

1 H.546

2 Introduced by Representative Klein of East Montpelier

3 Referred to Committee on

4 Date:

5 Subject: Land use; natural resources; Act 250; local zoning; appeals; permit
6 process consolidation; department of environmental quality

7 Statement of purpose: This bill proposes to consolidate state environmental
8 permit programs, including water quality, air pollution control, waste
9 management, and Act 250, and associated appeals, into a department of
10 environmental quality to be directed by a three-person environmental council
11 headed by a full-time chair; to require that the council include members with
12 relevant scientific expertise and be supported by staff scientists and counsel; to
13 have council appointments recommended by an environmental appointments
14 committee and made by the governor, subject to senate confirmation; to give
15 the council the rulemaking functions of the current natural resources board and
16 secretary of natural resources pertaining to environmental permits; to place all
17 divisions and employees of the current department of environmental
18 conservation and natural resources board, including those assigned to the Act
19 250 district commissions, within the department of environmental quality; to
20 require that the environmental council will provide for the day-to-day
21 administration of the department of environmental quality through an

1 executive director to whom division directors will report; to provide that the
2 council shall appoint a director of environmental enforcement with authority to
3 issue administrative orders and make referrals to the attorney general's office;
4 to provide that, when a project is subject to Act 250, the issuance of all other
5 permits, certificates, and approvals required from the department of
6 environmental quality shall be consolidated into the Act 250 process and
7 conducted by the district commission, with scientists of the department who
8 would normally issue the other permits making technical determinations to
9 which the district commission will give substantial deference; to endow the
10 environmental council with the appellate and enforcement hearing authority of
11 the current environmental court, and to allow the council to use hearing
12 officers to hear cases; to restrict certain staff, including the executive and
13 enforcement directors, from participating in the council's quasi-judicial
14 deliberations; to allow appeals of growth center designations to the
15 environmental council; to provide that the department of environmental quality
16 shall be the successor to the department of environmental conservation and the
17 natural resources board; to provide that the agency of natural resources shall
18 consist of the departments of fish and wildlife and of forests, parks and
19 recreation; and to repeal the environmental court. The bill would require that
20 the department of environmental quality convene a working group on further
21 improving Vermont's environmental permit process.

1 An act relating to consolidating land use and environmental permit
2 administration, rulemaking, and appeals into a department of environmental
3 quality headed by an environmental council

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

5 * * * Creation of Department of Environmental Quality * * *

6 Sec. 1. 3 V.S.A. chapter 51 is redesignated to read:

7 CHAPTER 51. ENVIRONMENTAL QUALITY;

8 NATURAL RESOURCES

9 Sec. 2. 3 V.S.A. §§ 2801 through 2804 are amended to read:

10 § 2801. DEFINITIONS

11 In this chapter, the following words mean:

12 (1) Agency: The agency of natural resources.

13 (2) Chair: The chair of the environmental council appointed pursuant to
14 section 2821 of this title.

15 (3) Council or environmental council: The environmental council
16 created and appointed pursuant to sections 2802 and 2821 of this title.

17 ~~(2)(4)~~ Department: ~~A major component of the agency.~~ The department
18 of environmental quality created pursuant to section 2802 of this title, except
19 when used as part of the terms “department of fish and wildlife” and
20 “department of forests, parks and recreation.”

21 ~~(3)(5)~~ Director: ~~The~~ Except when used as part of the term “executive
22 director,” the head of a division or branch of the agency or department.

1 ~~(4)(6)~~ Division: A major substantive, technical, or administrative
2 component of a the department or a ~~technical or administrative support~~
3 ~~component~~ of the agency.

4 ~~(5) Commissioner: The head of a department responsible to the~~
5 ~~secretary for the administration of the department.~~

6 ~~(7) Secretary: The head of the agency, a member of the governor's~~
7 ~~cabinet and responsible to the governor for the administration of the agency~~

8 Executive director: The executive director of the department appointed by the
9 council pursuant to section 2851 of this title.

10 § 2802. CREATION OF AGENCY ~~AGENCY~~ DEPARTMENT

11 (a) ~~An agency of natural resources~~ A department of environmental quality
12 is created consisting of the following:

13 (1) ~~The department of fish and wildlife~~ environmental council.

14 (2) ~~The department of forests, parks and recreation.~~ The division of
15 state land use, to include:

16 (A) ~~The division of forests~~ A director.

17 (B) ~~The division of parks~~ Act 250 district coordinators and other staff
18 assigned to the district commissions created under section 6026 of Title 10.

19 (C) ~~The division of recreation~~ district commissions created under
20 section 6026 of Title 10, attached for administrative support.

1 (3) ~~{Repealed.}~~ The division of environmental enforcement created
2 under section 2880 of this title.

3 (4) ~~The board of forests, parks and recreation~~ office of environmental
4 counsel created under section 2881 of this title.

5 (5) The divisions and employees of the former department of
6 environmental conservation and, except for the secretary of natural resources,
7 of the agency of natural resources' central office as it existed prior to creation
8 of the department of environmental quality.

9 (6) ~~The state natural resources conservation council~~ planning division
10 created under section 2877 of this title.

11 (7) The division of geology and mineral resources created under section
12 2879 of this title.

13 (8) The administrative services division created under section 2876 of
14 this title.

15 (b) ~~The natural resources board~~ environmental council is attached to the
16 agency for the purpose of receiving administrative support created to be the
17 chief executive body of the department and to exercise such quasi-judicial and
18 other authority as is granted to it by law.

19 (c) ~~The agency~~ department will provide representation on the following
20 compact commissions:

21 (1) The interstate commission on the Lake Champlain basin.

1 (2) The New England interstate water pollution control commission.
2 (d) Other departments and agencies of state government shall cooperate
3 with the department and the council and make available to them data and
4 facilities as may be needed to assist them in carrying out their duties and
5 functions. There shall be established a regular schedule of project review that
6 shall assure that all affected departments and agencies recognize and pursue
7 their respective responsibilities. State employees whose job is to assist
8 applicants in the permitting process shall endeavor to assist all applicants
9 regardless of the size and value of the projects involved.

10 § 2803. ADVISORY CAPACITY

11 ~~(a) All~~ Except for the environmental council, all boards, committees,
12 councils, and activities ~~and departments~~ which under this chapter are a part of
13 the ~~agency~~ department shall be advisory only, except as hereinafter provided,
14 and the powers and duties of such boards, committees, councils, and activities
15 ~~and departments~~, including administrative, policy making, rule making, and
16 regulatory functions, shall vest in and be exercised by the ~~secretary of the~~
17 ~~agency~~ environmental council.

18 ~~(b) Notwithstanding subsection (a) of this section or any other provision of~~
19 ~~this chapter, the fish and wildlife board and the natural resources board shall~~
20 ~~retain and exercise all powers and functions given to them by law which are of~~
21 ~~regulatory or quasi-judicial nature, including the power to adopt, amend and~~

1 ~~repeal rules and regulations, to conduct hearings, to adjudicate controversies~~
2 ~~and to issue and enforce orders, in the manner and to the extent to which those~~
3 ~~powers are given to those respective boards by law.~~

4 (c) [Repealed.]

5 § 2804. PERSONNEL DESIGNATION

6 ~~The secretary, deputy secretary, commissioners, deputy commissioners,~~
7 ~~chair, executive director, attorneys, director of environmental enforcement, and~~
8 ~~all members of boards, committees, commissions or councils attached to the~~
9 ~~agency for support the council are exempt from the classified state service, as~~
10 ~~are any members of other boards, committees, or councils that are attached to~~
11 ~~the department. Except as authorized by section 311 of this title or otherwise~~
12 ~~by laws, all other positions in the department shall be within the classified~~
13 ~~service.~~

14 Sec. 3. REDESIGNATION

15 3 V.S.A. chapter 51, subchapter 2 is redesignated to read:

16 Subchapter 2. Secretary Council

17 Sec. 4. 3 V.S.A. §§ 2821 and 2822 are amended to read:

18 § 2821. ~~APPOINTMENT AND SALARY COUNCIL; CHAIR; VICE CHAIR~~

19 (a) The ~~agency~~ department shall be under the direction and supervision of a
20 ~~secretary, who shall be appointed by the governor with the advice and consent~~
21 ~~of the senate and shall serve at the pleasure of the governor the environmental~~

1 council through the chair and, subject to the chair's supervision, the executive
2 director.

3 (b) The council shall consist of a full-time chair and two full-time
4 members.

5 (1) One member only shall be required to be admitted to the practice of
6 law in this state and shall have expertise in environmental law. At least one
7 member of the council shall have expertise in water quality and water
8 resources, and one member shall have expertise in land use planning. A
9 member may combine more than one of these areas of expertise.

10 (2) The chair and members of the council shall be appointed in
11 accordance with this subsection.

12 (A) An environmental appointments committee is created, to consist
13 of seven members appointed for six-year terms commencing on August 1 as
14 follows:

15 (i) Three members appointed by the governor.

16 (ii) Two members appointed by the speaker of the house, one of
17 whom shall be a member of the house committee on fish, wildlife and water
18 resources and one of whom shall be a member of the house committee on
19 natural resources and energy.

1 (iii) Two members appointed by the president pro tempore, each
2 of whom shall be a member of the senate committee on natural resources and
3 energy.

4 (iv) No member of the environmental appointments committee
5 may serve on the council. The department shall provide administrative
6 assistance to the environmental appointments committee.

7 (B) Whenever a vacancy on the council occurs, the environmental
8 appointments committee shall make a public announcement of the vacancy and
9 shall solicit applications for the vacant council position. The committee shall
10 review applications to ensure that there are members of the council who meet
11 the expertise requirements of subdivision (1) of this subsection (b). In
12 evaluating applicants, the committee shall give due consideration to other
13 relevant areas of expertise such as air pollution control, waste management,
14 rivers management, and wildlife habitat and ecology, and to other relevant
15 factors such as management and administrative experience, judicial
16 temperament, and experience in conducting quasi-judicial proceedings. The
17 committee by majority vote shall recommend to the governor a list of those
18 applicants it deems qualified for appointment, and the governor shall make the
19 appointment from the list, which appointment shall be subject to the advice
20 and consent of the senate. The list presented by the committee under this
21 section shall consist of at least five qualified applicants for each council

1 position unless the committee concludes that there are less than five qualified
2 applicants.

3 (c) The term of each member of the council shall be six years, except as set
4 forth in subsection (d) of this section. Each term shall commence on
5 February 1. Any appointment to fill a vacancy shall be for the unexpired
6 portion of the term vacated. A member wishing to succeed himself or herself
7 in office may seek reappointment under the terms of this section.

8 (d) The terms of the council members shall be staggered. The initial term
9 of the chair shall be six years and the initial terms of the other two council
10 members shall be two and four years, respectively.

11 (e) Notwithstanding section 2004 of this title or any other provision of law,
12 the chair and members of the council may be removed only for cause.

13 (f) The chair shall be the convening and presiding officer of the council.
14 The council shall elect one of its members to be vice chair. The vice chair
15 shall serve as chair in the chair's absence or a vacancy in the office of the
16 chair. The provisions of subsection 253(d) of this title shall apply.

17 (g) The council shall determine the policies of the department.

