 [Repealed.]

1 (3) “Environmental Court” or “Environmental Division” means the
2 Environmental Division of the Superior Court established by 4 V.S.A. § 30.

3 (4) “~~Natural Resources~~ Environmental Review Board” or “Board”
4 means the Board established under chapter 151 of this title.

5 (5) “Party by right” means the following:

6 (A) the applicant;

7 (B) the landowner, if the applicant is not the landowner;

8 (C) the municipality in which the project site is located and the
9 municipal and regional planning commissions for that municipality;

10 (D) if the project site is located on a boundary, any Vermont
11 municipality adjacent to that border and the municipal and regional planning
12 commissions for that municipality;

13 (E) the solid waste management district in which the land is located,
14 if the development or subdivision constitutes a facility pursuant to subdivision
15 6602(10) of this title;

16 (F) any State agency affected by the proposed project.

17 (6) “Person” means any individual; partnership; company; corporation;
18 association; joint venture; trust; municipality; the State of Vermont or any
19 agency, department, or subdivision of the State; any federal agency; or any
20 other legal or commercial entity.

1 (7) “Person aggrieved” means a person who alleges an injury to a
2 particularized interest protected by the provisions of law listed in section 8503
3 of this title, attributable to an act or decision by ~~a district coordinator, District~~
4 ~~Commission,~~ the Secretary, or the Environmental Division that can be
5 redressed by the Environmental Division or the Supreme Court.

6 (8) “Secretary” means the Secretary of Natural Resources or the
7 Secretary’s duly authorized representative. As used in this chapter,
8 “Secretary” shall also mean the Commissioner of Environmental Conservation,
9 the Commissioner of Forests, Parks and Recreation, and the Commissioner of
10 Fish and Wildlife, with respect to those statutes that refer to the authority of
11 that commissioner or department.

12 § 8503. APPLICABILITY

13 (a) This chapter shall govern all appeals of an act or decision of the
14 Secretary, excluding enforcement actions under chapters 201 and 211 of this
15 title and rulemaking, under the following authorities and under the rules
16 adopted under those authorities:

17 * * *

18 (b) ~~This chapter shall govern:~~

19 ~~(1) all appeals from an act or decision of a District Commission under~~
20 ~~chapter 151 of this title, excluding appeals of application fee refund requests;~~

1 ~~(2) appeals from an act or decision of a district coordinator under~~
2 ~~subsection 6007(e) of this title;~~

3 ~~(3) appeals from findings of fact and conclusions of law issued by the~~
4 ~~Natural Resources Board in its review of a designated growth center for~~
5 ~~conformance with the criteria of subsection 6086(a) of this title, pursuant to~~
6 ~~authority granted at 24 V.S.A. § 2793e(f). [Repealed.]~~

7 (c) This chapter shall govern all appeals arising under 24 V.S.A.
8 chapter 117, the planning and zoning chapter.

9 (d) This chapter shall govern all appeals from an act or decision of the
10 Environmental Division under this chapter.

11 (e) This chapter shall not govern appeals from rulemaking decisions by the
12 ~~Natural Resources~~ Environmental Review Board under chapter 151 of this title
13 or enforcement actions under chapters 201 and 211 of this title.

14 (f) This chapter shall govern all appeals of acts or decisions of the
15 legislative body of a municipality arising under 24 V.S.A. chapter 61,
16 subchapter 10, relating to the municipal certificate of approved location for
17 salvage yards.

18 (g) This chapter shall govern all appeals of an act or decision of the
19 Secretary of Natural Resources that a solid waste implementation plan for a
20 municipality proposed under 24 V.S.A. § 2202a conforms with the State Solid
21 Waste Implementation Plan adopted pursuant to section 6604 of this title.

1 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

2 (a) ~~Act 250 and~~ Agency appeals. Within 30 days of the date of the act or
3 decision, any person aggrieved by an act or decision of the Secretary, ~~a District~~
4 ~~Commission, or a district coordinator~~ under the provisions of law listed in
5 section 8503 of this title, or any party by right, may appeal to the
6 Environmental Division, except for an act or decision of the Secretary under
7 subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

8 * * *

9 (c) Notice of the filing of an appeal.

