

1 H.486

2 Introduced by Representatives Deen of Westminster and Nuovo of Middlebury

3 Referred to Committee on

4 Date:

5 Subject: Land use; environment; conservation; Act 250; agency of natural

6 resources; environmental permit appeals; environmental board

7 Statement of purpose: This bill proposes to replace the natural resources board

8 with an environmental board that is constituted similarly to the public service

9 board; and to move to the environmental board: (1) the appellate jurisdiction

10 of the environmental court over decisions of Act 250 district commissions and

11 the secretary of natural resources; and (2) the rulemaking authority of the

12 existing natural resources board.

13 An act relating to an environmental board that hears appeals of decisions of
14 district commissions and the secretary of natural resources

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

16 Sec. 1. REPEAL

17 10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.

1 Sec. 2. 10 V.S.A. chapter 221 is added to read:

2 CHAPTER 221. CONSOLIDATED ENVIRONMENTAL APPEALS AND
3 RULEMAKING

4 § 8511. PURPOSE

5 It is the purpose of this chapter to:

6 (1) consolidate existing appeal routes for acts or decisions of the
7 secretary and the district commission excluding enforcement actions brought
8 pursuant to chapters 201 and 211 of this title and the adoption of rules under
9 chapter 25 of Title 3;

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

13 (3) encourage people to get involved in the Act 250 permitting process
14 at the initial stages of review by a district commission by requiring
15 participation as a prerequisite for an appeal of a district commission decision to
16 the environmental board; and

17 (4) provide clear appeal routes for acts and decisions of the secretary.

18 § 8512. DEFINITIONS

19 As used in this chapter:

20 (1) “District commission” means a district commission established
21 under chapter 151 of this title.

1 (2) “Environmental board” means the environmental board established
2 under section 8513 of this title.

3 (3) “Person” means any individual, partnership, company, corporation,
4 association, unincorporated association, joint venture, trust, municipality, the
5 state of Vermont or any agency, department, or subdivision of the state, any
6 federal agency, or any other legal or commercial entity.

7 (4) “Person aggrieved” means any person who demonstrates an interest
8 which may be affected by the outcome of the proceeding and who is so
9 situated that the disposition of the proceeding may as a practical matter impair
10 or impede that person’s ability to protect his or her interest.

11 (5) “Secretary” means the secretary of the agency of natural resources or
12 the secretary’s duly authorized representative. For the purposes of this chapter,
13 “secretary” shall also mean the commissioner of the department of
14 environmental conservation, the commissioner of the department of forests,
15 parks and recreation, and the commissioner of the department of fish and
16 wildlife, with respect to those statutes that refer to the authority of that
17 commissioner or department.

18 § 8513. ENVIRONMENTAL BOARD

19 (a) An environmental board is created. The environmental board shall
20 consist of a chair and two members. No member shall be required to be
21 admitted to the practice of law in this state.

1 (b) The chair shall be nominated, appointed, and confirmed in the manner
2 of a superior judge.

3 (c) Members of the board other than the chair shall be appointed in
4 accordance with this subsection. Whenever a vacancy occurs, public
5 announcement of the vacancy shall be made. The governor shall submit at
6 least five names of potential nominees to the judicial nominating board for
7 review. The judicial nominating board shall review the candidates with respect
8 to judicial criteria and standards only and shall recommend to the governor
9 those candidates the board considers qualified. The governor shall make the
10 appointment from the list of qualified candidates. The appointment shall be
11 subject to the consent of the senate.

12 (d) The term of each member shall be six years. Any appointment to fill a
13 vacancy shall be for the unexpired portion of the term vacated. A member
14 wishing to succeed himself or herself in office may seek reappointment under
15 the terms of this section.

16 (e) Notwithstanding section 2004 of Title 3 or any other provision of law,
17 members of the board may be removed only for cause. When a board member
18 who hears all or a substantial part of an appeal retires from office before the
19 appeal is completed, he or she shall remain a member of the board for the
20 purpose of concluding and deciding that appeal, and signing the findings and

1 judgments involved. A retiring chair shall also remain a member for the
2 purpose of certifying questions of law if a party appeals to the supreme court.

3 (f) An appeal shall be deemed completed when the board enters a final
4 decision even though that decision is appealed to the supreme court and
5 remanded by that court.

6 (g) The chair shall have general charge of the offices and employees of the
7 board, including those employees assigned to assist the district commissions,
8 and the offices of the district commissions.

9 § 8514. POWERS OF SINGLE BOARD MEMBER OR OTHER OFFICER

10 OR EMPLOYEE

11 (a) One board member or any officer or employee of the board duly
12 appointed by the chair of the board may inquire into and examine any matter
13 within the jurisdiction of the board.

14 (b) A hearing officer may administer oaths in all cases, so far as the
15 exercise of that power is properly incidental to the performance of his or her
16 duty or that of the board. A hearing officer may hold any hearing in any matter
17 within the jurisdiction of the board. Hearings conducted by a hearing officer
18 shall be in accordance with chapter 25 of Title 3.

19 (c) A hearing officer shall report his or her findings of fact in writing to the
20 board in the form of a proposal for decision. A copy shall be served upon the

1 parties pursuant to section 811 of Title 3. However, judgment on those
2 findings shall be rendered only by a majority of the board.