18 (h) Rules to be adopted by the department shall be developed by the
19 applicable division and presented to the council for its consideration and
20 approval prior to commencement of rulemaking under chapter 25 of this title.
21 The council may initiate rulemaking on its own motion on any matter within

1 the department's jurisdiction. Authority to approve the filing of a final
2 proposal and an adopted rule on behalf of the department under sections 841
3 and 843 of this title shall rest with the council.

4 (i) The council shall make regulations consistent with law for the internal
5 administration of the department and its programs.

6 (j) The council shall have such quasi-judicial functions and authorities as
7 are conferred on it by law and shall develop a code of conduct and procedures
8 applicable to the members of the council and staff of the department to prevent
9 conflicts of interest and the discussion with members of the council outside the
10 hearing process of pending applications, investigations, or cases that may be
11 the subject of appeals or enforcement or revocation hearings before the
12 council, and to ensure compliance with chapter 25 of this title as it pertains to
13 contested cases.

14 (k) The council may create such advisory councils or committees as it
15 deems necessary within the department and appoint their members for a term
16 not exceeding the period remaining in the term of the chair at the time of the
17 members' appointment.

18 § 2822. BUDGET AND REPORT; POWERS

19 (a) ~~The secretary council shall be responsible to the governor and shall plan~~
20 ~~and, through the executive director, coordinate and direct the functions vested~~
21 ~~in the agency department.~~ The secretary council shall prepare and submit to

1 the governor an annual budget and shall prepare and submit to the governor
2 and the general assembly in November of each year a report concerning the
3 operation of the ~~agency~~ department for the preceding fiscal year and the future
4 goals and objectives of the ~~agency~~ department.

5 (b) The ~~secretary~~ council shall also have the powers and duties set forth in
6 section 2803 of this title.

7 (c) If a waiver has been granted by the public service board under
8 subsection 248(k) of Title 30, the ~~secretary~~ chair or the ~~secretary's~~ chair's
9 designee shall expedite and may authorize temporary emergency permits with
10 appropriate conditions to minimize significant adverse environmental impacts
11 within the jurisdiction of the ~~agency~~ department, after limited or no
12 opportunity for public comment, allowing site preparation for or construction
13 or operation of an electric transmission facility or a generating facility
14 necessary to assure the stability or reliability of the electric system or a natural
15 gas facility, regardless of any provision in Title 10 or chapter 11 of Title 29.

16 Such authorization shall be given only after findings by the ~~secretary~~ chair
17 that: good cause exists because an emergency situation has occurred; the
18 applicant will fulfill any conditions imposed to minimize significant adverse
19 environmental impacts; and the applicant will, upon the expiration of the
20 temporary emergency permit, remove, relocate, or alter the facility as required
21 by law or by an order of the public service board. A permit issued under this

1 subsection shall be subject to such conditions as are required by the ~~secretary~~
2 chair and shall be valid for the duration of the declared emergency plus 180
3 days, or such lesser overall term as determined by the ~~secretary~~ chair. Upon
4 the expiration of a temporary emergency permit under this subsection, if any
5 applicable permits have not been issued by the ~~secretary or the commissioner~~
6 ~~of environmental conservation~~ department, the ~~secretary~~ department may seek
7 enforcement under applicable law.

8 (d) The ~~secretary~~ council may adopt rules to implement the authority to
9 issue expedited, temporary emergency permits specified in subsection (c) of
10 this section and in subdivision 9(11) of Title 20.

11 (e) The ~~secretary~~ council, with the approval of the secretary of
12 administration, may transfer any unexpended funds appropriated in a capital
13 construction act to other projects authorized in the same section of that act.

14 (f) For any ~~agency~~ department program, the ~~secretary~~ council may provide
15 for simplified application forms and procedures for minor projects.

16 (g) The ~~secretary~~ department shall make all practical efforts to process
17 permits in a prompt manner. The ~~secretary~~ council shall establish time limits
18 for the processing of each permit as well as procedures and time periods within
19 which to notify applicants whether an application is complete. The ~~secretary~~
20 council shall report no later than the third Tuesday of each annual legislative
21 session to the house and senate committees on natural resources and

1 government operations. The annual report shall assess the ~~agency's~~
2 department's performance in meeting the limits; identify areas which hinder
3 effective ~~agency~~ department performance; list fees collected for each permit;
4 summarize changes made by the ~~agency~~ department to improve performance;
5 describe staffing needs for the coming year; and certify that the revenue from
6 the fees collected is at least equal to the costs associated with those positions.
7 This report is in addition to the fee report and request, required by subchapter 6
8 of chapter 7 of Title 32.

9 (h) [Repealed.]

10 (i) The ~~secretary~~ department shall not process an application for which the
11 applicable fee has not been paid unless the ~~secretary~~ department specifies that
12 the fee may be paid at a different time or unless the person applying for the
13 permit is exempt from the permit fee requirements pursuant to section 710 of
14 Title 32. In addition, the persons who are exempt under section 710 of Title 32
15 are also exempt from the application fees for stormwater operating permits
16 specified in subdivisions (j)(2)(A)(iii)(I) and (II) of this section if they
17 otherwise meet the requirements of section 710. Municipalities shall be
18 exempt from the payment of fees under this section except for those fees
19 prescribed in subdivisions (j)(1), (2), (7), (8), (14), and (15) of this section for
20 which a municipality may recover its costs by charging a user fee to those who
21 use the permitted services, except that a municipality shall also be exempt from

1 those fees for orphan stormwater systems prescribed in subdivisions
2 (j)(2)(A)(iii) and (2)(B)(iv)(I) or (II) of this section when the municipality
3 agrees to become an applicant or co-applicant for an orphan stormwater system
4 under section 1264c of Title 10.

5 * * *

6 (o) The council may delegate to the executive director the preparation of
7 the budget and report required by subsection (a) of this section, provided that
8 the budget and report shall be subject to the council's approval prior to
9 submission to the governor or the general assembly. The council also may
10 delegate to the executive director, in whole or in part, authorities of
11 subsections (e) through (i) of this section.

12 Sec. 5. REPEAL

13 3 V.S.A. § 2823 (executive assistants; vacancy) is repealed.

14 Sec. 6. 3 V.S.A. §§ 2824 and 2825 are amended to read:

15 § 2824. TRANSFER OF PERSONNEL AND APPROPRIATIONS

16 (a) The ~~secretary~~ council, with the approval of the governor, may transfer
17 classified positions, ~~excepting fish and wildlife department positions,~~ between
18 ~~state departments and other~~ components of the agency department, subject only
19 to personnel laws and rules.

20 (b) The ~~secretary~~ council, with the approval of the governor, may transfer
21 appropriations or parts thereof between ~~departments and other~~ components in

1 the ~~agency~~ department, consistent with the purposes for which the
2 appropriations were made, ~~excepting fish and wildlife funds which shall~~
3 ~~remain separate and intact.~~

4 (c) The council may delegate authorities of this section in whole or part to
5 the executive director.

6 § 2825. DUTIES OF THE ~~SECRETARY~~ COUNCIL

7 (a) The primary duties of the ~~secretary~~ council are to ~~coordinate~~ discharge
8 faithfully the rulemaking, appellate, and enforcement authorities conferred on
9 it by law, to provide overall direction and coordination of the activities of the
10 various ~~departments and~~ divisions of the ~~agency~~ department for the proper
11 development, management, and preservation of Vermont's natural resources,
12 to develop policies for the proper and beneficial development, management,
13 and preservation of resources in harmony with the state comprehensive
14 planning program, and to promote the effective application of these policies by
15 the ~~departments and~~ divisions affected.

16 (b) The ~~secretary~~ council, with approval of the governor, may direct the
17 commissioner of finance and management to pay monies from the outdoor
18 recreation land and water conservation fund to state agencies or to a
19 municipality for recreational projects in accordance with the conditions of
20 Public Law 88-578.

1 (c) The ~~secretary~~ council may enter into contracts and agreements with
2 agencies of the United States and furnish to the agencies reports and
3 information necessary to enable their officials to perform their duties under
4 Public Law 88-578, and amendments thereto.

5 (d) The ~~secretary~~ council may delegate authorities and duties assigned to
6 ~~him or her~~ it by statute, for the purpose of administering chapters 55 and 159
7 of Title 10 and chapter 120 of Title 24.

8 (e) Before acquiring any interest in real property, the ~~secretary~~ department
9 shall offer to the legislative body of the municipality in which the real property
10 is located the opportunity to meet, during which meeting the ~~secretary~~
11 executive director or his or her designee shall describe the proposed acquisition
12 and answer questions raised by town officials or the general public, including
13 questions concerning the impact of the proposed acquisition on local tax
14 revenues. The municipality may hold a ~~non-binding~~ nonbinding referendum
15 on the proposed acquisition, either at the discretion of the legislative body of
16 the municipality or upon petition signed by five percent of the legal voters of
17 the municipality and presented to the legislative body. The ~~secretary~~ council
18 shall consider the results of any such referendum in making a final decision on
19 whether to acquire the property. The requirements of this section shall also
20 apply to the agency before it acquires interest in real property, except the
21 opportunity to meet shall be with the secretary of natural resources or his or

1 her designee, and the consideration of referendum results shall be made by the
2 secretary of natural resources.

3 (f) The council may delegate authorities of subsections (b) through (d) of
4 this section in whole or part to the executive director.

5 Sec. 7. 3 V.S.A. § 2829 is added to read:

6 § 2829. PROCEDURE BEFORE DIVISIONS OF THE DEPARTMENT

7 (a) The council shall promulgate rules establishing notice and procedural
8 requirements for applications reviewed and declaratory rulings issued by the
9 department.

10 (1) Such rules shall impose requirements that are more stringent than the
11 minimum required by statute for proposed projects that are substantial in scope
12 or are likely to have substantial impact under the standards and criteria used in
13 determining whether to approve the application.

14 (2) At a minimum, the rules shall divide application review before the
15 department into three classes:

16 (A) Applications for which the minimum statutory requirements
17 provide sufficient notice and procedures.

18 (B) Applications for which, in addition to minimum statutory
19 requirements, notice should be provided to adjoining landowners.

20 (C) Applications which should be processed according to the
21 contested case requirements of chapter 25 of this title, with the applicable

1 division director or the director's designee serving as the decision-maker, and
2 for which notice should be provided to adjoining landowners.

3 (b) For the purpose of this section, notice to adjoining landowners includes
4 the provision of a list of adjoining landowners to the applicable division and
5 the provision of personal notice to such landowners of any hearing, draft
6 permit, or public comment period, by the applicable division, in accordance
7 with the rules of the council. The rules shall provide that a division director
8 may authorize waiver of personal notice to all or some adjoining landowners
9 based on a determination that the landowners reasonably could not be affected
10 by the activity for which a permit or other approval is sought, and that service
11 to each and every landowner by the division would constitute a significant
12 public burden without corresponding benefit.

13 (c) Notwithstanding any other provision of law, personal notice of a
14 hearing, draft permit, or public comment period shall be provided by the
15 department to any adjoining landowner who has requested such notice.

16 (d) This section does not apply to notice and hearing requirements under
17 10 V.S.A. chapter 151.