10 (1) ~~Upon filing an appeal from an act or decision of the District~~
11 ~~Commission, the appellant shall notify all parties who had party status as of the~~
12 ~~end of the District Commission proceeding, all friends of the Commission, and~~
13 ~~the Natural Resources Board that an appeal is being filed. In addition, the~~
14 ~~appellant shall publish notice not more than 10 days after providing notice as~~
15 ~~required under this subsection, at the appellant's expense, in a newspaper of~~
16 ~~general circulation in the area of the project that is the subject of the decision.~~

17 [Repealed.]

18 * * *

19 (d) Requirement to participate before ~~the District Commission or the~~
20 Secretary.

1 (1) ~~Participation before District Commission. An aggrieved person shall~~
2 ~~not appeal an act or decision that was made by a District Commission unless~~
3 ~~the person was granted party status by the District Commission pursuant to~~
4 ~~subdivision 6085(c)(1)(E) of this title, participated in the proceedings before~~
5 ~~the District Commission, and retained party status at the end of the District~~
6 ~~Commission proceedings. In addition, the person may only appeal those issues~~
7 ~~under the criteria with respect to which the person was granted party status.~~
8 ~~However, notwithstanding these limitations, an aggrieved person may appeal~~
9 ~~an act or decision of the District Commission if the Environmental judge~~
10 ~~determines that:~~

11 ~~(A) there was a procedural defect that prevented the person from~~
12 ~~obtaining party status or participating in the proceeding;~~

13 ~~(B) the decision being appealed is the grant or denial of party status;~~

14 ~~or~~

15 ~~(C) some other condition exists that would result in manifest injustice~~
16 ~~if the person's right to appeal was disallowed. [Repealed.]~~

17 (2) Participation before the Secretary.

18 * * *

19 (e) Act 250 jurisdictional determinations by a district coordinator.

20 ~~(1) The appellant shall provide notice of the filing of an appeal to each~~
21 ~~person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this~~

1 ~~title, to each person on an approved subdivision 6085(c)(1)(E) list, and to the~~
2 ~~Natural Resources Board.~~

3 ~~(2) Failure to appeal within the time required under subsection (a) of~~
4 ~~this section shall render the decision of the district coordinator under~~
5 ~~subsection 6007(c) of this title the final determination regarding jurisdiction~~
6 ~~under chapter 151 of this title unless the underlying jurisdictional opinion was~~
7 ~~not properly served on persons listed in subdivisions 6085(c)(1)(A) through~~
8 ~~(D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved~~
9 ~~under subsection 6007(c) of this title. [Repealed.]~~

10 * * *

11 (g) Consolidated appeals. The Environmental Division may consolidate or
12 coordinate different appeals where those appeals all relate to the same project.

13 * * *

14 (i) ~~Deference to Agency technical determinations. In the adjudication of~~
15 ~~appeals relating to land use permits under chapter 151 of this title, technical~~
16 ~~determinations of the Secretary shall be accorded the same deference as they~~
17 ~~are accorded by a District Commission under subsection 6086(d) of this title.~~

18 ~~[Repealed.]~~

19 * * *

20 (k) Limitations on appeals. Notwithstanding any other provision of this
21 section,

1 ~~(1) there shall be no appeal from a District Commission decision when~~
2 ~~the Commission has issued a permit and no hearing was requested or held, or~~
3 ~~no motion to alter was filed following the issuance of an administrative~~
4 ~~amendment;~~

5 ~~(2) a municipal decision regarding whether a particular application~~
6 ~~qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject~~
7 ~~to appeal;~~

8 ~~(3) if a District Commission issues a partial decision under subsection~~
9 ~~6086(b) of this title, any appeal of that decision must be taken within 30 days~~
10 ~~of the date of that decision.~~

11 (1) Representation. The Secretary may represent the Agency of Natural
12 Resources in all appeals under this section. ~~The Chair of the Natural~~
13 ~~Resources Board may represent the Board in any appeal under this section,~~
14 ~~unless the Board directs otherwise. If more than one State agency, other than~~
15 ~~the Board, either appeals or seeks to intervene in an appeal under this section,~~
16 only the Attorney General may represent the interests of those agencies of the
17 State in the appeal.

18 (m) Precedent. Prior decisions of the Environmental Board, Water
19 Resources Board, and Waste Facilities Panel shall be given the same weight
20 and consideration as prior decisions of the Environmental Division.