3 (d) At least 12 days prior to a hearing before the board or a hearing officer,
4 the board shall give written notice of the time and place of the hearing to all
5 parties to the case and shall indicate the name and title of the person designated
6 to conduct the hearing.

7 (e) Upon written request to the board at least five days prior to the hearing
8 by all parties to the case, the chair shall appoint at least a majority of the board
9 to conduct the hearing.

10 (f) Notwithstanding subsection (c) of this section, the chair may appoint a
11 hearing officer to hear and finally determine any appeal of a permitting
12 decision under this chapter. Upon petition of a party, filed within 30 days of
13 issuance of the hearing officer's decision, or on its own motion, the board may
14 determine that the hearing officer's decision should be treated as a proposal for
15 decision and order as provided in subsection (c) of this section. The board may
16 grant such request for good cause, including apparent error of fact, or
17 procedural or substantive law, and may conduct additional evidentiary hearings
18 or hear oral argument from the parties. If such request is not timely made or is
19 not granted by the board, the decision and order of the hearing officer shall
20 become the final decision of the board.

1 § 8515. COURT OF RECORD; PROCESS

2 (a) The board shall have the powers of a court of record in the
3 determination and adjudication of all appeals of all actions or decisions as
4 provided in section 8519 of this title. It may render judgments and enforce the
5 same by any suitable process issuable by courts in this state.

6 (b) All processes issued by the board shall state the time and place of return
7 in those cases where return is to be made to the board. Notices and other
8 processes issued by the board shall be served personally or by first class mail,
9 except that the board may direct that service be made by registered or certified
10 mail. If the whereabouts of a person are unknown or if the number of parties
11 or interested persons, as the case may be, is so great that personal service or
12 service by mail is impracticable, service may be made by publication.

13 (c) Except as provided in subsections (d) and (e) of this section, the board
14 shall give 12 days' notice of all hearings.

15 (d) A prehearing or procedural conference may be held upon any
16 reasonable notice.

17 (e) An evidentiary hearing, once commenced upon proper notice, may be
18 continued to a subsequent date upon any reasonable notice.

19 (f) The forms, pleadings, and rules of practice and procedure before the
20 board shall be prescribed by it.

1 (g) The board shall hear appeals on all acts or decisions specified in section
2 8519 of this title and make its findings of fact and rulings of law. Upon appeal
3 to the supreme court, its findings of fact shall be accepted unless clearly
4 erroneous.

5 § 8516. EXPERTS AND PERSONNEL

6 With the approval of the governor, the board may appoint and employ, at
7 the expense of the state, legal counsel, scientists, engineers, and such number
8 of experts, clerks, stenographers, and temporary employees as it deems
9 necessary in the performance of its duties, the provision of personnel to assist
10 the district commissions, and the investigation of matters within its
11 jurisdiction.

12 § 8517. PARTICULAR PROCEEDINGS; PERSONNEL

13 (a)(1) The board may authorize or retain legal counsel, official
14 stenographers, expert witnesses, advisors, temporary employees, and other
15 research services:

16 (A) to assist the board in any proceeding listed in section 8519 or
17 8521 of this title;

18 (B) to monitor compliance with any formal opinion of the board;

19 (C) to assist other state agencies that are named parties to the
20 proceeding where the board determines that they are essential to a full
21 consideration of the appeal; and

1 (2) The personnel authorized by this section shall be in addition to the
2 regular personnel of the board or other state agencies; and in the case of other
3 state agencies, may be retained only with the approval of the governor and
4 after notice to the applicant. The board shall fix the amount of compensation
5 and expenses to be paid such additional personnel.

6 (b) Persons employed by the state are competent to be designated to act for
7 the same purposes and in lieu of or in conjunction with additional personnel
8 retained under this section. However, when so acting, they shall not receive
9 compensation in addition to their regular pay.

10 § 8518. INTERGOVERNMENTAL COOPERATION

11 Other departments and agencies of state government shall cooperate with
12 the board and make available to it data and facilities as may be needed to assist
13 the board in carrying out its duties and functions. There shall be established a
14 regular schedule of project review that shall assure that all affected
15 departments and agencies recognize and pursue their respective
16 responsibilities. State employees whose job is to assist applicants in the
17 permitting process established under chapter 151 of this title shall endeavor to
18 assist all applicants regardless of the size and value of the projects involved.

1 § 8519. APPELLATE JURISDICTION OF BOARD

2 (a) This chapter shall govern all appeals of an act or decision of the
3 secretary, excluding enforcement actions under chapters 201 and 211 of this
4 title and rulemaking, under the following authorities:

5 (1) 10 V.S.A. chapter 23 (air pollution control).

6 (2) 10 V.S.A. chapter 37 (wetlands protection and water resources
7 management).

8 (3) 10 V.S.A. chapter 41 (regulation of stream flow).

9 (4) 10 V.S.A. chapter 43 (dams).

10 (5) 10 V.S.A. chapter 47 (water pollution control).

11 (6) 10 V.S.A. chapter 48 (groundwater protection).

12 (7) 10 V.S.A. chapter 50 (aquatic species control).

13 (8) 10 V.S.A. chapter 53 (beverage containers; deposit-redemption
14 system).