18 Sec. 8. REDESIGNATION

19 3 V.S.A. chapter 51, subchapter 3 is redesignated to read:

20 Subchapter 3. ~~Commissioners and~~ Executive Director and Division

21 Directors

1 Sec. 9. 3 V.S.A. §§ 2851 through 2854 are amended to read:

2 § 2851. ~~COMMISSIONERS~~ EXECUTIVE DIRECTOR—APPOINTMENT;

3 TERM

4 ~~The secretary, with the approval of the governor, shall appoint a~~
5 ~~commissioner of each department, who shall be the chief executive and~~
6 ~~administrative officer and head of the department and shall serve at the~~
7 ~~pleasure of the secretary~~ The chair shall nominate and the council shall appoint
8 an executive director who shall be subject to the administrative supervision of
9 the chair. The term of the ~~commissioner~~ executive director shall be concurrent
10 with that of the ~~secretary~~ chair.

11 § 2852. MANDATORY AND DELEGATED DUTIES

12 (a) ~~The commissioner shall, with approval of the secretary determine the~~
13 ~~policies of the department, and may exercise the powers and shall perform the~~
14 ~~duties required for its effective administration.~~

15 (b) ~~In~~ Subject to the direction of the council and the administrative
16 supervision of the chair, and in addition to other duties imposed by law, the
17 ~~commissioner~~ executive director shall:

18 (1) ~~Administer the laws assigned to~~ Oversee and provide for the
19 day-to-day administration of the department and the laws assigned to it.

20 (2) Coordinate and integrate the work of the divisions.

1 (3) Supervise and control all staff functions and have general charge of
2 the offices and employees of the department, except for staff that the council
3 may specifically assign to assist the council with quasi-judicial proceedings,
4 which staff shall be supervised by the chair.

5 (4) Exercise all authorities that may be delegated to him or her by the
6 council, subject to such conditions that the council may impose.

7 (b) Notwithstanding any other provision of law, the executive director shall
8 not serve as chair or a member of the council, shall not convene or preside over
9 a meeting of the council, and shall not function as an advisor to the council
10 concerning a quasi-judicial or enforcement proceeding before the council.

11 § 2853. PERMISSIVE DUTIES; APPROVAL OF ~~SECRETARY~~ COUNCIL

12 The ~~commissioner~~ executive director, with the approval of the ~~secretary~~
13 council, may within the department:

14 (1) Transfer appropriations or parts thereof within or between divisions
15 and branches, consistent with the purposes for which the appropriations were
16 made.

17 (2) Transfer classified positions within or between divisions subject only
18 to state personnel laws and regulations.

19 (3) Cooperate with the appropriate federal agencies and administer
20 federal funds in support of programs within the department.

1 (4) Submit plans and reports, and in other respects comply with federal
2 law and regulations which pertain to programs administered by the department.

3 (5) ~~Make regulations consistent with law for the internal administration~~
4 ~~of the department and its programs.~~

5 (6) ~~Appoint a deputy commissioner. The provisions of subsections (d)~~
6 ~~and (e) of section 253 of this title shall apply.~~

7 (7) ~~Create such advisory councils or committees as he deems necessary~~
8 ~~within the department, and appoint their members, for a term not exceeding~~
9 ~~his.~~

10 (8) Provide training and instruction for any employees of the
11 department, at the expense of the department, in educational institutions or
12 other places.

13 (9)(6) Organize, reorganize, transfer, or abolish divisions, staff
14 functions, or sections within the department. This authority shall not extend to
15 divisions or other bodies created by law.

16 § 2854. DIRECTORS

17 (a) A director shall administer each division within the ~~agency~~ department.
18 The ~~commissioners~~ executive director, with the approval of the secretary chair,
19 shall appoint the directors for divisions which are part of a the department, ~~and~~
20 ~~the secretary shall appoint any other directors. All directors shall be appointed~~

1 ~~subject to the provisions of section 15 of this act~~ except that the director of
2 environmental enforcement shall be appointed by the council.

3 (b) Each division and its officers shall be under the overall direction of the
4 council and subject to the day-to-day supervision and control of the
5 ~~commissioner or the secretary, except with regard to judicial or quasi-judicial~~
6 ~~acts or duties vested in them by law~~ executive director.

7 (c) No regulation may be issued by a director of a division without the
8 approval of the ~~commissioner or his designee and the secretary~~ council.

9 Sec. 10. REDESIGNATION

10 3 V.S.A. chapter 51, subchapter 4 is redesignated to read:

11 Subchapter 4. ~~Departments, Divisions and Boards~~ Agency of Natural
12 Resources

13 Sec. 11. 3 V.S.A. § 2870 is added to read:

14 § 2870. CREATION; SECRETARY

15 (a) An agency of natural resources is created. The agency shall consist of
16 the following:

17 (1) The department of fish and wildlife, including:

18 (A) The division of wildlife.

19 (B) The division of fisheries.

20 (C) The division of law enforcement.

21 (2) The department of forests, parks and recreation, including:

1 (A) The division of forests.

2 (B) The division of parks.

3 (C) The division of recreation.

4 (3) The board of forests, parks and recreation.

5 (b) The agency shall be under the direction and supervision of a secretary
6 of natural resources, who shall be exempt from the classified service and
7 appointed by the governor with the advice and consent of the senate. The
8 secretary shall be a member of the governor's cabinet and shall serve at the
9 pleasure of the governor.

10 (c) As used in this subchapter, "secretary" means the secretary of natural
11 resources under subsection (b) of this section.

12 (d) The agency is attached to the department of environmental quality for
13 the purpose of receiving administrative support.

14 (e) The following shall apply to the secretary:

15 (1) The secretary shall determine the policies of the agency and its
16 departments, and may exercise the powers and shall perform the duties
17 required for its effective administration.

18 (2) In addition to other duties imposed by law, the secretary shall:

19 (A) Administer the laws assigned to the agency and its departments.

20 (B) Coordinate and integrate the work of the agency's departments
21 and their divisions.

1 (C) Supervise and control all staff functions.

2 (f) With the approval of the governor, the secretary may:

3 (1) Transfer appropriations or parts thereof within or between
4 departments, divisions, and branches, consistent with the purposes for which
5 the appropriations were made.

6 (2) Transfer classified positions within or between departments and
7 divisions subject only to state personnel laws and regulations.

8 (3) Cooperate with the appropriate federal agencies and administer
9 federal funds in support of programs within the agency.

10 (4) Submit plans and reports, and in other respects comply with federal
11 law and regulations which pertain to programs administered by the agency.

12 (5) Make regulations consistent with law for the internal administration
13 of the agency and its programs.

14 (6) Appoint an employee to act as secretary in the event of the
15 secretary's absence or vacancy in the office of the secretary. The provisions of
16 subsections 253(d) and (e) of this title shall apply.

17 (7) Create such advisory councils or committees as he or she deems
18 necessary within the agency, and appoint their members for a term not
19 exceeding his or hers.

1 (8) Provide training and instruction for any employees of the
2 department, at the expense of the agency, in educational institutions or other
3 places.

4 (9) Organize, reorganize, transfer, or abolish divisions, staff functions,
5 or sections within the agency. This authority shall not extend to divisions or
6 other bodies created by law.

7 Sec. 12. 3 V.S.A. §§ 2871 and 2872 are amended to read:

8 § 2871. DEPARTMENT OF FISH AND WILDLIFE

9 (a) The department of fish and wildlife is reconstituted within the agency of
10 natural resources as the successor to and the continuation of the department of
11 fish and wildlife. The department of fish and wildlife shall be under the
12 direction and supervision of the secretary. Fish and wildlife funds shall be
13 used only for the purposes of the department.

14 (b) The fish and wildlife board shall retain and exercise all powers and
15 functions given to it by law which are of regulatory or quasi-judicial nature,
16 including the power to adopt, amend, and repeal rules and regulations, to
17 conduct hearings, to adjudicate controversies, and to issue and enforce orders,
18 in the manner and to the extent to which those powers are given to that board
19 by law.

1 § 2872. DEPARTMENT OF FORESTS, PARKS AND RECREATION

2 (a) The department of forests, parks, and recreation is reconstituted within
3 the agency of natural resources as the successor to and the continuation of the
4 department of forests and parks and the division of recreation; including the
5 board of forests, parks and recreation with jurisdiction over Camel's Hump
6 forest reserve commission, northeast forest fire protection commission, and the
7 forest resource advisory council. The department of forests, parks and
8 recreation shall be under the direction and supervision of the secretary.

9 (b) The department of forests, parks and recreation shall provide support to
10 the departments of environmental quality and of fish and wildlife with respect
11 to the acquisition and management of lands owned or controlled by those
12 departments.

13 Sec. 13. DESIGNATION

14 Within 3 V.S.A. chapter 51, immediately prior to 3 V.S.A. § 2873,
15 subchapter 5 is designated to read:

16 Subchapter 5. Department of Environmental Quality; Divisions

17 Sec. 14. 3 V.S.A. § 2873 is amended to read:

18 § 2873. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

19 QUALITY

20 (a) The department of environmental ~~conservation is created within the~~
21 ~~agency of natural resources.~~ quality is the successor to and

1 continuation of the ~~department~~ departments of environmental conservation and
2 of water resources and environmental engineering and of the natural resources
3 board, and shall administer the water resources programs contained in Title 10;
4 air pollution control and abatement as provided in chapter 23 of Title 10; state
5 land use and development as provided in chapter 151 of Title 10; waste
6 disposal as provided in chapter 159 of Title 10; and subdivision and trailer and
7 tent sites ~~as provided in subsection (c) of this section.~~

8 (b) The department shall perform design and construction supervision
9 services for major maintenance and capital construction projects for the ~~agency~~
10 ~~and all of its components~~ departments of fish and wildlife and of forests, parks
11 and recreation and for itself.

12 * * *

13 (e) There is created within the department of environmental ~~conservation~~
14 quality a division of pollution prevention, which shall carry out nonregulatory
15 functions of the department under 10 V.S.A. chapter 159, subchapter 2, in
16 providing technical assistance and coordinating state efforts to bring about a
17 decrease, within the state, in the use of toxics and the generation of hazardous
18 wastes. The office shall:

19 * * *

20 (f) There is created a toxics technical advisory board, that is attached to the
21 division of pollution prevention.

1 (5) Requisitioning from the department of buildings and general services
2 of the agency of administration, of supplies, equipment, and other
3 requirements;

4 (6) Management improvement services; and

5 (7) Other administrative functions assigned to it by the ~~secretary~~
6 executive director with the approval of the council.

7 (c) Other provisions of law notwithstanding, all administrative service
8 functions delegated to other components of the ~~agency~~ departments to which it
9 provides services shall be performed ~~within the agency~~ for those departments
10 by the administrative services division.

11 § 2877. PLANNING DIVISION

12 (a) The planning division ~~of the agency~~ is created within the department of
13 environmental quality. It shall be administered by a director of planning.

14 (b) The planning division shall be responsible for:

15 (1) Centralized strategic planning for all components of the ~~agency~~
16 department.

17 (2) Coordination of professional and technical planning of the line
18 components of the ~~agency~~ department, aiming towards maximum service to the
19 public.

20 (3) Coordinating activities and plans of the ~~agency~~ department with
21 other major agencies and the governor's office.

1 (4) Preparing multi-year plans and long-range plans and programs to
2 meet problems and opportunities for service to the public.

3 (5) Preparing a municipal planning and land use manual in accordance
4 with section 4304 of Title 24.