1 (n) Intervention. Any person may intervene in a pending appeal if that
2 person:

3 (1) appeared as a party in the action appealed from and retained party
4 status;

5 (2) is a party by right;

6 (3) ~~is the Natural Resources Board;~~ [Repealed.]

7 (4) is a person aggrieved, as defined in this chapter;

8 (5) qualifies as an “interested person,” as established in 24 V.S.A.
9 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

10 (6) meets the standard for intervention established in the Vermont Rules
11 of Civil Procedure.

12 (o) With respect to review of an act or decision of the Secretary pursuant to
13 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an
14 allocation of costs to an applicant only if the Division determines that the act,
15 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In
16 the absence of such a determination, the Division shall require the applicant to
17 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

18 (p) Administrative record. The Secretary shall certify the administrative
19 record as defined in chapter 170 of this title and shall transfer a certified copy
20 of that record to the Environmental Division when:

1 ~~(1)~~ there is an appeal of an act or decision of the Secretary that is based
2 on that record; ~~or~~

3 ~~(2) there is an appeal of a decision of a District Commission, and the~~
4 ~~applicant used a decision of the Secretary based on that record to create a~~
5 ~~presumption under a criterion of subsection 6086(a) of this title that is at issue~~
6 ~~in the appeal.~~

7 § 8505. APPEALS TO THE SUPREME COURT

8 (a) Any person aggrieved by a decision of the Environmental Division
9 pursuant to this subchapter, any party by right, or any person aggrieved by a
10 decision of the Environmental Review Board may appeal to the Supreme Court
11 within 30 days of the date of the entry of the order or judgment appealed from,
12 provided that:

13 (1) the person was a party to the proceeding before the Environmental
14 Division; ~~or~~

15 (2) the decision being appealed is the denial of party status; or

16 (3) the Supreme Court determines that:

17 (A) there was a procedural defect that prevented the person from
18 participating in the proceeding; or

19 (B) some other condition exists that would result in manifest injustice
20 if the person’s right to appeal were disallowed.

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* * * Environmental Division * * *

Sec. 10. 4 V.S.A. § 34 is amended to read:

§ 34. JURISDICTION; ENVIRONMENTAL DIVISION

The Environmental Division shall have:

(1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220;

and

(2) jurisdiction of matters arising under 24 V.S.A. chapter 61,
subchapter 12 and 24 V.S.A. chapter 117; ~~and~~

~~(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.~~

* * * Judicial Nominating Board * * *

Sec. 11. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

(a) The Judicial Nominating Board is created for the nomination of Supreme Court Justices, Superior judges, magistrates, the Chair and members of the Environmental Review Board, and the Chair and members of the Public Utility Commission.

* * *

(d) The Judicial Nominating Board shall adopt rules under 3 V.S.A. chapter 25 ~~which~~ that shall establish criteria and standards for the nomination of candidates for Justices of the Supreme Court, Superior judges, magistrates, the Chair and members of the Environmental Review Board, and the Chair and

1 members of the Public Utility Commission based on the attributes identified in
2 subsection 602(d) of this title. The application form shall not be included in
3 the rules and may be developed and periodically revised at the discretion of the
4 Board.

5 * * *

6 Sec. 12. 4 V.S.A. § 602b is added to read:

7 § 602b. DUTIES; ENVIRONMENTAL REVIEW BOARD MEMBERS

8 (a) In accordance with 10 V.S.A. § 6021, whenever a vacancy occurs for a
9 member position on the Environmental Review Board, the Governor shall
10 submit at least five names of potential nominees to the Judicial Nominating
11 Board for review. The Judicial Nominating Board shall submit to the
12 Governor the names of candidates it deems well qualified. The Judicial
13 Nominating Board shall submit to the Governor a summary of the
14 qualifications and experience of each candidate whose name is submitted to the
15 Governor, together with any further information relevant to the matter.

16 (b) A candidate for the position of member of the Environmental Review
17 Board shall not be required to be an attorney; however, if the candidate is
18 admitted to practice law in Vermont, the Judicial Nominating Board shall
19 submit the candidate's name to the Court Administrator, who shall disclose to
20 the Board information solely about professional disciplinary action taken or
21 pending concerning the candidate. If a candidate is not admitted to practice

1 law in Vermont but practices a profession requiring licensure, certification, or
2 other professional regulation by the State, the Judicial Nominating Board shall
3 submit the candidate’s name to the State professional regulatory entity, and
4 that entity shall disclose to the Board any professional disciplinary action taken
5 or pending concerning the candidate.