15 (9) 10 V.S.A. chapter 55 (aid to municipalities for water supply,
16 pollution abatement, and sewer separation).

17 (10) 10 V.S.A. chapter 56 (public water supply).

18 (11) 10 V.S.A. chapter 59 (underground and aboveground liquid storage
19 tanks).

20 (12) 10 V.S.A. chapter 64 (potable water supply and wastewater
21 permit).

1 (13) 10 V.S.A. § 2625 (regulation of heavy cutting).

2 (14) 10 V.S.A. chapter 123 (protection of endangered species).

3 (15) 10 V.S.A. chapter 159 (waste management).

4 (16) 29 V.S.A. chapter 11 (management of lakes and ponds).

5 (b) This chapter shall govern all appeals from an act or decision of a district
6 commission under chapter 151 of this title.

7 (c) This chapter shall govern all appeals from a district coordinator
8 jurisdictional opinion under chapter 151 of this title.

9 § 8520. APPEALS TO THE ENVIRONMENTAL BOARD

10 (a) Any person aggrieved by an act or decision of the secretary, a district
11 commission, or a district coordinator under the provisions of law listed in
12 section 8519 of this title may appeal to the environmental board within 30 days
13 of the date of the act or decision.

14 (b) Upon filing an appeal from an act or decision of the district
15 commission, the appellant shall notify all parties who had party status as of the
16 end of the district commission proceeding that an appeal is being filed.

17 (1) No aggrieved person may appeal an act or decision that was made by
18 a district commission unless:

19 (A) the person is a party pursuant to subdivisions 6085(c)(1)(A)
20 through (D) of this title; or

1 (B) the person was granted party status by the district commission
2 pursuant to subdivision 6085(c)(1)(E) or (F), participated in the proceedings
3 before the district commission, and retained party status at the end of the
4 district commission proceedings. In addition, the person may only appeal
5 those issues under the criteria with respect to which the person was granted
6 party status.

7 (2) Notwithstanding subdivision (1) of this subsection, an aggrieved
8 person may appeal an act or decision of the district commission if the
9 environmental board determines that:

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

12 (B) the decision being appealed is the granting or denying of party
13 status; or

14 (C) some other condition exists which would result in manifest
15 injustice if the person's right to appeal was disallowed.

16 (c) The filing of an appeal shall not automatically stay the act or decision,
17 except for:

18 (1) acts or decisions involving stream alteration permits or shoreline
19 encroachment permits issued by the secretary; and

20 (2) the denial of party status.

1 (d) The environmental board may grant a stay of any act or decision that
2 has been appealed, upon petition by a party or upon its own motion.

3 (e) The environmental board may consolidate or coordinate different
4 appeals where those appeals all relate to the same project.

5 (f) The environmental board shall hold a de novo hearing on those issues
6 which have been appealed.

7 (g) Any appeal of an authorization to discharge under the terms of a general
8 permit shall be limited in scope to whether the permitted activity complies with
9 the terms and conditions of the general permit.

10 (h) Notwithstanding any other provision of this section:

11 (1) the environmental board shall not hear an appeal of a district
12 commission decision when the commission has issued a permit and no
13 preliminary hearing was requested;

14 (2) a district commission's decision to grant or deny a motion for a
15 recorded hearing shall not be subject to appeal;

16 (3) if a district commission issues a partial decision under subsection
17 6086(b) of this title, any appeal of that decision must be taken within 30 days
18 of the date of that decision.

19 (i) The secretary may represent the agency in all appeals under this section.

20 If more than one state agency either appeals or seeks to intervene in an appeal

1 under this section, only the attorney general may represent the interests of the
2 state in the appeal.

3 (j) Prior decisions of the water resources board, the environmental board
4 created by Sec. 3 of No. 250 of the Acts of the 1969 Adj. Sess. (1970), the
5 waste facilities panel, and the environmental court on matters arising under the
6 chapters listed in section 8519 of this title shall be given the same weight and
7 consideration as prior decisions of the board.

8 § 8521. RULEMAKING

9 The board may adopt rules, in accordance with the provisions of chapter 25
10 of Title 3, in the following areas:

11 (1) Rules of procedure for the board and the district commissions.

12 (2) Substantive rules that interpret and carry out the provisions of
13 chapter 151 of this title, including rules that establish criteria under which
14 applications for permits under this chapter may be classified in terms of
15 complexity and significance of impact under the standards of subsection
16 6086(a) of this title. In accordance with that classification, the rules may
17 provide for one or more of the following:

18 (A) simplified or less stringent procedures than are otherwise
19 required under sections 6083, 6084, and 6085 of this title.

20 (B) the filing of notices instead of applications for the permits that
21 would otherwise be required under section 6081 of this title.

1 (C) a procedure by which a district commission may authorize a
2 district coordinator to issue a permit that the district commission has
3 determined under board rules is a minor application with no undue adverse
4 impact.

5 (3) Rules that provide a modified process by which the sole purchaser,
6 or the group of purchasers, of one or more lots that were sold to a purchaser
7 prior to January 1, 1991 without a required permit may apply for and obtain a
8 permit under chapter 151 of this title, which shall be issued in light of the
9 existing improvements, facts, and circumstances that pertain to the lots;
10 provided, however, that the requirements of chapter 151 of this title shall be
11 modified only to the extent needed to issue those permits. For purposes of
12 these rules, a purchaser eligible for relief under this subsection must not have
13 been involved in creating the lots, shall not be a person who owned or
14 controlled the land when it was divided or partitioned, as a person is defined in
15 chapter 151 of this title, and shall not have known at the time of purchase that
16 the transfer was subject to a permit requirement that had not been met.