5 (6) Providing technical assistance and training to municipal
6 commissions and boards regarding the development, administration, and
7 enforcement of municipal land use bylaws. In collaboration with the regional
8 commissions, the Vermont land use education and training collaborative, and
9 the Vermont League of Cities and Towns, Inc., the planning division shall
10 develop a municipal commission and board training program to foster fair and
11 consistent regulatory review of such commissions and boards.

12 (7) Providing assistance to the Vermont downtown development board
13 in accordance with 24 V.S.A. § 2792.

14 (8) Coordinating the provision to the Vermont center for geographic
15 information of data known to or maintained by the department that is relevant
16 to applications for permits, certificates, or other approvals under the statutes
17 administered by the department and chapter 117 of Title 24, ensuring that such
18 provision occurs in a manner that is timely and includes the most current data
19 available, and working with the center to ensure that it produces and maintains
20 geographic information service map layers that contain such data.

1 (9) Creating rules of procedure and ethics for use by appropriate
2 municipal panels under chapter 117 of Title 24. On adoption by the council as
3 rules pursuant to chapter 25 of this title, these rules shall apply to appropriate
4 municipal in the manner specified under 24 V.S.A. § 4461(a)(1). The council
5 shall adopt an initial set of rules under this subdivision (9) no later than
6 January 31, 2012.

7 (10) Other planning functions assigned to it by the ~~secretary~~ council.

8 § 2879. DIVISION OF GEOLOGY AND MINERAL RESOURCES

9 The division of geology and mineral resources is created within the
10 department of environmental quality. It shall be administered by a director
11 who shall be the state geologist.

12 Sec. 16. 3 V.S.A. § 2880 is added to read:

13 § 2880. DIVISION OF ENVIRONMENTAL ENFORCEMENT

14 The division of environmental enforcement is created within the department
15 of environmental quality. It shall be administered by the director of
16 environmental enforcement who shall be appointed by the environmental
17 council. The director of environmental enforcement shall be subject to the
18 supervision of the executive director and may be removed for cause only. The
19 director of environmental enforcement shall have authority to execute
20 assurances of discontinuance and issue administrative orders in accordance
21 with chapter 201 of Title 10, to petition the council for revocation of a permit,

1 certificate, or other approval issued by the department, and to refer matters to
2 the attorney general for civil enforcement on behalf of the department under
3 chapter 211 of Title 10. The director of environmental enforcement shall not
4 function as an advisor to the council concerning a quasi-judicial or
5 enforcement proceeding before the council.

6 Sec. 17. 3 V.S.A. § 2881 is added to read:

7 § 2881. OFFICE OF ENVIRONMENTAL COUNSEL

8 The office of environmental counsel is created within the department. The
9 office shall be a division of the department administered by the chief
10 environmental counsel. The office shall include all department attorneys who
11 advise and work with the regulatory divisions of the department and those
12 attorneys who appear before the council on appeals of department acts and
13 decisions under section 8504 of Title 10. The office shall advocate before the
14 council in support of the protection of the environment in accordance with the
15 statutes and regulations administered by the department. The office shall not
16 include counsel to the council appointed and employed under section 2887 of
17 this title.

18 * * * Quasi-Judicial Proceedings before Environmental Council * * *

19 Sec. 18. 3 V.S.A. chapter 51, subchapter 6 is added to read:

20 Subchapter 6. Quasi-Judicial Proceedings; Environmental Council

1 § 2885. POWERS; PROCESS; REVOCATION

2 (a) The council shall have the powers of a court of record in the
3 determination and adjudication of all requests for hearing under chapter 201 of
4 Title 10, all appeals of all actions or decisions as provided in chapter 220 of
5 Title 10, and petitions for revocation under subsection (j) of this section. It
6 may render judgments and enforce the same by any suitable process issuable
7 by courts in this state.

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

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

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

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

1 (f) The forms, pleadings, and rules of practice and procedure before the
2 council shall be prescribed by it.

3 (g) The council shall hear all requests for hearing under chapter 201 of
4 Title 10, all appeals on all acts or decisions specified in chapter 220 of
5 Title 10, and all petitions for revocation under subsection (j) of this section and
6 make its findings of fact and rulings of law. Upon appeal to the supreme court,
7 the council's findings of fact, if supported by substantial evidence on the
8 record as a whole, shall be conclusive.

9 (h) A quasi-judicial proceeding before the council shall be deemed
10 completed when the council enters a final decision, even though that decision
11 is appealed to the supreme court and remanded by that court.

12 (i) When a council member who hears all or a substantial part of a
13 quasi-judicial proceeding retires from office before the proceeding is
14 completed, he or she shall remain a member of the council for the purpose of
15 concluding and deciding that proceeding, and signing the findings and
16 judgments involved. A retiring chair shall also remain a member for the
17 purpose of certifying questions of law if a party appeals to the supreme court.

18 (j) After notice and opportunity for hearing, the council may revoke any
19 permit, certificate, or other approval granted by the department. Grounds for
20 revocation include:

1 (1) noncompliance with a statute administered by the department, rules
2 adopted under such a statute, or an order that is issued that relates to such a
3 statute;

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

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

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

8 (5) failure to pay a penalty or other sums owed pursuant to, or other
9 failure to comply with, court order, stipulation agreement, schedule of
10 compliance, or other order issued under Vermont statutes and related to a
11 permit issued by the department.

12 § 2886. POWERS OF SINGLE COUNCIL MEMBER OR OTHER OFFICER

13 OR EMPLOYEE

14 (a) One council member or any officer or employee of the council or
15 department duly appointed by the chair of the council may inquire into and
16 examine any matter within the jurisdiction of the council, except that the
17 following may not serve as a hearing officer:

18 (1) the executive director;

19 (2) the director of environmental enforcement;

1 (3) with respect to an appeal under chapter 220 of Title 10, the director
2 or any employee of the division issuing the decision or taking the action that is
3 on appeal;

4 (4) with respect to a request for hearing under chapter 201 of Title 10 or
5 a petition for revocation, any employee of the environmental enforcement
6 division and any director or employee of a division that administers a statute,
7 regulation, or permit that is the subject of the request for hearing or petition for
8 revocation; and

9 (5) any other officer or employee of the department whose participation
10 as a hearing officer would be a conflict of interest or would cause a reasonable
11 person to lose confidence in the integrity of the council's quasi-judicial
12 process, in accordance with the rules of the council.

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

18 (c) A hearing officer shall report his or her findings of fact in writing to the
19 council in the form of a proposal for decision. A copy shall be served upon the
20 parties pursuant to section 811 of this title. However, judgment on those
21 findings shall be rendered only by a majority of the council.

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

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

8 (f) Notwithstanding subsection (c) of this section, the chair may appoint a
9 hearing officer to hear and finally determine any appeal under chapter 220 of
10 Title 10. Upon petition of a party, filed within 30 days of issuance of the
11 hearing officer's decision, or on its own motion, the council may determine
12 that the hearing officer's decision should be treated as a proposal for decision
13 and order as provided in subsection (c) of this section. The council may grant
14 such request for good cause, including apparent error of fact or procedural or
15 substantive law, and may conduct additional evidentiary hearings or hear oral
16 argument from the parties. If such request is not timely made or is not granted
17 by the council, the decision and order of the hearing officer shall become the
18 final decision of the council.

19 § 2887. EXPERTS AND PERSONNEL

20 (a) With the approval of the governor, the council may appoint and employ,
21 at the expense of the state, legal counsel, scientists, engineers, and such

1 number of experts, clerks, stenographers, and temporary employees as it deems
2 necessary in the performance of its quasi-judicial functions. Such personnel
3 shall be subject to the direct supervision of the chair and not the executive
4 director.

5 (b) Notwithstanding the requirement for approval of the governor under
6 subsection (a) of this section, the council shall appoint and employ, at the
7 expense of the state, at least one attorney to be its counsel, another staffperson
8 who may be an attorney, and at least two scientists with qualifications
9 appropriate to the matters within the council's rulemaking and quasi-judicial
10 authority to serve as staff and advisors to the council. These employees may
11 act as hearing officers.

12 (c) Employees retained under this section shall not be part of the office of
13 environmental counsel or division of environmental enforcement.

14 § 2888. PARTICULAR PROCEEDINGS; PERSONNEL

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

17 (A) to assist the council on any request for hearing under chapter 201
18 of Title 10, on any appeal under chapter 220 of Title 10, or on any petition for
19 revocation;

20 (B) to monitor compliance with any decision of the council issued in
21 a quasi-judicial capacity;

1 (C) to assist other state agencies that are named parties to a
2 quasi-judicial proceeding before the council when the council determines that
3 they are essential to a full consideration of the matter; and

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

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

13 § 2889. ASSESSMENT OF COSTS

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

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

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

17 * * * Act 250 Provisions * * *

18 Sec. 19. 10 V.S.A. § 6001 is amended to read:

19 § 6001. DEFINITIONS

20 When used in this chapter:

1 Sec. 20. 10 V.S.A. § 6007(c) is amended to read:

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

1 coordinator shall be subject to a request for reconsideration in accordance with
2 rules of the ~~board~~ council and may be appealed to ~~the environmental court~~
3 pursuant to chapter 220 of this title.

4 Sec. 21. 10 V.S.A. § 6021 is amended to read:

5 § 6021. ~~BOARD; VACANCY; REMOVAL~~ COMMISSIONS;

6 DISQUALIFICATION, INABILITY TO SERVE

7 (a) ~~A natural resources board is created with a land use panel and a water~~
8 ~~resources panel. The board shall consist of nine members appointed by the~~
9 ~~governor, with the advice and consent of the senate, so that one appointment~~
10 ~~on each panel expires in each odd-numbered year. In making appointments,~~
11 ~~the governor and the senate shall give consideration to experience, expertise, or~~
12 ~~skills relating to the environment or land use. The governor shall appoint a~~
13 ~~chair of the board, a position that shall be a full-time position. The other eight~~
14 ~~members shall be appointed by the governor, four to the water resources panel~~
15 ~~of the board and four others to the land use panel of the board. The chair shall~~
16 ~~serve as chair on each panel of the board. Following initial appointments, the~~
17 ~~members, except for the chair, shall be appointed for terms of four years. The~~
18 ~~governor shall appoint up to five persons, with preference given to former~~
19 ~~environmental board, water resources board, natural resources board or district~~
20 ~~commission members, with the advice and consent of the senate, to serve as~~
21 ~~alternates for board members. Alternates shall be appointed for terms of four~~

1 ~~years, with initial appointments being staggered. The board chair may assign~~
2 ~~alternates to sit on specific matters before the panels of the board, in situations~~
3 ~~where fewer than five panel members are available to serve. No person who~~
4 ~~receives or, during the previous two years, has received a significant portion of~~
5 ~~the person's income directly or indirectly from permit holders or applicants for~~
6 ~~one or more permits under chapter 47 of this title may be a member of the~~
7 ~~water resources panel.~~

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.~~

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

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

17 Sec. 22. REPEAL

18 10 V.S.A. §§ 6022 (personnel) and 6024 (intragovernmental cooperation)
19 are repealed.