6 (c) A candidate shall possess the following attributes:

7 (1) Integrity. A candidate shall possess a record and reputation for
8 excellent character and integrity.

9 (2) Impartiality. A candidate shall exhibit an ability to make judicial
10 determinations in a manner free of bias.

11 (3) Work ethic. A candidate shall demonstrate diligence.

12 (4) Availability. A candidate shall have adequate time to dedicate to the
13 position.

14 (d) The Board shall not contain two members who reside in the same
15 county.

16 (e) Candidates shall be sought who have experience, expertise, or skills
17 relating to one or more of the following areas: environmental science, natural
18 resources law and policy, land use planning, community planning, or
19 environmental justice.

20 Sec. 13. 4 V.S.A. § 603 is amended to read:

21 § 603. APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES;

1 PUBLIC UTILITY COMMISSION CHAIR, AND MEMBERS;

2 ENVIRONMENTAL REVIEW BOARD CHAIR AND MEMBERS

3 Whenever the Governor appoints a Supreme Court Justice, a Superior
4 Judge, a magistrate, the Chair or a member of the Public Utility Commission,
5 ~~or a member of the Public Utility Commission~~ the Chair or a member of the
6 Environmental Review Board, he or she the Governor shall select from the list
7 of names of qualified persons submitted by the Judicial Nominating Board
8 pursuant to law. The names of candidates submitted and not selected shall
9 remain confidential.

10 * * * Report; Transition; Revision Authority Effective Dates * * *

11 Sec. 14. ENVIRONMENTAL REVIEW BOARD POSITIONS;

12 APPROPRIATION

13 (a) The following new positions are created at the Environmental Review
14 Board for the purposes of carrying out this act:

15 (1) one Staff Attorney 1; and

16 (2) four half-time Environmental Review Board members.

17 (b) The sum of \$300,000.00 is appropriated to the Environmental Review
18 Board from the General Fund in fiscal year 2023 for the positions established
19 in subsection (a) of this section and for additional operating costs required to
20 implement the appeals process established in this act.

1 Sec. 15. NATURAL RESOURCES BOARD TRANSITION

2 (a) The Governor shall appoint the members of Environmental Review
3 Board on or before January 1, 2023, and the terms of any Natural Resources
4 Board member not appointed consistent with the requirements of 10 V.S.A.
5 § 6021(a)(1)(A) or (B) shall expire on that day.

6 (b) The Environmental Review Board shall adopt rules of procedure for its
7 hearing process pursuant to 10 V.S.A. § 6025(a) on or before July 1, 2023.

8 Sec. 16. REPORT; ENVIRONMENTAL REVIEW BOARD

9 On or before December 31, 2023, the Chair of the Environmental Review
10 Board shall report to the House Committee on Natural Resources, Fish, and
11 Wildlife and the Senate Committee on Natural Resources and Energy on
12 necessary updates to the Act 250 program, including how to transition to
13 location-based jurisdiction in order to protect natural resources of statewide
14 significance, including biodiversity, and to encourage development in
15 appropriate locations; the effectiveness of the current permit fee structure; and
16 whether or not there needs to be a limit on the number of pages of an
17 application.

18 Sec. 17. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

19 Notwithstanding the repeal of its jurisdictional authority to hear appeals
20 relative to land use permits under Sec. 9 of this act, the Environmental
21 Division shall continue to have jurisdiction to complete its consideration of any

1 such appeal that is pending before it as of July 1, 2023 if, with respect to such
2 act or appeal, mediation or discovery has commenced, a dispositive motion has
3 been filed, or a trial has begun.

4 Sec. 18. REVISION AUTHORITY

5 In preparing the Vermont Statutes Annotated for publication in 2022, the
6 Office of Legislative Counsel shall replace all references to the “Natural
7 Resources Board” with the “Environmental Review Board” in Title 3, Title 10,
8 Title 24, Title 29, Title 30, and Title 32.

9 Sec. 19. EFFECTIVE DATES

10 This act shall take effect on July 1, 2022, except that the authority to make
11 appointments to the Environmental Review Board shall take effect on passage.