17 (4) Rules regarding surface levels of lakes and ponds that are public
18 waters of Vermont.

19 (5) Rules regarding classification of the waters of the state, in
20 accordance with chapter 47 of this title.

1 (6) Rules regarding the establishment of water quality standards, in
2 accordance with chapter 47 of this title.

3 (7) Rules regarding the surface use of public waters and rules pertaining
4 to the designation of outstanding resource waters, in accordance with chapter
5 49 of this title.

6 (8) Rules regarding the identification of wetlands that are so significant
7 that they merit protection. Any determination that a particular wetland is
8 significant will result from an evaluation of at least the following functions and
9 values that a wetland serves:

10 (A) provides temporary water storage for flood water and storm
11 runoff;

12 (B) contributes to the quality of surface and groundwater through
13 chemical action;

14 (C) naturally controls the effects of erosion and runoff, filtering silt
15 and organic matter;

16 (D) contributes to the viability of fisheries by providing spawning,
17 feeding, and general habitat for freshwater fish;

18 (E) provides habitat for breeding, feeding, resting, and shelter to both
19 game and nongame species of wildlife;

20 (F) provides stopover habitat for migratory birds;

1 (G) contributes to an exemplary wetland natural community, in
2 accordance with the rules of the board;

3 (H) provides for threatened and endangered species habitat;

4 (I) provides valuable resources for education and research in natural
5 sciences;

6 (J) provides direct and indirect recreational value and substantial
7 economic benefits; and

8 (K) contributes to the open-space character and overall beauty of the
9 landscape.

10 (9) Rules regarding the ability to reclassify wetlands, in general or on a
11 case-by-case basis;

12 (10) Rules protecting wetlands that have been determined under
13 subdivision (8) or (9) of this section to be significant, including rules that
14 provide for the issuance or denial of permits and the issuance of wetland
15 determinations under chapter 37 of this title by the department of
16 environmental conservation; provided, however, that the rules may only
17 protect the values and functions sought to be preserved by the designation.

18 The board shall not adopt rules that restrain agricultural activities without the
19 consent of the secretary of the agency of agriculture, food and markets and
20 shall not adopt rules that restrain silvicultural activities without the consent of
21 the commissioner of the department of forests, parks and recreation.

1 (11) Rules implementing 29 V.S.A. chapter 11, relating to management
2 of lakes and ponds.

3 § 8522. APPEALS TO THE SUPREME COURT

4 (a) Any person aggrieved by an act or decision of the environmental board
5 pursuant to this subchapter may appeal to the supreme court within 30 days of
6 the date of the entry of the judgment or order appealed from, provided that the
7 person was a party to the appeal before the environmental board.

8 (b) Notwithstanding subsection (a) of this section, an aggrieved person may
9 appeal a decision of the environmental board if the supreme court determines
10 that:

11 (1) there was a procedural defect which prevented the person from
12 participating in the proceeding;

13 (2) some other condition exists which would result in manifest injustice
14 if the person's right to appeal was disallowed.

15 (c) An objection that has not been raised before the environmental board
16 may not be considered by the supreme court, unless the failure or neglect to
17 raise that objection is excused by the board because of extraordinary
18 circumstances. The findings of the environmental board with respect to
19 questions of fact, if supported by substantial evidence on the record as a whole,
20 shall be conclusive.

1 (d) The attorney general may represent the state in all appeals under this
2 section.

3 § 8523. FEES

4 (a) All persons filing an appeal to the board from an action of the secretary
5 of natural resources or an appeal to the board from a district environmental
6 commission decision or jurisdictional determination of a district coordinator
7 shall pay a fee of \$250.00, plus any associated publication costs. The board
8 may waive the fee or publication costs if the board finds that the appellant is
9 unable to pay the fee or publication costs. The fee of \$250.00 shall not apply
10 to appeals to the board initiated in the name of the state by public officials
11 authorized to do so.

12 (b) All funds collected pursuant to this section shall be deposited into the
13 fund created in section 6029 of this title.

14 § 8524. ASSESSMENT OF COSTS

15 (a) The board may allocate to an applicant the portion of its expenses
16 incurred by retaining additional personnel for a proceeding. On petition of an
17 applicant to which costs are proposed to be allocated, the board shall review
18 and determine, after opportunity for hearing, the necessity and reasonableness
19 of those costs, having due regard for the size and complexity of the project,
20 and may amend or revise an allocation. Prior to allocating costs, the board
21 shall make a determination of the purpose and use of the funds to be raised

1 under this section, identify the recipient of the funds, provide for allocation of
2 costs among applicants to be assessed, indicate an estimated duration of the
3 proceedings, and estimate the total costs to be imposed. With the approval of
4 the board, estimates may be revised as necessary. From time to time during
5 the progress of the work, the board shall render to the applicant detailed
6 statements showing the amount of money expended or contracted for in the
7 work of additional personnel, which statements shall be paid into the state
8 treasury at the time and in the manner as the board may reasonably direct.