1 Sec. 25. 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. 26. 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 220 of this title. Revenues to the fund shall be those fees collected
10 in accordance with subdivisions 6025(b)(1)–(3) and section 6083a of this title,
11 gifts, appropriations, and copying and distribution fees. Revenues to the fund
12 shall also include those fees and costs collected under chapter 220 of this title.
13 The ~~board~~ council shall be responsible for the fund and shall account for
14 revenues and expenditures of the ~~board~~ council. At the commissioner's
15 discretion, the commissioner of finance and management may anticipate
16 amounts to be collected and may issue warrants based thereon for the purposes
17 of this section. Disbursements from the fund shall be made through the annual
18 appropriations process to the ~~board, and to the agency of natural resources~~
19 department of environmental quality to support the council, the district
20 coordinators and district commissions under this chapter, and those other
21 programs within the ~~agency~~ department that directly or indirectly assist in the

1 review of Act 250 applications or proceedings before the council. This fund
2 shall be administered as provided in subchapter 5 of chapter 7 of Title 32.

3 Sec. 27. 10 V.S.A. § 6083 is amended to read:

4 § 6083. APPLICATIONS

5 * * *

6 (b) An applicant or petitioner shall grant the ~~appropriate panel of the board~~
7 council, department, or district commission, or their agents, permission to enter
8 upon the applicant's or petitioner's land for these purposes.

9 * * *

10 (d) The ~~panels of the board~~ council and commissions shall make all
11 practical efforts to process matters before ~~the board and permits them~~ in a
12 prompt manner. The ~~land use panel~~ council shall establish time limits for the
13 processing of land use permits issued under section 6086 of this title as well as
14 procedures and time periods within which to notify applicants whether an
15 application is complete. The ~~land use panel~~ council shall report annually by
16 February 15 to the house and senate committees on natural resources and
17 energy and on government operations, and the house committee on fish,
18 wildlife and water resources. The annual report shall assess the performance
19 of the ~~board~~ council and commissions in meeting the limits; identify areas
20 which hinder effective performance; list fees collected for each permit;
21 summarize changes made to improve performance; and describe staffing needs

1 for the coming year. The annual report shall list the number of enforcement
2 actions taken by the ~~land use panel~~ council, the disposition of such cases, and
3 the amount of penalties collected.

4 * * *

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

8 * * *

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

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

15 Sec. 28. 10 V.S.A. § 6085 is amended to read:

16 § 6085. HEARINGS; PARTY STATUS

17 (a), (b) [Deleted.]

18 (c)(1) Party status. In proceedings before the district commissions, the
19 following persons shall be entitled to party status:

20 (A) The applicant;

21 (B) The landowner, if the applicant is not the landowner;

1 representative for the purposes of this subsection. These efforts at dispute
2 resolution shall not affect the burden of proof on issues before a commission or
3 the environmental court, nor shall they affect the requirement that a permit
4 may be issued only after the issuance of affirmative findings under the criteria
5 established in section 6086 of this title.

6 Sec. 29. 10 V.S.A. § 6086 is amended to read:

7 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

8 * * *

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

1 ~~approvals and permits issued by the agency of natural resources~~ divisions of
2 the department other than the division of state land use, technical
3 determinations of ~~the agency~~ the department shall be accorded substantial
4 deference by the commissions. The same deference also shall be given to
5 technical determinations of the departments of fish and wildlife and of forests,
6 parks and recreation. The acceptance of negative determinations issued by a
7 development review board under the provisions of 24 V.S.A. § 4420, with
8 respect to local Act 250 review of municipal impacts shall create a
9 presumption that the application is detrimental to the public health and welfare
10 with respect to the specific requirement for which it is accepted. Any
11 determinations, positive or negative, under the provisions of 24 V.S.A. § 4420
12 shall create presumptions only to the extent that the impacts under the criteria
13 are limited to the municipality issuing the decision. Such a rule may be
14 revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter
15 25, the Vermont Administrative Procedure Act. The rules adopted by the ~~land~~
16 ~~use panel~~ council shall not approve the acceptance of a permit or approval of
17 such an agency or a permit of a municipal government unless it satisfies the
18 appropriate requirements of subsection (a) of this section.

19 * * *

1 Sec. 30. 10 V.S.A. § 6086b is added to read:

2 § 6086b. PERMIT CONSOLIDATION

3 Notwithstanding any other provision of law, each of the following shall
4 apply when a development or subdivision subject to this chapter also requires
5 other permits, certificates, or approvals from the department:

6 (1) The applicant shall apply to the district commission for a permit
7 under this chapter and all other required permits, certificates, and approvals
8 from the department on a form issued by the department's executive director
9 and approved by the council.

10 (2) The applicable time frames and notice and hearing procedures for all
11 such other permits, certificates, and approvals shall run concurrently with the
12 process under this chapter and shall be those time frames and procedures that
13 apply to applications under this chapter.

14 (3) The determination of whether to issue such other permit, certificate,
15 or approval of the department shall not be made by the division or branch of
16 the department that would make the determination absent jurisdiction under
17 this chapter. Instead, such division or branch of the department shall make its
18 recommendation to the district commission. Technical determinations
19 contained in this recommendation shall be entitled to substantial deference in
20 accordance with subsection 6086(d) of this title.

1 (4) The district commission shall have authority to determine whether to
2 approve, approve with conditions, or deny an application under this section.

3 (5) In addition to the findings required by section 6086 of this title,
4 before granting a permit under this section, the district commission shall make
5 all findings required by, and necessary to ensure that the development or
6 subdivision will comply with all applicable statutes and regulations of the
7 department.

8 (6) The district commission shall issue its determination on an
9 application under this section as one set of findings of fact and conclusions of
10 law and, if a permit is granted, an associated permit that at a minimum
11 states the statutes and regulations under which it is issued, the required
12 approvals and approved activities which it encompasses, and all conditions that
13 the district commission has determined to be necessary.

14 (7) If a statute or regulation of the department applied by the district
15 commission under this section requires that a permit, certificate, or other
16 approval be for a specified period of time or subject to expiration, the district
17 commission's decision under this section shall indicate which specific
18 findings, approvals, and activities are time-limited, the date of expiration, and
19 the date by which an application for renewed authority must be filed.

1 (A) Other findings, approvals, and activities for the same
2 development or subdivision contained in the decision shall not be affected by
3 such time limit or expiration.

4 (B) The district commission shall be the decision-making body for
5 each such application for renewed authority, and the provisions of subdivisions
6 (3) through (5) of this section shall apply.

7 (8) With respect to a proceeding for partial findings under subsection
8 6086(b) of this title, review of all other required permits, certificates, or
9 approvals of the department that address the requirements of the findings at
10 issue in the proceeding shall be consolidated with that proceeding in
11 accordance with this section.

12 (A) The provisions of subsection 6086(b) of this title and the rules of
13 the council concerning issuance of partial findings shall apply to the
14 consolidated consideration of such other permits, certificates, or approvals.

15 (B) The district commission's decision in such a proceeding shall
16 include partial findings of fact and conclusions of law only, and actual
17 approval under the applicable statutes and regulations of the department shall
18 await the consideration of the remaining criteria of section 6086 of this title.

19 (C) The consolidated consideration of other required permits,
20 certificates, or approvals of the department that do not address the

1 requirements of the findings at issue may await the consideration of the
2 remaining criteria of section 6086 of this title.

3 (9) The council shall adopt such rules as are necessary to effect an
4 orderly and efficient process under this section.

5 * * * Environmental Enforcement * * *

6 Sec. 31. 10 V.S.A. § 8001 is amended to read:

7 § 8001. LEGISLATIVE FINDINGS

8 The general assembly finds it necessary to standardize and enhance the
9 enforcement powers of the ~~secretary of the agency of natural resources and the~~
10 ~~enforcement powers of the land use panel of the natural resources board~~
11 department of environmental quality in order to:

12 * * *

13 Sec. 32. 10 V.S.A. § 8002 is amended to read:

14 § 8002. DEFINITIONS

15 As used in this chapter:

16 (1) ~~“Board”~~ “Council” means the ~~natural resources board defined by~~
17 ~~subdivision 6001(1) of this title~~ environmental council created under
18 chapter 51 of Title 3.

19 * * *

20 (3) “Investigator” means an investigator designated and duly authorized
21 by the ~~secretary or the board~~ director.

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* * *

(7) ~~“Secretary” means the secretary of the agency of natural resources,~~
~~or the secretary’s duly authorized representative~~ “Department” means the
department of environmental quality created under chapter 51 of Title 3.

* * *

(10) ~~“Land use panel” means the land use panel of the board, as~~
~~established under chapter 151 of this title~~ “Director” means the director of
environmental enforcement under sections 2854 and 2880 of Title 3.

* * *

Sec. 33. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The ~~secretary~~ director may take action under this chapter to enforce the
following statutes:

* * *

(b) The ~~secretary’s~~ administrative enforcement authority established by this
chapter shall supplement any authority of the ~~secretary~~ department or other
state agency or department established by the chapters set forth in subsection
(a) of this section to initiate criminal proceedings, or civil proceedings under
chapters 47, 56, 59₂ and 159 of this title.

* * *

1 Sec. 34. 10 V.S.A. § 8004 is amended to read:

2 § 8004. ENFORCEMENT OF ACT 250; NATURAL RESOURCES

3 In addition to the enforcement of ~~chapter 151 of this title~~ on the ~~secretary's~~
4 director's initiative, the ~~secretary shall~~ director may institute enforcement
5 proceedings under chapter 151 of this title when requested by ~~the land use~~
6 panel a district coordinator or district commission and, when requested by the
7 secretary of natural resources, shall institute enforcement proceedings under a
8 statute identified in subsection 8003(a) of this title that confers authority on the
9 departments of fish and wildlife or of forests, parks and recreation. The
10 ~~secretary and the land use panel shall develop procedures for the cooperative~~
11 ~~enforcement of chapter 151 of this title.~~

12 Sec. 35. 10 V.S.A. § 8016 is amended to read:

13 § 8016. RULEMAKING

14 The ~~secretary, in consultation with the land use panel,~~ council shall adopt
15 rules defining classes of violations and an appropriate range of administrative
16 penalties to be assessed for each class of violation. The classes of violation
17 and range of penalties shall take into account the degree of potential impact on
18 public health, safety, and welfare and the environment resulting from the
19 violation. No administrative penalty may be assessed as part of an
20 administrative order pursuant to this chapter until applicable rules and
21 procedures have been adopted.

1 Sec. 36. 10 V.S.A. § 8019 is amended to read:

2 § 8019. ENVIRONMENTAL TICKETING

3 (a) The ~~secretary and the board~~ each council shall have the authority to
4 adopt rules for the issuance of civil complaints for violations of ~~their respective~~
5 the department's enabling statutes or other statutes identified in subsection
6 8003(a) of this title or rules adopted under those statutes that are enforceable in
7 the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any
8 proposed rule under this section shall include both the full and waiver penalty
9 amounts for each violation. The maximum civil penalty for any violation
10 brought under this section shall not exceed \$3,000.00 exclusive of court fees.

11 (b) A civil complaint issued under this section shall preclude the ~~issuing~~
12 ~~entity~~ director from seeking an additional monetary penalty for the violation
13 specified in the complaint when any one of the following occurs: the waiver
14 penalty is paid, judgment is entered after trial or appeal, or a default judgment
15 is entered. Notwithstanding this preclusion, the ~~agency and the board~~ director
16 may issue additional complaints or initiate an action under chapter 201 of this
17 title, including a monetary penalty when a violation is continuing or is
18 repeated, and may also bring an enforcement action to obtain injunctive relief
19 or remediation and, in such additional action, may recover the costs of bringing
20 the additional action and the amount of any economic benefit the respondent

1 obtained as a result of the underlying violation in accordance with subdivisions
2 8010(b)(7) and (c)(1) of this title.

3 (c) The ~~secretary or board chair~~ director and his or her duly authorized
4 representative shall have the authority to amend or dismiss a complaint by so
5 marking the complaint and returning it to the judicial bureau or by notifying
6 the hearing officer at the hearing.

7 * * *

8 Sec. 37. 10 V.S.A. § 8221 is amended to read:

9 § 8221. CIVIL ENFORCEMENT

10 (a) The ~~secretary, or the land use panel of the natural resources board with~~
11 ~~respect to matters relating to land use permits under chapter 151 of this title~~
12 ~~only,~~ department of environmental quality may bring an action in superior
13 court to enforce the provisions of law specified in subsection 8003(a) of this
14 title, to ensure compliance, and to obtain penalties in the amounts described in
15 subsection (b) of this section. The agency of natural resources shall have the
16 same authority with regard to a provision of law specified in subsection
17 8003(a) of this title that refers to the authority of one of its departments. The
18 action shall be brought by the attorney general in the name of the state.

19 * * *

1 of environmental quality created under 3 V.S.A. chapter 51. For the purposes
2 of this chapter, “~~secretary~~” “department” shall also mean the ~~commissioner of~~
3 ~~the department of environmental conservation, the commissioner of the~~
4 ~~department~~ departments of forests, parks and recreation; and the ~~commissioner~~
5 ~~of the department~~ of fish and wildlife, with respect to those statutes that refer
6 to the authority of that ~~commissioner or~~ department.

7 Sec. 39. 10 V.S.A. § 8503(c) is amended to read:

8 (c) This chapter shall govern:

9 (1) ~~all~~ All appeals arising under ~~24 V.S.A. chapter 117 of Title 24,~~ the
10 planning and zoning chapter.

11 (2) All appeals arising from a designation decision by the Vermont
12 downtown development board under section 2793b, 2793c, or 2793d of
13 Title 24.

14 Sec. 40. 10 V.S.A. § 8504(b) is amended to read:

15 (b) Planning and zoning and downtown development chapter appeals.

16 (1) Within 30 days of the date of the act or decision, an interested
17 person, as defined in 24 V.S.A. § 4465, who has participated as defined in
18 24 V.S.A. § 4471 in the municipal regulatory proceeding under that chapter
19 may appeal to the environmental ~~court~~ council an act or decision made under
20 that chapter by a board of adjustment, a planning commission, or a
21 development review board; provided, however, that decisions of a

1 development review board under 24 V.S.A. § 4420 with respect to local Act
2 250 review of municipal impacts are not subject to appeal but shall serve as
3 presumptions under chapter 151 of this title.

4 (2) Within 30 days of a designation decision under 24 V.S.A.
5 § 2793b(b), 2793c(e), or 2793d(b), any interested person as defined in this
6 subdivision may appeal to the environmental council.

7 (A) Any such appellant must have participated before the Vermont
8 downtown development board created under 24 V.S.A. § 2792 by submitting
9 written comments to that board or appearing at a public hearing or meeting of
10 that board and providing oral comments pertaining to the designation at issue.

11 (B) For the purpose of this subdivision (2), “interested person” means
12 any one of the following:

13 (i) A person aggrieved by the decision.

14 (ii) The municipality seeking the designation and any municipality
15 that is adjacent to the area proposed for the designation.

16 (iii) Any person owning or occupying property in or adjacent to
17 the area proposed for the designation who can demonstrate a potential physical
18 or environmental impact on the person’s interest from the designation, and
19 who alleges that the designation does not conform to the requirements of the
20 statute under which it was issued.

1 (iv) Any 10 persons who may be any combination of voters or real
2 property owners within the municipality seeking the designation who, by
3 signed petition, allege that the designation does not conform to the
4 requirements of the statute under which it was issued. Such appellants must
5 designate one person to serve as their representative regarding all matters
6 related to the appeal.

7 (v) Any department and administrative subdivision of this state
8 owning property or any interest in property within the region or municipality,
9 and the agency of commerce and community development of this state.

10 (3) Notwithstanding ~~subdivision~~ subdivisions (1) and (2) of this
11 subsection, an interested person may appeal an act or decision under 24 V.S.A.
12 chapter 117 of Title 24 or a designation decision under section 2793b, 2793c,
13 or 2793d of Title 24 if the environmental judge council determines that:

14 (A) there was a procedural defect which prevented the person from
15 ~~obtaining interested person status or~~ participating in the proceeding or, in the
16 case of subdivision (1) of this subsection (b), from obtaining interested person
17 status;

18 (B) in the case of subdivision (1) of this subsection (b), the decision
19 being appealed is the grant or denial of interested person status; or

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

1 Sec. 41. 10 V.S.A. § 8504(l) through (n) are amended to read:

2 (l) Representation. The ~~secretary~~ department's office of environmental
3 counsel may represent the ~~agency of natural resources~~ department in all
4 appeals under this section, provided that any such representation is by counsel
5 who does not also provide assistance to the council on any quasi-judicial
6 proceeding. ~~The chair of the natural resources board, on behalf of the board or~~
7 ~~either panel, may represent the board or either panel of the natural resources~~
8 ~~board in any appeal under this section, unless the board or the relevant panel~~
9 ~~directs otherwise~~. If more than one state agency, ~~other than the board or a~~
10 ~~panel of the natural resources board~~, either appeals or seeks to intervene in an
11 appeal under this section, only the attorney general may represent the interests
12 of those agencies of the state in the appeal.

13 (m) Precedent. Prior decisions of the environmental board, water resources
14 board, ~~and~~ waste facilities panel, and environmental court shall be given the
15 same weight and consideration as prior decisions of the environmental ~~court~~
16 council.

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

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

21 (2) is a party by right;

1 appellant is unable to pay the fee or publication costs. The fee of \$250.00 shall
2 not apply to appeals to the council initiated in the name of the state by public
3 officials authorized to do so.

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

6 * * * Title 24 Provisions (Growth Centers; Municipal and
7 Regional Land Use Planning) * * *

8 Sec. 44. 24 V.S.A. § 2792 is amended to read:

9 § 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

10 (a) A “Vermont downtown development board,” also referred to as the
11 “state board,” is created to administer the provisions of this chapter. The state
12 board shall be composed of the following members, or their designees:

13 (1) The secretary of commerce and community development;

14 (2) The secretary of transportation;

15 (3) ~~The secretary of natural resources~~ executive director of the
16 department of environmental quality;

17 (4) ~~the commissioner of public safety~~ The planning director of the
18 department of environmental quality;

19 (5) ~~the~~ The state historic preservation officer;

1 * * *

2 ~~(f) In situations in which the state board is considering applications for~~
3 ~~designation as a growth center, in addition to the permanent members of the~~
4 ~~state board, membership shall include as a full voting member a member of the~~
5 ~~Vermont planners association (VPA) designated by the association; the chair~~
6 ~~of the natural resources board or a representative of the land use panel of the~~
7 ~~natural resources board designated by the chair; and a representative of a~~
8 ~~regional planning commission designated by the Vermont association of~~
9 ~~regional planning and development agencies (VAPDA) and an alternate~~
10 ~~representative designated by VAPDA to enable all applications to be~~
11 ~~considered by a representative from a regional planning commission other than~~
12 ~~the one to which the applicant municipality is a member. The alternate~~
13 ~~designated by VAPDA may vote only when the designated representative does~~
14 ~~not vote.~~

15 Sec. 45. 24 V.S.A. § 2793c is amended to read:

16 § 2793c. DESIGNATION OF GROWTH CENTERS

17 * * *

18 (b) Growth center designation application assistance.

19 (1) ~~By October 1, 2006, the chair of the land use panel of the natural~~
20 ~~resources board~~ The planning director of the department of environmental
21 quality and the commissioner of housing and community affairs jointly shall

1 constitute a planning coordination group which shall develop a coordinated
2 process to:

3 * * *

4 (2) This program shall include the following:

5 * * *

6 (B) A preapplication review process that allows municipalities to
7 submit a preliminary application to the planning coordination group, consisting
8 of a draft growth center map and a brief explanation of planning and
9 implementation policies that the municipality anticipates enacting in order to
10 guide development inside the growth center and maintain the rural character of
11 the surrounding area, to the extent that it exists. ~~Department and land use~~
12 ~~panel staff~~ Staff of the department of housing and community affairs and the
13 district coordinator of the applicable district commission under chapter 151 of
14 Title 10 shall solicit comments from state agencies regarding areas of
15 respective agency interest; evaluate the preliminary application for
16 conformance with the requirements of this section; identify potential issues
17 related to the growth center boundary and implementation tools; and provide
18 recommendations for addressing those issues through adjustment to the growth
19 centers boundary, revisions to planned implementation tools, or consideration
20 of alternative implementation tools. Preliminary review shall be available to
21 municipalities while they are engaged in the municipal planning process so that

1 recommendations may be considered prior to the adoption of the municipal
2 plan and associated implementation measures.

3 * * *

4 (f) Review by ~~land use panel~~ district commission and issuance of Act 250
5 findings of fact and conclusions of law. Subsequent to growth center
6 designation by the state board, an applicant municipality may submit a request
7 for findings of fact and conclusions of law under specific criteria of 10 V.S.A.
8 § 6086(a) to the ~~land use panel of the natural resources board~~ applicable
9 district commission under chapter 151 of Title 10 for consideration in
10 accordance with the following:

11 * * *

12 (2) The ~~panel~~ district commission shall notify all landowners of land
13 located within the proposed growth center, entities that would be accorded
14 party status ~~before a district commission~~ under 10 V.S.A. § 6085(c)(1)(C) and
15 (D), and all owners of land adjoining the proposed growth center of a hearing
16 on the issue. The ~~panel~~ district commission may fashion alternate and more
17 efficient means of providing adequate notice to persons potentially affected
18 under this subdivision. Persons notified may appear at the hearing and be
19 heard, as may any other person who has a particularized interest protected by
20 ~~10 V.S.A.~~ chapter 151 of Title 10 that may be affected by the decision.

1 (3) The ~~panel~~ district commission shall review the request in accordance
2 with and shall issue findings of fact and conclusions of law under the
3 applicable criteria of 10 V.S.A. § 6086(a) which are deemed to have been
4 satisfied by the applicant's submissions during the formal designation process,
5 any additional submissions, as well as associated municipal plan policies,
6 programs, and bylaws. Findings and conclusions of law shall be effective for a
7 period of five years, unless otherwise provided. The ~~panel~~ district
8 commission, before issuing its findings and conclusions, may require specific
9 changes in the proposal, or regulatory changes by the municipality, as a
10 condition for certain findings and conclusions. These findings and conclusions
11 shall be subject to appeal to the environmental court pursuant to ~~10 V.S.A.~~
12 chapter 220 of Title 10 within 30 days of issuance.

13 (4) During the period of time in which a growth center designation
14 remains in effect, any findings and conclusions issued by the ~~panel~~ district
15 commission or any final adjudication of those findings and conclusions shall
16 be applicable to any subsequent application for approval by a the district
17 commission under chapter 151 of Title 10 and shall be binding upon the
18 district commission and the persons provided notice in ~~the land use panel~~
19 district commission proceeding under subdivision (3) of this subsection,
20 according to the rules of the ~~land use panel~~ environmental council, provided

1 the proposed development project is located within the designated growth
2 center.