9 (b) When regular employees of the board are employed in proceedings, the
10 board may also allocate the portion of their costs and expenses to the applicant
11 or applicants involved in the proceedings. The costs of regular employees
12 shall be computed on the basis of working days within the salary period. The
13 manner of assessment and making payments shall otherwise be as provided for
14 additional personnel in subsection (a) of this section.

15 (c) All payments for costs allocated pursuant to this section shall be
16 deposited into the fund created under section 6029 of this title.

17 Sec. 3. 4 V.S.A. § 1001 is amended to read:

18 § 1001. ENVIRONMENTAL COURT

19 (a) An environmental court having statewide jurisdiction is created as a
20 court of record subject to the authority granted to the supreme court. The
21 environmental court shall consist of ~~two judges, each sitting alone~~ one judge.

1 (b) ~~Two~~ One environmental ~~judges~~ judge shall be appointed within the
2 judicial branch who shall hear matters arising under 10 V.S.A. ~~chapters~~ chapter
3 201 ~~and 220~~ and matters arising under 24 V.S.A. chapter 117 and chapter 61,
4 subchapter 12. In addition, the ~~judges~~ judge shall have original jurisdiction to
5 revoke permits under 10 V.S.A. chapter 151.

6 * * *

7 (f) The environmental court shall be provided with a dedicated minimum of
8 one court manager, ~~two~~ one law ~~clerks~~ clerk, one case manager, and ~~two~~ one
9 docket clerk-courtroom ~~operators~~ operator. These positions shall not be
10 subject to any rotation with other courts. The environmental court shall
11 receive the same funding and provisions for security as provided to county
12 courthouses.

13 Sec. 4. 10 V.S.A. § 6001 is amended to read:

14 § 6001. DEFINITIONS

15 When used in this chapter:

16 (1) "Board" means the ~~natural resources~~ environmental board created
17 under chapter 221 of this title.

18 * * *

1 Sec. 5. 10 V.S.A. § 6021 is amended to read:

2 § 6021. ~~BOARD; VACANCY, REMOVAL~~ COMMISSIONS;

3 DISQUALIFICATION, INABILITY TO SERVE

4 ~~(a) A natural resources board is created with a land use panel and a water~~
5 ~~resources panel. The board shall consist of nine members appointed by the~~
6 ~~governor, with the advice and consent of the senate, so that one appointment~~
7 ~~on each panel expires in each odd numbered year. In making appointments,~~
8 ~~the governor and the senate shall give consideration to experience, expertise, or~~
9 ~~skills relating to the environment or land use. The governor shall appoint a~~
10 ~~chair of the board, a position that shall be a full-time position. The other eight~~
11 ~~members shall be appointed by the governor, four to the water resources panel~~
12 ~~of the board and four others to the land use panel of the board. The chair shall~~
13 ~~serve as chair on each panel of the board. Following initial appointments, the~~
14 ~~members, except for the chair, shall be appointed for terms of four years. The~~
15 ~~governor shall appoint up to five persons, with preference given to former~~
16 ~~environmental board, water resources board, natural resources board or district~~
17 ~~commission members, with the advice and consent of the senate, to serve as~~
18 ~~alternates for board members. Alternates shall be appointed for terms of four~~
19 ~~years, with initial appointments being staggered. The board chair may assign~~
20 ~~alternates to sit on specific matters before the panels of the board, in situations~~
21 ~~where fewer than five panel members are available to serve. No person who~~

1 ~~receives or, during the previous two years, has received a significant portion of~~
2 ~~the person's income directly or indirectly from permit holders or applicants for~~
3 ~~one or more permits under chapter 47 of this title may be a member of the~~
4 ~~water resources panel.~~

5 ~~(b) Any vacancy occurring in the membership of the board shall be filled~~
6 ~~by the governor for the unexpired portion of the term.~~

7 ~~(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be~~
8 ~~removable for cause only, except the chair, who shall serve at the pleasure of~~
9 ~~the governor.~~

10 ~~(d) The chair of the board, upon request of the chair of a district~~
11 ~~commission, may appoint and assign former commission members to sit on~~
12 ~~specific commission cases when some or all of the regular members and~~
13 ~~alternates are disqualified or otherwise unable to serve.~~

14 Sec. 6. REPEAL

15 10 V.S.A. §§ 6022 (personnel), 6024 (intragovernmental cooperation), and
16 6025 (rules) are repealed.

17 Sec. 7. 10 V.S.A. § 6027 is amended to read:

18 § 6027. POWERS

19 (a) The ~~panels of the~~ board and district commissions each shall have the
20 power, with respect to any matter within its jurisdiction, to:

1 (1) Administer oaths, take depositions, subpoena and compel the
2 attendance of witnesses, and require the production of evidence.

3 (2) Allow parties to enter upon lands of other parties for the purposes of
4 inspecting and investigating conditions related to the matter before the panel or
5 commission.

6 (3) Enter upon lands for the purpose of conducting inspections,
7 investigations, examinations, tests, and site evaluations as it deems necessary
8 to verify information presented in any matter within its jurisdiction.

9 (4) Apply for and receive grants from the federal government and from
10 other sources.