3 (5) In any application to a district commission under chapter 151 of
4 Title 10 for approval of a proposed development or subdivision to be located
5 within the designated growth center, the district commission shall review
6 de novo any relevant criteria of 10 V.S.A. § 6086(a) that are not subject to
7 findings of fact and conclusions of law issued ~~by the land use panel~~ pursuant to
8 ~~this section~~ the proceeding under subdivision (3) of this subsection.

9 (6) The decision of the state board pursuant to this section shall not be
10 binding as to the criteria of 10 V.S.A. § 6086(a) in any proceeding before ~~the~~
11 ~~panel~~ or a district commission.

12 * * *

13 Sec. 46. 24 V.S.A. § 4304 is amended to read:

14 § 4304. PLANNING AND LAND USE MANUAL

15 (a) ~~The agency of commerce and community development~~ department of
16 environmental quality through its planning director shall prepare, maintain, and
17 distribute from time to time to all municipalities a manual setting forth:

18 * * *

19 (b) ~~The agency of commerce and community development~~ the department
20 of environmental quality through its planning director shall, from time to time,
21 confer with interested persons with a view toward insuring the maintenance of

1 such manual in a form most useful to those regions and municipalities making
2 use of it.

3 * * *

4 Sec. 47. 24 V.S.A. § 4461 is amended to read:

5 § 4461. DEVELOPMENT REVIEW PROCEDURES

6 (a) Meetings.

7 (1) An appropriate municipal panel shall elect its own officers and adopt
8 rules of procedure, subject to this section and other applicable state statutes,
9 and shall adopt rules of ethics with respect to conflicts of interest. As of
10 February 1, 2012, an appropriate municipal panel that has not adopted rules of
11 procedure and ethics shall comply with those rules of ethics and procedure
12 adopted by the department of environmental quality pursuant to 3 V.S.A.
13 § 2877(b)(9).

14 (2) Meetings of any appropriate municipal panel shall be held at the call
15 of the ~~chairperson~~ chair and at such times as the panel may determine. The
16 officers of the panel may administer oaths and compel the attendance of
17 witnesses and the production of material germane to any issue under review.
18 All meetings of the panel, except for deliberative and executive sessions, shall
19 be open to the public. The panel shall keep minutes of its proceedings,
20 showing the vote of each member upon each question, or, if absent or failing to
21 vote, indicating this, and shall keep records of its examinations and other

1 official actions, all of which shall be filed immediately in the office of the clerk
2 of the municipality as a public record. For the conduct of any hearing and the
3 taking of any action, a quorum shall be not less than a majority of the members
4 of the panel, and any action of the panel shall be taken by the concurrence of a
5 majority of the panel.

6 * * *

7 Sec. 48. PERMIT PROCESS WORKING GROUP; REPORT TO
8 LEGISLATURE

9 No later than two years from the date on which the department of
10 environmental quality (the department) comes into existence, the department
11 shall initiate, conduct, and complete each of the following:

12 (1) The department shall convene a permit process working group (the
13 working group). The chair of the environmental council or his or her designee
14 shall be the chair of the working group. At least the following persons or
15 organizational interests shall be members of or represented on the working
16 group:

17 (A) The department's executive director or his or her designee.

18 (B) An employee of the department with substantial experience and
19 knowledge of the permit processes of the former department of environmental
20 conservation.

1 (C) An employee of the department's division of state land use with
2 substantial knowledge and experience with respect to chapter 151 of Title 10.

3 (D) The chairs of the house committee on fish, wildlife and water
4 resources and the house and senate committees on natural resources and
5 energy, who may designate another member of their committees to participate
6 in the working group.

7 (E) The Lake Champlain regional chamber of commerce.

8 (F) The Vermont homebuilders and remodelers association.

9 (G) The Vermont association of realtors.

10 (H) Vermont businesses for social responsibility.

11 (I) Associated industries of Vermont.

12 (J) The Vermont natural resources council.

13 (K) The Conservation Law Foundation.

14 (L) The Vermont League of Cities and Towns, Inc.

15 (M) The Vermont planners association.

16 (N) The land use center at Vermont Law School.

17 (O) Smart growth Vermont.

18 (2) The working group at a minimum shall:

19 (A) Identify opportunities to merge and make identical criteria of
20 10 V.S.A. § 6086(b) and the standards and criteria of other environmental and
21 land use permit and approval processes administered by the department and

1 other agencies of state government, with a goal to improve environmental
2 protection, create procedural efficiencies, and reduce or eliminate
3 redundancies. The working group shall develop recommended statutory
4 language.

5 (B) Create a proposed program for delegating authority under chapter
6 151 of Title 10 to municipal governments with respect to developments and
7 subdivisions within designated growth centers under 24 V.S.A. § 2793c,
8 provided that the appropriate municipal panels in the municipality operate in
9 accordance with chapter 36 of Title 24 (municipal administrative procedure
10 act) and are certified by the department's planning division. The working
11 group shall develop proposed requirements for such a certification, including
12 training of panel members and rules of procedure and ethics.

13 (C) The department may divide the members of the working group
14 into subcommittees for the purpose of completing the tasks required by
15 subdivisions (A) and (B) of this subdivision (2).

16 (3) Based upon the working group process, submit draft legislation that
17 at a minimum addresses the matters described in subdivisions (2)(A) and (B)
18 of this section. This submittal shall be made to the house committee on fish,
19 wildlife and water resources and the house and senate committees on natural
20 resources and energy. The submittal also shall summarize the activities and

1 results of the working group and describe the reasons for each proposed
2 statutory revision.

3 * * * Salaries of Environmental Council * * *

4 Sec. 49. 32 V.S.A. § 1013 is added to read:

5 § 1013. ENVIRONMENTAL COUNCIL

6 The annual salary of the chair of the environmental council shall be the
7 same as fixed for each magistrate under section 1003 of this title. The annual
8 salary of each of the other members of the environmental council shall be
9 nine-tenths of the chair's salary. The annual salary of the executive director
10 of the department of environmental quality shall be fixed by the council with
11 the approval of the governor.

12 * * * Repeal of Environmental Court * * *

13 Sec. 50. REPEAL

14 4 V.S.A. chapter 27 (environmental court) is repealed.

15 * * * Technical Amendments and Statutory Revision * * *

16 Sec. 51. 10 V.S.A. § 552 is amended to read:

17 § 552. DEFINITIONS

18 As used in this chapter:

19 (1) ~~“Agency” means the agency of natural resources~~ “Department”
20 means the department of environmental quality or its duly authorized
21 representative.

1 * * *

2 (7) ~~“Secretary” means the secretary of the agency of natural resources or~~
3 ~~the secretary’s duly authorized representative.~~

4 * * *

5 Sec. 52. 10 V.S.A. § 553 is amended to read:

6 § 553. ~~AGENCY~~ DEPARTMENT

7 The agency department is designated as the air pollution control agency for
8 the state. ~~The secretary or the secretary’s duly authorized representative,~~
9 ~~within the agency, and~~ shall perform the functions vested in the agency
10 department, as specified in the following sections of this chapter.

11 Sec. 53. 10 V.S.A. § 752 is amended to read:

12 § 752. DEFINITIONS

13 For the purpose of this chapter:

14 (1) ~~“Agency” means the agency of natural resources~~ “Department”
15 means the department of environmental quality or its duly authorized
16 representative.

17 * * *

18 (9) ~~“Secretary” means the secretary of the agency of natural resources or~~
19 ~~the secretary’s duly authorized representative.~~

1 Sec. 54. STATUTORY REVISION

2 (a) The legislative council is directed to make the following statutory
3 revisions:

4 (1) In 3 V.S.A. §§ 2805 (environmental permit fund), 2806 (Barnwell
5 potential liability fund), and 2808 (agency permits):

6 (A) Revise all references to the secretary to be to the chair except
7 that, in the fifth sentence, the word “secretary’s” shall be replaced with
8 “department’s.”

9 (B) Revise all references to the agency of natural resources to be to
10 the department of environmental quality.

11 (2) In 3 V.S.A. § 2822(j) through (n) (fees), replace the terms “agency
12 of natural resources,” “agency,” and “secretary” with “department.”

13 (3) In 3 V.S.A. § 2826 (environmental notice bulletin; handbook),
14 replace the term “department of environmental conservation” with
15 “department” and replace the term “secretary” with “council.”

16 (4) In 3 V.S.A. § 2828 (project scoping process):

17 (A) Replace the terms “department of environmental conservation”
18 and “secretary” with the term “department,” except that in subsection (f), both
19 occurrences of “secretary” shall be replaced with “executive director”;

20 (B) Delete, in the second sentence of subsection (b), the phrase “and,
21 if appropriate, the district coordinator”;

1 (C) Delete, in the second sentence of subsection (c), the phrases “or
2 the district coordinator determines that” and “is required.”

3 (5) Recodify 3 V.S.A. § 2840 (wind energy generation; state lands) as
4 3 V.S.A. § 2872a.

5 (6) In 3 V.S.A. § 2873(g) and (h)(1) (department of environmental
6 conservation), replace each reference to “department of environmental
7 conservation” with “department of environmental quality.”

8 (7) In 3 V.S.A. § 2873(h)(2)(C) (department of environmental
9 conservation), replace “commissioner of environmental conservation” with
10 “executive director with the approval of the environmental council.”

11 (8) In 10 V.S.A. chapter 8 (geographic information), revise all
12 references to the secretary of the agency of natural resources to refer to the
13 executive director of the department of environmental quality.

14 (9) In 10 V.S.A. chapter 19 (scenery preservation council):

15 (A) Revise all references to the department of environmental
16 conservation to refer to the department of environmental quality.

17 (B) Revise all references to the secretary of the agency of natural
18 resources to refer to the executive director of the department of environmental
19 quality.

20 (10) In 10 V.S.A. §§ 554 through 583 (air pollution control):

1 (A) Revise all references to the secretary, the secretary of natural
2 resources, and the agency of natural resources to refer to the department of
3 environmental quality.

4 (B) Delete “and judicial review” from the catchline of 10 V.S.A.
5 § 562.

6 (11) In 10 V.S.A. § 703 (state natural resources conservation council),
7 revise the reference to the secretary of the agency of natural resources to refer
8 to the executive director of the department of environmental quality.

9 (12) In 10 V.S.A. § 753 (flood hazard areas), revise the reference to the
10 secretary of the agency of natural resources to refer to the department of
11 environmental quality.

12 (13) In 10 V.S.A. § 6001, replace all occurrences of “secretary of
13 natural resources” with “appropriate division of the department of
14 environmental quality.”

15 (14) In 10 V.S.A. § 6083a, replace all occurrences of “land use panel”
16 with “council.”

17 (15) In 10 V.S.A. §§ 6086, 6089, and 6091(d):

18 (A) Replace all occurrences of “land use panel” with “council.”

19 (B) Replace all occurrences of “environmental conservation
20 department” with “department of environmental quality.”

21 (C) Replace all occurrences of “environmental court” with “council.”

1 (16) In 10 V.S.A. §§ 8005 through 8014, 8017, and 8018:

2 (A) Revise all references to the secretary to refer to the director.

3 (B) Delete all references to the land use panel.

4 (C) Revise all references to the environmental court to refer to the
5 environmental council.

6 (D) Revise all references to an environmental judge to refer to the
7 environmental council.