11 (b) The powers granted under this chapter are additional to any other
12 powers which may be granted by other legislation.

13 (c) The ~~land-use panel~~ board may designate or establish such regional
14 offices as it deems necessary to implement the provisions of this chapter and
15 the rules adopted hereunder. The ~~land-use panel~~ board may designate or
16 require a regional planning commission to receive applications, provide
17 administrative assistance, perform investigations, and make recommendations.

18 (d) At the request of a district commission, if the board chair determines
19 that the workload in the requesting district is likely to result in unreasonable
20 delays or that the requesting district commission is disqualified to hear a case,

1 the chair may authorize the district commission of another district to sit in the
2 requesting district to consider one or more applications.

3 (e) The ~~land use panel~~ board may by rule allow joint hearings to be
4 conducted with specified state agencies or specified municipalities.

5 (f) The board may publish or contract to publish annotations and indices of
6 the decisions of the environmental court, and the text of those decisions. The
7 published product shall be available at a reasonable rate to the general public
8 and at a reduced rate to libraries and governmental bodies within the state.

9 (g) The ~~land use panel~~ board shall manage the process by which land use
10 permits are issued under section 6086 of this title, may initiate or participate in
11 enforcement on related matters, under the provisions of ~~chapter~~ chapters 201
12 and 211 of this title, and may petition the environmental court for revocation of
13 land use permits issued under this chapter. Grounds for revocation are:

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

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

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

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

20 (5) failure to pay a penalty or other sums owed pursuant to, or other
21 failure to comply with, court order, stipulation agreement, schedule of

1 compliance, or other order issued under Vermont statutes and related to the
2 permit; or

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

6 ~~(h) The land use panel may hear appeals of fee refund requests under
7 section 6083a of this title.~~

8 ~~(i) The chair of the board, subject to the direction of the board, shall have
9 general charge of the offices and employees of the board and the offices and
10 employees of the district commissions.~~

11 ~~(j) The land use panel may participate as a party in all matters before the
12 environmental court that relate to land use permits issued under this chapter.~~

13 ~~(k) The water resources panel may participate as a party in all matters
14 before the environmental court that relate to rules adopted by the panel under
15 the authority of section 6025 of this title.~~

16 ~~(l) A district commission may reject an application under this chapter that
17 misrepresents any material fact and may after notice and opportunity for
18 hearing award reasonable attorney's fees and costs to any party or person who
19 may have become a party but for the false or misleading information or who
20 has incurred attorney's fees or costs in connection with the application.~~

1 Sec. 8. 10 V.S.A. § 6028 is amended to read:

2 § 6028. COMPENSATION

3 Members of the ~~board and~~ district commissions shall receive per diem pay
4 and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.

5 Sec. 9. 10 V.S.A. § 6029 is amended to read:

6 § 6029. ACT 250 PERMIT FUND

7 There is hereby established a special fund to be known as the Act 250
8 permit fund for the purposes of implementing the provisions of this chapter
9 and chapter 221 of this title. Revenues to the fund shall be those fees collected
10 in accordance with ~~section~~ sections 6083a and 8521(1)–(3) of this title, gifts,
11 appropriations, and copying and distribution fees. Revenues to the fund shall
12 also include those fees and costs collected under section 8523 of this title. The
13 board shall be responsible for the fund and shall account for revenues and
14 expenditures of the board. At the commissioner's discretion, the commissioner
15 of finance and management may anticipate amounts to be collected and may
16 issue warrants based thereon for the purposes of this section. Disbursements
17 from the fund shall be made through the annual appropriations process to the
18 board, and to the agency of natural resources to support those programs within
19 the agency that directly or indirectly assist in the review of Act 250
20 applications or appeals of decisions of the secretary. This fund shall be
21 administered as provided in subchapter 5 of chapter 7 of Title 32.

1 ~~panel~~ board, the disposition of such cases, and the amount of penalties
2 collected.

3 * * *

4 (g)(1) A district commission, pending resolution of noncompliance, may
5 stay the issuance of a permit or amendment if it finds, by clear and convincing
6 evidence, that a person who is an applicant:

7 (A) is not in compliance with a court order, an administrative order,
8 or an assurance of discontinuance with respect to a violation that is directly
9 related to the activity which is the subject of the application; or

10 (B) has one or more current violations of this chapter, or any rules,
11 permits, assurances of discontinuance, court order, or administrative orders
12 related to this chapter, which, when viewed together, constitute substantial
13 noncompliance.

14 ~~(2) Any decision under this subsection to issue a stay may be subject to~~
15 ~~review by the environmental court, as provided by rule of the supreme court.~~

16 ~~(3)~~ If the same violation is the subject of an enforcement action under
17 chapter 201 of this title, then jurisdiction over the issuance of a stay shall
18 remain with the environmental court and shall not reside with the district
19 commission.

1 Sec. 11. 10 V.S.A. § 6083a is amended to read:

2 § 6083a. ACT 250 FEES

3 * * *

4 (e) A written request for an application fee refund shall be submitted to the
5 district commission to which the fee was paid within 90 days of withdrawal of
6 the application.

7 * * *

8 (4) District commission decisions regarding application fee refunds may
9 be appealed to the ~~land-use panel~~ board in accordance with board rules.

10 * * *

11 (g) A commission or the ~~land-use panel~~ board may require any permittee to
12 file a certification of actual construction costs and may direct the payment of a
13 supplemental fee in the event that an application understated a project's
14 construction costs. Failure to file a certification or to pay a supplemental fee
15 shall be grounds for permit revocation.

16 Sec. 12. 10 V.S.A. § 6085(e) is amended to read:

17 (e) The ~~land-use panel~~ board and any district commission, acting through
18 one or more duly authorized representatives at any prehearing conference or at
19 any other times deemed appropriate by the ~~land-use panel~~ board or by the
20 district commission, shall promote expeditious, informal, and nonadversarial
21 resolution of issues, require the timely exchange of information concerning the

1 application, and encourage participants to settle differences. No district
2 commissioner or board member or employee who is participating as a
3 decisionmaker or hearing officer in a particular case may act as a duly
4 authorized representative for the purposes of this subsection. These efforts at
5 dispute resolution shall not affect the burden of proof on issues before a
6 commission or the environmental court, nor shall they affect the requirement
7 that a permit may be issued only after the issuance of affirmative findings
8 under the criteria established in section 6086 of this title.

9 Sec. 13. 10 V.S.A. § 6086 is amended to read:

10 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

11 (a) Before granting a permit, the district commission or board shall find
12 that the subdivision or development:

13 (1) Will not result in undue water or air pollution. In making this
14 determination it shall at least consider: the elevation of land above sea level;
15 and in relation to the flood plains, the nature of soils and subsoils and their
16 ability to adequately support waste disposal; the slope of the land and its effect
17 on effluents; the availability of streams for disposal of effluents; and the
18 applicable health and environmental conservation department regulations.

19 * * *

20 (G) Wetlands. A permit will be granted whenever it is
21 demonstrated by the applicant, in addition to other criteria, that the

1 development or subdivision will not violate the rules of the board, as adopted
2 under ~~this~~ chapter 221 of this title, relating to significant wetlands.

3 * * *

4 (9) Is in conformance with a duly adopted capability and development
5 plan, and land use plan when adopted. However, the legislative findings of
6 subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria
7 in the consideration of applications by a district commission.

8 * * *

9 (B) Primary agricultural soils. A permit will be granted for the
10 development or subdivision of primary agricultural soils only when it is
11 demonstrated by the applicant that, in addition to all other applicable criteria,
12 either, the subdivision or development will not result in any reduction in the
13 agricultural potential of the primary agricultural soils; or:

14 * * *

15 (iv) suitable mitigation will be provided for any reduction in the
16 agricultural potential of the primary agricultural soils caused by the
17 development or subdivision, in accordance with section 6093 of this title and
18 rules adopted by the ~~land-use panel~~ board.

19 * * *

20 (c) A permit may contain such requirements and conditions as are
21 allowable proper exercise of the police power and which are appropriate within

1 the respect to subdivisions (1) through (10) of subsection (a), including but not
2 limited to those set forth in subdivisions 4414(4), 4424(2), 4414(1)(D)(i),
3 subsection 4463(b), and section 4464 of Title 24, the dedication of lands for
4 public use, and the filing of bonds to insure compliance. The requirements and
5 conditions incorporated from Title 24 may be applied whether or not a local
6 plan has been adopted. General requirements and conditions may be
7 established by rule of the ~~land-use panel~~ board.

8 (d) The ~~land-use panel~~ board may by rule allow the acceptance of a permit
9 or permits or approval of any state agency with respect to subdivisions (1)
10 through (5) of subsection (a) or a permit or permits of a specified municipal
11 government with respect to subdivisions (1) through (7) and (9) and (10) of
12 subsection (a), or a combination of such permits or approvals, in lieu of
13 evidence by the applicant. A district commission, in accordance with rules
14 adopted by the ~~land-use panel~~ board, shall accept determinations issued by a
15 development review board under the provisions of 24 V.S.A. § 4420, with
16 respect to local Act 250 review of municipal impacts. The acceptance of such
17 approval, positive determinations, permit, or permits shall create a presumption
18 that the application is not detrimental to the public health and welfare with
19 respect to the specific requirement for which it is accepted. In the case of
20 approvals and permits issued by the agency of natural resources, technical
21 determinations of the agency shall be accorded substantial deference by the

1 commissions. The acceptance of negative determinations issued by a
2 development review board under the provisions of 24 V.S.A. § 4420, with
3 respect to local Act 250 review of municipal impacts shall create a
4 presumption that the application is detrimental to the public health and welfare
5 with respect to the specific requirement for which it is accepted. Any
6 determinations, positive or negative, under the provisions of 24 V.S.A. § 4420
7 shall create presumptions only to the extent that the impacts under the criteria
8 are limited to the municipality issuing the decision. Such a rule may be
9 revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter
10 25, the Vermont Administrative Procedure Act. The rules adopted by the ~~land~~
11 ~~use panel~~ board shall not approve the acceptance of a permit or approval of
12 such an agency or a permit of a municipal government unless it satisfies the
13 appropriate requirements of subsection (a) of this section.