8 (17) In 10 V.S.A. § 8007(c), in the third sentence, replace “its website”
9 with “the department’s website.”

10 (18) In 10 V.S.A. § 8014(c), in the first sentence, after “judicial,” insert
11 “or quasi-judicial.”

12 (19) In 10 V.S.A. § 8501, replace all occurrences of “secretary of
13 natural resources” with “departments of environmental quality, of fish and
14 wildlife, and of forests, parks and recreation.”

15 (20) In 10 V.S.A. §§ 8503, 8504(a) and (c) through (k), and 8505(b),
16 replace all occurrences of:

17 (A) “Secretary” with “department.”

18 (B) “Environmental court” with “environmental council.”

19 (C) “Environmental judge” with “environmental council.”

20 (D) “Natural resources board” with “environmental council.”

1 (21) In 30 V.S.A. § 248(a)(4)(E):

2 (A) Replace “the agency of natural resources” with “the department
3 of environmental quality and the agency of natural resources each.”

4 (B) Insert “that relate to its authority” after “subdivision (b)(5) of this
5 section.”

6 (b) In addition to subsection (a) of this section, the legislative council is
7 directed to make all additional revisions to the existing Vermont Statutes
8 Annotated necessary to effect this act in accordance with the following
9 direction:

10 (1) When applicable, the terms “environmental court,” “natural
11 resources board,” “land use panel of the natural resources board,” “land use
12 panel,” “water resources panel of the natural resources board,” “water
13 resources panel,” or “water resources board” in the Vermont Statutes
14 Annotated shall be replaced by the term “environmental council.”

15 (2) When applicable, the terms “secretary of natural resources,” “agency
16 of natural resources,” and “department of environmental conservation” and all
17 references to such secretary, agency, and department shall be replaced by the
18 term “department of environmental quality,” except that:

19 (A) If the subject matter is the rulemaking authority of such
20 secretary, agency, or department, then the replacement term shall be
21 “environmental council.”

1 (B) If the subject matter refers to the position of the secretary of
2 natural resources specifically, as opposed to referring to the secretary as a
3 proxy for the agency of natural resources, then:

4 (i) The replacement term shall be “executive director of the
5 environmental council” if the subject matter involves day-to-day
6 administration or participation on a group, board, or commission other than the
7 environmental council.

8 (ii) The replacement term shall be “environmental council” if the
9 subject matter involves providing overall direction or setting policy.

10 (C) If the subject matter clearly relates to the authority, functions, or
11 programs of either the department of fish and wildlife or of forests, parks and
12 recreation, the replacement shall not be made.

13 (3) When applicable, the following definitions shall be inserted into
14 chapters, subchapters, or sections referring to the former agency of natural
15 resources and department of environmental conservation:

16 (A) “Council” means the environmental council created under
17 chapter 51 of Title 3.

18 (B) “Department” means the department of environmental quality
19 created under chapter 51 of Title 3 or its duly authorized representative.

1 Sec. 55. TRANSITION AND IMPLEMENTATION

2 (a) Continued jurisdiction over appeals. Notwithstanding the repeal of its
3 jurisdictional authority to hear appeals of acts or decisions of the district
4 commissions, district coordinators, and the secretary of natural resources, or
5 under chapter 117 of Title 24, the environmental court shall continue to have
6 jurisdiction to complete its consideration of any such act or appeal that is
7 pending before it as of February 1, 2011, if, with respect to such act or appeal,
8 mediation or discovery has commenced, a dispositive motion has been filed, or
9 a trial has begun.

10 (b) Existing rules. All rules adopted by the natural resources board and the
11 department of environmental conservation prior to February 1, 2011, shall be
12 deemed to be rules adopted by the environmental council and the department
13 of environmental quality and shall remain in effect until amended or repealed
14 by the environmental council.

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

1 Sec. 56. APPROPRIATIONS; POSITIONS; INITIAL APPOINTMENT OF
2 ENVIRONMENTAL COUNCIL; SUPERVISION OF
3 TRANSITION

4 (a) Effective February 1, 2011, the following positions are transferred to
5 the environmental council and department of environmental quality:

6 (1) The two environmental judges and all regular employees of the
7 environmental court.

8 (2) The chair and all regular employees of the natural resources board.

9 (3) The secretary and deputy secretary of natural resources, the
10 commissioner of environmental conservation, all regular employees of the
11 agency of natural resources' central office and administrative services
12 division, the department of environmental conservation, and the division of
13 geology and mineral resources, and any other regular employees of the agency
14 of natural resources who are not employees of the departments of fish and
15 wildlife or of forests, parks and recreation.

16 (b) Effective February 1, 2011, each of the following is transferred to the
17 environmental council and department of environmental quality:

18 (1) Except for appropriations and funds specifically of the departments
19 of fish and wildlife or of forests, parks and recreation, all appropriations and
20 funds associated with the agencies, department, entities, and employees

1 described in subdivisions (a)(1) through (3) of this section, including wages,
2 personal service expenses, and operating expenses.

3 (2) Except for property that is specifically of the departments of fish
4 and wildlife or of forests, parks and recreation, all property of the agencies,
5 departments, and entities described in subdivisions (a)(1) through (3) of this
6 section.

7 (c) Effective February 1, 2011:

8 (1) The chair and members of the environmental council shall occupy
9 the following positions transferred to that council by this act: the former chair
10 of the natural resources board and the two environmental judges.

11 (2) The executive director of the environmental council shall occupy
12 the position of the former commissioner of environmental conservation.

13 (3) The department of environmental quality's director of state land use
14 pursuant to 3 V.S.A. § 2802(b) shall occupy the position of the former chief
15 coordinator of the natural resources board.

16 (4) The department of environmental quality's director of planning
17 pursuant to 3 V.S.A. § 2877 shall occupy the position of the former director of
18 policy, regulatory, and legislative affairs of the agency of natural resources.

19 (5) The counsel appointed pursuant to 3 V.S.A. § 2287(b) shall occupy
20 the position of the former general counsel of the natural resources board.

1 (6) The department's chief environmental counsel pursuant to 3 V.S.A.
2 § 2281 shall occupy the position of the former general counsel to the agency
3 of natural resources.

4 (7) The positions of natural resources board associate general counsel
5 for enforcement and permit compliance officer are transferred to the
6 department of environmental quality's division of environmental enforcement,
7 the position of one other natural resources board associate general counsel is
8 transferred to the department's office of environmental counsel, and the
9 position of a third natural resources board associate general counsel is
10 transferred to the environmental council to be a staffperson appointed under
11 3 V.S.A. 2287(b).

12 (8) The council's two staff scientists appointed pursuant to 3 V.S.A.
13 § 2287(b) shall occupy the two positions of environmental court law clerk,
14 and the positions shall be reclassified accordingly.

15 (9) One natural resources board administrative secretary and the
16 environmental court's court manager and case manager are transferred to the
17 environmental council to support its quasi-judicial and other proceedings.

18 (10) The position of private secretary to the secretary of natural
19 resources shall become the position of secretary to the chair of the
20 environmental council.

1 (11) The position of private secretary to the commissioner of
2 environmental conservation shall become the position of secretary to the
3 department's executive director.

4 (12) One natural resources board administrative secretary position is
5 transferred to the department's division of environmental enforcement to be
6 an environmental enforcement officer, and the position shall be reclassified
7 accordingly. This position shall be in addition to all environmental
8 enforcement officer positions in existence as of October 1, 2009.

9 (13) One position from the department of economic, housing and
10 community development is transferred to the department of environmental
11 quality's planning division to coordinate the division's outreach to and work
12 with other state agencies and regional and local entities and to assist in the
13 division's provision of training and technical assistance to municipal
14 commissions and boards.

15 (14) The positions of deputy secretary of natural resources, executive
16 assistant to the secretary of natural resources, commissioner of fish and
17 wildlife, and commissioner of forests, parks and recreation are eliminated.

18 (d) As of July 1, 2011, any remaining positions of the former
19 environmental court and natural resources board not included in subsection (c)
20 of this section are eliminated. The environmental council may continue those
21 positions in existence through June 30, 2011, as it may deem necessary to

1 support the completion of work by the former environmental court and natural
2 resources board under the transition for which this act provides.

3 (e) Any position that was in existence as of October 1, 2009, and described
4 in subsection (c) of this section and that is abolished or eliminated prior to
5 February 1, 2011, shall be re-created effective February 1, 2011. This
6 re-creation shall apply regardless of whether the position was vacant as of
7 October 1, 2009. The same re-creation shall apply to all environmental
8 enforcement officer positions of the department of environmental
9 conservation.

10 (f) By July 15, 2010, the governor, speaker of the house, and president pro
11 tempore of the senate shall appoint the members of the environmental
12 appointments committee created under 3 V.S.A. § 2821(b).

13 (g) No later than September 1, 2010, the environmental appointments
14 committee shall provide the governor with a list of recommended applicants
15 for appointment as the chair and members of the environmental council in
16 accordance with 3 V.S.A. § 2821(b). No later than October 1, 2010, the
17 governor shall appoint the chair and members of the environmental council
18 from the list provided by the environmental appointments committee. Each
19 such appointment shall be subject to senate confirmation during the
20 subsequent legislative session. The period between October 1, 2010, and

1 February 1, 2011, shall be added to the initial terms of the chair and the
2 council members as provided under 3 V.S.A. § 2821(b). During this period:

3 (1) The environmental council shall appoint an executive director of the
4 department of environmental quality.

5 (2) As it deems reasonably necessary to effect the transition under this
6 section, the environmental council shall have authority to reorganize,
7 reclassify, recruit, and appoint personnel for positions transferred to it and the
8 department of environmental quality under this act. This authority shall be
9 subject to subsection (c) of this section and shall continue after February 1,
10 2011.

11 (3) The environmental council shall take all actions necessary to assure
12 the delegation to the department of environmental quality of federal programs
13 previously administered by the department of environmental conservation.

14 (4) The environmental council shall have the authority to direct the
15 agency of natural resources, the department of environmental conservation,
16 and the natural resources board to take such actions as the environmental
17 council deems reasonably necessary to effect the transition under this section.
18 The environmental council shall the same authority to direct the
19 environmental court to take administrative or other nonjudicial action, but
20 only insofar as necessary to effect the transition.

1 (h) With respect to the state's office complex in Waterbury, effective
2 February 1, 2011, the environmental council shall occupy such office space as
3 it requires in the center building, the executive director shall occupy the office
4 of the former commissioner of environmental conservation in the one south
5 building, and the secretary of natural resources shall occupy the office of the
6 former commissioner of fish and wildlife in the ten south building.

7 Sec. 57. EFFECTIVE DATES

8 This act shall take effect on February 1, 2011, except that:

9 (1) Secs. 55 (transition and implementation) and 56 (appropriations,
10 positions, initial council appointment, supervision of transition) and this
11 section shall take effect on passage.

12 (2) In Sec. 4, 3 V.S.A. § 2821(b) through (f) (appointment of
13 environmental council) shall take effect on July 1, 2010, to the extent
14 necessary for implementation of Sec. 56 of this act.

15 (3) Sec. 29 (changes to Act 250 presumption statute) shall take effect
16 on February 1, 2012.

17 (4) In Sec. 30, 10 V.S.A. § 6086b(1) through (8) (permit consolidation)
18 shall take effect on February 1, 2012.