14 * * *

15 (f) Prior to any appeal of a permit issued by a district commission, any
16 aggrieved party may file a request for a stay of construction with the district
17 commission together with a declaration of intent to appeal the permit. The stay
18 request shall be automatically granted for seven days upon receipt and notice
19 to all parties and pending a ruling on the merits of the stay request pursuant to
20 board rules. The automatic stay shall not extend beyond the 30-day appeal
21 period unless a valid appeal has been filed with the environmental court. The

1 automatic stay may be granted only once under this subsection during the
2 30-day appeal period. Following appeal of the district commission decision,
3 any stay request must be filed with the environmental court pursuant to the
4 provisions of chapter 221 of this title. A district commission shall not stay
5 construction authorized by a permit processed under the ~~land use panel's~~ minor
6 application procedures of the board.

7 Sec. 14. 10 V.S.A. § 6089 is amended to read:

8 § 6089. APPEALS

9 Appeals of any act or decision of a district coordinator or a district
10 commission under this chapter shall be made to the environmental ~~court~~ board
11 in accordance with chapter ~~220~~ 221 of this title.

12 Sec. 15. 10 V.S.A. § 6091(d) is amended to read:

13 (d) Completion dates for developments and subdivisions. Permits shall
14 include dates by which there shall be full or phased completion. The ~~land use~~
15 ~~panel board~~, by rule, shall establish requirements for review of those portions
16 of developments and subdivisions that fail to meet their completion dates,
17 giving due consideration to fairness to the parties involved, competing land use
18 demands, and cumulative impacts on the resources involved. If completion has
19 been delayed by litigation, proceedings to secure other permits, proceedings to
20 secure title through foreclosure, or because of market conditions, the district

1 commission shall provide that the completion dates be extended for a
2 reasonable period of time.

3 Sec. 16. 32 V.S.A. § 1013 is added to read:

4 § 1013. ENVIRONMENTAL BOARD

5 The annual salary of the chair and members of the environmental board
6 shall be the same as fixed for each magistrate under section 1003 of this title.

7 Sec. 17. STATUTORY REVISION

8 The legislative council is directed to make all applicable revisions to the
9 existing Vermont Statutes Annotated. When applicable, the terms “natural
10 resources board,” “land use panel of the natural resources board,” “land use
11 panel,” “water resources panel of the natural resources board,” “water
12 resources panel,” or “water resources board” in the Vermont Statutes
13 Annotated shall be replaced by the term “environmental board.” When
14 applicable, the terms “10 V.S.A. chapter 220” and “chapter 220 of Title 10” in
15 the Vermont Statutes Annotated shall be replaced by the term “10 V.S.A.
16 chapter 221.” When applicable, the term “chapter 220 of this title” in Title 10
17 of the Vermont Statutes Annotated shall be replaced by the term “chapter 221
18 of this title.”

19 Sec. 18. TRANSITION AND IMPLEMENTATION

20 (a) Continued jurisdiction over appeals. Notwithstanding the repeal of its
21 jurisdictional authority to hear appeals of acts or decisions of the district

1 commissions, district coordinators, and the secretary of natural resources, the
2 environmental court shall continue to have jurisdiction to complete its
3 consideration of any such act or appeal that is pending before it as of
4 January 1, 2011 if, with respect to such act or appeal, mediation or discovery
5 has commenced, a dispositive motion has been filed, or a trial has begun.

6 (b) Existing rules. All rules adopted by the natural resources board prior to
7 July 1, 2010 shall be deemed to be rules adopted by the environmental board
8 and shall remain in effect until amended or repealed by the environmental
9 board.

10 (c) Pending rules. Notwithstanding the repeal of its enabling authority, the
11 water resources panel shall continue to exist and have jurisdiction with its
12 preexisting membership to complete its consideration of any proposed rules for
13 which, by January 1, 2011, the period for submitting public comments has
14 been completed. Upon adoption, all such rules shall be deemed to be rules
15 adopted by the environmental board and shall remain in effect until amended
16 or repealed by the environmental board.

17 (d) Upon enactment of this act, the environmental board shall consist of
18 three members: the current chair of the natural resources board, who shall
19 serve through the completion of that chair's term as it existed prior to
20 enactment; one member appointed by the governor who shall serve a term of

1 three years; and one member appointed by the governor who shall serve a term
2 of two years.

3 (e) The chair and members of the environmental board shall occupy the
4 following positions transferred to that board under Sec. 19 of this act: the
5 chair of the natural resources board, environmental judge, and one exempt
6 position from the natural resources board. As it deems reasonably necessary
7 to effect the transition, the environmental board shall have authority to
8 reorganize and reclassify and recruit personnel for the other positions
9 transferred to it under Sec. 19 of this act.

10 Sec. 19. APPROPRIATIONS AND POSITIONS

11 (a) For fiscal year 2011, the positions of chair and all regular employees of
12 the natural resources board are transferred to the environmental board.

13 (b) For fiscal year 2011, the positions of one environmental judge, one law
14 clerk, and one docket clerk-courtroom operator are transferred to the
15 environmental board.

16 (c) For fiscal year 2011, all appropriations and funds associated with the
17 natural resources board are transferred to the environmental board.

18 (d) For fiscal year 2011, all funds associated with the positions identified
19 in subsection (b) of this section, including wages, personal service expenses,
20 and operating expenses, are transferred to the environmental board.

1 Sec. 20. EFFECTIVE DATE

2 This act shall take effect on July 1, 2010.